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93-39 RECREATIONAL USES OF LANDS OF THE FOREST
RESERVES CREATED FROM THE PUBLIC DOMAIN

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HEARING
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-THIRD CONGRESS

FIRST SESSION
ON
H.R. 10491
TO PROVIDE FOR THE LEASING FOR COMMERCIAL OUT-
DOOR RECREATION PURPOSES OF CERTAIN LANDS OF THE
FOREST RESERVES CREATED FROM THE PUBLIC DOMAIN,
AND FOR OTHER PURPOSES

HEARING HELD DECEMBER 13, 1973

Serial No. 93-39

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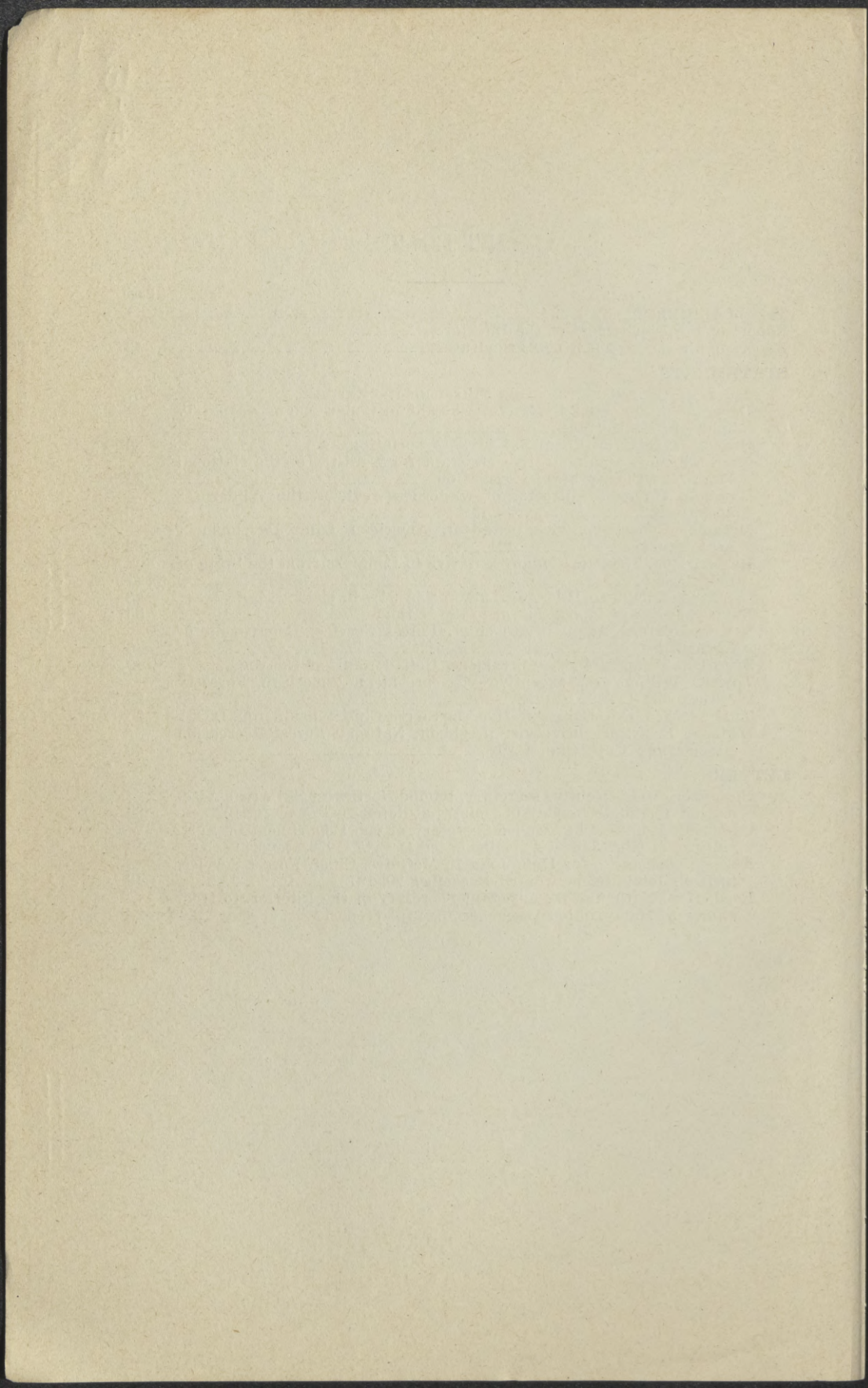
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RECREATIONAL USES OF LANDS OF THE FOREST RESERVES CREATED FROM THE PUBLIC DOMAIN

THURSDAY, DECEMBER 13, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1324, Longworth House Office Building, the Honorable John Melcher, presiding.

Mr. MELCHER. The Subcommittee on Public Lands will come to order.

We are meeting this morning to open hearings on H.R. 10491 by Harold Johnson from California, a ranking majority member of this subcommittee who, unfortunately, has had an accident involving some fractures of his wrist and will not be able to be with us this morning.

[Copy of H.R. 10491 follows:]

[H.R. 10491, 93d Cong., first sess.]

A BILL to provide for the leasing for commercial outdoor recreation purposes of certain lands of the forest reserves created from the public domain, 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 Congress hereby finds that the development and maintenance of commercial outdoor recreation facilities and related services upon the forest reserves created from the public domain is desirable to meet the increasing demand for public recreation; and that the enhancement of these opportunities for recreation and the preservation of the quality of the environment require prudent development and substantial amounts of private capital investment. It is the policy of Congress that private development and management of such facilities and services shall be encouraged and authorized under leases that provide certainty of tenure and security of investment, and contain provisions for payment by the public land user to the United States that reflect a fair rental commensurate with the primary objective of maintaining a high quality of facilities and services at reasonable prices for the public rather than maximizing receipts to the United States.

AUTHORITY TO GRANT LEASES

SEC. 2. The Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized to lease, in accordance with the provisions of this Act, to any person, association, partnership, or corporation (hereinafter referred to as the "lessee") portions of the forest reserves which, in his discretion, are needed to provide recreational facilities and services for the use and enjoyment of the public.

LEASEHOLD, ANNUAL RENTALS, TERM OF LEASES, DEVELOPMENT, MANAGEMENT, AND OPERATION

SEC. 3. (a) The amount of land to be leased shall, in each case, be determined by the Secretary, taking into consideration the present and future public needs for all the multiple uses of the national forests, including the demand for recreation facilities and related services, the need to protect the environment of the area leased and vicinity, the health and safety of the public, the need to develop an economically viable area to best meet the policies and objectives of this Act, and such other factors as the Secretary considers to be in the best public interest.

(b) The lessee shall pay to the United States an annual rental for Government-owned lands leased to the lessee, such rental to be based on percentages of the lessee's gross receipts for each calendar year (or fiscal year of any other twelve-month period).

(c) No lease given under the authority of this Act shall be for term of more than fifty years. The Secretary may terminate any lease authorized by this Act if such lands and facilities shall cease to be used for recreation or related purposes, or if in his judgment, in the public interest, the lands are needed for another use: *Provided*, That if any lease is terminated by the Secretary for another use, then in that event just compensation shall be awarded to the lessee.

(d) The general development, management, and operation of the facilities and services covered by the lease shall be the responsibility of the lessee, subject to national forest regulations and planning guidelines to be fixed by the Secretary consistent with the policies and objectives of this Act.

OPERATIONS BY A SINGLE LESSEE; PREFERENTIAL RIGHTS FOR NEW OR ADDITIONAL SERVICES

SEC. 4 (a) The Secretary may authorize the operation of some or all of the accommodations, facilities, and services for the public in each area, or portion thereof, or in more than one area, by one responsible lessee, and he may grant to such lessee a preferential right to provide such new or additional facilities or services as the Secretary may consider necessary or desirable for the use and convenience of the public. The manner in which the preferential right shall be exercised shall be stated in the lease.

(b) Within any area covered by a lease issued under this Act, the Secretary may permit other uses not inconsistent with the purposes of the lease.

RENEWAL PREFERENCE FOR SATISFACTORY PERFORMANCE; EXTENSIONS; NEW LEASES

SEC. 5. The Secretary shall encourage continuity of operation of needed facilities and services by giving preference in the negotiation of new leases to the lessees within the area involved who have performed their obligations satisfactorily. To this end, the Secretary, in his discretion, may grant a new lease to the same lessee upon its termination or surrender of the lease before its expiration.

LESSEE'S RIGHT OF TITLE; LIMITATIONS; COMPENSATION FOR TAKING; DETERMINATION OF JUST COMPENSATION

SEC. 6. A lessee who has heretofore acquired, or constructed, or who hereafter acquires or constructs, pursuant to a lease or permit any structure, fixture, or improvement shall own the legal and equitable title thereto, which may be assigned, transferred, encumbered, or relinquished. The said title shall not be extinguished by the expiration or other termination of the lease and shall not be taken for public use without just compensation: *Provided*, That the use or enjoyment of any such structure, fixture, or improvement shall be permissible only so long as the owner thereof has a lease of the land on which it is located.

RECORDKEEPING; AUDIT AND EXAMINATION; ACCESS TO BOOKS AND RECORDS

SEC. 7. Each lessee and sublessee shall keep such records as the lease may prescribe to enable the Secretary to determine that all terms of the lease have

been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the lessee and sublessee pertinent to the lease and all the terms and conditions thereof.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five calendar years after the close of the business year of each lessee or sublessee have access to and the right to examine any pertinent books, documents, papers, and records of the lessee or sublessee related to the negotiated lease or leases involved.

APPLICABILITY TO EXISTING PERMIT HOLDERS

SEC. 8. The present holder of a special use permit or permits for commercial recreation purposes under the provisions of the Act of March 4, 1915 (ch. 144, 38 Stat. 1101, as amended July 28, 1956; ch. 771, 70 Stat. 708); the Act of June 4, 1897 (ch. 2, 30 Stat. 34); or any other Act authorizing such special use permits, may apply to the Secretary for cancellation thereof and issuance of a lease under this Act.

APPLICABILITY TO OTHER LANDS IN THE NATIONAL FOREST SYSTEM

SEC. 9. The provisions of this Act with respect to forest reserves created from the public domain shall be applicable to all other parts of the national forest system.

Mr. MELCHER. We do have Mr. Dwight Barnes, the administrative assistant to Congressman Johnson present and he will read Biz's statement. Mr. Barnes?

STATEMENT OF DWIGHT BARNES, ADMINISTRATIVE ASSISTANT TO CONGRESSMAN HAROLD T. JOHNSON, SECOND CONGRES- SIONAL DISTRICT OF THE STATE OF CALIFORNIA

Mr. BARNES. Yes, sir.

Mr. MELCHER. We are very disappointed about Biz's accident and we hope that the doctor finds him progressing well this morning.

Mr. BARNES. Yes, sir. He is disappointed in not being able to be here and he had been very appreciative for your setting the hearing and also appreciates very much that we could have me read the statement. And without delay, I will proceed.

Mr. Chairman and members of the subcommittee:

Thank you very much for the opportunity to appear before you today in support of my bill, H.R. 10491, "To provide for the leasing for commercial outdoor recreational purposes of certain lands of the forest reserves created from the public domain, and for other purposes."

Opportunity for outdoor recreation has become an increasingly important requirement in maintaining the quality of life for our largely urban society. The Congress has recognized the importance of outdoor recreation in our society in its policy declaration in Public Law 88-29, May 28, 1963, reading, in part, as follows:

* * * Congress finds and declares it is desirable that all American people of present and future generations be assured adequate outdoor recreation resources.* * *

One of the most important recreational resources available to the American people is our national forests. Recreational visits to the national forests have increased during the past decade from 112,762,200 in 1962, to 183,958,300 in 1972.

In order to make these magnificent outdoor recreational resources more adequately available to the public new authority is needed by the Secretary of Agriculture to involve private enterprise. This is not new.

In 1960 the Outdoor Recreation Resources Review Commission said:

The most important single force in outdoor recreation is private endeavor—individual initiative, voluntary groups of many kinds and commercial enterprise.

The Congress promulgated the following outdoor recreation policy in Public Law 88-29, May 28, 1963:

* * * It is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop and utilize Government resources for the benefit and enjoyment of the American people.

The Public Land Law Commission, likewise, highlighted the importance of encouraging the participation of private enterprise in outdoor recreation.

The legislation which I have introduced is a significant new step in implementing these congressional mandates.

This legislation grants needed new authorities to the Secretary of Agriculture to expand the role of private enterprise in providing commercial recreational accommodations, facilities, and services in the national forests. Of primary importance are the provisions of my bill which would remove the acreage limitation of 80 acres which the Secretary may now authorize for any one commercial operation.

This new authority is needed particularly for most skiing areas where 80 acres is an insufficient amount of land to develop and operate an adequate ski facility. The remaining lands needed for such facilities are now made available by the national forest lands for many ski areas limited to year-to-year permits, it is extremely difficult for private enterprise to secure needed capital loans.

This legislation also would authorize leases for commercial recreational facilities up to 50 years. At the present time the authority of the Secretary is limited to issuing special use permits. Moreover, the term of such permits may not exceed 30 years, which is frequently insufficient time to amortize large capital investments.

There are witnesses here today from the U.S. Forest Service, the National Ski Areas Association, Inc., the United Bank of Denver, and the National Forest Recreation Association, to testify with respect to the need for, and the details of, this legislation. In addition the witness for the Bank of America was unable to attend, and I request that his testimony, when it arrives, be included in the hearing transcript.

I appreciate very much the chairman setting this hearing and I hope that we may be able to proceed expeditiously in granting these new authorities to the Secretary of Agriculture.

Thank you very much, Mr. Chairman, on behalf of the boss.

Mr. MELCHER. Thank you very much, Mr. Barnes. On behalf of the boss, I want you to relay on behalf of us to your boss our thanks for a very succinct and helpful opening statement for these hearings. I think it sets it in the right tone.

The gentleman from New Mexico?

Mr. RUNNELS. No, thanks.

Mr. BARNES. Thank you, sir.

Mr. MELCHER. Thank you very much.

Congressman John Rarick, the Subcommittee Chairman of Forestry of the House Agriculture Committee, will be testifying before this subcommittee this morning. However, he cannot be with us at the present because he is also testifying before the Government Operations Committee and whenever he is available, we will accept his testimony and we will make his written statement a part of the record at this point if there is no objection.

Hearing no objection, so ordered.

[The complete statement of Congressman Rarick follows:]

STATEMENT OF HON. JOHN R. RARICK, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF LOUISIANA

Mr. Chairman, members of the subcommittee, I appreciate being allowed to comment briefly on the provisions of H.R. 10491, legislation providing "for the leasing for commercial outdoor recreation purposes of certain lands of the forest reserves created from the public domain, and for other purposes."

I fully endorse the general thrust of this legislation and certainly recognize the importance of providing outdoor recreation facilities for our people. I do however, have three reservations about the legislation as it is presently drawn.

First, the bill contains no provisions to insure that, should there be merchantable timber on the leased land, this timber will be available for harvest. I believe that the bill should be amended so as to provide that merchantable timber on the leased lands will be harvested in keeping with the existing policies of the U.S. Forest Service. I have provided you and the other members of the subcommittee with proposed language to accomplish this purpose. You will note that my proposed amendment contains provisions which direct that funds obtained from timber harvest on these leased lands will accrue to the federal treasury.

Secondly, there are no provisions in the legislation as it is written which would insure that access roads to other lands subject to timber harvest can be constructed through the leased lands. I have provided you with suggested language amending the bill to provide that these access roads can and will be constructed when necessary. You will note that the lessee will not be required of course to bear the cost of this access road construction.

I would point out that the two amendments which I have suggested are in keeping with the multiple use concept that governs the administration of our public lands. We in the Congress must make every effort necessary to insure that our people's forest and rangeland environment is protected and that they have adequate recreational facilities while also insuring a maximum production of timber from our forest lands to meet the growing needs of the American people.

Finally, I am concerned over the provisions of section 9 of this bill which would make the legislation applicable to all lands in the national forest system. I recognize that the interior committee has jurisdiction over public lands west of the Mississippi. As you know, I am sure however, the Forests Subcommittee of the Agriculture Committee has general jurisdiction over the Forest Service and exclusive jurisdiction over the eastern lands.

As you know, the Forests Subcommittee, on which I serve as well as Chairman Melcher, has recently completed hearings on comprehensive forestry legislation.

I would recommend, Mr. Chairman, that this section of the legislation be deleted so that further study can be undertaken as to the effect of this type of measure on the eastern forest lands.

I sincerely appreciate having the opportunity to present this statement and will be happy to answer any questions you might have.

Mr. MELCHER. Our next witness will be Mr. Rexford A. Resler, Department of Agriculture, Associate Chief of the Forest Service.

Mr. Resler, the subcommittee welcomes you and we are delighted to have your testimony before us this morning.

STATEMENT OF REXFORD A. RESLER, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY MELVIN LOVERIDGE, DIVISION OF RECREATION

Mr. RESLER. Thank you, Mr. Chairman. I would like to introduce the gentleman with me, Mr. Melvin Loveridge of our division of recreation, who handles the special use permit activities of the national forests.

We thank you for this opportunity to participate in your consideration of H.R. 10491, a bill pertaining to the leasing of national forest lands for commercial outdoor recreation purposes.

H.R. 10491 would supplement authorities available to the Forest Service of this Department relating to maintenance and development of commercial recreation facilities on the national forests. Under the act of March 4, 1915, the Secretary of Agriculture is authorized to issue permits for use and occupancy of suitable areas of land within the national forests for the purpose of constructing hotels, resorts, or other recreation facilities. Permits may cover areas of land not exceeding 80 acres and periods of not more than 30 years. Also, the act of June 4, 1897, authorizes the Secretary of Agriculture to regulate occupancy and use of the national forests.

While not repealing existing law, H.R. 10491 would declare that such facilities and services should be encouraged and authorized under leases that provide certainty of tenure and security of investment. Payments to the United States would reflect a fair rental commensurate with a primary objective of maintaining high quality at reasonable prices to the public rather than maximizing receipts to the United States. The Secretary of Agriculture would be authorized to lease national forest areas which, in his discretion, are needed to provide recreational facilities and services for use and enjoyment of the public.

The policies and practices of the Forest Service relating to commercially operated recreation facilities on the national forests are the product of more than a half century of field testing and experience. Generally, we have found that existing law is adequate to meet national forest recreation objectives, and encourage private investors to offer public services and facilities on national forest lands. However, H.R. 10491 would modernize existing authority, and provide more clarity and stability in the management and operation of commercial recreation facilities.

For example, many commercial outdoor recreation developments, particularly winter sports areas, involve areas exceeding the present general permit limit of 80 acres. The "overflow" acreage is now handled by the Forest Service through supplemental terminable permits issued under the 1897 act. H.R. 10491 would allow these kinds of activities to be covered under one integrated permit. Also, H.R. 10491 would allow offering of a longer permit term, and thus provide a better base for the financing needed to operate and maintain high quality facilities.

We have suggested a number of amendments to H.R. 10491, to assure that lease arrangements would be in accord with public concerns beyond those relating to commercial recreation. These amendments are explained in detail in our legislative report. In part they

deal with the nature of the basic policy statement, the basis for annual rental rates, and the measures of compensation for any taking of leaseholds or property of the lessees.

With the amendments we suggest, we believe H.R. 10491 can enhance the partnership between the Forest Service and the private sector in providing needed recreational facilities on the national forests.

This completes my prepared statement. I will be glad to try to answer any questions you may have.

I would like you to know that we have had the report basically cleared. It is not signed yet but we expect it to be signed momentarily, within the next day or so.¹

Mr. MELCHER. And who is going to sign it, Mr. Resler?

Mr. RESLER. It has been discussed with OMB and it is going through the process of departmental clearance now for the Department of Agriculture.

Mr. MELCHER. You are waiting for somebody in the Department of Agriculture to sign it?

Mr. RESLER. Yes, sir.

Mr. MELCHER. Why are you waiting?

Mr. RESLER. Because it has just not cleared, and they have not had the chance to complete clearance. We anticipate no problem.

Mr. MELCHER. Do you have anything, any requirement within the Department to wait on the OMB to sign something before you come up here to testify?

Mr. RESLER. In the Department, the clearance process requires the clearance by both the Department and OMB on legislative initiative, as you know.

Mr. MELCHER. Under what—as I know? I do not know. Under what provisions of law?

Mr. RESLER. Well, I am not sure that I can answer the specific provision of law, but it certainly is policy because OMB does—

Mr. MELCHER. Do you have anybody with you that knows the provision of law that applies?

Mr. RESLER. No, sir. I could provide that information to you.

[The information follows:]

The requirements for review of legislation by the Office of Management and Budget are set forth in Office of Management and Budget Circular No. A-19 dated July 31, 1972. The bases for the circular are contained in various provisions of the constitution, statutes, and reorganization plans, and in Executive orders. The most recent of these are Reorganization Plan No. 2 of 1970 (84 Stat. 2085) and Executive Order No. 11541 of July 1, 1970.

Mr. MELCHER. As long as you brought the question of law up, and there possibly being such a law, I think this subcommittee is entitled to be acquainted with whatever law you are referring to.

Mr. RESLER. What I intended to convey was the fact that the Office of Management and Budget serves the function of coordinating actions of the various departments in their legislative reporting and I intended to convey that we have been in discussions with the Office of Management and Budget. Our proposals, basically, are accepted by them, and the Department should clear very quickly this report.

¹See report on p. 16.

Mr. MELCHER. Well, I think that is just a procedure that the Department wants to follow.

Mr. RESLER. Yes.

Mr. MELCHER. There is no money involved here, is there?

Mr. RESLER. No, sir; but it is a procedure that universally is applied to all legislative reports.

Mr. MELCHER. Do you not think that it delays Congress a lot of times?

Mr. RESLER. Perhaps it does at times, sir. But, we have—

Mr. MELCHER. It is delaying us now, is it not? It is really delaying us now. You do not have your report with you.

Mr. RESLER. We have a draft of the report that we think that will be cleared, and it is provided hopefully for your convenience. But, as I have indicated, I cannot give you absolute assurance that it will be signed. I can merely give you the understanding that based on our contacts, that it is acceptable.

Mr. MELCHER. Well, I think the whole procedure is ridiculous, if you cannot supply this committee and help along this committee on the process of legislation by a report from the Department on a particular piece of legislation. I think it is obvious that many times actions by committees are delayed on waiting for a report, and it is proving to be a poor policy. And I think that it is only in some instances when the delay caused by the Office of Management and Budget should be tolerated by the executive agencies. You look like you are subservient to them and, in fact, perhaps you are. Perhaps the entire Department of Agriculture and the high Cabinet posts, the Secretary, is subservient to whoever happens to be currently in charge of the Office of Management and Budget. I think that is deplorable and I am not blaming you specifically for it. But, I take this opportunity to point out in a public hearing and on the record that this type of delay, and this type of tomfoolery with the Office of Management and Budget on a piece of legislation that is entirely under the jurisdiction of Agriculture, and as I read the bill, it would involve no money and there is no logical reason to delay the Department's report awaiting somebody's pleasure down at the Office of Management and Budget.

But, to get on with the substance of this bill, I have just quickly followed your testimony, Mr. Resler. And does the Department—perhaps I have missed it—but have you addressed yourself to how many years there should be or a lease involved here?

Mr. RESLER. I think it would vary considerably, Mr. Chairman.

Mr. MELCHER. You would recommend a varying amount, a varying number of years?

Mr. RESLER. We are recommending that it be discretionary based on the type of investment that is required.

Mr. MELCHER. Well, on the amount of the investment?

On the logic that you have quite a few millions of dollars involved, that lease would have to extend over a period to attract that kind of investment, is that it?

Mr. RESLER. This would be a factor, certainly, an important factor. Another would be the kind of public service that is anticipated and the length of need for that kind of service, all of which would be

included in the prospectus and made a specific part of the leasing or permit arrangement.

Mr. MELCHER. Would you want up to 30 years?

Mr. RESLER. We have up to 30 years now.

Mr. MELCHER. You do have up to 30 years?

Mr. RESLER. Yes.

Mr. MELCHER. Do you use it very often?

Mr. RESLER. Quite frequently I would say, particularly in those areas that require heavy capital investment.

Mr. MELCHER. Would you recommend a type of review, and I have to confess that I am not familiar with your policies here, do you have a type of ongoing review or periodic review of such leases, or is this just a continuous affair?

Mr. RESLER. We have a periodic updating in a number of the permits, but there is generally a fixed term but with an opportunity to review it frequently.

Mr. MELCHER. Let me take one example that I am familiar with. Red Lodge in my district, a ski operation there. I would anticipate that this is probably the case, that the Forest Service people are in constant contact with the operators of this ski lift and the ski complex and that this is a constant review to see that their practices in no way violate the terms of the lease or endanger any part, or contemplate or are permitting damage to the forest areas. Is that a fair conjecture on my part?

Mr. RESLER. I would not say constant, but it is an ongoing part of the administration of special use permit activity or, in this case, it would be a leasing activity. Our people would inspect the area to see that the permit terms are being complied with. It is a periodic type of review. This is not a review of the conditions of the permit, you understand, but the actual operation of that permit.

Mr. MELCHER. Yes. I should have stated my conjecture, the actual operation of it, not the condition of the permit itself.

Mr. RESLER. Yes.

Mr. MELCHER. But, of course, if you found anything wrong, you would cancel the permit, is that the way it works?

Mr. RESLER. No, sir. That option in dire cases is available, but it is not used lightly.

Mr. MELCHER. Well, I understand that. I am certain. But the ability to cancel is there?

Mr. RESLER. Yes. The ability is there. It is written into the lease.

Mr. MELCHER. That is a club? That is a club?

Mr. RESLER. Yes.

Mr. MELCHER. Well, thank you very much, Mr. Resler, for your testimony. As always, the Forest Service gives this committee very excellent testimony and you have carried out that tradition.

Mr. RESLER. Thank you.

Mr. MELCHER. And I want to compliment you also in that you make it short and that helps, too. We are not through with you. The gentlemen on my left will probably have some questions to ask and probably counsel here, but I will say that you have carried out the tradition of giving from the Forest Service Division to this committee very direct

testimony, and comprehensive and without being too long. And my pointing to the lack of the departmental report is not a personal dig at you or at the Forest Service, but I hope that we do this often enough, and that enough committees do it so that we will change this policy of letting the Office of Management and Budget sort of supersede the flow of the authority on the flow of legislation in the Congress. I think it is entirely out of hand and I do not condone it. I condemn it. And one of the means of dramatizing that and making the point clear, is a continual barrage at the time we have these public hearings against this proposition. And I hope you convey it back to your Chief, and that he, in turn, conveys it to Secretary Butz, and Secretary Butz conveys it to the President and the President, in turn, straightens out this messy deal.

Mr. RESLER. Mr. Chairman, if I might comment very briefly, I would not want to shift the responsibility totally to the Office of Management and Budget or all of the blame. I do not consider it to be so. I can understand your concern but I think it should be recognized that while the legislation deals exclusively with the national forests, it is a fact there are strong relationships within the other departments in which there are precedent-setting relationships that do need to be coordinated. I apologize for us not being able to provide you a signed report. This certainly is our objective and we will try to improve on that in the future.

Mr. MELCHER. What other precedents?

Mr. RESLER. Well, I am thinking of the relationship between the special use permit, or rather the concessionaire types of operations in the national forests as it relates to other agencies' lands, such as national parks and the Corps of Engineers. There is a coordinating function there that OMB serves.

Mr. MELCHER. Well, we have the Secretary of the Interior's letter or the Assistant Secretary of the Interior, Nat Reed's letter, to the extent that it has been referred to Agriculture.

Mr. RESLER. Yes.

Mr. MELCHER. So apparently you have cleared through that group, in time for this hearing. But, perhaps there are other agencies, other than those involved with it here.

The gentleman from New Mexico?

Mr. RUNNELS. Thank you, Mr. Chairman.

First, if I understand your statement, you are in favor of having a flexible lease arrangement of more than 80 acres; is that correct?

Mr. RESLER. Yes, sir. There are times when it would be desirable to be able to expand it.

Mr. RUNNELS. If someone wants to lease forest land, is it put out for bid on a first-come, first-serve, basis? What do you do if there is more than one person at a time that is interested in the acreage?

Mr. RESLER. Normally, this kind of concession operation is handled by issuing a prospectus and notifying all, not only of the opportunity there, but of the specific requirements that we would have. In other words, in terms of the kinds of facilities that should be provided. In some cases, those accommodations may go over our minimum standard in the prospectus, but that is the objective, to handle it on a com-

petitive bid basis. And one of our recommended changes that you will see later on, will advocate that as a policy direction.

Mr. RUNNELS. Well, then, until we see the legislative report, we are sort of shooting in the dark right now.

Mr. RESLER. Yes.

Mr. RUNNELS. Let me ask you another question.

Now, that you have, at the present time, extended some leases up to 30 years, are most of them 30-year leases or are these leases less than 30 years?

Mr. RESLER. I would say the average would be less than 30 years, Mr. Runnels. But again the 30-year term is generally applied on winter sport complexes that require heavy capital investment.

Mr. RUNNELS. Why are they less than 30 years now? What governs whether it is a 10, 20, 15, or 30-year lease? Is it just the amount of investment?

Mr. RESLER. Again, I think it is the size of the facilities and the kind of service being provided.

Mr. RUNNELS. Why does the size have anything to do with it?

Mr. RESLER. Well, you see, we have a large number of fairly small resort facilities, stores, boat dock facilities, and things of this type, that would fall under the purview of this proposed legislation. Under those circumstances, we would quite frequently use 10 or 15 years as a term permit, which would allow us, both us and the permittee at that time, to review the circumstances, possibly to rewrite the permit and sometimes terminate the permit if there is substantial change in the kinds of public services needed, and reoffer on a prospectus basis again through the competitive process. So, it has been used as a means both for ourselves, and the permittees to have a periodic updating of the permit. But, I think the general continuity and tenure of permittees has been very solid. The bulk of the turnover has been due to initiative of the permittee. In other words, selling the facilities and then we quite frequently, most of the time, concur in that exchange.

Mr. RUNNELS. Under a 30-year lease, if we go from 30 to 50 years, is there any stretch of imagination that a prudent business person would take 50 years to write off his improvements under the IRS Code? Do you think that he would use what is commonly business practice today? He would not wait 50 years to write that investment off, would he?

Mr. RESLER. I would think he would have some arrangements for paying off or amortizing the investment prior to that time.

Mr. RUNNELS. So really and truly the magnitude of money invested for a long-range writeoff deal would not hold water, would it?

Mr. RESLER. Well, I think there is one other feature here that we might mention. Mr. Loveridge, would you comment on the requirements of different financing firms?

Mr. LOVERIDGE. Yes, sir; 30 years is often a reasonable long-term loan.

Mr. RUNNELS. Yes, sir.

Mr. LOVERIDGE. Under the regulations of the banking laws, when leasehold interests are involved, the loans may not be as long as the lease. A commercial bank, a national bank, must have a lease that

extends 10 years beyond the maturity of the loan. Therefore, if we have a 30-year permit, the maximum period of time that a national bank could loan money would be 20 years. Savings and loan associations have a 15-year length beyond the maturity of the loan, and so on a 30-year permit that means a 15-year loan commitment. The combination of those regulations leads us to support a 50-year maximum time limit, because this would then allow 30-year loans on leased lands, if a lending institution, for other reasons, felt that it was proper to lend the money.

Mr. RUNNELS. I thank you very much and in the essence of time, I am glad that this got into the record so that somebody will understand why they are asking for more than 30 years.

Now, I am going to turn it around. With respect to the money that the Forest Service receives, does the State where the land is involved, receive any portion of that money, whatsoever?

Mr. RESLER. Yes, sir. The receipts go into the total national forest receipts, and then 25 percent of that is allocated back to the States in which national forests are located.

Mr. RUNNELS. Does that include both the bonus rentals and all income that the Forest Service receives? The State receives 25 percent?

Mr. RESLER. Yes, that is correct.

Mr. RUNNELS. Thank you, Mr. Chairman, that is all of the questions that I have.

Mr. MELCHER. The gentleman from Guam?

Mr. WON PAT. I do not have any questions. Mr. Chairman, at this time. I think I just came in late and I am not fully aware of what has transpired.

Mr. RUNNELS. Mr. Chairman, may I insert one other question?

Mr. MELCHER. Certainly.

Mr. RUNNELS. Now, that 25 percent that goes to the States, does that apply to all of the States, or all but one of the States? Does not the State of Alaska get 90 cents out of that dollar collected by the Agriculture Department and all other States only get 25 percent.

Mr. RESLER. I am not familiar with that distinction.

Mr. RUNNELS. Would you check and furnish for the record whether or not there are any leased facilities in the State of Alaska and whether or not they, too, only get the 25 percent like all of the rest of the States?

Mr. RESLER. We will be glad to.

Mr. RUNNELS. Is it only on mineral leasing? For the record, would you furnish it, because I know they are getting 90 cents in Alaska out of all of their mineral leases, and I just hate to see this discrimination among States.

Mr. RESLER. We will be very pleased to do so.

Mr. RUNNELS. Thank you.

[The information follows:]

Twenty-five percent of national forest receipts are returned to the States in which the forests are located. (16 U.S.C. 500).

The exception raised in this hearing pertains to the distribution of receipts from the leasing of nonmetallic minerals as provided in the act of February 25, 1920 (41 Stat. 437, 30 U.S.C. 191). This act applied to Federal lands with the exception of lands acquired under the Weeks Law (36 Stat. 961), national parks, and military and naval reserved lands.

The act of February 25, 1920 in section 35 provides that receipts from leasing of nonmetallic minerals be dispersed with 10 percent to the Treasury of the United States, 52½ percent paid into and reserved, and appropriated as part of the reclamation fund and 37½ percent paid to States. This act was subsequently amended by the act of July 10, 1957 (71 Stat. 282) to provide that the 52½ percent also be paid to the State in the case of Alaska. This act also amended the act of October 20, 1914, (38 Stat. 744) pertaining to the leasing of coal lands to provide for a 90-percent return to Alaska.

Mr. MELCHER. Mr. Resler, staff has provided me with a copy of what is the proposed departmental report. On page 3 of the proposal, No. 3, which follows the letter which is also No. 1 and 2, in the second group in my copies here provided by the staff, and on page 3, you have recommended amendments and specific comments. Since this is not cleared, the report is not cleared, but you anticipate that it will be cleared, I think it would be very helpful and perhaps necessary for the completeness of this record for you to explain what you mean by these proposed amendments. I think the subcommittee and the full committee will want to give very careful attention to your proposed amendments. And I think in all fairness to our record and the advantage of the members that are not present here this morning on the subcommittee and, of course, for those members of the full committee, that we should be able to present them with a complete explanation of just what you are recommending in these amendments. And I would appreciate if you would give that explanation at this point.

Mr. RESLER. All right, Mr. Chairman, I will be pleased to.

Rather than go through the report, if I may, I will just address each of the proposed changes.

On page 1, we are proposing that the term "certain lands of the Forest Service created from the public domain" be deleted and merely referred to "areas within the National Forest System." This would provide us a broader opportunity to be concerned about national forest system status rather than being concerned with the origin. In other words, there are lands acquired by exchange, and purchase, and other resources, that will be so covered. There are two references, two modifications on that particular subject.

On page 2, line 2, we are suggesting that the term "on a competitive basis" be inserted after the word "services." It would thus read, "policy of Congress that private development and management of such facilities and services on a competitive basis shall be encouraged and authorized under leases that," and we are providing an insertion of another clause, "in accordance with the provisions of this act, provide certainty of tenure and contain provisions for payment by the lessee that reflect a fair rental commensurate with the primary objective of maintaining a high quality of facilities and services at reasonable prices for the public."

We are suggesting that that insertion would give specific reference to this piece of legislation, and we are proposing also that the terms "and security of investment" be deleted. It is, we think, unnecessary, and instead of referring to the public land users of the United States, we propose using just the word "lessee."

Mr. SIGLER. Mr. Chairman?

Mr. MELCHER. Yes.

Mr. SIGLER. May I ask some questions on that?

Mr. MELCHER. Certainly.

Mr. SIGLER. Mr. Resler, you have said what you recommended, but you do not give us a very good explanation of why you recommended it. Specifically, why do you recommend that "security of investment" not be one of the factors to be considered?

Mr. RESLER. Do you want to elaborate?

Mr. BERGOFFEN. I am Gene Bergoffen in the division of legislative affairs. The term "security of investment" in an absolute sense might imply more than we think it is intended to imply.

Mr. SIGLER. Well, explain that, please?

Mr. BERGOFFEN. If it were construed that all leases should provide absolute security of investment in all cases, then in a case of a bad market situation, you might assume that we would have to subsidize an operation, so that there is security of investment.

Mr. SIGLER. Mr. Bergoffen, do you think that is a reasonable interpretation of that phrase?

Mr. BERGOFFEN. We are suggesting deletion of it, so that connotation cannot be drawn. We think there is enough supporting language in this policy statement so that that phrase is not necessary to carry it forward.

Mr. SIGLER. I want to repeat my question: Do you think it is reasonable to interpret that phrase to mean that the Government would have to subsidize the lessee in the event of a market change?

Mr. BERGOFFEN. We think it is reasonable that that phrase could affect the manner in which the leases would be administered and drawn up.

Mr. SIGLER. You did not answer my question.

Mr. BERGOFFEN. We think it is reasonable, sir, yes.

Mr. SIGLER. Well, I accept your statement that you think so. Do you think "security of investment" should be a factor in any event?

Mr. BERGOFFEN. We think it is one.

Mr. SIGLER. With your limited connotations. Let me elaborate. Do you think the lessee should have "security of investment" in the sense that if the lessee's permit is terminated, he should be compensated?

Mr. BERGOFFEN. There are other provisions in the bill which relate directly to compensation in the case of the taking of a permit, and we believe they should be part of the permit arrangement or lease arrangement.

Mr. SIGLER. Are those other provisions complete protection or are they only partial protection?

Mr. RESLER. We think very adequate, very complete protection. This is one of the reasons for—

Mr. SIGLER. Would you tell me, sir, what the protections are. If a concessionaire spends a large sum of money to put improvements on the land, and then the lease expires, let us take that case first. The improvements are still there; they still have a value, what happens and what should happen?

Mr. RESLER. Well, what would happen in essentially all cases would be that as long as there is a continuing public need, the permit would undoubtedly be extended. Under the terms of this piece of legislation, of course, the investor would be retained.

Mr. SIGLER. Extended on a competitive basis? Would you put them up for lease for bidders?

Mr. RESLER. Here, again, I would say that this would normally be handled on a negotiation basis. I would leave only the option open.

Mr. SIGLER. Is there anything in the bill that says that?

Mr. BERGOFFEN. May I respond? Yes, sir.

Mr. SIGLER. Would you cite it, please?

Mr. BERGOFFEN. This section, the situation you suggest is covered by section 5 of the bill: "If the Secretary determines that the use should continue, that the facilities should continue to be provided, the lessee would be given preference in the negotiation of a new lease, if he had satisfactorily carried out his obligations under the prior lease."

Mr. SIGLER. Where does it say that, Mr. Bergoffen?

Mr. BERGOFFEN. The section reads: "The Secretary shall encourage the continuity of operation of needed facilities and services by giving preference in the negotiation of new leases to the lessee within the areas involved, who have performed their obligation satisfactorily."

Mr. SIGLER. I think you said that applies if the Secretary decides that the lease should be continued. I do not find those words, but if that is your position, what happens if the Secretary decides the lease should not be continued?

Mr. BERGOFFEN. In that case, the lessee would have an obligation to remove the facilities.

Mr. SIGLER. He would have no compensation for them?

Mr. BERGOFFEN. No direct compensation from the Government at the expiration of the lease term.

Mr. SIGLER. Is there any requirement—well, all right. If the lessee does not remove them, what happens?

Mr. BERGOFFEN. They may be removed by the United States.

Mr. SIGLER. I am talking about substantial improvements that have value and could be used for something?

Mr. BERGOFFEN. That is correct. If it is the Government's determination that that use should not continue, then the Government would have the right to have those facilities removed regardless of their nature.

Mr. SIGLER. Well, then, if I understand you, by recommending that deletion of the phrase on page 2 beginning on line 3, the reference to "security of investment," your position is that the lessee should not have any security of investment unless the Secretary chooses to give it to him?

Mr. BERGOFFEN. I do not think that is the conclusion that should be drawn from that.

Mr. RESLER. No.

Mr. SIGLER. What kind of security of investment would you give under your recommendation?

Mr. RESLER. The security of investment ties explicitly to the term of the permit. And I think also there is another factor here and that has to do with the question of whether or not that particular type of public service, is going to be needed indefinitely. Now, if we write into legislation an assurance that once a lease is issued that it may not be terminated for any reason, including a change in the public needs, this would put severe constraints on the Secretary's discretion. But, our total purpose in supporting this legislation is to provide security of investment within the terms of the lease. And we think that the other provisions in this piece of legislation adequately cover that phrase.

Mr. SIGLER. Let me go on to another question. You recommend the deletion of the last phrase in that section on page 2. The phrase is "rather than maximizing receipts to the United States." Would you explain that in a little more detail?

Mr. RESLER. Well, I think our purpose throughout is to try to provide high quality facilities and services at reasonable prices to the public. The objective is not necessarily to maximize receipts to the United States. It is, in fact, to gain a fair return.

Mr. SIGLER. But, that is what the sentence says. It says, "the objective is to provide these services at reasonable prices for the public" and you say you agree with that. But, then it adds, "rather than maximizing receipts to the United States." Do you agree that reasonable prices for the services should be charged, but you should not charge higher than reasonable prices in order to maximize receipts?

Mr. RESLER. Precisely.

Mr. SIGLER. Well, then, what is wrong with that phrase?

Mr. RESLER. We considered it to be repetitive. There are other statutes and requirements that adequately cover the fee structure system and we did not think it necessary and are recommending it be deleted.

Mr. SIGLER. Is your objection merely that it is unnecessary because the subject is covered elsewhere? If your objection is only that it is repetitive in nature, then you do not object to the substance of it, I gather?

Mr. BERGOFFEN. I think it is also a question of interpretation of whether it tips the balance one way or the other. We want to be sure that the Government realizes proper value for the use of public land, and if this phrase were to be interpreted to diminish that proper value, then we think it would be best that it be left out, and that the criteria be the primary objective of maintaining high quality and so forth.

Mr. SIGLER. Do you think the phrase does detract from the requirements that the services be at reasonable prices?

Mr. BERGOFFEN. I think that could be a question of interpretation, and we feel that it should be left out.

Mr. SIGLER. Thank you, Mr. Chairman.

Mr. RUNNELS [presiding]. Thank you.

Since we have only received this in our hands a few moments ago, we want to thank you for appearing. We may have questions to ask later and recommendations and so forth, but we appreciate your being before the subcommittee here this morning.

Mr. RESLER. Thank you, Mr. Chairman.

(The report from the Department of Agriculture follows:)

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., December 17, 1973.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: As you asked, here is the report of the Department of Agriculture on H.R. 10491, a bill "To provide for the leasing for commercial outdoor recreation purposes of certain lands of the forest reserves created from the public domain, and for other purposes."

The Department of Agriculture would have no objection to enactment of H.R. 10491, if amended as suggested herein.

H.R. 10491 would supplement authorities available to the Forest Service of this Department relating to maintenance and development of commercial recreation facilities on the National Forests. Under present law (Act of March 4, 1915 (38 Stat. 1101, as amended, 16 U.S.C. 497)) the Secretary of Agriculture is authorized to issue permits for use and occupancy of suitable areas of land within the National Forests for the purpose of constructing hotels, resorts, or other recreation facilities. Permits may cover areas of land not exceeding 80 acres and periods of not more than 30 years. Also, the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551) authorizes the Secretary of Agriculture to regulate occupancy and use of the National Forests.

While not repealing existing law, H.R. 10491 would broaden present authority, and deal more specifically with commercial leasing of National Forest areas for recreation purposes. The bill would declare that such facilities and services should be encouraged and authorized under leases that provide certainty of tenure and security of investment. Payments to the United States would reflect a fair rental commensurate with a primary objective of maintaining high quality at reasonable prices to the public rather than maximizing receipts to the United States. The Secretary of Agriculture would be authorized to lease National Forest areas which, in his discretion, are needed to provide recreational facilities and services for use and enjoyment of the public.

There would be no specified limit on the size of the area to be leased, rental rates would be based on percentages of the lessee's gross receipts, and the term of leases could be up to fifty years. The bill also contains provisions relating to termination, operation of facilities, preferential rights for new or additional services, negotiation of renewals and new leases, compensation for taking, recordkeeping, and applicability to existing leases.

The policies and practices of the Forest Service relating to commercially operated recreation facilities on the National Forests are the product of more than a half century of field testing and experience. Generally, we have found that existing law is adequate to meet National Forest recreation objectives, and encourage private investors to offer public services and facilities on National Forest lands. However, H.R. 10491 would modernize existing authority, and provide more clarity and stability in the management and operation of commercial recreation facilities.

For example, many commercial outdoor recreation developments, particularly winter sports areas, involve areas exceeding the present general permit limit of 80 acres. The "overflow" acreage is now handled by the Forest Service through supplemental terminable permits issued under the 1897 Act. H.R. 10491 would allow these kinds of activities to be covered under one integrated permit. Also, H.R. 10491 would allow offering of a longer permit term, and thus provide a better base for the financing needed to operate and maintain high quality facilities. H.R. 10491 also contains provisions which permit the Forest Service to assure that the overall public interest would be protected throughout a lease term.

With the amendments discussed in the enclosed supplemental statement, we believe H.R. 10491 can enhance the partnership between the Forest Service and the private sector in providing needed recreational facilities on the National Forests. The enclosed supplemental statement also describes the background of commercial recreation permits and our interpretation of key provisions of H.R. 10491.

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

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

Enclosure.

USDA SUPPLEMENTAL STATEMENT ON H.R. 10491

BACKGROUND OF NATIONAL FOREST CONCESSIONER RECREATION PERMITS

The Forest Service is responsible for the development and administration of public recreation facilities within the National Forests and National Grasslands, which cover 187 million acres of public land.

These facilities are provided through: (1) special-use permits granted to concessioners; (2) agency maintenance of camp and picnic grounds; and (3) the granting of permits to State and local governments.

At the present time, the Forest Service has about 800 concessioner permits currently in force for the construction and operation of recreational facilities and services which could be covered under H.R. 10491. In addition, the Forest Service maintains about 8,500 recreation sites, and a number of these sites (approximately 300) are operated by concessioners.

The Forest Service has granted approximately 50 permits to State and local governments for the operation of picnic areas and organizational camp sites. Payments to the Federal Government from such permits are nominal.

Concessioner facilities and services include hotels, motels, trailer sites, restaurants, stores, gasoline and oil stations, boat docks, skiing improvements and wayside stands. Generally, the type of clientele using these concessions include families and individuals camping, picnicking, swimming, hunting, fishing, boating, sightseeing, and enjoying winter sports.

During 1972, the National Forests received 184 million visitor days of recreation use. Concession operations accommodated almost 11 million of these days. It is estimated that these operations yielded \$5 million of profit from \$80 million of gross sales. Concessioners' investment in improvements totalled over \$200 million and receipts to the Treasury from fees was about \$1.6 million. We estimate that about \$200 million of concessioner investment could be made in the next 10 years to meet anticipated demand for National Forest recreation opportunity.

Concessioner payments to the Federal Government are in the form of flat fees and a percentage of net sales. In most cases, fees are reviewed and adjusted at 5-year intervals. The criteria for determining fees and percentages of net sales are provided in the Forest Service Manual.

A new system of determining fees was instituted in 1968. It considers the amount of sales that are generated from the investment in structures, fixtures, and equipment needed to generate income. Starting with minimum rates that apply to all sales up to the break even point, rates progress upward as sales exceed the break even point. Rates as established give the concessioner an opportunity to realize approximately 15 percent profit on investment when sales are equal to twice those needed to break even. Such a level of profit has been calculated on national averages and would apply to a concessioner of average operating efficiency experiencing a normal season. The system neither guarantees nor limits the profit of an individual concessioner. It does, however, return a reasonable land rent to the landowner commensurate with the value of the use authorized. This method of fee determination would be consistent with that authorized by H.R. 10491.

The current Forest Service fee system provides encouragement to added investment. Increased investment results in lower rates being applied to sales until such time as the anticipated increase in sales generated by the increased investment is realized.

Twenty-five percent of concessioner contracts are presently awarded on the basis of the concessioner being the only source of the service, fifty percent are awarded on a negotiated basis, and the remaining twenty-five percent of the awards are competitive. In the future, a higher percentage of awards through competitive bidding procedures can be expected.

The Forest Service requires an annual statement of sales from each concessioner, and standard business records which can be audited at the discretion of the Forest Service.

The concessioner is subject to the approval of rates and services and inspection of quality of service. The general specifications for services and facilities to be furnished are provided by the Forest Service.

Structural improvements made to Federal lands are the property of the permittee and they may be sold on permit termination or be removed by the permittee. Many Forest Service permits have experienced a change in ownership and in nearly all cases a permit was issued to the new owner. In a few cases, improvements have been abandoned and have become the property of the United States.

Under present authorities, no extension or renewal beyond the permit term is stated or implied. However, on termination of the original permit, if the use is appropriate and is compatible with the use of other National Forest resources, a new permit is normally issued to the owner of the improvements.

RECOMMENDED AMENDMENTS AND SPECIFIC COMMENTS

Scope of coverage

The enacting clause of H.R. 10491 and the statement of policy in section I of the bill relate to the "forest reserves created from the public domain." Section 9 of the bill, however, would make the bill applicable to all other parts of the National Forest System. We see no advantage in making this distinction between the origin of National Forest lands and urge that the authority relate directly to the National Forest System as a whole. This may be accomplished by substituting the words "areas within the national forest system" for the words "certain lands of the forest reserves created from the public domain" in the enacting clause. Also we suggest that the words "within the national forest system" be substituted for the words "upon the forest reserves created from the public domain" in lines 5 and 6 on page 1 of the bill. Similarly, we suggest the words "areas within the national forest system" be substituted for the words "portions of the forest reserves" on line 15, page 2 of the bill. These amendments would make section 9 of the bill unnecessary, and we suggest it be deleted.

Section 1 and 2—Clarifying amendments

We recommend that a comma be added after the word "that" in line 3, page 2 of the bill and the phrase "in accordance with the provisions of this Act," be inserted after the comma and before the word "provide." This change will make it clear that the more specific provisions in the bill will define the standard of "certainty of tenure" set forth in section 1.

On line 2, page 2 of the bill we recommend the words "on a competitive basis" be inserted between "services" and "shall." This addition will affirm the principle that the privilege to operate commercial facilities on public lands generally be granted on a competitive basis. We have found that encouraging such competition results in a higher level of service to the using public.

We recommend the phrase "and security of investment," be deleted from lines 3 and 4, page 2 of the bill. This standard, in an absolute sense, might conflict with other requirements and standards contained in the bill.

On line 5, page 2 of the bill we recommend, for clarity and consistency, that the word "lessee" be substituted for the phrase "public land user to the United States."

On lines 8 and 9, page 2 of the bill, we recommend that a period be placed after "public" and that the remainder of the sentence be deleted. The operating criteria would then be a "primary objective of maintaining a high quality of facilities and services at reasonable prices to the public." This deletion better recognizes the total public values in the lands involved.

We further recommend the phrase "in his discretion" be added between the parenthesis and "is" on lines 12, page 2 of the bill, and that the phrase be deleted from lines 15 and 16. This change will make it clear that issuance of a lease is wholly discretionary for the Secretary.

On line 17, page 2 of the bill we suggest the word "general" be inserted before the word "public" to make it clear that services and facilities on public lands will not be provided on a limited or exclusive basis.

Annual Rentals

Subsection 3(b) would provide that rentals would be based on percentages of the lessee's gross receipts. We construe this provision as authorizing the Secretary to prescribe, in accord with present practice, rates which reflect the probable value to the lessee of the privileges granted by the lease. The value would relate to the opportunity for net profit, taking into account both gross receipts and capital invested. Additionally, we interpret the provision as not precluding a progressive increase in the percentage charged as sales increase in proportion to the lessee's investment. To make it clear that the Secretary will have the necessary flexibility to use more than one means for calculating rates, we recommend that a period be placed after "lessee" in line 8, page 3 of the bill, that the word "such" following said period be capitalized, and that the word "to" in line 9 be deleted and the word "may" be substituted therefor.

We also recommend the following sentence be added at the end of line 11, page 3 of the bill: "In all cases rentals and charges shall be in accord with Title V of the Independent Offices Appropriation Act of 1952 (65 Stat. 290, 31 U.S.C. 483a)."

This will clarify the relationship of the fee approach involved here with overall Federal fee policy as set out in the Independent Offices Appropriations Act of 1952.

Termination and Just Compensation

Subsection 3(c) of the bill would provide, in part, for termination of the lease "if such lands and facilities shall cease to be used for recreation or related purposes." We expect that under the terms of any lease, this situation would be only one of several conditions and requirements of the lease agreement. Others include compliance with applicable laws and regulations, or requirements for upkeep and maintenance of the lessee's facilities. To assure that full range of lease conditions is covered in review or lease performance, we recommend substitution of the words "for breach of its terms" in lieu of the words "if such lands and facilities shall cease to be used for recreation or related purposes" in lines 14 through 16, page 3 of the bill.

Subsection 3(c) also provides that if any lease is terminated for another use, "just compensation" would be awarded to the lessee. We recommend that this provision be qualified by adding the phrase ", unless otherwise provided in the lease," following the word "lessee" on line 19, page 3. This would permit the Secretary and the lessee to expressly treat the matter of compensation in lease in a manner agreed upon by them. Such lease agreements can provide more certainty and avoid later conflict. We believe this qualification is necessary to retain the flexibility we now have to deal with varying situations. We would then interpret the provision for "just compensation" to mean that any compensation awarded would be dependent on the terms of the lease.

Preference Rights

We would intend to grant preference rights as authorized by sections 4 and 5 of the bill only after determining that such rights will best serve overall public needs and that these needs cannot be met on a competitive basis. We believe the area within which such rights could be exercised should be defined carefully in the lease. Accordingly we suggest the following amendments:

On lines 5 and 6, page 4 of the bill delete "or in more than one area", and add "of operations as defined in the lease" after the word "area" in line 5.

On line 20, page 4, delete "involved" and substitute therefor "of operations as defined in the lease".

Lessee's Right of Title to Improvements

Section 6 of the bill would provide that lessee's title to improvements could not be taken for public use without just compensation. As we interpret this provision, a lessee would be paid for his improvements if the Federal Government acquired them after a lease expired or was terminated.

However, if a lease expired or were terminated for breach, and the Government did not choose to continue a commercial recreation facility or service on the leased land, the lessee would not be entitled to compensation for the improvements. In the latter situation, title would remain with the original owner, who could remove the improvements or recover any remaining value through sale based on future use or salvage.

To clarify the respective rights of ownership, we recommend the first sentence of section 6 be amended and supplemented to read as follows:

"Any structure, fixture, or improvement which is not owned by the United States and which is covered by a lease issued pursuant to this Act shall not be deemed to be the property of the United States. The lessee shall be deemed to the owner thereof, and may remove the property, and assign, transfer, encumber, or relinquish the title thereto."

The Committee should note that this arrangement for title to improvements differs from that generally applicable to the National Park System under Public Law 89-249. Under that Act, the lessee has basically all aspects of ownership except title to improvements. Under long-standing Forest Service practice, title to improvements generally remains with the permittee.

Mr. RUNNELS. Next on our list is Congressman John Rarick, a Congressman from Louisiana. We are sorry that we kept you waiting, John.

STATEMENT OF HON. JOHN R. RARICK, A CONGRESSMAN FROM
THE STATE OF LOUISIANA

Mr. RARICK. Good morning, Mr. Chairman, and members of the committee.

I appreciate being allowed to comment briefly on the provisions of H.R. 10491, legislation providing for the leasing for commercial outdoor recreation purposes for certain lands of the forest reserves created from the public domain and for other purposes.

I might say, I endorse the general thrust of this legislation and recognize the importance of providing outdoor recreation facilities for our people. I do, however, have several reservations about the legislation as it is presently drawn.

First, the bill contains no provisions to insure that, should there be merchantable timber on the leased land, this timber will be available for harvest. I believe that the bill should be amended so as to provide that merchantable timber on the leased lands will be harvested in keeping with the existing policies of the U.S. Forest Service. I have provided you and the other members of the subcommittee with proposed language to accomplish this purpose. You will note that my proposed amendment contains provisions which direct that funds obtained from timber harvest on these leased lands will accrue to the Federal Treasury.

Secondly, there are no provisions in the legislation as written which would insure that access roads to other lands subject to timber harvest can be constructed through the leased lands. I have also provided you with suggested language amending the bill to provide that these access roads can and will be constructed when necessary.

You will note that the lessee would not be required to bear the cost of this access road construction.

I would point out that the two amendments which I have suggested are in keeping with the multiple use concept that governs the administration of our public lands. We in the Congress must make every effort necessary to insure that our peoples' forest and rangeland environment is protected so that they have adequate recreational facilities while also insuring a maximum production of timber from our forest lands to meet the growing needs of the American people.

Finally, I am concerned over the provisions of section 9 of this bill which would make the legislation applicable to all lands in the national forest system. I recognize that the Interior Committee has jurisdiction over public lands west of the Mississippi. As you know, I am sure, the forests subcommittee of the Agriculture Committee has general jurisdiction over the Forest Service and exclusive jurisdiction over the Eastern lands.

As you know, the forests subcommittee, on which I serve as well as Chairman Melcher, has recently completed hearings on comprehensive forestry legislation.

I would recommend, Mr. Chairman, that this section of the legislation be deleted so that further study can be undertaken as to the effect of this type of measure on the eastern forest lands.

I sincerely appreciate having the opportunity to present this statement and will be happy to answer any questions you might have.

Mr. RUNNELS. Thank you, John.

Mr. WON PAT. do you have any questions?

Mr. WON PAT. I guess you are aware, of course, of the jurisdictional question, as you pointed out, and you say that the Interior Department has the areas west of the Mississippi in the Department of the Interior and east of the Mississippi the Forest Subcommittee has jurisdiction. How does that come about? What is the justification for that?

Mr. RARICK. Let me say this, some time when we have an hour or so to go over our country's history—I mean, there has been a gradual building up over hundreds of years in the past and it just did not happen overnight, I assure you.

Mr. WON PAT. I think I am aware of that, and as I say, I am not fully aware of the background of this, so I just thought that I would ask for my own information.

Mr. RARICK. There is a difference between the forests in the West and the forests in the East, as far as the large acreage, the remote population as compared with the eastern forests where there are smaller forests and a much more dense population.

The comprehensive study on which we have just completed hearings is an effort for a comprehensive inventory of our forests, range lands and related public lands, so that we will know just what we do have, and try to make some goals. The matter is so vast that the target date on completion of the final comprehensive forest study is targeted for the year 2000.

Mr. WON PAT. Well, I thank you for the information.

Now, another point I would like to ask about: The harvesting of timber in such areas where people are interested for recreational purposes, when and if it is needed. On this harvesting, why do we want to have the timber in such areas that would not otherwise be made available for harvesting for commercial purposes? Is it a policy to protect, in other words, to protect the forests and the timber resources of the country and if it is left to be harvested commercially will it not lead eventually, in other words, to the diminishing of such resources?

Mr. RARICK. As I understand your question, you are asking why should we harvest the forests?

Mr. WON PAT. Yes. In other words, on leased land for recreational purposes?

Mr. RARICK. Well, in the paper the night before last there was a news story about 13 million Americans living in substandard housing. One of our national policies has been a suitable home guaranteed to every American and we do not seem able to attain such a goal unless somewhere we come up with the needed timber. The newspaper people even talk of shortage of newsprint. Just lately it was publicized that we may even have a shortage of toilet paper. So, our forest resources to help our people are made subject to harvest, in accordance with the adopted practices under both the Organic Act of 1890, and the Multiple Use Act, which requires that we get as many uses and services out of the forest lands, which includes timber harvest, recreation, outdoor activity, as possible. And the thrust of the Multiple Use Act has

been to try to equitably divide the natural resources in the forest, so that they benefit all of the people, not just for timber or exclusively for recreation.

Mr. WON PAT. Well, I am aware, of course, that there is the need for harvesting the timber in the forest and the forest resources. I think you are aware more than I am that we have been exporting a lot of this timber to a foreign country, and my concern is that in areas to be leased specifically for recreational purposes, why, in other words, should we have such areas? In other words, why should we have timber harvested in those areas? I mean there are other areas that should be used or should rather be harvested for commercial purposes.

Mr. RARICK. In the national forests there are 187 million acres of forest. The legislation before us would encompass all of the acreage. So, we have no way of knowing whether the lessee will want the best timber acreage or he might want the acreage accessible to a city with timber acreage behind. Unless we make some provisions the Forest Service could be precluded from timbering on prime parts of the forest.

Mr. WON PAT. Do you feel that there should be some guidelines regarding this? In other words, the leasing of such forest areas for recreational purposes?

Mr. RARICK. Yes. I favor guidelines over complete discretion, but I know the problems that you are going to encounter if you try to remove too much discretion from the Secretary or from the President.

Mr. WON PAT. You feel that the Secretary of Agriculture or Interior, whoever has jurisdiction over such areas could, in other words, provide the necessary protection so far as the national interest is concerned with regard to the forest resources?

Mr. RARICK. Well, we hear stories both ways. We hear that he is overprotecting it, and then we have other reports that he is exploiting the forests unnecessarily and that we are not maintaining our stewardship. Somewhere there is a possibility of a middle ground, I think, this should be our approach. This is what I had reference to when I referred to the equitable application of the multiple use concept.

Mr. WON PAT. Well, thank you for the illumination. I need a lot I am sure. I thank you.

Thank you, Mr. Chairman.

Mr. RARICK. Yes.

Mr. RUNNELS. Congressman, I think at this point in the record, we should include your three proposed amendments, or two amendments containing three changes. If there is no objection, we will include it in the record.

[The amendments to H.R. 10491, offered by Mr. Rarick, follow:]

AMENDMENTS TO H.R. 10491, OFFERED BY MR. RARICK

No. 1. Page 3, line 24.

Following subsection (d), add the following new subsection:

"(e) (1) Commercial timber on such land shall be harvested in accordance with existing policies of the United States Forest Service, and proceeds from such harvest shall accrue to the federal treasury, and not to the lessee.

"(2) Where necessary for the harvesting of timber on such lands or adjacent federal lands, the lessee shall allow construction of access roads for such purpose.

Provided, That the lessee shall not be required to bear the cost of such construction."

No. 2. Page 6, line 17.

Strike line 17 through line 21, inclusive.

Mr. RUNNELS. And, of course, we want to thank you for appearing here this morning and appreciate your views. I understand fully the first two, and on your striking of this section 9. I believe you mentioned it, your belief is that maybe this study would be completed in the year 2000. You do not plan to be around to complete the study, John?

Mr. RARICK. No. I doubt if I will be here by the year 2000, but, if we don't get something started and underway, we will not even be able to obtain a comprehensive inventory by the year 3000.

Mr. RUNNELS. But the Agriculture Committee you are serving on now, as well as, the chairman of this subcommittee, is making some studies that you think would make this a reasonable amendment which strikes section 9 from the bill?

Mr. RARICK. We are trying to study the situation and the possibilities. And I think the input will be considerable. But before we complete our study, if we remove one segment of the forests from the public domain, and make it subject to leasing nationwide, it could have a great impact as far as the study goes. That is my suggestion.

Mr. RUNNELS. Thank you very much, John. We do appreciate your appearance before this committee this morning.

Mr. RARICK. Thank you.

Mr. RUNNELS. We have a large number of witnesses and I would ask each witness from here on if you would insert your remarks in the record, and then give us a thumbnail sketch of your remarks. And we would appreciate greatly your doing that.

And the next one we have on the list is Mr. Thomas Cobb of the National Parks and Conservation Association, administrative assistant for forestry.

Mr. Cobb?

STATEMENT OF THOMAS COBB, ADMINISTRATIVE ASSISTANT FOR FORESTRY, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. COBB. Mr. Chairman and members of the committee, my statement is rather short but I will still try and summarize it the best I can for the record.

Mr. RUNNELS. Thank you, sir.

Mr. COBB. I am Tom Cobb, the administrative assistant for forestry with the National Parks and Conservation Association.

NPCA is a private, nonprofit organization, educational and scientific in character with approximately 50,000 members in the United States and other nations. Although primarily concerned with the protection and enhancement of the national park system, we are also engaged in other and related land use areas, including wildlife management and forestry.

In analyzing the provisions of H.R. 10491 and the Concessions Policy Act, we feel that there has been an effort to give the proposed legislation the same basic thrust as the National Park Service's Concessions Policy Act. In so doing, we feel that the point has been over-

looked or disregarded of the different basic objectives between the National Park Administration and the National Forest Administration. In brief, I would say the basic objective of the national park management is to keep the park in as natural a state as possible; where on the other hand, the national forests are managed for multiple use objectives, including not only outdoor recreation but grazing as well as rangeland and timber management.

Now, we feel providing preferential rights, renewal preferences, rights of title as well as 50-year terms of lease for commercial outdoor recreation enterprises, by providing that we may create a precedent to provide the same rights and preferences and terms to the livestock and timber interests who also use the resources of the national forests on a permit or contract basis. We take a dim view on the bill that the private property rights on public lands.

Now, in comparing H.R. 10491 with the Forest Service Term Permit Act, we find that the present situation allows a 30-year term, maximum term, for permittees as well as the 80-acre maximum acreage allowed to the commercial outdoor recreation entrepreneurs. However, since H.R. 10491 and the Concessions Policy Act of the Park Service are very similar with one exception, and, that is, that it would extend a 30-year term 50 years, we consequently think that this would be a major financial incentive to open up roads in undeveloped areas of our national forests which many conservationists would like to see preserved in their pristine state.

Now, although NPCA is wary of an elaborate system of occupation of land for hotels, resorts, summer homes, stores, and facilities for industrial, commercial, educational, and public uses, ski lifts, swimming pools, and other facilities associated with a massive recreational development, we do not oppose the prudent development of outdoor recreational facilities and related services, but that such development should be carried out on the basis of comprehensive regional planning in a manner that reflects the capabilities of the land, as well as the cooperative input of both the public and private sectors.

Now, as I have looked into the situation, I believe there are, at least last year they were, approximately 1,500 concessioners using permits on the national forests. And as I also recall, this included 186 ski resorts or ski areas, of which 40 were considered major areas. And I do not feel that the present system has been a major obstacle for investment for these people. And, furthermore, at least 40 of these ski areas have access upwards of 2,000 acres, as I understand the situation under the annual permit of the Forest Service which acts in combination apparently with the Term Permit Act which is the 30-year maximum. Now, although some holders of these 30-year permits currently apparently do have problems in securing loans for recreation developments or purposes on the national forests, the Forest Service has indicated, and I footnoted this, that "the concession system is fundamentally sound and that the concession environment is healthy." NPCA, therefore, feels that there is no sufficient justification as to why changes should not be made in the existing permit system for commercial outdoor recreation purposes on the national forest lands.

Thank you.

[The complete statement of Mr. Cobb follows:]

STATEMENT OF THOMAS L. COBB, ADMINISTRATIVE ASSISTANT FOR FORESTRY,
NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. Chairman and members of the committee, my name is Tom Cobb; I am the Administrative Assistant for Forestry with the National Parks and Conservation Association in Washington, D.C. I wish to thank you for this opportunity to present the views of NPCA on H.R. 10491, a bill which we feel has serious implications for the administration of our national forests.

NPCA is a private, nonprofit organization, educational and scientific in character, with approximately 50,000 members in the United States and other nations. Though primarily concerned with the protection and enhancement of the National Park System, NPCA is also engaged in other and related land-use areas, including wildlife management and forestry.

In analyzing the provisions of H.R. 10491 which call for a new leasing system for certain lands of the national forests, NPCA has looked into background material, and has consulted with experts in the field of outdoor recreation. We have also compared the bill with both the Concessions Policy Act (PL 89-249) which governs concession policy in areas administered by the National Park Service and the Term Permit Act, as amended in 1956, which is the authorization for the permit system currently used to regulate commercial outdoor recreation enterprises on the national forests.

H.R. 10491 AND THE CONCESSIONS POLICY ACT (PL 89-249)

We feel that an effort has been made to give the proposed legislation the same basic thrust as the National Park Service's Concessions Policy Act. In so doing, however, it is apparent that the different sets of objectives of national park and national forest administration have been overlooked or disregarded. In the language of PL 89-249 itself, the national parks are administered "in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations. . . ." National forests, on the other hand, are administered for multiple-use objectives which include, among others, outdoor recreation, rangeland and timber management. By providing preferential rights, renewal preferences, rights of title as well as 50-year terms of lease for commercial outdoor recreation enterprises, a precedent might well be established to provide the same rights preferences and terms to the livestock and timber interests who also use the resources of the national forests on a permit or contract basis. NPCA takes a dim view on the build-up of private property rights on public lands. The provisions of Sec. 3 of H.R. 10491 are even silent on the terms of public compensation in the event of breach of contract on the part of the lessee.

H.R. 10491 AND THE TERM PERMIT ACT

NPCA also feels that H.R. 10491 is especially geared to facilitate multi-million-dollar recreation developments on national forest lands.

The Term Permit Act, as amended in 1956 (16 U.S.C. 497), is the current authorization of the Secretary of Agriculture to formulate regulations, terms and conditions for the "Use and occupation of lands for hotels, resorts, summer homes, stores, and facilities for industrial, commercial, educational or public uses." Permits for such use and occupancy can be granted for a period of not more than 30 years and for a size not to exceed 80 acres.

Similarly, the National Park Service is authorized also to negotiate concession authorizations for periods not to exceed 30 years. It turns out, however, that the majority of concession authorizations in the national parks are for a period probably less than 10 years, with the 30-year term reserved almost exclusively for the multi-million-dollar development programs.¹ While seemingly providing commercial outdoor recreation enterprises on the national forests with similar rights as national park concessioners, H.R. 10491 would actually increase the term of lease from 30 to 50 years. The financial incentives which are thereby

¹ George B. Hartzog, Jr., Director, National Park Service; testimony at hearings before the Subcommittee on Environmental Problems Affecting Small Business, House of Representatives, pursuant to H. Res. 5 and 19, Washington, D.C., Feb., Mar., 1972, p. 39.

afforded the multi-million-dollar investor would also be an inducement, we feel, to open up roadless and undeveloped areas of the national forests which many conservationists would prefer to have retained in their pristine state.

Although NPCA is wary of the elaborate systems of motels, hotels, restaurants, ski lifts, roadways, power lines, skating rinks, swimming pools associated with massive recreation developments, we do not oppose the prudent development of outdoor recreation facilities and related services. Such developments, however, should be carried out on the basis of comprehensive regional planning in a manner that reflects the capabilities of the land as well as the cooperative input of both the public and private sectors.

Though some holders of special-use permits apparently do have problems in securing loans for recreation developments or purposes on the national forests, the Forest Service has indicated that its "concession system is fundamentally sound and that the concession environment is healthy."² NPCA therefore feels that there is no sufficient justification as to why changes should now be made in the existing permit system for commercial outdoor recreation purposes on the national forest lands.

This completes my statement, Mr. Chairman. Thank you.

Mr. RUNNELS. Thank you, Mr. Cobb.

Mr. Won Pat, any questions?

Mr. WON PAT. Yes. Thank you, Mr. Chairman.

I gather that the thrust of your testimony is that you are not fully, in other words, in support of the present bill?

Mr. COBB. Well, I would say that we are basically opposed to this bill. We simply would like to see the present permit system be retained as it is defined and stated under the Permit Act under which the Forest Service currently operates for commercial outdoor recreation enterprises.

Mr. WON PAT. I see your apprehension with regard to the leasing of this land for recreational purposes is that it will, of course, do harm to the national purposes of our forests and wildlife, what are called the characteristics of our national wildlife. What I mean to say is that when these areas are leased for commercial purposes that would involve, of course, some defacing, some physical changes of the area by doing away with some of the timber, and the improvements that are brought about, will have an ecological effect on the whole environment, as well as other environmental factors.

Now, as I understand it, generally the concept with respect to wildlife areas is that we want to, as you pointed out in your statement, to preserve these in as natural a state as possible. We would cause interference with recreational areas and there would be defacements.

Mr. COBB. That is correct. This pertains particularly to the roadless and undeveloped areas of the national forest of which I believe there are approximately 56 million acres right now. But, the entire national forest system details 187 million acres of land. And as I mentioned in my statement, we are not opposed to prudent development of outdoor recreational facilities but that this first requires very careful comprehensive planning on both the part of the public and the private sector. In other words, there are places where ski areas, lodges, and the like most likely could be included in the national forests, but this requires very careful planning.

Mr. WON PAT. That would be mostly suitable, particularly in the northern areas where such activities would be carried out?

² Thomas C. Nelson, Deputy Chief, Program Planning and Legislation, Forest Service; testimony at hearings before the Subcommittee on Environmental Problems Affecting Small Business, House of Representatives, Pursuant to H. Res. 5 and 19, Washington, D.C., Feb. 24, 28, and 29; and Mar. 13, 1972, p. 149.

Mr. COBB. Pardon me? Which areas?

Mr. WON PAT. That would be suitable in the northern areas of the United States; I mean, such recreational purposes are designed for that area?

Mr. COBB. Well, in particular you are referring of course to the ski development which are, I guess, predominantly in the West and in the North and Northeast also. But, there are other types of recreation, outdoor recreation facilities and services besides skiing, of course. We have our campgrounds and we have related services, restaurants, lodging, and the like, which also have to be taken care of and planned.

Mr. WON PAT. Thank you, Mr. Cobb.

Mr. COBB. You are welcome.

Mr. WON PAT. Thank you, Mr. Chairman.

Mr. UDALL [presiding]. Thank you, Mr. Cobb. We appreciate your appearance here today in connection with this legislation.

The next witness is Mr. Bill Towell.

Bill, we are happy to have you before us.

The bells are ringing for a quorum call. Let me first ask unanimous consent to put in the record at this point the December 13 report of the Department of the Interior signed by Assistant Secretary Reed. Without objection, that will appear.

[The report of the Department of the Interior follows:]

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 13, 1973.

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on H.R. 10491, a bill "To provide for the leasing for commercial outdoor recreation purposes of certain lands of the forest reserves created from the public domain, and for other purposes."

We defer to the Department of Agriculture for their views on the bill.¹

H.R. 10491 would authorize the Secretary of Agriculture to lease portions of the forest reserves to persons and organizations to provide recreational facilities and services. Leases would be limited to 50 years and lessees would pay annual rentals based on their gross receipts for each year. Leases would be subject to termination by the Secretary if the leased lands cease to be used for recreational purposes or if the Secretary determines the lands are needed for another use.

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

Sincerely yours,

NATHANIEL P. REED,
Assistant Secretary of the Interior.

Mr. UDALL. We have a statement from Mr. Harry Crandell, director of wilderness reviews for the Wilderness Society, and he wishes to have his statement put in the record and, without objection, it will be so ordered.

[The statement of Mr. Crandell follows:]

STATEMENT OF HARRY B. CRANDELL, DIRECTOR OF WILDERNESS REVIEWS, THE
WILDERNESS SOCIETY

Mr. Chairman, I am Harry Crandell, Director of Wilderness Reviews for The Wilderness Society, with headquarters here in Washington, D.C. The Wilderness Society is a national, nonprofit citizens' organization of some 85,000 members,

¹ See report on p. 16.

dedicated to obtaining protection for the nation's remaining wildlands, carrying on educational programs concerning the values of wilderness, and joining with other organizations in cooperating for the conservation of all natural resources.

We appreciate the opportunity to appear here today to present our views regarding H.R. 10491. The Wilderness Society is strongly opposed to this legislation as we believe that it is not only unnecessary but could result in great harm to our national forests. These national forests belong to all the American people, not simply to the commercial developers who would be the beneficiaries of H.R. 10491.

This legislation would eliminate the current 80-acre limitation on national forest lands which can be leased to recreational developers. It would give the Secretary of Agriculture discretion to lease unlimited acreages to commercial recreation developers. We believe the present 80-acre limitation is fully sufficient and possibly too much. We strongly recommend that this 80-acre limitation be maintained and that an Act of Congress be required for any commitments of National Forest land over 80 acres.

The Wilderness Society is very opposed to turning over blanket discretion to the Secretary of Agriculture to lease unlimited acreages of land for recreational development. If H.R. 10491 were enacted, decisions would be made within the Department of Agriculture, without citizen views being considered. It is particularly important to require Congressional review and thus have opportunity for public input, because we expect that many proposed developments may be in roadless areas which citizens are proposing for wilderness status.

H.R. 10491 would extend the maximum term of commercial recreational leases to 50 years. We recommend that the maximum term be kept at 30 years as it is currently, except in those cases where Congress makes a specific exemption. Changing to a 50 year term would make it practically impossible to dislodge lessees and would end in larger and more extensive developments, since the 50-year term would give developers time to amortize larger investments.

We also believe that this bill goes too far in Sections 4, 5, and 6 in giving the lessees rights which they can use as a club to prevent the Forest Service from curtailing or terminating their operations. Section 7 contains a major flaw in failing to require public access to financial records of the lessee. These records should be available for public inspection at principal Forest Service offices.

Another significant shortcoming of this bill is that it fails to make clear that areas in the National Wilderness Preservation System or under study for possible wilderness designation are not to be subject to recreational development leases.

In summary, The Wilderness Society feels that H.R. 10491 is unnecessary and could result in great harm to our national forests and the public interest. In a day when pressures on our remaining wildlands are increasing daily and growing numbers of people are seeking the solitude of undisturbed nature, we should be very careful in making decisions regarding the management of these precious remaining wildlands. Therefore, we feel it doesn't make sense to give such unlimited authority to the Secretary of Agriculture to commit these lands to commercial purposes. We believe the decisions as to how these lands are to be managed should be made through maximum public input.

Thank you, Mr. Chairman, for the opportunity to express our views.

Mr. UDALL. And so, Mr. Towell, we will go for a few minutes and then I will have to take a break and go and make the quorum call. But I will ask Mr. Won Pat to preside in my absence.

STATEMENT OF WILLIAM E. TOWELL, EXECUTIVE VICE PRESIDENT, AMERICAN FORESTRY ASSOCIATION

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

My statement is very brief and I could perhaps summarize it, but I think it would take more time to do so, than perhaps just to read it.

Mr. UDALL. All right, sir.

Mr. TOWELL. Mr. Chairman, I am William E. Towell, executive vice president of the American Forestry Association, the oldest citizen

conservation organization in America and the group most responsible for setting aside of the forest reserves and the creation of national forests with which legislation is concerned. We appear generally in support of this legislation, but with certain reservations.

Outdoor recreational developments on public lands are desirable and should be encouraged. The Forest Service should not get into major housing, food, and ski developments on its own, yet there are places in our national forest system where these facilities are needed and desirable. National park use and development already has demonstrated the desirability of private concessions. The Forest Service has similar needs.

For example, the proposed Mineral King ski development on the Sequoia National Forest in California would provide recreation for hundreds of thousands who need and seek such opportunities. The proposal submitted by Disney Productions would utilize one of the most suitable, natural snow basins in the United States under a plan of minimum environmental impact and highest quality development. Here is an opportunity, Mr. Chairman, for the use of private capital on public lands in the service of people. And we think this is impossible.

In order for it to be accomplished, however, there should be assurances of sufficient space and tenure of lease to make such investment of private capital attractive. The Federal Government should not attempt such projects with public funds. Currently, the Forest Service is restricted to land use permits not exceeding 30-years duration or 80 acres in size. We support the concept of a 50-year lease authority for larger, more expensive projects and removal of the 80-acre limitation on some developments, but we would oppose giving the Secretary such authority for all private recreational uses on national forests. Perhaps the lease authority and acreage extension could be extended to major recreational projects requiring capital investments of \$1 million or more, keeping other uses on a more restrictive permit system.

We are concerned, too, about other provisions of this legislation. Sections 4 and 5 give the Secretary authority to make preferential determinations in consolidating concessions in a given area and to encourage stability and continuity of operation by granting preferential renewal opportunities. It would seem to us, Mr. Chairman, that instead of spelling out such preferential treatments as a matter of Federal policy that each case should be considered on its own merits. I would prefer having the Secretary justify every decision rather than making it a Federal mandate to favor single concessioners and to promote renewal priorities.

Another provision in H.R. 10491 which causes some concern is section 3(c) covering termination of leases. It clearly states that if any lease is terminated by the Secretary for another use that just compensation shall be awarded the lessee. It is my understanding that this is now done to a limited degree where termination is in the public interest. Wherever possible I would prefer to see a termination clause make a part of each lease itself and limited to major recreational developments, rather than spell this out so rigidly in the law itself. If possible, we should avoid situations where private owners are given

vested rights in public lands and guaranteed reimbursements on investments made. Where clearly justified, compensation should be made, but let's avoid establishing inflexible precedent or policy.

With these few exceptions, we support this legislation, Mr. Chairman, and urge its approval by this committee.

Thank you for this opportunity to testify.

Mr. UDALL. We always appreciate your organization and your contribution to these hearings. I have no questions.

Mr. Won Pat?

Mr. WON PAT. Yes, just one question, Mr. Chairman.

In effect, your position is that the public or I mean the Department of Agriculture should not seek to having lands leased for recreational purposes where they have developments like other private developments?

Mr. TOWELL. I think that the Federal Government should not get into concession-type developments on its own. I do not think the Federal Government ought to be in the business of housing and feeding and ski lifts and ski tows when private capital is readily available to be expended on public land under public control. I would much prefer to see this sort of development be private funds rather than public funds.

Mr. WON PAT. But when they lease the land, naturally, the private or the lessee will underwrite the development and like the Government, then, will not be involved.

Mr. TOWELL. I am not sure I understand your point here. I would not want to see the lessee given any vested interest or rights in the land. I think they are entitled to a reasonable assurance of tenure and return on their investment. In other words, you cannot permit the Disney Productions to spend \$50 million this year and the next year then tell them, no, we have changed our mind and you are going to have to tear it all down, and we are not going to give you your money back. This would not be fair at all. But, I think we need to encourage that kind of development.

Mr. WON PAT. Of course, anybody going into business wants assurances that they will make something out of that venture.

Mr. TOWELL. That is right. Private capital just would not be attracted unless the proposition itself is attractive. And I think that this has been somewhat of an obstacle in the way of development in the past. I think we could have had more and better development if these assurances, as provided by this legislation, had been a part of our statute.

Mr. WON PAT. You are aware of the Disney World in Florida and is that—

Mr. TOWELL. That is all private investment on private lands. I am well acquainted with it, yes, sir.

Mr. WON PAT. And that, I believe, would be preferable rather than getting into Federal lands?

Mr. TOWELL. I do not think so because from the point of view we are talking about here for the recreational opportunities that occur on public lands, where the public has a need and a right to go and to use, and a lot of these public lands are in areas that private lands are not available, the high snow, high mountain snow areas, for example,

which are mostly all publicly owned in the West. If they were largely in private ownership, there might not be any need for this. But, most of them are in public lands and they should be made available to the public to use.

But, I feel it should be private capital that develops them rather than public funds.

Mr. WON PAT. I agree with you that the Federal Government should not be involved in private development.

Mr. TOWELL. Well sometimes they have to be. There are certain types of recreational opportunities that are just not attractive enough to private capital and, for that reason, the public will also be somewhat involved. But, when we get into the major developments where we are talking about hotels and housing and restaurants and feeding, and ski developments, that sort of thing, here I do not feel that the Government should be competing with private enterprise, as long as private capital is available and willing to be put into this kind of operation.

Mr. WON PAT. Well, we thank you for your fine testimony.

Mr. TOWELL. Thank you, sir.

Mr. WON PAT [presiding]. Our next witness will be Mr. McCune. You may proceed in any way you wish.

STATEMENT OF ROBERT G. McCUNE, VICE PRESIDENT, AMERICAN LAND DEVELOPMENT ASSOCIATION

Mr. McCUNE. I have a very brief statement, and I am in agreement with the previous witness. I think it would be better for me to read this brief statement rather than to try to synopsisize it.

Mr. Chairman, members of the committee, I am Robert McCune, vice president of the American Land Development Association. ALDA is the national and business trade association for 950 companies in the land industry in recreation, resort, and planned community development.

I am pleased to be able to appear here this morning and indicate our industry's support of H.R. 10491, a bill that would provide for leasing of portions of the U.S. forest reserves which are needed to provide recreational facilities and services for the use and enjoyment of the public. We feel that your consideration of this legislation in light of the fast growing participation by the American public in outdoor recreation and leisure time pursuits is timely. I will also state that our support of this bill concerns itself equally with the requirement for prudent development and the preservation of the quality of the environment.

H.R. 10491 indicates in section 1 that: "It is the policy of Congress that private development and management of such facilities and services shall be encouraged." This statement might lead some to conclude that our support for this legislation would appear to be self-serving. It is true that the industry I represent would be a logical segment of private development expertise to be solicited for involvement in any potential Government program for expanding the country's recreational resources. This industry is certainly able and inter-

ested in contributing its experience, planning, and management capabilities and private capital investment. However, let me assure this committee that our support extends beyond the possibility of a future role should legislation be enacted.

Based on professional involvement in the recreation and leisure industry and exposure to marketing forecasts and statistical data, it is our position that presently available recreational resources will not be adequate to maintain the increasing public demand for access and use of such resources. We feel that in the coming years, the recreational oriented American public will be faced with limited opportunity to fulfill their desires to take advantage of increased leisure time, unless there is congressional concern, such as the type proposed in H.R. 10491.

I might add here that our studies also indicate that, unfortunately, as is too often the case, the predictable shortage of recreational resources will probably have a greater effect on the lower income level of working families than on the middle or upper income groups.

We believe further substantiation for the need and benefit of this proposed legislation is stated in part of the recommendations of the report of the National Tourism Resources Review Commission submitted to the Congress and the President on June 25, of this year. I was privileged to have served as a member of this Commission which under Public Law 91-477 of October 21, 1970, was directed to undertake a 2-year study of tourism and the resources to meet those needs at present and by 1980. Public recreation facilities and services are an integral part of tourism and therefore, I believe, that two brief quotes from the Commission's recommendations would be applicable and helpful to you in consideration of H.R. 10491.

(1) The Commission recommends that Congress establish and the President carry out a national tourism policy. Objectives of the policy should be: adequate facilities for future needs; . . . cooperation with private industry; . . . optimum utilization of public lands consistent with environment protection . . . dispensal of tourism activity to relieve congestion and aid to economically depressed areas.

(2) The Commission recommends that as feasible studies are made for federal and other public projects such as resort areas and parks, particular attention be given to their potential for providing small business opportunities.

In closing, let me say that outdoor recreation is a way of life in this country, and hopefully each of our 211 million citizens can and will be able to participate to the degree, type, and timing of their choosing. It is important that adequate resources be available to further this important life interest and H.R. 10491 offers a reasonable approach to insuring that such recreational facilities and services can be made available when necessary.

Thank you, Mr. Chairman.

Mr. WON PAT. Mr. McCune, your organization is largely, in other words, a business organization in other words, an association of business organizations involved in, what do you call it? Real estate and land development?

Mr. McCUNE. Primarily of recreational, resort, and leisure time areas, rather than the pure real estate aspects. Second home developments.

Mr. WON PAT. Just to clear it in my mind, are the types that you have in mind like we have, for example, the development companies of Florida?

Mr. McCUNE. There are a number of development companies in Florida.

Mr. WON PAT. Where they, you know, do a lot of promotion?

Mr. McCUNE. I think you are probably referring to the I.T. & T.'s Palm something or other?

Mr. WON PAT. Yes.

Mr. McCUNE. They are not members of our association, but that would be typical of the type of industry we represent. We represent Hilton Head, for example, and Dell Webb's corporation, and his various developments, Snow Mass, Snow Bird, Pure Ski areas. Basically, as I say, those that have a recreational relationship rather than what you might deal with in terms of suburban housing developments.

Mr. WON PAT. Is that the type of recreational development envisioned in this proposal?

Mr. McCUNE. No, sir; and I hope you did not misunderstand my statement. What we are saying is, essentially, we would be that part of the private sector that would support the activities that would be planned on Federal lands. We do not contemplate involving ourselves in terms of the actual capital infrastructure that would be required. Obviously, if the Federal lands in any national preserve would be open to specific types of recreational use, there would undoubtedly be many of our companies that would want to go into the fee simple part of the area that would give them the type of housing, logistical support, commercial support, that would facilitate outdoor recreation on Federal lands.

Mr. WON PAT. So, your organization is composed of companies that probably own land not adequate to provide such type of development?

Mr. McCUNE. Not in terms of true recreational pursuits of the people of this country. There is a great deal of private land still to be developed, but I think it would not lend itself to what we are addressing here as outdoor recreation. I think one of the previous witnesses indicated that much of the Federal forest land does lend itself to the type of recreation that Americans generally want to pursue, so what we are saying is we would be willing to support, by providing in contiguous areas to the Federal lands the type of shelter and commercial facilities that you obviously would need if you had, if you had such recreational pursuits on Federal reserves.

Mr. WON PAT. Do you feel that it will be in the best interests of the people that our Government lands be made available for such development?

Mr. McCUNE. I think, as I mentioned, our statistical research indicates that if leisure time continues to grow, as an available part of the individual American's life, that he is going to want to spend that time in recreation and regardless of what type recreation it is, whether it is snowmobiling, riding, equestrian centers and so forth. And the obvious fact here is that Federal lands have the type of environment that would be most useful in allowing or accommodating those recreational pursuits. So, we think that unless such flexibility is recognized

and such multiple use of Federal reserves is expanded perhaps, that people are not going to be able to take their leisure time and go and find the type of outdoor recreation that they want to fulfill their life. It is a fact today that with the number of recreational vehicles that are being sold in this country, that in truth there is no place for those people to actually go and do their outdoor camping, for example. There are just not facilities available for them.

Mr. WON PAT. Our energy depletion will be growing, of course, and do you think the energy crisis will affect such development?

Mr. McCUNE. Unfortunately, it will, sir, but there are some counterbalancing arguments that perhaps will also serve to be energy conserving in the pursuit of outdoor recreation. Namely, an average family of four can certainly get by on less energy in a mobile or recreational vehicle out on the weekend than utilizing the type of energy, for example, that would be utilized in running their home and their television and so forth. So, as I say, we hope there is some consideration, and there has been in the House of Representatives in their bills.

Mr. WON PAT. Thank you, Mr. McCune. I think the chairman might want to raise some questions.

Mr. UDALL [presiding]. I have no questions.

Thank you for your assistance here.

Mr. McCUNE. Thank you, Mr. Chairman.

Mr. UDALL. Our next witness is Mr. Brown.

STATEMENT OF D. R. C. BROWN, NATIONAL SKI AREAS ASSOCIATION, INC.

Mr. BROWN. Thank you, Mr. Chairman.

With your permission, I will just summarize my statement and ask that the full statement be made a part of the record.

Mr. UDALL. Without objection, the full statement will be made a part of the record, as though read in full and you may summarize.

[The complete statement of Mr. Brown follows:]

STATEMENT OF D. R. C. BROWN, REPRESENTING NATIONAL SKI AREAS ASSOCIATION, INC., WEST HARTFORD, CONN.

Mr. Chairman and members of the subcommittee. Thank you very much for the opportunity to appear before you today in support of enactment of H.R. 10491, "To provide for the leasing for commercial outdoor recreational purposes of certain lands of the forest reserves created from the public domain, and for other purposes."

I am Chairman of the Federal Relations Committee of the National Ski Areas Association, Inc.

The National Ski Areas Association, Inc., is a nonprofit membership Corporation, composed of more than 600 ski area members and approximately 175 associate members who are manufacturers and suppliers of skiing equipment. One of the objectives of our Association is:

"To foster, stimulate and promote safety in skiing, to provide an agency through which information and ideas may be exchanged by the members, to collect and disseminate trade statistics and information, and to further and protect the legitimate interests of the ski area operators."

This legislation would establish Congressional policies and provide new authorities to the Secretary of Agriculture to encourage private enterprise to participate with the U.S. Forest Service in providing expanded outdoor recreational opportunities in our National Forests.

At the present time, the Forest Service does not have lease authority. Concessioners are authorized to operate commercial outdoor recreational facilities subject to special use permit. Moreover, the terms of such permits may not exceed 30 years nor involve more than 80 acres of land. (16 U.S.C. 497).

In many instances, particularly in the case of major ski areas, this is insufficient land to develop and operate an adequate skiing facility. The operations of approximately 180 ski area members of our Association involve National Forest lands. National Forest lands needed in each operation in excess of 80 acres can be made available by the Forest Service only on a year-to-year permit. These limitations often frustrate the efforts of private enterprise in developing adequate recreational facilities involving National Forest lands. Other witnesses here today from banking institutions will develop these matters further.

This legislation would remove these unwarranted limitations, permitting the Secretary of Agriculture to determine in each case the amount of land needed to develop and operate an economically viable recreational facility.

Moreover, this legislation would establish a framework of Congressional policies to encourage private concessioner investments and assure orderly, continuous operation of desirable commercial facilities.

In brief, Section 1 of H.R. 10491 articulates the Congressional policy and purpose for the leasing for commercial outdoor recreation purposes of the forest reserves created from the public domain.

Section 2 grants authority to the Secretary of Agriculture to implement this Congressional policy.

Section 3 establishes the Congressional policy relating to acreages to be leased (subsection (a)), rentals to be paid for leased Government-owned lands (subsection (b)), terms of leases and provision for their termination (subsection (c)). Subsection 3(d) provides that all such commercial operations on National Forest lands are the responsibility of the concessioner, subject to regulation and planning guidelines by the Secretary consistent with the policies and objectives of the Act.

Section 4 provides authority to the Secretary to authorize a single concessioner to operate some or all of the public services in an area, as well as a preferential opportunity to provide new services that may be needed. Any such leased lands, however, are subject to the Secretary permitting other uses on them not inconsistent with the lease.

Section 5 provides authority to the Secretary to encourage stability and continuity of operation by granting a preferential opportunity to existing concessioners to negotiate new leases either at the termination of their leases or prior thereto upon surrender of the lease. Such preferential opportunity shall be available only to concessioners who have performed satisfactorily. It is most important to grant authority for a new lease prior to the expiration of the old lease as, for example, when a large new capital investment is needed to expand concession facilities or services or develop new ones.

Section 6 recognizes title in the concessioner for any structure, fixture or improvement placed on leased lands by the concessioner. Moreover, this section provides that such title may not be extinguished by the expiration or other termination of the lease nor may it be taken for public use without just compensation. This is extremely important protection to encourage private investment on public lands. In fact, it is a requirement if the private entrepreneur is to be in a position to obtain needed long-term capital financing. Of course, operation of the facilities by the concessioner is permissible only so long as the concessioner has a lease from the Secretary for the lands on which the facilities are located.

Section 7 requires the maintenance of records of accounts, as prescribed by the Secretary, to determine that all the terms of the leases have been and are being faithfully performed. This section also grants access to the Secretary and to the Comptroller General, as well as their authorized representatives, to audit these records.

Section 8 authorizes the Secretary to cancel special use permits covering existing concession operations and to issue new leases to such permit holders pursuant to the provisions of this legislation.

Section 9 of the legislation extends the provisions of this legislation to all parts of the National Forest System.

I shall be pleased to try to answer any questions.

Thank you very much.

Mr. BROWN. I am chairman of the federal relations committee of the National Ski Areas Association. This is a nonprofit membership corporation composed of more than 600 ski area members and approximately 175 associate members, who are manufacturers and suppliers of skiing equipment. We have approximately 180 members that are operating in whole or in part on Forest Service lands.

From the ski areas operators' point of view, the most important aspects of this bill are the fact that it authorizes, gives the Forest Service lease authority, it eliminates the 80-acre limitation, and it provides the Secretary with the option of giving a longer lease than is presently permitted.

The first two items, the lease authority and the 80-acre limitation, are important to the operator that is trying to raise money from any lending source. A person, a lender unfamiliar with the ski area operation, is very reluctant to lend money where there is a 1-year term permit involved. I think there are other witnesses here today that will speak more to this and I would like to speak to the point of the 30 year, the present 30-year, limitation.

By way of example, one of the ski areas that my company runs is 10 years into the existing permit. We have to date invested roughly \$4 million in this area and over the next 10 years we will probably invest twice that. But, we will scarcely have time to amortize this investment over the remaining term of the lease, and on this account I feel that a 50-year lease, at the discretion of the Secretary would be very important to us.

I think the balance of the statement is not necessary to read into the record and I will be pleased to try to answer any questions that the chairman might have.

Mr. UDALL. Well, thank you, sir. We appreciate your brevity. I scanned through your statement and I think most of the points are good ones. Some may have been made by other witnesses. We have had a similar problem with regard to the term of commercial leases and concessionary interests in the National Park Service and I have personally been familiar with the various arguments for the need to extend the term and so forth. I offered somewhat similar legislation for the national park concessions. Your statement is helpful and brings out some things that the subcommittee will want to take into account.

Mr. Won Pat?

Mr. WON PAT. No. I do not think I have any questions.

Thank you.

Mr. BROWN. Thank you, Mr. Chairman.

Mr. UDALL. Thank you, Mr. Brown.

Mr. Alderson?

STATEMENT OF GEORGE ALDERSON, FRIENDS OF THE EARTH

Mr. ALDERSON. Thank you, Mr. Chairman.

I will merely brief my statement. It will be included in the record.

Mr. UDALL. Yes. Without objection, your statement will be printed in the record in full and you can either read it or proceed as you choose.

[The statement of Mr. Alderson follows:]

STATEMENT OF GEORGE ALDERSON, LEGISLATIVE DIRECTOR, FRIENDS OF THE EARTH

I am George Alderson, Legislative Director of Friends of the Earth, a national organization of 22,000 members, dedicated to the preservation, restoration and more rational use of the earth. Our Washington office is at 620 C Street, S.E. We appreciate this opportunity to present our views on H.R. 10491.

Friends of the Earth has been active since its inception in policy issues affecting the use and management of the national forests. A related concern that is directly applicable to the subject of this hearing is our activity with respect to concessions in the National Park System. We have recently participated with Interior Department officials in concession decisions at Crater Lake, Bryce Canyon, Zion, and Mount McKinley National Parks.

A lesson that has been learned from past experience is that, once a long-term concession contract has been signed, it is very difficult to back out, even though new circumstances may require changes in the contract. A case in point is the old national park policy of providing plenty of hotel or motel lodgings, operated by concessioners, *inside* the national parks and often at the scenic focal points of the parks. That was a good idea fifty years ago, when roads were primitive and so were cars. But now, with good roads and rapid car or bus transportation, in-park hotels are not necessary. The National Park Service has wanted to phase out the old hotels and cabins in many parks, but has not been able to because these facilities were written into long-term concession contracts. Reopening the contracts is certainly possible, but agency officials are never eager to open up that can of worms. The result is the retention of facilities which were already outdated and inappropriate 20 years ago.

This is precisely the situation that we believe would develop in the national forests if H.R. 10491 were to become law. Basically, this bill represents an unprecedented landgrab by commercial developers, aimed at national forest lands that belong to all the people.

BASIC PROVISIONS

H.R. 10491 has three basic purposes. First, it abolishes the present limit of 80 acres on leases of land for recreation developments in the national forests. It leaves the acreage completely at the discretion of the Secretary of Agriculture.

Second, it changes the present maximum term of such leases from 30 years to 50 years, and provides for extending the term of existing lessees accordingly.

Third, it provides preference privileges for lessees and requires compensation for termination of leases by the Federal government.

LENGTH OF LEASES

There are several problems areas in this bill that lead Friends of the Earth to oppose the entire measure. The bill would lock into long-term contracts the results of short-term judgments by Agriculture Department officials. It is very difficult to predict what the demands will be on these lands 30 or 40 years from now. Who would have guessed in 1940 how recreational use of the forests would burgeon in the ensuing 30 years? Yet, if a 50-year contract were in effect thirty years from now, it would effectively be another 10 or 20 years before any change could be made in the land use of the leased site. To be sure, there are provisions in the bill for terminating a lease, but such an action would mean paying the lessee for his facilities, and the equally vexing problem of mollifying local political officials, who are usually very attentive to the requests of such commercial operators. Mid-term termination would not be a viable option in most cases.

Thus, a 50-year lease is an almost irreversible commitment of public land to private commercial purposes. Thirty years has been a feasible term thus far, both in the national forests and national parks. Many recreation developments are now operating under 30-year leases throughout the national forests. We see no need to change this basic limit.

ACREAGE LIMITATION

Another basic objection to this bill is its abolition of the 80-acre limitation. Friends of the Earth believes that the present limit of 80 acres is too high. Many

scenic climax areas in the forests occupy small sites, where 80 acres would mean a tremendous loss of land that should be completely open to the public. We cannot afford to turn vast acreages of national forest lands over to private developers at a time when the public is increasingly depending on these lands for unconfined outdoor recreation. If this bill passes, people could be required to pay a private developer for the privilege of setting foot on some of the most scenic lands in the National Forest System. We believe the acreage available to private developers should be held to the absolute minimum, to avoid the private monopoly of public resources.

If larger acreages or longer-term leases are needed in specific cases, we believe the proponents of such projects should come before Congress and make their arguments here, where the public eye will be upon them. It would be unwise to turn these crucial decisions over to the Forest Service, which has time after time made such decisions in private, without seeking the views of the people.

OTHER PROVISIONS

Two related concerns are also at issue. H.R. 10491 contains no language to affirm that lands in the National Wilderness Preservation System, or under consideration for placement in the System, are protected against commercial leasing. It would be a mistake to allow this bill to be construed as superseding any of the provisions of the Wilderness Act, and we urge the committee to consider this problem carefully.

The bill also contains no public disclosure provisions. Friends of the Earth recommends that all commercial lessees of national forest lands for recreational purposes be required to file their basic financial documents for public inspection at three locations: (1) the forest supervisor's office, (2) the office of the regional forester, and (3) the Washington office of the Forest Service. In our view, when a commercial operator is granted an effective monopoly by the Forest Service to use public lands for private profit, then the financial status of the lessee should always be a matter for public inspection. H.R. 10491 provides for the Forest Service to see the financial records of the lessee, but the public is to be kept in the dark.

Finally, we believe that the provisions of Sections 4, 5 and 6 go too far in entrenching the incumbent lessee in his position. If he is performing adequately, what need is there to give him preference by statute to receive further leases? The government's right to cancel the leases is also not clearly enough established in Section 6.

CONCLUSIONS

Mr. Chairman, Friends of the Earth believes that the lessees who operate commercial recreation facilities on the national forests are performing an important public service, and getting well paid for their trouble. The objective that is foremost in our minds is to insure that these lessees do not obtain disproportionate influence in the management decisions of the Forest Service, and that they do not come to occupy lands that should remain open and free to all the people.

Unfortunately, the proposals in H.R. 10491 would tend to produce just these undesirable results. By fostering a cozy relationship between the lessees and the Forest Service, and by more solidly entrenching the lessees, this bill would give the lessees influence they do not deserve, and would shut the public out.

We earnestly urge the committee instead to take action that would open the financial records of these lessees to public scrutiny. The same should be done with national park concessioners. Legislation to do this is badly needed, and we would support it strongly.

Mr. ALDERSON. Thank you.

My name is George Alderson, the legislative director of Friends of the Earth.

A lesson that has been learned from past experience is that once a long-term concession contract has been signed it is very difficult to back out, even though new circumstances may require changes in the contract. And in the national parks, it has been very difficult to change the concession plans that were made decades ago, such as those requiring cabins and lodges and motels in the heart of many of the parks,

even though the National Park Service now wants to change these things, and does so when something happens that gives them an opening to do so. Reopening the contract is theoretically possible in mid-term of the contract, but agency officials are never eager to open up that can of worms. The result is that we have facilities which have been retained which were already outdated and inappropriate 20 years ago.

This is precisely the situation which we believe would develop in the national forest if this bill were to become law. Basically, this bill represents an unprecedented land grab by commercial developers aimed at national forest lands that belong to all of the people.

There are several problems with this bill that leads Friends of the Earth to oppose the entire measure. The bill would lock into long-term contracts the results of short-term judgments by Agriculture Department officials. A 50-year lease as we see it, is almost an irreversible commitment of public land to private commercial purposes. Thirty years has been a feasible term thus far, both in the national forests and national parks, and many recreational developments are now operating under 30-year permits throughout the national forests. We see no need to change this basic limit now.

Another basic objection to this bill is the abolition of the 80-acre limitation. We do not believe we can afford to turn vast acreages of national forestlands over to private developers at a time when the public is increasingly depending on these lands for unconfined outdoor recreation. If this bill passes, people could be required to pay a private developer for the privilege of setting foot on some of the most scenic lands in the national forest system. We believe the acreage available to private developers should be held to the absolute minimum to avoid the private monopoly of public resources.

If larger acreages or long-term leases are needed in specific cases, we believe the proponents of such projects should come before Congress and make their arguments here where the public eye will be upon them. We recall the debate over the proposed San Gregorio's development in California at the time that the wilderness bill was under consideration in the early sixties. When that issue was brought before a congressional hearing and the issue was given public exposure in field hearings, the local Congressman decided that he could not support the proposed development. That is the kind of beneficial results that you often get from exposure before a congressional process.

It would be unwise to turn these crucial decisions over to the Forest Service, which has time after time made such decisions in private without seeking the views of the people.

There are other related issues which I will briefly touch on. This bill contains no language that would make it clear that lands in the National Wilderness Preservation System or areas under consideration for such stature are protected against commercial leasing. It would be a mistake to proceed with a bill like this which might be construed to supersede the Wilderness Act and the prohibitions on commercial development.

The bill also contains no public disclosure provisions. We strongly believe that all commercial leases of national forest lands for recreational purposes should be required to file their basic financial docu-

ments for public inspection at three basic locations, the Forest Supervisor's Office, the Office of the Regional Forester and the Washington Office of the Forest Service. We believe that when a commercial operator is granted an effective monopoly by the Forest Service to use public lands for private profit, then the financial status of the lessee should always be a matter for public inspection. In this bill, the Forest Service is allowed to see the financial records of the lessee but the public is kept in the dark. This has also been a problem in the national parks. We understand that Members of Congress, as well as the Interior Department, are allowed to see these financial records, but the public is again prohibited from seeing this. We think it is essential for the public to be able to consider whether these private operators are meeting the criteria that the Government has laid down upon them, and that they are not just soaking the public by charging unfair prices and questions like that that are involved and are serious policy matters.

We also believe that the provisions in sections 4, 5, and 6 would unnecessarily entrench the incumbent lessee in his position and we believe that that should be modified to make it clear that the cancellation of the leases can be done.

We basically, Mr. Chairman, Friends of the Earth, believe that the lessees who are operating commercial recreational facilities on the national forest are performing an important public service and getting well paid for their trouble. But the objective that is foremost in the minds of Friends of the Earth, which we recommend to your consideration, is to insure that these lessees do not obtain disproportionate influence in the management decisions of the Forest Service and that they do not come to occupy lands that should remain open and free to all of the people.

That concludes my statement and we appreciate the opportunity to testify.

Mr. UDALL. Thank you, Mr. Alderson.

Your organization objects to the enlarging of the 80-acre limitation. I understand that in many cases such as ski operation on national forest, that your ski lodge, your machinery, your parking areas, and all of this perhaps, will occupy 80 acres and then you will have a very large area consisting of the ski slopes and related areas than would be much larger than 80 acres. It is not your position that we should be against all leasing arrangements that encompass more than 80 acres? Is it your position that beyond the 80 acres that year-to-year permits would be agreeable and satisfactory?

Mr. ALDERSON. Yes. We favor the present arrangement under which they do have the short-term permits.

Mr. UDALL. What is your answer to the suggestion that 80 is an arbitrary figure and that recreational developments vary all over the place and 80 acres might be perfectly good in 90 percent of the cases but you might have a proposal for 180 acres in size, which is sensible and reasonable and in the public interest, and why have an arbitrary limitation?

Mr. ALDERSON. Well, 80 acres may not be the proper figure, but we think that it would be better to be on the conservative side and have a

procedure for congressional approval of larger areas because you have to set an arbitrary limit somewhere and maybe this is it. We think this has been the one that has worked so far.

Mr. UDALL. Well, as a compromise between your position and a separate act of Congress for anything above 80 acres, and the present provision in the bill, what about a basic provision of 80, that could go up to 80, but they had to file notice in the Federal Register and let the proposal lay before the Congress for 60 days or something in the event that they were going beyond the 80, up to 180, or some other higher figure? Does this make any sense?

Mr. ALDERSON. Well, yes. But we would believe that that would not provide for adequate safeguard and adequate scrutiny because often Congress does not get around to these things, to scrutinizing them, and it is often hard to get hearings sometimes and even now the concession contracts in the national parks are submitted to Congress. But, I cannot recall a time when there has really been any action on those things. Now, you see, the word is just finally getting out about that multimillion dollar development on the rim of the Grand Canyon, even though that contract was apparently signed years ago. That is the kind of thing that slips by the public when we do not have a better procedure.

Mr. UDALL. You seem concerned and I certainly am, too, about the provisions of this proposed bill permitting intrusions upon, and violations of, the Wilderness Act. I do not see that there is any intention on the part of the author to permit that kind of thing and, from my own reading of it, certainly I would think the Wilderness Act would prevail in the case of any conflict. You might, before we get into the markup on this, suggest strengthening language if there is a concern in this area, as there is from my standpoint and I think from other members of the committee and there would be no purpose here, so far as I can see, to get around the Wilderness Act.

Mr. ALDERSON. Well, we believe that, too, and we will discuss it with the staff members.

Mr. UDALL. That is all.

Mr. Won Pat?

Mr. WON PAT. After reading the testimony of Mr. Alderson, I think he has some very good points and I want to commend him for it. I think though that the Wilderness Act will not be affected by that bill. Now, what do you think about the 30-year leasing? As I understand, you are opposed to the lengthening and you feel we should retain the 30-year lease, or make that a lease or term subject to renewal?

Mr. ALDERSON. Well, we favor retaining the 30-year limit on the lease. This is the same maximum term that now applies to concessions in the national park system even though in the parks, apparently, that long term is not used in many cases. So, we would favor retaining the 30-year limit.

Mr. WON PAT. I guess that Mr. Udall has asked the other questions, so I want to thank you again for your fine testimony.

Mr. ALDERSON. Thank you.

Mr. WON PAT. Thank you, Mr. Chairman.

Mr. MELCHER. Thank you, Tony.

Excuse me a minute, Mr. Alderson. I understand that in my absence, Mr. Udall elicited further comments from you on the acreage limitation, so I will review the record on that point. And I was interested, too, on your assessment and the assessment of your organization on that particular point. Thank you very much.

Mr. ALDERSON. Thank you.

Mr. MELCHER. Mr. F. A. Wallace, National Forest Recreation Association.

Mr. Wallace?

**STATEMENT OF F. A. WALLACE, EXECUTIVE VICE PRESIDENT,
NATIONAL FOREST RECREATION ASSOCIATION**

Mr. WALLACE. Thank you, Mr. Chairman.

Mr. MELCHER. We are pleased to have you with us this morning.

Mr. WALLACE. Since I have submitted this in writing to the staff, I would ask that it be made a part of the record, and in deference to time, I will just try to make a very short briefing and then try to answer any questions.

Mr. MELCHER. Without objection, Mr. Wallace's statement on behalf of the National Forest Recreation Association, will be made a part of the record at this point.

Hearing no objection, so ordered.

[The complete statement of Mr. Wallace follows:]

**STATEMENT OF F. A. WALLACE, EXECUTIVE VICE PRESIDENT, NATIONAL FOREST
RECREATION ASSOCIATION, CUPERTINO, CALIFORNIA**

Statement to the Subcommittee on Public Lands, Committee on the Interior and Insular Affairs, U.S. House of Representatives, December 13, 1973.

Mr. Chairman, members of the Committee, my name is Francis A. Wallace. I am Executive Vice President of the National Forest Recreation Association which in November of this year celebrated its 25th Anniversary.

The National Forest Recreation Association is composed of permittees operating on leases on federal lands, primarily on Forest Service lands. Our Resort members include persons operating lodges, restaurants, marinas, general stores, garages and like service facilities and includes summer camps.

The Winter Sports members include ski areas and snow play areas with facilities such as toboggan runs and skating rinks. The Packer-Outfitter memberships range from dude ranches to Packers who may operate only during the hunting season.

While the great majority of our members are located in the western states, we do have membership in a number of the central and eastern states who have an interest in federal permittee operations.

The theme of our Silver Anniversary meeting in November was "Tomorrow's Recreation—Today. 25 years of Partnership with the U.S. Forest Service."

Like any partnership, there are times of great conflict sometimes brought on by lack of good communications. By inviting Forest Service officers to attend our meetings, we have attempted to bridge any gaps in communication and have the opportunity to meet face to face to resolve problems and reach mutual agreement on plans for the future.

One might question after 25 years what have we accomplished working together with the Forest Service. As one official said last year—"We may not have solved all our problems, but we are still able to meet and talk together."

This legislation that is before you today, H.R. 10491, introduced by the Honorable Harold T. "Bizz" Johnson of California, is an excellent example of a way or means to strengthen the permittee-government partnership and provide the necessary services or facilities for public outdoor recreation.

Our Association has given its full endorsement to this legislation and we believe the Forest Service also endorses this legislation as a means to furnish needed recreation facilities for the public.

As a part of its multipurpose use policy on the national forests, the government, in this case the Forest Service, has taken a responsibility to provide recreation facilities to serve the public—a public that is highly oriented to outdoor recreation.

Reports have been written and rewritten on the continued growth of leisure time brought on by shorter work weeks and longer vacations. Certainly the news media—newspapers with their outdoor and travel columns—magazines—radio and TV have alerted the public to the outdoors and the pleasures derived in outdoor recreation.

Facing up to the fact that the Forest Service does not receive appropriated money to build such facilities as lodges, marinas, winter sports areas, pack stations and other service facilities—it has been the responsibility of private enterprise, through contracts with the government, to build and operate service facilities.

In past years the National Forest Recreation Association leaders have met with congressional officers and committees to explore ways to better achieve an equitable permittee-government contract and we believe in H.R. 10491 we have found the solution.

History will record that the small momma-papa operations of past years may have served their purpose in the Model T era but cannot keep pace with today's jet age. Those were the days where a resort was in reality a small store with poppa stepping away from the cash box to pump a few gallons of gasoline from his single pump—while momma busied herself at the hamburger-hot dog grill.

The winter sports area consisted of a warming hut and a rope tow powered by an old automobile engine, and slope maintenance and grooming were words unknown.

Today—to take care of the public needs—lodge facilities must care for housing, feeding and entertaining thousands against the limited number of visitors in the past and this is also true for the winter sports areas and the packer-outfitters.

Without question, the biggest road block today for new developments or expanding and modernizing the older facilities is financing. In contrast to facilities built on private land, permittees building on federal land cannot borrow money by using these facilities as collateral. Federal permittees have always had to build with short-term money borrowed on notes signed by individuals who put up their personal credit as collateral.

It should be noted that the profits earned on permittee operations are extremely low and, as such, investors are not likely to purchase stock and people willing to sign notes are becoming more reluctant to involve their good credit with little or no return.

In the past years new winter sports areas developed in the country related to Forest Service lands had their base facilities built on private land to effect financing, with the lifts operating on the upper slopes on a Forest Service permit.

There is little chance today that anyone would bid on a prospectus for a winter sports area or other type of operation to be totally developed on Forest Service land with the present type of permit.

In the national policy, we have relied on the private sector for development and operation and then failed to provide policies or regulations that permit private capital to function. Concessioners are given short term contracts subject to the whims of shifting government policies or changing administrations.

We ask that Forest Service permits be changed so they become a firm contract between the permittee and the government and acceptable to lending institutions to allow long term financing.

The language of H.R. 10491 makes this possible and Mr. Chairman and members of the committee—if you concur with us—the passage of this legislation will create a strengthened partnership between the permittee and the government and allow expanded and quality recreation facilities for the public.

Thank you for allowing me to meet with you today.

Mr. WALLACE. Thank you. My name is Francis A. Wallace, and I serve as executive vice president of the National Forest Recreation

Association, which is a group of people who are permittees operating on Federal land and primarily on the Forest Service lands. And that is mostly where it gets its name. We represent a division which involves resorts, marinas, and a type of service facility that is there for the public such as garages, service stations, stores, and such. We have another group known as the Packer-Outfitter which can range anything from a dude ranch all the way to just a packer who may operate only during the hunting season or, of course, the winter sports areas. Most of our members are from the Western part of the United States where most of the acreage is on the Forest Service lands and we have just celebrated our 25th anniversary and, as you might guess, our theme this year was "Twenty-Five Years of Partnership with the U.S. Forest Service." And I want to say sometimes that that partnership has not always been harmonious. There have been difficulties. We do have a good communication line and we have tried to work with them. And I think we have worked successfully with the Forest Service because it has had the policy, in part, of multiuse service from the Multiple Service Act for use of Forest Service lands for facilities being provided by private contract and speaking to this legislation, we view it as effective to, you might say, improve that partnership by providing a longer and better leasing system, and also providing a better financial program behind it.

Now, there is a speaker who is following me, who can go into far greater depth on the financing than I can, because he is in the banking field but there is one of our major problems. Recreation has changed from the old days when you went up into the mountains in your Model T Ford, and there was a Mom and Pop Resort up there and what happened is that Poppa would drop out from behind the cash register and pump a couple of dollars of gasoline, and Momma in the meantime was cooking hamburgers. But today you are supplying services to thousands of people, and we have modern highways, and modern transportation and facilities and despite the discussions and the day-long meetings that I attended yesterday on the energy problems, I am sure that the recreation people are still going to find a way somehow or other, as Senator Jackson said yesterday morning, they are going to save a couple of gas coupons and they are going to get to the woods somehow, at least for some time, and we think that with this growing recreation you cannot turn the people back. There is no way that you can say "stay home." We think they are going to come. They want to ski, they want to go to resorts, they want better facilities. They want higher quality facilities. But, all of this needs money and you have problems of time and leases.

And with that, without going any further, Mr. Chairman, I will just conclude and, hopefully, I can answer any questions you might have.

Mr. MELCHER. Well, Mr. Wallace, I appreciate your testimony. I see in glancing through it that your organization quite often finds itself at odds with the Forest Service, and you view this bill as anchoring down a sort of agreement that is satisfactory to your organization and, hopefully, would lead to a sounder understanding between recreational users and the Forest Service?

Mr. WALLACE. That is right. That is our belief, sir. That is right and we also know that we have worked with the Forest Service in discussions on this and we know that they are in support of the same principles.

Mr. MELCHER. Well, what do you think about the 80-acre limitation? I have not had a chance to look too well at your statement, but have you mentioned in your testimony, and if you have I do not see it in here, just glancing through it about the 80-acre provision?

Mr. WALLACE. Well, I am somewhat like Congressman Udall. They put the 80 acres in there at one time and they might just as well have said 160 because that is the acreage in a section, but they just said 80. I would say for the most part, on the majority of recreational facilities, when we are speaking of a resort, and machinery and the like, the 80 acres is no problem. But it is a problem in our ski area developments. Ski area developments today are larger in nature and scope. It is no longer a rope tow, but now you have a big lift operation, and you have to provide again all of these services to the public and 80 acres just does not always meet the needs. This does give the Secretary the proviso to review it. He does not have to give over 80 acres or even up to, but he has the provision to give what is best in line with the studies.

I should point out that the studies made are made both by the Government agencies and private investment people and were made long before they got involved with where they were going to build and what they were going to build, because you have to get a prospective and if it is a new development or an expansion of an old development, it must also be approved. I think the 80 acres is just something that happened in there and it may not have been the best thing possible but I am not trying to put a ceiling on that. I am simply saying that I think that should be at the discretion, and after studies and understandings have been reached.

Mr. MELCHER. What about some comments that are heard occasionally in this country that European skiing areas are designed and landscaped so that the scars are not significant in their minds. You always run into that and if you want a horrible picture of what happens to a mountain, somebody sends us one of the scars caused by skiing opportunities available on a nice mountain. And somebody sent me an aerial photograph of a big ski slope on the newest recreational complex in Montana, and there is no denying that you look at that picture and, you know, you are sacrificing something in order to get enjoyment for skiers. I am sympathetic to the skiers, but it is true that the scar is there on what otherwise would be a more pretty mountain before they cleared it for the ski slopes. Do you know of any way of minimizing the appearance? Is it true, as comments have been made, that the Europeans do a better job?

Mr. WALLACE. I cannot answer that, sir, because I have not seen a European area, either in winter or summer. But, in summer I would say an area could change its picture completely because a covering of snow does eliminate and cover many things. I would say that in many instances where I have ridden the ski lift in the winter and I go back and look at the rocks in the summer, I would not have wanted to be on them but nature put those rocks there. And in many instances, I know they have cleared runs which are a necessity for safety. But,

there is one who looks at it as a scar and another one who looks at it as a recreational opportunity and nature, itself, has scarred our mountains beyond the point of recovery in many areas from timber and everything else. And, now, of course, there are many developments which are going to higher levels, beyond the timberline operation. So, I do not think that scarring is as much as discussed. It is in the eyes of the beholder. Some people look upon a mountain as being scarred and can say that man did it. But, in many instances it is nature that has done it.

Mr. MELCHER. Well, I want to make my point clear. The scarring is visible, very much visible in the winter as it is in the summer, simply because of the swath of trees that have been cut out of there.

Mr. WALLACE. Well, I can point out——

Mr. MELCHER. Is it a swath or just a scar?

Mr. WALLACE. I can point out though, in many areas, sir, the ski areas have gone back to what we called and have used the word today of grooming. We are not talking just of the fact that when it snows we want to level that out or pack that down, but it is to their advantage if they can go back and see the slope, a slope being a run, we will call it and if they can go in there and see that slope, to put a grassy texture in there that will hold the soil but, at the same time, with the minimum amount of snow on that open slope where before you had to wait for 6 feet of snow to cover over the rocks before they could get on the ski run. Now, they can ski with a minimum of snow.

Mr. MELCHER. I appreciate your comments but, actually, you and I are talking about a little bit different aspect.

You are talking about a scar to the soil and the vegetation and the lower vegetation and I am talking about a scar because a swath of trees has been cut away and cleared. And it leaves that complex of lines where the trees have been chopped down to make the ski area or the ski slopes. I very much appreciate that it is done for a purpose, and I appreciate the purpose of the recreational opportunities of skiing. Nevertheless, the point is how do we minimize this kind of thing? I found it interesting on your comments about going above the timberline, but my experience with ski slopes is limited just to those that are principally below that elevation.

So, I know what is involved from my experience and I know it involves clearing the timber away. But, I thank you for your comments. If you have any suggestions or there are any suggestions anybody can make on minimizing the loss of scenic values from grading ski slopes, I think it would be very beneficial to this subcommittee.

Mr. WALLACE. I think, sir——

Mr. MELCHER. To have that information because it could very, very easily be done through this legislation or through discussions with the Department, with the Forest Service without legislation to try to accomplish the type of ski development that would lead to a minimal loss of scenic values.

Mr. WALLACE. Well, I would like to think, sir, that the ski operator of today is a very, very sensitive person and he has probably been longer a leader in the field of environment and ecology before some people knew how to spell either one of them. But, he was not always credited as such. But, I think even more today they are very sensitive to the complete layout of their whole facilities so as to make

the least impact upon it, but at the same time, provide the greatest pleasure possible for the greatest numbers that wish to use those facilities.

Mr. MELCHER. I do not disagree at all with the statement, but I refer to the latest development in Montana, which I think is predicated on that basis, to do the least amount of damage, and the least insult to scenic values as is possible, but an aerial photo, and indeed I witnessed the same thing just flying over in a small airplane, an aerial photograph clearly reveals the results of loss of scenic value from that mountain. And the point is, I think there may be ways of doing better and, if so, this subcommittee is certainly interested in learning those ways.

[Information for the record in letter dated Dec. 20, 1973 from John R. McGuire to Hon. John Melcher, follows:]

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., December 20, 1973.

HON. JOHN MELCHER,
*Chairman, Subcommittee on Public Lands, House Interior and Insular Affairs
Committee, Washington, D.C.*

DEAR MR. MELCHER: During the December 13 hearing on H.R. 10491, a bill "To provide for the leasing for commercial outdoor recreation purposes of certain lands of the forest reserves created from the public domain, and for other purposes," you asked for information on the process of designing ski areas for a minimum visual impact on the landscape.

This subject is now a part of the Forest Service Landscape Management Program. It is also one of many topics treated in "Planning Considerations for Winter Sports Resort Development" (see page 30) which uses Copper Mountain, on the White River National Forest in Colorado, as an appropriate example.

"National Forest Landscape Management, Volume I" is now in use throughout this Agency to make our people more aware of esthetics and some of the basic principles involved in managing Forest landscapes. The Copper Mountain ski area is one of the first in the U.S. to be designed and constructed with these in mind. This is causing a good deal of comment within the industry (see the enclosed copy of a recent editorial from Ski Area Management Magazine and our response)¹ and will hopefully provide us with usable response from the public.

Sincerely,

JOHN R. MCGUIRE (for chief).
THOMAS C. NELSON,

Mr. MELCHER. The gentleman from Guam?

Mr. WON PAT. Just one question, Mr. Chairman.

Are these ski operators for these recreational establishments, are they chain organization or individually owned and operated?

Mr. WALLACE. When you speak of chain organizations, you are speaking of a multiple complex such as I may use a reference to, say, Howard Johnson facilities?

Mr. WON PAT. Something like that, yes.

Mr. WALLACE. No, these are individual permittees and when I speak of individual, it could be a small corporate group, a small partnership a Mama and Papa being in partnership in many cases. No, to my knowledge, they are not, they are independent, and each is unto his own, has his own operation and his own worries, and whatever he has for his own financing and operations. No, it is not a chain, a multiple type of operation.

¹ Placed in files of the subcommittee.

Mr. WON PAT. That will be all. Thank you, Mr. Wallace.

Mr. WALLACE. Thank you.

Mr. MELCHER. Thank you very much.

Mr. Thomas W. Swanson, United Bank of Denver.

Mr. Swanson?

STATEMENT OF THOMAS W. SWANSON, VICE PRESIDENT, UNITED BANK OF DENVER

Mr. SWANSON. Mr. Chairman, my statement is quite brief so I would prefer to read it in its entirety.

Mr. MELCHER. Fine. Proceed, Mr. Swanson.

Mr. SWANSON. Thank you.

Mr. Chairman and members of the subcommittee, I am appearing before you today in support of H.R. 10491 as an officer of a bank which has provided financing for two major ski areas for the past several years. I am a vice president of the United Bank of Denver which is Colorado's second largest bank and which we feel plays a leading role in the State's economic development.

A banker is always interested in the security for a loan he makes. Part of this security lies in the character of and his experience with the borrower and part in the physical assets which the borrower may pledge as security.

Two major ski areas for which we are presently providing financing are Vail Associates and the Aspen Skiing Corp. Both of these companies had well established operations before our bank came into their financing picture. Under the existing Forest Service permit system, I have doubts whether our bank, without this previous experience, would undertake to finance a new and untried ski area operation. The present 30 years maximum life of a permit and the 80-acre limitation on it would represent serious constraints from a lender's point of view. These constraints would, I am sure, be even greater with regard to a prospective lender who has no previous experience in the ski business. A loan to help cover a multimillion dollar investment where the operation has only a year-to-year leasehold on most of the land he is using would not normally appear attractive to a lender without the previous experience in the ski business. I am aware that current Forest Service practice is to renew this 1-year permit annually but the very fact that it has to be renewed on an annual basis could be a deterrent to many prospective lenders.

Mr. Brown has mentioned to me the difficulties he had in this regard when, prior to dealing with us, he attempted to secure a line of credit with a New York bank unfamiliar with the skiing industry. I am sure that he would be glad to expand on this if the committee so desires.

H.R. 10491, if enacted, would allay these objections. In addition section 5 of this bill would give the Secretary authority to encourage stability and continuity of operation, both important factors to a lender.

All in all, I feel that this bill would go a long way to encouraging investment by private capital on public lands for the purpose of increasing and improving recreational facilities available to all Americans.

Thank you for giving me the opportunity to appear before the committee. I shall be glad to try to answer any questions.

Mr. MELCHER. Thank you, Mr. Swanson.

I am impressed that you have come from Denver to offer your testimony and I thank you very much. I think you buttress some of the statements that have been made by other witnesses and do so on the basis of an expert in the financial field. I find that that is very significant in this hearing record and I thank you very much for it.

The gentleman from Guam?

Mr. WON PAT. Thank you, Mr. Chairman.

Do you feel, Mr. Swanson, that under the present term of the 30-year maximum permit and the 80-acre limitation, that it will not be sufficient or adequate for, say, justification for your bank to loan to such enterprise?

Mr. SWANSON. I can answer that in two parts.

The nature of the ski industry is extremely capital intensive. That is, that most of the investment moneys have to go into the front end to create the lifts and the runs and the whole resort development rather than being spent in small amounts as the area grows. So that as a bank, we are asked to put substantial amounts of money in at the very beginning and we are paid off over a period of years, varying anywhere from 1 year to possibly up to 30 years or more. So, if we have a loan that is due in 5 years, we feel that it certainly is a potential problem if, in fact, for one reason or the other, the permit or the other special use permit which is a year-to-year permit could be revoked on an annual basis, leaving us without any source of cash repayment on our loan.

As far as the 30-year permit is concerned, mortgage finance companies, insurance company lenders do lend on occasion in excess of 30 years. Possibly even more important in the State of Colorado at this time is the fact that our areas, Aspen and Vail, are well into their 30-year permit, so that this is shortening. And, for instance, Snow Mass is 8 years into its permit, yet it is only one-third developed so there is going to be substantial more capital requirement and it is most likely that there will be substantially more loan requests from the company. And this continues to shorten so, for that reason, I would say it could be a significant deterrent, and is to many lenders, particularly ones that do not have a history and experience as we have in Colorado, and also certainly in the case of banks outside of the State that do not have the best of economic reasons for supporting our local industries.

Mr. WON PAT. Thank you, Mr. Swanson.

Mr. MELCHER. Thank you very much, Mr. Swanson.

Our next witness is Mr. Lloyd Tupling of the Sierra Club.

Hi, Mr. Tupling. We are glad to have you back with us. You are always a welcome witness before this committee.

STATEMENT OF MR. LLOYD TUPLING, THE SIERRA CLUB, WASHINGTON, D.C.

Mr. TUPLING. Thank you, Mr. Chairman. I would like to have my statement inserted in the record in full. I will abridge it in the interest of saving time.

Mr. MELCHER. Without objection, Mr. Tupling's statement on behalf of the Sierra Club will be made a part of the record at this point.

Hearing no objection, so ordered.

[The complete statement of Mr. Tupling follows:]

STATEMENT OF W. LLOYD TUPLING, WASHINGTON REPRESENTATIVE, SIERRA CLUB

Mr. Chairman, I am W. Lloyd Tupling, Washington representative of the Sierra Club, a national conservation organization whose objectives include enjoyment and preservation of the nation's forests. The Sierra Club welcomes this opportunity to comment on H.R. 10491 because of the profound effects it could have on attainment of those basic objectives.

The Sierra Club feels that H.R. 10491 is not the proper approach to serving public needs, may lead to destruction of large National Forest areas, will provide unprecedented economic benefits to private parties at the expense of the public interest, and is an attempt to legislate a settlement of a conflict which is before the courts. We believe that legislation affecting recreational development in the National Forests should seek to minimize environmental damage and maximize the public welfare.

This bill does neither. Commercial outdoor recreation facilities can have great environmental impact. For instance, large ski facilities generate water pollution and are indirect sources of air pollution. The construction of the ski slopes, support and service facilities, access roads and associated second home developments destroy the natural and wild values of our national forests that the users of such facilities are seeking to know and enjoy.

This bill furthermore would give private developers new special benefits. It would allow the Secretary of Agriculture to lease very large tracts of land without limitations to protect the public interest. No project would be too big for administrative decision. The dedication of significant blocks of our national forests to commercial enterprise could occur without even consultation with Congress or this Committee. The existing eighty-acre limitation may not be the most appropriation ceiling. Perhaps it should be higher or lower. But one thing is certain—Congress should not give unlimited discretion *carte blanche* to the administrative agency in this area.

The language of this bill is so broad and vague that it takes little imagination to speculate possible results. Presumably, this legislation is to make it easier to develop ski areas but the commercial leases would equally apply to private commercial campgrounds even though Congress has decided that camping facilities should not only be provided by public agencies, but that they should be provided free of charge in most cases. Another possible problem could be the leasing of national forest lands adjacent to a private second-home development to provide commercial outdoor recreation services such as golf, tennis, boating or fishing. Even though the development would most likely be available to the general public, the facilities and services could be designed to effectively become a private resort for those who own second-homes nearby. This legislation could also allow the Secretary to lease areas, in fact even wilderness areas, for specific guide services possibly closing these areas to all others who do not wish to have or cannot afford such guide services.

Another new benefit for lessees is the extension of lease terms to fifty years from thirty years. All existing leases could also be extended. This will make it all the more difficult to change land-use as the needs and wishes of the public change because leases will be considered less often. Also, if a mistake is made in granting a lease we will have to live with it for at least fifty years. Furthermore, there is no provision for requiring a lessee to remove at his expense facilities from the national forest lands if his lease is not renewed. This will make forest managers reluctant to recommend the cancellation of lease because it is difficult to obtain public monies for building removal.

The worst provision of this bill requires compensation for any lease which is terminated by the Secretary before term to allow for another use. This provision will greatly hinder the public interest for the same reason stated above regarding building removal. Compensation could become very expensive. Forest managers would then avoid, except in the most unusual circumstances, the recommendation that a lease would be terminated. These leases should not be certificates of public economic liability to private parties. They should only

be a permit which only grants permission to construct certain facilities and conduct certain activities within a set of guidelines that protect the environment and the public. There cannot be any economic right for these lands belong to the public and should be managed in their trust.

The bill does not provide policy for guidelines to protect the environment and the public in the issuance of leases. Is it the policy to have maximum development, maximum diversity, maximum private enterprise, maximum environmental protection, or what? Without this explicitly stated we can only conclude that it is maximum development as indicated in the second paragraph of the bill as part of the findings. A policy of maximum development is not in the public interest—for future generations or our own—because it can only result in environmental destruction and the preemption of other public uses of the national forests.

There is also nothing in the way of safeguards for the user of commercial facilities that would be leased under the provisions of this bill. What is to prevent the formation of monopolies where one firm would hold all or most commercial leases in an area? Section 5 would give lessees preference in negotiation over other applicants of new leases. But what standards of adequate service are there?

Finally, I would like to address the problem of legislating a resolution of a legal conflict. In *Sierra Club et al. versus Rogers C. B. Morton et al.*, we are trying to prevent the destruction of a unique and fragile Alpine Valley in Sierra Nevada. The Forest Service proposes to grant a permit to Disney Enterprises Inc. at Mineral King to build and operate a large ski and summer resort. Mineral King happens to be a game refuge surrounded on three sides by the Wilderness of Sequoia National Park. This very scenic area is part of the same eco-system as is the park, and citizens have sought to add it to the park for a long time.

One of the legal theories in the case is that the Secretary of Agriculture is exceeding his discretion and is willfully trying to circumvent the restriction of statutes limiting his authority to grant term permits to national forests to eighty acres. The Forest Service seeks to do this first by granting Disney Enterprises a thirty-year permit for eighty acres pursuant to 16 U.S.C. 497:

The Secretary of Agriculture is authorized . . . (A) to permit the use and occupancy of suitable areas of land within the national forests, not exceeding eighty acres and for periods *not exceeding thirty years*, for the purpose of constructing or maintaining hotels, resorts, and any other structures or facilities necessary or desirable for recreation, public convenience or safety . . .

Then the Forest Service intends to grant a purportedly revocable permit to be reviewed annually for permanent facilities on thousands of additional acres of land within Sequoia National Refuge and forest for a total of 13,000 acres. The Forest Service claims to have the authority to grant this "revocable" permit pursuant to 16 U.S.C. 551:

The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests . . . and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction . . .

We feel that neither this statute as to its language, history, and administrative construction demonstrate, nor the inherent authority of the Secretary of Agriculture allows him to permit the development of a ski and summer resort on thousands of acres in a national forest. Furthermore, 16 U.S.C. 497 precludes him from issuing permits for the use of more than eighty acres of national forest land for a resort. Irregardless of what the judgment is in this case, we feel it would be inappropriate for Congress to legislate away this litigation.

Congress has considered at various times through history how much discretion to give the Secretary of Agriculture in this area. In 1913 a bill to grant the Secretary authority to grant permits for areas up to eighty acres was defeated and a bill with a five-acre limitation passed the next year. In 1956, Congress did lift the limitation to 80 acres and the legislative history of that legislation and at earlier times indicates that Congress was concerned about granting the Secretary of Agriculture broad discretionary authority.

The existing limitations were enacted by Congress very deliberately because of their great concern to prevent Mineral King-type developments without Congress' approval.

We feel this is a real problem. The location of the Mineral King proposal indicates that the Department of Agriculture is not sensitive to environmental protection matters. Any proposal of the scale of Mineral King should be taken before Congress for special authorization. Only in Congress can the merits and demerits of a project be appropriately examined with the very necessary public involvement.

Mr. MELCHER. You may proceed, Mr. Tupling, as you see fit.

Mr. TUPLING. The Sierra Club feels that H.R. 10491 is not the proper approach to serving public needs, may lead to destruction of large national forest areas, will provide unprecedented economic benefits to private parties at the expense of the public interest, and is an attempt to legislate a settlement of a conflict which is before the courts. We believe that legislation affecting recreational development in the national forests should seek to minimize environmental damage and maximize the public welfare.

This bill does neither. Commercial outdoor recreation facilities can have great environmental impact. For instance, large ski facilities generate water pollution and are indirect sources of air pollution. The construction of the ski slopes, support and service facilities, access roads, and associated second home developments destroy the natural and wild value of our national forests that the users of such facilities are seeking to know and enjoy.

This bill furthermore would give private developers new special benefits. It would allow the Secretary of Agriculture to lease very large tracts of land without limitations to protect the public interest. No project would be too big for administrative decision. The dedication of significant blocks of our national forests to commercial enterprise could occur without even consultation with Congress or this committee. The existing 80-acre limitation may not be the most appropriate ceiling. Perhaps it should be higher or lower. But one thing is certain—Congress should not give unlimited discretion *carte blanche* to the administrative agency in this area.

I would like to address the problem finally of legislating a resolution of a legal conflict. In *Sierra Club et al. v. Rogers C. B. Morton et al.*, we are trying to prevent the destruction of a unique and fragile Alpine Valley in Sierra Nevada. The Forest Service proposes to grant a permit to Disney Enterprises, Inc. at Mineral King to build and operate a large ski and summer resort. Mineral King happens to be a game refuge surrounded on three sides by the wilderness of Sequoia National Park. This very scenic area is part of the same ecosystem as is the park, and citizens have sought to add it to the park for a long time.

One of the legal theories in the case is that the Secretary of Agriculture is exceeding his discretion and is willfully trying to circumvent the restriction of statutes limiting his authority to grant term permits to national forests to 80 acres. The Forest Service seeks to do this first by granting Disney Enterprises a 30-year permit for 80 acres pursuant to 16 U.S.C. 497.

The Secretary of Agriculture is authorized . . . (A) to permit the use and occupancy of suitable areas of land within the national forests, not exceeding 80 acres and for periods not exceeding 30 years, for the purpose of constructing or maintaining hotels, resorts, and any other structures or facilities necessary or desirable for recreation, public convenience or safety . . .

Then the Forest Service intends to grant a purportedly revocable permit to be reviewed annually for permanent facilities on thousands of additional acres of land within Sequoia National Refuge and forest for a total of 13,000 acres. The Forest Service claims to have the authority to grant this "revocable" permit pursuant to 16 U.S.C. 551.

"The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests . . . and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction . . ."

We feel that neither this statute as to its language, history, and administrative construction demonstrate, nor the inherent authority of the Secretary of Agriculture allows him to permit the development of a ski and summer resort on thousands of acres in a national forest. Furthermore, 16 U.S.C. 497 precludes him from issuing permits for the use of more than 80 acres of national forest land for a resort. Irregardless of what the judgment is in this case, we feel it would be inappropriate for Congress to legislate away this legislation.

Congress has considered at various times through history how much discretion to give the Secretary of Agriculture in this area. In 1913 a bill to grant the Secretary authority to grant permits for areas up to 80 acres was defeated and a bill with a 5-acre limitation passed the next year. In 1956, Congress did lift the limitation to 80 acres and the legislative history of that legislation and at earlier times indicates that Congress was concerned about granting the Secretary of Agriculture broad discretionary authority.

The existing limitations were enacted by Congress very deliberately because of their great concern to prevent Mineral King type developments without Congress approval.

We feel this is a real problem. The location of the Mineral King proposal indicates that the Department of Agriculture is not sensitive to environmental protection matters. Any proposal of the scale of Mineral King should be taken before Congress for special authorization. Only in Congress can the merits and demerits of a project be appropriately examined with the very necessary public involvement.

That concludes my statement.

Mr. MELCHER. Thank you very much, Mr. Tupling.

I wonder if you would have any objection to the next witness and our last witness this morning, Mr. Boyd Rasmussen. Do you have any objection if you both appeared together? Would you both approve of that? Your testimony is very similar.

Mr. TUPLING. It is all right with me.

Mr. MELCHER. Is it all right with you, Boyd?

Mr. RASMUSSEN. Fine.

Mr. MELCHER. I think the questions might as well be directed to both of you, because of the similarity of your testimony, and the objections that both of you raise are similar. Please come forward, Boyd.

Boyd, this committee is honored to have you here. I do not know how many times you have appeared here in your capacity representing the Bureau of Land Management and the Secretary of the Interior, but I suppose scores of times.

STATEMENT OF BOYD L. RASMUSSEN, CONSULTANT TO THE NATIONAL WILDLIFE FEDERATION

Mr. RASMUSSEN. Yes, quite a number.

Mr. MELCHER. And we are delighted to have you back here again in this capacity and on behalf of the National Wildlife Federation, and we look forward to having you back here often in the future.

Mr. RASMUSSEN. Thank you.

It is a pleasure to appear here today and any other time. I will be brief in my testimony, or our testimony.

Mr. MELCHER. Without objection, Mr. Rasmussen's entire statement on behalf of the National Wildlife Federation will be made a part of the record at this point.

Hearing no objection, so ordered.

[The complete statement of Mr. Rasmussen follows:]

STATEMENT OF BOYD L. RASMUSSEN ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Boyd L. Rasmussen, a member and consultant for the National Wildlife Federation, which has its headquarters at 1412 Sixteenth Street, N.W., here in Washington, D.C.

The objectives of our organization are to create and encourage an awareness among the people of this Nation of the need for wise use and proper management of those resources of the earth upon which the lives and welfare of men depend; the soils, plant life, and the wildlife.

The National Wildlife Federation is a private organization which seeks to attain conservation goals through educational means. It is composed of independent affiliates in all states, Guam, Puerto Rico and the Virgin Islands. These affiliates in turn, are made up of local groups and individuals who, when combined with associate members and supporters of the National Wildlife Federation, number an estimated 3½ million persons.

It is a pleasure to appear before this committee and extend our remarks on H.R. 10491.

We recognize that the present system used by the Forest Service to issue special use permits creates some barriers for proper financing. The question is whether these barriers are urgent enough to require such far reaching discretionary authority for the Secretary of Agriculture.

We are concerned that no mention is made of the need for public consultation prior to the issuance of long term leases. Further, no mention is made to the fact that this legislation would not apply to designated portions of the Wilderness System.

This legislation grants the Secretary of Agriculture:

- (1) Complete discretionary powers to issue long term leases to provide recreational facilities and services.
- (2) Authority to grant 50 year leases.
- (3) Authority to determine the acreage of land to be leased without any restriction on amounts.
- (4) Authority to grant leases without any public participation.

We recommend that the Committee consider the following changes:

Section 3—There are no restrictions on the amount of land which may be leased at the discretion of the Secretary of Agriculture. We feel that the 80 acre allotment is of sufficient size for most recreation developments. We recommend that the language provide for acreage exceptions to be made on an individual basis and that public consultation be provided for review of these exceptions.

Section 6—This section gives title to the lessee for any structure fixture or improvement. It does not define any responsibility for removal of structural fixtures or improvements or provide for restoration of the site. We recommend that such language be added.

Section 8—This section allows present holders of special use permits to apply for cancellation of his permit and issuance of a lease under this act. We recommend the addition of language to make clear that this action is at the discretion of the Secretary of Agriculture.

Section 9—We recommend that language be provided to this section which excludes from the provisions of the act designated lands which are a part of the Wilderness System.

Mr. RASMUSSEN. First, we are concerned that there is no mention that is made of the need for public consultation prior to the issuance of long-term leases or those that have large acreages. And I will go to the second page to the three recommendations on which we made comment.

On section 3, there is no restriction on the amount of land which may be leased at the discretion of the Secretary of Agriculture. We feel that the 80-acre allotment is of sufficient size of most recreation development. We recommend that the language provide for acreage exceptions to be made on an individual basis, and that public consultations be provided for review of these exceptions.

We also recommend public consultation for review of proposals in excess of 30 years.

What we are saying is that language should provide for exceptions when needed.

In section 6, this section gives title to the lessee for any structure, fixture, or improvement. It does not define any responsibility for removal of structure fixtures or improvements or provide for restoration of the site. We recommend that such language be added.

Section 8, this section allows present holders of special use permits to apply for cancellation of his permit and issuance of a lease under this act. We recommend the addition of language to make clear that this action is at the discretion of the Secretary of Agriculture.

We recommend on section 9 that the language be provided to this section which excludes from the provision of the act designated lands which are a part of the wilderness system.

That concludes my main points.

Mr. MELCHER. Thank you very much, Boyd.

Now, I would like to ask both of you and I think both of you have mentioned that there is some question on whether or not the proposed bill would have an impact on the Wilderness Act.

Mr. RASMUSSEN. We were assured this morning that it would not by Congressman Udall. Since this was part of our prepared statement prior to this—

Mr. MELCHER. I am going to ask Bill Shafer. Have you been asked for the record whether you have reviewed this particular problem?

Mr. SHAFER. No, sir, I have not.

Mr. MELCHER. Would you mind stating for the record now how you view it?

Mr. SHAFER. Well, I think, Mr. Chairman, there is very little danger because unless there is specific language in this proposal of Mr. Johnson's that would specifically override the provisions of the Wilderness Act, I really see no possibility that the Wilderness Act could be set aside and commercial developments permitted within wilderness areas on the basis of this particular bill, Mr. Chairman. There is no language in Mr. Johnson's bill that would override the provisions of the Wilderness Act.

Mr. MELCHER. I might add that I would have a particular concern also that the bill would not interfere with the normal process of de-

termining proposed new wilderness areas. After all, the Forest Service has gone through a lot of work and a lot of proposals and I want to be certain that the bill itself does not interfere with the work that is ongoing with them. I do not view that as a significant problem because I think in most cases, although I do not think in every case the Forest Service would evaluate with their studies on wilderness designations before they would contemplate taking proposed new recreational areas for any purpose.

However, to make that point clear, since it has been a subject referred to by several of our witnesses this morning, I would want at least a report to contain language if we are going to pass this bill that our report contain clarifying language as to what the committee's intent was for that purpose. And I see no reason to view this legislation as superseding anything in the Wilderness Act. And, frankly, there would not be any reason to think that it would allow for interference with the Forest Service and what it is doing on proposals in this area.

Mr. TUPLING, I think you referred to this, gives large acreages, possibly gives large acreages for recreation.

What would be your idea of a limitation on acreage? The current one, as I understand, is 80 acres. What would be your idea? I would not view that as very large, frankly.

Mr. TUPLING. No, I would not either but if this bill were enacted and the Disney Productions permit were to be pursued, they would, at the discretion of the Secretary, lease 13,000 acres which I think is a substantial acreage.

Mr. MELCHER. They could lease 13,000?

Mr. TUPLING. Yes, because through the permits that they sought through the 80-acre lease, and the annual so-called revocable permits, the additional 13,000 acres which they sought to control in their development, under this bill they would be able to get 13,000 or 15,000. There is no limit within this bill. It is discretionary authority of the Secretary.

Mr. MELCHER. Well, let me view this as somewhat anomalous and again from your experience and from my knowledge for myself, when you refer to 13,000 acres, that would be some application or necessity for some group to build a type of recreational areas that they wanted, which I assume is a ski recreational area, and now would that be 13,000 acres because they would have roads to service a portion of the lifts and slopes, is that it?

Mr. TUPLING. Well, of course, the Disney proposal is not just for a ski resort. It is a year-round resort and they would have other developments on this besides winter sport activities. Obviously, I do not have access as to what their complete plans are but I would assume that they would have golf courses, riding trails, and other things that would provide for year-round activity.

Mr. MELCHER. Well, I will go back to my question. Since there is an 80-acre limitation, if it were changed, what would be your idea of a reasonable limitation?

Mr. TUPLING. Well, I don't know whether it should be 100 or 180 or what. I really think that the current system with granting special use

permits outside of the 80 acres is not unreasonable or an unrealistic method of dealing with a recreational resort that is involved.

Mr. MELCHER. Of course, we run into the proposition with the limitation of several different applicants, I suppose, that would join forces for additional acres. What you say the bill does not do, Mr. Tupling, is the bill does not provide policies or guidelines to protect the environment and the public interest on the issue of leases. What if they filed an environmental impact statement? Is there something further that you are recommending?

Mr. TUPLING. Yes. In section 3(d) it says "the general development, management and operation of facilities and services covered by the lease shall be the responsibility of the lessee, subject to National Forest Service regulations and planning guidelines fixed by the Secretary, consistent with policies and objectives of this act." And, of course, one of the major objectives of the act is to maximize development in these areas. And I think that the policy, the guidelines that the Secretary is supposed to follow should be expanded somewhat to detail what the Congress believes should be achieved under the discretion that he has.

Mr. MELCHER. I think you make a very valid point. And I think it is something that we should address ourselves to if we are going to pursue passage of the bill.

One of the witnesses just prior to Mr. Swanson, Mr. Wallace, mentioned the possibility of skiing above the timberline. Do you have any comments on that, either one of you? Are we going to run into the fragile areas above timberlines or what happens there?

Mr. TUPLING. Well, I do not know. I have skied above the timberline, not in recent years, because I have gotten a little more brittle than I used to be but as far as I know I left no damage except some tracks in the snow.

Mr. MELCHER. Do you agree, Mr. Rasmussen?

Mr. RASMUSSEN. Well, there is a lot of skiing in this country that is above the timberline. I think one of my initial jobs in the Forest Service in 1937 was to help open the lodge Timberline in Oregon, and most of that upper area is above timberline. So there are a lot of areas where the ski facility, the lifts and things are above the timberline. I think you can look at those areas and tell what has happened over a period of time. But, in any case, before the Forest Service can establish such a lease or such an area, they would have enough studies to know the conditions of the soil, and what they might run into.

Mr. MELCHER. There would not be any possibility; we do not have anything in the East above the timberline, do we?

Mr. RASMUSSEN. How about Mount Storm?

Mr. MELCHER. Rather limited. I wonder why you say this bill would grant authority, would give to the Forest Service authority to grant leases without any public participation? Certainly they have to have public participation in their environmental impact statement, would they not?

Mr. RASMUSSEN. Yes; on large areas you would.

Mr. MELCHER. On a large area?

Mr. RASMUSSEN. But I think there are thousands of leases that are issued without environmental impact statements. At least it would be

my impression. What I am saying is that on the larger areas that we should have public hearings just on the issuance of the lease, maybe not on the impact statement, but which would follow and we should have public participation.

Mr. MELCHER. Well, now, maybe we are getting at two different things here. I was thinking of the environmental damage being a public concern, the impact on the environment being a public concern. Perhaps you are also addressing a public concern on whether or not the lease was appropriate in terms of the length and the money and so forth?

Mr. RASMUSSEN. Yes. There were two aspects.

Mr. MELCHER. I had not thought of it in that way.

Mr. RASMUSSEN. We also look at the term of years, and that is present standards are 30 years, and that for longer term leases we should have the same kind of consideration. In other words, leases above this there should be some public consideration.

Mr. MELCHER. Well, I do not want to play God, but we get bawled up in so many things. But, I would also think that the Forest Service could well work into their environmental impact hearings, how to have the lease, who is the proposed lessee and what amount of money is involved and so forth. That would certainly be satisfactory if they went at it in that way, would it not?

Mr. RASMUSSEN. We just want to make sure they do.

Mr. MELCHER. I think that can be very easily attended to in the report on the bill. It is certainly a good point.

I mentioned the latest development in my State, which is a rather broad development and I cannot go back and say whether the public felt they had gotten into act prior to its being started. But, the point is well taken. If they are in from the start then they can make their views known and the Forest Service can react to those views as they best see fit.

Why, Mr. Tupling, would you think that any bill that you do not like very well, that the worst provision is requiring compensation for any lease which is terminated by the Secretary? I would think when you are terminating—

Mr. TUPLING. Perhaps that is improperly phrased. But, what I meant to convey was that it is an undesirable feature because it complicates the decisionmaking on lease termination because of the difficulty that would be involved in obtaining funds to reimburse the leaseholder. In other words, suppose that within 50 years, and goodness knows, it is difficult for any of us to foresee what might occur in the demands on public land that far in the future, or 40 years from now it is decided that we need this land for some other purpose, for an important national purpose, which I could not describe, but just as hypothetical case, it may be very difficult to get a recommendation for termination of the lease, because of the financial obligation to the Treasury that would be involved. The forest management supervisor might be very reluctant to recommend the termination of a lease, and that was my point, not that I do not believe that if it is terminated for cause that the lessee should not be compensated, because that would be unfair taking of property without due process.

Mr. MELCHER. I understand and I put the wrong interpretation, I guess, on your statement. I recognize the point that you make.

I think perhaps we have to face the fact that there is not any movement on that I am aware of where the Forest Service really wants to get into the business of developing various types of recreation. They are not moving, nor is there any movement in Congress to say that the Forest Service, along with other public lands that belong to the country that are a part of the Federal land inventory, that recreational opportunities should be developed at public expense. We do so to some extent and would do so in national parks and national recreation areas, and in some of our water impoundments by the Corps of Engineers. But, there is no movement in the Forest Service or in the Congress that says that ski opportunities should be provided wherever practical and possible. So I guess we have to sift out or weigh what the opportunities are for recreation and forest lands and skiing. There are certainly a lot of them as you referred to in the Disney complex and there are probably other opportunities, and we all know of other opportunities. I think perhaps this bill is an attempt to let private investors go ahead on some sound footing, with principally skiing opportunities or perhaps other types of recreation also. And I find that this subcommittee has to weigh the public interest on both sides, and I am very sympathetic to greater recreational uses of our forests. I think we should have further development of these recreational opportunities and we should get on with it. But, I am certainly not willing to sacrifice in gaining those ends a great deal of damage for other uses or scenic, or wilderness or anything else on the Forest Service lands involved.

So, I think perhaps this subcommittee wants to move some type of a bill and I think in our hearings today we have laid the basis for finding some truly objectionable features in the bill. And if it is the will of the subcommittee later on when we meet to determine if they really want to move the bill I hope that we can move a type of legislation which is balanced and will permit some recreational opportunities that we do not have now, but will not detract unduly from the values of our forest lands.

Mr. RASMUSSEN. Mr. Chairman, I just want to make it very plain that the federation does not oppose the recreation opportunities that we have. We think they should be developed with some care.

Mr. MELCHER. Thank you.

The gentleman from Guam?

Mr. WON PAT. Mr. Chairman, I believe the time is running out and we still have another witness.

Mr. MELCHER. No, we do not.

Mr. WON PAT. Well, I just have a couple of questions.

Mr. MELCHER. Certainly.

Mr. WON PAT. What is the average area of these recreational areas that are now out in the United States? We have recreational areas all over the United States and they are mostly private, but some are in the forest section.

Mr. RASMUSSEN. I would make a guess at about 40 acres. It depends on the facility and depends upon the need for land. A concentrated

type of restaurant, motel, and this sort of thing would not require as much acreage as a golf course. But, I would say about 40 acres. The Forest Service would have better figures on the average size of commercial forest recreation areas than I think we would.

Mr. WON PAT. I suppose then that such recreational areas or facilities for skiing, for instance, would take much more area, would it not?

Mr. RASMUSSEN. Skiing would take a much larger area, if you included all of the land beneath the lift and all of the runs.

Mr. TUPLING. All of the supporting facility areas, the parking areas, roads and so forth, housing, restaurant facilities and other things, I would expect that in that type of development it would require more than 40 acres.

Mr. WON PAT. More than 40 acres?

Mr. RASMUSSEN. Oh, I think a ski area might require up to a thousand.

Mr. WON PAT. A thousand acres? So the 80 acres then would not be sufficient?

Mr. TUPLING. Well, but it is still possible to get a special use permit for the other 920 acres that you might need for it to make up the 1,000 acre unit on a year-to-year basis.

Mr. WON PAT. Oh, I see.

Mr. TUPLING. There is no restraint under the present system to accomplish that.

Mr. WON PAT. Under the present law, in other words, that can be accomplished?

Mr. TUPLING. Yes, certainly.

Mr. WON PAT. Well, then, the 30 acres is sufficient as a limitation, I think, and probably would do well. The idea is, I think, that there are some recreational activities requiring, of course, more acreage and there are some that would require less.

Mr. RASMUSSEN. I believe previous witnesses' testimony indicated that for the average ski area that 80 acres was not sufficient and that the year-to-year basis permit did not offer the security that was needed to secure the proper financing.

Mr. WON PAT. Under the proposal for the 30-year lease, would that perhaps satisfy financing institutions or lending institution?

Mr. MELCHER. Would the gentleman yield?

Mr. WON PAT. Yes.

Mr. MELCHER. I think that the point is that a 30-year lease is available for 80 acres but the additional acreage is a special use permit which has to be reviewed each year and which, of course, is not—

Mr. WON PAT. That would work very well.

Mr. MELCHER. Well, it limits the borrowing capacity of the various groups that might want to put together a ski operation.

Mr. WON PAT. Well, that is understandable from a business standpoint.

Mr. MELCHER. That is correct.

Mr. WON PAT. Thank you, Mr. Chairman.

Mr. MELCHER. The staff has a question.

Mr. SHAFER. I have just one question, Mr. Tupling, and Boyd. It seems that this acreage limitation may be one of the main hangups and

one of the chief concerns. Now, Mr. Rasmussen, I believe, has recognized, as we all do, the need for some flexibility. Mr. Tupling, I think, feels that many of these things, including acreage limitations, should be reviewed by Congress. He apparently would feel somewhat safer if there is some opportunity for congressional review. And I think Mr. Udall touched upon this. Could there be a marriage in here of some of these ideas that above a certain acreage, *x*-acreage, and I do not care what it is, 80 or 160 acres or some such amount, but above a certain acreage there would have to be a procedure for publication in the Federal Register and some type of review by Congress, or an opportunity for Congress to be heard on this. Would either one of you care to comment on that? What I am thinking of is to retain some degree of flexibility as Mr. Rasmussen has suggested and yet give Congress an opportunity for some type of review where it is needed. This would not be needed in every case, but only in cases that may be significant? What would be your reaction to that?

Mr. RASMUSSEN. Well, my reaction is that I do not think we are married hard and fast to the 80 acres. What we are proposing is there be some flexibility. I think it would be wrong to come back to Congress for individual areas. I just think this would be wrong. So, wherever you set the platform, it would satisfy the general run-of-the-mill permits, and I think it would be very agreeable as an approach from our standpoint.

Mr. TUPLING. Well, we are not inflexible. I think our attitude would not be inflexible without this. But, I do believe very strongly that because of the somewhat open ended provisions of this bill that some kind of congressional review is absolutely necessary. For one thing, the rental fee is to be a percentage figure of the income of the user and the percentage figure is not fixed, whether it is one-hundredth of 1 percent or whatever it may be. And I would think that this is something that Congress, in its own husbandry of our public land resources would want to be certain that this land was not being distributed at the discretion of the Secretary at a value less than what is realistic. And I do not know exactly what procedure should be followed but it is not uncommon for Congress to stipulate that when certain actions are taken by the Executive that they are sent up by message such as action contemplated and then a period of 90 days or 180 days transpires before any action could be taken, or where a committee will have a veto power if they so desire.

Mr. SHAFER. I just have one other question, Mr. Chairman.

This bill contemplates that the rental will be based on gross receipts and gross receipts only. Now, I can see that this may work to the advantage of the Forest Service and the Federal Government if these gross receipts are substantial. But, what would be the situation if say, for reasons of poor management, lack of gasoline or several other reasons, the gross receipts were relatively small, and yet the acreage used by the concessionaire was substantially large. Would the Government be getting a fair return, we will say, on an acreage basis rather than an investment basis or gross receipts basis. Is this gross receipt concept of rental limiting the Forest Service unnecessarily and unduly in the return that they would ordinarily receive if they used some other method of computing fair market value returns?

Mr. RASMUSSEN. I think you would have to ask the Forest Service on that, because their fee schedules are subject to review, they are public and whether this would bother their fee schedule or not, I am not, I am not sure. I certainly can see where outside factors might be quite a compelling fact in times of gasoline rationing or whatever we might have. But, you do have to have some fixed place to start with.

Mr. SHAFER. I recognize that but, at the present time, they have various options and under this bill they would not have the same discretion or the same options that are available to them now, as I understand it.

Mr. RASMUSSEN. I think they might want those options.

Mr. SHAFER. I have no other questions.

Mr. MELCHER. Well, I am very glad you raised that point and I appreciate Boyd's answer and Mr. Tupling's answer, but I would hope that this committee does not leave to the discretion of the Forest Service what to charge for fees. I am not at all impressed with a fixed percentage for the very reason that Bill Shafer has mentioned and I would certainly advance the idea that a fair market rental value is the only way that we should be looking at it. If we leave things to the various agencies to decide what the fees are and whether they are reviewed or not, they seem to, some of them seem to be ridiculous. And I just had come across my desk in the last couple of days a new fee schedule for cattle on BLM and Forest Service lands and it is very interesting that the new rates are adjusted upward but are still going to be about one-third or one-fourth, or perhaps even one-fifth, of what would have to be construed as fair market rental value, or fair market grazing value. So, I do not see any way of expecting the Forest Service to recommend appropriate fees. They simply have not, in my judgment, in many instances, have not in the past, and perhaps it is difficult for them to do so. I do not know. Perhaps this is one area that I, at least, one area that the Congress should be speaking to and setting the tone.

Nevertheless, the idea of a percentage, of course, is attractive, at times is an attractive proposal. But, I do not think it is a valid one, personally. I do not know what the subcommittee will think if we mark up the bill, but we would hope, or I will be pushing for fair market rental value rather than some other scheme. I think we can tie something to that, don't you, Bill?

Mr. SHAFER. I would hope so, Mr. Chairman. I think it may be desirable to leave the Forest Service several options on this rather than eliminating some of the options that they now have.

Mr. MELCHER. The other point of whether there should be congressional review, we have, of course, in various instances provided for some sort of congressional review at a point above a certain level with the idea that the appropriate committee would have the opportunity to take action, or need not take action, and by not taking action they left the agency alone. I gather from Mr. Tupling's view that that is possible and perhaps desirable and from Boyd's view he sees problems with it.

Mr. RASMUSSEN. Yes.

Mr. MELCHER. Perhaps something can be worked out on that one.

Thank you both very much.

Mr. TUPLING. Thank you, Mr. Chairman.

Mr. MELCHER. We have a letter from the Pacific Northwest Ski Areas Association and without objection it will be placed at this point in the record. Hearing none, so ordered.

[The letter follows:]

PACIFIC NORTHWEST SKI AREAS ASSOCIATION,
December 10, 1973.

PUBLIC LANDS SUBCOMMITTEE OF THE HOUSE INTERIOR AND INSULAR AFFAIRS
COMMITTEE

GENTLEMEN: This association and the 26 member ski areas on U.S. Forest Service lands respectfully recommend your support of Congressman Harold T. (Bizz) Johnson's H.R. 10491.

Most of the ski areas in the western states are located completely or partially on U.S. Forest Service land. These ski areas have encountered serious problems in securing adequate financing for expansion and improvements because of the severe restrictions in the existing U.S.F.S. permits. The provisions of the Special Use Term Permit, which provide for a maximum of 80 acres and 30 years' use, often are unacceptable to lending institutions.

Ski areas require large investments in roads, parking lots, water and sewer systems, and many other capital improvements which often require more than 30 years for the developer to recapture his investment.

We believe the interests of the public will be better served through improved development and use of the land and natural resources. The passage of this bill will also aid in securing complete compliance with all environmental protective measures.

Thank you for your favorable consideration.

Yours very truly,

MEL BORGERSEN,
Executive Secretary.

Mr. MELCHER. The hearing is adjourned.

[Whereupon, at 12:50 p.m., the hearing in the above entitled matter was concluded.]

