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USE PERMITS FOR NATIONAL FOREST LANDS

GOVERNMENT

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HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS

OF THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 3174

APRIL 10, 1974

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QUARTER

The first quarter of the year was a very successful one for the company. The sales were up 10% from the same quarter last year. This was due to a number of factors, including a new product line and a more aggressive marketing campaign. The company's financial performance was also strong, with a 15% increase in net income. The management team is confident that the second quarter will continue the upward trend.

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USE PERMITS FOR NATIONAL FOREST LANDS

WEDNESDAY, APRIL 10, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FORESTS
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 1301, Longworth House Office Building, Hon. John R. Rarick (chairman of the subcommittee) presiding.

Present: Representatives Rarick, Melcher, Goodling, and Baker.

Also present: Fowler West, staff director, and Anita Brown, staff assistant.

Mr. RARICK. The subcommittee will come to order.

The bill before us today, H.R. 3174, introduced by our colleague from California, B. F. Sisk, proposes "to establish certain policies with respect to certain use permits for national forest lands."

The legislation before us addresses the contractual arrangement between the Federal Government and those individuals who obtain permits for use of lands owned by the Government. The bill seeks to establish a possessory interest for any individual who acquires or constructs structures, fixtures, or improvements on national forest lands providing all incidents of ownership, except legal title, for such acquisition or construction of these structures, fixtures, or improvements to these individuals and further providing that such possessory interest cannot be taken for public use without just compensation.

The bill raises several interesting legal questions which the subcommittee will want answered. Generally speaking, we will be interested in determining the nature of the present contractual arrangements, the specific changes advocated by the legislation before us, and the value both to the interest of the permittee and the Federal Government of each suggested change.

Basically, the subcommittee recognizes the necessity of protecting the permittee and his interests; however, it is clear that the land is part of the national forest system and as such belongs to all of the people. Thus, the interests of the Federal Government must also be taken into account and must also be protected.

[The bill H.R. 3174 introduced by Mr. Sisk, and the U.S. Department of Agriculture report follow:]

(1)

93^d CONGRESS
1st SESSION

H. R. 3174

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 1973

Mr. SISK introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To establish certain policies with respect to certain use permits for national forest lands.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That any person who has prior to the date of enactment of
4 this Act acquired or constructed, or who after such date
5 acquires or constructs, pursuant to any permit issued by the
6 Secretary of Agriculture, any structure, fixture, or improve-
7 ment of any national forest lands shall have a possessory
8 interest therein which shall consist of all incidents of owner-
9 ship except legal title, which, except as hereinafter provided,
10 shall be vested in the United States. Such possessory inter-
11 est shall not be construed to include or imply any authority,

1 privilege, or right to operate or engage in any business or
2 other activity, and the use or enjoyment of any structure,
3 fixture, or improvement in which the concessioner has a
4 possessory interest shall be wholly subject to the applicable
5 provisions of the permit and of laws and regulations relating
6 to the lands. Such possessory interest shall not be extin-
7 guished by the expiration or other termination of the permit
8 (including failure to renew or extend) and may not be
9 taken for public use without just compensation. Such pos-
10 sessory interest may be assigned, transferred, encumbered,
11 or relinquished. Unless otherwise provided by agreement
12 of the parties just compensation shall be the amount equal
13 to the sound value of such structure, fixture, or improvement
14 at the time of taking by the United States determined upon
15 the basis of reconstruction costs less depreciation evidenced
16 by its condition and respective serviceability in comparison
17 with a new unit of like kind, but not to exceed fair market
18 value.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 8, 1974.

HON. W. R. POAGE,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR MR. CHAIRMAN: As you requested, here is our report on H.R. 3174, a bill "To establish certain policies with respect to certain use permits for national forest lands."

The Department of Agriculture recommends that H.R. 3174 not be enacted. H.R. 3174 would provide that any person who, pursuant to any permit issued by the Secretary of Agriculture, acquires or constructs structures, fixtures, or improvements on National Forest lands shall have a possessory interest therein. That interest would consist of all incidents of ownership except legal title which, except as provided in the bill, would be vested in the United States. It would not include or imply any authority, privilege or right to operate or engage in any business or other activity. The concessioner's use or enjoyment of any structure, fixture, or improvement in which he has a possessory interest would be wholly subject to the applicable provisions of his permit and of laws and regulations relating to National Forest lands.

The possessory interest which would be established by the bill would not be extinguished by expiration or other termination of the permit, including failure to renew or extend it. Such possessory interest could not be taken for public use without just compensation. It could be assigned, transferred, encumbered, or relinquished. Just compensation could be determined by agreement of the parties involved. If not determined by agreement, just compensation would be an amount equal to the sound value of such structures, fixture, or improvement at the time of taking by the United States. The sound value would be determined on the basis of reconstruction costs less depreciation evidenced by its condition and respective serviceability in comparison with a new unit of like kind. It could not exceed fair market value.

About 86,000 special use and grazing permits issued by the Forest Service in this Department presently authorize use of National Forest lands for a wide variety of purposes. Most of these permits involve permittee-built and owned improvements of some kind. The value of these involvements could exceed \$1 billion.

National Forest permits are legally drawn and executed agreements between this Department and the permit holders. These permits specifically set forth what, if any, obligations the Federal Government will have for compensating the permittee for improvements built on the permit area upon the expiration or termination of the permit. They also specify the rights and obligations of the permittee as to the removal of any improvements upon such expiration or termination.

These permits are of two general types insofar as duration is concerned. One group is terminable at any time and the other is issued for a specified term of years. None of the permits provides for any compensation to the permittee when the permit is terminable at any time or where the specified term of the permit has expired.

The permittees who have acquired or placed structures and improvements on the National Forest lands have done so under known and agreed to provisions of their permits. In many instances it is known that the permittee's need for use of the area or the period of use of the area to be allowed will be temporary or for a limited time only. To give these permittees the possessory interest and entitlement to compensation as H.R. 3174 would do, would bestow on them an asset or windfall that was not contemplated when they accepted their permits.

Use of the National Forest under a permit is a privilege extended to a relatively small number of people under specific conditions. If permittees were granted a possessory interest in the structures and improvements that could not be extinguished without compensation at the expiration or termination of the permit, they would apparently have a right to retain the improvements or structures in place. This would in effect give permittees vested rights in the use of land itself. Thus existing permits, would be converted into grants of permanent rights, even though existing permit provisions in accord with existing law provide otherwise.

The result of these provisions would be to give private interests priority over public interests in management of National Forests lands. We issue permits for specific uses at particular sites, dependent on the use being consistent with other existing and foreseeable resource uses and needs. We have found that the kinds of uses that can and should be permitted on given areas depend on factors that are changing rather than static in nature. If every permittee with structures and improvements on National Forest lands were given a possessory interest, we would lose the flexibility to accommodate general public needs. The only way we could terminate private uses would be to spend general funds to acquire the interests involved.

H.R. 3174 would therefore create for the Federal Government a major new financial obligation to provide compensation for structures and improvements.

At the same time it would provide a windfall to permit holders. The effect of such an obligation would be to discourage issuance of any new permits or authorization of new improvements where a higher public use could be foreseen in the future. It would also effectively discourage full development of National Forest range lands carried out in cooperation with grazing permittees because of the new financial obligation it would place on the government to provide compensation for structures and improvements. Assignment of possessory interests in structures and improvements could also lead to claims of a right of compensation when permit stipulations are revised to meet environmental standards and provide protection of other National Forest resources and values. For example many grazing permittees feel there is a strong argument favoring some level of com-

compensation for adjustments in their use of the range. We do not believe such compensation would be appropriate.

In addition H.R. 3174 would transfer to the United States title to permitted structures and improvements even though under existing permits title may be vested in the permittees. This could be construed as a legislative expropriation of legal title by the United States.

H.R. 3174 contains provisions similar to those contained in P.L. 89-249 which relates to concession policies. That law concerns only situations where concessioners have placed structures and improvements on land administered by the National Park Service of the Department of the Interior to provide services and facilities to accommodate the public. Upon completion of construction, title to these structures and improvements is vested in the Federal Government even though the concessioner paid for them. The application of the possessory interest concept was not automatically extended to the current concessioner contracts in effect on the date of the Act.

H.R. 3174 on the other hand would apply to all permits for the occupancy and use of National Forests lands. The vast majority of these are for the personal use and benefit of the permittee rather than to provide needed accommodations to the public in the enjoyment by the public of the overall area.

For these reasons, we believe enactment of H.R. 3174 would be undesirable from the standpoint of prudent management of National Forests for overall public purposes, and it is not necessary to provide equity for permittees.

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,

ROBERT W. LONG,

Assistant Secretary for Conservation, Research and Education.

Mr. RARICK. Our first witness this afternoon is the sponsor of the bill, a member of the full committee, our colleague Congressman Sisk.

Bernie, we are glad to have you with us here today. I understand you are accompanied by another of our colleagues, the Honorable Harold "Bizz" Johnson of California.

If you gentlemen will have a seat, we will be happy to hear your testimony.

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SISK. Thank you, Mr. Chairman. I might say as I indicated in my statement, my first bill goes back to 1966. I think it may be true that my colleague, Mr. Johnson, has had a bill in even earlier, because I will have to agree that he has an even bigger problem in this situation than I have, because he represents mountain areas. It has been a substantial problem to me.

Mr. Chairman, I appreciate the opportunity of appearing before you and the fact that you have set this hearing, because, as I say, this is a substantial problem. There are still some 19,000 summer home special use permittees and the Forest Service is still canceling permits. Investments of many generations evaporate with no compensation.

In 1967 this subcommittee held 4 days of hearings on "Management Policy and Other Problems of the National Forests." Unfortunately, the issue of special use permits between private citizens and the Forest Service ended there. The Forest Service objected to the legislative proposals at that time, and probably still opposes enactment of the legislation before you, as far as I know.

In recent years many individuals holding the magical "99 year lease" are threatened with losing their interests in summer houses and recreation cities because the Forest Service has determined a better use

in the public interest. I might just comment there, Mr. Chairman, aside from my statement that any maintenance of this 99 year lease arrangement, is, I am sure, more and more to some extent a—I started to say figment of the imagination and I do not think that is quite fair, either. Many of these old permits, going back many years ago, definitely were undertaken with the understanding of the permittees that in fact, they did have a 99 year lease or in essence a lease in perpetuity and were led to believe that by some of the early Forest Service people.

Back to the statement, Mr. Chairman.

In the meantime, individuals who have contracted and maintained summer facilities in the national forests are faced not only with giving up their interests in the developments, but the Forest Service dictated improvements. These special use permittees then lose the use and cost of building the improvement and the cost of maintaining the improvement. Local governments lose tax base. In leasing this interest the permittees also must bear the costs of removing the structures they have built and maintained. Since I mentioned the tax area there, Mr. Chairman, all the permittees pay, of course, personal property tax on these homes. In fact, in business, I believe the rate is about 5 percent. So actually, the taxes that they pay to the local counties in which they are located are a substantial item of income for the counties, plus the fact that there is a substantial investment over the period of years by the person who has owned them.

I feel that enactment of my bill, H.R. 3174, would provide just compensation to those individuals, and would not, as in the opinion of the Forest Service, be a \$1 billion windfall for all special use permittees of the Forest Service. If there is a better or more equitable method of handling this situation I would certainly appreciate reviewing it. Again, if I can ad lib momentarily, I say we have been seeking a fair and equitable way, because we do believe there is an equity involved for some of these permittees.

But something must be done now. Many of the original special use permits granted in my district did not have the famed section 12 included. This stipulation was added at a later date, and the permittee could only agree or not have the 10- or 20-year permit extended. That, in my estimation, is back door regulation. Mr. Chairman, I ask unanimous consent at this time that there be made a part of the record at the end of my statement a resolution from the California State Legislature, Senate Joint Resolution 25, relative to U.S. Forest Service special use permits.

Mr. RARICK. Without objection, that will be made part of the record. (The resolution may be found on p. 8.)

Mr. SISK. A great deal has been discussed about the present two types of special use permits, the term and the terminable. In my estimation our biggest problem is with the term special use permits which account for nearly 8,000 of the 19,000 special use permits issued by the Forest Service.

The Forest Service told this subcommittee in 1967 that 700 permittees had been given 10-years notice that their term special use permits would not be renewed. Yet, in my dealings with the Forest Service in recent years, this 10-year notice is just not being provided in most cases any longer.

If I might I would like to cite two examples.

I have in my files a term special use permit granted to the Camp Redwood Improvement Association. From 1916 to 1951—35 years—this association camped on the Sierra National Forest without written permit. In 1949, at the urging of Forest Service officials, the campers formed a nonprofit organization and the bylaws, rules and regulations of the association were adopted by the 202 individuals. On July 9, 1951, the Camp Redwood Improvement Association was given its first 10-year term permit.

This permit was renewed in 1962. Section 35 of that permit states:

This permit is issued with the understanding that it shall expire on December 31, 1972. If at that time the Forest Supervisor determines that the site is needed for other public use, the permit will not be reissued and all structures and improvements shall be moved in accordance with printed clause 11 of this permit.

The Forest Service, on July 9, 1971, informed the Camp Redwood Improvement Association that the special-use permit would not be renewed beyond September 31, 1972. I raise the question, actually, what do they mean, then, by the so-called 10-year notice, because the explanation and the indications are from statements of local Forest Service people that once the decision has been made, in all events, they will be given 10 years and it seems to me they are not complying in this case.

I cite a further case having to do with a couple who have an 8-year permit, that actually has 8 additional years to go before it is eligible for renewal. Now, the couple have actually sought to transfer this permit, but they have, in seeking any assurance of the Forest Service as to the fact that it will be extended, are unable, of course, to get any such approval at this time. Yet they are actually not under the so-called 10-year notice.

Mr. SISK. Now, Mr. Chairman, there are a number of other things I could say in connection with it. My colleague, Mr. Johnson, I think actually has a better statement in connection with this matter than the one I have given. However, I do want to ask unanimous consent to have placed in the record a statement by my colleague, Congressman Robert L. Leggett, of California, in support of the legislation. I ask unanimous support that that be in the record.

Mr. RARICK. Congressman Leggett's statement will be placed in the record at this point.

Mr. SISK. Mr. Chairman, in conclusion, I recognize that these lands are public property belonging to all the American people. Yet thousands of people were, literally, going back 50 or 75 years ago—in fact, some of these people in these areas went in in the late 1800's, were asked to give in; in fact, there were even inducements given, because they did contribute at that time and still do to the maintenance of roads. In many cases, these permittees constructed the arteries that we have for getting into these areas. They have made a great contribution, have continued to contribute to their tax money, and it simply seems to me a shame, with the investments that have been made, the developments that have been brought about in the Forest Service, that they not be given some consideration when they are being forced out because of what the Forest Service may determine to be a higher beneficial use. Certainly I do not, I am sure no one wants to stand in the way of that higher beneficial use. But in line with so many other areas where the Government does have, of course, the power of eminent domain to come in and take property, it is generally done with compensation in

almost all cases. In this case, that, of course, is not true and that is the remedy, frankly, Mr. Chairman, which I seek.

I thank you very much for the opportunity of making my presentation.

[The statement by Hon. Robert Leggett and the resolution previously referred to follow:]

STATEMENT OF HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CALIFORNIA

Mr. Chairman, I support H.R. 3174, a bill which I have co-sponsored in past legislative sessions. Because the legislation was first introduced eight years ago, I believe these hearings are long overdue.

This bill would provide just compensation for those persons holding special use permits on national forest lands. Many Californians, and indeed many Americans have constructed summer cabins in national forests.

When officials decide a better use can be made of the land, they may cancel or refuse to renew the permit. The only alternative left to the citizen is to tear down the structure at his own expense.

Often thousands of dollars worth of improvements are made at these sites; if a use permit is revoked without reasonable compensation, time and investment are wasted.

If we are to encourage people to make use of dormant parts of national forests, then we must assure our citizens that they will not be led into an economic mousetrap.

In other areas of American life, compensation is required when property is taken by the state for public use, such as when the eminent domain procedure is invoked.

The bill retains language from present laws stating that the legal title to the land shall be vested in the United States government.

I hope my colleagues will join me in assuring this bill swift and favorable action in Congress.

CALIFORNIA STATE LEGISLATURE, SENATE JOINT RESOLUTION NO. 25—RELATIVE
TO UNITED STATES FOREST SERVICE SPECIAL USE PERMITS

LEGISLATIVE COUNSEL'S DIGEST

SJR 25, Berryhill. Federal special use permits.

Memorializes President and Congress to take appropriate steps to give just and equitable consideration to the property rights of all United States Forest Service special use permittees and provide for a "fair market value" payment in cash to any such permittee should his permit be canceled or not renewed.

WHEREAS, The United States Forest Service is the agency which administers special use permits covering improvements erected on public lands, commonly known as "99-year leases"; and

WHEREAS, Initially, citizens were encouraged to apply for such permits, and to erect improvements on lots surveyed for "recreational" and "commercial" use permits; and

WHEREAS, Marginal lands were originally selected and surveyed as "tracts" in various locations along highways, rivers, lakeshores, and other areas, such lands generally being unsuited for grazing, timber, mining, or revenue producing uses, other than recreation, the sums yielded from such recreation having been several times the value of the land thus used as of now; and

WHEREAS, Permittee occupants of these tracts of land provide a protection and "custodial" care as against promiscuous, unidentified users who occupy public lands at will, where abundant evidence exists of desecration by such unidentified occupants, plus inconsideration for the privilege of such public land use, without paying any fee, or having any responsibility resulting from such use; and

WHEREAS, Special use permittees have erected substantial homes in such tracts, including substantial commercial establishments to serve permittee and public alike, and also including the building of roads, extension of powerlines, and numerous other safety benefits and conveniences; and

WHEREAS, Lamps and other open-flame lights originally provided the only illumination and power and liquid petroleum gas for light and heat were added along with other improvements toward health and safety; and

WHEREAS, During the late 1930's, the Forest Service ceased to survey additional lots, turning away thousands of applicants when abundant marginal land space existed, and adopted policies of increased "policing" of permittees, making repeated references to possible permit cancellations, with cancellations probable at any time on 10 years notice; and

WHEREAS, The improvements created in good faith on public lands by several thousand permittees in the State of California alone, represent values in improvements of more than hundreds of millions, if not billions of dollars; and

WHEREAS, No better or more beneficial use of such lands has been suggested, nor is there likely to be any, in view of the personal attention and responsible care given by permittee members in each such permit community; and

WHEREAS, In the cases where permittees have already, in some instances, been deprived of family enjoyment and recreation, by demands that the improvements be demolished and removed from the lot, without compensation for the cost of demolition and removal, no provision for payment to the permittee of the fair market value has been considered; and

WHEREAS, Such an arbitrary policy adds no benefit to the United States Forest Service, or the people of the United States, but instead diminishes and dilutes the acceptable and satisfactory situation originally intended by Congress, and substitutes arbitrary permit cancellation, with no consideration for the inequities and injustices involved, now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take appropriate steps to give just and equitable consideration to the property rights of all United States Forest Service special use permittees and provide for a "fair market value" payment in cash to any such permittee should his permit be canceled or, for any reason, not renewed; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

Mr. RARICK. Thank you very much, Mr. Sisk.

Mr. Johnson, would you care to proceed.

STATEMENT OF HON. HAROLD "BIZZ" JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. JOHNSON. Thank you very much, Mr. Rarick. I am not going to be repetitious. I have a statement I will ask unanimous consent to have placed in the record at this point.

Mr. RARICK. With objection, so ordered.

[The above referred to statement follows:]

STATEMENT OF HON. HAROLD T. (BIZZ) JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, It is with great pleasure that I appear before your Committee this morning in support of this legislation. I first of all want to express my appreciation to the Chairman for scheduling these hearings. The subject before you today is one which has been of interest to me and the people I represent for many years. Unfortunately, we have not been able to present our problems in recent years, and I am most appreciative of this opportunity.

One of the main problems which I have experienced during the sixteen years I have served in the House of Representatives involves the revocation of Forest Service permits to those persons occupying summer homes on the public lands. Such a revocation or failure to renew now requires that the permittee restore the property to its natural state. This means that the permittee must demolish or remove all manmade improvements on the land. I do not believe that the National Forest permittee—be he a cabin owner, a resort owner, or whatever—should bear the total financial burden of removing or demolishing his improvements. If the public is to benefit, the public should share in this burden.

As you are well aware, historically the U.S. Forest Service invited and encouraged individual citizens and families to develop summer home tracts. Al-

though admittedly there are no records of "99-year leases", the general acceptance throughout the West that this is what the summer home permittees were receiving indicates to me that the Forest Service personnel encouraging the development of these tracts must have used this term rather loosely.

Time after time, individuals have explained to me that they sincerely believe that they had been told by the Forest Service representatives in earlier years, going back as far as 3 or 4 decades, that they could stay on that land for several years. Assurance were given that although their permits would expire after a while, they could almost automatically expect renewals.

The reason we have the problem before us today is that on the basis of this optimistic prognosis, many summer home owners in many of the Western states subsequently made far heavier investments in their cabins and other improvements than they would have otherwise. Much of these investments were made under prodding by the Forest Service insisting upon the maintenance of specified high standards. These tracts, as you well know, were developed under strict regulations relating to the style of cabin, structural design, type of use, roads, water and sewer facilities, and so forth.

A number of retired people have put practically all of their capital savings into summer home purchases in certain areas in anticipation that they could live out their lives there. They would not have made that investment had they not felt this way.

Now that these costly improvements have been made, many cabin owners face the threat of the loss of all their possessions. If the Federal Government were to compensate the permittees for the improvements they made, I would have no basic quarrel. However, the way it now works, the individual is forced to assume the full burden of his loss. Therefore, the individual permittee whose cabin is taken for public use is the one who bears the cost of this taking, rather than the public.

Some cabins have been on the land for 40 years. Permittees are being charged each year approximately five percent of the fair market value of the land. The permittee, thus, in the period of a 20-year term, pays the full market value of the land. At this rate, the land is paid for twice over, and yet the Federal Government insists that the individual has no possessory interest in the land and that the Federal Government has no responsibility to the permittee. This is in spite of the fact that the value of the land has been increased substantially as a result of the road, utilities, and other improvements which the permittee financed through assessments, and his USFS fees have increased accordingly.

In return for paying for the land, the permit holder gets nothing other than the possibility of having to tear down the cabin at the end of 20 years. The people are paying for the land: they are taxed for it. It seems only fair that they get protection through a possessory interest. There is adequate precedent for establishing possessory interest, for the Congress granted it to concessionaires in National Parks. The least we can do for the private citizen who has a cabin in the hills for his family is to provide equal protection.

Mr. Chairman, the development of these small home tracts has been such that small communities have been formed. In addition to water and sewer systems, they have developed fire departments and other community facilities. This, I feel, has been done certainly under the guidance of the Forest Service, and in many areas, with the encouragement of the Forest Service as the community type development solved not only the cabin owners' problem, but also many of the Forest Service utility and fire protection deficiencies, thus adding to the convenience of the general public as well as the permittees.

Probably the most outstanding example of problems created by this policy occurred at Pinecrest Lake in the Stanislaus National Forest of Northern California. During the 1920's the Forest Service encouraged the development of cabins around this lake in Tuolumne County. Many summer homes were constructed on the lakeshore, some reaching a value of \$30,000 to \$40,000. In the 1950's the Forest Service decided that it would be a good idea to expand parking and other facilities near the shore. To do so, over 100 permittees would have to have been expelled from the desired property. If this action had been taken prior to the end of the 20 year permits, the Forest Service would have been required to compensate the permittees for any improvements taken. The Forest Service, however, waited until the permits expired and then refused to renew them, requiring the permit holders to remove all improvements at their own expense and loss. The permittees had no recourse or means of appeal except to turn to their Congressmen in Washington. It was only through Congressional concern that a majority of the permittees were spared this catastrophe.

As the members of this committee will well recall, we have been working on this problem for a number of years. Originally legislation was introduced to provide protection for all forest users. The Department of Agriculture strongly objected to this proposal as being too broad, so efforts were made to compromise. The next attempt limited protection to summer home owners only. Again the Department objected, this time because our proposal was too limited, and would discriminate in favor of a small group of permittees. Today we feel we have come up with a workable approach to the problem.

Granted the principal beneficiary of the legislation would be the summer home permittee. The average summer home permittee has made investments in not only the structure, his cabin, but also in many cases, because he felt that he had an assurance from the Forest Service for a long term tenure, he went ahead and built roads and water and electrical systems on the property and made other types of improvements. Particularly this was true of those who have developed these areas as a group or as an organization. But at practically no time have any of the people ever profited personally from having summer homes on Forest Service land.

It is true that the summer home owners have enjoyed the use of these cabins. It is also important to point out that they have paid fees for this land use—fees which are the same that they might pay for rental of private land in a similar fashion.

Today we call on the Forest Subcommittee to rectify this problem. We are not insisting that the people stay on this land forever. We are simply asking that when they are required to leave the property, the full fair market value of any improvements made on the land be paid to the permit holder as just compensation for the taking of those improvements. We are aware that there are objections to the proposal. I point out, however, that the people living in these summer homes have made their contributions to the Federal Government through taxes, and that in many cases the taking of such improvements without compensation will mean financial ruin for the permittee. I feel they are entitled to such compensation. I hope that this distinguished committee will give this proposal its customary careful consideration.

Mr. JOHNSON. I might say I became acquainted with this when I first arrived in Congress in 1959. They were relocating an interstate highway across the mountains. On all lands other than Forest Service, the State had compensated people where they had to move their homes or businesses. In a certain area of the national forest, it was ruled that the national forest could not make reimbursement to these people, nor could the Federal funds on the interstate be used for that purpose. So we introduced legislation here in the Congress, but it was unsuccessful. Next year when our State legislature was in session, we went back to the State and we were successful in getting State legislation passed whereby the State could use their funds for reimbursement of the market value of the places taken and demolished or a fee to allow the improvements to be moved to suitable lots that were made available by the Forest Service.

I had at one time 14 national forests in my district and we had several thousand summer home permits in effect in that area. Shortly after I arrived here the Forest Service, began looking at some of the summer home tracts as lands for a higher use, many homeowners had relocated in the 1920's. We became disturbed in one case, the summer home tract in Pinecrest Lake in Tuolumne County. We did everything we could to try to see if these people could not be reimbursed for their improvements, but we have been unsuccessful up to this time.

I might say that these people located there in a summer home tract that was laid out in the Forest Service, they built their cabins in the first instance and homes, you might say, in later years. They built them to the Forest Service standards. They were laid out and in many cases, the streets were more or less left up to them, as Congressman Sisk has

said, and they maintained it. They also offered fire protection, became a small community, even built community facilities such as meeting halls, on the Forest Service land.

They were assessed a fee that was looked over every 5 years and they paid that use fee for the use of their lands. Many of them have been there for 20 and 30, as much as 40 years that I know of. So they have paid a 5 percent fair market value land use fee in each of these years.

In the early days, as Congressman Sisk said, they always figured they were 99-year leases. But that was more hearsay than fact when they looked at the actual special use permit: it was not that.

The original people who went in there thought they were there for here and ever after and in many cases, handed their places down from father to son and on down through the family.

Since we have opened up many of these areas with roads and snow removal and services that are provided for today, these have become year-round homes, you might say. Many of these homes amount to a \$40,000 or \$50,000 facility. They are as modern as modern can be. We have been trying over the years to have some provision of law that would allow them, if they had to move for higher use, to be reimbursed fair market value for their improvements, or if in-lieu lots were offered, to be paid moving costs from the present location to the new lot that would be made available to them. But in many cases, the Forest Service naturally would not let them remove trees to remove houses. So many of these facilities could not be moved, therefore, they were a total loss and had to be removed by the holder of the use permit.

We are not asking that these people have a permanent right interest, but we do think they should have some sort of possessory interest right that has been provided for in some of our national park buildings where all facilities built by concessionaires do have a possessory interest protection. That is what our people would like to have at the present time. If their special use permits were to be canceled for a higher use being made of the land, if they could be reimbursed, I think that would be satisfactory, but we have never been able to get legislation that would allow the homeowners and special-use permit people to have that right accrue to them.

In many cases, summer home tract people where the forest has taken property have been able to go out and secure another piece of land and exchange it with the foresters. A tract in Tehama County was treated that way and it worked out very well. The landowners went out and bought a tract of land that was suitable to the Forest Service, the appraisal being equal, and purchased it. Then the Forest Service would give title to the summer home tracts that were found on the original summer home tract. That is not possible in all situations, but I do think that the Sisk bill, H.R. 3174, would recognize the improvements and make provisions for fair market value if the lands had to be taken. And that is something that I think would be fair to all.

When we talked to these summer home people who have these special-use permits at the present time, they would be agreeable to that type of statute. They do not say that these lands belong to us for here and ever after, but they do think if the Forest Service in the first instance laid out the summer home tract, allowed them to go in there and invest, as I say, some of those homes are good \$50,000 homes

today; they are not just a mountain cabin that you used to use for 6 or 8 weeks or 3 months in the summer time, but these are year-round facilities. They have their community hall, they have their roads, their fire protection under existing State statutes, and it is pretty much an organized community in the mountains. Their taxes on their improvements are levied the same as they are on real property and as far as county purposes are concerned, and they pay their school taxes, everything else, the same as anyone else, whether it be on foreign service land or private lands as far as the improvements are concerned.

So I do hope that the subcommittee can give consideration to the bill that would allow some relief in this area.

That is all, Mr. Chairman.

Mr. RARICK. That you very much, Mr. Johnson, and Mr. Sisk. You do a great job in representing your people and bringing before our subcommittee a problem that is at least peculiar in your area.

Mr. Goodling, do you have any questions?

Mr. GOODLING. Just a few, Mr. Chairman.

Mr. Sisk, I should like to suggest that those of us who are growing older find it a little difficult to read carbon copy.

Mr. SISK. I am sorry, I should have given you the original here, George.

Mr. GOODLING. Mr. Sisk, you speak of the Camp Redwood Improvement Association. Will you tell us briefly what is involved here?

Mr. SISK. Yes, this was a group of people that basically live in the valley, in San Joaquin Valley, I might say, by the way, where the gentleman from Pennsylvania had an opportunity to visit with some of the committee members some years ago. Actually, the original group went in there around the turn of the century, around 1900, in an area around the Sierra Nevadas and established a summer home, a camp area. I think by around 1916, really, they were more or less organized. It was a group of families, frankly, from the community of Dos Palos. They went along then for about 50 years—well, say 40 years or thereabouts. They were there, of course, at the invitation of the Forest Service and only in around 1950, then, for the first time, they were asked to secure a permit or to become more an organized community. At that point, they did organize into a nonprofit community called the Redwood Association, something over, I think, around 200 people or maybe a little bit more. In many cases, we have got the fourth generation now that are using this area and there has been a constant battle in recent years with the Forest Service requesting these people to move out. Now, they have some permanent facilities built there; they have their own water system, they have developed their roads and so on in that area. This is not an unusual situation in the western areas of the Sierra Nevadas; this just happens to be one particular group that are using this area.

Of course, here again, they recognized at the time they went in there 50 or 75 years ago now, approximately, that this was, of course, Federal land, but over the years, as I say, they have paid taxes on properties that they have. They have, as I say, I think made a contribution in the way of opening up an area, maintaining it, and so on. To the extent that some of these people are to be literally canceled out, we feel that there should be some kind of compensation made available to them.

I have no objection and certainly none of these people, particularly in the summer homes, where they have more or less permanent homes

established over a long period of time—which is a little different from this Camp Redwood—frankly have paid over the years several times for the property if, in essence, you want to count it that way.

Mr. GOODLING. How many people are involved?

Mr. SISK. In this case, something over 200 people are involved.

Mr. GOODLING. What are their disposal facilities?

Mr. SISK. They have their own sewer system and so on as required by the Forest Service. They meet all the requirements of the Forest Service. You see, these people have to comply with the requirements of the Forest Service in connection with their water system—they have developed their own water system, they have their own sewer system and disposal system. They haul their own solid waste to designated areas and so on.

Mr. GOODLING. What do these people do?

Mr. SISK. These are people who have homes in the San Joaquin Valley. This particular association that I am referring to, Mr. Goodling, is made up of people who live in Dos Palos. They are business people, agricultural people, and so on. In most cases, they are farmers and they use this as a summer home area.

Mr. GOODLING. Are we being inconsistent with the concept of wilderness areas?

Mr. SISK. This, of course, is not a wilderness area. It is part of the Sierra National Forest.

Mr. GOODLING. What you are saying, in effect, is you think the Department of Agriculture should furnish ground on which to build homes for people. Is that correct?

Mr. SISK. That is what the Forest Service did. That was the policy of the Forest Service. It is not one that we set. I say we set—I mean the Congress set it as a policy and it was a policy of the Forest Service, has been, of course, ever since there has been a Forest Service. In fact, some of the cases of these people were there before the Forest Service was, if you go back to some of these old, old homes, cabins and homes in these areas. They pay a use permit—I am speaking now of the cabin owner.

The issue in connection with Camp Redwood that I am referring to, with inadequate notification before they are moved out. The average homeowner, and there are thousands of them, that have these homes went there basically at the invitation of the Forest Service and because they, too, sought a homesite. These were set up under regulations and they must meet year-by-year requirements of maintaining those places. They pay a substantial fee and these fees have been going up at a rather rapid rate. Plus that, they paid taxes to the county for a personal property tax and school taxes and so on on this.

Mr. GOODLING. I notice Mr. Leggett says this:

Often, thousands of dollars worth of improvements are made at these sites. If a use permit is revoked without reasonable compensation, time and investment are wasted.

Are not these people, in effect, gambling when they make improvements on the lands?

Mr. SISK. I do not think they are gambling any more than thousands of people are gambling all over this country in locating in various places and then are compensated.

Just as Mr. Johnson indicated a moment ago, in national parks, for example, a concessionaire in the national park goes in there. You say

he is gambling. He builds a building, and some of them are pretty elaborate buildings. But the point is they are compensated then in the event that the Park Service decides to change its opinion and move them out.

In fact, Yosemite National Park, which for many years was represented by my colleague from California, Mr. Johnson, when they began the move to El Portal, then this compensation was allowed in connection with the abandonment of those quarters.

Frankly, all we seek here is reasonable compensation because these permittees made great contributions to the development of that area over the last 100 years. In many cases, they built the roads and they maintain them; they built the streets and they maintain them.

I could cite an instance, for example, in Sierra National Forest of a community such as one mentioned by my colleague, Mr. Johnson, the little community of Big Creek. We did finally, after about a 6-year effort, work out a land exchange and got those people title to their own lands in that community. It was a long, difficult struggle. But that is one way to do it, but it is practically impossible to do in connection with these single homeowner sites. In fact, you cannot do it except in connection with more or less a public group. In that case, we did, however, after a long period of time. This is the community of Big Creek in California. It involved several hundred people.

Mr. GOODLING. I do not believe the two conditions are exactly comparable. Concessionaires on public land are there to service the general public. Without these concessionaires, there would not be a Yellowstone Park. So there is a difference. As I say, I do not believe the two are comparable.

Mr. SISK. Well, I still think that the contribution made by these people in these areas is just as substantial, in many cases more so than some of the concessionaires, I say to the gentleman; I have worked with this problem for many, many years.

Mr. GOODLING. I have taken up too much time, Mr. Chairman.

Mr. RARICK. Mr. Baker?

Mr. BAKER. Thank you, Mr. Chairman.

Gentlemen, I should be more familiar with the law than I am, but in the absence of that knowledge, you perhaps could enlighten me. Do we continue to issue permits for uses similar to those which have been described in your testimony today?

Mr. SISK. Yes sir, we do.

Mr. BAKER. Then the problem which we are addressing overselves to now is when the Forest Service determines they need the land on which the permittees have developed appurtenances and so forth?

Mr. SISK. That is correct.

Mr. BAKER. You want compensation for them?

Mr. SISK. Yes, and let me say to my colleague that we certainly have no argument there. When the time comes that there is a higher use, a need for a higher use, there is no question but what that higher use should be met, because this is an obligation of the Government and these are public lands. All we seek here, as I say, is compensation for those people who are dislocated, because they are being dislocated for a public good and it is right and just, but we feel that they are entitled to compensation for the contribution that they have made, too.

Mr. JOHNSON. Speaking further to that, the first time I ran into the problem, as I stated earlier is when Interstate 80 was to be built across

the Sierra Nevada Mountains. All of the private lands were taken. The State fully compensated for land and improvements. Where the Forest Service land was involved, the lands were made available to the State of California, but the permittees on the Forest Service land were not compensated by the Forest Service when the lands were turned over to the State, nor were they able to be paid under the Federal moneys going to the State for the Interstate System. Therefore, we went back to the State and got State legislation so that these people could be compensated for their improvements or their improvements moved at State expense.

Then we came back here and tried to get legislation to protect the individual homeowner who had secured a lot under special use permit within a forest home tract. We have been unable to do that, now, to get them considered in the same light that if the lands were to be taken for a higher use, they would be compensated for their improvements.

Mr. BAKER. Who establishes the fees and taxes that the permittees pay?

Mr. JOHNSON. It is mandatory that they review the use fee every 5 years.

Mr. BAKER. The Forest Service?

Mr. JOHNSON. Under a mandate of the General Accounting Office. They have mandated the Forest Service to make a study of the fees and bring them up to date. They do pay a special-use permit fee each year amounting to 5 percent of fair market value.

Mr. BAKER. What about the taxes to which you refer?

Mr. JOHNSON. They pay their normal taxes for school and county purposes to the counties.

Mr. BAKER. But it would not be a property tax, it would be a school district tax or something of that sort, is that correct?

Mr. SISK. A personal property tax, yes.

Mr. JOHNSON. It would be considered that, sir.

Mr. BAKER. In lieu of taxes, if they paid it based on the land?

Mr. SISK. The permittee pays to the county a tax based on the value of the property that he has.

Mr. BAKER. The permittee, in essence, pays for his roads, his utilities, and so forth?

Mr. SISK. Yes.

Mr. BAKER. Does he enter into any sort of contract when he gets this permit?

Mr. SISK. Well, the permits that are being issued today and that have been now, you might say, for the last, oh, I guess at least 25 or 30 years—maybe my colleague would know more about this, how far back they started issuing them—were issued for 20 years. In fact, when really they started issuing written permits, they were written for 20 years, mostly, I think, were they not, Bizz? At least as I recall.

I think they are still issuing some for 20. They are issuing some for 10 now, 10-year permits.

Now some are operating on a so-called annual permit, where they are just more or less year by year.

You see, many of these homes that, as I say, went in there—I have a home in mind that actually went in in the late 1800's on Huntington Lake, where there is quite an establishment of homes. Actually, it was developed over the years, I guess they have probably got a \$50,000 or

\$75,000 investment there. It is a beautiful home. It does happen to be fairly close to the lakeshore and the Forest Service has said that, in fact, did serve notice at one time that they wanted that area to develop what in essence would be a higher use, a public park. Really, there was no recourse but to burn this home, as I say, a very beautiful home. Actually, at the present time, I might say very frankly, we have been able to get an extension of some 10 years. I think we finally got a 10-year extension.

But these people went in there many years ago and for all practical purposes, developed the area, developed their water systems, developed their sewer systems, built their regional roads and in many cases, maintain them. Then finally, the county came in and took over.

Of course, the county itself is maintaining many of those roads. Basically, though, there has been a heavy investment not only in the material but also the use permit that they pay means that they actually pay the value of that every 20 years. That is really what it means. Plus they are paying all their tax. So the counties, once we eliminate one of these places, the county loses a amount of tax base also.

Mr. BAKER. Now, your bill basically asks for what treatment?

Mr. SISK. It simply asks for compensation based on the fair market value of the development of the property, the home or whatever it may be that they have developed.

Mr. BAKER. The Forest Service places no restrictions when they start off on how much money they can spend? That is purely up to the individual? Have you established any limit to the amount that a permittee might expect to recover on his investment?

Mr. SISK. No, as far as I know, there is no basic limit. They actually have to build in compliance with Forest Service requirements. They have to comply as to generally, I think, even as to the color of paint that is used. They have to maintain these places. They have to be kept up. The Forest Service checks.

Let me say this basically as a friend of the Forest Service and one who fights hard to get more money for the Forest Service, because I am a strong believer in it and basically they do a good job: they set the rules which these permittees must live by and the way they take care of their property and the way they construct their sewers and disposal of solid waste and so on. So really, they live under fairly close regulation. Any addition now—I believe I am right on this—any addition, for example, to these homes now requires approval of the Forest Service.

Mr. BAKER. Do you visualize a basis on which they might be properly compensated? A 100- or a 5-percent depreciation?

Mr. SISK. Actually, what we are seeking is what we call fair market value. Now, again, let me make one point clear. We are here pleading the mercy of the committee. This has been an issue Mr. Johnson and I have both been concerned with for many, many years. If this is not the proper way to do it, it seems to me that there is some equity that should be considered. Whether or not the committee in its judgment felt that they should be compensated at fair market value or only 75 percent of fair market value, I rest my case on the wisdom of the committee.

Basically what this bill does is allow development of fair market value. That means, of course, depending on depreciation or whatever the market value of that particular piece of property is at the time of

taking, as would be normal under any eminent domain provisions or where a court, for example, would set what is determined to be a fair market value.

Mr. BAKER. Thank you, Mr. Chairman. Our friends have made a good presentation, in my judgment.

Mr. RARICK. May I ask you gentlemen, has either of you seen a departmental response to your bill?

Mr. SISK. I am sorry, I have not seen their response to this. I recognize the opposition, generally, that we have had from the Forest Service, and I can understand that they have to go through OMB just like everything else does. Of course, what we are asking for here does represent a call on the Treasury, because it would require compensation. Unfortunately, I have not seen their report on this particular bill.

Mr. JOHNSON. I presume their report is adverse because it has been in the past and based upon the hearings that have been held previously, I have had the opportunity to listen to the Forest Service's testimony and I presume they will testify in about the same way this time that they have in the past. But I do think that where they lay out the summer home tract and they require a person to build to a certain standard and maintain their homes, the value that is in their homes—the homes are worth more today than they ever were before regardless of age, because they are generally maintained in a fair manner and as homes go today, in most instances, they are more valuable today than they were when they were built.

Mr. RARICK. The departmental reply indicates that they fear that possessory interest would be established by the legislation which would not be extinguished by expiration or other termination of the permit, including failure to renew or extend it.

I think that what you really are after in wanting to compensate the permittee on enhanced value of the property. The Department proceeds to say that the possessory interest could then be assigned, transferred, encumbered, relinquished, I imagine even inherited. They object to this.

Then, the report indicates that the estimated value of improvements on Forest Service property today could exceed \$1 billion, if you are talking about reimbursing the people.

The only other comment that I thought you might be interested in was the expressed feeling that the granting of this possessory interests could lead to claims of erratic compensation under any land use management, for example, where stipulation were revised to meet environmental standards and provide protection of other national forest resources and values.

Maybe I should not even comment on this because Dr. Nelson is here.

Mr. JOHNSON. We were just given a copy of the Department's position, but I would have to read it over. We may want to draft a rebuttal and place it with the committee here for further consideration.

Mr. SISK. If I could just comment briefly on that and I have not had an opportunity to read it. As I say, I see it is dated April 8. I have not had an opportunity to see a copy. I know Dr. Nelson is here to testify and as I say, I certainly respect the Forest Service because I work with them day in and day out in my area and they are important to us. And as I say, they basically do a good job.

I do not seek any possessory interest in any way other than the fact that, as I say, these people who have been there, in many cases now for many, many years and have invested substantial amounts, have paid their fees in substantial amounts to the Forest Service plus their taxes. All I ask is that when that time comes and a determination is made that there is a higher use need for that property, whether it is for a public campground or for access roads or for whatever, that then those people whose property then will be taken, in which there is no way to move it or anything other than to burn it—and unfortunately, that is what sometimes happens—that they be compensated for the actual value of the development itself. Certainly, if there is need for change in the language, I have no particular pride of authorship as to exactly the way the bill is written—I would want to see to it that the Forest Service is fully protected and once that home or that development, whatever it is, is moved, that that land, of course, there is no longer any interest in or any way of getting any further compensation. But it is just purely for the value of the property that has been developed.

Mr. RARICK. Thank you very much, Mr. Sisk.

Mr. SISK. Thank you very much. We appreciate the opportunity to appear.

Mr. RARICK. Our next witness this afternoon is Dr. Thomas C. Nelson, Deputy Chief, Forest Service, U.S. Department of Agriculture.

Mr. Nelson, I did not mean to steal your thunder by reading from the written report of the Department, but we will listen to you now first hand.

STATEMENT OF THOMAS C. NELSON, DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. NELSON. Not at all, Mr. Chairman. Thank you for this opportunity to participate in your consideration of H.R. 3174, a bill pertaining to use permits on national forest lands.

H.R. 3174 would provide that any person who, pursuant to a permit issued by the Secretary of Agriculture acquires or constructs structures, fixtures, or improvements on national forest lands would have a "possessory interest" in such improvements. That interest would consist of all incidents of ownership except legal title which would be vested in the United States.

The possessory interest which would be established by the bill would not be extinguished by expiration or other termination of the permit, including failure to renew or extend it. Such possessory interest could not be taken for public use without just compensation.

We are aware of certain concerns regarding the present policies pertaining to use permits on national forest lands. In particular, we believe H.R. 3174 may have been directed toward providing a means for compensating national forest recreation residence permittees for the value of their improvements when their use is terminated. I submit this is the particular issue to which Congressman Sisk and Congressman Johnson addressed their remarks.

However, this bill would apply to a much broader situation, and we continue to believe that the possessory interests which would be created under H.R. 3174 would be undesirable from the standpoint of proper management of the national forests. I would like to briefly discuss our concerns.

The bill would affect some 86,000 special use and grazing permits which are issued by the Forest Service for use of national forest lands. Most of these permits involve permittee built and owned improvements of some kind. We roughly estimate that the value of these involvements could exceed \$1 billion.

National forest permits are legally drawn and executed agreements between this Department and the permit holders. These permits specifically set forth what, if any, obligations the Federal Government will have for compensating the permittee for improvements when the permit expires or is terminated. They also specify the rights and obligations of the permittee as to the removal of any improvements upon such expiration or termination.

These permits are of two general types insofar as duration is concerned. One group is terminable at any time and the other is issued for a specified term of years. None of the permits provides for any compensation to the permittee when the permit is terminable at any time or where the specified term of the permit has expired.

Permittees who have acquired or placed structures and improvements on the national forest lands have done so under the terms of their permits. Sometimes they do not need nor do they expect more than temporary or limited use of the permitted area. To give these permittees the possessory interest and entitlement to compensation as H.R. 3174 would do, would bestow on them an asset or windfall that was not contemplated when they accepted their permits.

Use of the national forest under a permit is a privilege extended to a relatively small number of people under specific conditions. If permittees were granted a possessory interest in the structures and improvements that could not be extinguished without compensation at the expiration or termination of the permit, they would apparently have a right to retain the improvements or structures in place. This would in effect give permittees vested rights in the use of land itself. Thus existing permits would be converted into grants or permanent rights, even though permit provisions provide otherwise.

The result of these provisions would be to give private interests priority over public interests in management of national forest lands. National forest uses that can be allowed today may not be allowable in the future. The kinds of uses that can and should be permitted on a given area depend on factors that change with time. If every permittee with structures and improvements on national forest land were given a continuing possessory interest in them, the flexibility we need for sound management of the national forests would be impaired. The only way we could terminate private uses would be to spend general funds to acquire the interests involved.

H.R. 3174 would therefore create for the Federal Government a major new financial obligation to provide compensation for structures and improvements.

At the same time it would provide a windfall to permit holders. The effect of such an obligation would be to discourage issuance of any new permits or authorization of new improvements where a higher public use could be foreseen in the future. It would also effectively discourage full development of national forest rangelands carried out in cooperation with grazing permittees because of the new financial obligation it would place on the Government to provide compensation for structures and improvements.

In conclusion we believe enactment of H.R. 3174 would impair our ability to provide for the greatest public use and benefit of the national forests. We strongly urge that H.R. 3174 not be enacted.

Mr. Chairman, this completes my prepared statement. I will be glad to answer questions you or the committee may have.

Mr. RARICK. Thank you very much, Mr. Nelson. I notice in your statement that you indicate that the contracts entered into between the Forest Service and the licensees or permittees provide terms under which compensation would be paid to the permittee for transfer of the property.

Mr. NELSON. Yes, I think the statement reads there, "if any."

Mr. RARICK. Are those all uniform, then, or is there a great variance between different locations and certain areas?

Mr. NELSON. In the summer home area, Congressman Rarick, there is no obligation incurred on the part of the Government for such compensation when the permit has terminated or expired.

Mr. RARICK. We heard some comment, I believe, from Congressman Sisk referring to the feeling by some of these permittees that they had 99 year leases. To your knowledge, has there ever been any issuance of 99 year permits or leases?

Mr. NELSON. No, sir, Congressman. There have been two types of permits issued in the summer home residence area. One has been a term permit for 20 years. These are 20-year permits. The other have been terminable permits which can be terminated at any time at the discretion of the Government. This latter type, in effect, is essentially what we would classify as an annual type permit.

I will, if I might, clarify the record. I do feel that in the beginning, in the early days when these permits were issued, some of the permittees had the feeling that they were equivalent to something to the effect of a 99-year lease. But there is nothing in the language of the permit that indicates this and we have attempted to dispel this particular type of notion.

Mr. RARICK. I notice also your comment that you feel that in reality, what the two Congressmen are seeking is a just compensation for the enhancement on the property rather than granting a possessory interest. Does the Forest Service in any instance give any compensation for homes which are enhanced to the value of \$50,000 or \$60,000 which cannot be moved?

Mr. NELSON. No, we have not, except in one instance, or a particular set of circumstances. Mr. Rarick. In the event that it has been necessary to terminate a permit for a higher public use when this has been a term permit, the 20-year-type permit, and it has been revoked prior to the 20-year period. Then we have compensated for the fair market value of the improvements.

Mr. RARICK. I am reasonably certain that this matter has been litigated. Are you familiar with any court procedures on this?

Mr. NELSON. If I might ask one of my assistants this question. I do know there has been one question of litigation with the Park Service. We have had no litigation in this particular field.

Mr. RARICK. Thank you very much.

Mr. Goodling?

Mr. GOODLING. Mr. Nelson, are you continuing to issue these permits for building?

Mr. NELSON. We are continuing to issue these permits, sir, in summer home tracts. Since 1966, we have not opened any new summer home tracts.

We are also continuing to issue these permits where the 20-year permit expires. Whereas in most cases there is no higher public use for this area, these permits are extended; that is to say, a new permit is issued for another period of 20 years.

Mr. GOODLING. Why continue to issue these permits for even summer homes?

Mr. NELSON. The authority for this, Mr. Goodling, is in the act of 1915 for construction of summer homes. We feel that if this is the highest use of the land, such permits should be extended, and should be continued to be issued.

Now, in a number of these areas, we have laid out tracts and in a tract, perhaps, of 100 or 200 lots, down through the years, perhaps 195 of these lots have been put to use and there are 5 lots that are vacant. So in these cases, we have felt that it is good management for these lots to go under permit.

Mr. GOODLING. I recall a title of a song which says, we have come a long way, baby. When you were considering this in 1915, and this is 1974, we have a completely changed condition. In 1916, we hardly knew what the word "recreation" meant. Today with a shorter work-week and more facilities for traveling you are going to have more and more demand if you are going to continue to do this, as I see it.

Mr. NELSON. Mr. Goodling, we have not opened any new summer home tracts since 1966. At present, we only have lots laid out without permits in the neighborhood of 60 or 75 in the total national forest system. These are the only unclaimed lots that we have of lots under permit for summer home residences.

Mr. GOODLING. You mean there are that many lots in one block?

Mr. NELSON. No sir, I said 60 or 75 in the total national forest system that are not now under permit that are within summer home tracts.

Mr. GOODLING. I see. But you are definitely restricting them?

Mr. NELSON. Yes sir. We have not laid out any new summer home tracts in the last 7 or 8 years. In fact, I am sure of this, and for perhaps a number of years, several years prior to that, none were laid out.

Mr. GOODLING. I am inclined to think that is good policy.

That is all, Mr. Chairman.

Mr. RARICK. Mr. Baker?

Mr. BAKER. Thank you, Mr. Chairman.

Do you have any summer home tracts in the Cherokee National Forest?

Mr. NELSON. I have a listing here by States, Congressman Baker. I can provide that for you. Of the approximately 16,000 lots that we have, somewhat over half of them are in the State of California.

In Tennessee, we have 6 tracts with 78 summer home permits.

Mr. BAKER. And you do not indicate where they are?

Mr. NELSON. They are within the Cherokee National Forest, sir. I do not have the exact location, but we could furnish it for you if you wish.

Mr. BAKER. My basic concern was that since this has developed, little communities are surrounded by the national forest, and in essence, are encompassed by the forest. Does the Forest Service have the right of eminent domain to take what have been in the past private residences? Or do we move in that direction to acquire that kind of property?

Mr. NELSON. We have, under the law, the right of eminent domain. But these are not acquired under eminent domain unless there is specifically a higher public use that is necessary at the present time. So by and large, on these inholdings, usually we do not exercise the right of public domain. Where it is advantageous to the Government under the Weeks law and under the Land and Water Conservation Act, we do try to purchase some of these inholding tracts, however.

Mr. BAKER. The longest term permit you have now in the Forest Service is a 20-year permit, is that correct?

Mr. NELSON. For summer homes. For the summer residence, the longest term permit that we have is 20 years. Now, under some of our other special uses, we have permits that extend to 30 years.

Mr. BAKER. And what sort of notice are you obligated to give a person who holds a permit if you are going to terminate it at the end of the permit year?

Mr. NELSON. By policy, we have set a 10-year notification period, that is, we allow the permittee at least 10 years before we move in. In other words, we have some cases where notification has been given at this time in which we do not expect to terminate that permit until 1993. In these cases, 20 years have been allowed.

Now, there are some cases that have occurred in the past where other agencies of the Government have moved in for purposes such as reservoirs or roads, and where it was not possible in these cases to give this 10-year notice.

Mr. BAKER. And you have provisions to compensate individuals if you upset your timetable, is that correct?

Mr. NELSON. Yes, we do. Of course, you recognize that of these permits, about 37 percent of the summer home permits are term of the 20-year type and the remainder are terminable. In the terminable type permits, where something occurs, we are not able to compensate. These were the type of cases, I believe, that Congressman Johnson was talking to.

Mr. BAKER. You renew these year to year, is that my understanding?

Mr. NELSON. We review a tract at about 5-year intervals. At that time, we obtain an appraisal of the fair market value of the land and assess a fee for the 5-year period. It is usually at that time that we look at the developments. The annual fee payment constitutes the renewal.

Mr. BAKER. Every permit holder is aware of what you are doing all along, whether you review the status of the set aside area or whether he has expectation of a long-term contract or a long-term occupancy of that land?

Mr. NELSON. Yes sir. We have attempted to go perhaps further in working with the permittee in the summer home area than we have in relations to any of our other permittees. By that I mean that we notify the permittee 18 months ahead of the time that we are going to make an appraisal. We attempt to give him the new appraised value in the fee schedule 9 months ahead of time. We attempt to work with permittees—many of these are in tract areas and they have a homeowner's or permittee's association. We attempt to work with the permittee association, to attend their meetings and explain the regulations and their permits to these people at that time. So I would say, sir, that we have done a great deal to attempt to work with the summer home resident permittees in this respect.

Mr. BAKER. Can you account for the justification which must be in the mind of an individual who has spent \$50,000 or \$60,000 on property under these expressed conditions?

Mr. NELSON. I think I would have to make a couple of statements to that, Congressman.

First, there is no question but what there was encouragement for these people to come in in the early 1900's—1915, 1920, in the 1930's, to establish this type of summer home tract. At that time, it was felt that it was in the best interest of management of the forest and for the good of the people at large for this type of thing to occur. Now, we had at that time no indication that the values would reach the proportions that they have today in terms of investment. Many of these investments at that time were just several thousand dollars on sites for some type of cabin.

Now, it seems to me, sir, that in the later years, especially after World War II, most of the summer permit holders—and 80 percent of these have changed hands since the original permit was issued—that most of these people have been or should have become aware of the fact that these permits were for a specified period of time, that this was in fact a contractual relationship with the Government, and that they understood it. It seems to me that if I were obtaining a permit or had a permit of this type, I would attempt to determine for myself the conditions under which I did get this permit.

I think also, the fact that bears on this is that the title to these improvements is vested in the permittee. The title for the improvements does not go to the Government. So this is his property, you see. At the time of expiration of a permit, he is obligated, in fact, or he has the option, I should say, of removing this property, this improvement, this home or whatever, from the tract.

Mr. BAKER. One final question, Mr. Chairman.

Would you consider that the Department might be inclined to consider compensation as being reasonable to those who have occupied a permit area for, say, 20 or 30 years and have lived on it and improved it, to the exclusion of some who had not been there so long?

Mr. NELSON. No sir, I would not. The reasons why I would not are, first, there have been over the past years a number of cases that have been closed out, where permits expired or were terminated and I would submit, sir, that it would be unfair to those persons who had removed their property prior to any legislation of this type vis-a-vis those people who had removed property with a possessory interest and therefore, some type of remuneration.

Further, it seems. I would think, that even if the act did primarily talk to summer homeowners, we interpret this act as written to talk to all special use permittees, all 86,000, that there would be a precedent set here of possessory interest. Not only would this affect the permittees on national forest land, but it would have a precedent-setting effect on permittees on all types of Government land and installations.

Mr. BAKER. Thank you, Mr. Chairman.

Mr. GOODLING. Mr. Chairman, if I may digress for just a moment—I assure you I will be brief—I had a violent disagreement with the Forest Service a year or two ago on a Forest Service proposal to use part of the Allegheny National Forest in my State of Pennsylvania for a landfill, a garbage disposal landfill. Frankly, I have not followed through on this. Did I win or lose that battle, do you know?

Mr. NELSON. I do not know if you won or lost that battle, Congressman Goodling. I do know that we have attempted wherever possible to get landfills located on private land because there was a question as to whether landfills of this type were the highest public use for land owned by all the people. So as a general policy, we have attempted to try to work with local communities to get landfills and sanitary fills off national forest land.

Now, in some cases, there is just no other place to go and we have tried to recognize this and tried to work with the communities where this was the case.

Mr. GOODLING. As I recall, the Forest Service was rather favorable to this project. As I say, I should have followed through on it but I did not.

That is all, Mr. Chairman.

Mr. RARICK. Thank you very much, Dr. Nelson.

Our next witness is Mr. Brock Evans, director of the Washington Office of the Sierra Club in Washington, D.C.

Mr. EVANS, we are happy to have you with us today and will be happy to receive your testimony at this time.

**STATEMENT OF BROCK EVANS, OFFICE DIRECTOR, SIERRA CLUB,
WASHINGTON, D.C.**

Mr. EVANS. Thank you, Mr. Chairman. I appreciate the opportunity to be here. I am also here on behalf of the Federation of Western Outdoor Clubs, which is a group of about 50 outdoor-oriented organizations in the West concerned with this issue as well. The Sierra Club has participated in the creation of the Organic Act of 1897, and also the creation of the U.S. Forest Service in 1905. Both organizations participated in legislation which has been enacted since which fundamentally affects the management of the national forests, such as the Multiple Use Act of 1960, the Wilderness Act of 1964, and the Forest and Rangeland Environmental Management Act of 1974, recently before this same subcommittee. I cite all this only to reemphasize again our great concern and interest for the management of the national forest and the kind of issues we have before us today.

During all these years, spanning nearly a century now, our policy with regards to the issue before us today has been quite consistent: The national forests are public forests belonging to all the people. While it may be appropriate in certain select instances for the public authority (in this case the Forest Service) to grant away public rights to private interests through the special use permit device, we very strongly feel that such special use permits and grants are generally not a good idea. Where done, they should be given most carefully, for limited terms, with full protection of other values, and with a guarantee that the areas involved may, when ever the public authority deems appropriate, be returned to the public. While we can accept and understand the need for long-term use permits from time to time, we think it is imperative that encumbrances not be added to the terms of the permit which would operate to inhibit the public authority from reasserting its rights at the appropriate time.

This is the general background against which we evaluate legislation such as H.R. 3174. And, it does appear to us that this legislation, if enacted, would have a very definite inhibiting affect upon the Forest

Service if, it at some future time, desires to terminate a special use permit where the grantee has constructed facilities.

H.R. 3174 grants a statutory possessory interest in "any structure, fixture, or improvement of any national forests land. . ." This statutory right to national forests concessionaires, or other holders of special use permits for compensation for fixtures and improvements—which I think is the primary thrust here—at the end of their term will always guarantee their ability to get a renewal, because the Government will not want to buy them out. Thus, this bill has the effect of granting a near-permanent interest in lands which are supposed to be covered by special use permits only for a relatively short period of time, and the public loses effective control.

We are basically opposed to legislation which will effectively remove public control from public lands, by inhibiting or restricting the choices available to the public authority. We recognize that perhaps in some special circumstances, permittees may have a right to be compensated for investments instructions which they make upon land in the proper exercise of their permit. However, we feel that the proper method of compensation that this should be done through the tax laws, perhaps, by permitting them to amortize their investment over the proper period of years, rather than by giving them a statutory possessory interest which would inflate the value and inhibit the public authority from reasserting its rights.

Thank you very much.

Mr. RARICK. Thank you very much, Mr. Evans. I think you have several good suggestions here, especially on the ability of the Government to buy these permittees out, because we will have some of them up in that billion dollar.

Mr. EVANS. That is the biggest problem.

Mr. RARICK. Especially the tax writeoff situation, to allow them to have some relief.

Mr. EVANS. Yes sir.

Mr. RARICK. Other than that, I guess their loss, if there is any, should be considered as part of their fee for having this special right to—I do not know whether the word is squat—or to utilize these lands.

Mr. Goodling?

Mr. GOODLING. No questions, Mr. Chairman. I would like to make this brief observation.

The Sierra Club and I have not always seen eye to eye in the past, but in this particular instance, I believe we are traveling down the same street.

Mr. EVANS. I greatly enjoyed sitting back here and hearing your fine remarks. I felt the same way.

May I add one more thing, Mr. Chairman?

Mr. RARICK. Certainly.

Mr. EVANS. It occurred to me when I was sitting back here and listening first to your colleagues and then to the Forest Service, that there is something else, perhaps some other method of compensation if this discussion ever continues. That for lack of a better term I would call psychological compensation. In other words, the permittees built their structures not out in the San Joaquin Valley which is quite hot and flat, but they built them up in the mountains where it is cool and it is a quite attractive environment. In fact, the public provided that environment. So there is a benefit they have received over these

years. It is worth, say, just \$1,000 a year to a person to know they have that and to go there, which is not taken into account by the cost of the physical structure and the facilities they put in. If we ever do talk about compensation, certainly this should be taken out of it because that is certainly an effective thing which was provided by the public.

Mr. RARICK. Mr. Baker?

Mr. BAKER. Thank you, Mr. Chairman.

I, like Mr. Goodling, have not always moved in tandem with the Sierra Club, but I have a daughter-in-law who is an avid Sierra Club member and worker and I will be glad to tell her that we are in agreement.

Thank you.

Mr. EVANS. Thank you, sir.

Mr. RARICK. Thank you very much, Mr. Evans.

Our next witness is Mr. Richard Pardo, programs director, American Forestry Association, Washington.

Welcome, Mr. Pardo, to the committee. We will be happy to hear your testimony at this time.

STATEMENT OF RICHARD PARDO, PROGRAMS DIRECTOR, AMERICAN FORESTRY ASSOCIATION, WASHINGTON, D.C.

Mr. PARDO. Thank you very much, Mr. Chairman. I want to thank you for allowing me to be here today to present this testimony. This is the first opportunity that I have had to appear before this committee, but I look forward to many more such opportunities in the future.

AFA is a national citizen conservation organization of some 75,000 members, with a long history of dedication to wise use of our Nation's public and private forest resources. I am here today to record our strong opposition to H.R. 3174.

By its terms this bill would grant to private parties a possessory interest in certain structures and facilities on public lands, thereby allowing them to occupy and use these facilities to the exclusion of other public uses of the land. In effect, under this bill the lessee or permittee could continue to occupy public lands even after termination of the lease, until such time as the Government bought him out. We oppose this as unsound precedent-setting policy which could cost the Public Treasury millions of dollars.

Perhaps as applied to bona fide concessions, which serve the public and which therefore have a public purpose in being on public lands, this bill has some justification.

But H.R. 3174 goes far beyond that, because it would apply to every national forest special use permittee and lessee. In most cases these national forest permittees are on the land solely for their own purpose, serving no public service function.

A primary example, and the subject of most of the discussion today, is the occupant of a summer home site. He is occupying public land strictly for his own purposes, not the public's. At the termination of the lease, the Government should not be forced to purchase these improvements if the lessee is unable to move them.

In the April 1967 issue of American Forests magazine in an article entitled "A \$1 Billion Mistake," former AFA Chief Forester Kenneth Pomeroy traced the history of just such a situation in the Pinecrest

Recreation Area of the Stanislaus National Forest which was referred to in earlier testimony, I believe it was by Congressman Sisk. In the article, Pomeroy noted that the Forest Service had begun to issue permits, but, says Pomeroy "Apparently there was a mutual understanding, not confirmed in writing, that the permits would be renewed as long as the land was not needed for a higher public use, provided permittees fulfilled the terms of their permits."

By 1938, writes Pomeroy 394 such special one-half acre permits had been issued in the Pinecrest area. Eventually a small community grew up, including roads, stores and a water system.

During the period 1948-50 most of the Pinecrest authorizations were changed from annual permits to 20-year term permits. About the same time, it became apparent to Forest Service officials that the land on which these permits stood would eventually be needed as public recreation sites. Accordingly, in 1950, 16 permittees were given 12-year leases with the agreement that they would move all structures at the end of the lease, unless the Forest Service terminated the lease early, in which case the Government would purchase the improvements or pay for their removal.

When the leases expired, three of the lessees refused to move, and sought legislation that would give them a possessory interest in the property even though the lease had expired.

This is the same legislation before you today. Although couched in terms of "concessionaires," the bill is actually aimed at securing private benefits and use of public land by nonconcessionaires. If I could depart from my text for just a moment, this disturbs us, Mr. Chairman, the fact that the bill seems to be couched in terms of concessionaires, when really, we feel that its main aim is the summer home. Somehow, this does not seem quite honest to us. It does not come right out and state what the problem is, what the aim of the legislation is. This has bothered us.

In his 1967 article, Pomeroy noted that passage of such legislation could make the Government, that is the public, pay as much as \$1 billion merely to acquire the use of what is already public property.

Pomeroy wrote: "If this proposal becomes law, it will establish a precedent for 63,000 permits covering 80 different uses of national forest land. Permittees have constructed improvements valued at \$1 billion on these tracts." Earlier, we heard Mr. Nelson quote a figure, I understand, of \$87 million now. If anything, that figure will be even higher today, considering what inflation has done to the dollar in the past 7 years.

More important than the cost, however, is the principal that such legislation would establish. It would confer interest in public lands in the national forest system to private individuals: not because of any specific public benefit to be achieved, but ironically, because the individuals were granted the privilege of a special-use permit to begin with.

I cannot imagine Congress passing a law which would do the same thing in a lessor-lessee relationship between two private parties. Of course, that would probably be unconstitutional, but I do not expect anybody would have to buy out his lessee at the termination of the lessee. Why should the public be expected to do so?

In summary, Mr. Chairman, we can see no justification for this bill. It carries no public benefit. On the contrary, it burdens the public

purse with one more favor to a privileged few. Passage of this measure would be a serious mistake, and we urge that the subcommittee recommend the bill not pass.

That concluded my prepared statement, Mr. Chairman. I would be glad to respond to any questions you or the other members of the committee might have.

Mr. RARICK. Thank you very much, Mr. Pardo.

Mr. Goodling, do you have any questions?

Mr. GOODLING. No questions, Mr. Chairman.

Mr. RARICK. Mr. Baker?

Mr. BAKER. No questions, Mr. Chairman. Very good statement.

Mr. RARICK. That is a very good statement. I compliment you for your appearance here today.

Mr. PARDO. Thank you.

Mr. RARICK. Our final witness today is Mr. Thomas Cobb, representing the National Parks and Conservation Association.

Mr. Cobb, we will be glad to hear from you.

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

Mr. Cobb. Mr. Chairman, members of the committee, my name is Tom Cobb. I am the administrative assistant for forestry of the National Parks and Conservation Association in Washington, D.C. I wish to thank the committee for this opportunity to present the views of NPCA on H.R. 3174, "A Bill to establish certain policies with respect to certain use permits for National Forest lands."

NPCA is a private, nonprofit organization, educational and scientific in character, with more than 42,000 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 areas of land use, including wildlife management and forestry.

The provisions of H.R. 3174, we feel, have serious implications for the effective administration of the national forest system. The proposed legislation would grant a possessory interest to any person who has acquired or constructed any structure, fixture, or improvement on any national forest lands. The provision for such a possessory interest is similar to that enjoyed by National Park concessioners pursuant to Public Law 89-249, "The Concessions Policy Act" (Section 20e 16 U.S.C. 20.) Unlike the national parks, however, there exist on national forest lands many vacation or recreation-type residences acquired or constructed by individuals for their exclusive personal use, but which serve no public need or purpose. It is very difficult to rationalize why the citizens of this country should be put in the position of having to possibly compensate persons with private vacation dwellings on national forest lands when such persons accepted or acquired their dwellings under standard and accepted terms of agreement with the U.S. Forest Service. In contrast, park concessions entail facilities and services for public use and enjoyment of the national park area in which they are located.

It should be pointed out that the very presence of private vacation dwellings acquired or constructed on national forest land can con-

ceivably preclude the use of that land parcel for other multiple and sustained yield objectives of management. The granting of a possessory interest might well detract from the flexibility the Forest Service needs for multiple-use planning and decisionmaking. Since there are other persons who also use the resources of the national forests on a permit or contract basis, a precedent might be created by the passage of H.R. 3174 to provide possessory interests to all permit holders on the national forests, with serious financial implications for the Federal Government. One source estimates these permits to number 63,000 and covering 80 different uses of national forest lands. The public financial responsibility derived from a previously introduced measure calling for possessory interests has similarly been estimated to be in the order of \$1 billion. It seems like we have all agreed on that figure this afternoon.

In light of these considerations, Mr. Chairman, NPCA holds that the granting of possessory interests to persons under the provisions of H.R. 3174 is not in the public interest. Also, since the Forest Service pointed out in 1972 that its "concession system is fundamentally sound and the concession environment is healthy", NPCA feels that there is no sufficient justification why changes should now be made.

Thank you. I also included that last statement primarily because I did not think the bill was that specific in stating what particular cases possessory interest was to be granted in.

Mr. RARICK. Thank you very much, Mr. Cobb, for your appearance and your statement.

Mr. COBB. Thank you, sir.

Mr. RARICK. Do you have any questions, Mr. Baker?

Mr. BAKER. No questions, Mr. Chairman.

Mr. RARICK. If not, that concludes the list of scheduled witnesses. Does anybody else wish to be heard on the bill, H.R. 3174?

[No response.]

Mr. RARICK. There being no one else, the subcommittee stands adjourned subject to the call of the Chair.

[Whereupon, at 3:30 p.m., the subcommittee adjourned subject to the call of the Chair.]



