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93-44 PROPOSED FOREST SERVICE MINING REGULATIONS

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

HEARINGS HELD IN WASHINGTON, D.C.

MARCH 7 AND 8, 1974

Serial No. 93-44

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OVERSIGHT HEARINGS ON THE PROPOSED FOREST SERVICE MINING REGULATIONS

THURSDAY, MARCH 7, 1974

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

The subcommittee met pursuant to notice, at 10:15 a.m. in room 340 Cannon House Office Building, the Honorable John Melcher (chairman) presiding.

Mr. MELCHER. The subcommittee will come to order.

This morning we are meeting for a dual purpose. One is to mark up H.R. 3903; and the other purpose is to hear from the Forest Service on the proposed regulations that have been published in the Federal Register, asking for comment concerning the Forest Service regulations as they affect mining operations on the public forests.

[Discussion off the record.]

Mr. MELCHER. Back on the record, now.

Our witness for the Forest Service is Chief John McGuire. Chairman Bizz Johnson of the Water and Power Subcommittee is conducting a hearing of his own in the subcommittee this morning, and is not able to be here. He is our first witness, Dwight Barnes is present, however; is that right?

Mr. BARNES. Right.

Mr. MELCHER. Would you care to summarize for the committee Bizz's testimony, so that the committee can have the suggestions of our colleague.

STATEMENT OF DWIGHT BARNES, ON BEHALF OF HON. HAROLD T. (BIZZ) JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE 2D CONGRESSIONAL DISTRICT OF THE STATE OF CALIFORNIA

Mr. BARNES. Yes, sir, I would like to.

I appreciate the opportunity—as you said, Congressman Johnson does have hearings going in the Water and Power Resources Subcommittee relative to the Colorado River salinity problems. He had hoped to get over, but got jammed up on witnesses himself. He did want to express his appreciation to the committee for holding these hearings, because he feels that the problems which are raised by the regulations as proposed by the Forest Service create great difficulties and are of major consequence to the little miners and prospectors, particularly.

The Nation is, of course, pretty much dependent upon minerals for our high standard of living, and unfortunately, most of our minerals, as we all know, come from foreign sources. And I do not believe that this is the time to hamper or restrict domestic prospecting or exploratory operations.

Your former colleague, John Kyl, now Assistant Secretary of the Interior, recently told the American Mining Congress that the Nation will face, in 5 or so years, a material crisis that will make the energy crisis look like a Sunday school picnic unless our mineral production is increased substantially.

Therefore, the Congressman feels that the important thing is to try to develop and expand and make more realistic our mineral production, rather than trying to restrict it.

As far as the regulations themselves are concerned, he feels that they are unreasonable, unrealistic, taking particular exception to bonds which are proposed. Most small miners, as you all know, pretty much operate on a shoestring, and they just cannot afford a \$2,000 bond. They are not going to be able to do much if they have to put up that type of thing.

Second, the appeal rights extend only to the regional forester, and the individuals are deprived of the full appeal rights to which every citizen is entitled.

Third, as far as regulations are concerned, the advance planning requirements are pretty general. In fact, they are extremely general and they could add up to something of the type of paperwork nightmare that we have seen with some environmental impact statements, where some of these have run thousands of pages, weighing 8 to 10 pounds, 4 or 5 volumes, and take 1 or 2 years to prepare. So the advance plan could become an extreme problem, especially for the little man, and an expensive problem.

The requirement of a bond and the planning requirements regulations kind of constitute a requirement for a permit, and we believe that the 1872 act gives the prospectors and those who would explore on Federal land, a right to do so without compensation to the Federal Government. This right has been substantiated on several occasions by the Supreme Court.

Finally, that the proposed regulations would in fact change the 1872 laws, and this is the responsibility not of the executive branch of Government, but of the Congress. And the fact that the executive branch of Government has sent to Congress in the 92d Congress and again in the 93d Congress, proposals to change the 1872 law, recognizes that the legislative process should be followed, rather than doing it by administrative regulations.

This is the reason that he has extreme concern over the operation of the regulations as proposed. We would like to submit for the record a resolution of the Northern California County Supervisors Association and a resolution of the Plumas County Board of Supervisors, expressing the position of local government as it relates to this matter.

And his full statement is attached there also, Mr. Chairman.

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

Without objection, our colleague's entire statement will be made a part of the record, and his attached letter to Chief McGuire will also be made a part of the record. Also, if there is no objection, the attach-

ments dealing with the resolutions will be made a part of the record immediately following Mr. Johnson's statement.

[The materials referred to follow:]

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

Mr. Chairman, first of all let me commend you and members of this Subcommittee for scheduling these hearings into the proposed new regulations of the Forest Service relative to mining operations.

As you know these were published in the *Federal Register* December 19, 1973. Since that time there has been a great deal of discussion about them. My primary concern is the basic constitutional question of whether the impact and intent of laws enacted by Congress can be modified drastically by administrative regulation.

Initially, I would like to make a comment or two about the general situation as it relates to mining and our mineral industry and also about the regulations as proposed.

We have heard a great deal about the energy crisis and we recognize the need for self-sufficiency in our petroleum products, because of our former dependence upon foreign sources for our crude oil supplies.

In a recent appearance before the American Mining Congress in Spokane, Washington, our former colleague on the Interior and Insular Affairs, Assistant Secretary of Interior, John Kyl, forecasts that within five or ten years this country could well have a materials crisis which would make this energy shortage look like a Sunday School picnic unless minerals production is greatly expanded.

Too little is known about our dependence upon minerals for the way of life which we enjoy today with our high standard of living, but the facts are there and they range from antimony to zircon. Without antimony to harden metals and for storage batteries we would have to be cranking our automobiles like we did the old Model-T. Without zircon our nuclear power plants could not be constructed. Ponder our dependence upon tin which is essential for enumerable items, or manganese which is essential for steel, and chromium which is used in jet engines, stainless steel and a host of other commodities, or copper, beryllium or bauxite. Admittedly there are no known sources of some of these materials within this country but we do have some areas where the only known sources of ore is a small region of a square mile or less. For instance, most of the nation's reserves in borax are located in a small area in Boron, California and our supplies of rare earths come from Mountain Pass, California. There may well be similar concentrated deposits of scarce minerals still undiscovered.

Along these lines, Mr. Chairman, I would like to submit for the record a letter from Mr. Dave Taylor of Greenville, California, who discusses some of the potential for minerals which generally are not thought to exist in this country. It is these types of possibilities which I think must be explored at all costs.

Exploration or prospecting must continue as we follow up on our quest for greater self-sufficiency in the minerals industry and it is my conviction that this is not the time to hamstring the little miner or prospector but rather to encourage them. In light of these general thoughts I would like to turn to some specific comments about the regulations as proposed.

I recognize that the specifics of the proposed regulations were subject to review and comment under Department of Agriculture regulations and the period for these comments closed March 1. Along with hundreds of others, I did file comments and I would request permission to incorporate in my testimony at this point my comments submitted to the Forest Service on January 21, 1974. (attached)

From the tone of the letter, you can see I am convinced these are most unreasonable and will work an extreme hardship upon the minerals industry, especially the small prospector and miner upon whom this nation has been so dependent historically for discovery and location of our mineral supplies.

In discussing the most unreasonable of the provisions of these proposed regulations, I would first like to discuss the extremely restrictive appeal rights allowed by the proposal. I am sure we all have had cases brought to our attention where administrative remedies have failed to correct inequities. The only course of action left to correct these injustices is through legislative or judicial

review. In either event the first question asked by the legislative committee or the court is: "Have the administrative remedies been exhausted?" In each instance this has meant the full appeal procedures, all the way to the Secretary and/or all his appeals review board acting on his behalf. The regulations as published would deny this full appeal review to the miner and I can readily visualize situations where the courts and legislative bodies would refuse to consider the matters because full review process had not been taken, a process denied by the regulations.

The Chief of the Forest Service has recognized the problem, but I mention it because I believe the provisions are not only unreasonable but most importantly, deprive the miner and prospector of the "due process" provision of the Constitution.

A second point of specific concern is the requirement that a \$2,000 minimum bond be posted. This is a concern which you, Mr. Chairman, voiced in your announcement of these hearings. As you noted at that time, hundreds of prospectors and small miners have charged that such a bond would indeed put them out of business. I think this is true even though the response of the Forest Service is that the bond could be obtained for a relatively small amount.

Miners and prospectors traditionally operate on a shoe-string. Even a small additional expense poses an unreasonable burden upon them. The same can be said for the requirement that miners and prospectors spell out in advance how they intend to search for and develop deposits of minerals.

We have seen, over the years, various proposals for advance planning and submission of plans detailing proposed works of many types. In many areas preparations of these plans have become a profession for many a lucrative profession which places heavy burdens upon the developers. Take for instance the National Environmental Protection Act, which I supported and I suspect most of us here supported. It is upon this Act, that the U.S. Forest Service is relying in seeking to adopt these regulations.

When we passed NEPA, did anyone of us envision it would be used to demand an environmental impact statement six to eight inches thick, weighing approximately ten pounds and consisting of four or more volumes, numbering hundreds of pages?

While admittedly these are extremes, I think we all recognize that it is not unusual to have an environmental impact statement of an inch or more thick, nor is it unusual to have the preparation of such statement cause a delay of a year or more due solely to the massive massaging of the paperwork required by the regulations drafted under this act.

Mr. Chairman, I am not saying that the regulations are drafted require plans of this scope. They do not, however, there is nothing in these regulations which would prevent the development of this type of plan. This leaves the scope of the plan to be developed pretty much up to the local ranger, and the small miners and prospectors fear deeply that in interpreting these regulations the local officials will lean over backward in favor of massive paperwork requirements. This fear is justified, to be demonstrated by an example cited to me by one miner. We all know that the mining laws authorize a miner to build whatever facilities he needs for his mining operation on his claim. In one instance a miner reported that the local ranger advised him he could build a tool shed so long as the structure was not big enough to sleep in. I have checked this story through and while there was a difference of opinion as to what actually was said, it was admitted that this interpretation from the Forest Service official's remarks could be taken. Can we doubt the grave concern held by the small miner and prospector about regulations as broad as these?

Again, I feel they are absolutely unreasonable. While there are other provisions which I feel are equally unreasonable in their scope, I will leave it with these two examples and address myself to what I believe is an even more basic problem than appeals rights, bonds or master plans. This involves the basic mining laws of this nation.

The mining laws of 1872, passed by the United States Congress and signed by President Ulysses S. Grant, provide that the lands belonging to the United States shall be "free and open to exploration and purchase." Historically it is my belief that this language precludes the charging of fees for mining operations, prospecting and exploring operations and precludes the requirement that permits be issued. While the Forest Service may allege otherwise, certainly I believe that common sense would demonstrate that the regulations as drafted do in fact require permits for mining operations. How else can you describe a regulation which demands prior approval of all operations by the local ranger, the Forest Service in this instance, as the authority to deny the plan of exploration and,

therefore, has the authority to deny a permit. How else also would you describe a regulation that requires posting of bonds in the absence of which permits to explore and prospect would be denied. No, Mr. Chairman, I think there is no question but what the regulations described do demand establishment of a permit system for prospecting and exploring on public land.

This conviction has been substantiated time and time again during the past 102 years by the courts of our land. The Supreme Court has declared "Intent of Congress, in making public lands available to people for purpose of mining valuable mineral deposits, was to reward and encourage discovery of minerals that are valuable in economic sense." Additionally, the court has held "The general policy of the mining laws is to promote widespread development of mineral deposits and to afford mining opportunities to as many persons as possible." And, again, "The general purpose of the mining laws was to encourage citizens of the United States to assume the hazards of searching for and extracting the valuable minerals deposited in the public lands, and it was supposed that by reason of the stimulus thus given to the production of mineral wealth and rendering the same available to commerce and the arts the public would indirectly receive a compensation commensurate with the value of the grant, and thus considered the legislation is approved as embodying a wise public policy."

Throughout the court decisions relative to the general purpose of the mining laws the court continues to talk about the miners' *rights* on the public lands. In fact, the Federal courts in Montana in 1891 went to the heart of the situation by saying the 1872 Act is "the charter of the miners' rights upon public domain," and again in the Federal District Courts of California in 1964 the 1872 Act "grants right to explore and purchase all valuable mineral deposits in lands belonging to the United States, and the right to occupation and purchase of lands in which valuable mineral deposits are found," and finally the Supreme Court has held that "Congress has by tacit consent permitted mining on government lands without receiving any compensation, and without requiring the miners to buy or pay for such land." Thus I believe that the actions proposed by the Forest Service are contrary to Federal law, as enacted by Congress and interpreted by the highest courts of our lands.

But, even if I did admit, which I will never do, that the provisions of these regulations do not constitute a permit system. I don't believe that the Department of Agriculture has any authority to amend the mining laws of the nation. The interpretation and the administration of these laws are clearly given to the Department of Interior by the Congress of the United States and it is that Department and not the Forest Service which has the sole authority to manage our mineral resources on public lands including those owned by the Forest Service.

In summary, Mr. Chairman, I feel that the whole basic concept and reasoning behind these proposed regulations is to amend the mining laws of 1872. While I may be engaged in an exercise in semantics I would call to your attention the comments of Mr. John R. McGuire, Chief of the Forest Service, at the National Western Mining Conference in Denver, Colorado, February 7th, of this year. He referred to the proposed regulations as "affecting 1872 mining law activities in the National Forests." There is no question but what the regulations would "affect" the 1872 law. I think in this instance the terms "amend" and "affect" could be interchanged and, therefore, I would charge that the proposed regulations are indeed amending the mining laws of 1872.

We all know the amendments to the laws is the responsibility of the Congress of the United States. Furthermore, Article IV, Section 3, Paragraph 2 of the United States Constitution states very clearly "the Congress shall have the power to dispose of and make all needful rules and regulations respecting the territories or other property belonging to the United States." This Article has been upheld by a whole string of Federal Court decisions, including one which declares very simply, "mining laws of the United States should be liberally construed." I would respectfully submit that first of all the unreasonable regulations proposed by the Forest Service December 19, 1973 in no way follow the concept of liberal construction of the mining laws and secondly if our mining laws are to be amended this is the responsibility of the Congress of the United States. It cannot be accomplished through administrative order and in conclusion I believe the Executive Branch of Government fully recognizes this for wasn't it just in the last Congress that the administration sent up a request for a new mining legislation which would have modified drastically the 1872 Act. Did not Congress in its wisdom decline to act on that proposal and last year, did not the administration propose to this Congress that the 1872 Act be repealed and to date there has been no action on this request either. Therefore, I believe we cannot permit

the purposes of these requests for drastic changes in our historic mining laws to be accomplished through the circumvention of the Congress of the United States. This is what I believe would be the effect of the implementation of these regulations.

Thank you Mr. Chairman.

HOUSE OF REPRESENTATIVES,
Washington, D.C., January 21, 1974.

Mr. JOHN R. McGUIRE,
Chief, Forest Service, Department of Agriculture,
South Building, Washington, D.C.

DEAR Mr. McGUIRE: One of the first things I want to do upon my return to Washington today is to express my strong opposition to the proposed regulations relative to mining operations on National Forest lands. My objections to these regulations published in the *Federal Register* of December 19, 1973 are both specific and general in nature.

Specifically I take exception to the \$2,000 minimum bond required for mining operations. Noting that the \$2,000 figure is a minimum and that the actual amount of the bond required would depend upon the whims of the local ranger, I would comment that in most instances your major mining operations could afford such a bond, however, the small operator, and this nation's mining industry has always depended on the individual to do much of its prospecting, could not. Even the minimum bond would be oppressive. Secondly, I would emphasize that the mining laws of 1872 specifically do not provide for fees for mineral exploration and development and the posting of such a bond in fact would create a fee structure which is not provided for in the law.

Thirdly, the language of the proposed regulations is too loose and subject to too much interpretation in the field. You, as Chief of the Forest Service, would have little control over how these interpretations were made and administered since the regulations deny the individual miner the right of appeal beyond the regional forester. While I can understand the need for the delegation of authority, I do not believe you can delegate away the individual's right to full appeal procedures nor his right to full judicial review. As I interpret these proposed regulations this is just what would result if they were placed in force.

I would like to say that even if these specific complaints were corrected I would have to oppose the regulations. This is because I believe they reflect a general philosophy of discrimination against the mining industry, and specifically the small operator.

We are hearing much about our energy crisis. The President has set as a goal for this nation self sufficiency in our petroleum products. This is because if our import pattern were not changed we would soon be dependent upon foreign sources for more than half our crude oil supplies.

This nation faces much the same situation in its minerals industry. We do not mine anywhere near the gold that we need for our domestic nonmonetary uses. We are dependent upon foreign sources for such diverse mineral products as antimony, bauxite, bryllium, chromite, and the list goes on and on. A crisis of similar or greater proportions to that we face today in energy could well develop if our mineral supplies were cut off, therefore, I believe very strongly that this is a time in which to encourage the mining industry rather than to hamstring it.

And, finally, I emphasize that these proposed regulations, as I see them, would, in effect, amend the mining laws of 1872. Under our system of government it is not legally possible to amend laws by administrative decree. If you desire to amend the mining laws of 1872 it is essential that this be attempted through the regular legislative process including the full hearings and consideration by the appropriate committees of Congress and votes by all the members of the U.S. House of Representatives and the U.S. Senate.

With these thoughts in mind I would strongly urge you to abandon the proposed regulations and instead draft a program which would encourage our mining industry.

Sincerely yours,

HAROLD T. (BIZZ) JOHNSON.
Member of Congress.

GREENVILLE, CALIF., February 23, 1974.

Congressman HAROLD T. JOHNSON,
Rayburn Building, Washington, D.C.

DEAR SIR: Thank you very much for your answer to my letter, in regards to the changes in mining regulations, as proposed by the U.S. Forest Service. I wholeheartedly agree with your stand and comments in this matter.

On page two of your letter to Mr. John McGuire you mention the shortages of minerals, which we are entirely dependent upon foreign sources for. Mr. Johnson, I have long years and tremendous hours in mineral research, and our country abounds in various needed minerals or metals, that are in short supply and considered non-existent, and below are listed a few examples. (1) In Plumas County, California one of the world's great Bauxite deposits exists. Experts state that the world's known reserves of this ore of aluminum will only last some 25 years. As time goes by foreign suppliers will become more demanding and arrogant, and will adopt attitudes similar to those now present with Middle-Eastern oil. It therefore behooves our country to fully develop our own resources.

(2) Some 90 miles from Los Angeles, California is a tremendous virgin mountain of chrome ore, containing countless millions of tons, that should solve the short supply of chrome within the United States. In Northern California are other deposits, one of which assays 90-95 percent chrome. Recently a news article stated that our country has less than 7 million tons of low grade chrome ore, so we therefore must depend upon foreign sources. I personally do not believe this at all.

(3) Knowledgeable experts say that we have no tin (cassiterite) of commercial consequence in our country. A 91 year old man has two deposits in Southern California. Recently, people were drilling a water well and tin ore was encountered to 649 feet. Assays of samples show 1300 pounds of tin per ton.

For eleven years I have averaged over 300 letters a month to individual miners and prospectors, and many of these people are the source of tremendous information. They also are patriotic Americans who deeply wish to help our country. The large U.S. firms have personal greed or corporate profit as their only motive, and they have fully demonstrated this in our present oil situation.

Our U.S. Congress should get behind mining, and many of our current problems could be totally solved, including our shortages of oil. Would you please show this letter to the Chairman of the House Subcommittee on Minerals and Mining?

I would certainly appreciate some manner of governmental help, in the full development of the various minerals I am aware of. They could be a tremendous source of various minerals, plus would provide much employment for our people. I also wish to assure you that I am most sincere in what I state, and that it all can be readily proven to be fact. Thank you.

Respectfully yours,

DAVE TAYLOR.

NORTHERN CALIFORNIA COUNTY SUPERVISORS ASSOCIATION RESOLUTION
No. PL-2-74

RESOLUTION IN OPPOSITION TO PROPOSED CHANGE IN MINING LAWS AS PUBLISHED IN
FEDERAL REGISTER ON DECEMBER 19, 1973

Whereas, the U.S. Forest Service has drafted and caused to be published in the Federal Register on December 19, 1973 proposed rules for use under U.S. mining laws; and

Whereas, it appears that the proposed rules would modify many long existing and well understood practices and procedures; and

Whereas, the proposed rules appear vague, indefinite and confusing; and

Whereas, the proposed rules appear to vest their administration in administrative officers, whose decisions are not subject to appropriate review and appeal; and

Whereas, it would appear that any such major modification of the U.S. mining laws should be the subject of Congressional enactment and not by administrative fiat.

Now, therefore, be it resolved, by the Northern California County Supervisors Association in General Session at Red Bluff, California, that it oppose the adoption of the proposed rules.

Be it further resolved, that copies of this resolution be sent to all members of of the California Congressional Delegation, U.S. Senate Mining Committee, Arch Mahan, Jack Merelman and the Regional Forester.

Passed and adopted this 9th day of February, 1974, by the membership of the Northern California County Supervisors Association.

NORMAN A. WAGONER,
Secretary-Treasurer.

LARRY DEAN,
President.

RESOLUTION No. 74-2553

(Opposing mining regulations presently proposed by the U.S. Forest Service)

Whereas, the mining regulations presently proposed by the U.S. Forest Service appear to be contrary to the best interests of miners and other citizens of Plumas County, and

Whereas, Congressman Harold T. "Bizz" Johnson has publicly indicated his opposition to such proposed regulations,

Now, Therefore, Be It Resolved that the Board of Supervisors of the County of Plumas, State of California, wholeheartedly supports Congressman Johnson in his opposition to the proposed U.S. Forest Service regulations on mining.

The foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Plumas, State of California, at an adjourned regular meeting of said Board held on the 26th day of February, 1974, by the following vote:

Ayes: Supervisors: Dean, Ross, Bohne, Crivello and Jeskey.

Noes: Supervisors: None.

Absent: Supervisors: None.

ROBIN R. JESKEY,
Chairman, Board of Supervisors.

Attest:

RAYNELLE SLATEN,
*County Clerk and ex-officio Clerk
of said Board of Supervisors.*

Certify that the foregoing is a true and correct copy of Res. #74-2553, adopted by the Board of Supervisors of Plumas County, California, on February 26, 1974, attest March 4, 1974.

RAYNELLE SLATEN,
*County Clerk and ex-officio Clerk
of the Board of Supervisors.*

Mr. MELCHER. Thank you.

Mr. BARNES. Thank you, Mr. Chairman.

Mr. MELCHER. Are there any questions of Mr. Barnes?

Mr. TOWELL. I would just like to thank the witness for presenting this testimony today; and I would also like to speak up on behalf of independent miners throughout Nevada and the people who have done mining exploration on public lands.

I think and feel very much the way you do, and the material that you have presented this morning, and would be in wholehearted support of your position.

I want that for the record. Hundreds and hundreds of letters, calls, and personal contacts that I have had throughout Nevada, indicate that people are extremely disturbed about any of these proposed regulations by the Forest Service. And I wholeheartedly would support the position.

Mr. BARNES. Thank you.

Mr. YOUNG. Mr. Chairman.

Mr. MELCHER. The gentleman from Alaska.

Mr. YOUNG. There is no question on the testimony. I would like to associate myself with the remarks of the gentleman from Nevada. One thing I would like to compliment you on is on the second page, third

paragraph, about the \$2,000 minimum bond posted. And I have heard a lot of people saying this does not apply to the prospector. I interpret it that it does. But their argument, and I have heard Mr. McGuire's statement, it says that they could easily obtain this bond with very little problem, this \$2,000. You really do not believe they can obtain the bond, and I do not either, of \$2,000 from an easy source.

Now if they would guarantee to sell bonds to the prospector, I might agree with it. But I have dealt with bonding companies before in the construction business and I know how difficult they are.

And I would like to compliment you for bringing that up, because for them to say it is easy to obtain a bond for thousands of prospectors, it just is not true.

Mr. BARNES. I think in many cases it would be impossible.

Mr. YOUNG. That is all I have.

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

Mr. BARNES. Thank you, Mr. Chairman.

[The following letter was received for inclusion in the record:]

HOUSE OF REPRESENTATIVES,
Washington, D.C., March 20, 1974.

HON. JOHN MELCHER,

Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, Longworth Building, Washington, D.C.

Dear Mr. CHAIRMAN: Supplementing my remarks of March 7th, 1974, I have been requested by an old friend, Mr. C. E. Tuffy Harthorn, that the enclosed letter be inserted either in the hearings record or filed in connection with our oversight hearings of the mining claim operations.

Sincerely yours,

HAROLD T. (BIZZ) JOHNSON,
Member of Congress.

Enclosure.

MARCH 12, 1974.

HOUSE SUBCOMMITTEE ON PUBLIC LANDS,
House of Representatives,
Washington D.C.

Dear Sir: I am a small operator in the gold mining industry and have waited a long time and spent considerable money in maintenance of my claims, waiting for the price of gold to again become economic.

It would be a disaster to me and others if the Forest Service were to become sole judge within its boundaries of an industry about which it knows nothing.

I heartily support the testimony of Harold T. (Bizz) Johnson before your committee.

Sincerely yours,

C. E. HARTHORN.

STATEMENT OF JOHN R. McGUIRE, CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY C. W. BRIZEE, OFFICE OF GENERAL COUNSEL, AND HOWARD BANTA, CHIEF MINING ENGINEER, FOREST SERVICE

Chief McGUIRE. Thank you, Mr. Chairman.

With your permission, I would like to have Mr. C. W. Brizee of our Office of General Counsel, and Howard Banta, Chief Mining Engineer in the Forest Service, accompany me.

Mr. MELCHER. Yes, that is fine, Chief; go right ahead.

Chief McGUIRE. The Department of Agriculture welcomes this opportunity to discuss our proposed regulations which would govern activities in the national forest under the 1872 mining laws.

At the beginning I would like to make clear that the regulations you are reviewing are only proposed at this time. They were published in the Federal Register on December 19, 1973, as "Proposed Rules" with a period for public review and comment which extended until March 1, 1974.

I would now like to briefly review the background and major provisions of the proposed regulations.

In recent years public use of national forest lands has increased dramatically. Mineral activities often need to be coordinated with other uses and programs. Prospecting, exploration, and mineral development in certain cases have resulted in adverse environmental effects on national forest resources. These adverse effects in many instances could have been avoided or reduced with special care and attention.

The development of the proposed regulations was an outgrowth of strong public and agency concern that mining activities authorized on national forest lands, under the mining laws of 1872, needed to be more closely coordinated with other national forest uses, and that regulations were needed to specify the steps to be taken to minimize the impact of mineral activity on the environment.

The National Environmental Policy Act of 1969 added impetus to our concern by directing that "to the fullest extent possible the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this act." One of the policies stated in the act is "to promote efforts which will prevent or eliminate damage to the environment."

After careful review of our existing authority, we determined that the Organic Administrative Act of 1897 provided adequate authority for the promulgation of new regulations governing mining activity on national forest lands originating from the public domain. The regulations would apply to approximately 140 million acres within the National Forest System. The Organic Administration Act reaffirms that persons may enter the national forests for purposes of prospecting, locating, and developing mineral resources; however, it also provides that such persons must comply with the rules and regulations covering such national forests.

The early drafts of the proposed regulations were formulated in 1970 and 1971. In the spring of 1971, draft regulations and a draft environmental statement were widely circulated to mining associations, conservation groups, and other organizations and individuals for their review and comment. Based on an evaluation of these comments and intensive interagency review and coordination, the regulations were redrafted into the form published on December 19, 1973.

In brief, the proposed regulations provide that any person proposing to conduct mineral operations which might cause a significant disturbance of the environment shall first submit a proposed plan of operations.

The plan of operations is to be reviewed by the responsible forest officer, and the operator is to be notified of approval or the need to change or make additions to the plan. All operations are to be carried out under approved plans. The forest officer is to periodically inspect operations to determine compliance with the approved plan.

The regulations would provide that all operations be conducted so as to minimize adverse environmental impacts on national forest resources and to provide for timely reclamation of disturbed areas.

A minimum performance bond of \$2,000 would be required prior to the approval of each plan of operations to assure compliance with regulations and approved plans.

The responsibility to approve plans would be with the forest supervisor of the affected national forest with an appeal procedure specified in the regulations. The regional forester would have the authority to make a final decision on any such appeal.

Regarding access to mining operations, the regulations state that operators shall be entitled to access in connection with operations; however, written authorization from the responsible forest officer would be required before new construction or improvement of this access. The operator would make application for such access with the responsible forest officer. These provisions embrace our current policy regarding authorization of access on the national forests.

The proposed regulations pertaining to national forest wilderness are consistent with the provisions of the Wilderness Act and current regulations applicable to mining activity in wilderness.

We believe these proposed regulations provide an appropriate balancing of resource use, development, and protection of the national forests. I would like to emphasize we are dealing with surface resources on the national forests. The Department of the Interior continues to have jurisdiction and responsibility for disposition of the minerals themselves. We will not interfere with the basic rights of mineral operators under the mining laws, but rather seek to assure that development of subsurface resources is carried out in a manner that will minimize the impact on surface resources. We believe that the proposed regulations are a reasonable and necessary step in the management of national forest surface resources.

I would also like to emphasize that we see these regulations as entirely consistent with the administration's proposed "Mineral Leasing Act of 1973" as presently before the House in H.R. 5442. We urge enactment of that legislation as providing long-term direction for mineral development on public lands. We view our proposed regulations or future lease and permit stipulations which require an operation plan and measures for environmental protection as necessary components under any system allowing mineral development.

We recognize that the implementation of regulations, such as we propose, will have to be based on a spirit of cooperation between mineral operators, other forest users, and Forest Service administrators.

I spoke on this need recently in appearing before the National Western Mining Conference. I pointed out that the heart of the regulation system would be a mutual understanding between the Forest Service and operators as to what is planned and how damages will be avoided or minimized. I also emphasized that we view mining as a full partner in our multiple use management of the national forests.

Finally, I would like to bring you up to date regarding the status of our final review of the proposed regulations.

Substantial public comment was received during the recent period of public review. We are now in the process of evaluating this public comment and considering the need for any changes in the regulations. For example, we have received a number of recommendations from public groups and individuals relating to the bonding requirement. We are taking a hard look at the conditions under which a bond should be required and the amount of such bonds.

We view these hearings and the action of this committee as being helpful in our evaluation of the proposed regulations. We want to be responsive to the various concerns identified during the review and hearing process. After evaluation of public comment and a review of resource management needs, we conclude that it is important to move ahead and finalize the proposed regulations. Our goal is to complete the review so that we can implement the regulations during the upcoming summer field season. We are aiming for an effective date of June 15. We believe your committee's efforts can effectively blend into this schedule.

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

Mr. MELCHER. Thank you very much, Chief.

We are going to interrupt here just a minute.

[Whereupon, the committee proceeded to other business, after which the above-entitled hearing was resumed.]

Mr. MELCHER. The committee will now return to the testimony of Chief John McGuire.

Chief McGuire, what is the specific language in the Organic Act of 1897 that authorizes the Forest Service to promulgate the regulations that deal with exploration and development of minerals on public lands, on forest lands?

Chief MCGUIRE. Mr. Chairman, I will ask Mr. Brizee to read that language.

Mr. BRIZEE. Mr. Chairman, that language is found in title XVI of the United States Code.

Mr. MELCHER. Could you speak louder, please?

Mr. BRIZEE. Yes, sir.

The specific statutory provision is in title XVI of the United States Code, section 478, and I will read it to the committee if they would desire. It provides that, "nothing in the act will prohibit any person from entering upon a national forest for any proper and lawful purpose, including prospecting, locating, and developing the mineral resources thereof, providing such persons must comply with the rules and regulations covering the national forests."

Mr. MELCHER. The gentleman from California.

Mr. CLAUSEN. Mr. Chairman, it is good that our subcommittee has scheduled these hearings on the Forest Service's proposal for regulation of the mining industry.

Since the publication of this proposal several months ago I have been deeply concerned with the apparent impact of the proposal on the small miner upon whom this Nation is greatly dependent for meeting our mineral needs.

The effect of the regulations can clearly be seen in the requirement for a \$2,000 minimum bond. To place this burden on the small prospector is unconscionable at best. It amounts to confiscating his rights by imposing a high fee—to me, this is simply not in keeping with the traditional American sense of justice and fair play.

Other provisions in the regulations are similar in scope and purpose and have come about, in my judgment, because the Forest Service has attempted to make serious and substantial changes in our national mining policy by bureaucratic fiat rather than through normal legislative channels.

It is the legislative process where these ideas can be thrashed out in a public forum with public decisions. The regulatory process is totally unsatisfactory in this regard.

On this subject, I ask unanimous consent, Mr. Chairman, that I may be permitted to insert in the permanent hearing record letters I have received from Mr. Frank J. Brickwedel, Mr. Robert Olesky, Mrs. Lynne Graham, Dr. Robert Van Kirk, Mr. and Mrs. C. H. McClendon, and Timothy and Marcia Moore.

I think these comments, from among those I have received, will help the subcommittee in its consideration of this issue.

In addition, I ask unanimous consent that I be permitted to submit additional material bearing on the question of the Forest Service proposal.

Mr. MELCHER. Without objection, the material will be allowed.

[The material referred to follows:]

CRESCENT CITY, CALIF., February 15, 1974.

Hon. DON H. CLAUSEN,
Congressman, First District, House of Representatives, Washington, D.C.

DEAR DON H. CLAUSEN: The Northern California Miners Association (Del Norte Chapter) requests your support in opposing the proposed changes in the federal register of the mining laws. Congressman Bizz Johnson said it better than I could in a letter to John R. McGuire, Chief of the U.S. Forest Service dated Jan. 21, 1974.

Our chapter here in Del Norte County is opposed to changes in these laws, as we feel they will completely eliminate the small miner and prospector as a viable factor in the discovery and operation of minerals. We are in an energy crisis due to the extreme environmental reaction. Let's not follow it with a mineral crisis. These proposed environmental restrictions would drastically hinder future exploration.

Yours very truly,

FRANK J. BRICKWEDEL,
Past President of Nor-Cal
Miners Association.

ORLEANS, CALIF., January 25, 1974.

DEAR REPRESENTATIVE CLAUSEN: As a small resident miner in your constituency, I urge you to not only vote against but actively work and campaign against the new bill designed to force miners to post a \$2,000 bond to remain on their claim. Since my family and I are dependent on our place for our living, passage of this bill would mean disaster for us. I think the time has come for the Forest Service and the big business it protects be moved aside in favor of the little man—who, in the first place, made America great.

ROGER OLESKY.

ETNA, CALIF., January 22, 1974.

DEAR CONGRESSMAN CLAUSEN: Please, please protect the 1872 mining laws! We are alarmed at the proposal that the U.S. Forest Service had printed in the Federal Register on Dec. 19, 1973. We can only ask that you give the miners a bit of thought before letting the Forest Service destroy the mining laws of 1872.

Yes, people here are unsettled by the fuel shortage, even "small" miners usually need gas to operate their equipment. However, we are much more upset over the Forest Service proposal than we are over the gas situation!

Thank you for your consideration and cooperation.

Sincerely,

LYNNE GRAHAM.

CALIFORNIA STATE UNIVERSITY, HUMBOLDT,
SCHOOL OF NATURAL RESOURCES,
Arcata, Calif., February 13, 1974.

HON. DON H. CLAUSEN,
House of Representatives, House Office Building, Washington, D.C.

DEAR MR. CLAUSEN: I am writing in reference to the proposed rules regulating mining on national forests as presented in the Federal Register, Vol. 38 (243), Wednesday, December 19, 1973. In general, I support 36 CFR Parts 251 and sections of Part 252. Although the regulations are not as restrictive as they might be, they are an improvement over present regulations.

I cannot support Part 252.17 and Part 293, which regulate mining in de facto and classified Wilderness. I am not criticizing the Forest Service here, since Congress is responsible for the present dilemma of allowing mining in Wilderness; but it is difficult for me to understand how any type of regulation can be restrictive enough to protect the values of Wilderness as mandated by the Wilderness Act. Therefore, Regulations 252.17 and all of Part 293 are quite meaningless to me.

I appreciate and support your efforts and that of Congress and the Forest Service to better manage our national forests and for the opportunity to express my opinion.

Respectfully yours,

ROBERT R. VAN KIRK,
*Assistant Professor,
Natural Resources-Fisheries.*

CRESCENT CITY, CALIF., February 20, 1974.

HON. DON H. CLAUSEN,
Congressman from California, House Office Building, Washington, D.C.

DEAR DON: We wish to express our strong opposition to the proposed new regulations to be adopted by the Forest Service relative to mining operations on Forest Service administered lands.

The Forest Service proposes to bring about certain changes in the 1872 Mining Law by administrative decree by insertion in the Federal Register rather than by consideration of both Houses of Congress and the will of the people.

The one basic industry without which no other industry can survive is the mining industry. Mining should be encouraged rather than discouraged in order to make this country self sufficient in its production of minerals, rather than to be dependent upon communist countries for our needs.

Enclosed is a copy of a letter written by Congressman Harold T. (Bizz) Johnson to the Forest Service. Mr. Johnson has made a thorough study of the regulations and states the various reasons why these proposed regulations should be abandoned.

We hope you will give this matter serious consideration.

Very truly yours,

C. H. McCLENDON.
CAROL M. McCLENDON.

EUREKA, CALIF., March 21, 1974.

Congressman CLAUSEN,
*Rayburn Building,
Washington, D.C.*

DEAR DON: In response to our recent telephone conversation on the matter of Forest Service vs. Mining Claims; Particularly ours, (The old original Gasquet Toll Station on Patrick Creek, total 150 acres, known as the Oak Flat Group) which was established in the late 1800s and has been operated as a Placer Mine since. Through out the years, it has been sold only a few times, in 1910, from Higgins to Raymond, who operated it until 1959, then sold to Mr. Carlson and we bought it in 1971. There has always been a cabin on this property, and most of those years was inhabited. Since we bought the property, we have a caretaker there, as the vandalism was horrible. Now, the Forest Service has decided, there should be no one living there, and a direct quote, "We want everyone out so we can watch them." ??? We were called out to a meeting March 15, and after a rather heated discussion, they agreed to let the "Squatters," as our caretakers are called, alone until May 15, when dredging operations will resume. Then, they, will take a validity test and determine if we will be allowed to keep the claim and cabin.

We have reason to believe that this property has been patent or homesteaded. However, the records in the Del Norte County Courthouse are quite incomplete, to put it mildly, or conveniently misplaced. So, we would appreciate very much, your corporation in having the records in Washington searched. The claim is now located in, section 32, Township 18, Range 3 E. However, as you know, the sections have been changed, and in 1936, it was in section 27.

We have talked to a few Lawyers on this matter, only to be told that the Forest Service was a formidable foe, and we would be wasting our time and money, so, No Thank You.

The Forest Service has been given entirely too much power by people, who we believe really don't know what it's all about, and we know *you do*.

The 1872 mining laws are still in force, and all the laws we need if properly enforced. The validity test which they want to make is unlawful. There is a bill being prepared or already before Congress, giving the Forest Service *more power* over the miners, which *must* be stopped. If this trend for more and more bureaucracy is continued, we, the tax paying and voting majority, who are now angry and troubled, as they see freedom after freedom taken away, will be in open rebellion. So, may we suggest Don, That if it be true your interest is *not* with us, (which we find hard to believe). Please add your voice to the few that is showing an interest and do something. Everything out here can't be Parks or campgrounds controlled by a few.

Sincerely

TIMOTHY and MARCIA MOORE.

Mr. MELCHER. Would you identify yourself for the record?

Mr. BRIZEE. Yes, sir, I am Mr. C. W. Brizee and I am with the Office of the General Counsel of the Department of Agriculture.

Mr. MELCHER. Brizee?

Mr. BRIZEE. B-r-i-z-e-e.

Mr. MELCHER. Brizee. Thank you, Mr. Brizee.

You have cited language in 16 U.S.C. 478 which you say it provides the authority for the Forest Service regulations.

Mr. BRIZEE. Mr. Chairman, there are several sections of the 1897 act that pertain to the question of the Secretary's authority that is at issue here. There is, of course, another section of the same act which is codified in title XVI at section 482, which states that the national forests are open to location and entry under the 1872 mining law. There is another provision of the 1897 act which is codified at 16 U.S.C. 551, which gives the Secretary of Agriculture the authority to issue regulations to accomplish the purposes for which the forests are established and administered.

The way we read these several authorities together, the Secretary of Agriculture may not deny the right to enter upon the national forests for location and entry, but he may condition them. These conditions would be reasonable conditions in the sense that they would be directed toward the protection of the nonmineral surface resources of the forests that are the responsibility of the Secretary and in the furtherance of national forest purposes, and at the same time would not unreasonably impair the miner's right.

Mr. MELCHER. I'm glad you brought up the point of reasonableness, because I think that would be the whole crux of your regulations, whether or not they are reasonable.

Nothing in what you have cited, the Organic Act of 1897, mentions anything about a fee, though, does it—a bond?

Mr. BRIZEE. No.

There is no provision for a fee.

Mr. MELCHER. Or a bond either.

Mr. BRIZEE. To answer your question about the fee, Mr. Chairman, there is no provision that would allow the Government to ask for a

compensation for the right of entry. This, indeed, would, we think, abrogate the right. We would see the bond as being of a different status. The bond, after all, is only a guarantee which is to provide, in the event the individual is unable to respond in damages—would provide the Government with a compensation they would otherwise be entitled to by law if a person were found liable for such payment.

Mr. MELCHER. But the question is, is there a statutory provision for a bond?

Mr. BRIZEE. There is not.

This must be substantiated as being reasonable in connection with the other provisions of the regulations.

Mr. MELCHER. You really are making—you really have not approached the Congress and said we do not have statutory provision for a bond and we think we ought to have one, and asked for a bill, have you?

Chief McGUIRE. I think the answer there is the administration's proposal.

Mr. MELCHER. The administration's what?

Chief McGUIRE. The administration has proposed a mineral leasing legislation which we feel would accomplish the end that we are seeking here and, in fact, go beyond it.

Mr. MELCHER. You are talking about H.R. 5442 which you have mentioned in your testimony—

Chief McGUIRE. That is correct.

Mr. MELCHER [continuing]. Which has a great deal of material in it.

But the answer to my question is, that before you put out the regulations you did not come to Congress and say, we do not have any statutory authority for a bond, but we think we ought to have except in this, all of the provisions that are contained in H.R. 5442.

Chief McGUIRE. We felt, Mr. Chairman, that we had sufficient authority under our 1897 act to go as far as the bond without seeking further legislative authority, in view of the fact that the administration had requested some additional authority which went far beyond in the mineral leasing proposal.

Mr. MELCHER. You did not request. You have not got H.R. 5442, and I do not know if you are ever going to have it, but that is not the point before us.

What Mr. Brizee has stated, if I understand him correctly, is that you do not have statutory authority for a bond, but you think that your oversight responsibilities enable you to make a regulation despite the lack of a statutory provision.

Mr. BRIZEE. May I correct that statement, Mr. Chairman?

Mr. MELCHER. My statement or your statement?

Mr. BRIZEE. Your statement, sir, interpreting my statement.

Mr. MELCHER. I hope you will, if I am wrong.

Mr. BRIZEE. I would find the authority, in the general authority here to provide regulations—reasonable regulations—to condition the entry of the prospector or miner on the national forests. The specific provision about the bond must rise or fall in that connection. There is no express authority for a bond—express statutory authority for a bond. It must be viewed, simply, in the same connection as all of the regulations.

Mr. MELCHER. Now, that you have corrected my statement, I find that we have said the same thing.

Mr. BRIZEE. All right, sir.

Mr. MELCHER. I think—are you not really telling me, Mr. Brizee, that while you do not have statutory authority for a bond, you feel that the responsibility is such that you are encouraging a regulation beyond what statutory authority has been granted by Congress.

Mr. BRIZEE. No, sir.

I would agree, again, that there is no express authority to require a bond. Whether or not we can require the bond depends upon whether or not it is reasonable, just as the other regulations depend on whether or not they are reasonable.

If there is no authority for the Secretary to make any reasonable regulations concerning entry, then he may not make the one of the bond.

Now, some of them may be reasonable. The bond one may not be reasonable.

Mr. MELCHER. Well, I think part of that too will hinge on whether or not you have required bonds for other purposes.

Mr. BRIZEE. Yes, sir.

Mr. MELCHER. Have you?

Mr. BRIZEE. The Forest Service has, in connection with timber sales. There is the requirement that a performance bond be provided.

The bond as set forth in the proposed regulations, of course, is a bond of a little different nature. It is, I think, what you would more reasonably call a reclamation bond. It has, as you probably are familiar—

Mr. MELCHER. Wait a minute. Would the bond for timber sales have something to do with the forest, the Treasury of the United States receiving payment for products taken off the national forests?

Mr. BRIZEE. No, sir. Not the mining one.

Mr. MELCHER. It would be a reclamation bond?

Mr. BRIZEE. This one would be.

Mr. MELCHER. Pardon me?

Mr. BRIZEE. The mining one would be.

Mr. MELCHER. The mining one would be, but did you say the forest—the bond for our timber sales would be a reclamation bond?

Mr. BRIZEE. No, sir. It is a bond to guarantee faithful performance. In, of course, the mining situation—

Mr. MELCHER. The one for timber sales has nothing to do with the value of the timber?

Mr. BRIZEE. That is generally right; however, it is to guarantee the performance of the contract.

Mr. MELCHER. Which does, or does not, include reclamation?

Mr. BRIZEE. It may.

Mr. MELCHER. Is there a separate statutory authority on that?

Mr. BRIZEE. I—

Mr. MELCHER. Are you basing that on the Organic Act, too?

Mr. BRIZEE. The Organic Act has specific authority for the Secretary to enter into timber sales, yes, sir.

Mr. MELCHER. It is a little different, then, is it not?

Mr. BRIZEE. It is.

Mr. MELCHER. Do not the Organic Acts specifically require that nothing therein shall abrogate or supersede the 1872 mining law?

Mr. BRIZEE. Yes, sir; it does.

This is the way—I think you have to consider what it is that is not overridden by any other provision of the 1897 act, and that is that the lands are not withdrawn from location, and we are not withdrawing the lands from location and entry.

Mr. MELCHER. The act of July 23, 1954, authorizes the Forest Service to manage and dispose of the surface resources of the mining claim located in the national forests after the effective date of the act.

Does not that act also prohibit interference with prospective mining and related activity?

Mr. BRIZEE. Yes, sir, it does.

We think that this act simply carries out the relationship that the 1897 act established; that is, the right of the miner and the right to make reasonable disturbance. It really defines the area of the Secretary's responsibility.

Mr. MELCHER. The Multiple Use Sustained Yield Act of June 12, 1960, is also cited as authority for the proposed Forest Service regulations.

Does not the act provide that nothing therein is to be construed so as to effect the use or administration of mineral resources in national forests?

Mr. BRIZEE. Yes, Mr. Chairman, it does.

We see this, again, in the same way as the Multiple Surface Use Act. It describes the purposes for which the Secretary is to administer the forests, at the same time avoiding any impairment of the miner's right.

Mr. MELCHER. The National Environmental Policy Act of 1969 is referred to as authority for these regulations.

Does that act not contain a section providing that the policies and goals of the act are supplementary to existing statutes?

Mr. BRIZEE. Yes, sir.

We do not see the National Environmental Policy Act as a separate authority. We see it merely as one that enforces the authority of the 1897 act.

Mr. MELCHER. Section 105 of the NEPA Act specifically relates to this, does it not?

Section 104 says the policies and goals of this act are supplementary to those set forth in existing authorizations to Federal agencies. I think I am correct on that.

Chief MCGUIRE. That is correct, Mr. Chairman, but section 103 is also pertinent in the National Environmental Policy Act. This requires all agencies to review their present statutory authorities, administrative regulation and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein, which prohibit full compliance with the purposes and provisions of this act.

Mr. MELCHER. The proposed regulations require anyone proposing to conduct operations which might cause a significant disturbance of the environment on national forest lands to first submit a plan of operation to the district ranger for approval.

Now, no operations can be conducted unless they are in accordance with an approved plan.

Does this not establish a permit system for mining on national forests, which is beyond the authority of the Forest Service, under the Organic Act, and other enabling legislation which we have already referred to above?

Chief McGUIRE. We do not believe that it does, Mr. Chairman. We think that this is a reasonable requirement, where there is a likelihood of significant disturbance.

As you know, under present procedures, the miner is not even obligated to let us know that he is proceeding upon the public land with a disturbance plan.

The result is that we do not even have very good estimates of how many instances there are where a disturbance is occurring, or has occurred. Frequently, we detect it after the fact.

Mr. MELCHER. I yield to the gentleman from Arizona, Mr. Udall.

Mr. UDALL. Chief, I appreciate your coming before us today, and I am one in the room, at least, who has some sympathy for what you are trying to do with these regulations—at least the goals of them.

I have, in my own mind, some of the same problems that Chairman Melcher expressed earlier whether this is the way to go about it.

It is very clear to me that the Congress ought to come up with some answers to the kinds of questions that you are having to administer. On the one hand we want to protect the environment, protect the forests, and on the other hand, there is a great demand for more minerals of all kinds to be produced.

And I think, standing by as you do and seeing the damage and, in fact, not even knowing, as you point out, who has claims on your land, it is very difficult to be an effective land management official in that kind of situation.

Has the Subcommittee on Mines and Mining held hearings on your proposed bill, and the other bills, to change and amend the 1972 mining law?

Mr. BERGOFFEN. The Senate has scheduled hearings.

Mr. UDALL. I could ask a number of questions I am sure will be asked by others regarding the details of your proposed regulations. I personally support them. I support them in large part as stopgap measures to prevent damage until we can get some legislation. But there is a serious question about the conflict here. On one hand we passed the 1872 mining law which says mining comes first in the forests and all Federal lands are open, and on the other hand we have passed an act which tells you to administer the forest and protect them from unnecessary damage, and all of the rest.

You are obviously under a good deal of pressure from the Western States and the mining industry for proposing these regulations. I am glad that you have done it, if for no other reason than that this may well force the Congress to make some policy decisions that are at least 10 years overdue.

So I hope we can struggle on and you will hold your ground and maybe out of all of this will come some congressional action to solve this. There are some very obvious conflicts and instead of trying to battle them out on the basis of whether Mr. Brizee can find some language in these obscure statutes to do the things that I think ought to be done.

The gentleman from Arizona, Mr. Steiger.

Mr. STEIGER. Thank you, Mr. Udall.

I will surprise you, Chief, by telling you that I am convinced you have got a problem. [General laughter.]

I am convinced that the problem of the enforcement of existing regulations is a tough one. But I think what you, in your approach—what you have done is to compound your problem, if I may say so.

As I recall the freeze, the so-called personnel freeze, hit the Forest Service probably as strongly as any other agency. I know from my friends in the Forest Service, they tell me that the attrition freeze has had a significant effect.

I also must tell you that I was a permittee, for some years, on two forests and were it not for the adamacy, or what I considered blind obstinate devotion to mindless regulations, I would probably not be offending the Forest Service at this moment but would be tending the cows, much to Mr. Udall's and other people's relief.

MR. UDALL. Oh, what a loss to the country. I protest.

[General laughter.]

MR. STEIGER. But I give you that background because what really shakes me about your program is that the district ranger will have the authority to approve, as I understand it, or disapprove, a plan of operation for a mine.

Now, Chief, when you combine district rangers' performances of the past, with the recognized lack of personnel to enforce present regulations, I would say that you are looking at a can of worms that makes this meeting, today, look rather like a festival, because district rangers, by their very nature, are emboldened by authority anyway.

Given this new authority, of these awesome dimensions, without any background in the mining, or the specific background that is obviously going to be required, the expertise, absent sufficient personnel to refer specific engineering problems to, you are looking at confrontations that I do not think the Forest Service is prepared to cope with without the authority of law.

I tell you very honestly that your goals are commendable. I do not think you have sufficient enforcement power to enforce a reasonable protection of the forest, the forestlands, under mining, under existing mining conditions. And I know from my own experience, I had what we called rock collectors on my permit in Arizona, and these people were, under the mining law of 1872—were able to remove, not only vast amounts of building rock, decorative rock, but a lot of overburden, trees, and other things, which bothered me.

So on a pragmatic basis, anybody who says you are able to cope with the problem now does not understand it. But I would ask that you consider the demands on your personnel and the results of confrontations with overworked rangers and irate miners, and I do not think you have solved it. I think all you have done is generate even more bitter feelings, possibly, than are presently available under a questionable aegis of law.

I think that Mr. Brizee has been very candid with us. He says that the question rises or falls on the reasonableness of the regulations, which nobody would quarrel with. That, unfortunately, is a litigant's paradise, because it is questionable; it is a judgment call.

All right, it seems to me what you clearly need is some statutory authority to do this. Is that unreasonable?

Chief McGUIRE. Mr. Steiger, I am sure we need more legislative authority, but on the other hand we face this kind of dilemma with regard to your comments.

The National Environmental Policy Act did require us to take a look at the authorities we now have and to answer the question whether we were using them to the maximum extent possible. The primary deficiency that we identified in 1970, was failure to exercise the authority that our attorneys told us that we appeared to have with respect to regulating mining, not to denying it, but to regulating it.

Now that we have identified this, it seems to me that we are in an extremely vulnerable status to challenge in the courts if we do not proceed, and I think that will happen.

So this is our problem. If we go ahead we are going to be in trouble and if we stand still we are going to be in trouble.

The second thing that is pushing us is the great upsurge in mining activity. We encounter tens of thousands of new entries upon the national forests per year, and I think the numbers are going to increase with the increasing prices of minerals, and the prospective prices will go up even further.

Mr. STEIGER. I agree.

Chief McGUIRE. We need to do something. I recognize that we are extremely short of manpower. We are going to have to rely, in the absence of manpower, on the cooperation of the industry.

The industry, in general, has been extremely cooperative in the past and we have gotten along with most miners, but there always will be a few that will require some more policing than the average. If we do not have enough manpower, we are going to try to get more, but I think just the fact that the manpower is short is not in itself enough excuse for backing away here.

Mr. STEIGER. I do not—if I might respond, I do not suggest, Chief, that you ought to back away. I just think that is this is the approach, and it does seem like a reasonable approach, frankly, I think it has got to have the protection of the law, and I think it also has to be supported by appropriate manpower, because I know that there is no way that you would admit privately or publicly—because I do not think you believe it—that the problem of—if you will—abuse of power at the field level of the Forest Service, in my personal experience, exceeds that of all other agencies, and that is saying a lot. And I recognize that—I do not mean that as a blanket indictment either, but I think it is the nature of the relationship.

I think that you have got significant—people whose lives and economics are totally involved in their permit, and they are dealing with someone whose obligation is to protect that which these people would have a tendency to abuse. So inevitably, there is a conflict and we cannot afford to pay the kind of wages that attract the kind of giants that it really would take to play that role properly, but that thing exists nevertheless.

Now, you are asking the same people to take on a load that I think is very unfair to them—the rangers, I am talking about.

Chief McGUIRE. Here again, this is the proposal, and we could change. We have looked at this. We have talked to the miners about this problem. On the one hand, if we decentralize decisions down to the forests you will get a faster answer, the miner then talks to people who know the situation on the ground. On the other hand, we are likely to have inconsistencies among ranger districts and forests.

But if we move the decision point further up into the hierarchy, then inevitably we are going to have delays and probably more red-tape. So it is a balancing act.

We are willing to consider proposals for putting decision points elsewhere than we have described in our regulations. In fact, it is one of the things that we are looking at. But personally, I am inclined to start out on a decentralized basis, recognizing the problem, recognizing the need for close supervision and training. If it does not work, we can move the decision further up the line.

Mr. STEIGER. Chief, if past is prologue and if my congressional activity is symptomatic of other Members of Congress who represent national forest areas, any authority presently at the most local level invites delay anyway because if there is an unfavorable decision, it seems that it is always appealed.

You must be more familiar with that problem than I am. But I do not want—I hope that you would not underestimate the difficulty of asking a district ranger to make the kind of judgments that you are asking him to make, in addition to all of the other problems he inevitably faces. But therein lies the seeds of failure of itself.

I do not want to belabor it, Chief.

Chief McGUIRE. If I may comment, Mr. Steiger, these are the kinds of decisions that the district ranger has to make every day. The National Environmental Policy Act, for example, now requires him to decide whether or not an environmental statement is required. He has got some tremendous decisions to make, but I still think that decentralized decisionmaking, despite its drawbacks in general, works better than a centralized scheme.

Mr. STEIGER. All right.

I do not want to take up any more time. As a matter of fact, I just had a reminder that I should not take any more time.

I thank the chairman.

Mr. MELCHER. The gentleman from Guam.

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

My feeling on the matter is that the proposed regulations should be implemented, notwithstanding any specific statutory authority. It is indicated, of course, that if there are questions regarding that, they can always direct them to the proper authority for clarification.

But I do feel though that the administrator has to do something in the face of all the current situations. That is all I have to say.

Mr. MELCHER. The gentleman from Nevada.

Mr. TOWELL. Thank you, Mr. Chairman.

Chief, how much training do your people in the field have regarding ecology and the decisions that they are supposed to make regarding—

Chief McGUIRE. We employ a large number of disciplines in the Forest Service, Mr. Towell. Most of our district rangers hold degrees in forestry, and the basis of their training, of course, is in the biological sciences, including ecology. However, we recognize that no one man is going to have all of the necessary skills; and therefore, we are prepared to back him up with whatever skills he needs.

Mr. TOWELL. How much of that training—when you say forestry, how much would be in mining and mining methods, so on and so forth?

Chief McGUIRE. I would think that our foresters get very little mining education as a part of their curriculum, but we do not think

that that is the essential point here. We are not questioning in most cases the mining aspects themselves. We are questioning the surface disturbance, the effect on vegetation, and so on.

Mr. TOWELL. I am not a mining expert, believe me, and I do not want to get into that field, but any disturbance has to be the way you are going to put in a mine, the way you put down shafts or whatever it happens to be. It seems to me that enters the picture quite heavily.

Chief McGUIRE. That is right. But I think that in most instances——

Mr. TOWELL. But then you are asking by these regulations to say that the man in the field, whether he wants to or not, is supposed to become some kind of an authority on that.

Chief McGUIRE. I think in the first place we do have quite a large number of mining engineers in the Forest Service. If we need to get into the question of where a shaft should be placed, I think most of the time we will not be questioning the miner's decision as to where he is going to mine; rather, we are going to question where he is going to put his roads, where he is going to put his waste rocks and tailings, what he is going to do about water runoff, what he is going to do about reclamation after he is through.

But in a typical case we do not expect to question the miner's expertise. If there is a question, however, that comes up, we have also access to the experts in the Department of the Interior; and we plan to draw upon them if they are needed.

Mr. TOWELL. We all hear about damage and this and that happening to the surface or stream. And I am sure that different witnesses can always point to a given case.

But do we have any records of actually in total what damage has been outside of an individual case?

Chief McGUIRE. Unfortunately, we do not always know where the miner is operating, as I say, and we have made estimates in the past of how many mining claims existed on the national forests. We think that at the present time the number approaches about 1½ million claims, perhaps 1.3 or 1.4 million.

Now, a lot of those claims are not active, but even if only 10 percent of them are active and the minimum statutory amount of \$100 of work is done on these claims, you still have several thousand acres disturbed annually.

But there is no way in which we can pin this down without a continuing survey.

Mr. TOWELL. When you say disturbed, that does not mean it is going to be ruined, though.

Chief McGUIRE. Well, in some cases there is ruin of a mountain meadow—soil erosion that cannot be easily corrected; roads placed where roads are not really needed. We have a book of pictures here, if the committee would like to look at some examples.

I am not saying that all miners behave this way, but enough of them do that we need to control them.

Mr. TOWELL. I am not arguing. I am sure there have been abuses. There is no one on this committee who wants to continue abuses.

I think a lot of us are very concerned about a philosophy of perhaps over over-regulation, where we get more and more regulation by continuing piling up regulations in Washington that someone is supposed to implement out in the field, that you might say you kill the goose that lays the golden egg.

We are going to be in a mineral shortage—everyone seems to be in agreement with that. If we are not in one now, it is coming within 5 years, or 3 or 4 years certainly.

At the very time we all see that coming, we are about to all sit here, and your staff I suppose would want to implement regulations. Some of us would hope to change those and make it less difficult to mine.

Chief McGUIRE. Well, we hope that it will not make it more difficult for the responsible, legitimate miner to mine. In fact, as I have said to the industry many times, we think mining is a proper use of these lands; but undoubtedly, there will be some additional expense just as a matter of stopping in at the office and preparing a plan.

Mr. TOWELL. You know, a lot of people in the Congress complain, especially in this day, complain repeatedly about big business, big company—right now the big oil companies, the big mining companies. By these regulations you kill off the small miner. Zap. His head is gone. He is no longer with us.

If your regulations were put in, he is gone tomorrow morning. And the thing I hear day in, day out from people in Washington is that they are all mad at big business; but you are about to just eliminate the small miner completely.

Now, I think we have to make some changes in the regulation if we are going to do what everybody in Washington seems to want to do. Both sides of the political aisle seem to want to protect the small man. You are surely not protecting him in those regulations.

Chief McGUIRE. Mr. Towell, it is not our intention to discriminate against the small miner. We think the small miner is essential to the industry. He is very important in exploration and discovery, and most of the big firms will tell you this. So both big industry and Government have an interest in maintaining the small miner.

Now, if there is something that we can do in these regulations that will make it easier for the small miner, we are wide open to your suggestions. And I hope that one thing that will come out of these hearings will be a clarification of the idea that we are not against small business in the mining industry. We want to see it continue.

Mr. TOWELL. I am glad we have that on the record, and I think that is a good point that we all can be working from on the committee on a serious basis, hopefully working together, that we are going to make sure that the small miner can stay in business. Because believe me, I have not heard from one small miner that says he can stay in business with those regulations; and I am sure you get copies of the letters I get. They come in by the hundreds, and indeed, by the thousands if you count the petitions. I am sure my colleague from Alaska has the same experience, and the two gentlemen from Arizona probably have the same experience, although they express theirs a little differently than I would perhaps.

Well, I appreciate your coming up for the testimony, but I would like to just strongly emphasize the point of view that I get from Nevada, is that those regulations as you have proposed them would wipe out the individual and even the small mining operation. And I hope that we are going to be able in the next few weeks to do some of the things that I have already presented to your staff and that the rest of the members have continued to present, that we can work some regulations to guarantee that that man is still going to be in business come June 16.

I believe your regulations—you said you were heading for June 15, and I would hate to see these very independent men out of business on the 16th of June.

Chief McGUIRE. So would we, Mr. Towell. We do not intend to put them out of business.

Mr. TOWELL. No further questions, Mr. Chairman.

Mr. WON PAT. The gentleman from Alaska, Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman.

Chief, I am deeply disturbed by these regulations as proposed. I think you know why. Primarily I have small business sympathy.

I question—you say there are tens of thousands of new entries. Is this tens of thousands of new claims or tens of thousands new prospects?

Chief McGUIRE. Perhaps I could ask Mr. Banta to elaborate on that.

Mr. BANTA. Mr. Young, I think it is fair to say that there are tens of thousands of claims probably being located every year, and when we speak of entry here, we are talking about in the legal sense that the law of 1872 talks of it.

Mr. YOUNG. Free and open process?

Mr. BANTA. The process of staking a mining claim is a location and entry.

Mr. YOUNG. For the record, you have stated that this would in no way be a detriment or hardship to the prospector himself, that he would not have to put up to \$2,000 bond to go out and prospect. We know what a prospector is. That means a man with a pick and shovel, a pan if he wants to, a metal detector, the small mineral bottles, and so forth.

Will he be eliminated under this act?

Chief McGUIRE. No, sir.

Mr. YOUNG. Will he have to put up the \$2,000 bond?

Chief McGUIRE. We have not made the final decision, but we would expect that that kind of prospecting would not be affected at all.

Mr. YOUNG. I would suggest that to make your regulations more palatable, that would be definitely spelled out because this is the biggest complaint that I have from the individual private citizen who wishes to enjoy the miles with a pick and shovel and small metal detector in hopes of finding a find. And this is where the real rub comes it.

Chief McGUIRE. Yes, sir. There has been substantial misunderstanding there, as you know. One thing I hope will come out of these hearings is to clear that up.

Now, there are small prospectors, however, who do use mechanical equipment, bulldozers for example, who want to build roads.

Mr. YOUNG. I do not consider a bulldozer a small piece of equipment nor that type. You know what I am talking about.

Chief McGUIRE. Yes, sir.

Mr. YOUNG. Anyone who takes the time—and I have been in the business myself. Anyone who goes in with a bulldozer to build a road has got more than a prospect. He has very nearly got a find; and if he has not got a find, he has lost a lot of money and is going bankrupt, too. I will grant you that.

The other thing, I have submitted to you a series of recommendations primarily in hopes it will be—if you do not have them, you are supposed to have them—covering each section—in conjunction with

Mr. Towell from Nevada—covering each section that would enable the small operator in cooperation with the forestry agent, regional forester, to do some of the work. For instance, on sections 252.6 there is one thing that bothers me. It claims that the operator has to do such, such, and such. And you start out, C, and you go all of the way to 9—that he has to have a description, a list of owners, roads, equipment that will be used, methods of operation—it goes back to Mr. Towell's statements—maps and sketches, the types of vegetation, soil that will be disturbed, and so forth.

Now, we are talking about the small operator again, the mother and father operation. And at the very bottom of it it says, "An environmental statement shall be filed by the applicant." This again—there is no way that a small operator can do this, especially when he files all of these things before the regional forester; and if he decides that they are wrong, the only due course of law is to appeal to whom?

Chief MCGUIRE. The appeal is just one step—to the regional forester and then to the courts.

Mr. YOUNG. To whom?

Chief MCGUIRE. The courts.

Mr. YOUNG. I thought you also had to appeal to the forester. Do you not have this section in there?

Chief MCGUIRE. Sir, this is one of the undecided issues as to appeals.

Now, perhaps I might explain somewhat. The Public Land Law Review Commission criticized the Forest Service for having too many steps in its appeal process all of the way to the Secretary of Agriculture, so that an appellant had to go through these many steps before he could get into court.

We have had many suggestions to reduce the number of steps, and this is what we have tried to do here. If we reduced too much, we are open to suggestions.

Mr. YOUNG. Chief, what I am saying is the forester is going to make a decision. If he is wrong, who can he appeal? To the forester, and you know he is not going to rule against himself. It is impossible.

Chief MCGUIRE. There are two steps. The forest supervisor makes a decision, and the forest supervisor's superior who is the regional forester would consider the appeal.

Now, I think you could argue, of course, that this really is not an appeal, but what we are doing here is trying to achieve consistency among forests. And that is why we want the regional forester to be sure that the regulations evenly apply throughout the region.

Mr. YOUNG. Throughout the region. I will not disagree with that, so long as it is not throughout the nation because we have different forests, different climatic conditions, different terrain, and so forth.

But my suggestion to you, specifically my recommendation is that although it may sound improper or very hard to do, I would much prefer a board of three members and not contain a member of the—that originally made the decision is what I am trying to say—a member of the representatives of the mine. It could be from private industry, of other industry. It can also be from somebody in Washington, D.C.

Because I can see that if the rest of the regulations are adopted—you know, I have been through this, and you are well aware of some of my dissatisfaction in Alaska where the regional forester very frankly has the power of God. And this is not our form of government.

And I can see that he could all of a sudden decide that this man is doing something wrong. And you say go through the courts. I would prefer going before the board. But say we go the way you want. Now, who pays for that court? The man individually. He has a cleanup session in Alaska. He has only a short period of time. He has done everything he can possibly do environmentally and every other way, but this one man, a regional forester, decides he is wrong and then his area director decides he is wrong. He goes to a court; he finally wins in court, and he is broke.

That is one reason we are in trouble in the agencies, as you are well aware. The agencies act as, you know, nobody has to say anything to them. We have to get away from that if we make this thing work.

Chief McGUIRE. I agree with you, Mr. Young. This is a broader problem than just the mining situation.

Now, we do have a Board of Forest Appeals in the Department of Agriculture which advises the Secretary. We are looking at the possibility of some other kind of arrangement that would also shorten the number of steps. There are divided opinions on this. Admittedly, for the very small operator it is cheaper to go through the appeals process and have it fairly long. For the larger operator I think the opinion is that it might be better to shorten the appeals process and get them to court faster.

What we have tried to do is find some middle ground. There is no way of satisfying all of the interests concerned here; but we are also trying to find a better way of handling appeals than what we have.

I hope that we will come up in another year or so with a better system, but we are stuck with what we have got for the moment.

Mr. YOUNG. I would suggest, like I say, the board system; and the way I like it is if there an impartial board there would be some arguments and dissatisfactions, but I know that every case that you have so far has been appealed because it is the natural thing to do, to appeal it. And again, it breaks the small guy.

There is another thing. Let us go back to the—by the way, I understand—I have just been passed a note that the appeals are backlogged 3 to 5 years in some of your cases now.

Is that true?

Chief McGUIRE. I did not think it was that long.

Mr. YOUNG. If it is longer than 30 days, it is too long.

Mr. BRIZEE. It may be before the Board of Contract Appeals. I think it is more than a year before the Board of Forest Appeals—

Mr. TOWELL. Would my colleague yield?

Mr. YOUNG. Yes.

Mr. TOWELL. I would just like to thank you gentlemen for coming. I think we do have some differences of agreement. I hope we can iron those out.

And I have to make another meeting and another quorum; and I thank you very much.

Mr. YOUNG. I want to pursue this, if I can, Mr. Chairman, a little further.

Let us say that I am a prospector with a pick and shovel, and so forth, and I find a find, and I go file a claim, and you are made aware of this claim, or you should be. If in these regulations I could go to you and say

I have found and filed a claim on an asbestos field, whatever, and this is the area, this is the nearest access to the road, the nearest stream available, these are the number of streams—I can give you that information.

Can you not envision somewhere some help to me to make sure that the roads are built according to your specifications and in your locations. Because if I submit the plan and you disagree with it, and I have to go back and resubmit it, it is just a continual process of delay.

Now, once that is done and we have, with your agreement—remember, this is a mutual cooperation deal—I make the find. I think it is a good prospect, a good find, and I want to develop it. I go to you and use your help.

Now, it is going to take more money, I know, in your Department, but once that is set down I think we could go before any court or anything else and say this is what has been done. And we could develop our minerals.

This is my big interest in this, as you know, because I look at Alaska as the real storehouse for the rest of the Nation, because as I mentioned before, we are in a mineral crisis as we are now in a fuel oil crisis. We have to develop wisely and systematically, but you cannot do it by bucking heads. And that is the impression that we are getting now. That the Forest Department gets back—you are acting arbitrarily because of the need for revisions and so forth; that you are going to do it the way you want to do it, and the heck with everyone else.

I have gotten about six phone calls saying they are going to shoot the first guy that comes on their claim. And they say it, too, and that worries me.

Chief McGUIRE. I fully agree with what you are saying. The first point, though, is that the prospector is not required to let us know that he has filed a claim.

Mr. YOUNG. Someone has to be told that because it is filed in a legitimate office. Either it is in the BLM office or——

Mr. BANTA. Mr. Young, if I may clarify that. The statute requires that the location notice be filed for record in the county recorder's office—in the case of Alaska, it would be the borough, I suppose—and this is not a Federal office as such.

Mr. YOUNG. Point of clarification. If the claims that you file in that office is on BLM land, and they know when you file a claim—if they do not know—I know they know where every claim is in that State right now.

Mr. BANTA. May I explain perhaps why they might know? There is a good deal of effort made by the Bureau of Land Management and the Forest Service to find out where claims are being filed and where activities might be carried on.

The purpose of this, of course, is to see as much as we can what can be done to head off unnecessary damage. But the way we find out about that is to go to the county recorder's office.

Mr. YOUNG. Well, I am going to have that checked out, because I know that the claims up there—in fact, every map that we have put out by BLM has every known claim filed.

Mr. BANTA. That is the Alaska Department of Natural Resources, Division of Mines and Geology has a recording system.

Mr. YOUNG. And BLM has access to it, and they utilize it because they know where the claims exist.

Mr. BANTA. Oh, they do.

Mr. YOUNG. I am not going to argue semantics, but we know where the claims are. We should know where they are.

Now, that brings back another point. By the Mineral Act of 1872, I believe it is, we have to do a certain amount of assay work a year on each claim that is filed. That is by Federal law.

Can you foresee in any of these regulations that you are proposing that by your restrictions that the \$100 could not be done, thus losing the claim?

Chief McGUIRE. No, sir. We fully recognize the problem. There are also State laws and State requirements may exceed the Federal, and we believe that we can work this out in each case without any interference with what the miner plans to do.

However, I would like to come back to this case where the miner wants to, having discovered a site, wishes to build a road to it. In the usual case I would think that he would come into our office and together with our ranger decide the best place to put the road.

Now, it may be that where the ranger wants to put it will cost the miner more money than where he wants to put it. If they cannot find a good compromise, they may wind up with an appeal in that instance. But we are prepared to work with the miner on the ground in connection with this plan, help them develop this plan.

The bigger companies I would expect would probably have their plans pretty well laid out before they came in.

Mr. YOUNG. That gets back—the bigger companies will be—I am going to get back to what Mr. Towell said. When the people realize it, and especially my environmental friends—we are falling into a trap. We have already fallen into it with the oil companies. We have 11 large oil companies controlling all the known and unknown oil reserves in this Nation because of the regulations put down by the Government. The independent cannot operate, and we are doing the same thing in the mineral field. And I cannot—this is not healthy.

Chief McGUIRE. I hope we can avoid those kinds of problems.

Mr. YOUNG. There is another section, 252.10. This is a short one. I would appreciate it—and we have been talking about this in the land use planning bill—changing the word from “restoration” to “reclamation.” You know, you cannot restore all of the time.

Chief McGUIRE. That is a good suggestion, Mr. Young.

Mr. YOUNG. The other thing—as I mentioned before, there has to be a way a current operator that is operating already, and under the NEPA Act he has to have distilling ponds and so forth. That operator, if there is an objection by the forester, he has to be given time to rectify the problem, if there is a problem. If he is not given that time, again, they go back to the seasonal work. And you can effectively bankrupt somebody.

Chief McGUIRE. We are willing to work with the miner in all cases like that. We recognize the need for time—the short season in many parts of the country. I believe we can work out almost all of those problems.

Mr. YOUNG. In conjunction with these regulations, in line with Mr. Steiger's statement, in your present budgets have you requested additional men for this type of surveillance.

Chief McGUIRE. Our present budget request does not provide all that—that is, the President's budget does not provide all that we have asked for. We have made estimates, however, of the total amount; and if the Congress does not appropriate sufficient funds in the initial appropriation, we will ask for a supplemental.

Mr. YOUNG. The reason I asked that question to you is, the primary reason, we go back—and you are well aware of this—we have had some meetings concerning the need for timber sales, and so forth. And one of the arguments on your behalf was that you did not have the proper staff. But we checked the records and never once was the money requested for that individual area. And this disturbs me.

If you have a problem, I suggest you request it and let the Congress do the deciding on this. If they cannot do it, let somebody know it; because if you are going to do the job and do it right, you cannot do it. If you wanted to get a real problem and cause the miners real headaches, give the authority that you are asking for on these regulations, which I am not convinced yet are completely—the way they are written, I know they are not right—and we can sit down and work it out.

But if you want to have real problems, give that man the authority and have him spread so thin that he makes bad mistakes. Then you have real public reaction, and I do not think you solve the problem. You create a problem.

Chief McGUIRE. We are well aware of that risk, Mr. Young. Of course, we cannot make direct requests to the Congress, as you know. Our requests are considered in view of all the other national priorities that go into the making of the administration's budget.

Mr. YOUNG. I understand, Mr. Chairman, if I could yield to the counsel, he has a few questions.

Mr. WON PAT. Yes.

Mr. SHAFFER. It may be helpful to try to clarify this recordation problem and the availability of the records to the Bureau of Land Management and/or to the Forest Service.

As I recall, there are only two statutory requirements for the filing of a location of a mining claim with the Bureau of Land Management. One is Public Law 369 of 1955, and the other is Public Law 167 of 1955. Both are very restrictive in the type of recordation required.

Public Law 369 was for power sites. You had to file a notice of location with BLM on power sites after the date of enactment. P.L. 167 applied only to claims that had been filed prior to Public Law 167, if you wanted to take advantage of that act regarding retention of surface rights.

Now, I think on the O&C lands in Oregon and California there is a regulatory requirement by the Department of Interior that location notices must be filed with the agency, but other than that there is no statutory or Federal requirement that any mining claim has to be brought to the notice of the Federal agency. If they so desire, they can go out and check the county records and acquire that information themselves; but there is not a statutory requirement that a miner has to file his notice or place on notice any of the agencies.

Mr. YOUNG. Again, maybe I am wrong, but I still—if I am not mistaken, in Alaska in lieu of the fact that we are 96 percent public lands, we do not have any burrough lands quite frankly. We have just a few acres. Those claims, until we were a State, were always filed with the Federal Government.

Mr. BANTA. I wish I could agree with you, Mr. Young.

Mr. YOUNG. You do not have to. If I am wrong, I want to know it.

Mr. BANTA. I am an Alaskan myself, and I worked for 8 years in the Forest Service as a mining engineer in the Alaska region. And I had many occasions to go to what would be equivalent in the lower 48 of the county recorder's office. In this case, at that time it was the magistrate's office.

Mr. YOUNG. Well, if you are right, fine. I would then commend the BLM effort, because I do not think that there is a claim that the BLM is not aware of in the State of Alaska. And I also do not think that there is a claim that has not been identified on a map; because I have a habit of looking at these, and—

Mr. BANTA. I would then go back and explain that the Legislature of Alaska was rather perceptive. And primarily I think as a consequence of the vision of Phil Holdsworth, the former commissioner of mines, he set up what was known as a central recording system. And the legislators saw to it that sufficient funds were available to continue that effort.

So that it is true exactly as you put it. These are—any location notice, as I recall, any location notice which is filed with a magistrate's office, or perhaps it is a burrough now—I am long enough away from Alaska, I do not know exactly the procedures now—is also sent to the Department of Mines and the Department of Natural Resources, the Division of Mines and the Department of Natural Resources. And it becomes the tool whereby the location is plotted on a map. And then those records are—of course, BLM being interested in these kinds of records, is getting hold of them, and so are we, I suppose.

Mr. YOUNG. Under present NEPA law, is it required that any miner file a NEPA statement?

Chief McGUIRE. No, sir.

The law requires the responsible Federal official, where there is an action that significantly affects the environment, to file a NEPA statement. We would not expect the small miners to write environmental impact statements, certainly.

Mr. YOUNG. Again, it goes back to that reasonableness, because we had a case in Cordova where there was a church group that wanted to put a new roof on a hospital and they had to file an environmental impact statement because it changed the ethnic environmental area because they wanted to put a different color on it. That is true, too. And that was one of the local people doing it, not your person.

Chief McGUIRE. I would not say this was required by the law; it might have been an arrangement by the agency.

Mr. YOUNG. I thank you for coming up, Chief, and I think there is a possibility of working these regulations out, I do.

Getting us back to the words, "flexibility" and "reasonableness," and working together, if we manage to go ahead on, I think we will both defeat our purposes and we do not want to do that. Of course, I am vitally interested because of the percentage of land in Alaska that is

public domain. It is getting so we have less every year, as you are well aware. The proposals—if some of them are accepted, we will not have any at all. And I just think that is maybe an attempt on the part of your agency, too, if we look at it together we can work out something that can help the miners, it can help the forestry area, and provide us with the known minerals without destroying the surface land.

Thank you, Mr. Chairman.

MR. SHAFER. Mr. Chairman, I have two or three questions, if I may.
MR. WON PAT. The council.

MR. SHAFER. A statement was made, and I believe it may be a little misleading. I would like to try and clarify it.

The statement was made that tens of thousands of mining claims are filed every year. I do not question this, but we were talking about disturbance to the surface. Now, of those tens of thousands of mining claims that are filed each year, I think it is a reasonable assumption that probably annual assessment work is not done on more than 10 percent. We are cutting that total down about 90 percent. I do not think that the impression should be left that on all of 10,000 mining claims, or 20,000, or whatever it is, everybody does assessment work every year because the history will show that it is very unusual if more than 10 percent of the claims filed have assessment work done on them.

Chief McGUIRE. We would agree with that, by the way. If we gave the other impression, we were wrong.

MR. SHAFER. I wanted the record to be clear on that, Mr. McGuire.

The other point I would like to clarify for myself. At what point would a bond be required? As I understand it, it is not required for prospecting. Is it required upon the filing of a claim? Is it required upon the commencement of annual assessment work? Or is it required upon substantial development work, exploration, and production? At what point would you require a bond, let us say, by the small prospector or small miner?

Chief McGUIRE. We would require a bond at the point where the miner plans to disturb the surface.

MR. SHAFER. This would be in assessment work, then. He would have to get a bond before he could do his annual assessment work.

Chief McGUIRE. Yes, or it might be a road or something.

MR. BANTA. May I correct something on that point a little bit. Much assessment work is done using a drill, which I should think in many cases does not envision a significant surface disturbance depending on whether there is a road access already there or close by. Certainly not all excavations depending upon this sight would be of the sort that I would conceive as being substantial surface disturbance.

MR. YOUNG. Get back to the bond issue again. My opening statement with Mr. Towell—when you say a \$2,000 bond, where are they going to get the bond? Are you going to have a clearinghouse or is there going to be—I ask that seriously. I have tried to get bonds for other things, and it sounds well and good but your bond broker is a thief half of the time.

Chief McGUIRE. We are still considering this whole question of bonding. Much of our mail has pointed out shortcomings in the proposal and I am sure you will hear others address this question. There are other ways of going.

One is to provide for some other kind of deposit, maybe a lesser amount of money. We are not sure yet what would be the best way to go.

This particular proposal was put in the regulations as a result of the review within the executive branch. I believe it came from the Interior Department. And the idea was to have the amount of the bond consistent with some other activities going on in Interior. But that is not, perhaps, a sufficient reason for using this approach. We are open to suggestions.

Mr. MELCHER. Thank you very much, Chief McGuire, Mr. Brizee, and, pardon me, I have forgotten your name.

Mr. BANTA. Banta.

Mr. MELCHER. Thank you all very much.

We had hoped to get to Mr. Dempsey's testimony today, and unfortunately, the House will be in session in a few minutes and we will have to postpone that until tomorrow when the committee meets again at 10 o'clock.

The committee is adjourned.

[EDITOR'S NOTE.—The following correspondence was received prior to the hearings but will be inserted at this point.]

MARCH 6, 1974.

Chief JOHN R. McGUIRE,
U.S. Forest Service, Department of Agriculture,
Washington, D.C.

DEAR CHIEF McGUIRE: Thanks for your February 28 reply to questions which I raised concerning the proposed Forest Service mining regulations.

While I am pleased that the Forest Service will appear at the Subcommittee's oversight hearings on March 7th, I am not satisfied with your report on how the proposed regulations will be implemented.

There is an indication from your letter that, while the regulations would not be implemented until June 15, the timetable for the impact statement, OMB clearance and publication in the Federal Register remains on schedule. This would indicate to me that the Forest Service has no plans to take into consideration any possible suggestions from the Public Lands Subcommittee as a result of the oversight hearings. It seems, really, to indicate you will testify and then go ahead with business as usual.

What I feel is needed, Chief, is for the Forest Service to put this entire projected timetable you outlined on the back burner pending the oversight hearings, and the Subcommittee's evaluation of the testimony it receives.

Kindest personal regards.

Sincerely,

JOHN MELCHER,
Chairman, Public Lands Subcommittee.

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., February 28, 1974.

HON. JOHN MELCHER,
Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, House of Representatives.

DEAR MR. MELCHER: This replies to your letter of February 19 which asked that we withhold, until oversight hearings are completed, final action or decision on the implementation of proposed regulations to govern activities authorized by the 1872 mining law.

We are pleased that you intend to hold hearings in the very near future, and we stand ready to appear at your call.

While we plan to file a final Environmental Impact Statement on the regulations with the Council on Environmental Quality on March 15, and to submit the

regulations to OMB for clearance at that time, we will not plan to publish the final regulations in the Federal Register until May 1. Implementation of the regulations would not take place until June 15. We trust this schedule will not conflict with that for the hearings you plan.

Sincerely,

JOHN R. MCGUIRE, *Chief.*

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS,
Washington, D.C., February 19, 1974.

Chief JOHN R. MCGUIRE,
U.S. Forest Service, Department of Agriculture,
Washington, D.C.

DEAR JOHN: The Subcommittee on Public Lands has recently received numerous letters and expressions of concern regarding the proposed Forest Service regulation entitled, "Use of Mineral Resources on National Forests Under United States Mining Laws" which were published December 19, 1973 in the Federal Register.

Due to the wide interest in this proposal and the controversy surrounding certain aspects of it, the Subcommittee intends to hold oversight hearings on the matter in the very near future.

At this time, specific dates have not been selected but we hope to be able to notify you of this very soon. In the meantime, it is requested that pending the hearings, the Forest Service withhold any final action or decision on the implementation of the proposed regulations.

Kindest regards.

Sincerely,

JOHN MELCHER, *Chairman.*

[Whereupon, at 11:50 a.m., the subcommittee adjourned, to reconvene on Friday, March 8, 1974, at 10 o'clock a.m.]

OVERSIGHT HEARINGS ON THE PROPOSED FOREST SERVICE MINING REGULATIONS

FRIDAY, MARCH 8, 1974

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

The subcommittee met, pursuant to notice, at 10 a.m. in room 1302, Longworth Office Building, Hon. John Melcher (chairman) presiding.
Mr. MELCHER. The Subcommittee on Public Lands will come to order.

This morning we are going to continue our oversight hearing on the proposed Forest Service mining regulations, which appeared in the Federal Register on Wednesday, December 19 of last year.

Yesterday we heard from our colleague, Hon. Harold Johnson of California, and Chief John McGuire of the Department of Agriculture, Chief, U.S. Forest Service.

This morning we have a series of witnesses. I will ask staff first of all if Mr. Russell Chadwick, president of the Northwest Mining Organization, has canceled his appearance.

Mr. SHAFER. Yes.

Mr. MELCHER. Mr. Chadwick, who was scheduled to be our second witness this morning, was not able to come here from Spokane and canceled his appearance. I hope his testimony has been furnished for the committee.

Has it?

Mr. SHAFER. It will be.

Mr. MELCHER. Thank you. The first witness is Mr. Stanley Dempsey, American Metal Climax, Inc., representing the American Mining Congress.

Mr. Dempsey.

STATEMENT OF MR. STANLEY H. DEMPSEY, AMERICAN METAL CLIMAX, INC., REPRESENTING AMERICAN MINING CONGRESS

Mr. DEMPSEY. Chairman, I am Stanley Dempsey, chairman of the Forest Service Regulations Subcommittee of the Public Lands Committee of the American Mining Congress. The American Mining Congress is a national trade association representing most of the mining companies engaged in exploration and mining activity on national forest lands.

The American Mining Congress is of the opinion that the Forest Service is without authority to promulgate and enforce regulations that may preclude access and mineral development on the national

forests. All of the statutes cited by the Forest Service as authority for issuing the proposed regulations contain provisions specifically stating that nothing in those laws is to be construed as abrogating or superseding the general mining laws.

The Forest Service can regulate surface resources, but under existing statutes, it cannot regulate mining, at least to the extent contemplated by the proposed regulations.

The American Mining Congress has submitted detailed comments to the Forest Service on how the regulations should be amended to comply with existing laws. These comments made to the Forest Service do not ignore the need for sound environmental planning in connection with mineral activities; but they do make it clear and we reaffirm that we do not believe that the Forest Service has the authority to require to support the regulations that they have now proposed.

The most significant problem created by the proposed regulations is the conflict between them and State mining claim location laws. Some States require the performance of location or discovery work within 60 or 90 days after a claim has been located. And failure to meet these requirements may render the claim void or voidable.

The American Mining Congress has been urging abolition of States' surface disturbing requirements since the early 1950's. The Public Land Law Review Commission recommended Federal preeminence in this area; but in spite of the changes that have been made in most State location laws, we are still faced with excavation requirements in a few States.

Location or discovery work is often time consuming; and thus, must be commenced shortly after a claim is staked if it is to be performed within the prescribed time limits. This work is not necessarily surface disturbing. Quite a few States still require excavation; but surveying, monumentation, and validation drilling usually require some form of motorized access. If the locator of a mining claim is delayed for 30 days, or longer if an environmental impact statement must be prepared to accompany the required plan of operations, he will not be able to comply with State requirements.

Also, delay in the acceptance of a plan of operations at the time of annual assessment work is due would cause serious difficulties. Such delay might interfere with the timely performance of annual labor. This could be particularly troublesome if the operator is required to perform such work under the terms and conditions of a mining lease or option from another private party.

Section 252.7(a)(3) of the proposed regulations allows the forest supervisor up to 90 days to review a proposed plan of operations and this period can be automatically extended when "the area of operations is inaccessible for inspection." Due to the short field season in some areas of Colorado, Wyoming, and Montana, Idaho, the high altitude and northern latitude problem, this provision could create a real hardship for a prospector or operator and could cause him to lose his claims for failure to do the required assessment work in a timely manner.

If approval of the plan of operations is deemed to be a major Federal action which must be accompanied by an environmental impact statement under the National Environmental Policy Act, it would be impossible to obtain approval of the plan of operations prior to the end of the field season in some areas.

The Council on Environmental Quality guidelines under NEPA provide that action may not be taken until 30 days after the final environmental impact statement is made available to the public. In certain areas of the West, the length of the field season is only from 30 to 60 days. Usually the plan of operations cannot be submitted for review well in advance of the time approval is sought because the scope of exploration work is not defined until shortly before the operations commence.

The proposed regulations create uncertainties for the operator which will inhibit exploration and development of mineral resources in the national forests. For example, under section 252.6(e) the forest supervisor may at any time require the operator to submit a proposed modification to the initial or supplemental plan of operations, detailing means of minimizing unforeseen environmental impacts. No time limit is established wherein the modified plan must be acted upon; and the operator could be forced to suspend operations during the review period prior to approval.

After a plan of operations has been approved, the operator must have assurance that he will be allowed to proceed pursuant to that plan unless there is a significant change in circumstances justifying a modification.

In order to commit funds for exploration or development, a company or individual must be able to ascertain the costs that will be incurred, including the cost of the reclamation that may be required. Modification of the plan of operations may impose more costly duties which would make uneconomic an operation which was economic based on the originally approved plan.

With this potential threat existing, the commitment of funds for exploration and mining projects becomes very risky and the obtaining of financing becomes extremely difficult, particularly for the small prospector. It is well known in the industry that it is practically impossible to plan an exploration program in detail in advance. The exploration activity necessarily must be dictated by the information gathered as the exploration proceeds, and in the light of the data that is developed by the geologists who are conducting that exploration.

The individual miner or prospector would find it nearly impossible to comply with the requirements in these regulations. The time, effort, and monetary costs involved in preparing a plan of operations, supplying the Forest Service with background information for an environmental impact statement, and obtaining a bond will certainly discourage mineral exploration and development on the forests.

This is in direct contravention of the Mining and Minerals Policy Act where Congress declared that it is the continuing policy of the Federal Government in the national interest to foster and encourage an economically sound and stable domestic mining industry and orderly development of domestic mineral resources.

In conclusion, we would like to stress that the proposed Forest Service mining regulations would discourage exploration at a time when the Nation is faced with serious mineral and fuel shortages. If the regulations are adopted as proposed, we will be forced to rely more upon imports of minerals to supply the raw materials needed for our society.

Miners must be encouraged, not discouraged to find and develop domestic sources of minerals in order to avoid placing the U.S. economy and security at the mercy of foreign nations.

The American Mining Congress has for several years been indicating to the Forest Service that the mining industry was anxious to work out approaches that would accommodate both forest management and mineral development goals within the framework established by existing statutes. However, we cannot support those particular features of the presently proposed regulations which go beyond Forest Service authority and which impose undue burdens on mineral exploration and development.

Thank you.

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

Did you address yourself in your testimony to the \$2,000 bond?

Mr. DEMPSEY. We did not refer specifically to the bond. We would respond that it will be very difficult, if not impossible, for the small miner operator to secure a \$2,000 bond for his operation.

Mr. MELCHER. The American Mining Congress is not made up of small miners, is it?

Mr. DEMPSEY. That is right.

Mr. MELCHER. You do have an interest, though, in what small miners do, do you not?

Do they not make a lot of the discoveries?

Mr. DEMPSEY. The testimony before the House Interior Committee in the past by the American Mining Congress has gone into great detail about the position of small mining and how it is essential to the development of major mines.

I believe the chairman of Anaconda made a statement before a committee of Congress that they were not operating any mine in the United States that was not discovered by a small miner. It is an essential precursor of mineral development.

Mr. MELCHER. What is your opinion then on the \$2,000 bond?

Mr. DEMPSEY. It is going to be a serious impediment to the small prospector.

Mr. MELCHER. The question is whether it is reasonable.

Mr. DEMPSEY. I do not think it is reasonable.

Mr. MELCHER. You think it is unreasonable?

Mr. DEMPSEY. That is right.

Mr. MELCHER. For the record, you should identify—maybe it will be an estimate—what the impact of the regulations as they are drafted would have on your company.

Mr. DEMPSEY. On my company?

Mr. MELCHER. Yes.

Mr. DEMPSEY. I have appraised what our operations are for the coming summer in areas where we would be affected by the proposed regulations. I think it will slow down our exploration efforts significantly—not for the reason that the Forest Service would purposely delay review of our proposed plans of operation, but for two reasons. One, it would be very difficult for us to prepare plans in detail of what we intend to do this summer in certain areas of Colorado and Wyoming until the snow goes out of there and we have an opportunity to send in our geologist and our environmental specialist. They cannot draw up a plan of operations until some time late in June in these areas. By the

time we file them and go through an approval process, and have the Forest Service take a look at them, I think we will probably be delayed beyond the end of the assessment year, which is September 1.

I think there are some of our prospects that we might consider dropping if we became embroiled in difficulties.

Mr. MELCHER. Would the impact of the regulations as drafted fall heaviest on the companies of your size or on the small prospectors or small operators?

Mr. DEMPSEY. On the small operator.

Mr. MELCHER. Thank you.

The gentleman from Guam.

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

Mr. Dempsey, do you think that the proposed rules and regulations of the Forest Service would have the authority to enforce the regulations; that is, the mineral development within the national forests?

And in the promulgation of these rules and regulations did the agency look at the various statutes affecting these matters, like the environmental impact statement, the mining regulations? In addition to that, have they asked that people or parties objecting or having different views may submit such opposing views to the Department for review?

Did you do that?

Mr. DEMPSEY. Yes, sir. We did submit at the time that the informal proposals were made in 1971 and again in response to the published regulations, proposed regulations—we pointed out our feeling that they were without authority to promulgate the regulations.

Mr. WON PAT. In the light of what has been promulgated, do you think that they have taken into account your suggestion or objection?

Mr. DEMPSEY. I think that they have rejected our contention that they were without statutory authority. They did integrate into the details of the regulations many of the suggestions that we made for making them more practical.

Mr. WON PAT. Another point. You say that there is nothing in the State and Federal regulations—the regulations governing the State performing discovery work. How would you recommend a resolution to those conflicting laws?

Mr. DEMPSEY. If the regulations were adopted, I would suggest that location work be one of the exceptions in the list of exceptions in the front of the regulations; that no plan be required for the location and discovery and monumentation of work under State law.

Mr. WON PAT. Of course, another controversy in this matter is the \$2,000 bond. Do you feel that many of the small miners or prospectors cannot afford to put up the necessary bond?

Mr. DEMPSEY. That is correct. My experience with bonding with regard to reclamation laws and with regard to contracting is that the small operator will find it impossible to secure a bond from a bonding company unless he is willing to put in a fee as a premium the amount of the bond.

The only way that I could see that is one miner would put up a bond is to put up a \$2,000 cash bond with the Forest Service. I think that is a very difficult burden.

Obviously, we are trying, all of us, to see a way to secure performance of the reclamation work. I think that the bond ought to reflect a

fair estimate of what it would cost to reclaim the property. But it is difficult for me to see, in terms of the operations that are conducted by small operators, why an arbitrary \$2,000 bond would be required, particularly in the case of drilling where the reclamation of the drill site which is being used, often an existing road, may be a very small item. It may not cost very much to reclaim a drill site. Certainly not \$2,000.

Mr. WON PAT. I think the previous witnesses have concurred with that. I think most of the members also concur.

My personal feeling is that the Forest Service should do something about this, rather than just wait for statutory authority. You know how Congress works. Before we get a legislation to provide that authority it would take some time. We might not even be able to do it. Of course, much would depend upon the committee.

What do you think of that?

Mr. DEMPSEY. I think that the Forest Service has to address itself to the issues related to mineral activities and their management. We have stated in our testimony that they do have statutory authority to protect forest resources.

I think the wise way for this regulatory scheme to be implemented is to set out self-executing regulations protecting forest resources which are of general applicability. Then if the miner violates them, action can be taken. If recreation uses violate them, we have a common standard to protect forest resources. These regulations try to regulate mining. It is not within the capability or the capacity of the Forest Service to get into the regulation of the mining industry. If they want to protect the forest resources, they have the authority; and they should exercise that authority and make the regulations for the protection of watersheds, water, timber, and those items that they are best suited to regulate.

Mr. MELCHER. Would the gentleman yield?

Mr. WON PAT. Yes, Mr. Chairman.

Mr. MELCHER. I do think it is important to note that with the Forest Service you are very much dealing with the watershed, so that almost any operation of exploration conducted for mining purposes would be or is an impact on the watershed itself.

So I think in this instance there is certainly a responsibility of the Forest Service that this be recognized.

Is that not true, Mr. Dempsey?

Mr. DEMPSEY. That is true.

Mr. MELCHER. I thank the gentleman for yielding.

Mr. WON PAT. I do not have any other questions.

Thank you, Mr. Dempsey. You have been very enlightening in your presentation.

Mr. MELCHER. The gentleman from Oregon.

Mr. DELLENBACK. I thank the chairman.

Mr. Dempsey, I think the last point that you have been making reference on the clear right of the Forest Service to deal with surface resources is extremely relevant. I do have a couple of followup questions on that.

Could the kind of thing be done where they would say, for example, that anybody who is going to deal with any operation in the national forests that would have a significant impact would file a plan. That is

taking in effect the requirement under mining and then generalizing on it.

Mr. DEMPSEY. We have no objection to a notification procedure which would alert the Forest Service to the expected activities.

Mr. DELLENBACK. I am making the distinction between aiming at mining versus aiming at any other operation on the surface, on the same requirement. Are you objecting to the requirement, or are you objecting to the fact that they are attempting to place restrictions on mining that they do not place on something else?

Mr. DEMPSEY. I think we are objecting to being singled out as an industry, because we think that there are many activities that cause impacts that could be harmful to the forest resources. That is part of the statement that I made.

The second thing that I am trying to stress is if the Forest Service can come out with a set of regulations that are designed to protect watersheds, timber, these surface resources that they are charged with managing, I believe the mining industry can live within that framework very nicely.

I think that would give the forest manager everything he needs to stop abuses and improper impacts.

Mr. DELLENBACK. Again, if I may push further, are you indicating that you think that if they go that way, the regulations would be different?

Mr. DEMPSEY. Yes.

Mr. DELLENBACK. Again, one of the regulations talks in terms of significant impact.

What if they say, in effect, any person who is going to use the surface of national forest land in a way that will have a significant impact on the surface rights or the surface situation, must file a plan?

Would that be acceptable to you?

Mr. DEMPSEY. It depends on what happens with the plan after it is in. If there is an approval arrangement that would create the possibility of triggering impact statements, that is where we have difficulty.

Mr. DELLENBACK. It is not just the fact that mining is singled out that you are objecting to. It is the nature of what they are proposing to be done.

Mr. DEMPSEY. That is right.

Mr. DELLENBACK. I read your response to the gentleman from Guam as the fact that you were objecting to being singled out. My question was, was that really the case? I join you with a certain concern that the Forest Service, which has a legislatively imposed responsibility to deal with surface rights, has written some regulations which sound that they are not dealing with surface rights alone. They are dealing with mining.

We could solve that by getting the Forest Service to say make your regulations apply to everybody—forestry, operators, recreation users, cattle grazers. And you say take the same language that you have applied to mining and say if you are going to have an operation which will have a significant impact on surface rights, you must file a plan, then go down the line the rest of the way, and have that plan approved. And these are your rights if you go forward with the approval process.

Do I read you as saying you would object to that also?

Mr. DEMPSEY. Yes. For the reason that, I guess to be fair mining has been singled out in a very positive way over the years by the legislation that has dealt with mining and forestry. At the time of the Organic Act and the Multiple Use Act, Congress has specifically addressed the particular problems of the miner, and in a very positive way has said none of these acts that create the Forest Service and which give it its power to regulate surface should get into the way of legitimate mining activities. Those laws have said that the miner must comply with the regulations covering the forest, which we have always felt met if the Forest Service had a fire closure, no campfires in this area, the miner has to comply with that. That is safeguarding the timber.

Our problem with the plan of operations and the approval process that must take place after that plan is that we feel that we do have the statutory right to conduct the mining operations, and that the approval process suggests that someone may be able in the Forest Service to withhold that approval, particularly in access and the right to get in and discover minerals.

We think that they do not have that authority. But I do want to make it clear that the mining industry feels or understands the need of the Forest Service to have some controls that protect the things that they are managing. We do not object to living within a regulatory framework which protects those resources; but we do object to having to seek approval from the Forest Service for the operations that we intend to carry on.

Mr. DELLENBACK. What if the operations that you intend to carry on, Mr. Dempsey, have an impact on the surface? When are you perfectly willing to seek approval under those circumstances?

Mr. DEMPSEY. That is the nature of a mining plan.

Mr. DELLENBACK. You just said that the Forest Service has the responsibility of managing surface resources. I do not mean to push it unduly but I am trying to find out what really you are suggesting to us.

Are you saying that, in a situation where the Forest Service is really, by its regulations, trying to control the impact on the surface, and mining which must, by its very nature, have an impact on that surface those two things coming into conflict with each other, the Forest Service should not insist that those who would mine must do certain things in the way of filing plans, getting approvals, and so on?

In other words, when mining comes into conflict with impact on the surface, are you saying that impact on the surface should be avoided?

Mr. DEMPSEY. Yes.

Mr. DELLENBACK. May I ask a little bit about what sort of costs your company in particular, or other members the American Mining Congress, what sort of costs are you running into now, Mr. Dempsey, in spending on environmental activities in connection with mining operations? I think particularly of impact statements, but anything else that you would care to give us information on.

Mr. DEMPSEY. I can speak for American Metal Climax in that regard. Our general approach to exploration and mining activities—this is all the way through the construction of the mining facility and on to the smelting—is to do an environmental reconnaissance early in the proceeding. This is done usually by a consulting ecologist, someone

who is trained in the discipline. These are running, I would guess, anywhere from a few hundred dollars—if they spent 5 or 6 days in the field, it might run as much as \$5,000. This reconnaissance includes a field check of the area to see what resources are there now. It includes discussions with State and Federal officials in the area, a check of the endangered species list, a check of the National Historical Monument Register. And this results in a report to our management that suggests that there may be unique problems, or there may not be unique problems. But it discusses the possibilities of protecting the area from a change point of view.

These are very practical, short reports. They may be 4 to 10 pages. And they are very reasonable in cost to prepare. If there are special problems that would require a hydrologist, we may have to bring a hydrologist in. That may run the price up. On a major new coal mine we might spend \$10,000 on the environmental reconnaissance.

If it is clear that we are into difficulties and we are actually developing the property, the cost may run up very significantly. We are budgeting \$250,000 for environmental planning, detailed information gathering at our Bel-Air property in Wyoming. This is the largest environmental study expenditure that is now going on in AMC except the work that we are doing in your State, in Oregon. I am speaking specifically to your question about mining.

We are finding that the impact of the environmental statement cost-wise is not unreasonable in the reconnaissance stage and in that work which can be integrated into the planning of the mine. We are finding it very expensive to try to provide the degree of documentation that is now properly put into impact statement, the thick volumes and volumes of material. It is a very expensive procedure.

I think we do not quarrel with the kind of analysis that we are being required to do. We are finding it very expensive to try to run out these massive documents.

Mr. DELLENBACK. You will find, Mr. Dempsey, in one sense you are on the wrong side of the wrong committee because this is not the committee that has the responsibility over NEPA.

Are you telling the members here, because of our concern in the problem, that you think part of what is going into the impact statements is not worth putting in?

Mr. DEMPSEY. I do.

Mr. DELLENBACK. Do you think the information, once gathered, is really not used?

Mr. DEMPSEY. I think that is a fair statement. I think that the National Environmental Policy Act makes us go out there and really get the detailed information, put it in our planning process and make use of it.

The other part of NEPA is to allow people to be able to scrutinize those decisions and make sure that you take these things into account. That is the awkward part for us. We do not mind the scrutiny, but the form of the scrutiny is very expensive.

I am particularly concerned with these proposed regulations if they trigger impact statements—not for the reason that we are going into some of the most beautiful areas of the country with our exploration. We have to do some environmental reconnaissance work in connection with these activities. But if we get into the 2- or 3-year delays

that are involved in preparing a full set of documents, not for our use on the drill rig but for the purpose of proving to everybody else that we took it into account, we are going to slow down exploration in the United States very significantly.

Mr. DELLENBACK. We will leave that to another subcommittee.

May I ask one last question? On page 4 of your testimony you say, "Section 252.17 of the proposed regulations would effectively prohibit mining activity in wilderness areas."

Let me not sail under any false colors in this particular regard. I personally was not here when the Wilderness Act was passed, so I did not have a chance to speak on this. I have real concerns whether mining ought to be permitted in wilderness areas, so you understand the bias from which I speak.

But I recognize what the law says at the present time. Even though I did not help write it, I do think we have an obligation to stay within until we change it.

Would you expound a little bit on that view? How do these regulations reach indirectly, which you indicate they should not be able to reach directly.

Mr. DEMPSEY. They require that the plan of operations in this area provide—let me quote from my testimony:

So as to provide for the protection of national forest resources in accordance with the general purpose of maintaining the national wilderness preservation system unimpaired for future use and enjoyment as wilderness and so as to provide for the preservation of its wilderness character.

It is clear that you cannot run a mining operation in a wilderness area and maintain wilderness character as we have defined wilderness character in this country in that legislation.

Mr. DELLENBACK. I was taking a look at that, but that language is quoted from 252.17, is it not?

Mr. DEMPSEY. Yes.

Mr. DELLENBACK. I just wanted to be sure to what point you were speaking to. It is that language that you consider in effect contradictory to the Wilderness Act?

Mr. DEMPSEY. Yes.

Mr. DELLENBACK. Therefore, beyond the scope of the Forest Service in writing these particular regulations?

Mr. DEMPSEY. The Wilderness Act puts special restrictions on many activities. It did provide for mining activities. Those special provisions cannot be carried to the extreme of absolutely prohibiting surface activity.

Mr. DELLENBACK. Thank you very much. This has been helpful.

Thank you, Mr. Chairman.

Mr. MELCHER. The gentleman from Alaska.

Mr. YOUNG. First, let me apologize for being late. I have no real excuse.

Your big fear of these regulations, if they are adopted, it will impede exploration work and actual mining work through the use of the courts questioning your environmental impact statements and your work construction, et cetera?

Mr. DEMPSEY. That is part of the fear. As you know from your experiences in Alaska, the field seasons are very short, and exploration is a peculiar kind of business to be in. These projects are con-

ceived and executed rather quickly. Most of them fail; probably 1 out of 100 has any chance of success. And the timeliness of decisions is the key to it, and you do not wait 2 or 3 years to secure approval of a plan to do something that is only going to take 90 days and may not do much disturbance at all.

Mr. YOUNG. Do you foresee that possibly the regulations, because of the regulations—this goes back to the original question—that there would be a possibility that we would impede not only the development, but the work of the miner?

Mr. DEMPSEY. Very definitely.

Mr. YOUNG. The reason I ask that, Mr. Chairman, sadly I had a visit from Alaska from two constituents who have been involved with the BLM. This is why I was very critical yesterday.

The BLM has some regulations as far as mining activity, and the case shows what an agency can do by the lack of activity and by the insistence of their findings without the proper appeal of the mining owner.

What I am speaking of, they decided that they were going to build a road. By flying over a system of mines, they rejected this; that this was not a road, that it was blazed trails. BLM is never on the ground. Finally, they got them after 18 months to go to the ground. This is for 18 months. They went up and studied it, and they were blazed trails. They lifted a no-trespassing memorandum. In the meantime they lost their assay work. They could not follow through, so they said they did not do their assay work, so they had to reclaim—refile their claims.

That is a good example of why I am a little worried about if we adopt these regulations. It puts the agencies in a tremendous position of really not responding to the individual that follows every legal aspect. They will win this case, but it has taken the man 4 years. He is bankrupt. It is giving him heart problems. He is a fanatic now, and I am a little worried about him.

Of course, this is your fear, but I am worried about your statement on the Wilderness Act. The 82 million acres that we are talking about in Alaska that are going to be withdrawn either for forestry lands or parks or refuges, potentially have wilderness designations. And if this regulation is adopted, it means that those areas, even if they are forestry areas, will not be touched as far as the exploration of minerals. Whether this was intentional or not, I am not sure; but it does offer a great threat as far as development of minerals in my State.

That is all I have to say.

Mr. MELCHER. Thank you very much, Mr. Dempsey. Your testimony has been very helpful to the committee.

[Letter with supplemental information from Mr. Dempsey follows:]

AMERICAN METAL CLIMAX, INC.,
Denver, Colo., March 25, 1974.

HON. JOHN MELCHER,
Chairman, House Public Lands Subcommittee, Longworth House Office Building,
Washington, D.C.

DEAR CHAIRMAN MELCHER: During my appearance before your Committee on March 7 and 8, 1974, with testimony concerning the Forest Service regulations, you asked me about the importance of small prospectors and miners to mineral production capabilities in the United States.

As a supplement to my response at that time, I am submitting information from the May, 1973, edition of the *Engineering & Mining Journal* which indicates what prospectors and small miners have been able to accomplish in Canada.

This is a revealing discussion of the importance of small miners in that area, and as you know much of our western United States is comparable to the Canadian situation.

Very truly yours,

STANLEY DEMPSEY,
General Attorney.

WHAT PROSPECTORS HAVE ACCOMPLISHED

Dr. Paul M. Kavanagh, vice president of Kerr Addison Mines Ltd., presented strong arguments in support of basic prospecting by the individual prospector and the small exploration company. "In the more intensely explored regions of the Precambrian Shield below the 55th parallel, which divides Hudson Bay from James Bay, and in the Appalachian regions of Gaspé and the Maritime Provinces, the chances of a prospector finding a mine are not very good," he said. "However, prospectors can still be effective in the Cordilleran regions of British Columbia, the Yukon, and the Northwest Territories, and in the Precambrian Shield above the 55th Parallel." To emphasize this argument, he stated that every one of the 39 metal mines now operating in these regions was initially indicated by basic prospecting.

In support of the small exploration company and the contributions such companies have made to the Canadian mining industry, Kavanagh cited the list of still operating mines which were found or initially developed by small companies: Advocate, Consolidated Rambler, Brunswick, Consolidated Durham, Dresser Industries' Nova Scotia barite and silver mine, Camflo, Campbell Chibougamau, East Malartic, Horne, Joutel, Louvem, Madeleine, Marban, Normetal, Orchan, Patino, Renzy, St. Lawrence Columbium, Agnico, Campbell Red Lake, Cliffs of Canada, Denison, Dickenson, Hedman, Hollinger, the first Falconbridge mine, Kam-Kotia, Kerr Addison, Macassa, Madsen Red Lake, McIntyre, National Steel, Pickands Mather, Rio Algom's uranium mines, Robin Red Lake, Tribag, Wilroy, the original Sherritt Gordon mine, the Tantalum Corp. mine in Manitoba, Central Canada, Sylvite, Bethlehem, Brenda, Cassiar, Craigmont, Endako, Gibraltar, Lornex, Silmonac, Western, Anvil, Echo Bay, Pyramid, and Whitehorse Copper.

The small companies succeed in competition with the exploration departments of large mining companies, Kavanagh said, because they are great risk-takers: "First of all, they work in areas and on properties considered long shots, and secondly, they take on properties which large companies have previously investigated and have concluded are uneconomic."

The small exploration companies, to remain effective, must be able to raise venture capital, Kavanagh asserted. Regulations by Canadian stock exchanges in recent years have tended to shut off such venture capital. Provincial governments have a responsibility to see that small companies can arrange financing, and for their part, "small companies must conduct their business responsibly and in a manner which will deserve respect," Kavanagh said.

Mr. MELCHER. Mr. Brock Evans is not able to be with us this morning. Without objection, his statement will be made part of the record at this point.

[The prepared statement of Brock Evans follows:]

STATEMENT OF BROCK EVANS, DIRECTOR OF WASHINGTON OFFICE, SIERRA CLUB AND FEDERATION OF WESTERN OUTDOOR CLUBS

Thank you for the opportunity to appear before you today. As you know, both the Sierra Club, since its founding in 1892, and the FWOC, since its own beginning in 1932, have been deeply concerned about the fate and future of the public resources of our national forests. We have testified at countless hearings and before every kind of legislative body for close to a century now about the imperative need to protect, unimpaired, the most beautiful and significant wild parts of the American earth, and to follow the best kind of proper multiple use management practices on the rest. This has been a consistent thread of our policy, and we have never deviated from it.

Over the years, thanks to the efforts of the Congress and the American people, much significant legislation has been enacted to assure such policies: Among

them are the National Forest Organic Act of 1897, the National Park Act of 1916, the Wilderness Act of 1964, and the National Environmental Policy Act of 1969. And, we trust, that this Congress will also see the enactment of two other similar landmark pieces of legislation: The Eastern Wilderness Act, and the BLM Organic Act. Such legislation will just about round out the fundamental framework of our public land laws, and create a web into which can be woven specific laws and regulations to prescribe specific practices and to protect specific areas.

But in all of this accomplishment, there has been one drastic and fundamental thing missing: Any attempt whatsoever at reform of the archaic and outdated mining laws of 1872. It is still incredible to us that, after 102 years, a law which was designed for conditions which have long since vanished from the American scene, can still remain so fundamentally intact. Statutes have been passed since that time to reform the manner in which timbermen can cut the forest on public land. Laws have been passed and regulations enacted to attempt to control grazing practices on public lands. Laws and regulations have been enacted to control recreation uses on public land. But almost nothing has been done to control in any meaningful sense activities of miners on public lands, particularly the national forests.

I spent six years in the Pacific Northwest, as the field representative for the Sierra Club, responsible for all the territory literally from the North Pole to California, and including Montana, Wyoming, and Idaho. During the course of my continuous travels throughout this region, I spent a great deal of time in the 50-plus national forests in that region, and saw many examples of the damage that can be done to fragile and beautiful public resources, without any meaningful control. For example, in the Challis National Forest in Idaho, I saw a place where a mining operator performed his annual assessment work simply by putting his bulldozer blade down to the ground and pushing it around for awhile, stripping off a thin soil cover at high elevation (8,000 feet) which took centuries to grow. The scar is there and visible for 20 miles.

In the Salmon National Forest, I saw hundreds of pits and holes dug in high steep mountain sides, with tons of debris dumped down into side streams in the Salmon River drainage.

In the Snoqualmie National Forest in Washington State, I have seen the copper claims at La Bohn Gap in the Chain Lakes area, dead center in the heart of one of the most beautiful and spectacular wildernesses in the entire state. Tailing dumps and piles and mess and junk are scattered all through the area, without the slightest attempt to clean up. And further North, in the Mount Baker National Forest, the Kennecott Copper Company still pushes its proposal for an open pit copper mine in the heart of the Glacier Peak Wilderness, and denies that it is hindered by any law whatsoever, to clean up, to take care of the land, or to restore what it has done.

In the Deerlodge National Forest in Montana, some 20,000 acres of public, Forest Service land, South of the town of Lincoln, have been permanently scarred and disfigured by the crisscross tracks of prospecting vehicles, and the scars of their bulldozer blade as they searched for copper and other minerals a few years ago.

The list of this kind of damage goes on and on, and could be repeated endlessly throughout the West. And almost all past attempts by the Forest Service to regulate these practices have been met with claims from the miners that they cannot be controlled, and that the mining laws of 1872 give them practically unrestricted access to mineral bodies on the public lands, and practically no obligation to take care of their mess or cleanup.

We submit that this is a situation which should no longer continue, and that is why we support the Forest Service regulations. We think they could be stronger, and should be tightened up, particularly to give groups other than mining operators the right to appeal, and to strengthen control over mining in wilderness areas. But they still should have strong support. A copy of our comments is attached for the record.

We believe that the incredible situation, where only miners, out of all the body public, have practically unrestricted access to and the right to do damage on public lands, must not be permitted to continue. Timbermen are regulated, and have to pay for damages that they cause by their activities. Stockmen are regulated, and have to pay for damages caused by their activities, and also pay a fee, so do timbermen. Recreationists pay fees in many places, and are also prosecuted if they violate regulations, and have to pay for damage that they caused. But

miners, which do more permanent damage to public resources than any other group, do not bear any such burden. We feel that the Forest Service proposed regulations, even though they should be stronger, are a good first step in long-overdue efforts to make all users of the public lands equal in rights and obligations.

THE SIERRA CLUB.

U.S. DEPARTMENT OF AGRICULTURE,

Forest Service, Division of Watershed Management, Rosslyn Plaza E, Arlington, Va.

DEAR SIRs: The Sierra Club, a nationwide conservation organization with approximately 140,000 members, is filing these comments on the proposed regulations relating to mining on forest service lands because of its interest in the Forest and wilderness resources of our nation. The Club appreciates the invitation to comment on the proposed regulations and commends the Forest Service for its decision to implement by regulations its functions of protecting forest and land resources from encroachment by mining activities.

These comments are similar to ones filed by the Sierra Club in 1971 on proposed regulations issued at that time. We are in general accord with the purposes of the proposed regulations and the methods proposed to meet those ends.

We offer the following suggestions with respect to the proposed regulations:

1. We suggest that Section 252.4(a) include in line 6 thereof after the words "including roads" the additional phraseology "and cutting timber". This language should then be followed by the concluding phrase in the proposed regulations as written.

2. Lines 5 through 8 of Section 252.5(c), contains the following language "... prospecting, exploration, development, mining or processing operations, and uses reasonably incident thereto . . ." We suggest that such activities are included within the definition of the word "operations" contained in section 252.4(a), and would recommend that the word "operation" be substituted for the above verbiage.

3. In section 252.5(c) there appears in lines 10 and 16 the word "clearance". This word is vague and should be defined. Also, it remains unclear why "severance or removal for clearance" should be exempted from the requirement of "sound principles of forest management".

4. Section 252.5(c) provides that the severance and removal of timber other than for clearance purposes shall be in accordance with "sound principles of forest management, as specified in the plan of operations". The ensuing sections dealing with content of the plans of operations do not define and require operations in accord with sound principles of forest management. Therefore, since there is some difference of opinion as to what constitutes "sound principles of forest management", a detailed definition should be developed so as to provide more specific guidelines for operators. In view of this, a requirement should be added that all cutting of timber is prohibited except under the supervision of the supervisor of the national forest in which the operation is conducted.

5. Section 252.6(a) requires operators to submit a plan of operations where activities might cause a "significant" disturbance of the environment. It also provides that the requirement to submit a plan shall not apply to "prospecting which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study". The term "significant" is vague and gives operators little guidance to determine whether they must submit a plan of operations. Some uncertainty could be removed if the term "significant" were defined to include certain categories of operations which experience has shown to cause significant harm to the environment. Removal of vagueness and consequent uncertainty is necessary so that an operator cannot use his discretion to avoid the regulatory scheme.

6. Section 252.6(a) (2) (3) exempts from the requirement of submitting a plan of operations "individuals desiring to search for and occasionally remove small mineral samples or specimens for other than commercial purposes and "prospecting which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study." The first category is apparently exempted because it is believed that no significant harm will result. Persons in these categories, however, should be under some supervision as experience has shown that some such operators do cause significant damage. Requiring the typical person to prepare a plan of operations, undergo a review period, and post at least a \$2,000 bond would be unreasonably burdensome. But some check should be made to ensure that their activities do not in fact cause significant harm. They should be on

notice that if significant harm is likely to result from their operations, they would then be subject to the regulatory scheme and the requirement of submitting a plan of operations and posting a bond. Before engaging in any activities, they should have to complete a form at the office of the forest supervisor relating the location of operations and type of activity to be undertaken. The form could be valid for an entire year on the forest and should inform them of the regulatory requirements if their activity should lead to significant harm.

7. The exemptions from the requirement of submitting a plan of operations contained in section 252.6(b) are redundant since various types of operations are not required to file a plan in the first place under Section 252.6(a). It would seem apparent that no plan need be filed on operations concluded prior to the effective date of the proposed regulations.

8. Section 252.6(c) (9) dictates that the plan of operations shall include "a description of the measures used or to be used to minimize the adverse environmental impacts of the operations, including the measures to be taken to meet the requirements of section 252.10." The word "description" implies a summary of the proposed action by the operators. We suggest that the "detailed plan" replace "description."

9. Section 252.7 providing for approval of the plan of operations should include a provision for public hearings. This will enable formal citizen input to help formulate a less environmentally harmful operation. Public hearings need to be held only when there is citizen opposition to the mining or to mining in accordance with the plan of operations as submitted to the Forest Supervisor. Hearings under these circumstances should be required whether or not an environmental impact statement will be prepared. If an impact statement is prepared, public hearings should be held relatively.

10. Section 252.8 provides that certain information required to be submitted in the plan of operations may be withheld from the public. To intelligently review the environmental impact of an operation, the public must know where exploration pits, drill holes, excavations, and mining operations are to occur. This information should not be given protection.

11. Section 252.10, subsection (a), (b), and (c) should each be followed with a proviso to the effect that: "Provided that if pollution control devices or techniques, at any given time, have reached engineering design efficiency greater than federal or state standards, then such control methods must be used." This type of requirement might be referred from the first paragraph of section 252.10, but should be made more explicit. Each paragraph of the section should list and require proven techniques for eliminating or reducing a particular type of environmental harm.

12. Section 252.10 (a-g) should be expanded to prohibit the following actions on Forest Service lands except with the express prior permission and under the close supervision of the Forest Supervisor:

- (a) all cutting of plant growth, including cutting of trees;
- (b) all modification of the natural terrain, as by digging (tunnels, shafts, pits), or by emplacement of objects (buildings, machinery, survey markers, signs);
- (c) modification or pollution of stream flow (as by discharge, sediment, dams, settling ponds, etc.); and
- (d) modification of atmosphere (as by seeding, smoke, or vapors).

13. Section 252.10 should provide that noise from mining operations be minimized as this type of pollution is quite disturbing to recreationists.

14. The period of one year on lines 2 and 3 of section 252.10(g) should be shortened to 90 days for completion of restoration measures.

15. The first sentence of the section 252.12 should be changed to read: "Unless otherwise authorized by the Forest Supervisor upon a showing of good cause by the operator, operator shall remove within 90 days following cessation. . . ."

16. Section 252.15—Other remedies besides forfeiture of the performance bond should be provided to the Forest Service in case of non-compliance with the regulations. We suggest that the agency have the power to revoke its approval of any plan of operation of the operator, in whole or in part, and to refuse to approve future plans of operations submitted by the same operators, after proper notice is given the operator and a hearing held in accordance with the Administrative Procedure Act. In some instances, it might be less expensive for the operator to forfeit the bond than to complete the restoration project, and such result should not be permitted.

17. Section 252.16 gives to operators a remedy of appeal from the decisions of the Forest Supervisor. Since conservation groups and individuals concerned with protection of the national forests are also interested in and affected by decisions made under these regulations, the right of appeal should be extended to these groups. We would suggest that Section 252.16 line one be amended to add the wording "or person" after the word "operator".

The National Environmental Policy Act does not provide an adequate substitute for review of the specific plan of operations. Review under NEPA may lead to an impact statement being prepared or to a reformed statement but not necessarily to a less environmentally harmful mining operation. NEPA does not enable substantive review of particulars of a plan. NEPA review is also much more cumbersome and expensive than an appeal to the Regional Forester.

We hope these comments will meet with your approval and that regulations will be promulgated soon.

Sincerely,

MICHAEL McCLOSKEY,
Executive Director.

Mr. MELCHER. I have testimony received, a letter and attached testimony received from the Western Montana Mining Association.

Without objection, the letter and statement will be made a part of the record at this point. Hearing no objection, so ordered.

[The information referred to follows:]

WESTERN MONTANA MINING ASSOCIATION,
March 5, 1974.

SUBCOMMITTEE ON PUBLIC LANDS,
U.S. House of Representatives,
Longworth House Office Building,
Washington, D.C.

GENTLEMEN: I received notice yesterday of your hearings scheduled for March 6 & 7, 1974 on the new proposed forest service regulations concerning mining. Our organization cannot be represented at the hearings but we would like to express our views in writing, hence I am sending three copies of my letter that was written to the Forest Service. Hopefully you will consider these provisions when you review the results of your hearings.

We too question the authority of the forest service to impose these regulations and it will probably take the Supreme Court to make the final decision. If the forest service has this authority, then Congress should seriously consider removing mineral lands from their jurisdiction and put them under the authority of the Bureau of Land Management. These people seem to be more aware of our minerals crisis and are willing to aid us in our search for minerals.

Thank you for anything that you can do to help us.

Sincerely yours,

KOEHLER STOUT, *President.*

WESTERN MONTANA MINING ASSOCIATION,
January 22, 1974.

U.S. DEPARTMENT OF AGRICULTURE,
Forest Service, Division of Watershed Management,
Rosslyn Plaza E,
Arlington, Va.

GENTLEMEN: Thank you for sending me a copy of the Federal Register Vol. 38, No. 243—Wednesday, December 19, 1973 pertaining to proposed rules, Forest Service [36 CFR Parts 251, 252 and 293] Mineral Resources on National Forests, Use under U.S. Mining Laws. Comments are to be received by your office on these proposed rules by February 15, 1974.

The Montana Mining Association, formerly called the Western Montana Mining Association, is an organization of about 500 miners and prospectors in Montana dedicated to the preservation of all citizen's rights to the natural resources, to be informed and to inform the public about pending mining bills, to assist them in search for and development of natural resources in a reasonable and logical manner; to oppose radical and extreme methods, and dedicated also to the belief that mining and environmental protection can be compatible.

We believe that if these proposed rules are enacted you will completely eliminate the *true* prospector and *operator* of a small mine. There are two basic

sources of wealth on this continent, mineral and agricultural. Without these, nothing else will exist, and they are so intertwined that one cannot exist without the other. The importance of mining is quoted from "What Mining Means to the United States" by the American Mining Congress. "Even though the value of all raw fuels, metals and non-metals produced from the earth is only about 3% of the total value of goods and services to the United States (Gross National Product) these products have a direct impact on 40% of the economy and an indirect impact on an additional 35% of the economy. With products from the earth American industry has built plants, equipped them with machinery, and obtained the raw materials to run the plants—in short, made jobs directly or indirectly for a large percentage of the 70 million non-farm workers of the nation."

Of course, we are all aware of the energy crisis and its impact on our everyday life. The mineral picture is even more bleak because our country must import a large portion of our mineral requirements. Depending on the whims and dictates of foreign sources and government can be very precarious as shown by our energy dependence on foreign supplies. Therefore, we must prospect here to protect our way of life. Contrary to popular belief, ore bodies are very difficult to find. In ten years, the U.S. Government Strategic Minerals Development Program examined and explored 10,071 prospects; 1053 developed some ore grade tonnage but were not successful mines, and the only large producer was the San Manuel Mine in Arizona. These statistics suggest that the odds exceed 10,000 to 1 against finding a good ore body. Although miners are accused of tearing up the whole country the compiled statistics show that only 0.3% or 0.003 of the land surface has been disturbed by all types of mining in the United States and of this one-third has been reclaimed. In Montana, after more than 100 years of mining, only 0.03% or 0.0003 of the land surface has been disturbed.

Why in times of crises does the Forest Service come out with rules and regulations that can eliminate a large body of dedicated and true prospectors while allowing only the richer land speculators on the *citizen's* National Forest.

To better explain why these rules will eliminate the prospector, reference will be made to numbered sections of the proposed rules.

Page 34818 Section 252.6 Column 1 and 2 No. 1.—What is meant by *significant*? Does this mean one acre, one square foot or what? Our organization knows that, although you have many reasonable district rangers who follow the multiple use concept as our law dictates, you also have a few who feel that anytime a miner or prospector once sticks his shovel in the ground, he is disturbing a significant amount of the environment. Armed with the power of these rules and the loose interpretation of 'significant,' these men can become dictators and keep all mineral searchers from the land.

Page 34818 Section 252.6 Column 2 No. 2.—How can one submit a plan of operation when he does not know what he has? In the development of a prospect plans cannot be made until the results of the individual digging or drill hole can be interpreted. Therefore, prospecting should not be included. Many prospectors do not have the financial resources or necessary skills to complete one of these required forms.

Page 34818 Section 252.7 Column 3 No. 3.—As we view this, there would almost always be a delay of 90 days, which is one prospecting season in Montana, and in the very high country this could extend to two or possibly three prospecting seasons. Of course, this is unreasonable, unnecessary, and a real restriction to prospecting.

Page 34819 Section 252.8 Column 1 No. 4.—Who is going to determine what information is made available to the public? We could see a prospector making a valuable discovery, trying to comply with the law, and then having somebody in the Forest Service give this information to a land or mining speculator who could rush out, after paying his bond, and take over the prospector's land. This is not the democratic American way of life as we view it, nor is it the intent of the mining law.

Page 34820 Section 252.15 Column 1 No. 5.—In this section the Forest Service can be extremely dictatorial in allowing roads, and we feel that there should be some appeal procedure for the miner. There can be a very legitimate difference of opinion between good conservation in mineral production and surface resource conservation. The appeal board must consist of some knowledgeable mining people. Some of our public land still must be dedicated to mining.

Page 34820 Section 252.15 Column 1 No. 6.—This provision will eliminate all legitimate prospectors because they cannot get bonded unless they deposit

the money with the Forest Service or a bonding company. Prospectors are willing to gamble their time, but when it comes to putting up $\frac{1}{4}$ or more of their yearly income for such a high-risk venture, they cannot in all conscience do this and deprive their families of this money. The bond is entirely too high, unreasonable, and in most cases unnecessary because every true prospector knows how much work it requires and how expensive it is to dig and prospect. Not the legitimate and bona fide prospectors and operators but the land speculators and novices tear up the country.

Page 34820 Section 252.16 Column 2 No. 7.—This appeal procedure is ridiculous. The history of appeals when they go up the line in the same organization or agency always heavily favors the agency. Why take an appeal to a pristine environmentally oriented Regional Forester? The industry feels that you have a few men oriented this way in these important positions and their actions would be so biased that the prospector or miner would not be given fair consideration. We should have a true appeals system established and should have a member or members of the minerals branch of the government or industry in any appeal board, who should have a say equal to that of the U.S. Forest Service. Of course, these decisions should always be open to judicial review by the U.S. Court system.

Montana prospectors and small-mine operators have been working under a state law covering reclamation of mining lands that has allowed us to prospect and to protect the environment, while still searching for minerals for our national need. The law is similar to your proposed rules and regulations but it does define this very nebulous term "significant" and it does give a small miner exclusion, which we feel is necessary in these rules and regulations, and which is required under the mining law of 1872 pertaining to assessment work.

Pertinent Sections of the Montana law are as follows:

50-1203 (10) "Mining" shall be deemed to have commenced at such time as the operator shall first mine ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand (10,000) short tons.

50-1203 (15) "Small miner" shall mean any person, firm or corporation engaged in the business of mining who does not remove from the earth during any twenty-four (24) hour period material in excess of one hundred (100) tons in the aggregate.

50-1220. Exemption of small miners-written agreement-noncompliance a misdemeanor. No provisions of this act shall apply to any small miner when the small miner agrees in writing. (1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operation which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed.

Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), payable to the Department of Revenue of the State of Montana, or any board, commission, or person authorized to collect said fine.

Unless the present rules are modified, according to these suggested changes, you would effectively take away a person's right to do assessment work on his unpatented mining claim unless he pays a \$2,000.00 bond. This is not the intent of the mining law of 1872 or any modification of this law, it is not *due process* of law as defined by the U.S. Constitution and U.S. Supreme Court interpretations. I have supporting documents for the facts and figures quoted and for the Montana Law. If you need any of these supporting documents, please contact me.

Very truly yours,

KOEHLER STOUT, President.

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[36 CFR Parts 251, 252 and 293]

PROPOSED RULES—FOREST SERVICE—MINERAL RESOURCES IN NATIONAL FORESTS
USE UNDER U.S. MINING LAWS

The Forest Service proposes to amend Parts 251 and 293, and add a new Part 252 to Chapter II, Title 36 of the Code of Federal Regulations. The new and revised regulations proposed will apply to prospecting, discovery, exploration, development, mining and processing operations under the United States mining laws of May 10, 1872. They will apply to approximately 140 million acres that are open to location and entry under the mining laws within the National Forest System.

Increasing demand for minerals is causing an intensive search for new resources. Most easily accessible deposits have been found and it will be necessary to mine from greater depths and from larger, low grade near-surface deposits. Regulation of surface use of National Forest lands has not been adequate to achieve uniform protection of the environment. In order to meet environmental responsibilities, insure future productivity of renewable Forest resources, and more clearly define the rights and obligations of mineral operators; it is appropriate to provide new mining regulations to meet these objectives. Primary authority for these regulations is found in the Organic Administration Act of 1897 which provides that persons entering the National Forests for purposes of prospecting, locating, and developing mineral resources must comply with the rules and regulations covering the National Forests.

All persons who wish to submit written data, views, or objections pertaining to the proposed amendment may do so by submitting them to the U.S. Department of Agriculture, Forest Service, Division of Watershed Management, Rosslyn Plaza E, Room 810, 1621 North Kent Street, Arlington, Virginia 22209, by February 15, 1974.

All written submissions made pursuant to this notice will be available for public inspection in the Division of Watershed Management during regular business hours (7 CFR 1.27(b)).

The proposed amendment of Chapter II follows.

PART 251—LAND USES

- § 251.12 [Revoked]—1. Part 251 is amended by revoking § 251.12.
2. A new Part 252 is added to read as follows:

PART 252—MINERALS

See.

252.1 Authority.

252.2 Purpose.

252.3 Scope.

252.4 Definitions.

252.5 Use of mining claims, surface resources.

252.6 Plan of operations—requirements.

252.7 Plan of operations—approval.

252.8 Availability of information to the public.

252.9 Inspection, noncompliance.

252.10 Requirements for environmental protection.

252.11 Maintenance during operations, public safety.

252.12 Cessation of operations, removal of structures and equipment.

252.13 Prevention and control of fire.

252.14 Access.

252.15 Performance bonds.

252.16 Appeals.

252.17 Operations within National Forest Wilderness.

§ 252.1 Authority.—Pursuant to the Act of June 4, 1897 (30 Stat. 35, 36, as amended; 16 U.S.C. 478, 551), persons entering National Forests for the purpose of prospecting, locating and developing mineral resources must comply with the rules and regulations covering National Forests. Section 4 of the Act of July 23, 1955 (69 Stat. 368, 30 U.S.C. 612), provides that mining claims subject to the provisions of that Act are to be used only for prospecting, mining, or processing operations and uses reasonably incident thereto, and that rights under such claims are subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources thereof. The Multiple Use-Sustained Yield Act of June 12, 1960 (74 Stat. 215, 16 U.S.C. 528–531), authorizes and directs the Secretary of Agriculture to develop and administer the renewable natural resources of the National Forests for multiple use and sustained yield of their several products and services for outdoor recreation, range, timber, water-shed, and wildlife and fish purposes. Section 102 of the National Environmental Policy Act of 1969 (83 Stat. 42 U.S.C. 4332), authorizes and directs that, to the fullest extent possible, the policies, regulations, and laws of the United States shall be interpreted and administered in accordance with the policies of the Act.

§ 252.2 Purpose.—It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest lands in connection with operations authorized by the United States mining laws shall be conducted so as to minimize adverse environmental impacts on National Forest resources.

§ 252.3 Scope.—These regulations apply to operations under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.) on all National Forest land under the jurisdiction of the Secretary of Agriculture to which such laws are applicable: *Provided, however*, That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482a–482q) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

§ 252.4 Definitions.—For the purposes of this part the following terms, respectively, shall mean:

(a) *Operations*. All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access whether on or off a mining claim, on lands subject to the regulations in this part.

(b) *Operator*. A person conducting or proposing to conduct operations.

(c) *Person*. Any individual, partnership, corporation, association, or other legal entity.

(d) *Mining claim*. Any unpatented claim or millsite authorized by the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.).

§ 252.5 Use of mining claims, surface resources.—(a) No mining claim shall be used for any purposes other than prospecting, exploration, development, mining or processing, operations and uses reasonably incident thereto.

(b) Except for claims not subject to surface management under the provision of the Act of July 23, 1955 (69 Stat. 368, 30 U.S.C. 612), mining claims shall be subject to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof, including the right of the United States, its permittees and licensees, to use so much of the surface as may be necessary for such purposes, or for access to adjacent land, so long as the use of the surface does not endanger or materially interfere with the prospecting, exploration, development, mining or processing of the mineral resources thereon or access reasonably incident thereto.

(c) No operator shall sever, remove or use any vegetative or other surface resources subject to management or disposition by the United States except to the extent required for prospecting, exploration, development, mining or processing operations, and uses reasonably incident thereto, or for the construction of building or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent otherwise authorized by the United States. Any severance or removal of timber permitted under the exceptions of the preceding sentence, other than severance or removal for clearance, shall be in accordance with sound principles of forest management, as specified in the plan of operations.

§ 252.6 Plan of operations—requirements.—(a) Any person proposing to conduct operations which might cause a significant disturbance of the environment

on lands subject to the regulations in this part shall first submit a proposed plan of operations to the District Ranger having jurisdiction over the area within which operations will be conducted. The requirements to submit a plan of operations shall not apply (1) to operations which will be limited to the use of vehicles on existing roads open to public use, (2) to individuals desiring to search for and occasionally remove small mineral samples or specimens for other than commercial purposes, and (3) prospecting which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study.

(b) Any person conducting operations on the effective date of these regulations shall within 120 days submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: *Provided, however*, That upon a showing of good cause the Forest Supervisor may grant an extension of time, not to exceed an additional 6 months. The requirement to submit a plan of operations shall not apply (1) to operations which are limited to the use of vehicles on existing roads open to public use, (2) prospecting which does not cause significant surface resource disturbance and does not involve removal of more than a reasonable amount of mineral deposit for analysis and study, and (3) to operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and address of the operator(s) and the owner(s) if operations are to be conducted by other than the owner(s). If any of the foregoing are other than individual proprietors, the names and addresses of the principal officers of the business entity and the person(s) designated to represent such entity with the Department of Agriculture shall be included;

(2) A description sufficient to identify the area or areas on the ground within which the operations are being conducted or are to be conducted and the estimated period of activity;

(3) A map or sketch of access routes used or to be used and the description of the means of transportation used or to be used, submitted in compliance with the provisions of § 252.14;

(4) A map or sketch showing the location of existing and proposed roads within mining claims, a description of the type and standard of such existing and proposed roads, and a description of the means of transportation used or to be used;

(5) A list of equipment and a description of facilities used or to be used in the operations;

(6) A description of the methods of operations used or to be used;

(7) A map or sketch showing the location and size of areas upon which it is expected vegetation or soil will be disturbed;

(8) A description of the effects the operations are having or may have upon the environment and forest resources; and

(9) A description of the measures used or to be used to minimize the adverse environmental impacts of the operations, including the measures to be taken to meet the requirements of § 252.10.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) above for the entire operation for the full estimated period of activity: *Provided, however*, That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any operations not covered by the initial plan.

(e) At any time during operations under an initial or supplemental plan of operations, the Forest Supervisor may require the operator to submit a proposed modification to the initial or supplemental plan detailing the means of minimizing unforeseen significant adverse environmental impacts.

(f) An environmental statement pursuant to section 102(2)(c) of the National Environmental Policy Act will be prepared in the review and approval of plans of operations, supplemental plans, or modifications of initial or supplemental plans where operations will significantly affect the quality of the environment. Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development or processing, and on the scope of operations (such as size of operations, construction required, length of operations and equipment required),

resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife. The determination whether an environmental statement will be prepared will be on a case-by-case basis and will follow Guidelines of the Council on Environmental Quality (40 CFR 1500).

§ 252.7 Plan of operations—approval.—(a) No operations shall be conducted unless they are in accordance with an approved plan of operations, except as provided in paragraph (b) of this section and in § 252.6(b). A proposed plan of operation shall be submitted to the District Ranger, who shall promptly acknowledge receipt thereof to the operator. Within thirty (30) days of such receipt, the Forest Supervisor shall;

- (1) Notify the operator that the plan of operations is approved; or
- (2) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or
- (3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed: *Provided, however*, That days during which the area of operations not be included when computing the sixty (60) day period; or
- (4) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental quality as provided in § 252.6(f).

(b) Pending final approval of the plan of operations, the Forest Supervisor may approve such operations as may be necessary to comply with the provisions of State law so long as such operations do not create impacts which must be considered in an environmental statement pursuant to the National Environmental Policy Act.

(c) A supplemental plan or plans of operations provided for in § 252.6(d) and a modification of an initial or supplemental plan as provided for in § 252.6(e) shall be subject to approval in the same manner as the initial plan of operations.

(d) In the provisions for review of operating plans, the Forest Service will arrange for consultation with appropriate agencies of the Department of the Interior with respect to significant technical questions concerning the character of unique geologic formations and special exploration and development systems, techniques and equipment, and with respect to the relative values of minerals.

§ 252.8 Availability of information to the public.—Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination by the public at the office of the District Ranger in accordance with the provisions of 7 CFR 1.1-1.6 and 36 CFR 200.5-200.10. Specifically identified in formation and data submitted by the operator as confidential concerning trade secrets or privileged commercial or financial information will not be available for public examination. Information and data to be withheld from public examination may include, but is not limited to, known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content, and the known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws, and other commercial information which relates to competitive rights of the operator.

§ 252.9 Inspection, noncompliance.—(a) Forest Officers shall periodically inspect operations to determine if the operator is complying with the regulations in this part and an approved plan of operations.

(b) If an operator fails to comply with the regulations or his approved plan of operations, the Forest Supervisor shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action must be completed, generally not to exceed thirty (30) days; *Provided, however*, That the Forest Supervisor shall require immediate suspension of operations if noncompliance is causing significant environmental damage.

§ 252.10 Requirements for environmental protection.—All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest resources, including the following requirements:

(a) *Air quality.* Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (84 Stat. 1676, *et seq.*) and wherever practicable, shall conduct operations in such a manner as to minimize damage to forest resources by air pollutants resulting from such operations.

(b) *Water quality.* Operator shall comply with applicable Federal and State quality standards including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (86 Stat. 816; 84 Stat. 91; 70 Stat. 498), and wherever practicable, shall conduct operations in such a manner as to minimize damage to downstream waters by water pollutants resulting from such operations.

(c) *Solid wastes.* Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, including buildings and equipment no longer usable in connection with operations shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest resources. All tailings, dumpage, deleterious materials or substances, and other waste produced in operations shall be disposed of or treated so as to minimize adverse impact upon the environment and forest resources.

(d) *Scenic values.* Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) *Fisheries habitat.* In addition to compliance with water quality and solid waste disposal standards required by this section, operators shall take all practicable measures to maintain and protect fisheries habitat which may be affected by the operations, including but not limited to, maintenance of normal ranges of water temperature and turbidity levels, unobstructed fish passage, and protection of fish spawning, rearing, and feeding areas.

(f) *Roads within mining claims.* Operator shall construct and maintain all roads within mining claims on a location and to a design and standard to assure adequate drainage and to minimize or where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the Forest Supervisor, roads within mining claims no longer needed for operations (1) shall be closed to normal vehicular traffic, (2) bridges and culverts shall be removed, (3) cross drains, dips, or water bars shall be constructed, and (4) the road surface shall be restored to as near a natural contour as practicable and be permanently stabilized.

(g) *Reclamation.* At the earliest possible time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the Forest Supervisor, operator shall, where practicable, restore the surface disturbed in operations to a natural-appearing condition and take such measures as will prevent or control on-site and off-site damage to the environment and forest resources including, but not limited to:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;
- (4) Reshaping and revegetation of disturbed areas;
- (5) Elimination of hazards to public health and safety;
- (6) Restoration of fisheries and wildlife habitat in surface water bodies; and
- (7) Stabilization of access roads by proper grading, drainage control, surface treatment, and revegetation.

(h) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.

§ 252.11 Maintenance during operations, public safety.—During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public.

§ 252.12 Cessation of operations, removal of structures and equipment.—Unless otherwise authorized by the Forest Supervisor, operator shall remove within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes (1) verification of intent to maintain the structures, equipment and other facilities, (2) the expected reopening date, and (3) an estimate of extended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the

operating site, structures, equipment and other facilities in a neat and safe condition during nonoperating periods.

§ 252.13 Prevention and control of fire.—Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all necessary measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

§ 252.14 Access.—An operator shall be entitled to access in connection with operations, but no road or other means of access, including landing areas for aircraft, shall be constructed or improved until the operator has received authorization in writing from the Forest Supervisor. Application for such access shall be filed with the District Ranger and shall include a description of the type and standard of the proposed means of access, a plat showing the proposed route of access, and a description of the means of transportation to be used. Authorization for such access shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest resources, including, but not limited to, vegetative screening and other measures to protect scenic values and to insure against erosion and water or air pollution.

§ 252.15 Performance bonds.—(a) To assure that operator will faithfully comply with the regulations in this part and adhere to an approved plan of operations, a performance bond in a minimum amount of \$2,000 will be required prior to approval of each plan of operations. In lieu of a performance bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the nature of the reclamation and restoration requirements and the estimated costs of reclamation and restoration in the event that the operator forfeits his performance bond. This consideration will include (1) the size of the operations; (2) the estimated damage to the environment and National Forest resources if the operator fails to comply with the regulations in this part or fails to adhere to the approved plan of operations; (3) the estimated cost of stabilizing, rehabilitating and restoring the area of operations; and (4) the type and amount of access to be constructed in connection with operations.

(c) In the event that an initial plan of operations is supplemented or amended in accordance with § 252.6 (d) and (e), the Forest Supervisor will review the initial performance bond for adequacy and, if necessary, will adjust the performance bond to conform to the operations plan as amended or supplemented.

(d) When the operations have been conducted and completed in accordance with the regulations in this part and the approved plan of operations, the Forest Supervisor will notify the operator that performance under the bond has been completed: *Provided, however,* That when the Forest Service has accepted as completed any portion of the operations, the Forest Supervisor shall notify the operator of such acceptance and reduce proportionally the amount of bond thereafter to be required with respect to the remaining operations.

§ 252.16 Appeals.—(a) Any operator aggrieved by a decision of the Forest Supervisor in connection with the regulations in this part may file with the Forest Supervisor a written statement setting forth in detail the respects in which the decision complained of is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary, or is otherwise in error. No such appeal will be considered unless it is filed with the Forest Supervisor within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of appellant's statement, the Forest Supervisor shall prepare his own statement explaining his decision and the reasons therefor and forward the statements and record to the appropriate Regional Forester for review and decision. The decision of the Regional Forester shall be final.

(b) At the time appellant files his written statement of appeal he may request and shall be afforded an opportunity to present his views orally to the Regional Forester.

(c) If the Regional Forester considers the record inadequate to support a decision on the appeal, he may provide for the production of such additional evidence or information as may be appropriate or may remand the case with appropriate instructions for further action.

(d) The official files of the Forest Service relating to such an appeal and any testimony and documents submitted by the parties on which the decision of the Forest Supervisor was based constitute the record in the appeal. The Forest Supervisor shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to the Regional Forester for review. The Forest Service shall make the record available to the appellant upon request.

(e) On or before the expiration of forty-five (45) days after closing the record the Regional Forester shall make his decision: *Provided, however*, That if more than forty-five (45) days are required for a decision after the record is received, the Regional Forester shall notify the parties to the appeal and specify the reason for delay. The decision of the Regional Forester shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based.

(f) A decision of the Forest Supervisor from which an appeal is taken shall not be automatically stayed by filing a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the Regional Forester. The Regional Forester shall promptly rule on requests for stays, and his ruling shall be final.

§ 252.17 Operations within National Forest Wilderness.

(a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in § 252.4 in National Forest Wilderness shall comply with the regulations in this part so as to provide for the protection of National Forest resources of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as Wilderness and so as to provide for the preservation of its wilderness character.

(c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads across National Forest Wilderness unless authorized in writing by the Forest Supervisor in accordance with § 252.14. Specifically the Forest Supervisor shall require such changes in location and type and standard of construction as are necessary for the protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as Wilderness and so as to provide for the preservation of its wilderness character, consistent with mineral location, exploration, development, drilling, and production and for transmission lines, and processing operations, including, where essential, the use of mechanical transport, aircraft or motorized equipment.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment and other facilities no longer needed for mining purposes in accordance with the provisions in § 252.12 and restore the surface in accordance with the requirements in § 252.10(g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in

the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations (78 Stat. 890, 16 U.S.C. 1131-1136).

PART 293—WILDERNESS—PRIMITIVE AREAS

3. The regulations of Part 293 were transferred from Part 251 on March 5, 1973 (38 FR 5851). The new Part 293 is further amended by revising §§ 293.13, 293.14 and 293.15. Regulations applicable to activities under the 1872 mining law in National Forest Wilderness, now appear in Part 252 rather than Part 293.

§ 293.13 Access to valid occupancies.—Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.14 Mineral leases and mineral permits.—(a) All laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(c) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Minerals Act of July 31, 1947, as amended and supplemented.

(30 U.S.C. 601-604).

§ 293.15 Gathering information about resources other than minerals.—(a) The Chief, Forest Service, shall allow any activity, for the purpose of gathering information about resources, other than minerals, in National Forest Wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in National Forest wilderness is subject to the regulations in Part 252.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with any activity for the purpose of gathering information about resources, other than minerals, except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about re-

sources, other than minerals, shall apply in writing to the Office of the Forest Supervisor or District Ranger having jurisdiction over land involved. Excavations shall be considered "substantial" which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section 4(d) (4) (1) of the Wilderness Act, will be permitted when and as authorized by the President.

Mr. MELCHER. Mr. George Alderson.

STATEMENT OF GEORGE ALDERSON, THE WILDERNESS SOCIETY

Mr. ALDERSON. Thank you, Mr. Chairman.

I am George Alderson, director of Federal affairs for the Wilderness Society. I appear here today to testify in support of the proposed rules of the Forest Service that were announced in the Federal Register on December 19, 1973.

If my statement could be included in full in the record, I will touch some of the principal points.

Mr. MELCHER. Without objection, the statement in total will be made part of the record at this point.

Hearing no objection, so ordered.

[The prepared statement of George Alderson follows:]

STATEMENT OF GEORGE ALDERSON, DIRECTOR OF FEDERAL AFFAIRS, THE WILDERNESS SOCIETY

Mr. Chairman, I am George Alderson, Director of Federal Affairs, The Wilderness Society, 1901 Pennsylvania Avenue N.W., Washington, D.C. 20006. It is with a great deal of pleasure that I appear here today to testify in support of Proposed Rules of the Forest Service which were announced in the Federal Register, Wednesday, December 19, 1973 and extended Thursday, January 24, 1974, relative to Mineral Resource use on National Forests under the U.S. Mining Laws.

The Wilderness Society has urged, and will continue to urge, the immediate adoption of the Proposed Rules with the following minor, yet important, modifications:

1. *Paragraph 293.14 (a)* should specify that effective at midnight, December 31, 1983, and subject to valid existing rights, minerals within National Forest Wilderness areas are withdrawn from the operation of the mining and mineral leasing laws.

2. *Paragraph 252.16* permits appeals only by "operators". We believe that the provisions of the Administrative Procedures Act would permit appeals by others, including groups like The Wilderness Society. In other words, by mentioning only "operators" the proposed regulations appear to restrict appeals to but one class of citizens or groups.

3. While we applaud the bonding requirements of *paragraph 252.15* we do feel that in those situations where a small prospector is using limited tools, posing a limited potential for damage to the land, such bonding requirements might be set lower.

4. *Section 252.6 (a)* needs amending to read, "... disturbances of the environment or public values on lands." *Section 252.6 (f)* should also be amended to assure consideration of Wilderness. This can be done by adding the word "wilderness" in the next to last sentence so it will read, "... in varying degrees of disturbance of vegetative resources, soil, water, air, wildlife, or Wilderness."

Mr. Chairman, The Wilderness Society has these additional comments which, while general in nature, are intended to express the reasoning behind our strong support for these regulations.

1. *Legal Basis for Proposed Rules.*—There are some who are asserting that the Forest Service has no legal foundation on which to base the proposed regulations. On the contrary, there is no question that the Forest Service has sufficient authority under law to issue and enforce the proposed regulations. Any Federal agency is authorized to promulgate regulations to carry out its mandate from Congress. In our opinion, there is ample authority in the statutes: The Act of June 4, 1897, is the Organic Act for national forests. 16 USC § 551, a provision thereof, authorizes the Secretary of Agriculture "to make such rules and regulations, and establish such service as will insure the objects of such reservations, namely to regulate their occupancy and use, and to preserve the forests thereon from destruction . . ." In *United States v. Grimaud*, 220 U.S. 506 (1911), it was held that a regulation prohibiting the grazing of livestock on a forest reservation without a permit, was a valid exercise of delegated authority under the Act, notwithstanding that no mention is made in the Act of livestock grazing. The Secretary's general authority to preserve the forests was sufficient. The Act here is stronger since it expressly states that miners and prospectors "must comply with the rules and regulations covering such national forests." 16 USC § 478.

The policies of the National Environmental Policy Act (NEPA) are set forth in § 101 (42 USC § 4331) and include a broad range of objectives, including the preservation of amenities, the protection of historic, cultural and natural features, enhancement of the environment and conservation of resources. Since NEPA requires that the laws under which forests are managed "be interpreted and administered in accordance with the policies set forth in (the) Act", 42 USC § 4332, and, since the measures proposed in these regulations are reasonably designed to achieve that result, this promulgation by the Secretary of Agriculture is authorized. The Act of July 23, 1955, applies to mining claims located after the date of the Act and gives additional authority to the Secretary. 30 USC § 621 (b) directs the Secretary to manage and dispose of vegetative resources of such mining claims and to manage the other surface resources thereof (except mineral deposits). This language indicates that regulations may properly require the protection of the reserved public property. The proposed regulations are reasonably designed to attain that end. Finally, the Multiple Use-Sustained Yield Act of 1960, 16 USC § 528-531, directs the Secretary to develop and administer renewable natural resources on the national forests for "recreation, range, timber, watershed, wildlife and fish purposes," the realization of which reasonably requires measures such as the proposed regulations.

2. *Restoration Measures.*—While some people might feel that the restoration measures of the proposed regulations are impractical, The Wilderness Society strongly believes there is no good reason why operators should not repair damages they inflict on public lands.

3. *Small Mining Operators.*—In our opinion the proposed regulations would not put the small miner out of business by changing the Mining Law of 1872. Legislation to change the 1872 law is now pending in the Congress, which is the *only* way it can be changed. Meanwhile, these regulations would actually protect the small operator since they do not change his lawful right to explore and produce—they merely provide protective measures to the land while he is doing so and regulates the methods by which he may operate in order to protect the public land. Thus, they strengthen his responsibilities as a citizen in assuring his right to operate but in a manner which would protect the public's land.

4. *Restoration and Rehabilitation.*—The proposed Rules would require that persons conducting mining operations restore and rehabilitate areas they disturb. This provision is novel but it is fully justified by the statutes. Mining claimants, who are working claims but who have not yet made a discovery (in the technical sense), or who yet made a discovery (in the technical sense), or who are merely prospecting for minerals, have no rights against the United States. They have no right to occupy forest lands except by sufferance of the sovereign. In the past such operations by private persons have damaged lands severely. When their quests have proved fruitless such persons have usually departed, leaving the wreckage behind for nature or the Government to repair. The proposed regulations would require operators to reclaim and rehabilitate. Since it would often be difficult or impossible for the Government to find those responsible for such damage, and since recovery of damages from such persons would be uncertain, it is reasonable to require the posting of bonds as security for their obligation to replace or restore public property destroyed or damaged.

In summary, Mr. Chairman, The Wilderness Society appears here today in

strong support of the proposed regulations of the Forest Service, with minor modifications, relative to mining activities in the National Forests. We believe the regulations to be responsible, prudent, legal and within the frame work of the "multiple-use concept" we hear so much about these days.

We further suggest that the Committee consider striking the archaic 1872 Mining Law from the books as soon as possible and in its place enact a mineral leasing system for the public lands in tune with the times. Then, perhaps, the mining industry could get on with its function of developing minerals for the Nation while at the same time assuring the broad public interest in protecting the public land base would be preserved.

Thank you for the opportunity to appear here today.

Mr. ALDERSON. The Wilderness Society has urged and will continue to urge the immediate adoption of the proposed regulations. The other uses of the national forests are all covered by extensive detailed supervision by the Forest Service—logging, grazing, recreation, and the rest. Detailed regulations were issued last year on off-road vehicle use in the national forests. Water supply, you name it—the Forest Service is supervising all these. They exert direct authority over these activities. Only mining is free of this kind of regulation.

We suggest the following minor, yet important, modifications to the proposed mining operations. First, paragraph 293.14(a) should specify that, "Effective at midnight, December 31, 1983, and subject to valid existing rights, minerals within the national forest wilderness areas are withdrawn from the operation of the mining and mineral leasing laws." This would merely put into the regulations what was already prescribed in the Wilderness Act in 1964.

The American Mining Congress objected to this section of the regulations, but scrutinizing that from our standpoint and from our experience with wilderness we have to recognize that unfortunately there is nothing here that prohibits mining in wilderness.

We recognize that the Wilderness Act allows mining to continue in the Forest Service wilderness areas.

That section of the regulations carries out section 4(d)(3) of the Wilderness Act, which gave the Forest Service a very long paragraph full of directions on how to handle mining in wilderness areas. That is all spelled out in great detail in the Wilderness Act. We feel this paragraph of the regulations merely implements that section of the Wilderness Act.

Paragraph 252.16 permits appeals only by mining operators. We believe that the provisions of the Administrative Procedure Act would permit appeals by others, including groups like the Wilderness Society and many citizen groups in each State. In other words, the activities permitted here are not the concern of only the miners; they are the concern of the citizens of each State. Those citizens should be able to challenge these decisions on the same basis as the miners could.

Third, while we applaud the bonding requirements of paragraph 252.15, we feel that in those situations where small prospectors are using limited tools, with limited potential damage of the land, such bonding requirements might be set lower. The bonding requirements we feel are important, but they should be keyed to the type of mining or prospecting operation that is being considered.

There is a fourth suggestion—to strengthen the references to public values and wilderness in other sections of the regulations.

The Wilderness Society would also like to make the following points, general in nature, that express the reasoning behind our strong support for these regulations. First, we believe that there is a strong legal basis for these proposed rules in statute. The Organic Act of the National Forests is one of those basic acts upon which these are based. The decision in the *United States v. Grimaud* also confirm this principle with respect to regulation of livestock grazing. That decision by the courts is directly pertinent to the statutory basis for these mining regulations. The National Environmental Policy Act also lends a basis for these regulations. The act of July 23, 1955, similarly is part of the basis. Finally, the Multiple Use-Sustained Yield Act of 1960.

The Forest Service statement the other day went into these in great detail. We merely touch on them, because we believe with the Forest Service that there is ample basis in statute for these regulations.

Going on to the point about small mining operators, since this has been one of the main objections that have been raised by mining witnesses. In our opinion, the proposed regulations would not put the small miner out of business by changing the mining law of 1872, as mining witnesses have argued.

Legislation to change the 1872 law is now pending in the Congress, which is the only way it can be changed. Meanwhile, these regulations actually protect the small operator, since they do not change his lawful right to explore and produce. They merely provide protective measures to the land while he is doing so and regulate the methods by which he may operate in order to protect the public land.

Thus, they strengthen his responsibilities as a citizen, assuring his right to operate, but in a manner which will protect the public's land.

One word of concern on this point, Mr. Chairman—the small mining operator, while he has minimal impact on the land, is one of the focal points of concern because his operations here are being used as an excuse to challenge these whole proposed regulations. We think by scaling the bonding requirements to the scale of the prospecting operation that those complaints can be dealt with. Responsible mining that is responsive to the public interest and is part of a multiple-use stewardship process is what we seek.

Turning to the question of restoration and rehabilitation, the proposed rules would require that persons conducting mining operations restore and rehabilitate areas they disturb. This provision is novel, but it is fully justified by the statutes. Mining claimants who are working claims but have not yet made a discovery in the technical sense, or who are merely prospecting for minerals, have no rights against the United States. They have no right to occupy forest lands, except by sufferance of the sovereign. In the past such operations by private persons have damaged lands severely. When their quests have proved fruitless, such persons have usually departed, leaving the wreckage behind for nature or the Government to repair.

The proposed regulations would require operators to reclaim and rehabilitate. Since it would often be difficult or impossible for the Government to find those responsible for such damage and since recovery of damages from such persons would be uncertain, it is reasonable to require the posting of bond as security for their obligation to replace or restore public property destroyed or damaged.

As we see it, restoration of lands disturbed by mining is basic to the concept of stewardship of our public lands.

In summary, Mr. Chairman, the Wilderness Society strongly supports the proposed regulations of the Forest Service with minor modification. We believe that the regulations are responsible, prudent, legal, and within the framework of the multiple use concept that we hear so much about these days.

For too long miners have been a law unto themselves. These regulations would be one step toward bringing them in under the multiple-use concept where they belong, on the same basis as the other uses of the public lands.

We further suggest that the committee strike the archaic 1872 Mining Law from the books as soon as possible, and in its place enact a mineral leasing system for the public lands in tune with the times. Then perhaps the mining industry could get on with its function of developing minerals for the Nation while at the same time assuring that the broad public interest in protecting the public land base would be preserved.

Thank you for the opportunity to appear here today.

Mr. Chairman, before closing, Mr. Evans had asked me to submit his statement. Since you already put it in, I did want to indicate, as he requested, that the Sierra Club is also strongly supporting these regulations. They also feel that the bonding requirement could be scaled to the size of the operation, as we suggested.

Mr. MELCHER. Thank you very much. I appreciate your testimony. I am sure that we are going to want to look very closely as to what is being proposed here as regarding wilderness. I appreciate the fact that both the Wilderness Society and the Sierra Club have indicated that the \$2,000 bond, if there is going to be a bond, it should be for the operation itself rather than be prohibited on the miner or prospector.

The gentleman from Guam.

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

I would join the chairman in commending you for the fine presentation that you made this morning, and particularly I am glad that you pointed out the statutory basis upon which the agency has authorized the promulgation of these rules and regulations.

Thank you, Mr. Chairman.

Mr. MELCHER. The gentleman from Alaska.

Mr. YOUNG. Mr. Chairman, I would have been deeply surprised if my good friend had not supported the regulations. Of course, you know my feelings on it, and I understand your goal. As I stated before today, I think that your association in their enthusiasm, and truly you have to admit, have locked up areas that have to be eventually utilized for the benefit of this Nation, are doing us a disservice.

I can state right now we have the highest unemployment rate because of the energy crisis. You may say this played no part. But I have seen the Environmental Protection Act passed to protect the environment misused. It is misused by delaying lawsuits.

The agency has spent \$13 million in defending some of their log sales. They have won every one but one under the National Environmental Protection Act.

I can only say, Mr. Chairman, and to you that your goals are admirable and I support them. Your tactics I think are deplorable; and I think that the passing of these regulations will again give, not because of the Forest Department, but because of the people that are

so fanatically dedicated to not having systematically planned development but no development at all, would be in a position again of truly not being able to supply to the people of the United States needed minerals that we have to have.

We have said before in the energy crisis—we said 15 years ago it was coming. Nobody believed it. We have told people that we were going to be in a crisis. Nobody believed us.

Are you going to suggest that we pass the Mineral Leasing Act? I see the Mineral Leasing Act, very frankly, possibly producing minerals but with a small or very large international mining operation. And it deprives the individual that has just as much right under our system as anybody else to participate in the Earth's rich resources.

I understand your goals. I wish, though, that your groups would look at the big picture and try to have clean air, clean water, and the beauty, but do not deprive the rest of the people of the United States from a livelihood.

That is all I have to say.

Mr. ALDERSON. Mr. Young, we appreciate your agreement with our goals, but to turn to the question of the National Environmental Policy Act and what we have said here this morning and on many other occasions before this committee and others, what we are seeking is a process that will allow us to make some rational decisions on these issues.

We are not against progress. We are for progress that is planned on a rational basis.

The National Environmental Policy Act was enacted to provide consideration of environment impact. For example, on the Alaskan pipeline question, if the Interior Department had taken that act seriously in 1970 and had carried it out as Congress had intended, the pipeline could have gotten started within the first year. The only reason for the 3 years that it took—

Mr. YOUNG. That is not true. There would have been a lawsuit. The laws—you know this—the suits would have gone on. That is what I am saying—the misuse of the suits.

As you well know, we have the pulp mill in Juneau, Alaska today. That suit is going to be won. It has taken 5 years to win it. In the meantime, I consider 5 years a long time in future growth. That is the type of abuse under the act that I am talking about. As long as you continue that abuse, eventually you are going to get yourself in trouble.

Mr. ALDERSON. We do not consider it abuse. On the Alaskan pipeline question, the only basis for the lawsuits and the only basis for the injunctions that held the project up were the failure of the Department to comply with Environmental Policy Act, and their failure to comply with the Mineral Leasing Act.

What we are trying to do is to get the Government to live up to these laws that have been enacted already.

Mr. MELCHER. Thank you very much, George. Your testimony has been helpful.

Our next witnesses are Mr. and Mrs. Knute Kirkberg, representing the Montana Mining Association, and Mrs. Kirkberg, who is the director of the Sanders County Chapter of the Montana Mining Association.

Mr. and Mrs. Kirkberg, we welcome you to the committee this morning. We understand you will appear jointly.

STATEMENT OF KNUTE KIRKBERG, MONTANA MINING ASSOCIATION AND DELORES KIRKBERG, DIRECTOR OF THE SANDERS COUNTY CHAPTER, MONTANA MINING ASSOCIATION

Mr. KIRKBERG. Mr. Melcher and members of the committee, my name is Knute Kirkberg, speaking on behalf of the Montana Mining Association. Our association represents approximately 600 members interested in mining in Montana. We presently have 18 corporate members, although the bulk of our membership are prospectors and small miners. In 1971, the miners came out of the hills, determined to protect themselves from the rush of unreasonable and restrictive environmental legislation being promoted by a religion that did not understand mining or care for our country's mineral needs. Mining chapters were organized on a county basis and a State association coordinated their activities. Today, we have 18 chapters throughout the State, represented by our State association headquartered in Helena, the State capital.

I am a miner and operator, also a prospector, contractor, and promoter. As a lifelong resident of Montana, my activities have included ranching, logging, real estate, and politics. I am proud to have a degree in mining engineering from Montana College of Mineral Science and Technology. With this background, our association felt I was highly qualified to present their views.

As a result of many individual efforts, our association has developed a fine liaison with State agencies working to promote a healthy mining climate in Montana. In addition, we have induced a good line of communication from our local members to their elected State representatives. We are noticeably pleased with this success to be able to express our view to the State of Montana, but the Forest Service is another story.

The U.S. Forest Service has long exhibited a hostile, anti-mining attitude to prospecting and mining in our area, regardless of the 1970 Mineral Policies Act which directs them to help foster and promote a healthy mineral industry for our Nation. We are aware of the efforts of the Forest Service to change the existing mining laws and we were appalled at their effort to do this in a most dictatorial manner when the proposed rules were published in the Federal Register.

The Montana Mining Association is dedicated to the preservation of all citizens' rights to the natural resources, to be informed and to inform the public about pending mining legislation, to assist the citizen in the search for and development of natural resources in a reasonable and logical manner and promote the belief that mining and environmental protection can be compatible.

We believe, if these rules are enacted, the true prospector and operator of small mines will be completely eliminated from the national forest. There are two basic sources of wealth, mineral and agricultural. Without these, nothing else will exist. The mineral picture is bleak because our country must import a large portion of our mineral requirements. Contrary to popular belief, ore bodies are hard to find and statistics suggest the odds exceed 10,000 to 1 in finding a good orebody. In this effort the miners of Montana have used less land than Interstate 90 covers, crossing the State of Montana. Now we are facing an impending mineral crisis. Why in times of crisis does the Forest Serv-

ice come out with rules and regulations to eliminate the true and dedicated prospectors while allowing only the wealthy on our national forest? These rules, if approved, will be an infringement on every citizen's right to search for minerals on public lands.

Specifically, we find these rules written entirely in favor of the environmentalist and not in favor of fostering reasonable mineral development. The definitions are ambiguous and vague. For example, what is meant by significant disturbance? Armed with the power of these rules and loose interpretation, forest rangers become dictators and will keep mineral searchers from the land.

How can one submit a plan of operations until he knows what he has? In the development of a prospect, plans cannot be made until the results of digging or a drill hole can be interpreted. In addition, many prospectors do not have the financial resources and the necessary skill to prepare the required plans.

As we view the 90-day delay provisions, it infringes on a short prospecting season in Montana. In the high country this could include the entire season. This delay is unreasonable and unnecessary.

Who is going to determine what information is made available to the public? We can see the prospector making a valuable discovery, trying to comply with the law and then have the Forest Service release the information to a land or mine speculator who rushes out after paying the bond and takes over the prospector's discovery. This is not democratic or is it the intent of mining law.

The appeal procedure in the proposed rules is ridiculous. The appeals going up the line in the same organization always favors the agency. Why should we be forced to appeal to a pristine environmentally oriented forest ranger? We have gone the full circle, the Forest Service becomes the legislator, the judge, and the jury.

The bonding provision has probably excited our members the most. They know when it comes time to put up a quarter or more of their yearly income in a high-risk venture, they cannot in all good conscience do this and deprive their families. The prospector already knows how expensive it is to prospect. If any section of these rules is the clincher for the elimination of the prospector, the bond is it.

We have received virtually a unanimous rejection from our members of these rules as proposed by the U.S. Forest Service. If you legislators continue to pass enabling acts, transferring your legislative authority to various bureaus, the people will become dubious for the need of elected representatives.

The Forest Service is exhibiting the characteristic of being overbearing and giving no consideration to the rights of the citizen. It has not asked or solicited any comment before drafting the proposed rules from our members or this association on a problem only they feel is here. We believe the Forest Service is totally unequipped to administer mineral lands under their jurisdiction and are trying to administer these lands with incompetent people. It is widely known, the Forest Service are experts on bugs and trees. However, today they are even making a mess of forest management and we are sure they will make a mess of the mineral management they do not appreciate.

We can only totally oppose these rules and regulations and request getting the Department of Agriculture and the U.S. Forest Service out of the mineral management business. If the Nation is to avoid a

mineral crisis, Congress must act to see that these mineral lands are administered by competent people.

May we express our thanks to this committee for hearing our views. We particularly wish to thank Mr. John Melcher of Montana.

MR. MELCHER. Thank you very much, Mr. Kirkberg.

Mrs. Kirkberg, why do you not proceed, and we will question you together.

Mrs. KIRKBERG. Thank you, sir.

Mr. Chairman and committee members, my name is Delores Kirkberg, director, Sanders County Chapter, Montana Mining Association. I was raised on a ranch and farm in South Dakota. During my lifetime, I have been a sheepherder, telephone operator, an assistant to an optometrist, deputy sheriff, secretary, hard rock miner, and prospector. Montana has been home since 1964. It is with gratitude and pride that I appear here today. Gratitude to my people that they have once again dug deep into their pockets to protect their beliefs and pride because they have chosen me to represent them.

We miners are real people, hard working, homebuilding, voting, tax-paying, responsible citizens throughout Montana.

My people are frustrated, upset, and angry in that agencies and bureaus of our Government are not helping us and the increasing bureau trend using rules and regulations are denying citizens their rights under Federal mining law. In view of the present misuse of laws, rules, and regulations by the U.S. Forest Service, it is difficult to understand how more power can be given them. Our chapter members have had the experience of seven different directives by seven different Lolo National Forest Service personnel on one situation. Competent legal opinion has advised us to obtain all directives in writing and such directives to be signed by the issuing person and stating his authority.

Today we have members who are denied attempts to work at their livelihood, while awaiting special use permits approval by the Forest Service. This is pretty tough to take with the U.S. Forest Service personnel continually drawing their salary.

We are faced with the difficult problem that the Federal Government has seen fit to place administration of minerals on public lands into the hands of people who are incompetent in mineral matters. It would be equally foolish if forest management were thrust upon the U.S. Geological Survey.

The 1872 mining law is most unique in that it allowed for the first time in history of all mankind, that all citizens, rich or poor, were allowed ownership of the minerals they could discover. This provided one incentive which resulted in this advanced Nation.

In past history and many countries today minerals and land has been and is controlled, claimed, or owned by churches, kings, dictators, governments, and families where only the privileged are allowed to indulge in mineral development. It is evident that the proposed rules and regulations would take this right of mineral ownership away from the citizen of the United States. Is the future of mining to be regulated so only the wealthy can participate? Remember, we live here, too.

We live here and love our State. Montana is blessed with many areas of scenic beauty and we are protective of that beauty.

The Forest Service under the proposed rules and regulations will dictate where, when, and how to prospect and mine. It's scary. The

where points up and uneducated thought. Mineral deposits do not occur where we want; mineral deposits occur where nature puts them. The when is our daily livelihood, it is bread and butter on our table, it puts a roof over our head, heats our homes, and pays our taxes. The Minerals Policy Act of 1970 pointed up the minerals crisis and the upcoming minerals shortage for our United States. When is when? The how—who determines the how? Nonexperts or qualified people?

The U.S. Forest Service is getting its "d's" and "s's" mixed up.

This is a democratic, not a socialistic nation.

Thank you.

Mr. MELCHER. Thank you very much, Mrs. Kirkberg.

I appreciate the appearance of both of you here today very much. You bring before us some very definite testimony. This is the type of testimony that the committee needs. I note specifically Mr. Kirkberg. You are talking about definitions. You are making your complaint there known, that the definition in the regulations are ambiguous and vague, and I agree that that is a very dangerous procedure.

You need to know, like other miners and prospectors need to know just what is being required, and suggested by the regulations when enacted. It is definitely pretty hard to determine that on the surface right now.

You also make a point on the plan of operations, how you know what the plan of operations is going to be until you know what you have.

The 90-day provision, I believe you are the first one that mentioned that. No, I do believe we received that criticism also from Mr. Dempsey.

I am particularly intrigued by the point you make on how you make information available to the public. I can see the dilemma that a small prospector might find himself in, if his find is going to be announced to everybody, and then he loses the benefit from that find.

The criticism that you have of the appeal procedure certainly must be reviewed by this committee. I would call your attention to the fact, though, that the legal basis for the regulation as being cited by the Forest Service and as agreed to by others, I do not say all, but agreed to by many, is the Organic Act of 1897. However, as much as the seniority system is invoked in this Congress, there is nobody around here that had anything to do with the act of 1897.

I want to call your attention to the paragraph in your testimony where you state that if the Congressmen are going to continue to pass enabling acts such as this, you are going to turn us out to pasture. It is too late now. Our forefathers should have been talking to the Congress in 1897 or prior to that time about the Organic Act.

Whether or not the basis of the Organic Act of 1897 can be used as the basis for writing these regulations will be scrutinized by committee counsel. I think Mr. Dempsey made the point that it cannot be denied that the surface management of the lands in the Forest Service definitely is a responsibility of the Forest Service in that as mining affects the surface lands, they have some responsibility as far as exploration. They do have some responsibility.

I am well aware that the Organic Act says that nothing in it, and subsequent legislation, guiding statutory legislation guiding the Forest Service also stipulates that it would not interfere with mining

activities, but there is, by necessity, an overlap there, and when exploration does disturb the surface, as it was, the Forest Service is going to have some responsibility.

But we will, I can assure you, have the committee counsel go over this very carefully to determine where the legal boundary, statutory boundaries for the Forest Service lie, what are the limitations, and review the regulations in that light.

We have a great concern, and I know all of us on this committee have a great concern of various Federal agencies doing by regulation what is not called for by congressional direction.

We see it all too often in many Federal agencies, not just the Forest Service, but many others. But the point here that you make is well taken, and deserves our scrutiny. That is the very purpose of these oversight hearings, to have our input into the regulations before they are adopted.

We have received assurance from Chief McGuire that they have no intentions of finalizing the regulations until this committee has had a chance for a thorough review following these hearings.

So we would anticipate that many of the points that you and others have raised will be very much in the limelight as far as this committee is concerned, as we review the facts and make our own determinations and our own recommendations to the Forest Service.

The gentleman from Guam?

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

I want to thank Mr. and Mrs. Kirkberg for their fine testimony. This is the first instance that I have seen a man and wife appearing as witnesses before a committee, and your testimony rings very strongly in myself, particularly when you point out that the agency is the legislature, the judge, and jury. They are almost dictatorial.

You know, for almost half a century we had to live under this kind of system under the American Government, where the military in Guam became the administrator, the legislator, and the judge. There was nothing we could do. We had no appeal.

I recognize, of course, the bureaucratic processes, but at the same time we must recognize that these people are, performing what they feel, what they think is their responsibility as they understand the law. It also provides a system that they give the advice in order for us to appeal those laws that are not in our best interests.

I am not fully aware of mining, prospecting, and so on, coming from an island where mining is unknown. We had mining when the Japanese occupied Guam. They mined manganese, but I do not know anything about mining, but I do have a great feeling for your position in Montana where the people resort to mining as a form of livelihood. You have lived there all your life and know your home State and its condition. The mining laws, as the chairman pointed out, have been enacted since 1872, and I do believe that it should be reassessed and changed as our lives change to conform to existing conditions.

I feel that we must abide with the assumptions that the agency has to perform until such time as the law is changed. I am in full sympathy with your position, but I also feel that for our system to work, we must work within the system. That is what I feel.

Coming from an area where I have not fully enjoyed all these democratic principles, I am beginning to realize and appreciate that more as I participate in the decisionmaking process.

So, like your chairman, our chairman, I am fully sympathetic with your views and your position.

Thank you, Mr. Chairman.

Mr. MELCHER. The gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman.

I want to thank both of you for a very fine testimony.

Just a small comment. The Mining Law of 1897 has been referred to and apparently mining for many, many years has been able to function very adequately under that law. We also have had forest lands for many, many years, and it appears to me that we have a very energetic Forest Service attorney because after 77 years, they decided that they had the power to do something.

This disturbs me a little bit. It has been 77 years now and it has been decided that it is the—there is the power in the act. The chairman has said we will study both these acts to see if they do have the power.

Again, do have a good summer in your operation. I know your upcoming time will be a busy time. Your climate, I think, is very similar to ours.

Thank you, Mr. Chairman.

Mr. MELCHER. Thank you very much, Mr. and Mrs. Kirkberg.

Mr. KIRKBERG. Mr. Chairman, may I make one comment?

Mr. MELCHER. Certainly.

Mr. KIRKBERG. You actually hit upon this view, that people are becoming dubious of the need of elected representatives.

Let me point out that these expressions in this testimony, they have my personality in them, but I know so many miners in Montana, I have lived there all my life, and so many of these expressions that are presented here are not mine. They are the individuals, the people that come to me with these problems and tell me what their frustrations are, and this little bit comes from an old colleague of yours. Mr. Chairman, Mr. West Earns, who was a colleague in the Montana House of Representatives.

So I thought I would pass that along for your personal knowledge.

Mr. MELCHER. You may take back to my old friend West Earns that I realize the frustrations that he might have at times, but he is well aware of the system, and he, above all, in western Montana would know that the only real hope you have when you are dissatisfied with your bureaucracy, whether it be State or Federal, is your elected representatives.

So any remark West might have had about wondering whether or not you need an elective representative I would not take very seriously because he knows as I know, when you cannot get along with what the bureaucracy has decided, your only way of handling it is electing somebody that will do something with the bureaucracy, electing somebody in the executive branch.

Mr. WON PAT. Mr. Chairman?

Mr. MELCHER. The gentleman from Guam.

Mr. WON PAT. I would just like to comment on that. Yes, we have read about Congress and the elected representatives. Also I was addressing this question just the other day. They raised the same question

about Congress. It was that Congress had a very low image. It is a fact that many people do not know, of course, how Congress operates, and that there are 435 Representatives in Congress with divergent views, representing different interests and views. Until they understand how these varied views and varied constituents interests are reconciled in a compromise, then they can appreciate, and thus perhaps get a better image of the Members of Congress.

Mrs. KIRKBERG. May I make a comment?

Your words, I felt at home with your words because our problem in mining with the Forest Service is because they do not know how mining operates, and it is very frustrating and we are in the same boat.

Thank you.

Mr. MELCHER. Thank you both very much.

Our next witness is Mr. Oliver Houck of the National Wildlife Federation.

STATEMENT OF OLIVER HOUCK, NATIONAL WILDLIFE FEDERATION

Mr. HOUCK. I would like to summarize my testimony.

Mr. MELCHER. Without objection, Mr. Houck's entire testimony will be made part of the record at this point.

Hearing no objection, so ordered.

[The prepared statement of Mr. Houck follows:]

STATEMENT OF NATIONAL WILDLIFE FEDERATION

The National Wildlife Federation fully supports the Department of Agriculture's proposal to regulate mining activities under the mining laws of 1872 which take place on public lands on the national forest system. We identify below the Federation's interest in these regulations, the need for the regulations and the duty of the Forest Service to issue them, and specific areas in which the regulations should be strengthened to provide effective management for our nation's forest resources.

1. The Federation's interest in the regulations

The National Wildlife Federation is a national organization dedicated to the conservation, wise use and perpetuation of the natural resources of North America. With over three million members and supporters in the fifty United States, Canada, and Virgin Islands, Guam and Puerto Rico, the Federation is the largest conservation organization in the world. The Federation and its members have long urged regulation of mining activities in the national forests. When draft proposed regulations first appeared on March 23, 1971, the Federation submitted detailed comments one week later. On August 9, 1971 the Federation supplemented its comments with an analysis of the requirements for a performance bond in an effective regulatory program. In 1972 and 1973 Federation staff made fact-finding visits to Forest Service headquarters in Washington, D.C. and to each forest region to become fully informed on the extent of mining activity and the need for regulations. During the week of February 25, 1974, the Federation participated as an observer in the Forest Service workshop on its proposed regulations at Salt Lake City, Utah. The observations and comments provided below reflect information gathered by Federation staff over the last three years in researching Forest Service regulation of mining activity. They also reflect the experience and views of Federation members, some of whom are or have been members of the United States Forest Service, others of whom are and have been members of the mining industry.

2. The need for regulation and the duty to regulate

The need for these regulations can be most amply demonstrated by the fact that there are an estimated 1,378,000 mining claims on national forest lands. Of these claims, approximately 138,000 are thought by Forest Service headquarters

to be currently active. Forest Service Region III in the southwest estimates 63,000 claims, of which 11,000 are currently active. Region II of the Rocky Mountains may have as many as 500,000 claims, of which perhaps 10,000 are presently active. The Intermountain Region IV has almost 10,000 new locations a year, with almost 100,000 active locations in the Forests under its jurisdiction. Region I to the north may have 175,000 claims on its lands, with active claims up to 40,000. The impreciseness of these data highlights the threshold problem with the present state of non-regulation. The Forest Service has really no idea how much mining activity is going on in the forest under its jurisdiction, beyond the fact that there is indeed a good deal of activity. If we were to summarize the ways in which this non-regulation frustrate effective Forest Service management, on the basis of our own observations and our conversations with Forest Service personnel in the field we would list:

1. Notice. At present there is no requirement that any prospective prospector or miner notify the Forest Service in advance of his entry or activity on forest lands, with the exception of certain special use permits. This means that the way the Forest Service generally finds out about mining activity is after the trees are down or the trench is cut, after the harm has been done. The Forest Service cannot manage resources under these circumstances; it can only react, usually too late to repair the damage done.

2. Inventory. Management by definition presumes knowing what is going on. Unless the Forest Service were to examine the county records of every county of the western states for mining claims dating back decades, it would have no way of knowing who claims what on Forest Service lands.

3. Uniformity. Without Forest Service regulations each Region, and more often each Forest or District, is forced to cope with mining activities on an *ad hoc* basis. The resulting attempts at regulation and enforcement are quite uneven. In addition, the regulation is often tentative, as there is understandably some uncertainty about which enforcement efforts will be supported in Washington.

4. Effect on Miners. Prospective miners, even those who would like to comply with reasonable requirements, cannot know what they are required to do. Some prospective miners are encouraged to believe that since the Forest Service has not undertaken to regulate their activities, the Forest Service has "no right" to regulate.

5. Piecemeal regulations. The best of the existing regulation is handled on a piecemeal basis not only among Regions and Forests, but also from activity to activity. Surface use is regulated one way, access in another. Nothing puts the three essential steps together for miners or for resource managers—notice, access, and surface use.

The results of the current failure to regulate mining activities are apparent. They include bull-dozed roads through areas designated as "roadless areas", long trenches at timber line in proposed wilderness areas, scars in the tundra which will not heal for 100 years, land slides and erosion, sedimentation and stream pollution, slashed timber, fires, acid wastes, abandoned mine shafts, and cabins, shacks and unlawful occupancies by a variety of people who want a free ride on the public land through spurious mining claims.

These regulatory gaps and their unfortunate results on our resources can be cured under existing statutory authority. The Secretary of Agriculture is mandated to protect forest lands under his jurisdiction, 16 U.S.C. § 551. This duty is supreme; access, surface use, and water use by miners are conditioned upon compliance with regulations of the Secretary, 16 U.S.C. §§ 478, 481. Subsequent legislation has only reinforced the Secretary's authority to act. 30 U.S.C. § 612, 16 U.S.C. § 528 *et seq.*, 42 U.S.C. § 4321 *et seq.* Under these circumstances, the Secretary's failure to act is unlawful. The proposed regulations are not only desirable, they are required. Our comments below are offered with the objective of making the required regulations more effective.

3. Comments on the proposed regulations

§ 252.5(c).—This section appears to exempt timber "severance or removal for clearance" from sound principles of forest management or the specifications of a plan of operations. That the operator has a right to sever and remove timber reasonably incident to his mining operations is granted. But the Secretary of Agriculture has the over-riding duty to protect the public forest. The Secretary has the same authority, and duty, to regulate timber severance or removal for clearance that he has to regulate access or any other aspect of mining activity. It is apparent that if the Secretary fails to regulate timber severance or removal for clearance he is gratuitously impairing his own ability to protect the public

forests. We recommend that the phrase "other than severance or removal for clearance" be eliminated from this section.

§ 252.6.—The intent of this section, a plan of operation, is the heart of meaningful regulation. Without such a plan the Secretary cannot manage the public forests, he can only react to harm. The section as presently structured, however, contains several serious problems.

First, the Forest Service's biggest single problem in managing the forests in relationship to mining activity at the present time is its inability to know what activity is taking place. In many areas of the national forests, and in almost all potential wilderness areas, once the harm is done it is as a practical matter too late to remedy. This so, the first requirement in any attempt to regulate mining activity should be to require notice from people who are coming onto the forests to mine. The plan of operations is one way to obtain notice, but if exceptions are provided, especially exceptions as ambiguous as those set forth here, anyone can claim he thought he was excepted. The notice will fail and the Forest Service will be back in its old, indefensible posture of reacting to harm already done and impossible to repair.

We recommend, therefore, that this section require anyone entering the national forests to conduct mining activities to notify the Forest Service of this fact. This notice, by itself, would not require a plan of operations. It would, however, allow the Forest Service to determine from the outset whether a plan of operations were required or whether the proposed activity fit within one of the exceptions provided.

There is a second problem with the scope of the exception (3) which is phrased in terms of "significant surface resource disturbance" and "reasonable amount of mineral deposit." Some attempt must be made to define these terms in the regulations or they will be void for vagueness. One method would be a physical minimum requirement for disturbance, perhaps one-quarter acre, and a reasonable amount of mineral deposit, perhaps fifty kg. Another method would be to list factors which would determine the significance of the disturbance or reasonableness of the amount. Any such definition should include aesthetic impacts, and the statement that any doubts in favor of the significance of the disturbance or reasonableness of the amount will be resolved in favor of requiring a plan of operations.

A third problem arises in connection with § 252.6(b). This provision makes the regulations applicable to all persons conducting operations as of the date these regulations become effective. The provision is absolutely essential for the Forest Service to get a reading, in many forests for the first time, on the extent of the 1872 mining activities taking place. Once again however notice is the key. Anyone presently conducting operations can avoid submitting a plan of operation simply by claiming that the operation will not cause "significant forest resource disturbance" or removal of more than a "reasonable amount" of mineral. The Forest Service should require notice in all cases, and subsequently make its own decision on whether or not a plan of operation is required.

We recommend, therefore, that notice be required for all activities, and that exception (3) be defined with sufficient precision to be an effective component of the regulations.

§ 252.6(f).—The provisions for an environmental impact statement pursuant to the National Environmental Policy Act of 1969 are of course required by law. This section should make clear that a statement will be prepared if the activity "may" significantly affect the environment, and that the determination whether an environmental statement will or will not be prepared shall be made public as provided in § 252.8.

§ 252.7(d).—In this provision for review of operating plans the Forest Service should arrange not only for consultation with the appropriate agencies of the Department of the Interior but also for consultation with other appropriate state and federal agencies within their areas of expertise.

§ 252.8.—This section concerning availability of information to the public is surprisingly one of the most deficient in the proposed regulatory scheme. We say "surprisingly" because the Forest Service should recognize that concerned members of the public are its strongest allies in implementing its authority to protect the public forests. There is no reason not to take the few, simple actions which could fully inform the public of proposed mining activities and allow for public contribution to the Forest Service's decision.

The established policy of the Department of Agriculture is to "expand and, wherever possible, improve procedures for providing information to the public

and for obtaining and considering local, regional and national views on matters relating to the environment. It is an objective of the Department to involve the public in developing its policies and in formulating and implementing its programs." Secretary of Agriculture Memorandum 1995, Supplement 5, December 1, 1970. In a similar vein the President's Executive Order 11514 (March 5, 1970), directed the heads of all federal agencies, including the Secretary of Agriculture, to: develop procedures to ensure the fullest practical provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, wherever appropriate, provisions for public hearings, and shall provide the public with relevant information . . .

With this policy as background, § 252.8 provides only that some of the information submitted by a prospective operator will be available for examination at the office of the District Ranger. This limited provision is unnecessary and unwise. With almost no additional administrative burden, this regulation should provide that (1) a proposed plan of operation will be published in a newspaper of general circulation in the area in which the operation will be carried out, and (2) notice be mailed directly to local governments and organizations known to have an interest in the affected area. Notice should describe the proposed operation with sufficient specificity to allow intelligent comment and should provide for a period of time, no less than 14 days from the issuance of the notice, for the receipt of comments on the plan. The section should further provide that the actions of the Forest Supervisor in approving a plan, and determining that an environmental impact statement need or need not be prepared, should be noticed in similar fashion. Finally, provision should be made for public hearings on proposed activities which are controversial or which will have significant impact on forest resources. If these provisions are to be found in other Forest Service guidelines such as those implementing the National Environmental Policy Act, they should be specifically referenced.

This provision is also deficient in limiting information available to the public. While there is every reason to protect commercial secrets, there is not reason to withhold from the public information on the geology of the public lands and the method by which the lands may be disturbed. The forests are public property. Language should be more carefully fashioned to provide this information to the public and still protect the legitimate commercial secrets of operators.

We recommend, therefore, that this section be substantially supplemented to include the provisions for public notice and contribution indicated above, and to provide for fuller availability of information to the public concerning its land and the proposed mining activity.

§ 252.9.—Enforcement is the backbone of any regulatory scheme. If regulations fail to provide for enforcement they become a statement of good intentions for well-intentioned people. This proposed regulation provides for a "notice of non-compliance" and for possible "suspension of operations." For an operator who has posted adequate bond, the provision may suffice. But a quite predictable problem will arise when a violator has leveled an area, without bothering to notify the Forest Service, and has no further interest in mineral exploration at that site. Suspension of his operations is a meaningless act. For these situations which have often occurred and can be expected to occur in the future, the Forest Service should make explicit reference in this section to its enforcement authority under 16 U.S.C. § 551.

§ 252.10.—The delineation of requirements for environmental protection would be adequate, but for the fact that each requirement has been watered down with the phrase "wherever practicable." Whatever this phrase is intended to mean, it will inevitably lead the Forest Service into difficult and time-consuming quibbles about what is "practicable" for a particular operator. The Secretary of Agriculture has the duty to protect the forests. This is not a duty to be exercised "wherever practicable." The phrase raises unnecessary problems, and accomplishes less than the Secretary is mandated to accomplish. We recommend that this phrase be deleted from all subsections of this section.

The provisions with regard to solid wastes, subsection (c) appear to be in conflict with the reclamation requirements of § 252.12. Insofar as building and equipment are concerned, there is no reason "to treat them to minimize . . . [their] . . . impact." They should be removed.

Subsection (h) provides in effect that these regulations will be diluted down to the weakest applicable state law. This provision should be either deleted or amended by the phrase "when they are as strict or stricter than those of the Forest Service."

Subsection (e) provides for protection of fisheries habitat. This section should be expanded to include wildlife habitat as well.

§ 252.12.—This provision deals with the very real problem of abandonment of mining operations and claims. The requirement of a yearly statement on the operation is an excellent one. The provision should also make clear that the filing of this statement does not, in and of itself, satisfy the operator's duty to restore the site. The Forest Supervisor may in a given case determine that, the yearly statement notwithstanding, abandonment has occurred.

§ 252.14.—This provision is at best unclear and at worst self-defeating. The biggest uncertainty is its relationship to a plan of operation. If the Forest Service is here separating access from the operation plan it is unraveling its program. In many instances the access will be the greatest element of environmental harm in a proposed mining activity. If so, the proposed access, alternatives to it, notice, and environmental review are all covered in previous sections.

We recommend, therefore, that this provision be combined with § 252.6. Access should be tied to a blanket requirement of notice of entry on forest lands with an intent to carry out mining activities under the 1872 mining laws. The regulatory scheme which best protects the forest and is easiest to administer is one which requires notice in the first instance of the proposed activity, be it access or any other mineral development activity, and then a determination of whether a plan of operations is necessary, and subsequent approval according to the provisions of that section.

§ 252.15.—Performance bonds are another essential ingredient of enforceable Forest Service mining regulations. Performance bonds are a routine aspect of federal resources management and are especially appropriate for the activities covered by these regulations. The National Wildlife Federation has researched this question extensively in a memorandum entitled "Mandatory Performance Bonds and Regulations Governing Mining on National Forest Lands" and submitted to the Forest Service on August 9, 1971. We incorporate the Memorandum herein by reference. It is as applicable today as it was two and one-half years ago.

§ 252.16.—This section dealing with appeals from decisions under these regulations is curiously focused on the rights of an aggrieved operator, to the exclusion of the aggrieved public. If an operator may be aggrieved by a decision on an operating plan, the public may be equally aggrieved by a decision which unnecessarily endangers forest resources. Sauce for the goose is sauce for the gander. If the operator may appeal, the same provisions should be applicable to members of the public who can show a direct interest adversely affected by the decision. In all cases of appeals, by an operator or by the public, public notice should be provided, as in § 252.8.

§ 252.17.—Provisions extending those regulations to national forest wilderness areas are appropriate and commendable. These provisions should be strengthened, however, in two ways. First, the provisions dealing with wilderness and requiring recognition of wilderness character should be extended to lands which are being studied or have been proposed for study for inclusion in the wilderness system. Several federal courts have imposed this requirement on the Forest Service in its regulation of timber activities; no less is required for mining activity.

Secondly, subsection 252.17(d) should require the removal of all structures and equipment no longer needed for mining purposes. "All reasonable measures" are not the question in these areas. If this is a wilderness area what you take in you take out—the hikers their candy bar wrappers and the miners their mining rigs.

§ 293.15.—This provision is generally sound, again with the exception of subsection (c) which provides that permits "may" call for the protection of national forest resources. "May" should read "will".

Mr. HOUCK. I would like to preface my very brief summary with a statement that the National Wildlife Federation is an organization of 3 million members in the United States, Guam, Puerto Rico, and Canada. That membership includes foresters and miners and wildlife managers and industry executives, and we have one common belief: that is, that resources must be used but they have got to be managed, and if there is anything that is clear before you in these regulations and in the background behind them, it is that for 70 years the locatable mineral activity on forest lands has not been managed.

To give you some idea of the basis for which we have for drawing that conclusion, I should say, just so you know how to weigh the testimony, that we have spent over 21½ years trying to get the facts behind this activity. We started out in Washington, D.C. You could have told us better than that. We did not know better, and having started here, we asked them how much activity is going on. How do you regulate it and what is the effect of your regulations? Do they work?

After a few days it was apparent to us that that information was not available in Washington, so we have gone to each region in the country, every one, and we have spent days in the regional offices and we have looked through their files to the extent that they are publicly available. We have looked at photographs of what is going on. We have looked at their regulations and their nonregulations. We have visited the forests; we have talked to their mineral examiners and the Forest Service personnel and we have drawn our conclusions, and they are really threefold.

First, these regulations are not only authorized by law, they are at this point required.

Second, that they are required by the facts of what is going on up there.

And third, that they are quite reasonable. In fact, they are probably too reasonable to work.

I have heard you discuss the law, and I have heard you indicate your willingness to explore that in greater depth, and I welcome it. Rather than give a legal brief at this time, I would like simply to state that one of the reasons that people have not realized that the 1897 act gave the authority that now for the first time is being exercised is that you cannot find that act anywhere. If you looked in the United States Code, which is the normal place that you would try to find it, it has been so fragmented, so divided, so hidden that no one can look at that code and find out what this act says.

If you go to the act itself you can see it is set up in a very reasonable scheme of regulation that says that the Secretary shall regulate excess timber use, water use, with regard to miners. If that act was not clear enough, the Surface Resources Act of 1955 put it right on the line. That is where it is.

So we feel the duty is there.

We would be happy to amplify this with any submissions or discussions that your committee would like to have. We feel at this stage that if the Forest Service did not exercise this duty in issuing regulations, a court could well require it to.

With regard to the facts, from what we have seen in the field in each region, we feel the facts require regulation. You ask why, and there are so many ways to give you the why. I will try to categorize them rather than giving you a parade of horrors on the kind of abuses that have taken place. But if you could give generic categories, I would say the first thing that is wrong out there now is that there is no notice. The Forest Service has no notice of what mining activity is taking place on its land. The only time that they find out is after something has happened, and if it has been harmful, they are in the position of an arresting officer. They are reacting to harm. They cannot prevent it. If management means anything, it means preventing, not trying to penalize or punish someone after the fact.

There is a second sort of general category of what's going wrong there. It is that the Forest Service has no idea, no inventory on the lands that it is supposed to be responsible for, so that when the White Clouds Recreation Area was proposed in the Scalas National Forest in Idaho, the Forest Service had to go to the county records all over the State trying to find who claimed what since 1900 and if those claims were active, and if those claims had been abandoned.

This is true with every forest in the country. They have no idea. They talk to you in terms of estimating millions of claims, 150,000 active claims. They could be wrong 50,000 either way. They do not know what is going on; unless they are told, unless there is a requirement that people tell them what they are doing, they never will know.

These are the people who are managing the public forest. So you can see the problems that this causes management, no notice, no inventory.

Let me throw out a third problem. There is no uniformity. Some regions do a fine job, and region I in Missoula, Mont. is the best. They do have regulations. These regulations are patterned very closely after region I. The reason that region I is able to have regulations is that Montana, to its great credit, also has a good State law on surface use. Other States do not have those laws.

Unless the Secretary implements his authority, let me tell you what the Forest Service cannot tell you, that is, that the people in the field have the feeling in trying to regulate this activity that they are all alone, and when they try to insist on some kind of reasonable compliance with resource management and a company gets tough with them, there is nothing to back them up. You can see what that does.

Now, there are other observations that I made in my comments. I will simply slough over them.

Right now, what regulation there is is very piecemeal surface use, access to Forest Service use to the extent that it is done at all. There is an attitude prevailing because nobody tried to regulate for a long time, no one can regulate me, I have a license, I am immune.

There is a third problem of enforcement. If you have ever looked at the ludicrous files on trying to evict any of the most egregious of trespassers, the most willful, the resource destroyers, the people who did not give a hoot, you would see that they would spend years in court. Denver has been, since 1971, trying to evict a group of trespassers after the famed Strawberry Festival. They still do not have them off. They have been to court two or three times. Unless there is an enforcement mechanism, there is no way to manage.

The results are very painfully apparent.

Again I urge you, before you make your conclusions, go to the forest, get their data, take a look at what is happening, get their photos. We will give you ours. And you will see roads in roadless areas. You will see assessment work, great bulldozer trenches in the tundra. Those trenches will not heal for a 100 years. There are other ways of doing that assessment work to satisfy the law.

We are not talking about preventing it. We are talking about doing it in a way that is consistent with resource management. That can be done.

You will see lots of other abuses, too. You will see abandonment. You will see roads leading to a pile of junk at the end of the trail, and

that is that. You have no idea, and the Forest Service has no idea whether that is still in operation or whether it is closed.

One thing is sure, the people have not bothered to take out what they took in.

If I had a final statement to make, it would simply be, Mr. Chairman, that these regulations are very reasonable, and they have the two ingredients that any regulation must have. They require some kind of an advance notice. They require some kind of planning in advance so that the Forest Service is not the traffic cop reacting with arrests. They are trying to manage in advance.

The second thing that the regulations have, they do not have any teeth, but they have one tooth. That is the performance bond, and if you had seen the alternatives to a performance bond and how they do not work, I think you would be much more of a mind that a bond is what is required. It is what is required when you live in an apartment and you try to move out, if you tear down the walls while you are going. It is required in many, many aspects of U.S. life. It should be required in this one as well.

In conclusion, if we had a conclusion that we could say in a single sentence, it would be, these regulations are far from perfect, but after 70 years of doing nothing, if regulations come out that require some kind of advance planning and require a bond, they are a darn good start. They deserve the support of every American. They have got the support of the 3 million of our members. They deserve the support of this Congress.

That is the end of my remarks.

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

If you have unanimous agreement of your 3 million members, I dare say it is the first time on any proposed set of regulations, and I will not hold my breath while we hear from the various organizations that comprise the National Wildlife Federation just as to what they want changed, or in perfect agreement with everything in there.

I think we will have a lot of comments. I think I will get from my own State of Montana just what they think is unreasonable in these regulations, from the Montana Wildlife Federation.

Mr. HOUCK. The Montana Wildlife Federation has made comments that are fully consistent with mine, since they have submitted them. I will submit them to the committee.

Mr. MELCHER. I would make a note for the record that I never found the membership of the Montana Wildlife Federation unanimous on anything as complex as a group of regulations as these. I do not mean an issue. I mean on points within a regulation. They will have varying viewpoints, I am sure, Mr. Houck.

Mr. HOUCK. Congressman, I would not tell you differently. I would tell you one thing. They all believe in management. They would all agree that that has not happened for 70 years.

Mr. MELCHER. I am going to agree with you on that. I think that is true.

But to indicate that these regulations should stand as they are and be completely agreed upon by 3 million members I think is a little far fetched.

Mr. HOUCK. I think the record will reflect exactly what I said with regard to the 3 million members.

Those 3 million members support management, and these regulations are management. Many of the individual associate members and affiliate member organizations of the federation have commented on these regulations. Everyone of those comments is in support of the regulations and consistent with the comments we have also provided.

That is my statement.

Mr. MELCHER. That is fine, Mr. Houck.

Your statement includes a point that you think the bonding requirement is fine, and I found great objection to the bonding requirement of \$2,000 from numerous Montanans, some of which belong to the Montana Wildlife Federation.

Mr. HOUCK. I do not think anywhere in our statement do we say \$2,000 is the written in stone immutable amount of bond.

What we say and what we have said in a very detailed memo on performance bonds that we have submitted to the Forest Service is a performance bond is required. If that principle is accepted, then we are just talking about the amount of money. I would agree with you that for some people and for some operations, \$2,000 may not be necessary.

Mr. MELCHER. I would hope you would agree with that.

We have already received the Sierra Club estimate of that.

Mr. HOUCK. I do not speak for them.

Mr. MELCHER. I know you do not. We also received the Wilderness Society assessment on that. They both point out that they think it ought to be geared to the size of the operation, and in fact, some prospectors certainly are not going to do any more damage if they are not using the tools that do damage than you or I would do if we were walking on the land for the enjoyment.

But that is splitting hairs, Mr. Houck.

I have some more important comments on more important points that I would like to get further comment from you on.

I do not think you mean to infer that in all cases there has not been notice to the Forest Service when mining companies or mining prospectors are going to go in.

Mr. HOUCK. I do not mean to infer that.

Mr. MELCHER. I hope you are not inferring that even when there has been notice given that there has not been damage at times.

Mr. HOUCK. Both have occurred, no notice, damage with notice, damage without notice.

Mr. MELCHER. You bet they have occurred. The damage has occurred when the description was adequately given to the Forest Service prior to the bulldozing to proceed and to infer that the Forest Service has had to perform or tried to perform the duty without—being completely in the dark and not being backed up by the public, I do not understand your point there. There are many incidents where a mining company has said exactly what they are going to do. The Forest Service knew exactly what they were going to do and knew it was damaging and they allowed them to do it.

Mr. HOUCK. If you are asking me to respond—

Mr. MELCHER. Yes, I am.

Mr. HOUCK. I do not maintain that notice is everything. Our point is simply, it is the basic threshold requirement. Without notice, some of the harm that has occurred could have been prevented. If that is

accepted, then we get into the area of what happens after notice is given, and what are the Forest Service requirements.

If the Forest Service has a comprehensive set of regulations upon which they can rely which require notice, not only that we are going to go in and do this, but also requiring restoration and a bond to cover the amount of that, then the likelihood that companies will be able to give them a notice, which is in effect an ultimatum and proceed to do unwarranted damage is greatly diminished.

Mr. MELCHER. I think you made the point in your summary that bulldozing at times was harmful. Of course, many times it is harmful, very harmful, and that there are other means of doing it.

However, the Forest Service was being told and given notice by a substantially large company that it could do it a different way. The Forest Service did not require them to do it. It did not ask them to do it.

Mr. HOUCK. We have come to many, many head on conflicts with the Forest Service on exactly that point. They can get equipment in certainly without bulldozing a road in, and for instance by helicopter transport, especially if it is a large industry which can afford the use of helicopters, and which in fact is using helicopters in other areas. I could not agree with you more.

Mr. MELCHER. You make a point in your testimony of the inventory. Do you see these regulations requiring an inventory?

Mr. HOUCK. No. What they do is they provide step 1 in which an inventory in a given area could be obtained. I think it would be a rather onerous requirement on the Forest Service now and say go out and inventory every mining claim that exists on your land. They have better things to do. It does give them the ability, if they have a particular piece of land that they are interested in knowing in depth about. Take Colorado, that they are considering classification as a wilderness area. It would be very important to them to know, as they had to know for other areas just what claims existed. They have no way to find that out now.

If these regulations are implemented, then they will at least have records of who claims to have claims now. It is a good step 1.

Mr. MELCHER. I am of the opinion that inventory is a pretty broad word, of course, but I am of the opinion that in land management that there should be a categorizing of what the public lands are and what they provide and what they contain and what the potentials are, but I think that it ought to be done by statute. I do not see these regulations at all.

I understand your point, that it might lead to something that will be helpful. We should, I think, require them to do it, not just on the basis of mining or the potential of it, but on the basis of all the values of the land.

Mr. HOUCK. You have our full support.

Mr. MELCHER. Not by piecemeal, by various agencies and various land agencies. I think we should have an overall program. We do have a section in a bill which we have been holding hearings on for some 21½ months that would require of Interior to complete inventory of the public lands under their protection.

I do not think we have heard from the National Wildlife Federation on that point.

Mr. HOUCK. If we would be invited to testify, we would be happy to respond.

Mr. MELCHER. We will send you a special invitation.

Mr. HOUCK. We will look forward to it.

Mr. MELCHER. We never had to worry about sending out special invitations before, but we will be delighted to send you one if that is what it takes to get your comments on it.

Thank you very much.

The gentleman from Guam.

Mr. WON PAT. I want to comment on the fine presentation of Mr. Houck.

While I concur with your views generally, there should be regulations, of course, on exploration and mining, in such areas as defined in the regulations.

However, you will concede that some of these regulations as they apply to people in different areas sometimes works to the disadvantage of these people.

Do you agree with that?

Mr. HOUCK. Any regulation requires people to do more than they otherwise would be required to do. That I agree with.

Mr. WON PAT. You heard the views of Mr. and Mrs. Kirkberg. They are intimately familiar with their own State and that was the reason I raised that question, that some other regulations may not work to their benefit or advantage. For example, the time element and the effort and money in preparation of plans, it sometimes works to their disadvantage.

Now, the imposition of a bond, you agree that there should be a bond, but do you think that a minimum amount required so as not to impose bitter hardship on a speculator, especially the poor prospector?

Mr. HOUCK. I think, Mr. Congressman, you have hit on the very balance of these regulations. They have to be reasonable for the Forest Service. They have to be reasonable for the miners. The ultimate decisions are going to be drawn on what is the most reasonable for both.

In our view, a bond commensurate with the activity is reasonable. In our view, a plan commensurate with the activity is reasonable. If you are going in with a pick over your shoulder and you really do not know what you are looking for, then you really cannot draw up much of a plan, can you.

But if you are going to go in with a bulldozer and you are going to take the top off of a mountain, then it seems to me that you can do it with a plan. The amount of plan, the amount of bond is all the rule of reason, and that operates in every area of administrative activity in the country.

This is no different. The only thing different is that it has not happened here.

Mr. WON PAT. Do you feel then that the rules and regulations should be enforced in the absence of any statutory authority?

Mr. HOUCK. I believe that the statutory authority exists, and therefore these rules and regulations should be in force. Maybe I misunderstood your question.

Mr. WON PAT. That is correct.

Do you feel that the mining laws enacted way back in 1872 are archaic and need revision or modification?

Mr. HOUCK. Absolutely. But to postpone regulation of forest mineral activity until Congress can finally pass this law is, I think, saying let's not look for short-term energy solutions. Let's develop the ultimate sources. You need them, you need something now, you need something ultimately. The ultimate is the reform of the law. In the meantime, let's regulate.

Mr. WON PAT. I agree with you. Thank you.

Mr. YOUNG. Mr. Houck, I would like to compliment you on your testimony, but I am not. I would say that I am very surprised that you have 3 million Americans, that the rest of us are not Americans.

Mr. HOUCK. I did not say that.

Mr. YOUNG. You said every Congressman, every American should support the 3 million. I want to tell you, I consider myself an American. I represent a State which certainly does not agree with me all the time, and I doubt if your 3 million agree with you all the time.

The thing that disturbs me is that you are buying a set of regulations and for some reason you personally believe that this should not be criticized or looked at or balanced, and see if there is not a set of reasonable regulations proposed. But you keep referring to reasonable.

What do you consider reasonable?

Mr. HOUCK. I think in any aspect of regulation, whether you are dealing with access, whether you are dealing with how much money is used, water is used, if you are dealing with effluent, tailings, how you dispose of them, what you take in, what you take out, how that is done and the amount of bond that is required, each one is a separate reasonable question.

Mr. YOUNG. The reason I ask that question, apparently we have received considerable testimony from private individual mining associations, the Forest Service themselves, and they are looking at the term "reasonable." You are stating if we do not adopt these regulations in toto, that you do not think that is reasonable. Just because you might disagree with them, they are unreasonable.

Mr. HOUCK. I certainly did not state that. If you received that impression, I would like to hasten to correct it.

Mr. YOUNG. You believe there can be some additions or subtractions to these regulations. For instance, the bonding, you think the bond is a tooth. We have heard testimony from others that the bond is not a tooth. You are saying they are unreasonable.

Mr. HOUCK. I do not think they would work.

Mr. YOUNG. You are saying they would be unreasonable.

Mr. HOUCK. You can draw a conclusion whether they are reasonable or not. I would not phrase it in those terms. I would say it would not work. I would tell you why. I will tell you that in order to enforce regulations, either you can have an internal enforcement mechanism within the regulations or you can go to court action every time you have a problem. Going to court is a loser. It is a loser for the U.S. Government, it is a loser for the people involved. It takes more money to enforce these things than you could ever get in compensation for the damage done.

Mr. YOUNG. Do you have any solution to where the bond is going to be purchased?

Mr. HOUCK. Wherever bonds are purchased for any other resource activity in the United States, oil, coal, you name it, highway construction.

Mr. YOUNG. Are you a mining expert?

Mr. HOUCK. No, sir.

Mr. YOUNG. Have you ever indulged in mining?

Mr. HOUCK. Indulged?

Mr. YOUNG. Yes.

Mr. HOUCK. No, I have not indulged in mining.

Mr. YOUNG. You kept referring to a bulldozer and other systems—helicopters, et cetera.

Are you expounding a theory that you are an expert on?

Mr. HOUCK. No, I am stating that reasonable people can draw conclusions as to alternative methods of access, which was Mr. Melcher's point. Mr. Melcher asked me whether or not I agreed as to bulldozer access to certain operations that were permitted by the Forest Service. I responded no, I believe that alternative mechanisms are available. I do not believe that those are only questions for bulldozer operators to answer.

Mr. YOUNG. Do you believe that the Forest Service should acquire the ability to be notified that they should have the authority on how and in what way the mining activities should be taking place?

Mr. HOUCK. They cannot prevent the activity.

Mr. YOUNG. That is not the question.

Do you believe they should have the authority to tell how mining should be done?

Mr. HOUCK. No, they should have the authority to say in some stances, because of the harm to the resources, how it will not be done.

Mr. YOUNG. What do you consider harm?

You talked about the parade of horrors.

Mr. HOUCK. I consider harm 6-mile-long, 20-foot-wide trenches dug by bulldozer operators simply by dropping the blade and dragging across tundra area in proposed wilderness areas which will take over 100 years to grow back if they grow back at all. I would consider harm to be clearing of a proposed mining site by simply cutting down and burning everything that grows on it as an incident to mining. I would consider harm to be an access road to a mining exploration site by a bulldozer that went right up a streambed, which streambed because that was the easiest way to get up the hill, which streambed provided important water quality and fishery benefit farther on down. Those are some excesses.

Mr. YOUNG. Harm is in the eye of the beholder.

Mr. HOUCK. That is true.

Mr. YOUNG. I know areas where we use the bulldozers and create a fishery area and duck areas, to you this is destruction.

Mr. HOUCK. I am not saying that.

Mr. YOUNG. I am saying the things that we have done through mining, there are more ducks there than ever before. And you represent the National Wildlife Federation.

Mr. HOUCK. I do indeed.

Mr. YOUNG. By changing nature's role we have been able to produce more ducks than in the past, we have developed a nesting area, feeding area that was not there before, and that is damage in your eye.

Mr. HOUCK. No, sir. I have never said it and I would not say it now. I am simply saying that some bulldozer operations cause more harm than good, and some cause more good than harm, and that is true with people and it is true with every activity of man.

Mr. YOUNG. It gets back to your judgment versus the reasonableness of other people's judgment.

Mr. HOUCK. People who manage forests have a fair idea of what activities are significantly harmful on those forests.

Mr. YOUNG. According to their findings and no one else's findings.

Mr. HOUCK. Not according to anybody else's findings, because no other administrative agency is under the oath either by Congress or the courts.

Mr. YOUNG. Well Mr. Houck, as I said before, I would like to compliment you on your testimony. I am not going to. I often tell myself that I would never question your association for the one reason that I think they are blind in facts. You may say I am, but I am elected. During this time I am going to represent the people of my State.

Mr. MELCHER. Thank you very much.

Our next witness is Mr. Ralph Watson, chairman of the Public Lands Committee of the Idaho Mining Association, Boise, Idaho.

STATEMENT OF RALPH A. WATSON, CHAIRMAN, PUBLIC LANDS COMMITTEE OF THE IDAHO MINING ASSOCIATION

Mr. WATSON. I am Ralph Watson. I appear as the chairman of the Public Lands Committee of the Idaho Mining Association. The Idaho Mining Association expresses its appreciation to the subcommittee for this opportunity to present its views on the proposed Forest Service regulations.

While the Idaho Mining Association is not opposed to and in fact has supported the concept of reasonable protection of the environment in connection with mining activities, the association nevertheless notes that the proposed regulations pose many significant problems which would have a substantial detrimental effect on mineral production in the United States. The most significant impact of the proposed regulations would be to discourage mining and exploration on forest lands because of the uncertainties that would arise under the regulations resulting in an unwillingness of companies and their financing entities to risk capital to finance operations on forest lands.

This in turn would result in reduced exploration and mining activities and ultimately less mineral production in the United States.

There is ample authority to support the contention that regulations such as those proposed will substantially reduce mineral development. As pointed out in the Second Annual Report of the Secretary of the Interior, under the Mining and Minerals Policy Act of 1970—June 1973—at pages 1 and 2:

However, despite our vast natural resources, we find increasing evidence that development of domestic mineral resources is not keeping pace with domestic demands, with consequent unfortunate effects upon the entire economy.

For example:

Domestic exploration in 1972 continued its downward trend. We had a deficit of \$6 billion in the United States mineral balance of trade in 1972.

We are encountering greater difficulty and higher costs in acquiring mineral raw materials in foreign areas and we are also encountering greater difficulty in world markets in selling many manufactured articles.

Comparing forecast future U.S. demand trends with U.S. mineral production trends of the past two decades indicates that our annual deficit in the mineral balance of trade could approach as much as \$100 billion by the year 2000.

The report went on to state:

Causes of decline in mineral exploration include: uncertainties over future restrictions on land use; prospecting moratorium in some areas.

As stated in the final report of the National Commission on Materials Policy, June 1973:

We recognize the need to protect public monuments, unique and irreplaceable natural wonders, and parks. Vast areas of the public domain, however, have been so restricted, with their status so uncertain that the risk of exploration cannot be economically justified by the prospect of success. Without entry to these lands and without assurance of tenure in the event of a discovery, no mining group can calculate the relative costs and benefits which would permit determination of the most effective uses of the lands.

The effect of oppressive regulation on mineral development is demonstrated by the example of the primitive and wilderness areas. Since the highly restrictive legislation and regulations were adopted for these areas, almost no mineral development has occurred on these lands—primarily because of the inability of mining companies to justify the risking of capital.

The energy crisis has emphasized the folly of being dependent on foreign producers of natural resources. I have inserted a table that was printed in Newsweek magazine, the percentages of imports of various mineral commodities in the United States.

Mr. MELCHER. Mr. Watson, may I interrupt you?

The gentleman from Alaska, my colleague here, will have to be leaving in a moment. He would like to make a comment.

Mr. YOUNG. Mr. Watson, thank you for appearing.

Is it your belief that these regulations as proposed would not only give you a hardship but that they would be impossible to operate under due to the fact that you cannot advance plan for exploration?

Mr. WATSON. That is correct, and I will give an analogy here. In Idaho, the primitive areas were set aside in 1931 and the regulations by and large similar to those now proposed generally were enacted or promulgated for those areas, and there has been essentially no mineral exploration or development within those areas.

Mr. YOUNG. You are saying the primitive areas in Idaho allowed mining but there has been no mining?

Mr. WATSON. That is correct.

Mr. YOUNG. What you are really stating is, if these regulations were adopted there is a very strong chance that there would be no mining.

Mr. WATSON. It would be very difficult.

Mr. YOUNG. Unless it were in the far future by a national mining company?

Mr. WATSON. Yes, sir.

Mr. YOUNG. This gets back to my discussion with the previous witness.

Is there any reasonable ground on these proposed regulations?

I am asking this with all sincerity. I believe in reasonableness, and I believe very frankly that the notification of activity is not unreasonable.

Mr. WATSON. I agree.

Mr. YOUNG. As I mentioned to the chief yesterday, I think that the agency, other than to inhibit mining, should encourage mining by cooperation. That does not mean that they have the ultimate say-so, but I think there should be some reasonableness.

What I am asking you, do you have in your testimony any other proposals that could be melted in these regulations whereby you could live as as a miner?

I want you to understand this, what the agency is saying, very frankly, is what was threatened by the person before that testified that they will take the agency to court. I do not think—this is a side-line. We have a surplus of teachers. Now all those young people that were going to be teachers decided to become lawyers because we have more agencies.

Do you see a way that you can somehow sit down with these proposed regulations, answer some of the questions and avoid the problems?

MR. WATSON. I think so. We have offered and hope to be able to sit down with the Forest Service and work out some language which will be effective. We have two primary problems. One of them is the question of the suspension of an already agreed upon arrangement arbitrarily.

MR. YOUNG. This was brought up yesterday. That has to be looked at very closely.

MR. WATSON. The other one is, we see as they are presently written—let me start again.

We would like to see some self-operating regulations such that the Forest Service would not be required to decide upon and approve, which in turn could and very likely would trigger an environmental impact statement, which again brings on the interminable delays that frankly we cannot afford.

MR. YOUNG. What you are saying is that you would prefer some regulations such as in logging that the Forest Service has today that are already written, already accepted, so that you do not have to include the impact statement?

MR. WATSON. Right.

MR. YOUNG. Mr. Chairman, I would thank the gentleman for his testimony. Again, it gets back to the term reasonableness. I am glad to hear that you are willing to sit down and work with the Department and Congress, and not just be obstinate on the one side of the view.

Thank you.

MR. MELCHER. Without objection, Mr. Watson's entire statement will be made a part of the record as if read. I think we are into the discussion of Mr. Watson's position. We will continue with it if you have no objection.

[The prepared statement of Mr. Ralph Watson follows:]

STATEMENT OF RALPH A. WATSON, CHAIRMAN, PUBLIC LANDS COMMITTEE OF THE
IDAHO MINING ASSOCIATION, POCATELLO, IDAHO

INTRODUCTION

Mr. Chairman and members of the committee, my name is Ralph A. Watson. I appear as Chairman of the Public Lands Committee of the Idaho Mining Association. The Idaho Mining Association expresses its appreciation to the subcommittee for this opportunity to present its views on the proposed Forest Service Regulations. While the Idaho Mining Association is not opposed to and in fact has supported the concept of reasonable protection of the environment in connection with mining activities, the Association nevertheless notes that the proposed regulations pose many significant problems which would have a substantial detrimental effect on mineral production in the United States. The most significant impact of the proposed regulations would be to discourage min-

ing and exploration on forest lands because of the uncertainties that would arise under the regulations resulting in an unwillingness of companies and their financing entities to risk capital to finance operations on forest lands. This in turn would result in reduced exploration and mining activities and ultimately less mineral production in the United States.

There is ample authority to support the contention that regulations such as those proposed will substantially reduce mineral development. As pointed out in the Second Annual Report of the Secretary of the Interior, under the Mining and Minerals Policy Act of 1970 (June 1973) at pages 1-2:

However despite our vast natural resources we find increasing evidence that development of *domestic mineral resources is not keeping pace with domestic demands*, with consequent unfortunate effects upon the entire economy. For example: Domestic exploration in 1972 continued its downward trend. . . . We had a deficit of \$6 billion in the United States mineral balance of trade in 1972.

We are encountering greater difficulty and higher costs in acquiring mineral raw materials in foreign areas and we are also encountering greater difficulty in world markets in selling many manufactured articles.

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Causes of decline in mineral exploration include: . . . Uncertainties over future restrictions on land use; prospecting moratorium in some areas.

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The effect of oppressive regulation on mineral development is demonstrated by the example of the primitive and wilderness areas. Since the highly restrictive legislation and regulations were adopted for these areas, almost no mineral development has occurred on these lands—primarily because of the inability of mining companies to justify the risking of capital.

The energy crisis has emphasized the folly of being dependent on foreign producers of natural resources. Only twenty-eight (28) percent of U.S. oil comes from foreign producers. Our reliance on imports is far greater with respect to other minerals. The percentages of mineral consumption in the United States met by imports during 1972 according to the United States Department of the Interior and Department of Agriculture statistics are as follows:

	Percent		Percent
Manganese -----	93	Bismuth -----	62
Cobalt -----	92	Mercury -----	57
Graphite -----	92	Zinc -----	51
Chromium -----	91	Tungsten -----	43
Aluminum -----	81	Gypsum -----	38
Platinum -----	76	Iron Ore -----	26
Tin -----	75	Lead -----	25
Nickel -----	71	Silver -----	22
Antimony -----	64		

As stated in the U.S. News and World Report of February, 1974 at page 33: . . . demand is growing so rapidly, Government officials say, that by 1985 the U.S. could depend on imports for half of all its supplies of raw materials—including even iron ore and lead.

Anxiety over a cutback in raw materials from abroad is no idle concern.

Scheduled in February, is a meeting in Guinea of major producers of bauxite, to control production and fight for the highest possible prices for bauxite, an ore from which aluminum is produced. The avowed goal: a common front

C. Fred Bergsten of the Brookings Institution says that two countries, Malaysia and Bolivia, account for 70% of all tin exports. Four nations control more than 80% of the world's copper exports. A similar number of countries hold more than half the world's reserves of bauxite. . . .

There are many other problems posed by the regulations, but the major thrust of the following comments will be to document the potential effect of these regulations on mineral production.

ANALYSIS OF PROPOSED REGULATIONS

I

In order for a company to commit funds for exploration or mining, it must be able to ascertain the costs that will be incurred, including the cost of reclamation that may be required. Section 252.6(e) provides that the Forest Supervisor may unilaterally require the operator to submit a modification to the initial or supplemental mining plan which previously has been approved and thus impose requirements not anticipated at the outset of the operation. This implies, of course, that a previously approved plan thus becomes unapproved, and under Section 252.7, the Forest Supervisor could stop operations indefinitely until the modified plan had been approved. The modified plan may impose more costly requirements which would make uneconomic an operation which was economic based on the original approved plan. With this potential threat existing, the commitment of funds is extremely difficult. The significance of this problem is compounded by the fact that the regulations permit the Forest Supervisor to dictate not only the reclamation which must ultimately be achieved but also the mining and exploration methods which may be used by an operator—thus all these factors are subject to unilaterally imposed changes.

II

The regulations require the filing and approval of operational plans not only for mining but also for exploration activities. Partial plans may be submitted, but this nevertheless implies that the requirements of the Forest Service could be substantially changed with each new partial plan submitted. Thus it is impossible to forecast costs at the outset of an operation inasmuch as the operator would be unable to determine what requirements might ultimately be imposed. (i.e. Initially the Forest Service may agree that backfilling would not be required but as the project developed, it may well require backfilling, and of course, this would be a substantial increased expense). The potential of such a problem stifles development because of the uncertainty as to costs.

Furthermore, requiring the submission of an exploration plan will effectively destroy the secretiveness of exploration despite the provisions of the regulations designed to maintain confidentiality. Clearly, this confidentiality would be destroyed if an impact statement with all of the publicity entailed were required.

III

It is well known in the industry that it is impossible to plan an exploration operation in advance, and it is further well understood that exploration procedures must be dictated by the information gathered as the exploration proceeds in the light of the expertise developed by the geologists conducting the exploration. If this cannot be done, then few operators will risk their capital to explore on forest lands. Yet, the proposed regulations permit the Forest Service to specify what and where exploration activities may be conducted.

IV

With each exploration and mining operation requiring the approval by the Forest Service of a development plan, the provisions of the National Environmental Protection Act are automatically triggered with respect to the preparation and filing of an impact statement. Impact statements require substantial time to prepare and also entail the broad dissemination of information which with respect to exploration activities is very detrimental. The possible exception contemplated in Section 252.6 of requiring the plan only for operations which cause a significant disturbance of the environment provides little relief inasmuch as the determination of whether or not there is a significant disturbance also implies federal action which could result in a requirement that an environmental impact statement be prepared and filed. Furthermore, the term "significant disturbance" is ambiguous even in the context of the specific exclusions referred to in the regulations. The delays resulting while these procedures are followed would preclude the operator from doing the required assessment work and thus would prevent him from being able to stake and maintain valid claims.

V

Under the provisions of Section 252.7 and other sections of the proposed regulations, there are no guidelines governing the requirements that may be imposed by the Forest Supervisor. Consequently the operator is unable to forecast what requirements may be imposed and the cost thereof. Even though the purpose of the regulations is allegedly not to prevent access to the Forest for mining purposes, the practical effect would be to preclude access if the requirements imposed resulted in an uneconomic operation, or if the threat of imposing more stringent requirements after the operation commenced made it impossible to obtain financing for the proposed operation. Even the standards of the existing regulations as to air quality, water quality, and solid waste cannot be relied upon inasmuch as the proposed regulations allow the Forest Service to impose stricter requirements than are provided for under existing legislation and regulations relative to those matters.

VI

Section 252.14 requires an operator to submit an application for access and stipulates that the Forest Service may establish conditions necessary to protect the environment as a condition to access. No time limits are imposed within which the Forest Service must act on an application for access. The thrust of this regulation is to make it possible for the Forest Service to regulate mining and exploration by the means of imposing requirements as to these operations in order to obtain access to the forest. No guidelines are established as to what the Forest Service may require as a condition to obtaining access.

VII

The bonding requirements are such that most small operators would simply be unable to obtain a bond. There are no guidelines as to the maximum amount of any bond.

VIII

There are numerous other problems posed by the regulations which could be avoided by re-drafting without interfering with the overall objective of the regulations. Many of these problems have been documented by the comments of the American Mining Congress submitted to the Forest Service. The purpose of the foregoing, however, is to highlight some of the critical areas which in effect would substantially reduce or preclude mining and exploration operations on forest lands.

STATUTORY AUTHORITY FOR ISSUANCE OF REGULATIONS

It is not the objective of these comments to exhaustively detail the questionable authority of the Forest Service to promulgate these regulations. Nevertheless, attention is drawn to the following:

I

While 30 U.S.C. Section 612(b) provides that the Forest Service has the right to manage and dispose of the vegetative and other surface resources of a mining claim located after the effective date of that section, the section specifically provides that the Forest Service is not to have the right to manage the mineral deposits. The proposed regulations would result in the Forest Service managing the development of the mineral deposits on the mining claims, despite the language of the code which states:

That any use of the surface of any such mining claim by United States, its permittees and licensees, shall be such as not to endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto.

II

While the Forest Service, pursuant to 16 U.S.C. Section 478, has the authority to adopt regulations relating to access to National Forests, it is clear from that section that the regulations imposed are not to result in prohibiting access to the forest for the prospecting, locating or developing mineral resources.

III

As set forth in 16 U.S.C. Section 528, National Forests are established and administered, among other things, for outdoor recreation, range, timber, watershed and wild life and fish purposes, however that particular section also provides:

Nothing herein shall be construed so as to affect the use or administration of the mineral resources of National Forest lands. . . .

IV

Even 16 U.S.C. Section 531 stipulates that the management authority of the Forest Service relates to "renewable surface resources" of the National Forests.

V

The foregoing indicates that the authority of the Forest Service to promulgate and enforce regulations and thus manage and control mineral development is questionable. In fact the statutes indicate that any effort to do so which, as a practical matter, would preclude access to the forest lands and the utilization of forest lands for mineral development would exceed the authority of the Forest Service, and would be contrary to the provisions of these statutes. The proposed regulations which would have such a detrimental effect on mineral production should not be adopted in the face of the clear mandate of the Congress evinced by existing legislation favoring the development of minerals on forest lands. The objective of the Forest Service Regulations could be achieved by modifying the regulations to eliminate the problems posed. The Administration and the Congress will be failing the American people if they thus foster a domestic mineral shortage crisis.

Mr. WATSON. We have pretty well covered the remainder of this paper already. If you do not object, I will say that we do question the statutory authority. We have a great deal of legal research done, and it is our conclusion that there is definitely a question as to whether the Forest Service does have the authority to issue the regulations.

We also question the size of the bond, the point you made earlier. We believe there is need for adjustment, primarily because a great deal of prospecting is done by individuals with very limited means and limited intentions. The simple fact is that a person who uses prospecting as a hobby is not about to go out and buy a \$2,000 bond. That is all there is to it.

Thank you.

Mr. MELCHER. The gentleman from Guam.

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

I just have a couple of questions.

Do you concur that the agency has the authority to issue these regulations?

Mr. WATSON. We do not.

Mr. WON PAT. You do not?

Mr. WATSON. No.

Mr. WON PAT. You feel that the promulgation of these regulations would discourage exploration of minerals?

Mr. WATSON. We believe so.

Mr. WON PAT. A person, in the absence of such a regulation—
Is there any exploration being done?

Mr. WATSON. Is there exploration being done now?

Mr. WON PAT. Yes.

Mr. WATSON. Yes; a great deal.

Mr. WON PAT. With the issuance of such regulations it would discourage further exploration?

Mr. WATSON. As written it would.

Mr. WON PAT. Of course, various witnesses hold for a different view. Personally, my feeling is that there is need for regulation. But I do not, of course, subscribe to the idea of making it so restrictive as to discourage exploration. I believe that the committee is aware of all these views and I think we will take the proper action to come to a resolution of the matter.

Thank you, Mr. Chairman.

Thank you, Mr. Watson.

Mr. WATSON. May I comment?

Mr. MELCHER. I wish you would, Mr. Watson.

Mr. WATSON. There has been much made this morning of the trouble of hauling somebody into court for abusing a privilege. I find it most unusual to have that expression, since most all of our police activities are directly involved in parallel situations.

Mr. MELCHER. I have gone over your testimony quite carefully, Mr. Watson, as my colleague from Alaska was questioning and I want to commend you on what I think is a very well prepared testimony. Along with my fellow Montanans, Mr. and Mrs. Kirkberg, you have made some specific points this committee wants to draw attention to.

I want to commend you further on your attitude that you feel that your association and the Forest Service can work out procedures and regulations that are not so stringent as to deny the further development of minerals on Forest Service lands.

I thank you very much.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. MELCHER. Mr. Ted H. Eyde, Tucson, Ariz., representing Southwest Minerals Exploration Association.

Mr. Eyde, we are pleased to have you here this morning.

STATEMENT OF TED H. EYDE, GEOLOGIST, SECRETARY, SOUTHWEST MINERALS EXPLORATION ASSOCIATION

Mr. EYDE. Chairman Melcher, members of the committee, my name is Ted H. Eyde. I am a registered geologist in the State of Arizona and a certified professional geologist by the American Institute of Professional Geologists. I have staked claims and I have mined lands.

I represent the Southwest Minerals Exploration Association of which I am secretary. The Southwest Minerals Exploration Association is an organization of more than 50 professional exploration people engaged in the search for minerals in the Southwestern United States.

The amendments and additions proposed by the U.S. Department of Agriculture, Forest Service as published in the Federal Register, December 19, 1973, will severely impede domestic mineral exploration at a time when the United States has learned that the dependency on foreign minerals and mineral fuels is literally economic suicide. Most conservationists recognize the need for domestic mineral resources which can be exploited with minimal disturbance to the environment under a sequential multiple use of the forest resources.

Unfortunately, these proposed rule changes go well beyond what might be termed reasonable environmental protection. If implemented, the new rules would result in the nearly complete cessation of ex-

ploration activities within the national forests, which contain the bulk of the undeveloped mineral resources within the United States.

First, I should like to call attention to the fact that the Forest Service does not have the authority under the Organic Act of 1897 to prohibit prospecting, locating, and developing mineral resources. The Multiple Use Act of 1955 as well as the Multiple Use—Sustained Yield Act of 1960 clearly state that the use of the surface shall not be construed so as to affect the user or administrator of the mineral resources of national forest lands.

Finally, the Mining and Mineral Policy Act of December, 1970, declared that it is the continuing policy of the Federal Government in the national interest to encourage private enterprise to develop an economically sound and stable domestic mining, minerals, metal, and mineral reclamation industry, and the orderly and economic development of domestic mineral resource reserves and reclamation of metals and minerals, to help assure satisfaction of domestic security and environmental needs.

Certainly, the Forest Service, which deals principally with renewable forest resources, should have called upon the expertise of the Department of the Interior through the U.S. Geological Survey and the U.S. Bureau of Mines. Both agencies have competent scientists available who can assess the impact of the proposed rule changes on the domestic exploration and mining industry.

We further ask the Forest Service as to why the mining and exploration industry are faced with more constraints on their activity than are logging, grazing, or other commercial operations within the national forests. Standards set up within the national forests should treat all users impartially.

By implementing these rule changes on June 16 at the beginning of the field exploration season in the northern part of the United States, the Forest Service will effectively stop all exploration activity for an entire year. With a leadtime of 5 to 7 years between the time a mine is discovered until it is put into operation, such a premature imposition of punitive regulations will have the affect of significantly delaying new mineral production within the United States.

If an environmental impact statement was prepared for the implementation of Executive Order 11644 pertaining to the use of off-the-road vehicles on public lands, which principally referred to the use of recreational vehicles on public lands, an activity not critical to national security, then an environmental impact statement must be prepared to ascertain the effect of these rule changes.

We also submit that because of the tremendous impact of these proposed rules on the future mineral supply of the United States, that public hearings must be conducted to allow those individuals, companies, and organizations adversely affected by these rule changes to express their opinions.

Mr. MELCHER. Thank you, Mr. Eyde.

You make a point that the Forest Service deals principally with renewable forest resources, and as a matter of fact the Organic Act and subsequent acts seem to direct the Forest Service to look at the renewable forest, but not to interfere with mining development because it is covered in different statutes. However, we do get into that problem, though, of the surface, and I am just going to get your reaction.

The Forest Service must protect the surface because that is a renewable or part and parcel of a renewable resource such as watersheds and so on. There is no quarrel on that.

Is there from your association?

Mr. EYDE. No, sir. We do not feel that there is a particular quarrel in that respect. Our principal problem is that it goes beyond this. In other words, I being a geologist would not find myself too well suited by education and experience to manage forests. In other words, I could not tell the difference between a ponderosa pine and other pines. We have numerous instances where the Forest Service has stated categorically that all limestone deposits are the same. Anybody who has worked with these things knows that there are substantial differences between these. There are chemical grade limestones, dimension stones, other things. These things are different. Some are rare, some are not rare. Some are unusual and unique and they have to be treated in this way.

Mr. MELCHER. You evidently feel, as other witnesses have testified, that the proposed regulations are more stringent on prospectors and miners than they are on other users of the forest division and permitted and encouraged under the Multiple Use Act.

Mr. EYDE. If I may respond to that, I would say the proposed rule changes that this might well be the case. I would also like to comment that the exploration industry—and I can only speak as an explorationist—has for many years, at least as long as I have worked in the national forests, which is approaching 17 years, we are already operating under cooperative road permits and multiple use permits, and these regulations do protect the forest resources apart from the new-renewable resources. In other words, there is tremendous consideration as to the grade of these roads. We have to put in water bars. We have to reseed afterwards, and I might add that we do.

Mr. MELCHER. I come to your last paragraph and I do not think anybody else has brought it up. You evidently feel that the Forest Service should have gone through the torturous process of preparing an environmental impact statement on the regulations, and the reason being that everybody ought to have a chance to testify.

Is that it, the public hearing?

Mr. EYDE. Representative Melcher, I feel that any time you affect a natural resource industry or perhaps any other major industry, that you have to find out what the effects of it are going to be, or what the long-term effects are going to be on the economy.

I would cite one other case or one other situation where the Interstate Commerce Commission put in effect an overall freight increase on scrap and recycleable materials. They are going to have to go back and prepare an environmental impact statement because it places scrap and recycleable materials to a disadvantage to those that come from virgin materials. Certainly, this has a profound effect on the Nation's economy at a time when we are critically short of minerals.

And I would further say that this could have such an effect down the road on our balance of payments that we ought to look at it carefully. I do not think that an investigation as arduous as you may feel that it may be, since it affects the United States so critically in its balance of payments and everybody, that I do not think that this is unreasonable to ask.

Mr. MELCHER. Mr. Watson supplied the committee—I think you were present in the room when he referred to a list in his testimony that shows how much of the various minerals that we import, which is in many instances pretty high.

Mr. EYDE. It is pretty substantial.

Mr. MELCHER. There is quite a list here.

The gentleman from Guam.

Mr. WON PAT. Mr. Chairman, I do not have any questions. I think you have raised the point that I was to ask the gentleman.

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

The committee is very appreciative of your testimony.

Mr. EYDE. Thank you.

Mr. MELCHER. We have concluded our list of witnesses on this oversight hearing. The committee will properly assess the testimony that we have received and we will be formulating some suggestions and recommendations of our own based on these hearings to the Forest Service before any regulations are promulgated.

The meeting is adjourned. The committee is adjourned until next week.

[Whereupon, at 12:30 p.m., the committee adjourned, subject to the call of the Chair.]

[Supplemental information for the record follows:]

STATEMENT OF ARTHUR E. DETTWILER, PRESIDENT, AND RALPH O. DETTWILER, MEMBER, WESTERN MONTANA MINERS' ASS'N., NOXON, MONT.

From our experience as prospectors and small miners in Western Sanders County in Montana we submit that the proposed \$2000 performance bond would put an end to most of the activity that leads to the discovery of the minerals that are so important in our economy at a time when the need for the discovery of domestic sources is so urgent. Generally, the large mining companies move in and develop the mineral sources after these sources are located by the prospector/small miner. \$2000 is an exorbitant sum and one that is completely out of line with the amount of damage a prospector/small miner would be likely to cause.

We recognize the need to prevent "significant damage to the environment," but feel the prospector/small miner is an unlikely source of significant damage.

A visitor to our area would have to go miles into the hills to find any sign of activity even, much less damage, by prospectors/small miners; it is hardly necessary to leave the main highways to discover major damage done by the Forest Service in the last ten years.

NEVADA MINING ASSOCIATION, INC.,

Reno, Nev., January 31, 1974.

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE,

Division of Watershed Management,

Rosslyn Plaza E, Arlington, Va.

GENTLEMEN: On behalf of Nevada Mining Association, Inc. and in accordance with instructions from its Board of Directors, I want to broadly state that such restrictive rules would virtually halt future prospecting on National Forest lands. This would result in long range damage to the ability of the United States to retain or expand required self-sufficiency in mineral production; particularly in view of the well-recognized crisis in domestic metallic mineral production—which could be equal to or greater than the recent oil and fuel crises.

I have been executive secretary of Nevada Mining Association since mid-1964 and since graduation from college in 1930, have actively pursued my career in the mining industry as a mining engineer, mining geologist and mine operator. As a result, I have had a great many years of first hand experience watching highly speculative attempts, some successful, many not successful, to bring prospects to production. I have also repeatedly experienced the effects of fluctuating prices in metal markets that either close down or rejuvenate interest in mines and prospects.

Only inexperience can properly account for the proposal in this "rule making" that an abandoned prospect or a depleted ore body necessarily signifies lack of future merit and, therefore, justification for wiping out evidence developed by the prospector or operator. This is not to say that a strip coal mine in Appalachia, opened up to completely extract a particular bed of coal, should not have the acreage reclaimed for surface use. Once that bed of coal is mined, the total purpose of the operation has been accomplished. However, in metal mining, positive evidence has made clear that old prospects and old producers are prime target locations for renewed attention to find and delineate new reserves.

Without detailing the specific paragraphs of the proposed rules, it is noted that much emphasis is placed upon restoration of workings. Repeated filings and permits are proposed when the operator returns year after year to continue his search; this in spite of the fact that in a great majority of cases, repeated efforts have been made over a period of years before economic metallic mineral producers have been explored, developed and ultimately brought into production.

I question the validity of the introductory statement, "Most easily accessible deposits have been found and it will be necessary to mine from greater depths and from larger, low-grade near surface deposits." Recent discovery of Nevada's two large gold producers resulted from sampling outcrops at surface and the ore found by subsequent drilling has been relatively high grade. Both mines are located in previously recognized and long-established mining districts. They again demonstrate the principle that once a metallic mining district is recognized, the area should be given special status for *mineral* in the same way that special regulations pertain to prime timber productive areas. It should be noted that National Forest lands in Nevada commonly have no timber-producing function. On the other hand, several recognized mining districts are located in Nevada's Forest areas.

The introductory statement also declares, "Regulation of surface use of National Forest lands has not been adequate to achieve *uniform protection of the environment.*" (italic added) It is to be noted that neither nature, man nor animals will permit regulation to achieve such an objective and minerals must be found, explored for and developed in the locations where nature places the deposits. This is not bad inasmuch as the total area of land use by the mineral producing industry has been and will continue to be small indeed. Most mineral production areas exceed in economic return the value per acre of that from other productive uses and the mineral production has little impact on such other uses. Total land use by mining in Nevada has been estimated at but a fraction of the populated area in the city of Reno.

One of the obvious problems with detailed regulations such as proposed is that vast differences in quality of lands must come under a uniform coverage or else discretion that permits of human bias must be granted the administrators. A local administrator would be hesitant to make decisions relative to resources about which he is uninformed so interminable delays would be incurred. In fact, the reports, bonding, restoration requirements and paper work required to even continue to explore in already recognized mineral-bearing areas would discourage the prospector and divert his search elsewhere.

No showing has been made that over the past 100 years any significant amount of permanent damage has been done to the surface in National Forest lands of Nevada. I am intimately acquainted with representative parts of the state, including National Forest lands, and I believe there is no urgency for imposing more restrictive practices on prospecting, exploration and production of mineral commodities in Nevada. On the other hand, the public interest will best be served by maximum encouragement of mineral exploration in these lands.

Universally applicable environmental regulations under both state and federal agencies will obviate parts of the proposed rules. When and if proposed operations are such as to require an environmental impact study, this should be the responsibility of the Forest Service personnel. Most ordinary cases can well be left to a broad environmental statement covering standard prospect and exploration activities so as to avoid this needless paper work, time and expense.

Under Section 252.7, "Plan of Operations—Approval," it appears that the time required for approval could and would very likely extend through most of a summer working season.

Under Section 252.8, "Availability of Information to the Public," invokes criticism that mere exposure to the public that a particular operator is active at a particular place and point in time can be detrimental to the party making the search in early stages of exploration.

Under Section 252.10, "Requirements for Environmental Protection." Air quality, water quality, fisheries, etc. have already come under control of state and federal authority. Reclamation of workings, as previously stated, should not be a blanket requirement if mineral activity is to be encouraged by continued access and preservation of evidence for future and rejuvenated interest in the prospect. The same concern is expressed for proposed regulations under Section 252.12.

Under Section 252.14, "Access." Rules should place a time limit for approval of access.

Under Section 252.15, "Performance Bonds." Such requirement should not be needed in the future any more than it has been needed in the past. This bonding requirement alone would be a severe hindrance to individual prospectors and discourage them from searching for minerals on National Forest lands.

Under Section 252.16, "Appeals." The objection to this section is that there is no independent, qualified and unbiased avenue to seek redress when needed.

Very truly yours,

PAUL GEMMILL.

SEATTLE, WASH., March 4, 1974.

SUBCOMMITTEE ON PUBLIC LANDS,

U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

GENTLEMEN: On December 19, 1973, the Forest Service had published in the Federal Register, such ambiguous and far reaching rules and regulations;—that if enacted into law as proposed, would destroy the mining industry so vital and essential to our National survival and security—in approximately 140 million acres that are now open to location and entry under the mining laws of 1872 within the National Forests.

These rules and regulations, among other things—(check Federal Register for specific details)—would require the posting of a minimum bond of \$2,000.00 to even prospect on Forest land (which in the past has been the life-blood of the Country)—together with the submittal of all detailed plans for an operation of any kind or nature—to be first submitted to the Local Ranger, subject to his whims, for approval, modification or denial—at this point—if dissatisfied, there would be no further recourse or right of appeal beyond the Regional Forester Director, who's decision would be final, which definitely constitutes an infringement and gross violation of our constitutional rights.

Only Congress has the power to make or amend the Laws (not some administrative appointed Federal Agency, such as the Forest Service)—of which said Congress has been trying for sometime past to amend the 1872 mining laws, without any definite results or decisions as of this date.

Yet, knowingly and in view of all this—the Forest Service waits until Congress has adjourned for the Holidays, to publish its proposed rules and regulations in the Federal Register—which are illogical, unwarranted and arbitrary.

There is nothing I can do, as an individual, except to appeal to you as a member of the Congress of these United States, for your urgent support in filing an immediate protest with the Chief of the Forest Service, Washington, D.C.—before the implementation of these proposed rules and regulations become effective—denying all prospectors and miners, the rights as set forth under the mining laws of 1872.

Respectfully yours,

A. R. PATTERSON.

MANNIX ELECTRIC, INC.,
Great Falls, Mont., March 4, 1974.

SUBCOMMITTEE ON PUBLIC LANDS,

U.S. House of Representatives,

Longworth House Office Building, Washington, D.C.

GENTLEMEN: The Montana Mining Association, formerly called the Western Montana Mining Association, is an organization of about 500 miners and prospectors in Montana dedicated to the preservation of all citizen's rights to the natural resources to be informed and to inform the public about pending mining bills, to assist them in search for and development of natural resources in a reasonable and logical manner; to oppose radical and extreme methods, and dedicated also to the belief that mining and environmental protection can be compatible.

We believe that if these proposed rules are enacted you will completely eliminate the *true* prospector and *operator* of a small mine. There are two basic

sources of wealth on this continent, mineral and agricultural. Without these, nothing else will exist, and they are so intertwined that one cannot exist without the other. The importance of mining is quoted from "What Mining Means to the United States" by the American Mining Congress. "Even though the value of all raw fuels, metals and non-metals produced from the earth is only about 3% of the total value of goods and services to the United States (Gross National Product) these products have a direct impact on 40% of the economy and an indirect impact on an additional 35% of the economy. With products from the earth American Industry has built plants, equipped them with machinery, and obtained the raw materials to run the plants—in short, made jobs directly or indirectly for a large percentage of the 70 million non-farm workers of the nation."

Of course, we are all aware of the energy crisis and its impact on our everyday life. The mineral picture is even more bleak because our country must import a large portion of our mineral requirements. Depending on the whims and dictates of foreign sources and government can be very precarious as shown by our energy dependence on foreign supplies. Therefore, we must prospect here to protect our way of life. Contrary to popular belief, ore bodies are very difficult to find. In ten years, the U.S. Government Strategic Minerals Development Program examined and explored 10,071 prospects; 1053 developed some ore grade tonnage but were not successful mines, and the only large producer was the San Manuel Mine in Arizona. These statistics suggest that the odds exceed 10,000 to 1 against finding a good ore body. Although miners are accused of tearing up the whole country, the compiled statistics show that only 0.3% or 0.0003 of the land surface has been disturbed by *all* types of mining in the United States and of this one-third has been reclaimed. In Montana, after more than 100 years of mining, only 0.03% or 0.0003 of the land surface has been disturbed.

Why in times of crises does the Forest Service come out with rules and regulations that can eliminate a large body of dedicated and true prospectors while allowing only the richer land speculators on the *Citizens National Forest*?

To better explain why these rules will eliminate the prospector reference will be made to numbered sections of the proposed rules.

Page 34818 Section 252.6 Column 1 and 2 No. 1.—What is meant by *significant*? Does this mean one acre, one square foot or what? Our organization knows that, although you have many reasonable district rangers who follow the multiple use concept as our law dictates, you also have a few who feel that anytime a miner or prospector once sticks his shovel in the ground, he is disturbing a significant amount of the environment. Armed with the power of these rules and the loose interpretation of "significant," these men can become dictators and keep all mineral searchers from the land.

Page 34818 Section 252.6 Column 2 No. 2.—How can one submit a plan of operation when he does not know what he has? In the development of a prospect, plans cannot be made until the results of the individual digging or drill hole can be interpreted. Therefore, prospecting should not be included. Many prospectors do not have the financial resources or necessary skills to complete one of these required forms.

Page 34818 Section 252.7 Column 3 No. 3.—As we view this, there would almost always be a delay of 90 days, which is one prospecting season in Montana, and in the very high country this could extend to two or possibly three prospecting seasons. Of course, this is unreasonable, unnecessary, and a real restriction to prospecting.

Page 34819 Section 252.8 Column 1 No. 4.—Who is going to determine what information is made available to the public? We could see a prospector making a valuable discovery, trying to comply with the law, and then having somebody in the Forest Service give this information to a land or mining speculator who could rush out, after paying his bond, and take over the prospector's land. This is not the democratic American way of life as we view it, nor is it the intent of the mining law.

Page 34820 Section 252.15 Column 1 No. 5.—In this section the Forest Service can be extremely dictatorial in allowing roads, and we feel that there should be some appeal procedure for the miner. There can be a very legitimate difference of opinion between good conservation in mineral production and surface resource conservation. The appeal board must consist of some knowledgeable mining people. Some of our public land still must be dedicated to mining.

Page 34820 Section 252.15 Column 1 No. 6.—This provision will eliminate all legitimate prospectors because they cannot get bonded unless they deposit with

the money with the Forest Service or a bonding company. Prospectors are willing to gamble their time, but when it comes to putting $\frac{1}{4}$ or more of their yearly income for such a high-risk venture, they cannot in all conscience do this and deprive their families of this money. The bond is entirely too high, unreasonable, and in most cases unnecessary because every true prospector knows how much work it requires and how expensive it is to dig and prospect. Not the legitimate and bona fide prospectors and operators but the land speculators and novices tear up the country.

Page 34820 Section 252.16 Column 2 No. 7.—This appeal procedure is ridiculous. The history of appeals when they go up the line in the same organization or agency always heavily favors the agency. Why take an appeal to a pristine environmentally oriented Regional Forester? The industry feels that you have a few men oriented this way in these important positions and their actions would be so biased that the prospector or miner would not be given fair consideration. We should have a true appeals system established and should have a member or members of the minerals branch of the government or industry in any appeal board, who should have a say equal to that of the U.S. Forest Service. Of course, these decisions should always be open to judicial review by the U.S. Court system.

Montana prospectors and small-mine operators have been working under a state law covering reclamation of mining lands that has allowed us to prospect and to protect the environment, while still searching for minerals for our national need. The law is similar to your proposed rules and regulations but it does define this very nebulous term "significant" and it does give a small miner exclusion, which we feel is necessary in these rules and regulations, and which is required under the mining law of 1872 pertaining to assessment work.

Pertinent Sections of the Montana Law are as follows:

50-1202 (10) "Mining" shall be deemed to have commenced at such time as the operator shall first mine ore or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand short tons.

50-1203 (15) "Small miner" shall mean any person, firm or corporation engaged in the business of mining who does not remove from the earth during any twenty-four (24) hour period material in excess of one hundred (100) tons in the aggregate.

50-1220 Exemption of small miners-written agreement-noncompliance a misdemeanor. No provisions of this act shall apply to any small miner when the small miner agrees in writing, (1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operations which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed.

Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), payable to the Department of Revenue of the State of Montana, or any board, Commission, or person authorized to collect said fine.

Unless the present rules are modified, according to these suggested changes, you would effectively take away a person's right to do assessment work on his unpatented mining claim unless he pays a \$2,000.00 bond. This is not the intent of the mining law of 1872 or any modification of this law, it is not *due process* of law as defined by the U.S. Constitution and U.S. Supreme Court interpretations.

Very truly yours,

C. E. MANNIX, *President.*

BEAR CREEK MINING CO.,
Salt Lake City, Utah, March 5, 1974.

The Honorable JOHN MELCHER,

Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR SIR: This is in response to hearings by the Public Lands Subcommittee of the House Committee on Interior and Insular Affairs scheduled on the proposed Forest Service regulations governing mining and prospecting in the National Forests.

We understand and do not oppose the proposition that the Forest Service needs a regulatory framework that will enable it to manage and prevent abuse of the surface estate of the National Forests. However, we are concerned that the net effect of the proposed regulations will, if promulgated, restrict access to and hamper development of valid mining claims in National Forests. Additionally, we are concerned that the proposed permit system and related detail will have the effect of providing a device that will undermine the initiative and ability of the Forest Service in the management of National Forest lands. The proposed regulatory system would appear to provide an open invitation for needless litigation by special interest groups and those who seek opportunity to pursue private social causes rather than answers to questions of balanced land use in the public interest. It is our view that we cannot afford to have overly restrictive regulations in a time of energy and mineral shortages, and we hope the final regulations will take this into account.

We have provided herewith a copy of our statement to the Forest Service regarding the proposed regulations. This statement pursues in more detail specific concerns we have regarding the proposed regulations. We would like to have this statement and the above comments entered as part of the Hearing Record.

Very truly yours,

JOHN H. LAGRANGE,
Land and PR Coordinator.

Enclosure:

FEBRUARY 25, 1974.

DEPARTMENT OF AGRICULTURE,
Forest Service, Division of Watershed Management, Rosslyn Plaza East,
Arlington, Va.

GENTLEMEN: The following are comments on the proposed regulations governing prospecting, discovery, exploration, development, mining, and processing operations in National Forest, published in the Federal Register December 19, 1973.

We can understand the concern prompting the Forest Service to seek rules to protect National Forest lands. We also recognize the serious need to respond to environmental responsibilities. However, it is our view the restraints and administrative requirements resulting from promulgation of the proposed regulations will create such a burden on the domestic mineral industry it will be unable to adequately fulfill its responsibility to develop new mineral reserves that we so desperately need. We believe at a time when this nation will shortly face mineral shortages of crisis proportions, that in the public interest, rules and regulations should be fashioned to encourage exploration and development of natural resources on National Forest lands. National Forest lands currently subject to location and entry under the general mining laws represent one of the major source areas in the United States which will supply such mineral reserves. A reasonable balance must be struck between concern for the environment and the very real practicalities of supplying mineral resources.

We endorse the American Mining Congress position in entirety. However, our comments are limited to specific sections we find most troublesome and in which, in the public interest, we suggest certain changes and amendments be made in the proposed regulations.

Section 252.6: The phrase "open to public use" in subsection 1, paragraph (a) should be clarified to permit miners and prospectors to operate vehicles on public roads and on roads not open to the public (such as those used by the Forest Service itself). In order to conduct an efficient and flexible exploration program, the prospector must be allowed to engage in necessary off-road vehicle travel without submitting a plan of operation. This section should also be clarified to include the use of vehicles, diamond drills and aircraft during prospecting.

There should be a clause in Section 252.6(b) that while a plan of operations is being reviewed by the District Ranger existing operations can continue pending approval of the plan of operations.

Section 252.7: A major problem created by the proposed regulations are the conflicts between the regulations and state and federal mining laws. Many states require performance of location or discovery work within a 60- or 90-day period after a claim has been located. Failure to meet these requirements may cause the locator to lose his rights. Location or discovery work is often time-consuming, particularly in areas of heavy timbered and steep slopes, common in many parts of the western United States. Work must be commenced shortly after a claim is staked. If it is not completed within the prescribed time limits, a delay of 30

days or longer will preclude the locator from ability to comply with the state requirements.

A delay in the acceptance of a plan of operations would seriously interfere with the timely performance of annual assessment work. This would be particularly troublesome to a prospector who is obligated to perform such work in compliance with the terms of the mining lease or option.

The section should be revised to set a time limit of review of no more than 45 days. Operations should be permitted pending approval of a plan when the operations are necessary to comply with the state and federal law or meet contractual obligations.

Section 252.8: Mining exploration is an extremely competitive business, and it is based on ideas and concepts which have been developed at great cost to the individual prospector. These are trade secrets and are a valuable asset. The extensive information required from the prospector in the plan of operations compromises the competitive secrecy required during exploration, particularly before land control is established. Under current federal laws governing information disclosure, the claim of this section that appropriate data could be "kept confidential" is virtually meaningless. A plan of operations should require only the essential information and the information should be required only in those cases where it is absolutely necessary.

Section 252.9: This section is unnecessary and should be deleted. The Forest Supervisor should not have authority to close down a mining operation unless the operation is causing injury or damage or if the operation threatens public safety or health. In such case, the Forest Supervisor can readily obtain an injunction to halt the offensive practice. This section permits the Forest Supervisor summary authority which could have a severe cost impact on the operator. The operator should not be subjected to a risk of unreasonable and arbitrary judgment by the Forest Supervisor.

Section 252.10: This section implies that the prospector or miner must go beyond the requirements of applicable federal and state environmental laws. It should be sufficient to require compliance with applicable laws and avoid imposition of more stringent regulations on prospectors in National Forests than they can expect elsewhere.

Section 252.14: The helicopter has become an important tool in mining reconnaissance exploration, providing great flexibility and rapid access. It has greatly reduced the need for roads on National Forest lands. Helicopter sites can normally be selected requiring no surface disturbance and where they cannot, they require minimum clearance of vegetation. The proposed requirement for prefiled permit and travel plan will severely and unnecessarily hamper reconnaissance operations and will divulge confidential exploration plans. Helicopter landing sites should be exempted from the written permission requirement.

Section 252.15: It would be very difficult for some operators, particularly a small company or individual, to obtain a performance bond required by this section. This requirement would virtually eliminate their activities. Small companies and individuals play an important role in the discovery and development of significant deposits of minerals. Their contribution to the national interest is extremely important in these times of critical domestic mineral shortages.

This section should provide that the District Ranger be empowered to permit waiver of bond if, in his judgment, conditions requiring a bond are unnecessary or if a bond is already in force under an approved state reclamation plan. Any bond required should guarantee reclamation of the area disturbed rather than as this section requires, guaranteeing compliance with the regulations and conformance with the plan of operation.

Section 252.16: The Forest Supervisor will be prejudiced to concur with the decision of the Regional Forester in nearly every case. The simplified appeals procedure in this section is, a practical matter, no appeals procedure at all. The procedure is certain to create a great deal of litigation costly to both the prospector and the Forest Service. Inadequate appeals procedures should recognize the right of the prospector to appeal to the U.S. District Court for judicial review of the Forest Service Supervisor's decision.

Section 252.17: This section appears to amend the Wilderness Act by extending requirements "so as to provide for protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and so as to provide for the preservation of its wilderness character." Any exploration development activity will cause some disturbance of the environment and may impair the pristine character of the area. This section should be amended

to require that the prospector operating in wilderness areas simply comply with the Wilderness Act.

We appreciate the opportunity to comment on the proposed regulations, and we hope that the foregoing suggestions are helpful.

Very truly yours,

H. L. BAUER, Jr.

SUMMIT CITIZENS ASSOCIATION,
Breckenridge, Colo., March 5, 1974.

SUBCOMMITTEE ON PUBLIC LANDS,
U.S. House of Representatives,
Longworth House Office Building,
Washington, D.C.

GENTLEMEN: On behalf of the Summit Citizens' Association of Summit County, Colorado, I should like to comment on the proposed Forest Service Mining Regulations. Our interest stems from the fact that our county is in the heart of the Colorado mining country, and we have many scars to show for the uncontrolled mining of the past. We realize that in the years ahead the U.S. will feel an increasing need for raw materials, and as prices increase, more prospecting and mining will occur.

Unfortunately, it is often the small mines or prospector who has the least concern for the environmental impact of his actions. In the high country of Colorado (most of Summit County is over 9,000 feet) damage from careless use of bulldozers or other heavy equipment can take many years to heal. Careless pollution of streams can silt up beaver dams, cause fish kills, and cause unsightly mud flats along mountain streams. Clearly, some kind of control and planning of mining activities on Forest Service land is required. In this, we wholeheartedly support the concept of review by the District Ranger with the requisite approvals. These men are familiar with the terrain under their jurisdiction, are of high professional caliber, and, we feel, will make judgments which will be fair both to the miner and the public.

It would also appear that if the miner is unable or unwilling to post a \$2,000 bond, it is unlikely he will have the finances to carry out a modern environmentally acceptable mining operation. After all, the bond is refundable if the miner follows the approved plan.

In summary, we support the Forest Service regulations since we feel they can be administered with regard for both the protection of public property and the rights of the individual miner or prospector.

Very truly yours,

ALFRED T. WHATLEY, *Chairman.*

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY,
Juneau, Alaska, February 28, 1974.

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

DEAR CONGRESSMAN MELCHER: I had the pleasure meeting you at the Spokane meeting of the Northwest Mining Association last December and hearing you talk at the Saturday luncheon.

It is our understanding that you will be holding hearings on the proposed Forest Service regulations affecting mining. Yesterday we mailed you a copy of our protest to the Forest Service with respect to this matter. Please find enclosed a list of our section by section objections. Our overriding concern is that the regulations tend to discriminate against the small operator who has neither the expertise nor the money to provide the environmental information requested. We are certain you agree that imposing undue burdens on small operators in these times of mineral need is not the answer to environmental protection. Rather, since protection of the environment is a policy consideration of the country as a whole, its cost should be borne by society. This is particularly so in the case of the small operator.

We respectfully request that we be informed of any hearing that your subcommittee holds on this matter as we would like to be heard.

Thank you for your courtesies and attention in this matter.

Yours very truly,

F. O. EASTAUGH.

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY,
Juneau, Alaska, February 26, 1974.

U.S. DEPARTMENT OF AGRICULTURE,
Forest Service, Division of Watershed Management, Rosslyn Plaza E, Arlington, Va.

GENTLEMEN: The Alaska Miner's Association, Juneau Branch, composed of 45 members, principally engaged and interested in the essential preliminary stages of mineral development consisting of prospecting and exploration, does by the undersigned, as Chairman of its Special Committee on Proposed USDA Mining Regulation, respectfully present its views, comments, objections and proposals with respect to the proposed Regulations and the accompanying draft Environmental Statement.

The immediate area of interest of these members is Southeast Alaska, almost wholly embraced within the boundaries of the Tongass National Forest. Their interest extends to other areas of Alaska, including the Chugach National Forest, and some of the areas proposed for USFS management under the proposals of Secretary Morton for the 83.47 million acres dated December 18, 1973 embodied in S. 2917 entitled "Alaska Conservation Act of 1974".

It is the general belief of the members that the Proposed Regulations, as well as the draft of the Environmental Statement, and the policy behind S. 2917, were drafted and formulated prior to (1) the general national recognition of the energy fuels shortage and (2) the generally unrecognized shortages of agricultural fibers and non-fuel minerals. The plight of the national interest in the latter is partially illustrated by USGS Professional Paper 820 and the problem is rapidly gaining attention in certain quarters of our national government and by the Natural Resources Section of the American Bar Association which has established an Ad Hoc Committee on Non-Fuel Shortages of which the undersigned is a member.

It is the specific comment of the members that the characterization of mining contained in Article V of the Draft Environmental Statement as being a short-term use is either an admission of the fragility of the United States to the point where its continuation may be expected to be short term, or that by some ledger-dain its government can legislate away its basic dependence on the mining industry to supply the needs of its citizens for food and the necessities as well as the conveniences of modern life. An "untouched" wilderness resource cannot supply the food, clothing and housing needs of 210 million citizens. The characterization of mining as "short term" is a poor approach to the problem of providing long-term mineral needs that by factual necessity will be with the United States as long as it continues.

The members subscribe to the purposes set forth in Article II. The second sentence in Article III is an inaccurate generalization, particularly with regard to the activities of the prospector which are a vital part of the general term "exploration". The dedication of the prospector to the outdoor life should be respected as much as those who hunt and fish for trophies or spend weeks each year in wilderness travels. The members find no problem with the matters treated in Article IV and support the conclusions reached.

The attitude of the members towards the Proposed Regulations can best be understood with reference to their basic interest in prospecting and preliminary exploration. The prospector is the low man on the mining totem pole. His goal, generally speaking, is to prospect for and find a valuable discovery, locate his claim or claims according to the mining laws, record the discovery and location, keep the claims in good standing by the performance of annual labor as required, and develop sufficient information about them to enable him to sell the claims to a mining company. These activities are expensive and time consuming, and are almost always preceded by countless hours of research of records and documents and the resulting knowledge is highly valued and carefully guarded. The proposed regulations are especially burdensome to the small operator and could constitute an increment of expense sufficient to force him out of the industry.

It is difficult for the prospector to read the proposed regulations with confidence that his basic activities described above can be continued without undue interference. Part of his problem is that the language of the regulations is couched in terms of NEPA rather than in terms of the mining laws or limitations upon them. To the extent the regulations are undue limitations and restrictions of the mining laws there is adequate authority to believe them invalid. (Sec. 16 U.S.C. § 483, 30 U.S.C. § 612(b) and 16 U.S.C. § 628.)

At the outset the confidence of the members was shaken by Sec. 252.1, Authority, which fails to cite the Mining and Minerals Policy Act of 1970 which would

appear to be germane to regulations dealing with acts authorized and indeed required by the 1872 Mining Act. Thus from the beginning the Proposed Regulations appear to have been approached from a one-sided viewpoint. The members understand the tremendous pressures exerted for such an approach but would prefer a more balanced recognition of the pertinent Congressional enactments.

There is a serious problem with "operations" as defined in Sec. 252.4 and further complicated by the requirements thereof as stated in Sec. 252.6 (a). The exemptions of (1), (2) and (3) thereof do not include the activity of locating a claim. Thus the regulations as written would require the prospector who made a valuable discovery to go to the District Ranger and ask permission to make the location. This requirement is an undue burden entailing possibly great expense in money and time, and could result in the loss of a valuable property right. The defect could and should be remedied by another exemption (4) to cover the act of locating a claim or claims.

This exemption should make it clear that the requirements of location, including acts as required by State law (Alaska Statutes 27.10.010) such as "and by cutting out, blazing or marking the boundary lines so they can be readily traced" do not constitute a "significant surface resource disturbance".

Considerable discussion has centered around whether the proposed Regulations would prohibit helicopter access and airborne core drilling equipment. It is the belief of the membership that such uses should be encouraged as being less damaging to the environment than surface access and digging of pits and trenches, and therefore an additional specific exemption under Sec. 252.6 (a) is also requested. It is noted that exemption (3) under the above section is limited to prospecting, and since core drilling is more properly classified as exploration the alternative is to extend (3) to "prospecting or exploration which will not cause—".

Another problem is found in the time frames incorporated in Sec. 252.7, for approval of an operational plan, particularly the indefinite extension of the 60-day period when the area is inaccessible for inspection. In the short Alaska season, complicated by both high altitudes and northern latitudes, this would mean that a plan filed in the fall of the year could not be inspected until perhaps June or July from which time the 60 days for approval would commence to run. This would effectively defeat ownership rights should an operation plan be required for assessment work which must be accomplished by September 1. There must be some provision giving the claim owner the right to proceed with annual assessment work for at least the 30-day period preceding September 1. The seeming relief provided by the discretionary authority in (b) of this Section does not give the needed protection to property rights. Furthermore, under Sec. § 252.7(b) operations may be permitted to continue "so long as operations do not create impacts which must be considered in an environmental statement". Since permission to continue operations is contingent on avoiding such impacts and since the phrase is not defined and completely open ended, the permission to continue is in fact illusory. When coupled with the 90-day review provision in the preceding section, miners could lose a claim by failing to comply with State law.

The bond provisions of Sec. 252.15 are too widely applied when read together with the definitions of "operations" and "operator". A prospector who actually performs a prospecting reconnaissance would have to put up a bond whereas a hunter or fishermen or backpacker doing the same thing would not. There should be a specific exemption from the bond requirement as is provided from the operational plan in Sec. 252.6(a), augmented as proposed above. Furthermore the bond should be conditioned on performing reclamation as such, rather complying with the regulations themselves.

Sec. 252.6(a) (1) contains the limitation of "—open to public use—". This limitation on the exemption should be stricken in the public interest of allowing prospectors and miners to use existing roads which are not open to the public use, such as Forest Service logging roads. The public benefit of the use of such roads by Alaska citizens, and particularly the native communities on Prince of Wales Island, should be recognized.

Sec. 252.6(f) requires the preparation of draft environmental statements in certain cases. The section should be clarified to make it clear that the EIS would be prepared by the Forest Service pursuant to the Court's ruling in *Greene County v. FPC*, 3 ERC 1595 (Second Cir. 1972) cert. den., 4 ERC 1752 (1972), and some of the language deleted which appears to create additional standards of compliance beyond those required by NEPA and the CEQ Guidelines.

Furthermore, the operator should be allowed to continue operations pending completion of the draft.

Sec. 252.14 is a direct infringement on the present right of access to the extent that it requires an application to be submitted therefor. The real thrust and justification for this section is for authorization to construct means of access, such as roads and airfields. This objection can be easily cured by changing "authorization for such access" to "authorization to construct facilities—".

Your consideration of the foregoing views, comments and objections will be appreciated by the members of the Juneau Branch of the Alaska Miners Association.

Very truly yours,

F. O. EASTAUGH,
Chairman, Special Committee on Proposed
Forest Service Regulations.

ADDENDUM

Section and Portion Protested

Reason

§ 252.6(a)—"which might cause a significant disturbance of the environment."

Arguably any act *might* cause a significant disturbance. Accordingly, the activity which triggers implementation of this section should be more precisely spelled out so as to prevent arbitrary and/or uneven application. Moreover, the person who is to decide whether or not an activity might significantly disturb the environment should be designated as well as an appellate tribunal.

§ 252.6(a)—" . . . open to public use . . ."

This phrase should be stricken to enable prospectors and miners to use existing roads which are not open to public use, such as some Forest Service roads.

§ 252.6(b)

Existing operations should be allowed to continue while the plan of operations is being reviewed by the District Ranger.

§ 252.6(c) (3)

The small operator cannot be expected to know the access routes to a claim a developing mining corporation might use, and thus should be required to submit such information only where he possessed it—it should not be required.

§ 252.6(c) (4)

The small operator cannot be expected to know the placement of proper roads or the means of transportation a developing mining corporation might use, and thus should be required to submit such information only where he possesses it—it should not be required.

§ 252.6(c) (5)

The small operator cannot be expected to know the equipment or facilities a developing mining corporation might use and thus should be required to submit such information only where he possesses it—it should not be required.

§ 252.6(c) (6)

The small operator cannot be expected to know the methods of operations a developing mining corporation intends to use, and thus should be required to submit such information only when he possesses it—it should not be required.

§ 252.6(c) (8)

a. The word "adverse" should be inserted before the word "effects".

b. Should the small operator's description of environmental effects be insufficient, a determination of the effects should be made by the Forest Service.

ADDENDUM—Continued

*Section and Portion Protested**Reason*

§ 252.6(c) (9)

While the small operator should be permitted to provide input into those actions which should be taken to minimize adverse environmental effects, responsibility for determining such measures should rest on the Forest Service.

§ 252.6(e)

Inasmuch as no time limit is set for plan modification, operations proceeding in good faith compliance with an approved plan could be altered with consequential expense to the operator. Any such costs should be borne by the Forest Service.

§ 252.6(f)

Pursuant to the Court's ruling in *Greene County v. FPC*, 3 E.R.C. 1595 (2d Cir. 1972) *cert. den.* 4 E.R.C. 1752 (1972) this section should provide that draft environmental impact statements be prepared by the Forest Service. Furthermore, the small operator should be allowed to continue operations pending completion of the draft.

§ 252.7(a)

Given the short mining season in Alaska and the severe weather which make regions inaccessible for long periods of time, the period allowed the Forest Supervisor to review a plan is far too long. Even permitting operations to continue during review would not solve this problem since the uncertainty to which the small operator's business is subjected would force him to wait for approval before improving a claim. For these reasons review should be restricted to 10 days.

§ 252.7(b)—Operations may be permitted to continue "so long as operations do not create impacts which must be considered in an environmental statement."

Since permission to continue operations is contingent on avoiding such impacts and since this phrase is not defined and is completely open-ended, the permission to continue is in fact illusory. When coupled with the 90 day review provision in the preceding section, miners could lose a claim by failing to comply with state law.

§ 252.9(b)

The proviso gives the Forest Supervisor absolute authority to drive a small operator out of business in that "significant environmental damage" can arguably reach any activity connected with mining.

§§ 252.10(a) (b) (c) (d) (e)

The small operator should receive information from the Forest Service as to what is necessary for their operation to comply with these respective federal laws.

§ 252.10(g)

Requiring restoration may often be impractical and thus unduly expensive. Rather, the word "reclamation" should be substituted for the word "restoration".

§ 252.14

By requiring Forest Service authorization for access to a claim to be approved, this regulation sets up the possibility of the necessity of two environmental impact statements. Again, such a draft should be provided by the Forest Service and the small operator should be allowed to continue to operate pending approval.

ADDENDUM—Continued

Section and Portion Protested

§ 252.15

Reason

The bond requirement, particularly the \$2,000 minimum places an impossible burden on the small operator and discriminates in favor of the large mining companies. The Forest Service should grant the small operator an unsecured loan for such a bond if it is to continue in the proposed regulations.

§ 252.16

Instead of appealing a Forest Service decision to the Regional Forester, an independent Board made up of a representative of industry, a representative from the Bureau of Mines, and a representative from the Forest Service should be created.

KENNECOTT COPPER CORP.,
New York, N.Y., March 4, 1974.

HON. JOHN MELCHER,

Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MELCHER: It is our understanding that your Subcommittee will hold hearings on March 7th and 8th to review the proposed Forest Service regulations for mining and prospecting in National Forests. Kennecott is greatly concerned over the impact these regulations could have on the domestic mining industry at a time when the gap between domestic demand and supply of many minerals essential to the nation's economic health is broadening.

We do not support the Forest Service's belief that these regulations represent a necessary and appropriate step to anticipate expected Federal laws dealing with land use; nor do we believe the Service has the authority to promulgate such broad land use regulations.

In the event, however, that the Forest Service is successful in seeking to implement these regulations, there are certain vital changes in the regulations which must be made if ill-timed and serious harm to the domestic minerals effort are to be avoided.

I am enclosing a letter written by C. D. Michaelson, President of Kennecott's Metal Mining Division. The letter was written in response to the Forest Service's request for comments to its proposed regulations. It sets forth both our general and specific comments on the regulations.

Please accept mine—and Mr. Michaelson's letter—as our formal statement for the record. As we stated to the Forest Service, Kennecott would be most happy to provide additional information or to answer any questions which might occur to the Subcommittee or the staff.

Very truly yours,

GILBERT E. DWYER,
Vice President-Administration.

KENNECOTT COPPER CORP.,
METAL MINING DIVISION,
New York, N.Y., February 19, 1974.

U.S. DEPARTMENT OF AGRICULTURE,

*Forest Service, Division of Watershed Management,
Rosslyn Plaza E., Arlington, Va.*

GENTLEMEN: We welcome the opportunity to comment on the proposed new and revised regulations covering prospecting, discovery, exploration, development, mining, and processing operations in National Forests. As a member of the American Mining Congress, Kennecott is aware of the many meetings which have been held between AMC and representatives of the Forest Service in a continuing effort to resolve some of the serious problems which would result from promulgation of the proposed regulations. We agree with the AMC's position regarding the Service's authority to implement regulations of the type proposed.

We can, however, understand the concern which has prompted the Department of Agriculture to seek rules to protect National Forest lands. Assistant Secretary Long's statement that "the search for new resources has intensified, with

more pressure to dig mines deeper and to strip mine low grade deposits near the surface" is a valid one; such actions are logical and necessary responses to the growing shortage of domestic minerals. We can also understand his interest in meeting environmental responsibilities. But we would suggest that the two objectives—increased production of domestic minerals *and* environmental protection—are compatible. New minerals can be found and developed under an effective control system which does not inhibit this effort, but does curb abuses of our national resources, and imposes appropriate reclamation rules. As the Department is aware, Federal laws which will accomplish this are very much in the forefront of legislation being considered by the 93rd Congress—surface mining reclamation and policies affecting private and public land use being the most evident. Both the Senate and the House have already recognized the care which must be taken in developing such Federal guidelines if the ultimately enacted laws are to be balanced in terms of all pertinent national interests; the Congress is making important and steady progress toward the enactment of such laws. In view of this, interim proposals such as the new and revised regulations for National Forests pose a most serious problem since they are based on the assumption that environmental protection is a national interest which overrides all others. By singlemindedly serving *one* goal, the regulations would pose serious obstacles to achieving others which are necessary for the development of mineral resources which lie within 140 million acres of National Forest land currently subject to location and entry under Federal mining laws.

We believe the most appropriate step for the Department of Agriculture at this point would be to delay development and implementation of the proposed regulations until Congressional action has been completed. Then, if the necessity for doing so remains, the Department could issue whatever regulations are appropriate.

We are aware, however, that the Department has stated its firm intention to proceed with the proposed regulations. If this approach is followed, it is vital to the public interest that certain changes or amendments be made in the proposed regulations. Following is our point-by-point analysis of those sections of the regulations which we find most troublesome.

Section 252.6: A plan of operation would be required of any action which "might cause a significant disturbance of the environment." The language is vague, particularly since the words "might" and "significant" open the way to a wide range of interpretation and argument. The word "might" should be deleted and a definition of "significant" added.

Paragraph (a) could well be read as a restriction on the rights of prospectors to operate vehicles on public roads, on roads not open to the public (such as those used by the Forest Service itself), and to engage in necessary off-road travel—without submitting a plan of operation.

Section 252.6 should be clarified to state that existing operations may continue while a plan of operation is being reviewed by the District Ranger.

The requirements to include an environmental impact statement in the submitted plan of operation should be limited to an estimate of adverse effects the operation has or will have (not "may have") on the environment.

Section 252.6(f) appears to add a new test for determining whether an environmental impact statement must be prepared under the National Environmental Policy Act. The Section should be amended to require an environmental impact statement, pursuant to the new and proposed regulations, only when required under Section 102(2)(C) of the NEPA. The determination of whether an environmental impact statement will be prepared should be on a case-by-case basis and follow the Guidelines of the Council on Environmental Quality.

Section 252.7: This Section grants the Forest Supervisor up to 90 days—or more—to review a proposed plan of operation. Such delays could prove most serious to the prospector or miner who faces time constraints either in the form of Federal and state laws and mining leases or options, or in the form of natural restraints imposed by weather or altitude conditions.

The Section should be revised to set the time limit for review at no more than 45 days. It should also be amended to permit operations—pending approval of the plan—when operations are necessary to comply with state or Federal law, or meet contractual requirements.

Section 252.8: The extensive information required from the prospector or miner in the plan of operation would compromise the competitive secrecy required for certain operations. The claim of this Section that appropriate data would be kept "confidential" is virtually meaningless under current Federal

laws governing information disclosure. It is our understanding that the Forest Service itself has already admitted the fallacy of offering any guarantee of confidentiality. The solution lies in requiring a plan of operation only in those cases where it is absolutely necessary and, in those instances, limiting the information required only to what is essential.

Section 252.9: This Section grants the Forest Supervisor authority to require immediate suspension of operations if he determines that the operator, through noncompliance with his approved operation plan, is "causing significant environmental damage." If a prospecting or mining operation is causing irreparable injury or damage, or if the operation threatens public safety or health, the Forest Supervisor can readily obtain a temporary restraining order or injunction halting the injurious practice. This Section should be deleted.

Section 252.10: By implying that the prospector or miner must go beyond the requirements of applicable Federal and state environmental laws, this Section would permit the imposition of more stringent regulations on prospectors and miners in National Forests than they can expect elsewhere. It should be sufficient to require compliance with applicable Federal and state environmental standards.

Section 252.14: This Section should be required to more clearly reflect the apparent intent: that applications must be filed for "construction and improvement," and not simple access. Helicopter landing sites should be exempted from the written permission requirement. These sites require minimal clearance of vegetation. Imposing the proposed requirement for a prefilled permit and travel plan would severely hamper reconnaissance operations and would divulge confidential exploration plans.

Section 252.15: While major mining companies such as Kennecott, by obtaining blanket bonds, would experience no great difficulty with the performance bond requirement, it would virtually wipe out the activities of many amateur prospectors or small companies. In most cases they would be unable to obtain a performance bond and would be faced with the alternative of keeping \$2,000 in reserve for each operation. The small company and amateur prospector are an integral part of domestic minerals development and have traditionally served the national interest by searching for, and discovering significant deposits of, minerals. Their role is no less important in these times of critical domestic minerals shortages.

This Section should be rewritten to require a bond guaranteeing reclamation of the area disturbed, rather than guaranteeing compliance with the regulations and conference with the plan of operation. A maximum amount for the bond should be specified and the District Ranger empowered to approve the bond pursuant to certain guidelines. The Section should also be amended to permit waiver of the bond if a bond is already in force under an approved state reclamation plan.

Section 252.16: An apparent attempt to simplify and localize the appeals procedure, this Section is completely unworkable. It permits a prospector or miner who challenges the decision of the Regional Forester to appeal only to the Forest Supervisor—whose decision "shall be final." This places an awesome burden on the Supervisor, since it presupposes he is equipped to render judgment on complex matters encompassing law, engineering, and economics. There seems little question but that such an inadequate appeals procedure would inspire a great deal of litigation.

We would suggest that the Section be amended to specifically recognize the prospector's or miner's right to appeal the Supervisor's decision to the U.S. District Court with jurisdiction.

Section 252.17: Since any exploration or development activity will necessarily cause some disturbance of the environment, it would be impossible to assure that such operations "provide for the protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness so as to provide for the preservation of its wilderness character." The Section should be amended to simply state that the prospector or miner operating in wilderness areas comply with the Wilderness Act.

In the interest of brevity, we have limited our comments to our major areas of concern. Should more detailed information be required, we would be most willing to meet with representatives of the Department of the Forest Service for a more detailed discussion.

Very truly yours,

C. D. MICHAELSON.

THE COLORADO MINING ASSOCIATION,
Denver, Colorado, March 5, 1974.

The Honorable JOHN MELCHER,
*Chairman, Subcommittee on Public Lands, Interior and Insular Affairs, U.S.
 House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN MELCHER: The Colorado Mining Association is a voluntary trade association, founded in 1876 and incorporated in 1897. Its membership, numbering 120 companies and 1,450 individuals, is composed of both large and small mining enterprises, manufacturers and distributors of mining and processing equipment and supplies, commercial banks and other institutions serving the mining industry. The Association respectfully submits the following comments and attached changes regarding the captioned regulations. These comments and suggested changes were developed by the Association's Wilderness Subcommittee of its Committee on Public Lands, under authorization of the Association's Board of Directors.

The Association understands the purpose, acknowledges the need and philosophically has no problem with regulations which provide that the Forest Service has reasonable control of mining operations on National Forest lands. The members are sensitive to the change of National interest favoring environmental and restorations practices as illustrated by the development of its own "Code of Exploration Practices" in 1970. Further, the Association is eager to cooperate in developing reasonable regulations consistent with being able to explore and mine the mineral products so necessary to our Nation's health and well-being.

The Association's suggested changes to the proposed regulations are relatively few in number but important in application. If all mineral activity and operations affected by the proposed regulations require Forest Service approval, there is a strong possibility that such approval would constitute "a major Federal action" as stated in section 102(C) of the National Environmental Policy Act (NEPA). The determination of this fact could be removed from the discretion or decision making authority of the Forest Service and put into the hands of special interest groups and judges. If this occurred, then these same special interest groups could further remove decision making and control of Forest Service responsibilities for resource management and land use by insisting that mineral activities and operations of every character and magnitude be qualified as "significantly affecting the quality of the human environment" (NEPA). If the above resulted, then the Forest Service would be required by NEPA to prepare an Environmental Impact Statement for each and every proposed plan submitted for approval.

This situation would require tremendous manpower resulting in the necessity to hire hundreds or thousands of experts in several fields of professional disciplines and cause months or years of delay on prospective exploration targets. This situation would also cause needless waste of time and money because it is a recognized fact that the early stages of exploration causes little or no damage to the environment. This fact, when considered in the light of the odds against exploration success, (which is discussed later in this letter) readily shows the strong likelihood of wasting large amounts of time and money.

In light of the above, the regulations as proposed could take management control away from the Forest Service and place it in the hands of special interest groups which may or may not be responsible in their actions. An answer to this unfavorable possibility is for the proposed regulations to be amended as suggested on the attached, such that the Forest Service promulgate minimum operating standards, nationally and regionally, and provide that all operators conducting mineral activities and operations on National Forests must submit plans complying with these standards. If not, no operations could be conducted without Forest Service approval. Other safeguards are also built into the suggested changes to allow ample protection for the Forest Service to exercise necessary control over mining operations.

The demand and need for the production of domestic mineral commodities has been detailed in the Second Annual Report of the Secretary of the Interior, (June, 1973) under the Mining and Minerals Policy Act of 1970 (PL 91-631). The shortage of petroleum products has received much publicity in Congress and the press in recent months and Secretary Rogers C. B. Morton has publicly stated that mineral shortages would cause a worse crisis. Among the causes of a decline in mineral exploration, despite increasing demand, are uncertainties over future restrictions on land use and prospecting moratoriums in many perspective areas. The mineral industry must have continued reasonable access to

land with favorable geological character within the National Forests in order to develop economic mineral deposits which are so badly needed for American consumption and export to lessen the balance of trade deficit.

Economic mineralization is a rare phenomenon with statistics suggesting that the odds are over 10,000 to 1 against finding a good ore body even in an area that has a significant occurrence of mineralization. Many economic mineral deposit discoveries have been made by an individual prospector or small mining company, and this will be true in the future. It is the opinion of the Association that the prospector and small mining company needs special recognition in the regulations to prevent their being squeezed out economically. If a project gets beyond the prospecting and initial exploration phase, then the environment will be affected appreciably more and at that time more comprehensive regulations are in order. The loss of incentives to the prospector and small mining company not only runs counter to the traditional American policy of encouraging competition and the Mining and Minerals Policy Act of 1970, it also diminishes mineral exploration incentive. The enclosed comments of the Boulder County, Colorado Mining Association are specifically directed toward the situation of the prospector and small mining company. The Association takes this opportunity of re-emphasizing that the Mining and Minerals Policy Act of 1970 (PL 91-631) states, "It is the continuing policy of the Federal Government in the National interest to foster and encourage private enterprise in (1) the development of economically sound and stable mining, minerals, metal and mineral reclamation industries,..."

Although the members of the Association are in doubt as to the Forest Service authority to promulgate and enforce the above captioned regulations, we stand ready to cooperate in developing reasonable regulations as stated earlier in this letter.

Concerning the implementation of the proposed regulations, the Association respectfully suggests that the effective date be after September first, thus not affecting the already planned exploration season of 1974. It is conceivable that, because of organizational and other delays predictably inherent in any new program, many firms and individuals could lose this entire exploration season and more importantly create serious jeopardy to valuable unpatented mining claims. Under 43 CFR 3851.3, the failure of a mining claimant to perform annual assessment work will render the claim subject to cancellation at any time. This is so if only one year has been missed although assessment has subsequently been performed for several years.

The Association's detailed comments and suggestions are contained in the attached verbatim transcript of the Forest Service Proposal as published in the Federal Register, December 19, 1973. Words enclosed in black brackets indicate proposed deletions, and italics indicate new material which is suggested to be added.

We thank you for this opportunity to present the views of the Colorado Mining Association and trust they will be helpful.

Respectfully submitted,

OMER R. HUMBLE,
Vice President, Public Lands.
DAVID R. COLE,
Secretary and Manager.

Attachments.

Boulder County Metal Mining Association,
Boulder, Colo., February 20, 1974.

Colorado Mining Association,
Denver, Colo.

GENTLEMEN: It is recognized that in the immediate present, production from large operations surpasses that from the comparatively few small operations. This situation is destined to be reversed, however, as the need for mineral products becomes more and more acute. An ever-growing tide of prospectors and small operators will be examining every acre of public and private domain, constituting a flood which will engulf and may overwhelm all regulatory bodies. New sources of minerals will be found, thereby building new foundations for future large-scale productive operations.

With this knowledge in mind, all regulations must be established with the intent of aiding and encouraging the small operator. There are two general types of mining operations that must be recognized and treated upon entirely different bases. One of these types is the large scale operation, inherently inefficient, substantially funded, and requiring production potential measured in tens

of millions of dollars. This is obviously the only kind of mining operation generally recognized by governmental agencies.

The second type of mining operation is that done by the small operator or prospector, often consisting of from only one to ten workers. Efficient by necessity, so limited in capital that every dollar must be directed toward production, this operator is able to create new national wealth from sources and ores rejected by the large operators as non-commercial or too lean or small to be worked. One illustration of the small operator is a local miner who has produced a million dollars worth of ores entirely from sources that the large companies have abandoned or rejected.

Add to this the fact that the small operator has made by far the larger portion of new discoveries, and the absolute necessity of encouraging and supporting him becomes obvious even to the most ardent supporter of monopoly.

One of the primary purposes of the national Mining and Minerals Policy Act (P.L. 91-631) is to protect and support the small mine operator. With this in view, reconsideration and revision of certain of the Proposed Rules is required, among which are:

252.6(c), (1) through (9): The drawing and submission of a complete Plan of Operation must not require more than four hours of the applicant's time. The assembly of a prolonged, detailed, time and money-consuming Plan of Operation outline circumvents the intent of the Mining and Minerals Policy Act, and all who cause this must be held accountable.

252.10-c: "Tailings", "dumpage", "waste produced in operation", have, throughout history, consistently become stockpiles of needed material. Such material must be kept as intact as possible for the use of future generations. Leveling, grading, hiding, or dispersal of such material is contrary to the Mining and Minerals Policy.

"Buildings no longer usable" become focal points of interest to outdoor recreationists. In some cases, they become historical sites. Removal or destruction of obsolete mining structures may therefore be against the national interest.

252.10-f: Destruction of any road, after money is spent upon its installation, is cause for punitive action under the Mining and Minerals Policy Act. If a later prospector has a better idea for discovering ore in a previously explored and abandoned area, it is highly unjust to require him to spend money again for the same road. Such requirement is typical governmental insistence upon wastefulness.

252.10-g: Add a statement that no rock faces or exposures resultant from mining or prospecting operations may be covered or hidden, as such faces constitute valuable knowledge and reference information which must be available to later searchers. Covering such information evades the Mining and Minerals Policy, and should be subject to punitive action.

252.14: It must be made plain that the intent of the term "reasonably necessary" must be for the benefit of the operator.

252.15-a: The performance bond of \$2,000 must be drastically scaled down for the small operator, whose capital must go for production. In such cases, a minimum bond of \$2,000 is definitely contrary to Mining and Minerals Policy.

252.16: It becomes mandatory that the proposed system of appeals be simplified and streamlined. The periods of delay guaranteed by this section assures that any government agent can tie up a small operator until he dies on the vine. This, of course, is contrary to Mining and Minerals Policy.

252.17; 252.17-c (the phrase "consistent with"); 293.13 (the phrase "when appropriate"); 293.14: The small operator already concedes defeat in regard to the 20-year right to prospect in Wilderness areas, because he is precluded by biased, unreasonable, obstructing regulations, all of which evade the intent of the national Mining and Minerals Policy.

Respectfully submitted.

GEORGE VRANESH, *President.*

[From the Federal Register, Dec. 12, 1973]

PART 251—LAND USES

251.12 [Revoked]

1. Part 251 is amended by revoking 251.12.
2. A new Part 252 is added to read as follows:

PART 252—MINERALS

Sec.

- 252.1 Authority.
- 252.2 Purpose.
- 252.3 Scope.
- 252.4 Definitions.
- 252.5 Use of Mining Claims, Surface Resources.
- 252.6 Plan of Operations—Requirements.
- 252.7 Plan of Operations—Approval.
- 252.8 Availability of Information to the Public.
- 252.9 Inspection, Noncompliance.
- 252.10 Requirements for Environmental Protection.
- 252.11 Maintenance During Operations, Public Safety.
- 252.12 Cessation of Operations, Removal of Structures and Equipment.
- 252.13 Prevention and Control of Fire.
- 252.14 Access.
- 252.15 Performance Bonds.
- 252.16 Appeals.
- 252.17 Operations Within National Forest Wilderness.

252.1 Authority.

Pursuant to the Act of June 4, 1897 (30 Stat. 35, 36, as amended; 16 U.S.C. 478, 551), persons entering National Forests for the purpose of prospecting, locating and developing mineral resources must comply with the rules and regulations covering National Forests. Section 4 of the Act of July 23, 1955 (69 Stat. 368, 30 U.S.C. 612), provides that mining claims subject to the provisions of that Act are to be used only for prospecting, mining, or processing operations and uses reasonably incident thereto, and that rights under such claims are subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources thereof. The Multiple Use-Sustained Yield Act of June 12, 1960 (74 Stat. 215, 16 U.S.C. 528-531), authorizes and directs the Secretary of Agriculture to develop and administer the renewable natural resources of the National Forests for multiple use and sustained yield for their several products and services for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. Section 102 of the National Environmental Policy Act of 1969 (83 Stat. 853, 42 U.S.C. 4332), authorizes and directs that, to the fullest extent possible, the policies, regulations, and laws of the United States shall be interpreted and administered in accordance with the policies of the Act. *The National Mining and Minerals Policy Act of December 31, 1970 (84 Stat. 1876)*, 30 U.S.C. 21A declares that the continuing policy of the Federal Government is to foster and encourage orderly and economic development of domestic mineral resources.

252.2 Purpose.

It is the purpose of these regulations to set forth *minimum operating standards* and procedures through which use of the surface of National Forest lands in connection with operations authorized by the United States mining laws shall be conducted so as to minimize *significant* adverse environmental impacts on National Forest resources.

252.3 Scope.

These regulations *constitute all requirements which* apply to operations under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.), on all National Forest land under the jurisdiction of the Secretary of Agriculture to which such laws are applicable: *Provided, however*, That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482a-482q) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

252.4 Definitions.

For the purposes of this part the following terms, respectively, shall mean:

(a) Operations. All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and uses reasonably incident thereto, including roads and other means of access whether on or off a mining claim, on lands subject to the regulations in this part.

(b) Operator. A person conducting or proposing to conduct operations.

(c) Person. Any individual, partnership, corporation, association, or other legal entity.

(d) Mining Claim. Any unpatented claim or *unpatented* millsite authorized by the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.).

252.5 Use of Mining Claims, Surface Resources.

(a) No mining claim shall be used for any purposes other than prospecting, exploration, development, mining or processing operations and uses reasonably incident thereto.

(b) Except for claims not subject to surface management under the provision of the Act of July 23, 1955 (69 Stat. 368, 30 U.S.C. 612), mining claims shall be subject to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof, including the right of the United States, its permittees and licensees, to use so much of the surface as may be necessary for such purposes, or for access to adjacent land, so long as the use of the surface does not endanger or materially interfere with the prospecting, exploration, development, mining or processing of the mineral resources thereon or access reasonably incident thereto.

(c) No operator shall sever, remove or use any vegetative or other surface resources subject to management or disposition by the United States except to the extent required for prospecting, exploration, development, mining or processing operations, and uses reasonably incident thereto, or for the construction of building or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent otherwise authorized by the United States. Any severance or removal of timber permitted under the exceptions of the preceding sentence, other than severance or removal for clearance, shall be in accordance with sound principles of forest management, as specified in the plan of operations.

252.6 Plan of Operations—Requirements.

(a) Any person proposing to conduct operations which might cause a significant disturbance of the environment on lands subject to the regulations in this part shall first submit a proposed plan of operations to the District Ranger having jurisdiction over the area within which operations will be conducted. The requirements to submit a plan of operations shall not apply (1) to operations which will be limited to the use of vehicles on existing roads open to public use, (2) to individuals desiring to search for and occasionally remove shall mineral samples or specimens for other than commercial purposes, [and] (3) prospecting which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study[.] (4) *the location of unpatented mining claims*, and (5) *the performance of Federal and State statutory discovery, validation, assessment or patenting requirements*.

(b) Any person conducting operations on the effective date of these regulations *may continue such operations*, but shall within 120 days *thereafter* submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: Provided, however, That upon a showing of good cause the Forest Supervisor may grant an extension of time, not to exceed an additional 6 months. The requirement to submit a plan of operations shall not apply (1) to operations which are limited to the use of vehicles on existing roads open to public use, (2) prospecting which does not cause significant surface resource disturbance and does not involve removal of more than a reasonable amount of mineral deposit for analysis and study, (3) *the location of unpatented mining claims*, (4) *the performance of Federal and State statutory discovery, validation, assessment or patenting requirements*, and [3] (5) to operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and address of the operator(s) and the owner(s) if operations are to be conducted by other than the owner(s). If any of the foregoing are other than individual proprietors, the names and addresses of the principal officers of the business entity and the person(s) designated to represent such entity with the Department of Agriculture shall be included;

(2) A description sufficient to identify the area or areas on the ground within which the operations are being conducted or are to be conducted and the estimated period of activity;

(3) A map or sketch of access routes used or to be used and the description of the means of transportation used or to be used[.]; [submitted in compliance with the provision of 252.14;]

(4) A map or sketch showing the location of existing and proposed roads within mining claims, a description of the type and standard of such existing and proposed roads, and a description of the means of transportation used or to be used;

(5) A list of equipment and a description of facilities used or to be used in the operations;

(6) A description of the methods of operation used or to be used;

(7) A map or sketch showing the location and size of areas upon which it is expected vegetation or soil will be disturbed;

(8) A description of the effects the operations are having or may have upon the environment and forest resources; and

(9) A description of the measures used or to be used to minimize the adverse environmental impacts of the operations, including the measures to be taken to meet the requirements of 252.10.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) above for the entire operation for the full estimated period of activity: *Provided, however,* That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any operations not covered by the initial plan.

(e) At any time during operations under an initial or supplemental plan of operations, the Forest Supervisor may **[require]** *request* the operator to submit a proposed modification to the initial or supplemental plan detailing the means of minimizing unforeseen significant adverse environmental impacts.

(f) An environmental statement pursuant to section 102(2)(c) of the National Environmental Policy Act will be prepared **[in the review and approval of plans of operations, supplemental plan, or modifications of initial or supplemental plans where operations will significantly affect the quality of the environment]** *by the Forest Service on actions taken by it when required.* **[Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development or processing, and on the scene of operations (such as size of operations, construction required, length of operations and equipment required), resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife.]** The determination whether an environmental statement will be prepared will be on a case by case basis and will follow Guidelines of the Council on Environmental Quality (40 CFR 1500).

252.7 Plan of Operations—**[Approval]** *Submission.*

(a) No operations shall be conducted unless they are in accordance with **[an approved]** *a submitted* plan of operations, except as provided in **[paragraph (b) of this section and in]** 252.6 **[b]**. A proposed plan of operation shall be submitted to the District Ranger, who shall promptly acknowledge receipt thereof to the operator. Within thirty (30) days of such receipt, the Forest Supervisor shall;

(1) Notify the operator that the plan of operations **[is approved]** *meets the minimum standards identified by the Secretary of Agriculture;* or

(2) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet **[the purpose of the regulations in this part]** *these minimum standards;* or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed: *Provided, however,* that days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period *further provided that this extension of time shall not be later than August 1.*

[(4) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in 252.6(f).**]**

[(b) Pending final approval of the plan of operations, the Forest Supervisor may approve such operations as may be necessary to comply with the provisions of State law so long as such operations do not create impacts which must be considered in an environmental statement pursuant to the National Environmental Policy Act.**]**

[(c) **(b)** A supplemental plan or plans of operations provided for in 252.6(d) and a modification of an initial or supplemental plan as provided for in 252.6(e)**]**

shall be subject to [approval] review in the same manner as the initial plan of operations.

[d] (c) In the provisions for review of operating plans, the Forest Service will be guided by and conform with the National Mining and Minerals Policy Act and will arrange for consultation with appropriate agencies of the Department of the Interior with respect to significant technical questions concerning the character of [unique] geologic formations and [special] exploration and development systems, techniques and equipment, and with respect to the relative values of minerals. Operator shall be permitted to conduct operations during the review periods as provided in 252.7 if they are conducted in such a manner as to comply with or exceed the minimum requirements stipulated by the Secretary of Agriculture and if the operator has previously posted the bond required in 252.15.

252.8 Availability of Information to the Public.

Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination by the public at the office of the District Ranger in accordance with the provisions of 7 CFR 1.1-1.6 and 36 CFR 200.5-200.10. Specifically identified information and data submitted by the operator as confidential concerning trade secrets or privileged [commercial or financial] operator information [will] shall not be available for public examination. Information and data to be withheld from public examination may include, but is limited to, known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content, and the known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws, and other commercial information which relates to competitive rights of the operator.

252.9 Inspection, Noncompliance.

(a) Forest Officers shall periodically inspect operations to determine if the operator is complying with the regulations in this part and [an approved] will be submitted a plan of operations.

(b) If an operator fails to comply with the regulations or his [approved] submitted plan of operations, the Forest Supervisor shall serve a notice of non-compliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action must be completed, generally not to exceed thirty (30) days; Provided, however, That the Forest Supervisor shall require immediate suspension of operations if noncompliance is [causing significant environmental damage.] substantially below the minimum required standards as stipulated by the Secretary of Agriculture and as provided in 252.10.

252.10 Requirements for Environmental Protection.

All operations shall be conducted so as, where feasible, to minimize significant adverse environmental impacts on National Forest resources, including the following requirements:

(a) Air Quality. Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (84 Stat. 1676, et seq.) and wherever practicable, shall conduct operations in such a manner as to minimize damage to forest resources by air pollutants resulting from such operations.

(b) Water Quality. Operator shall comply with applicable Federal and State quality standards including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (86 Stat. 816; 84 Stat. 91; 70 Stat. 498), and wherever practicable, shall conduct operations in such a manner as to minimize damage [to] or to improve downstream waters by water pollutants resulting from such operations.

(c) Solid Wastes. Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, including buildings and equipment no longer usable in connection with operations shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest resources. All tailings, dumpage, deleterious materials or substances, and other waste produced in operations shall be disposed of or treated so as to minimize adverse impact upon the environment and forest resources.

(d) **Scenic Values.** Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) **Fisheries Habitat.** In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries habitat which may be affected by the operations, including but not limited to, maintenance of normal ranges of water temperature and turbidity levels, unobstructed fish passage, and protection of fish spawning, rearing, and feeding areas.

(f) **Roads within Mining Claims.** Operator shall construct and maintain all roads within mining claims on a location and to a design and standard to assure adequate drainage and to minimize or where practicable, eliminate damage to soil, water, and other resource values. **[Unless otherwise approved]** *If required in writing by the Forest Supervisor within 30 days after cessation of operations,* roads within mining claims no longer needed for operations (1) shall be closed to normal vehicular traffic, (2) bridges and culverts shall be removed, (3) cross drains, dips, or water bars shall be constructed, and (4) the road surface shall be restored to as near as natural contour as practicable and be permanently stabilized.

(g) **Reclamation.** At the earliest possible time during operations, or within one year of the conclusion of operations, unless a longer time is allowed by the Forest Supervisor, operator shall, where practicable, restore the surface disturbed in operations to a natural-appearing condition and take such measures as will prevent or control on-site and off-site damage to the environment and forest resources including, but not limited to:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;
- (4) Reshaping and revegetation of disturbed areas;
- (5) Elimination of hazards to public health and safety;
- (6) Restoration of fisheries and wildlife habitat in surface water bodies;

and

- (7) Stabilization of access roads by proper grading, drainage control, surface treatment, and revegetation.

(h) **Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations** will be accepted as compliance with **[similar or parallel requirements of]** these regulations.

252.11 Maintenance During Operations, Public Safety.

During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public.

252.12 Cessation of Operations, Removal of Structures and Equipment.

[Unless otherwise authorized] *If directed in writing by the Forest Supervisor within 30 days after cessation of operations,* operator shall remove within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes (1) verification of intent to maintain the structures, equipment and other facilities, (2) the expected reopening date, and (3) an estimate of extended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the operating site, structures, equipment and other facilities in a neat and safe condition during nonoperating periods.

252.13 Prevention and Control of Fire.

Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all necessary measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

252.14 Access.

An operator shall be entitled to access in connection with operations, but no road or other means of access, including landing areas for aircraft, shall be con-

structed or improved off the operator's claim block and on National Forest lands until the operator has received authorization in writing from the Forest Supervisor. Application for such access shall be filed with the District Ranger and shall include a description of the type and standard of the proposed means of access, a plat showing the proposed route of access, and a description of the means of transportation to be used. Authorization for such access shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest resources, including, but not limited to, vegetative screening and other measures to protect scenic values and to insure against erosion and water or air pollution.

252.15 Performance Bonds.

(a) **[To assure that operator will faithfully comply with the regulation in this part and adhere to an approved plan of operations.]** *Each operator who has submitted a plan of operations pursuant to 252.7, prior to commencing operations thereunder, will file a performance bond in a minimum amount of \$2,000 [will be required prior to approval of each plan of operation] to assure performance of the requirements of Section 252.10. In lieu of a performance bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. Said bond may be waived if a bond has been posted with some other authority under an approved restoration plan.* A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the nature of the reclamation and restoration requirements and the estimated costs of reclamation and restoration in the event that the operator forfeits his performance bond. This consideration will include (1) the size of the operations; (2) the estimated damage to the environment and National Forest resources if the operator fails to comply with the regulations in this part or fails to adhere to the **[approved]** submitted plan of operations; (3) the estimated cost of stabilizing, rehabilitating and restoring the area of operations; and (4) the type and amount of access to be constructed in connection with operations.

(c) In the event that an initial plan of operations is supplemented or amended in accordance with 252.6 (d) and (e), the Forest Supervisor will review the initial performance bond for adequacy and, if necessary, will adjust the performance bond to conform to the operations plan as amended or supplemented.

(d) When the operations have been conducted and completed in accordance with the regulations in this part and *with the [approved] submitted plan of operations*, the Forest Supervisor will notify the operator that performance under the bond has been completed: Provided, however, That when the Forest Service has accepted as completed any portion of the operations, the Forest Supervisor shall notify the operator of such acceptance and reduce proportionately the amount of bond thereafter to be required with respect to the remaining operations.

252.16 Appeals.

(a) Any operator aggrieved by a decision of the Forest Supervisor in connection with the regulations in this part may file with the Forest Supervisor a written statement setting forth in detail the respects in which the decision complained of is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary, or is otherwise in error. No such appeal will be considered unless it is filed with the Forest Supervisor within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of appellant's statement, the Forest Supervisor shall prepare his own statement explaining his decision and the reasons therefor and forward the statements and record to the appropriate Regional Forester for review and decision. The decision of the Regional Forester shall be final.

(b) At the time appellant files his written statement of appeal he may request and shall be afforded an opportunity to present his views orally to the Regional Forester.

(c) If the Regional Forester considers the record inadequate to support a decision on the appeal, he may provide for the production of such additional evidence or information as may be appropriate or may remand the case with appropriate instructions for further action.

(d) The official files of the Forest Service relating to such an appeal and any testimony and documents submitted by the parties on which the decision of the Forest Supervisor was based constitute the record in the appeal. The Forest Supervisor shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to the Regional Forester for review. The Forest Service shall make the record available to the appellant upon request.

(e) On or before the expiration of forty-five (45) days after closing the record the Regional Forester shall make his decision: Provided, however, That if more than forty-five (45) days are required for a decision after the record is received, the Regional Forester shall notify the parties to the appeal and specify the reason for delay. The decision of the Regional Forester shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based.

(f) A decision of the Forest Supervisor from which an appeal is taken shall not be automatically stayed by filing a statement or appeal. A request for a stay may accompany the statement of appeal or may be directed to the Regional Forester. The Regional Forester shall promptly rule on requests for stays, and his ruling shall be final.

252.17 Operations Within National Forest Wilderness.

(a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in 252.4 in National Forest Wilderness shall comply with the regulations in this part so as to provide for the protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as Wilderness and so as to provide for the preservation of its wilderness character.

(c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads *for ingress and egress* to such claims across National Forest Wilderness unless authorized in writing by the Forest Supervisor in accordance with 252.14. Specifically the Forest Supervisor shall require such changes in location and type and standard of construction as are necessary for the protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as Wilderness and so to provide for the preservation of its wilderness character, consistent with mineral location, exploration, patenting, development, drilling, and production and for transmission lines, and processing operations, including, where essential, the use of mechanical transport, aircraft or motorized equipment.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment and other facilities no longer needed for mining purposes in accordance with the provisions in 252.12 and restore the surface in accordance with the requirements in 252.10 (g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the [mature] timber may be cut and used as is needed in the extraction,

removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management;

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall **[allow]** *not prevent* any activity including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations (78 Stat. 890, 16 U.S.C. 1131-1136).

PART 293—WILDERNESS—PRIMITIVE AREAS

3. The regulations of Part 293 were transferred from Part 251 on March 5, 1973 (38 FR 5851). The new Part 293 is further amended by revising 293.13, 293.14 and 293.15. Regulations applicable to activities under the 1872 mining law in National Forest Wilderness, now appear in Part 252 rather than Part 293.

293.13 Access to Valid Occupancies.

Persons with valid occupancies wholly within National Forest Wilderness shall **[be permitted]** *not be denied* access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, **[issue permits which shall]** prescribe the routes of travel to and from the surrounded occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

293.14 Mineral Leases and Mineral Permits.

(a) All laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(c) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Minerals Act of July 31, 1947, as amended and supplemented. (30 U.S.C. 601-604).

293.15 Gathering Information About Resources Other Than Minerals.

(a) The Chief, Forest Service, shall **[allow]** *not prevent* any activity, for the purpose of gathering information about resources, other than minerals, in National Forest Wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in National Forest wilderness is subject to the regulations in Part 252.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with any activity for the purpose of gathering information about resources, other than minerals, except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about re-

sources, other than minerals, shall [apply] submit a plan of operation in writing to the Office of the Forest Supervisor or District Ranger having jurisdiction over land involved. Excavations shall be considered "substantial" which singularly exceed 200 cubic feet or collectively exceed [200] 2000 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation [may be authorized by a permit issued by the Forest Service] shall be allowed if performed within the minimum requirements if a bond is posted and if all other provisions of 252 are complied with. Such [permits may] plan of operation must provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas[.]. [including the posting of performance bonds.]

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section 4(d) (4) (1) of the Wilderness Act, will [be permitted] not be prevented when and as authorized by the President. (78 Stat. 890 (16 U.S.C. 1131-1136)).

December 12, 1973.

[FR. Doc. 73-26634 Filed 12-18-73; 8:45 am]

INCOMPLETE PRELIMINARY DRAFT—MINIMUM OPERATING STANDINGS

1. Contact the responsible District Forest Ranger in charge of the National Forest wherein operations are to be conducted prior to any new road construction, major improvement of existing roads, blasting, fence cutting, or any other activities causing substantial disturbance or damage, to assure coordination with other Forest uses in the area, such as salvaging the commercial timber out of the road right-of-way.
2. Consult and coordinate with the appropriate District Forest Ranger in planning and executing operations so as to minimize conflict with other uses and planned uses for the area affected.
3. Design and construct roads that are compatible with exploration needs. In general, roadbed outslotted, berms removed; no flat blading; install rolling dip or water bars where needed due to slope or grade; and avoid plugging streams or small drainages with soil and other debris.
4. Build only those roads which are necessary to adequately perform operations for the exploration and development of Operator's plans.
5. Hold to a minimum any excavation for drill pads, landings, etc. that require surface disturbance.
6. Maintain existing and constructed roads on an equitable basis with other users and in conjunction with the Forest Service maintenance program.
7. Schedule field operations to the extent possible to avoid muddy periods when damage to roads and watershed values is at a maximum.
8. All internal combustion engines used within the National Forests are to be equipped with approved spark arrests, as per Forest Service specifications.
9. Take all precautions necessary to prevent starting a wild fire and assist in wild fire suppression to the fullest extent on or adjacent to the area of operations.
10. Adequately fence any large shafts or pits constructed by Operator to prevent entry by cattle, horses, wild game, or humans, in accordance with State Laws and regulations.
11. Repair all fences damaged by Operator, such repairs to be in accordance with Forest Service specifications.
12. Comply with all State laws in regard to blasting and storage of blasting materials.
13. Provide for disposal of litter or refuse by removal or sanitary burial in accordance with Federal and State laws.
14. Take adequate precautions to protect official U.S. land monumentation corners and witness trees within the claims area.
15. Provide the U.S. Forest Service with pertinent geological data obtained from the drill holes for determining water bearing strata and well locations.
16. Require that all of Operator's contractors, subcontractors and personnel be responsible for complying with these minimum operating standards.
17. If required in writing by the Forest Supervisor within 30 days after cessation of operations, Operator will close all roads constructed by it by removing the berm, installing proper dips, closure structures, water bars and drainage structures and revegetate to grass.

18. At all reasonable times and prior to Operator abandoning operations on National Forest lands, all drill holes are to be plugged, trenches covered, sludge beds filled and all disturbed areas shall be shaped, covered with soil and seeded where practicable. Mined pits need not to be filled.

[Telegram]

Golden, Colo., March 6, 1974.

Re Public Lands Subcommittee hearings—Proposed Forest Service Mining Regulations.

HON. JOHN MELCHER,
Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

SIR: I request this telegram be made a part of the record of the House Public Lands Subcommittee hearings into the proposed Forest Service Mining Regulations.

I believe it is essential to embody within the language of the proposed regulations the obligation of the Forest Service to consider carefully the congressional mandate recognized in the Mining and Minerals Policy Act of 1970 (Public Law 91-631) during its discretionary deliberations under the proposed regulations.

Specifically, I request the following language be added to the proposed regulations:

"Section 252.7 Plan of Operations—Approval—

"(E) All proposed plans of operation will be evaluated by the Forest Service with due consideration given to the congressional mandates embodied in the Mining and Minerals Policy Act of 1970."

During the hearings, I would appreciate your asking Mr. McGuire to explain the absence of any reference in the proposed regulations to the Mining and Minerals Policy Act of 1970.

I appreciate your assistance in this matter.

DAVID L. NELSON,
Attorney at Law.

NATIONAL AUDUBON SOCIETY,
New York, N.Y., March 8, 1974.

MR. JOHN MELCHER,
Chairman, House Public Lands Subcommittee, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR CHAIRMAN MELCHER: While the National Audubon Society was unable to schedule a witness for your Subcommittee hearing March 7-8 on the proposed mining regulations issued by the United States Forest Service, we would wish to register strong support for the regulations. We have commented on them directly to the Department of Agriculture, and submit, herewith, a copy of that statement to the Subcommittee. We respectfully request that this letter and the accompanying statement be made part of the Subcommittee hearing.

Sincerely yours,

CHARLES H. CALLISON,
Executive Vice President.

COMMENTS OF THE NATIONAL AUDUBON SOCIETY ON THE PROPOSED REGULATIONS ON MINERAL RESOURCE USE IN THE NATIONAL FORESTS UNDER THE U.S. MINING LAWS

PREFACE

The U.S. Forest Service and the U.S. Department of Agriculture are to be commended for proposing this new set of regulations governing hardrock mining activities on USFS lands. Proposed under the Mining Law of 1872, these regulations definitely help update that tragic environmental anachronism; they certainly help redress the traditional imbalance which, until recent years, has seen the miner, large and small, absolutely free to prospect, build roads, and mine as he wished on the public National Forest lands. Today, the result of this imbalance is a legacy of scarred land; wildlife habitat has been destroyed, streams permanently polluted by old tailing ponds and mine dumps, and large surface areas ravaged and then abandoned.

While the real need to control hardrock mining activities can only be met by new legislation, these proposed regulations come close to doing as much for the en-

vironment as is possible under the existing laws. Certainly, for example, they are *more* geared to protecting wilderness areas from damage by mining activities than the Wilderness Act of 1964.

Most of the comments that follow are aimed at clarifying, and in some cases strengthening the environmental protection provisions of the proposed regulations. In passing, we will also occasionally suggest directions that we believe a new mining law should take—trusting that the Forest Service and Agriculture Department will take note as they work toward this inevitable and badly needed goal. In all cases, we speak as an environmental organization that is vitally interested in the wise and foresighted use and preservation of the National Forest lands.

COMMENT

I. General

A. *To Minimize or Prevent?* The general intent of these regulations focuses more on “how to mine” rather than on “whether or not to mine.” One might expect that, if these sections go into effect, there will be less emphasis on contesting claims and land withdrawals, and more emphasis on making mining activities more environmentally acceptable, i.e. on making the best of what is usually a bad thing.

We have no quails with the philosophy of minimizing when certain impacts are *truly* necessary or inevitable. We do believe that one should think in terms of minimizing only *after* attention has been given to the prior and more basic issue: in this case, “Do we really need to mine for this particular mineral in this particular place?” If the answer is affirmative, further care must be taken so that minimizing impacts will not degenerate to a mere exercise in cosmetics designed to placate the public. The basis of all minimizing should lie in careful study of the ecosystem (or systems) to be affected; their well being should be the primary concern.

However, our concern here is to be sure that even the most ecologically-based minimizing, as encouraged by these regulations, not be permitted to supersede (especially in practice on the District Ranger or Forest Supervisor levels) the traditional “weapons” of land withdrawal and contesting claims. Given the extreme rights accorded mining by the 1872 law, it should be spelled out in the regulations that the options of withdrawal and claims contesting are to remain viable.

B. *Will These Regulations Mean More Patenting?* The proposed regulations contain the stiffest environmental controls ever imposed on hardrock mining in the U.S. Thus the question arises: will these have the effect of forcing more public lands to *patent* so that claimants can operate without such controls?

The existence of the old patenting procedure is today responsible for many “private inholdings” and large areas of fragmented land ownership within National Forest boundaries. Colorado’s Uncompahgre National Forest (Ouray District) is a graphic example; throughout the West are many more like it. In these areas. It is next to impossible to determine, on the ground, where Forest Service land begins and ends; they are a land manager’s nightmare. Overall planning is utterly impossible. This situation should not be permitted to worsen.

More seriously, the patenting process poses the ongoing prospect of continued erosion of the public National Forest land base—and at what is today an unconscionably low sell-off price. It is polite to call this arrangement a “give-away.” Take, for example, the present situation in southwestern Colorado’s Wilson Mountains Primitive Area; here some 940 acres of unpatented claims have recently been filed, effectively blanketing Navajo Basin, the heart of this wild area. Today, it is likely that, if the prospecting company (Texasgulf, Inc.) finds mineable copper here, much of the basin will be patented anyway. However, it would be tragic were the stiffness of these proposed regulations to force the issue; the loss to the public would be irreplaceable.

Thus, the Forest Service should weigh carefully just what effect these regulations will have on this always potential threat to its land base. If, down the road, it becomes apparent that the regulations are truly accelerating the patenting process, then they should be immediately and appropriately reexamined and modified.

On the subject of patenting, one should also ask if the process of patenting under the Mining Law of 1872 is not subject to the National Environmental Policy Act of 1969. While private property rights, *per se*, cannot usually be touched by NEPA, the process of *issuing a patent* could well be construed as a “major federal action significantly affecting the quality of the human environment.” This is, after all, nothing more than a land transfer—but a transfer which means

a loss of management control by the Forest Service, and a possible loss of wildlife habitat, recreational opportunities, fisheries, watershed, et al. At the very least, the filing of a NEPA "102 Statement" in relation to the decision-making process of issuing a patent would bring about a fuller disclosure of the impacts, costs and benefits of such an action. Establishing that actions under the Mining Law of 1872 are subject to the NEPA process could also have the effect of slowing the patenting process which the proposed regulations might otherwise accelerate. It is a generally acknowledged fact that the mining industry fears this application of NEPA. That the proposed regulations stipulate just this application (section 252.1) is wholly commendable.

C. *How Loose the Language?* There are, in the proposed regulations, a number of qualifiers or "weasel words" which are capable of wide ranges of interpretation. We note, for example, the following: "significant," "reasonable," periodically," "as practicable, etc.

While the exact meaning of some of these terms and phrases have been or will be determined by the courts, the fact remains that their existence could lead to an unnecessary and unadvisable flexibility in on-the-ground applications. Given the basic environmental axiom, "When in doubt, be cautious and strict," it will be our tendency in the following pages to tighten phraseology in behalf of the land and its native, natural attributes.

II. Specific

252.6 Plan of Operation—Requirements

(a) *New Operations.*—The key word here, as well as in much of the rest of these regulations is "significant, which we assume is used purposely to tie in with the language of NEPA. However, we question whether this terminology is sufficiently strict or specific. For example, on the delicate alpine tundra of the Colorado Rockies, the disturbance of a comparatively small area—say a 10 x 10 drill pad—could leave an eroding scar that might well not revegetate naturally for a century or more, if ever. That is significant.

Forest officials we have spoken to about this critical term have generally responded by saying that, "It all depends upon how this is administered in practice." They have explained that the term will be "self-defining" and/or "dynamic."

While we concur with the need for some administrative flexibility, we believe that "significant" could and should be more precisely pinned down. An effort could be made, for example, to specify the parameters of "significance" in each of the various life zones, or general ecosystem types administered by the agency. Among the criteria that should be used to determine "significance" in this context are: a) size of disturbance, b) length of time required for disturbed area to revegetate to pre-existing conditions, c) location of disturbance with respect to scenic areas, wildlife habitat, water, and other values and potential impacts upon same, d) duration of disturbance (i.e. projected length of human activity, etc.).

These regulations define "significant" only negatively; we believe some *positive* attempt at definition should be included.

Regarding the negative definitions, we have two comments:

(1) Operations limited to "the use of vehicles on existing roads open to the public use" are not required to submit a "plan of operation" to the District Ranger. Since the Forest Service is now actively closing many formerly open roads to public use, we would urge that—especially in areas of known or potential mineralization—all new, or seasonal road closures be lucidly and widely announced. Signing in the field should be part of this process, with the wording of the signs addressed *both* to recreationists and miners.

(2) This clause seems to say it's all right to prospect without submitting a plan of operation, if all one is going to do is bring out some samples for assay, etc. We trust that the phrases here re: "significant surface resource disturbance" will cover those cases where tons of overburden, for example, might have to be removed in order to come up with those samples.

(b) *Existing Operations.* The clause here allowing an existing operator an extension of up to six months beyond the prescribed 120 days for filing a plan of operation seems gratuitous. If an outfit cannot come with a description of what it is doing within 120 days after the regulations go into effect, then it's probably to muddled or irresponsible to be allowed the privilege of mining on the public lands in the first place. Forest Service officials have suggested that this clause will allow leeway during which the regulations can come to the operator's attention, and also give District Rangers ample administrative time to process the plans. While the latter may have some merit, the former seems

frivolous and coddling; ignorance in this case (as with most other laws) should not be an excuse—if the Forest Service adequately publishes the regulations.

(c) *Plan of Operation.* This seems a comprehensive provision with one exception. Clause (2) states that "a description sufficient to identify the areas on the ground within which" operations take place shall be prepared. Our question is: "sufficient for whom?" The inadequacy of claim location descriptions is already a hair-raising problem for many District Rangers and Forest Supervisors who must put up with hasty and often erroneous descriptions. We believe a competent survey by a *registered land surveyor* should be required at the very least.

Clause (8) is also a possible problem. In effect, it allows the operator to assess the environmental impacts of his activities. In addition to involving some operators in matters that are outside or beyond their areas of competence and knowledge, it also allows a kind of self-assessment which may or may not be adequate and objective. The approval provisions allow something of a check and balance arrangement to operate here. However, it might make better sense to have parts (8) and (9) of the plan of operation prepared with the consultation of the District Ranger and appropriate staff from the outset. In many cases, this would seem to be a more efficient and objective way of coming up with these key environmental portions of the plan.

(f) *102 Statement* What happens if a 102 Statement is not required? Is the plan of operation sufficient unto itself? We believe an intermediate option should be added: that of preparing (by the USFS) an in-house environmental analysis.

252.7 Plan of Operation—Approval This section should include an appropriate *public hearings* clause. In cases where a NEPA statement is required, hearings should be mandatory; they should be held so that public input and comment can be taken prior to final approval of a plan of operation. One of the historic problems environmentalists have faced with the mining industry is the latter's traditional secrecy with regard to its activities—even though public lands are often directly involved. Hearings should be held in towns or cities near the proposed mining activity (on the model of wilderness hearings in that respect); notice should be sent to all concerned groups and individuals. This hearings clause places on the Forest Service the burden of disclosing to the concerned public those mining activities which will have significant impacts on the public lands.

(d) *Consultation with Appropriate Agencies* This is perhaps the most interesting clause in these proposed regulations—as it seems to contain a hint that there might be some basic weighing of the various values involved (not just those of mining economics) in the preparation of a plan of operation. This is only as it should be.

We would like to see consultation go beyond "appropriate agencies of the Department of Interior" to include: a) the Environmental Protection Agency, and b) appropriate State Fish and Game agencies. We would also, obviously, like to see the provenance of the consultation extended beyond the more technical aspects of mining and geology now listed. Mining activity can, and usually does effect the total environment, and the more perspectives brought to bear on its various impacts, the better the prospects for avoiding or dealing sensibly with those impacts.

252.8 Availability of Information to the Public

The tradition of mining industry secrecy, competitive rights, etc. obviously makes public information a difficult problem. Several times, in attempting to investigate mining activities effecting National Forest lands, we have been denied *all* information because *some* of it is, e.g., "confidential, concerning trade secrets or privileged commercial or financial information."

Thus, we believe specifications regarding the *form* in which an operator submits his information should be specified. More exactly, there should be some means whereby the secret competitive information is broken out and separated from that information which is, by definition, public. A mining operator could, by judiciously scattering secret data throughout all his submissions, effectively deny the public access to much of what he is about.

Ideally, of course, mining on public lands should be removed from the shroud of competitive secrecy altogether.

252.10 Requirements for Environmental Protection

Line 2 of this section: strike the phrase "where feasible;" the sentence here already deals with minimizing, which is plenty loose enough. The "where feasible" loophole makes all that follows unnecessarily flabby. In the same vein, the phrase "Wherever practicable" should be stricken from line 7 of part (b) relating to Water Quality. Likewise in lines 1 and 2 of part (d) re: Scenic Values; here the phrase "to the extent practicable" is suspect.

After part (e) one of the most glaring omissions in the entire set of regulations should be rectified. There is no provision for the protection of *wildlife or wildlife habitat*. A clause dealing with *all species*, not just those that are hunted or of high visibility, should be included. Special mention should be made of those species that are protected by law—e.g., rare or threatened species, the two eagles, wild horses. Critical wildlife areas—e.g. mule deer winter range, elk calving grounds, etc.—should also be given special attention.

In cases where mining operations will seriously damage habitat and reduce wildlife populations for an extended period of years, provisions should be made whereby the States would be indemnified for their wildlife losses. Funds for habitat purchases are probably the best way of accomplishing this goal. Many areas in Colorado, for example, are critically short of winter range for deer and elk as lowland country is being subdivided at increasing rates; taking some of these private lands into the public sector is an obvious option.

Our concern here is to see that the public is indemnified approximately *in kind* for the kinds of extended or irretrievable losses that occur. The time has come when simply writing them off no longer suffices.

(g) *Reclamation* The key to any effective reclamation provision is the standards built into it. The central clause here is "restore the surface disturbed in operations to a natural-appearing condition." We don't think "natural-appearing" is an adequate or clear goal; the phrase should be replaced. Our first concern with this goal is its vagueness; one must immediately ask: "Natural-appearing to whom?" the District Ranger, the miner, the public, an ecologist, the local ground squirrels? Secondly, the term is altogether too cosmetic and superficial in its implications; the point of effective reclamation is not simply to get something going that *looks good*. Thirdly, the term has no scientific basis or meaning, when such is readily available.

We would therefore suggest that restoration be aimed at "a natural, self-sustaining condition which is ecologically integral with surrounding natural systems." Furthermore, we believe a desirable target (and a great challenge as well) in almost all cases is: restoration to pre-existing conditions.

There is a tendency in parts of the Forest Service today to want to "manage" and "improve on" natural conditions wherever possible. This philosophic bias is, we think, a main cause of much of the discord that exists between the agency and conservationists. We know, we recoil when people start talking "enhancement" or "pre-designed altered land-forms," when they start dabbling in restoration/reclamation with exotic grasses that *look* nice and no more. The Forest Service's current enthusiasm regarding landscape architecture is involved here, too.

For reasons that are both romantic and scientific, the current touchstone of most conservationists today is that which is natural—i.e. that which the conditions of time, climate, soils, rainfall, etc. have formed into an integrated, self-sustaining ecosystem, without interference by man.

To those of the Forest Service who argue that in restoration they can improve on what existed before, we can only say, "No thanks, just get it back to the way it was, or to a condition that will naturally succeed to that state."

Section (6) of the Reclamation provision is puzzling. Why should "restoration of fisheries and wildlife habitat" be limited (in the case of wildlife) to "surface water bodies?" This would seem to restrict wildlife habitat restoration to that for ducks, beavers, muskrats, etc. We do not find this makes sense. Why not strike, "in surface water bodies?" All habitat is important.

252.15 Performance Bonds—This is an encouraging provision, and also one that is quite apt to meet strong opposition from the mining industry. It is going to force the hack miner with a D-6 cat to make a much more careful assessment of the impact of his activities; in some cases it may well stop him altogether, as we expect he will have difficulties finding a bonding company willing to back him. Since the hack miner is responsible for a lot of random surface damage in the National Forests, this is a welcome move.

The difficulty of bonding may well signal an end to one of the more colorful figures of American mining history, the classic grizzled prospector who has changed little over the decades, save that he now rides jeeps or bulldozers, rather than mules. To those who mourn his passing, we can only say that, overall, we have reached a time when his environmental damage now appears to outweigh his contributions. Realistically, it's time that he be allowed to fade into the past.

252.17 Operations within National Forest Wilderness—This section of the regulations is a valiant attempt to expound upon and clarify the *absolute contradiction* embodied by the so-called "mining exception" in the Wilderness Act of 1964.

The key phrase throughout is "by means consistent with the preservation of National Forest Wilderness," though in practice it remains logically impossible to mine by such means. Nevertheless, we believe the emphasis on forcing mining activities to conform, as much as possible, to the goal of wilderness preservation is to be commended. We believe the Forest Service has gone just about as far as it can within the framework of the existing laws.

(c) *Access*—We question the relativistic wording in this section which allows access to wilderness mining claims "by means . . . which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness." If there is virtue in this phrasing, it lies in its flexibility—i.e. in its ability to allow access only by the newest means of transit which will have the very least wilderness impact. Today that means helicopters and, ironically, pack animals (in regard to the latter, the technical innovation is the designing of prospecting equipment in modules which can be packed in and assembled on the spot, and thereafter packed back out).

However, we think this regulation could be firmed up by establishing means of access which are no longer valid in wilderness areas. Certainly, for example, roads for prospecting are no longer necessary, and should be prohibited. In the case of an actual mine in certain geographical situations, road access might not be necessary, e.g. a deep mine in a mountainous area which can be reached from a tunnel entry outside the wilderness area. This section of the regulations is too circular or relativistic for this to be wholly clear.

Re: road construction in wilderness areas, we think this is a decision that should be made not by the Forest Supervisor, but rather by the Chief in Washington. Our wilderness resources are of established national value, and any decision to build a road therein should be made on the national level. We believe a NEPA statement and public hearings should also be mandatory.

(d) *Reclamation in Wilderness* A separate set of reclamation provisions should be established for mining activities in wilderness areas. These should be specifically geared to the restoration of the *wilderness* quality of the land. A careful environmental inventory and study should be required *before* any mining takes place in a wilderness area; the purpose should be a thorough gathering of baseline data on pre-existing conditions, so that such information can later direct the process of wilderness restoration.

Bonding No distinction is made between bonding in non-wilderness and wilderness areas. Since wilderness designation places a special valuation upon the land, and since restoration will have to be especially painstaking, we believe it would make sense to up the minimum bond for wilderness mining operations to \$5,000 per acre. Admittedly this performance bond floor is mainly a token figure, as in most cases that amount (as determined by the procedures outlined in Sect. 252.15 (b)), will be considerably higher. Still, the higher figure for wilderness operations would serve to signify to the miner the special responsibilities involved in working within these wild areas.

Final Thought: Financing Implementing these regulations will take money, and time. A District Ranger should not be given these major new responsibilities—with only his current budget and staff—and be asked to do the job. In some particularly active districts, a special Mining Staff Officer may be needed; in other instances, the National Forest level may be the more appropriate spot for such an addition. This is a significant new administrative area, and must be funded appropriately.

The Forest Service should, as soon as apt, ask Congress to appropriate new funds for this task. Otherwise these generally encouraging new regulations cannot be justly implemented.