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TO AMEND THE WILDERNESS ACT OF 1964

GOVERNMENT

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HEARING

BEFORE THE

SUBCOMMITTEE ON
MINERALS, MATERIALS, AND FUELS

AND THE

SUBCOMMITTEE ON PUBLIC LANDS

OF THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 1010

A BILL TO AMEND THE WILDERNESS ACT (78 STAT. 890) TO
PRESERVE THE UNIQUE AND IRREPLACEABLE ECOLOGICAL
VALUES OF WILDERNESS AREAS BY PROVIDING FOR THE
TERMINATION OF THE APPLICATION OF MINING AND MIN-
ERAL LEASING LAWS TO, AND OF CONTINUING MINERAL
PROSPECTING ACTIVITIES IN, SUCH AREAS, AND FOR OTHER
PURPOSES

JULY 18, 1973



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

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WASHINGTON : 1973

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TO AMEND THE WILDERNESS ACT OF 1964

WEDNESDAY, JULY 18, 1973

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

The subcommittees met, pursuant to notice in room 3110, Dirksen Office Building, at 2 p.m., Hon. Lee Metcalf, chairman, presiding.

Present: Senators Metcalf [presiding], Haskell, Hansen, Hatfield, and Buckley.

Also present: Jerry T. Verkler, staff director; Steven P. Quarles, special counsel; D. Michael Harvey, special counsel; and Harrison Loesch, minority counsel.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. The subcommittees will be in order.

This is a joint hearing before the Subcommittees on Minerals, Materials and Fuels and Public Lands of the Committee on Interior and Insular Affairs on S. 1010 introduced by Senator Jackson, which would amend the Wilderness Act of 1964 by precluding future mineral exploration, mineral leasing, and mining claim location. Existing valid rights under leases or claims would not be affected.

The provision of the Wilderness Act—section 4(d)(3)—which permits mineral development has always been controversial. It was not included by the Senate when it passed the Wilderness Act in 1961 and 1963. Many people regard mineral development as totally incompatible with the wilderness concept.

The wilderness system today constitutes less than one-half of 1 percent of our country's total acreage. The rapid development of our land insures that, in the years ahead, fewer and fewer areas will qualify for inclusion in the system. Our mineral wealth is not confined to this tiny fraction of our land base. S. 1010 is based on the assumption that needed minerals can be found elsewhere.

I hope that our witnesses today will not only address the specific issue raised by S. 1010 but also give us any suggestions they may have about dealing with the basic conflict between mineral development and wilderness preservation.

The text of S. 1010, the reports of the Departments of Agriculture, Interior, and the Office of Management and Budget and the Wilderness Act will be inserted in the record at this point. We also have a number of comments on S. 1010 which will be included in the record after the conclusion of today's testimony.

I also wish to insert into the record an amendment to S. 1010, which I intend to offer when the bill reaches the state of marking up. The amendment would require recordation of all mining claims within the boundaries of wilderness areas by January 1, 1976, and the filing of applications for patents for such claims by January 1, 1948. Any claim not recorded by January 1, 1976, or on which a patent application is not filed, would be void.

[The text of the Wilderness Act, the bill S. 1010 with amendments, and departmental reports, follow:]



Public Law 88-577
88th Congress, S. 4
September 3, 1964

An Act

To establish a National Wilderness Preservation System for the permanent good of the whole people, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Wilderness Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Wilderness Act".

WILDERNESS SYSTEM ESTABLISHED STATEMENT OF POLICY

SEC. 2. (a) In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.

(b) The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereof immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

78 STAT. 890.

78 STAT. 891.

DEFINITION OF WILDERNESS

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geo-

logical, or other features of scientific, educational, scenic, or historical value.

NATIONAL WILDERNESS PRESERVATION SYSTEM—EXTENT OF SYSTEM

SEC. 3. (a) All areas within the national forests classified at least 30 days before the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall—

(1) Within one year after the effective date of this Act, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

Classification.

Presidential
recommendation
to Congress.

Congressional
approval.

78 STAT. 891.
78 STAT. 892.

(b) The Secretary of Agriculture shall, within ten years after the enactment of this Act, review, as to its suitability or unsuitability for preservation as wilderness, each area in the national forests classified on the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after the enactment of this Act, not less than two-thirds within seven years after the enactment of this Act, and the remaining areas within ten years after the enactment of this Act. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on the effective date of this Act shall continue to be administered under the rules and regulations affecting such areas on the effective date of this Act until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this Act, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area,

September 3, 1964

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Colorado, if the Secretary determines that such action is in the public interest.

(c) Within ten years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after enactment of this Act, not less than two-thirds within seven years of enactment of this Act, and the remainder within ten years of enactment of this Act. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

(d)(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness—

(A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

(B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided*, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

(e) Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recom-

Report to President.

Presidential recommendation to Congress.

Congressional approval.

Suitability.

Publication in Federal Register.

Hearings.

Publication in Federal Register.

78 STAT. 892.
78 STAT. 893.

Proposed modification.

mendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

USE OF WILDERNESS AREAS

Sec. 4. (a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and—

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215).

(2) Nothing in this Act shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thyre-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thyre-Blatnik-Andresen Act (Public Law 607, Eighty-fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with the Act of August 25, 1916, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

PROHIBITION OF CERTAIN USES

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

16 USC 475.
16 USC 528-531.

16 USC 577-577b.

16 USC 577a-577h.
16 USC 577d-1,
577g-1, 577h.

39 Stat. 535.
16 USC 1 et seq.

41 Stat. 1063.
49 Stat. 838.

78 STAT. 893.
78 STAT. 894.

September 3, 1964

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SPECIAL PROVISIONS

(d) The following special provisions are hereby made:

(1) Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

(3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to the effective date of this Act, extend to those national forest lands designated by this Act as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: *Provided*, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after the effective date of this Act within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the

Mineral leases,
claims, etc.

76 STAT. 894.

76 STAT. 895.

provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this Act shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

Water resources.

(4) Within wilderness areas in the national forests designated by this Act, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Other provisions of this Act to the contrary notwithstanding, the management of the Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, shall be in accordance with regulations established by the Secretary of Agriculture in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area, particularly in the vicinity of lakes, streams, and portages: *Provided*, That nothing in this Act shall preclude the continuance within the area of any already established use of motorboats.

(6) Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

78 STAT. 895.
78 STAT. 896.

(7) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(8) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

STATE AND PRIVATE LANDS WITHIN WILDERNESS AREAS

SEC. 5. (a) In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture: *Provided, however*, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or

Transfers, re-
striction.

September 3, 1964

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78 STAT. 896.

causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

(c) Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this Act as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress.

Acquisition.

GIFTS, BEQUESTS, AND CONTRIBUTIONS

SEC. 6. (a) The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this Act for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this Act for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall become part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this Act, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this Act.

ANNUAL REPORTS

SEC. 7. At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make.

Approved September 3, 1964.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 1538 accompanying H. R. 9070 (Comm. on Interior & Insular Affairs) and No. 1829 (Comm. of Conference).
SENATE REPORT No. 109 (Comm. on Interior & Insular Affairs).

CONGRESSIONAL RECORD:

Vol. 109 (1963): Apr. 4, 8, considered in Senate.

Apr. 9, considered and passed Senate.

Vol. 110 (1964): July 28, considered in House.

July 30, considered and passed House, amended, in lieu of H. R. 9070.

Aug. 20, House and Senate agreed to conference report.

93^d CONGRESS
1ST SESSION

S. 1010

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1973

Mr. JACKSON introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To amend the Wilderness Act (78 Stat. 890) to preserve the unique and irreplaceable ecological values of wilderness areas by providing for the termination of the application of mining and mineral leasing laws to, and of continuing mineral prospecting activities in, such areas, and for other purposes.

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

3 That subsection 4 (d) of the Wilderness Act (78 Stat. 890)
4 is amended as follows:

5 (a) Strike paragraph (2) thereof and insert in lieu
6 thereof the following new paragraph (2):

7 “(2) In accordance with such program as the Secretary
8 of the Interior shall develop and conduct in consultation with

1 the Secretary of Agriculture, national forest wilderness areas
2 shall be surveyed on a planned, recurring basis consistent
3 with the concept of wilderness preservation by the Geological
4 Survey and the Bureau of Mines to determine the mineral
5 values, if any, that may be present; and the results of such
6 surveys shall be made available to the public and submitted
7 to the President and Congress."

8 (b) In paragraph (3) thereof:

9 (1) strike "December 31, 1983" wherever it ap-
10 pears and insert in lieu thereof the date of enactment
11 of this amendment; and

12 (2) strike "January 1, 1984" and insert in lieu
13 thereof the date of the first succeeding day after the
14 date of enactment of this amendment.

93D CONGRESS
1ST SESSION

S. 1010

IN THE SENATE OF THE UNITED STATES

JULY 18, 1973

Referred to the Committee on Interior and Insular Affairs and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. METCALF to S. 1010, a bill to amend the Wilderness Act (78 Stat. 890) to preserve the unique and irreplaceable ecological values of wilderness areas by providing for the termination of the application of mining and mineral leasing laws to, and of continuing mineral prospecting activities in, such areas, and for other purposes, viz: On page 2, line 14, add a new paragraph (c) to read as follows:

- 1 (c) Insert at the end of paragraph (3) thereof: "Any
- 2 mining claims under the mining laws of the United States
- 3 within the boundaries of wilderness areas must be recorded
- 4 with the Secretary of the Interior by January 1, 1976. Ap-
- 5 plication for patent for such mining claims must be filed by
- 6 January 1, 1984. Any mining claim not recorded by Janu-

Amdt. No. 383

1 ary 1, 1976, or for which an application for patent is not
2 filed by January 1, 1984, shall be conclusively pre-
3 sumed to be abandoned and shall be void. Such recordation
4 or application will not render valid any claim which is not
5 otherwise valid.”.

93^d CONGRESS
1st SESSION

S. 1010

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 1973

Referred to the Committee on Interior and Insular Affairs and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. METCALF to S. 1010, a bill to amend the Wilderness Act (78 Stat. 890) to preserve the unique and irreplaceable ecological values of wilderness areas by providing for the termination of the application of mining and mineral leasing laws to, and of continuing mineral prospecting activities in, such areas, and for other purposes, viz: On page 2, line 14, insert the following:

- 1 (c) Insert at the end of paragraph (3) thereof: "Any
- 2 mining claims under the mining laws of the United States
- 3 within the boundaries of wilderness areas must be recorded
- 4 with the Secretary of the Interior by January 1, 1976. Appli-
- 5 cation for patent for such mining claims must be filed by
- 6 January 1, 1984. Any mining claim not recorded by Janu-
- 7 ary 1, 1976, or for which an application for patent is not filed

Amdt. No. 460

- 1 by January 1, 1984, shall be conclusively presumed to be
- 2 abandoned and shall be void. Such recordation or application
- 3 will not render valid any claim which is not otherwise valid."



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 18 1973

Dear Mr. Chairman:

This is in response to your request for the views of this Department on S. 1010, a bill "To amend the Wilderness Act (78 Stat. 890) to preserve the unique and irreplaceable ecological values of wilderness areas by providing for the termination of the application of mining and mineral leasing laws to, and of continuing mineral prospecting activities in, such areas, and for other purposes."

In lieu of S. 1010, we recommend that the Administration's proposed "Mineral Leasing Act of 1973", introduced as S. 1040, be enacted. This would subject mineral exploration and development in wilderness areas (as well as in all other Federal land) to a leasing system under sound criteria to ensure protection of wilderness and other environmental values. Until S. 1040 is enacted, however, we would not object to amending the Wilderness Act to bring mineral exploration and development in National Forest wilderness areas under a similar leasing system.

S. 1010 would amend subsection 4(d) of the Wilderness Act by striking the provision permitting mineral prospecting and exploration in National Forest wilderness areas and by changing the mineral entry and leasing deadline from December 31, 1983, to the first succeeding day after enactment of this amendment. The proposed legislation would immediately withdraw from appropriation and disposition under the mining and mineral leasing laws the 54 areas taken into the wilderness system by the Act and the 11 areas subsequently added, altogether totaling 10.7 million acres. It could similarly affect new additions to the system, whether primitive or other candidate areas, on the date each is enacted into the system.

Because subsection 4(d) of the Wilderness Act is applicable only to National Forest lands designated by that Act as "wilderness areas", enactment of S. 1010 would have no effect upon the wilderness program of this Department, other than to continue the authorization for mineral studies of National Forest wilderness areas. Subsection 4(c) of the Wilderness Act, read in conjunction with subsection 4(d), is inconsistent with permitting extraction activities within wilderness areas of the National Park and Wildlife Refuge Systems and for this reason, we have proposed no area for wilderness designation which is open to mineral entry.

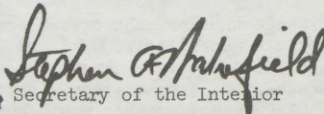
Wilderness areas of the national forests ultimately will make up a large block of Federal land placed in a restricted category of resource and development use. Subsection 4(d) of the Act was based on the need for an adequate long-range mineral supply base for the Nation, and this need has become more evident since the Act was passed. Projections of our future mineral needs show that the problems in mineral supply will further increase. In his first annual Report to Congress under the Mining and Minerals Policy Act of 1970, the Secretary of the Interior stated that at the same time the need for minerals is increasing, land available for prospecting and exploration is decreasing. He specifically mentioned the withdrawals for wilderness without adequate knowledge of their mineral values. We have continued to express these views which time shows are valid. The Nation will, within this decade, experience the impact of a mineral shortage, such as we are now experiencing in fossil fuels, unless positive steps are taken to prevent it. We therefore believe it inappropriate to preclude exploration and possible development of wilderness area minerals prior to the Act's 1983 deadline.

On the other hand, relatively little mineral exploration and development is now occurring in proposed wilderness areas. It is evident that the total land that might be used for mineral development is extremely small, relative to total wilderness acres.

In view of this, we believe it is appropriate to keep wilderness areas open to mineral development through the present 1983 deadline but subject to a more flexible and sound management system. The Administration's "Mineral Leasing Act of 1973" provides a system for preserving wilderness values while at the same time retaining the possibility of exploration and development of minerals to meet the Nation's future requirements. We therefore urge its prompt enactment.

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

Sincerely yours,


 Assistant Secretary of the Interior

Hon. Henry M. Jackson
 Chairman, Committee on
 Interior and Insular Affairs
 United States Senate
 Washington, D. C. 20510



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

July 18, 1973..

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate

Dear Mr. Chairman:

As you requested, here is our report on S. 1010, a bill "To amend the Wilderness Act (78 Stat. 890) to preserve the unique and irreplaceable ecological values of wilderness areas by providing for the termination of the application of mining and mineral leasing laws to, and of continuing mineral prospecting activities in, such areas, and for other purposes."

The Department of Agriculture supports the objective of providing better means for dealing with the impacts of potential mineral development in connection with management of National Forest wilderness. We believe this objective could best be accomplished through enactment of S. 1040, the Administration's proposed general revision of the mining laws. Should your Committee determine that it is necessary to deal specifically with mineral development within wilderness, we would have no objection to withdrawal of National Forest wilderness areas from the mining laws, provided that minerals in such areas would be subject to appropriate leasing provisions until December 31, 1983.

S. 1010 would amend the Wilderness Act to withdraw National Forest wilderness areas from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto, effective the date of the first succeeding day after the date of enactment of the amendment.

The amendment would continue the present authorization for the Secretary of the Interior, in consultation with the Secretary of Agriculture, to develop and conduct a mineral survey program in National Forest wilderness areas as determined to be consistent with the concept of wilderness preservation. The survey program would be conducted by the Geological Survey and the Bureau of Mines. The results of such surveys would be submitted to the President and Congress and would be made available to the public.

The National Wilderness Preservation System represents a system of unique and outstanding Federal lands which Congress has dedicated for a high order of preservation and protection. Because of the special values of these lands, we believe this Department should be in a position to weigh other resource values and needs, including mineral development, before new private mineral rights are perfected which, by their very nature, are inconsistent with wilderness protection. Such authority to balance wilderness and mineral values is contained in S. 1040, which embodies

Honorable Henry M. Jackson

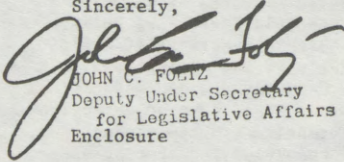
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the Administration's proposed Mineral Leasing Act of 1973. S. 1040 would generally repeal the 1872 Mining Law and provides for disposition of minerals on Federal lands through a leasing system. Under S. 1040, presently locatable minerals on generally all public lands, including units of the National Wilderness Preservation System, would be available for disposition at the discretion of the land managing agency. Subject to valid existing rights, minerals within wilderness would not be subject to disposal after December 31, 1983.

The problems relating to mining within wilderness are similar to those where mining activities involve other public values and resources on the public lands. We would therefore prefer that future mineral development within National Forest wilderness areas be considered within the framework of a general revision of the mining laws. The enclosed supplemental statement describes the reasons for our recommendation in more detail.

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

Sincerely,



JOHN C. FORIZ
Deputy Under Secretary
for Legislative Affairs
Enclosure

USDA SUPPLEMENTAL STATEMENT ON
S. 1010

Section 4(d)(3) of the Wilderness Act (16 U.S.C. 1133(d)(3), 78 Stat. 894) presently provides that the United States mining laws and all laws pertaining to mineral leasing continue to extend to National Forest wilderness areas designated by the Act until December 31, 1983. The section also provides that activity under the mining and mineral leasing laws is subject to reasonable rules and regulations governing ingress and egress, and including surface restoration of lands disturbed by mining work. After December 31, 1983, subject to valid existing rights, all such wilderness areas would be withdrawn from appropriation under the mining laws and disposition under the mineral leasing laws.

Section 4(d)(2) of the Act permits prospecting activity to be carried on for gathering minerals information, if the activity is compatible with preservation of the wilderness environment. With the exception of the Sawtooth Wilderness, the Acts relating to all National Forest wilderness areas added to the wilderness system since 1964 have incorporated the provisions of sections 4(d)(2) and 4(d)(3) of the Wilderness Act by reference.

An objective of the Wilderness Act was to establish a system of lands to be administered in a manner to leave them unimpaired for future use and enjoyment as wilderness, to protect them, and to preserve their wilderness character. The conduct of mineral activity can naturally conflict with such an objective.

Under the general mining laws, any private individual may prospect for and discover a valuable mineral deposit within a National Forest wilderness and when he does, he has established a right to develop and remove the deposit. Such a right is subject to reasonable rules and regulations, but ultimately has priority over other resource values, including wilderness. Thus the effect of sections 4(d)(2) and 4(d)(3) of the Wilderness Act is to extend, through 1983, the possibility for perfection of valid existing claims within National Forest wilderness, without affording this Department an opportunity to balance the wilderness and other resource values before the private rights are acquired. It continues the potential for authorizing additional activity that will impair and conflict with the wilderness values of the lands within the wilderness system.

We recognize that important, presently undiscovered, mineral values could be involved in National Forest wilderness areas, and that these minerals might eventually be considered in meeting anticipated national needs for critical mineral materials. The existing units of the Wilderness System were designated in 1964 without a general and critical

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evaluation of mineral values involved. Accordingly, we believe that minerals in existing units of the Wilderness System should be available for disposition on a discretionary basis until 1984, if such disposition is found to be in the overall public interest. Provisions of S. 1040, the Administration's proposed general revision of the mining laws, which relate to future mining activities on generally all public lands, would accomplish this. They would permit a careful balancing of all resource values by the head of the agency charged with management of the lands involved.

We strongly prefer that the general revision of the mining laws be adopted in lieu of limited legislation covering only wilderness. Should the Committee determine that it is necessary to deal with National Forest wilderness at this time, we suggest consideration of leasing provisions contained in recent legislation dealing with the Flaming Gorge and Whiskeytown-Shasta-Trinity National Recreation Areas. These would authorize leasing by the Secretary of the Interior, with the consent and subject to conditions specified by the Secretary of Agriculture to protect other values involved.

We believe enactment of legislation along the lines of S. 1040 will eliminate uncertainties which now affect the mining operators who consider the conduct of operations within wilderness. Although these lands have been open for mineral entry since the enactment of the Wilderness Act in 1964, relatively little development has occurred. Proposals to explore or develop minerals within wilderness have often been met by strong and vocal public opposition. Conditions placed on operations, which we have deemed necessary to protect wilderness values, have also tended to discourage actual development.

It should be stressed that we do not recommend elimination of valid existing claims, or the possibility they might be developed. We do, however, believe we should take steps to avoid creation of new individual rights that could easily lead to future conflicts.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 18 1973

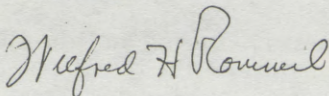
Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
3106 New Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request of June 13, 1973, for the views of the Office of Management and Budget on S. 1010, a bill "To amend the Wilderness Act (78 Stat. 890) to preserve the unique and irreplaceable ecological values of wilderness areas by providing for the termination of the application of mining and mineral leasing laws to, and of continuing mineral prospecting activities in, such areas, and for other purposes."

The Office of Management and Budget concurs in the views of the Departments of Agriculture and the Interior in their reports on S. 1010, and accordingly recommends enactment of the Administration's proposed "Mineral Leasing Act of 1973", S. 1040, in lieu of S. 1010. We also concur in the Departments' recommendation that should the Committee authorize mineral development specifically within wilderness, we would not object to providing for mineral exploration and development in National Forest wilderness areas under a leasing system similar to that in the Administration's proposal until December 31, 1983.

Sincerely,



Wilfred H. Rommel
Assistant Director for
Legislative Reference

Senator METCALF. I may add parenthetically if S. 1010 is not approved, I am going to offer this amendment as a separate bill, as a means to determine where the mining claims are and when applications for patents would be required.

The chairman of the full committee, Senator Jackson, is the author of the bill and has a statement which without objection will be incorporated in the record at this point as if read.

**STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM
THE STATE OF WASHINGTON**

Senator JACKSON. S. 1010, which I introduced on February 26 and which is the subject of today's hearing, is simple both in text and effect. I believe, however, that its contribution to the preservation of our natural heritage will be great indeed.

I firmly believe that mining and mineral location and leasing activities within the Natural Wilderness Preservation System are not required for the economic well-being of the mining industry or for the material comfort of all of us who depend upon the products of mining. Less than one-half of 1 percent of our country's total acreage lies within wilderness areas. In the future, as pressures upon our land base increase, fewer and fewer areas will qualify for addition to the system. Our Nation's mineral wealth is not confined to this tiny fraction of our land resource. That wealth can and should be obtained elsewhere.

The Wilderness Act of 1964 gave congressional recognition to the unique environmental values of our Nation's rapidly dwindling wilderness and provided a mandate to us all to preserve those values. We are failing to fulfill that mandate as long as we continue to maintain the open invitation to establish mineral locations and mineral rights in wilderness areas.

Mining and mineral location activities—both actual and proposed—upon present and potential units of the wilderness system have generated major conflicts between industry and environmentalists. In my own State of Washington, a bitter dispute has arisen over copper deposits in the Glacier Peak Wilderness. Similar conflicts have occurred over the Boundary Waters Canoe Area in Minnesota, the Three Sisters Wilderness in Oregon, and the Blue Ridge Primitive Area in Arizona. Whether or not the threat posed to these wilderness areas is truly real, the perception of such a threat is, in fact, real. I believe few would argue that the sum total of these actual or potential incursions of mining in the wilderness does represent an unwarranted risk for natural environments which may never be duplicated by man.

I would like to point out, as well, that the 19-year mining exemption presents us with an economic problem, as well as an environmental problem. I suspect that the public will not tolerate mining in wilderness areas, and the Government will respect the public will. We, therefore, will be faced with the economic problem of buying back the mining rights we continue to permit to be established. The exemption has 10½ years to run—10½ years in which the bill the Federal Government will eventually have to pay for maintenance of the wilderness system, can continue to increase.

S. 1010 is carefully drawn so as not to disturb rights already established before the date of its enactment. Furthermore, S. 1010 would in no way adversely affect the security of our Nation in terms of any

national emergency. Section 4(d)(2) of the Wilderness Act directs that recurring surveys be made by the Bureau of Mines and U.S. Geological Survey to determine mineral values present in the national forest wilderness areas. Should this Nation ever be faced with a national emergency which can be met only by the extraction of minerals within the national forest wilderness areas, with the knowledge gathered through surveys required by section 4(d)(2), the Congress could act to make those minerals available for mining.

The problems which this amendment attempts to resolve supply further proof of the need to reform our mining laws. The principal law—the mining law of 1872—is now more than a century old. In its time, it was a worthy achievement, but I submit that, today, it is clearly outmoded and requires fundamental reform.

I am grateful to my distinguished colleagues, the chairmen of the Minerals, Materials, and Fuels, and Public Lands Subcommittees, for scheduling this hearing. I believe this bill is no less important to the concept and reality of wilderness than the proposed Eastern Wilderness Areas Act and the numerous other measures which have been introduced to increase the size of the wilderness system.

Senator METCALF. Our first witness this morning is an old friend, a friend of the wilderness, a friend of the lumber industry, Hon. John Dellenback, who is a distinguished Member of the House of Representatives, and we welcome you over here and we welcome you as a member of our Joint Committee on Congressional Operations. Congressman Dellenback.

STATEMENT OF HON. JOHN DELLENBACK, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DELLENBACK. Thank you very much, Mr. Chairman and other members of the subcommittee for this opportunity to testify before you today.

I wish to express my support for S. 1010, Senator Jackson's bill, to prohibit mining in wilderness areas, and to commend Chairman Metcalf and Chairman Haskell and their subcommittees for conducting these hearings. I have introduced legislation similar to S. 1010 in the House in the form of H.R. 455 and am hopeful that these subcommittees will act favorably on the legislation as soon as possible and that the House will follow suit.

The Wilderness Act of 1964 was written to preserve in their natural form lands which had not yet felt the imprint and impact of man's hand. As the law states, "A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the Earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." Yet included in this law is a provision which allows claims to be established in wilderness areas until December 31, 1983. It is this inconsistency in the act which I believe needs to be rectified.

I believe not only wisdom but necessity demands that we eliminate the provision in the Wilderness Act which allows mining in these protected areas. The U.S. District Court for Minnesota recently handed down a ruling granting an injunction against all mining activi-

ties in the Boundary Water Canoe Area. In handing down this injunction, Judge Phillip Neville stated:

It is clear that wilderness and mining are incompatible. If the premise is accepted that mining activities and wilderness are opposing values and anathema each to the other, then it would seem that in enacting the Wilderness Act Congress engaged in an exercise of futility if the court is to adopt the view that mineral rights prevail over wilderness objectives. Mineral development thus by its very definition cannot take place in a wilderness area; else it no longer is a wilderness area.

Judge Neville's statement exemplifies the reaction of much of the public to the provision regarding mining which we here seek to eliminate.

I have stated that the legislation which I have introduced, H.R. 455, is similar to S. 1010. However, it does differ in one significant way—a way in which I hope S. 1010 might be amended. H.R. 455 not only attempts to cut short the 1983 date listed in the Wilderness Act after which mining claims cannot be validly filed, but also proposes to give new authority to the Secretary of Agriculture to impose reasonable rules and regulations on existing valid mining claims. This language is purposely left vague so that the Secretary may have discretionary authority to deal with this admittedly sensitive matter.

The importance of expanding the Secretary of Agriculture's authority to regulate valid existing mining claims has been emphasized to me by a conflict that exists in the Three Sisters Wilderness Area in my State of Oregon. The Three Sisters Wilderness was established in 1957 and was incorporated into the wilderness system by the Wilderness Act of 1964. At that time, U.S. Pumice, a mining concern located in Los Angeles, Calif., had located 10 claims in the wilderness, in an area with some of the most unique volcanic formations in the Pacific Northwest known as Rock Mesa. In 1963 the claims were examined by the Forest Service and preliminarily ruled valid. If final determinations now underway find the claims valid, U.S. Pumice will be able to mine this area, which would result in the desecration of this unique assemblage of geological formations, do irreparable damage to a truly beautiful wilderness area, and necessitate the relocation of parts of the Pacific Crest National Scenic Trail.

Over the past few years I have worked closely with the Forest Service in an attempt to find a way to stop this mining administratively and to preserve the scenic and wilderness qualities of this area. Under the Wilderness Act and the Forest Service's present regulations, the Forest Service cannot prohibit access to or activity on a valid mining claim. They are able to regulate the manner in which operations are conducted to assure that all possible steps are taken to minimize adverse environmental effects. These regulations cannot go so far, however, as to have the effect of taking of the mineral right. The claimant must be permitted to derive a minimum profit opportunity from this claim.

Consequently, even when mining would destroy the wilderness values of an area and do irreparable damage, the Forest Service through the Secretary of Agriculture has no authority to impose protective restrictions which would eliminate the minimum profit opportunity. Clearly, if we desire to eliminate the inconsistency of allowing through 1983 new mining claims to be filed in the wilderness

areas, then we should also move to expand the authority of the Secretary of Agriculture to deal more reasonably with existing valid mining claims.

The hollowness of dealing only with potential future mining claims was emphasized again last February when the Forest Service suggested, and the Bureau of Land Management implemented, an administrative withdrawal of Rock Mesa from future appropriations under the public land laws, including the mining laws. This withdrawal was made possible, however, not because of the fact that this was a wilderness area, but only because of the particular uniqueness of the geological formations in this area.

This administrative withdrawal will prevent any mining in this area in the future but will not settle the problem of existing claims. Again, the need to expand the authority of the Secretary to deal with valid existing mining claims becomes clear.

Although there have been only 17 permits issued for mining in wilderness areas, there are approximately, I am informed, 9,000 claims which have been filed and are awaiting determination. The vast majority of these 9,000 claims will most likely not be found valid. It is staggering, however, to imagine the destruction such mining operations would wreak on approximately 200,000 acres of our 11.1 million acres of wilderness areas.

In conclusion, I again commend the subcommittees for holding hearings on S. 1010, necessary legislation to deal with potential future mining claims in wilderness areas. I also urge the subcommittee to incorporate some language, whether or not it be similar to that contained in H.R. 455, which would provide the Secretary of Agriculture a more meaningful and effective tool to deal with existing valid mining claims in wilderness areas.

Once again, I thank the members of these subcommittees for the opportunity to appear before you today.

Senator METCALF. Thank you very much, Congressman Dellenback, for a most important, significant, and very persuasive statement. I am pleased that you have had the opportunity to open this hearing on this note and the instances you have given are rather alarming.

Senator Buckley.

Senator BUCKLEY. I do want to thank you for the statement. It is very constructive. I just wanted to ask one question about the feature in your bill which you pointed to. Would the authority granted the Secretary of Agriculture be so extensive as to enable him, in effect, to retake a valid claim?

Mr. DELLENBACK. No, Senator Buckley, I really don't think it would go to that extreme and I don't intend it to because then we run in a constitutional process and violation of contract situation. The language says, "valid existing rights are subject to such reasonable regulations as may be proscribed by the Secretary of Agriculture consistent with valid existing rights." I don't want to go to the point of being indirectly able to do what one shouldn't do directly.

If we are going to wipe out what is in existence, then we are in a taking situation where due process is involved, but I do mean to give the Secretary every reasonable tool he can have, with valid existing rights, not inconsistent with those rights, but to give him as much control over the environment as he possibly can have.

Senator BUCKLEY. It sounds very reasonable. Thank you.

Senator METCALF. Senator Haskell.

Senator HASKELL. I have no questions, and I apologize for being late. I have had a chance to read your statement and to see the suggested additions that you make and it makes a great deal of good sense to me.

I want to say that I appreciate your being here.

Mr. DELLENBACK. As I said to Chairman Metcalf earlier, I appreciate very much this chance to appear on an issue that I think is of major importance. We in the Interior Committee spent the morning wrestling with another problem concerning us all and we are wrestling with the Alaska pipeline on our side, and the House is debating the war powers bill, and I must return, but I did deem this of sufficient importance that I wanted to take time to be here to at least say these words on an issue that I think has major importance.

Senator METCALF. Senator Hansen.

Senator HANSEN. May I defer to my distinguished colleague from Oregon.

Senator METCALF. Senator Hatfield.

Senator HATFIELD. Thank you very much, Mr. Chairman.

I am sorry that I did not have a chance to be here to hear my very good friend and one of the outstanding Members of the House of Representatives, Congressman Dellenback, but he and I share in our concern for the Rock Mesa Area, and I will not avail myself at this time of the opportunity of asking him questions, but rather to support his testimony and to offer some of my own at an appropriate time.

Senator METCALF. Of course. The Senator from Oregon will be privileged to put all matter in the record that he wants to.

Senator METCALF. The statement of Senator Packwood of Oregon will be incorporated in the record at this point as if read.

STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator PACKWOOD. Mr. Chairman, I am pleased to testify in support of S. 1010 which is of particular interest to me. As a Senator from a State in which the question of mining in wilderness areas has come up, I am wholeheartedly in favor of what the measure before us embodies.

In the 92d Congress I introduced two bills pertaining to mining in wilderness areas. One related specifically to mineral resources in lands comprising the Three Sisters Wilderness in Oregon. The other related more generally to the disposition of mineral resources in wilderness areas. The question of mining laws, the effect of the Environmental Protection Act, and the Wilderness Act meeting on a collision course if not clarified is one which needs addressing and demands our immediate and studied attention.

That is the reason for my having introduced in the last Congress the two measures, one which would withdraw the Three Sisters Wilderness Area from all forms of appropriation under the mining laws of the United States, and the other to withdraw from mining all federally owned mineral deposits in non-Federal lands and all mineral deposits in federally owned lands within the wilderness areas.

My initial interest in this arose as a result of attempts by a Los Angeles firm, U.S. Pumice, to mine block pumice in The Three Sisters Wilderness in Oregon, an area which deserves the label "unique" and is truly a scenic and geologic wonder.

Mining, under the Federal Wilderness Act of 1964 enjoys at present an especially privileged position, due to the circumstances under which the act was finally signed into law. The Wilderness Act itself had a rough road to passage. A wilderness measure passed the Senate in 1961 and 1963, the matter having been under study since 1949. Not until 1964 did the House act favorably, a concession on mining claims being essential to obtaining the necessary votes. We have since had a great deal of confusion over just what we are to allow in wilderness areas.

In light of this perplexity, it is imperative that we take the opportunity now, before we have irrevocably desecrated our environment, to clarify the situation and to preserve, as this bill before us does, the unique and irreplaceable ecological values of wilderness areas by providing for the termination of the application of mining and mineral leasing laws to such areas.

It is difficult to conceive of a wilderness remaining intact with mining operations being allowed to continue. The mining process creates scars under the best of circumstances. And the Wilderness Act itself recognized this, although in a haphazard and backhanded manner, when it provided for mineral prospecting "if such activity is carried on in a manner compatible with the preservation of the wilderness environment." District Judge Nevell in *Izaak Walton League v. St. Clair*, illustrates this point extremely well in his opinion of January 5, 1973. This case centered around mining in the Boundary Waters Canoe Area in northern Minnesota. I would like at this point in the record to have the full text of Judge Nevell's opinion inserted.

[The text of Judge Nevell's opinion follows:]

IZAAK WALTON LEAGUE v. ST. CLAIR

U.S. District Court, District of Minnesota, Fifth Division

IZAAK WALTON LEAGUE OF AMERICA, a not for profit corporation, v. GEORGE W. ST. CLAIR; THOMAS YAWKEY; CLIFFORD HARDIN, Individually and as Secretary of Agriculture; EDWARD P. CLIFF, Individually and as Chief of the United States Forest Service; CRAIG RUPP, Individually and as Supervisor of the Superior National Forest; JARLE LEIRFALLOM, Commissioner of Conservation of the State of Minnesota; RUFUS T. LOGAN, Commissioner of Taxation of the State of Minnesota, Defendants, and ROBERT E. GARDNER, EVELYN A. GARDNER, WILLIAM A. GARDNER, MAREA B. GARDNER, JANE G. HEAD, MURDOCK HEAD, MICHIGAN-UMI IRON COMPANY, and MUSKEGON BANK AND TRUST COMPANY, Additional Defendants, No. 5-69 Civ. 70, January 5, 1973.

LAND

1. Federal, state, and local regulation—Authority to regulate (§ 8.02).

Federal, state, and local regulation—"Wilderness" areas (§ 8.205).

Federal, state, and local regulation—Special land uses—Mining (§ 8.421).

Liability by industry—Mining (§ 11.55).

Congress has authority to bar all mineral activities in national forest wilderness area that consists solely of federally owned land and land owned by state that accedes to such federal regulation, even though ban may affect mineral rights owned by private individuals, since ban is reasonable, has a rational basis, and bears substantial relation to public purpose.

2. Federal, state, and local regulation—"Wilderness" areas (§ 8.205).

Federal, state, and local regulation—Special land uses—Mining (§ 8.421).

Liability by industry—Mining (§ 11.55).

Court jurisdiction and procedure—Injunctions (§ 15.71).

Wilderness Act of 1964's establishment of Boundary Waters Canoe Area in Superior National Forest as roadless national wilderness area warrants federal district court injunction barring Department of Agriculture from permitting any private mineral activities in area, since any mineral exploration would destroy wilderness area.

Raymond A. Haik, of Popham, Haik, Schnobrich, Kaufman & Doty, Minneapolis, Minn., for plaintiff.

Arthur D. Smith, Department of Justice, Washington, D.C., for defendants Hardin, Cliff, and Rupp.

Philip J. Ölfelt, special assistant attorney general, St. Paul, Minn., for defendants Leirfallom and Logan.

William P. O'Brien and Gaylord Swelbar, of Sullivan, Hanft, Hastings, Fride & O'Brien, Duluth, Minn., for remaining defendants.

Full Text of Opinion

NEVILLE, District Judge:

This declaratory judgment action is brought by the Izaak Walton League of America, a non-profit organization formed in 1922, which interests itself *inter alia* in the field of conservation and the use of land areas in the United States. One area in which it has been extremely active is the Boundary Waters Canoe Area (BWCA) in Northern Minnesota extending many miles along the Canadian border and embodying a great many lakes and streams, containing 1,031,204 acres approximately, and a part of the larger area known as the Superior National Forest. It alleges that it long has supported the Federal and State governments in securing legislation protecting wilderness areas generally and that in connection with the BWCA it further went to the extent of purchasing some 7,000 acres, later selling or transferring the same to the United States at something less than its purchase price.

Defendants are (1) George W. St. Clair,¹ who claims to be the lessee of mineral rights underlying approximately 150,000 acres of land in the BWCA, (2) the so-called "Federal defendants" i.e., the United States Secretary of Agriculture, the Chief of the United States Forest Service and the Supervisor of the Superior National Forest, the three of whom regulate and manage the national forests and the BWCA, (3) the so-called "State defendants", i.e., the State of Minnesota Conservation Commissioner and the Commissioner of Taxation, both of whom in different ways have jurisdiction over State lands, and (4) a number of other defendants who are lessors to St. Clair as owners of the mineral rights, later joined by the court by order dated April 19, 1971.

The BWCA is an irregularly shaped area extending 110 miles more or less from east to west hugging the Canadian border and at places measuring 30 miles or more from north to south. Included within it are hundreds of lakes and streams through which one in a canoe, with numerous portages, can pass virtually from one end to the other in an east-west direction said to be the "Highway of the Voyageurs" of the 18th Century. It complements and abuts the Quetico Superior Park on the Canadian side of the border, subject to certain international agreements and treaties including the Webster-Ashburton Treaty of 1842. With the exception of logging largely years ago and certain scarring by forest fires, the area remains substantially in a natural state with large stands of virgin timber. All former private resorts in the area have now been or are being removed and closed and travel in the area by airplane, motor boat or any motorized vehicle is strictly prohibited. It is a roadless area and the establishment of camps is rigidly regulated. Other regulatory means exercised both by the State and Federal governments are employed to keep the area in its pristine condition. From 100,000 to 150,000 people a year including Boy Scout troops and others from all over the United States are said to enter the area and canoe, tramp or camp therein.

From a stipulation of facts filed by counsel it appears that approximately 71.3% or 742,800 acres within the BWCA are owned by the United States, 26.3% including lake beds by the State of Minnesota, 1.4% by counties and approximately 1% privately, though gradually by condemnation, expiration of life estates and otherwise this 1% is decreasing. On the other hand of the under-

¹ Thomas Yawkey originally was named as a defendant but on agreement of counsel the case was dismissed as to him by order dated April 19, 1971 subject to certain conditions since his counsel stated he no longer owns or leases any mineral interests in the BWCA and that in any event he agreed to be bound by the outcome of this litigation should it later develop he does own some such interest.

lying mineral rights, the United States owns only 44% or 458,224 acres, the State of Minnesota and counties the same 26.3% and 1.4% with the remaining 28.3% of the mineral rights, including the St. Clair claims, held in private ownership.

The case here arises because during 1969 defendant St. Clair, through various employees and agents, entered BWCA with the Federal defendants' permission and undertook surface mineral exploration, establishing a base camp and other more temporary encampments. Travel was by canoe. In December, 1969, St. Clair gave notice that core drilling was planned, which would involve the use of mechanical equipment, access overland and permanent camps. The Federal officials in charge besides permitting the original entry authorized the establishment of the original base camp for a period longer than normally permitted by applicable regulations. Exploratory mining operations generally are not uses contemplated or permitted by the BWCA regulations (the substantial argument being whether they are so prohibited). As to the core drilling request, the Federal defendants on receipt of it requested information concerning St. Clair's right and title to the tracts of land on which he intended to drill. Prior to being furnished such, the present lawsuit was commenced. No action has been taken on the application by either the Federal defendants nor has any administrative determination been made.

After the commencement of this lawsuit, St. Clair's exploration activities ceased at the request of or on order from the Forest Service. The equipment used by St. Clair originally was stored at the base camp site he had established. The original reservation and severance of the mineral rights St. Clair now seeks to exercise were effected approximately 38 years ago, principally in the year 1934, with some in 1929, one tract in 1935, and the last in 1936. St. Clair, however, did not acquire his rights as a lessee until quite recently in 1969 for the most part. Plaintiff proceeds on various legal theories and prays a judgment in short declaring St. Clair and his agents to have no authority or right to enter BWCA for the purpose of exploring, drilling for or removing minerals and enjoining both the Federal and State defendants from permitting such.

PROCEDURAL HISTORY OF CASE

A motion for preliminary injunction became moot when it was reported to the court that St. Clair's equipment had been stored and that no further entry would be made or exploration activity conducted pending the determination of this declaratory judgment action. This court, by order dated June 1, 1970, *Izaak Walton League of America v. St. Clair*, 313 F. Supp. 1312 (D. Minn. 1970), denied the motion of the Federal defendants to dismiss on the grounds that the complaint fails to state a cause of action, that the United States had not consented to suit against it and that plaintiff lacks standing. Subsequently the Federal defendants filed an answer requesting dismissal and taking the view that what they permitted as to St. Clair or might so do in the future either as to him or others is properly an administrative matter and not within the purview of the court's jurisdiction in an action such as this. Meantime, the State defendants answered, stating in part "Defendant Commissioner of Conservation agrees generally with the nature of the claim . . . subject however to specific denials, affirmations and additional allegations . . .", but contending that the land in the BWCA should be subject to mining activity only as "related to a national emergency". The State defendants have cross-claimed against the Federal defendants in support of the plaintiff's request for permanent injunction. Defendant St. Clair has answered in general denying the allegations of the complaint and the cross-complaint as have his lessors who were joined as additional defendants by order of this court of April 19, 1971, which order also denied various dismissal motions. Subsequently the State defendants moved to amend their answer and cross-claim to assert that the lands in which St. Clair claims mineral rights were, prior to the year 1900, separated fraudulently from the public domain under the then applicable federal homesteading law and therefore no private titles thereto can or do exist and title remains in the United States. Exhibits and briefs presented would indicate some substance to the claim, had it been timely presented years ago. The court denied leave so to amend, however, on May 15, 1972 *Izaak Walton League v. St. Clair*, 55 F.R.D. 139 (D. Minn. 1972), holding as a matter of law that even if established, such facts at this late date would not constitute a defense in view of the statute of limitations. Subsequently at the court's instance, argument was held for a full day at Duluth, Minnesota on September 15, 1972. The legal questions are now ripe for decision.

CONGRESSIONAL HISTORY

The statutory and administrative history behind the BWCA is rather lengthy. March 3, 1891 Congress directed that "The President of the United States may, from time to time, set apart and reserve in any state . . . having public land bearing forests . . . any part of the public lands . . . as national forests . . . by public proclamation." 16 U.S.C. § 471. By Congressional Act of June 4, 1897, 16 U.S.C. § 473 *et seq.*, detailed provisions were made for administration and regulation of national forests, including sale and use of timber, egress or ingress of actual settlers and tourists and other matters. Jurisdiction as of today is in the hands of the United States Forest Service, a division of the Department of Agriculture, and thus subject to regulations prescribed by the Secretary of Agriculture. This Act provided, however, 16 U.S.C. § 478:

"Nor shall anything herein prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating and developing the mineral resources thereof."

Also, 16 U.S.C. § 482 contains the following language:

" . . . And any mineral lands in any national forest which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions contained in section 473—482 and 551 of this title."

Though in 1893 lands in Minnesota were withdrawn from the general mining laws² authorizing location and patenting of minerals in public domain lands, it is quite clear that Congress in early legislation did not intend to remove national forest land from mineral exploration. 16 U.S.C. § 475 speaking of National forests contains the provision:

" . . . but it is not the purpose or intent of these provisions . . . to authorize the inclusion therein [national forests] of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes."

As late as 1950, 16 U.S.C. § 508b, Congress passed an Act providing as to previously withdrawn land for the prospecting and for the development and utilization of such mineral resources.

In 1909 by proclamation President Theodore Roosevelt established the Superior National Forest, an area of approximately 3,000,000 acres. Included within it is what is now the 1,031,204 acres of the BWCA. The President thus at that time, though given the statutory right to revoke his proclamation in whole or in part, 16 U.S.C. § 473, made a finding at least inferentially that the Superior National Forest was more valuable for forest than for mineral. To date no President nor Congress has ever sought to reverse this position nor to proclaim otherwise.

In or prior to 1927 the Secretary of Agriculture, pursuant to authority vested in him by the Act of June 4, 1897, see 16 U.S.C. § 551, established the first roadless area in the Superior National Forest. See *United States v. Perko*, 108 F. Supp. 315, 316 (D. Minn. 1952), *aff'd Perko v. United States*, 204 F. 2d 446 (8th Cir. 1953), *cert. denied* 346 U.S. 832 (1953). Thereafter other roadless areas were established which, when all combined became by regulation promulgated January 27, 1958 the BWCA and was so renamed.³ Meantime, a Presidential Proclamation banning airplane flights below 4,000 feet over the roadless area of the Superior National Forest was held valid by judges of this court against a challenge of unconstitutionality. *United States v. Perko*, *supra*. See companion cases of *United States v. Perko*, 133 F. Supp. 564 (D. Minn., 1955), 141 F. Supp. 372 (D. Minn. 1956); *Bydton v. United States*, 175 F. Supp. 891 (Ct. Cl. 1959).

In 1930 Congress passed what came to be known as the Shipstead-Newton Nolan Act, 16 U.S.C. § 577 *et seq.*, withdrawing from public entry or appropriation under land laws of United States the public lands in the Superior National Forest.⁴ By the Thy-Blatnik Act of June 1948, as later amended, the Secretary of Agriculture was given authority to purchase land from private individuals, subject however to 16 U.S.C. § 513 *et seq.*, the Weeks Act of 1911, which required originally that any reservation of rights, where a deed was given to the United States must

² 30 U.S.C. § 48 made inapplicable 30 U.S.C. § 22 which latter permitted a prospector who filed a claim to follow, within limits, the vein or lode in accordance with the customs and laws in force at the date of the location.

³ The Superior Roadless Area was established in 1939 and in 1948 the Little Indian Sioux and the Caribou Roadless Areas were announced.

⁴ This statute recites as a purpose "conserving the National beauty of shore lines for recreational use." It also limited logging privileges and actions affecting water levels. 16 U.S.C. § 577a.

spell out the time within which minerals shall be removed and rules and regulations under which such could be done. As amended in 1913 this section provides:

"Such . . . reservations retained by the owner from whom the United States receives title, shall be the Secretary of Agriculture . . . and such rules and regulations shall be expressed in and made part of the written instrument conveying title to the lands to the United States . . ." 16 U.S.C. § 518.

There are thus two categories or types of reservations: those reserved by grantors in deeds to the United States and those already existing in third parties at the time the United States acquired the surface rights. In the former, the United States may prescribe conditions and incorporate its regulations.

The most recent Congressional Act is the so-called National Wilderness Act of 1964, 16 U.S.C. § 1131 *et seq.* By 16 U.S.C. § 1133(d)(5) the BWCA was expressly statutorily recognized as a distinct area.

"Other provisions of this chapter to the contrary notwithstanding, the management of the Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, shall be in accordance with regulations established by the Secretary of Agriculture in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area, particularly in the vicinity of lakes, streams and portages."

This section makes no reference to minerals, but two sections of the same Act 16 U.S.C. § 1133(d)(2) and (3) provide as follows:

"(2) Nothing in this chapter shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, *if such activity is carried on in a manner compatible with the preservation of the wilderness environment.* Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress." [Emphasis added]

"(3) Notwithstanding any other provisions of this chapter, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to September 3, 1964 [5] extend to those national forest lands designated by this chapter as 'wilderness areas'; *subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production,* and use of land for transmission lines, water-lines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto". [Emphasis added]

The Act further provides: 16 U.S.C. § 1133(c)

"Except as specifically provided for in this chapter, and *subject to existing private rights,* there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area."

REGULATIONS OF THE SECRETARY OF AGRICULTURE

Some fifteen months after the passage of the Wilderness Act and on December 21, 1965, the Secretary of Agriculture adopted 36 C.F.R. § 251.85 titled "Special

⁵ As pointed out in footnote 2 *supra*, the United States mining laws were not applicable prior to September 3, 1964 to Minnesota lands. Thus this section by its very wording has no application to the BWCA.

provisions governing the BWCA, Superior National Forest". In material part, these read as follows:

"Subject to existing private rights, the lands now owned or hereafter acquired by the United States within the Boundary Waters Canoe Area of the Superior National Forest, Minn., as formerly designated under Reg. U-3 (§ 251.22) and incorporated into the National Wilderness Preservation System under the Wilderness Act of September 3, 1964, shall be administered in accordance with this regulation for the general purpose of maintaining, without unnecessary restriction on other uses, including that of timber, *the primitive character of the Area, particularly in the vicinity of lakes, streams, and portages.*

(b) Except as provided in the Wilderness Act, in this section and in §§ 251.27, 251.28, and 251.30, and *subject to existing private rights*, there shall be no commercial enterprises and no permanent roads within the Boundary Waters Canoe Area and there shall be no temporary roads, no use of motor vehicles, motorized equipment, or motorboats, no landing of aircraft, and no other form of mechanical transport.

(1) All uses that require the erection of permanent structures and all permanent structures except as herein provided, are prohibited in the Boundary Waters Canoe Area. The Chief, Forest Service, may permit temporary structures and commercial services within the Boundary Waters Canoe Area to the extent necessary for realizing the recreational or other wilderness purposes, which may include the public services generally offered by outfitters and guides.

(3) The overland transportation of any watercraft by mechanical means, including the use of wheels, rollers, or other devices, is prohibited . . .

(4) No motor or other mechanical device capable of propelling a watercraft through water shall be transported by any means across National Forest land except over routes designated by the Chief, Forest Service . . .

(c) No permanent or semipermanent camp may be erected or used on National Forest land except as authorized in connection with a reserved right, or in the Portal Zone in connection with the harvest and removal of timber and other forest products.

(f) Nothing in this regulation shall be construed as affecting the jurisdiction or responsibility of the State of Minnesota with respect to wildlife and fish in the National Forest.

(g) The State of Minnesota, other persons, and their successors in interest owning land completely surrounded by National Forest land shall be given such rights as may be necessary to assure adequate access to that land. Such rights may be recognized in stipulations entered into between the Forest Service and the private owner or State. Such stipulations may prescribe the means and the routes of travel to and from the privately owned or State land which constitute adequate access and *any other conditions reasonably necessary for the preservation of the primitive conditions within the Boundary Waters Canoe Area.*"

December 1964 the BWCA Review Committee appointed by the then Secretary of Agriculture submitted a ten-page report containing *inter alia* a recommendation:

"18. It is recommended that all pending applications for mineral prospecting permits pertaining to the BWCA be reviewed and that action be taken to withdraw consent where previously given. It is recommended that the Secretary of Agriculture withhold consent on all present and future applications.

The Committee supports the 1954 statement by former Forest Service Chief McArdle that mining not be allowed in the BWCA except in a national need and emergency. Full mineral development should be continued on the portion of the Superior National Forest outside the BWCA."

In response to this report the Secretary of Agriculture issued a statement January 12, 1965 reading in part as follows:

"IV. Mining Activities

The Committee recommends, in summary, that consent of the Department of Agriculture not be given for mining and mineral leasing in the Boundary Waters Canoe Area, except in a national emergency, and that private mineral rights within the Canoe Area should be acquired.

We will follow the policy of withholding consent on future applications for mineral prospecting permits in the Canoe Area except in cases of national emergency. As recommended by the Committee, we will withdraw consent previously given where we can. I accept the view that mineral development should proceed outside of the Canoe Area."

STATE OF MINNESOTA LAWS AND POLICY

Minn. Stat. § 92.45 (1923) recognizes in general the federal jurisdiction over the BWCA and the restrictions imposed by 16 U.S.C. § 577—577b. Minn. Stat. § 1.045 gives the State's consent to acquisition by the Federal Government of land in the Superior National Forest. In general the State has enacted legislation complementary to the Federal legislation. Minn. Stat. §§ 84.43, 84.44, 14.16, 84.521. The State Department of Conservation has pursued substantially the same policies as the Federal Department of Agriculture, and the State's regulations for purpose of this case are substantially in accord. No State permits nor leases have been given for mineral exploration of any land owned by the State of Minnesota in the BWCA. Minnesota passed the "Little Shipstead Nolan Act" of 1933 Minn. Stat. § 110.13 and in 1947 by Joint Resolution importuned Congress to enact laws to preserve the Wilderness Area. The "Little Wilderness" Act Minn. Stat. § 84.43—84.52 limited air and motorboat traffic in the area. The State's administrative activities have been diligent for many years in an effort to preserve the Wilderness character of BWCA, including participation in international conferences with Canada, prosecutions for trespass and of an offending pilot, opposition to the building of proposed roads, the prohibition of bringing cans and bottles with in the BWCA, regulations relating to game and fish, and other similar actions. The State's pronouncement of its public policy is very clear as to BWCA, reference being made to its "matchless scenic beauty of inestimable value from the recreational and tourist viewpoint". The State of Minnesota obviously is as anxious to preserve the BWCA as is the Congress judging from the State's past activities and indeed from the answer and cross-claim of its officers in this suit. Its position differs from that of the Izaak Walton League only in that the latter desires a complete prohibition of all mining activities whereas the State would except from the injunction activities "related to a national emergency".

The State's position dates back really to 1902 when its Chief Fire Warden recommended lands be set aside for what later in 1909 became the Superior National Forest. Substantial State effort was made during the 1920's and thereafter in opposing an hydroelectric project proposed for the area, and later in opposing the so-called "Gun Lake" road. The State cites all of the above as evidence of an adopted statutory and administrative policy to which the court should give weight in its determination.

PARTIES' CONTENTIONS

The questions before the court for decision are several. Plaintiff and the State defendants on their cross-claim contend the BWCA has been effectively zoned against any kind or sort of commercial activity including mining and mining exploration under either or both State and Federal statutes and regulations and that in any event defendant St. Clair and his lessors have abandoned any claims they might have had to mineral rights and/or are guilty of laches or are estopped.

Defendant St. Clair asserts two basic contentions. First that Congress did not intend to ban the exercise of mineral rights in Wilderness areas including BWCA and second, even if it had so intended, attempting so to do would constitute a deprivation of defendants' property without due process of law. The Federal defendants in general join defendant St. Clair's position but more directly continue to stand on the proposition that this declaratory judgment suit is premature since administratively the Forestry Service never has passed on St. Clair's application for core drilling in the BWCA. These defendants join St. Clair and the others in asking for a dismissal of the action.

ZONING

This court is satisfied, if it can be said that Congress intended to bar all mineral activities in the BWCA, that it has the power and prerogative so to do. The wilderness purpose is a public one and the proscription and regulations are in this court's opinion reasonable. Rarely does zoning take place without someone suffering some impairment of the unbridled right of use of property and often perhaps some depreciation in value.

It is well established that governmental bodies do have the right to zone property against certain uses, even though to some extent such deprives the owner of some of the purposes to which he could devote his property. The most common example is in cities where certain areas are zoned commercial, others industrial and still others residential with a variety of intermediate classifications. Argument is made

that zoning is the exercise of a police power; that police power is limited to the states since the Federal government has no inherent police power; that the zoning cases cited by plaintiff are instances of state or municipal regulations and not an attempt by the Federal government to exercise inherent zoning power. While in general this stands as a correct proposition, it would seem not to be applicable here in a situation where the Federal government is controlling and regulating the use of its own land and land of the State of Minnesota where the state in turn has explicitly recognized the Federal government's right so to regulate, control and thus to zone the property. In the BWCA the State of Minnesota has bowed to the jurisdiction of the Federal government and has in fact cooperated with it. Zoning is appropriate even though it may require abandonment of uses to which the property has previously been devoted. Persuasive here is the case of *Hadacheck v. Sebastian*, 239 U.S. 394 (1915). In the *Hadacheck* case the court upheld a Los Angeles City ordinance prohibiting the operation of brick kilns despite the fact that when defendant purchased his property for the purpose of mining its extensive clay deposits and to operate kilns it was not situated within the City of Los Angeles. Though this resulted in a substantial reduction in valuation of the property the Supreme Court upheld the validity of the zoning ordinance. The most recent case which the court has been able to find in the Eighth Circuit is *City of St. Paul v. Chicago, St. Paul, Mpls. and Omaha Ry.*, 413 F.2d 762 (8th Cir. 1969). In this case the court upheld the zoning ordinance regulating building heights and placing restrictions on erecting structures adjoining a city park in a downtown river front area. The lower court found such depreciated the value of the property from \$320,000 to \$150,000. What the court there said is very appropos to the case at bar and a more clear iteration of the applicable principles than this court could restate (p. 766):

"... They argue, however, that the ordinance is violative of the Fifth Amendment to the United States Constitution and Article 1, Section 13 of the Minnesota Constitution in that it takes the railroads' property without compensation.

Neither constitutional provision interposes a barrier to the imposition of restrictions on the use of private property if a zoning ordinance is enacted pursuant to a valid exercise of the police power. *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 593, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962); ⁸ *City of Marysville v. Standard Oil Co.*, 27 F.2d 478 (8th Cir. 1928), aff'd, *Standard Oil Co. v. Marysville*, 279 U.S. 582, 49 S.Ct. 430, 73 L. Ed. 856 (1929); *Kiges v. City of St. Paul*, 240 Minn. 522, 62 N.W.2d 363, 369-370 (1953); *State ex rel. Beery v. Houghton*, 164 Minn. 146, 204 N.W. 569, 54 A.L.R. 1012 (1925), aff'd mem., 273 U.S. 671, 47 S.Ct. 474, 71 L.Ed. 832 (1927).⁹ The test of whether the enactment falls within that power is one of reasonableness.

The zoning ordinance will be sustained unless its '*** provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.' *Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114, 121, 71 L.Ed. 303 (1926). *Gorieb v. Fox*, 274 U.S. 603, 608-609, 47 S.Ct. 675, 71 L.Ed. 1228 (1927); *McMahon v. City of Dubuque, Iowa*, 255 F.2d 154, 158-159 (8th Cir.), cert. denied, 358 U.S. 833, 79 S.Ct. 53, 3 L.Ed.2d 70 (1958); *Naegle Outdoor Adv. Co. v. Village of Minnetonka*, 281 Minn. 492, 162 N.W.2d 206, 212 (1968); *State ex rel. Howard v. Village of Roseville*, 244 Minn. 343, 70 N.W.2d 404, 407 (1955).

In reviewing the trial court's determination of invalidity, we examine the record not to see whether its findings are supported by evidence but to ascertain

"*** The power which the states have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals, or the safety of the public is not—and, consistently with the existence and safety of organized society cannot be—burdened with the condition that the state must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted by a noxious use of their property, to inflict injury upon the community."

Goldblatt v. Town of Hempstead, 369 U.S. 590, 593, 82 S.Ct. 987, 989 (1962).

"The public use, which sustains the taking of property under the power of eminent domain upon compensation paid, differs from the public interest or welfare which justified the restriction of the individual in the use of his property without compensation, in consideration of the public interest and common welfare of the community. ***"

"Zoning statutes are becoming common. The police power in its nature indefinable, and quickly responsive, in the interest of common welfare, to changing conditions, authorizes various restrictions upon the use of private property as social and economic changes come. A restriction, which years ago would have been intolerable, and would have been thought an unconstitutional restriction of the owner's use of his property, is accepted now without a thought that it invades a private right. As social relations become more complex, restrictions on individual rights become more common."

State ex rel. Berry v. Houghton, 164 Minn. 146, 204 N.W. 569-570 (1925), aff'd mem., 273 U.S. 671, 47 S.Ct. 474 (1927).

upon the whole record whether it is possible to say that the legislative choice is without rational basis. *South Carolina State H. Dept. v. Barnwell Bros.*, 303 U.S. 177, 191-192, 58 S.Ct. 510, 82 L.Ed. 734 (1938); *Weinberg v. Northern Pac. Ry. Co.*, 150 F.2d 645, 648 (8th Cir. 1945).

Fairly debatable questions as to the reasonableness, wisdom and propriety of an ordinance are not for the determination of the courts but for that of the legislative body on which rests the duty and responsibility of the decision. *Standard Oil Co. v. Marysville*, *supra*; *Naegele Outdoor Adv. Co. v. Village of Minnetonka*, 162 N.W.2d at 209.

The mere fact that the ordinance seriously depreciates the value of the complainants property is not enough to establish its invalidity. *Goldblatt v. Town of Hempstead*, *supra* at 594, 82 S. Ct. at 900.¹⁰ *American Wood Products Co. v. City of Minneapolis*, 21 F. 2d 440, 444 (D. Minn. 1927) (J. Sanborn), *aff'd*, 35 F. 2d 657 (8th Cir. 1929); *Kiges v. City of St. Paul*, 62 N.W. 2d at 369. Nor can it be invalidated on the grounds that aesthetic considerations will be furthered if it is permitted to stand. *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954),¹¹ *Naegele Outdoor Adv. Co. v. Village of Minnetonka*, *supra*;¹² *State ex rel. Twin City Bldg. & Inv. Co. v. Houghton*, 144 Minn. 1, 174 N.W. 885, 176 N.W. 159, 162, 8 A.L.R. 585 (1920).¹³

[1] The Minnesota Supreme Court has consistently upheld reasonable zoning ordinances, *Alexander Co. v. City of Owatonna*, 222 Minn. 312, 24 N.W. 2d 244 (1946); *Northwestern Tele. Exchange Co. v. City of Minneapolis*, 81 Minn. 140, 83 N.W. 527 (1900), 86 N.W. 69 (1901); *State ex rel. Beery v. Houghton*, 164 Minn. 146, 204 N.W. 569 (1925). It seems to the court here that if such is what Congress intended, Congress clearly had the power to zone the BWCA in view of the public purpose to keep it virginal and untrammelled. Applying to tests in the *City of St. Paul* case quoted above, it seems patent that the regulation of the BWCA is not clearly arbitrary and unreasonable, that such does have a substantial relation to a public purpose and has a rational basis. The fact that zoning may seriously depreciate the value of property or that aesthetic consideration will be furthered is not a ground for invalidation of zoning. *Naegele Outdoor Adv. Co. v. Village of Minnetonka*, 281 Minn. 492, 162 N.W. 2d 206 (1968). Whether mineral rights owners might be able to claim a "taking" so as to be able to assert a cause of action in the Court of Claims under the Tucker Act 28 U.S.C. § 491 is not a question now before the court.

The power of the Federal government to create and regulate wilderness areas for recreational purposes for the public has been held to exist in other cases. *United States v. Gregg*, 290 F. Supp. 706 (W.D. Wash. 1968) (air regulations); *McMichael v. United States*, 355 F. 2d 283 (9th Cir. 1965) (motor vehicle regulations); *United States v. Foresyth*, 321 F. Supp. 761 [2 ERC 1159] (D. Colo. 1971) (core drilling etc.); see also *West Virginia Highlands Conserv. v. Island Creek Coal Co.*, 441 F. 2d 232 [2 ERC 1422] (4th Cir. 1971).

¹⁰ "This is not to say, however, that governmental action in the form of regulation cannot be so onerous as to constitute a taking which constitutionally requires compensation. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L. Ed. 322 * * *. There is no set formula to determine where regulation ends and taking begins. Although a comparison of values before and after is relevant, see *Pennsylvania Coal Co. v. Mahon*, *supra*, it is by no means conclusive, see *Hadacheck v. Sebastian*, 239 U.S. 394, 36 S.Ct. 143, 60 L. Ed. 348 * * *, where a diminution of value from \$800,000 to \$60,000 was upheld. * * *"
Goldblatt v. Town of Hempstead, *supra* at 594, 82 S.Ct. at 990.

¹¹ " * * * The concept of the public welfare is broad and inclusive * * *. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

Berman v. Parker, 348 U.S. 26, 33, 75 S.Ct. 98, 103 (1954).

¹² " * * * The mere fact that the adoption of a zoning ordinance reflects a desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance. Thus, if the challenged restriction is reasonably related to promoting the general welfare of the community or any other legitimate police power objective, the fact that aesthetic considerations were a significant factor in motivating its adoption cannot justify holding it unconstitutional. * * *"
(Citations omitted.)

Naegele Outdoor Adv. Co. v. Village of Minnetonka, 281 Minn. 492, 162 N.W. 2d 206, 212 (1968).

¹³ " * * * It is time that courts recognize the aesthetic as a factor in life. Beauty and fitness enhance values in public and private structures."

State ex rel. Twin City Bldg. & Inv. Co. v. Houghton, 144 Minn. 1, 176 N.W. 159, 162 (1920). 413 F. 2d at 766-68.

ABANDONMENT, LACHES, EQUITIES

One position taken by plaintiff and the State is that the court need not decide the question of the power of the Federal government to zone or whether Congress did in fact so intend. They point out that the mineral rights have existed in a severed title for some 38 years more or less during all of which time the Superior National Forest was being promoted and developed at an expenditure of more than 12½ million dollars and during which time the 1964 Wilderness Act was passed, no action was taken or attempted to be taken by the owners to exercise their mineral rights until after the BWCA concept was fully matured and the area began to have its most extensive Wilderness appeal for tourists.

Actually St. Clair, according to the stipulation of facts filed herein, acquired his leases for the most part in 1969, with one in 1967, one in 1968 and one in 1970. There is no evidence before the court as to the terms thereof. However, both the severance of the mineral rights as separate titles or estates in 1929 and the recent acquisition of leases by St. Clair occurred after the establishment in 1927 of the first roadless area and as to St. Clair's acquisition, long after the passage of the Wilderness Act of 1964. The direction the Federal and State governments were taking was by this time clear.⁶

From this premise the State and plaintiff argue that defendant St. Clair, and his lessors, are mere speculators hoping to advantage themselves as opportunists. It is true that at no time since the severance from the title of the mineral rights, have either the owners or lessees been required to pay any Minnesota real estate taxes thereon. The Minnesota Supreme Court long has held that mineral rights are an estate of inheritance: *Washburn v. Gregory Co.*, 125 Minn. 491, 147 N.W. 706 (1914); *Wichelman v. Messner*, 250 Minn. 88, 83 N.W. 2d 800 (1957). A tax against a particular tract was held not to be a lien upon or attach to the minerals therein where separately owned. Minn. Stat. § 93.52 *et seq.* now and since 1969 requires a form of recordation of mineral interests with the Register of Deeds or Registrar of Titles, but heretofore there has been no such requirement.

There is no merit in the bare bones contention that failure to pay any real estate taxes on mineral rights in some way or other forfeits them, for reserved mineral rights have never been separately assessed nor subject in Minnesota to real estate taxes. Yet the law and decided cases have permitted deliberate attempts to arrange real estate transactions whereby the grantor and his heirs retained a speculative mineral interest for generations without having to pay taxes or any carrying charges, to the end that if mineral in merchantable quantities ever were discovered, the holder could interfere with the surface rights to realize upon his speculation. Defendant St. Clair and his lessors are in this class. The court does not believe it can find as such an intent for abandonment, nor the

⁶ See *United States v. Perko*, 108 F. Supp. 315, 317 (D., Minn. 1952), where the court stated:

"This first road ban regulation in the Superior National Forest was promulgated before there was any extended use of aircraft as a means of travel into remote recreational areas, and was prompted no doubt by a policy to preserve the unique character of this national forest which extends along the Canadian border for many, many miles. To the north of a substantial portion of the forest, Canada has established a national park. The general area constitutes one of the last wilderness areas in the United States. From the days of the voyageurs, it has been a canoe country, and the innumerable lakes and connecting streams with adjacent portages furnish an almost endless variety of trips by water. Perhaps no other place in the United States is so steeped in the lore of the Indian fur trader, who traditionally used these waterways before the Northwest was settled. Public interest in the conservation of this area so that it might be retained in its primitive condition undoubtedly motivated the Secretary of Agriculture in establishing regulations so that the intrusion of automobiles and other vehicles would not destroy the unique recreational appeal of this Forest Reserve. The Roadless Areas have been augmented from time to time and now aggregate approximately one million acres. They are commonly known as Superior, Little Indian Sioux, and Caribou Roadless Areas. . . . [108 F. Supp. at 317] . . .

" . . . The conservation of this wilderness tract is an outgrowth of years of government planning. Drastic curtailment of any exploitation by the use of the water therein for commercial purposes has been attained by congressional enactment. Public lands have been withdrawn from entry, and logging along certain waterways has been definitely restricted in order to 'conserve the natural beauty of shore lines for recreational use.' The Roadless Area was created by the Secretary of Agriculture in order to conserve the uniqueness of this region for the type of public recreation for which it was singularly adapted. That purpose and the general policy of the Government, as manifested in so many ways by congressional action and the legislative history, is now threatened by unrestricted airplane travel to and from that area. One of the effective barriers against the spoliation of the primitiveness of this canoe country was the establishment of the Roadless Area. This barrier, of course, will be circumvented entirely by the use of airplane travel, not only to the comparatively few resorts now located therein, but by airplane travel to and from the many lakes which will be used as landing fields for public and private air travel transportation." [108 F. Supp. at 320.]

existence of laches, without an evidentiary factual hearing, but must recognize in view of the above facts that the equities are not strong in favor of defendant St. Clair and his lessors. Their speculative purpose and obvious knowledge flies directly in the face of what plaintiff and the State and Federal governments are attempting to do preserve the BWCA and whereas in a technical sense the law of bona fide purchase is not applicable, such equitable considerations are properly considered by the court. The State in particular has advanced a theory of trusteeship claiming that under such cases as *Klass v. Twin City Federal Savings and Loan Ass'n*, 291 Minn. 68, 190 N.W. 2d 493 (1971), and *Heywood v. Northern Assurance Co.*, 133 Minn. 360, 188 N.W. 632 (1916), defendants St. Clair and his lessors have unjustly enriched themselves. The court does not see these cases or this theory as particularly apposite here, which is not to say, however, that any injustice will be done if these defendants are held to be some sort of constructive trustees for the public on the basis of being speculators knowing the trend of the BWCA development history.

ACCESS TO MINERAL RIGHTS

Plaintiff and the State contend that St. Clair and the mineral rights owners can obtain access to their land only by using State controlled waters or by traversing other properties owned either by the Federal government or the State of Minnesota; that there were no grants of easements over other properties giving them access such as might be where a grantor deeds off a portion of his property, retaining the balance which landlocks the granted portion and where courts have implied an easement. Here the adjoining property, over which mineral rights owners would of necessity have to travel was, so far as appears, never owned by common grantors. To gain meaningful access to the property other than by canoe and portage, some overland roadway or railroad right-of-way would have to be established, cutting through the heart of the BWCA, or some exception carved out of the air ban which this court long ago has upheld. See *United States v. Perko supra*. In answer, defendant St. Clair points to 42 U.S.C. § 1139(a) and (b) and to the Department of Agriculture Regulations 36 C.F.R. §§ 251.81, 251.82 and 251.85(g), the former of which read as follows:

"251.81 Access to surrounded State and private lands.

States of persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given such rights as may be necessary to assure adequate access to that land. 'Adequate access' is defined as the combination of routes and modes of travel which will, as determined by the Forest Service, *cause the least lasting impact on the primitive character of the land and at the same time will serve the reasonable purposes for which the State and private is held or used.*" [Emphasis added]

"251.82 Access to valid mining claims or valid occupancies.

Persons with valid mining claims or other valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded claims or occupancies *by means consistent with the presentation of National Forest Wilderness which have been or are being customarily used with respect to other such claims or 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 claims or occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness." [Emphasis added]

Attention also is called to Regulation 36 C.F.R. § 251.83 which is rather extensive but spells out in some detail treatment that should be accorded those who owned mining claims "prior to inclusion of the land within the National Wilderness Preservation System." Plaintiff and the State answers this by arguing that the regulations are subject to the statute and the Secretary of Agriculture either overlooked the fact of the special statutory treatment of BWCA or intended these regulations not to apply to it. Whatsoever that rationale, it is factually clear that some means of access either by air, water or over land will of necessity be required and *pro tanto* will destroy the wilderness.

BWCA SPECIALLY TREATED IN STATUTE

Plaintiff's counsel argues that all of the references in the Congressional acts, including the Wilderness Act of 1964 and regulations promulgated thereunder which refer to permissive mineral activities have no application to the BWCA since in the Wilderness Act the BWCA is specifically mentioned, and is the only Wilderness area specifically so mentioned. Since no reference to minerals activity

is included in such section, it was not intended by Congress that mineral activity would prevail or be permitted in the BWCA. Counsel arrives at this conclusion in that 16 U.S.C. § 1133(d)(5) commences "Other provisions of this chapter to the contrary notwithstanding. . ." and goes on to place management of the BWCA under regulations established by the Department of Agriculture "... in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area . . ." It will be observed no mention of mining or mining exploration is mentioned in this section. In attempting to construe the intent of Congress, this argument would seem to have some merit. Further, the sections of the Wilderness Act appearing to authorize mining in National Forests and Wilderness areas refer to the "United States mining laws and all laws pertaining to mineral leasing" 16 U.S.C. §§ 478 and 482 and 1133(d)(3) refer to mining rights in these same terms. Again, this language would seem of assistance in attempting to construe Congressional intent in view of the fact that United States Mining Laws, i.e., staking or locating a claim, have been prohibited on land in Minnesota since 1873, after which 16 U.S.C. §§ 478, 482 and 1133 were enacted. The use of this language further bolsters the argument that BWCA is a special area and should be treated separately.

Further, an inconsistency would appear to arise in that both the 1964 Wilderness Act and the BWCA Regulations speak in terms of "existing" and "reserved" rights and yet the Wilderness Act specifically reaffirmed the Shipstead Nolan Act, 16 U.S.C. § 577(a) which contains no such exceptions; nor does Executive Order 10092, the air ban order.

The attorney for the Federal defendants refers to the 1969 National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* but that Act is so new and became effective after the filing of this action that this court has not based its decision thereon.

INJUNCTIVE RELIEF

The Federal defendants claim that their administrative process has been thwarted; that the suit is at best premature and that given an opportunity they might or might not issue permits to defendants St. Clair and permit further mineral exploration; that until it is known what they will do, the action is not ripe for decision. The fact is, however, that the Forest Service did permit St. Clair to enter the BWCA and made an exception for him from the regulations as to a base camp; that upon receiving advice that he intended core drilling they did not reject the request but took the view inferentially at least, that if he could establish title it was within the jurisdiction and discretion of the Forest Service to determine whether he should be permitted so to do. Indeed their answer and brief in this proceeding so assert. Their conception is contained in quote from page 10 of their brief:

"As expanded technology has supplied new forms of public transportation and recreation, additional restrictions have been imposed in order to protect the unique character of this area. Most of these restrictions, however, have exempted existing private rights. Throughout the history of the BWCA, outstanding mineral rights have been recognized as one such right."

The case before the court is a declaratory judgment action and no longer an application for preliminary injunction nor temporary restraining order. The court thus need not find an exigency or immediate emergency in order to grant permanent injunctive relief. It is clear to the court that no adequate remedy at law exists if leave for mineral development is granted for the wilderness is lost forever or at least for several generations to come.

CONCLUSION

Proceeding on the premise that Congress has the right to zone, the question presented, and the one to which counsel have devoted most of their argument, is whether in fact Congress did intend to zone out of the BWCA Wilderness area specifically any and all mineral exploration and removal.

The task before this court is to divine the fundamental and prevailing intent of Congress from the various acts passed from time to time as above recited and to determine whether it is consistent with the position taken by the plaintiff and the State or that taken by the Federal defendants and/or St. Clair. It seems to the court that the various statutory acts and administrative regulations including the most recent Wilderness Act of 1964, contain within themselves fundamental inconsistencies. A Wilderness purpose plain and simply has to be inconsistent with

and antagonistic to a purpose to allow any commercial activity such as mining within the BWCA. A look at the maps stipulated in evidence will reveal that the reserved mineral rights in private hands are situated right in the middle of the BWCA. There can be no question but that full mineral development and mining will destroy and negate the wilderness or most of it. Even any substantial exploratory operation such as core drilling will require a means of ingress and egress,⁷ a communications system of some kind, the establishment of various camp sites, the importation of food, clothing, etc., power lines and the modification to a greater or lesser extent of the environment. Should minerals be discovered in commercially productive quantities and be amenable to open pit mining as in other locations in Minnesota or as in taconite sites, the purpose and values of almost the entire BWCA is lost. The same is true, but to somewhat lesser degree, should any mining be done in the conventional underground method. In either event, access as by railroad, or highway is necessary, areas of timber must be logged off, a water supply must be obtained and other wilderness interferences effected.

Congress itself defined a "wilderness area" in 16 U.S.C. § 1131(c):

"A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation. . . ."

It is clear that wilderness and mining are incompatible. Wilderness exists because man has not yet intruded upon it. As the United States was settled and frontiers vanished, wilderness disappeared except for inaccessible or otherwise then commercially useless areas. As of today but few true wilderness areas remain. Once penetrated by civilization and man made activities, it cannot be regained for perhaps hundreds of years. The recovery period is meaningless for generations to come. The destruction is irreversible. So with mining, logging off and other activities, they are anathema to all wilderness values. Congress in the Wilderness Act, for instance, 16 U.S.C. § 1133(d)(2) above quoted, refers to mineral prospecting "if such activity is carried on in a manner compatible with the preservation of the wilderness environment". Other portions of the Act and the regulations use language of a similar import.

[2] If the premise is accepted that mining activities and wilderness are opposing values and are anathema each to the other, then it would seem that in enacting the Wilderness Act Congress engaged in an exercise of futility if the court is to adopt the view that mineral rights prevail over wilderness objectives. A mineral resource developer cannot proceed without making use of the surface of the land. Any use of the surface for the exploration or extraction of minerals becomes an unreasonable use because the surface is no longer wilderness and is irreversibly and irretrievably destroyed for generations to come. Mineral development thus by its very definition cannot take place in a wilderness area; else it no longer is a wilderness area. It is of course necessary that mineral owners disturb the surface in order to enjoy the mineral estate. Generally and absent zoning or restrictions, a mineral owner may make a reasonable use of the surface. One has to reach the conclusion however that if the area is to remain true wilderness, there is no reasonable usage to which the surface can be put and still retain the area's character as wilderness. An open-pit mine for instance or an underground mine with resultant piles of slag or refuse and all equipment needed can never reasonably be undone. There is an inherent inconsistency in the Congressional Act and it falls in the lap of the court to determine which purpose Congress deemed most important and thus intended. In this court's opinion the Wilderness objectives override the contrary mineral right provision of the statute (and of necessity the regulations promulgated pursuant thereto). Otherwise, the Congressional Act is a nullity. It does not seem to this court that it can presume that Congress intended a nullity. Congress demands that the Wilderness remain inviolate and yet at the same time appears to allow mineral development. Which use should be paramount

⁷ Heavy machinery can hardly be brought in by canoe or foot, particularly with the necessary portages, nor can substantial quantities of material be removed without other means of transport.

is the court's problem. To create wilderness and in the same breath to allow for its destruction could not have been the real Congressional intent and a court should not construe or presume an Act of Congress to be meaningless if an alternative analysis is available. The court is aware of the general rule of construction that the specific controls the general and that the provision relating to mineral rights are more specific. Nevertheless, if the Act means anything, the BWCA was established by Congress to secure for future generations the beauty, pristine quality and primitiveness of one of the few remaining small areas of this Country.

It is argued that mere prospecting and drilling is in the nature of a minor interference. It is nevertheless an encroachment upon wilderness, what with its heavy machinery, the noise of its operation, necessity for water or land transportation, base camps, communication lines, etc. Further, prospecting is only worthwhile if something is found, and it would follow as an *a fortiori*, that removal of the ore is the next step requiring further encroachment and as this court stated earlier knocking out the very heart of the BWCA.

The State requests that the injunction lie "except as related to a national emergency." It contemplates the time may come "when it is apparent that mineral values are of such great public importance that the need for them cannot be ignored in the public interest". The difficulty the court has with this concept is one of definition. The terms are so broad that to include this in an injunctive decree is merely to breed a further law suit. It is not clear whether the "national emergency" would constitute for instance, a declaration of war by Congress, a civil uprising at home, or merely a shortage of metals requiring imports to meet local needs. If the term were "national survival" it might be more capable of definition, but even that is or would be a matter of judgment at some time in the future. Presumably any definitive action by Congress in relation to BWCA or other wilderness areas unequivocally determining that the objectives and a value of wilderness are to be relegated and secondary to mining interests and activities whether or not a "national emergency" exists will be controlling. Theoretically a "national emergency" could be extant having no particular relationship to mineral interests i.e., extensive destruction by floods, tornados, pestilence, etc. Congress can define and prescribe but until it does so, for the reasons above, the court declines to attempt to carve out a "national emergency" exception to the injunction.

A separate permanent injunction order has been entered.

Senator PACKWOOD. I think it is well to point out here that Judge Neville hit the nail on the head when in his conclusion to this opinion he stated:

(2) If the premise is accepted that mining activities and wilderness are opposing values and are anathema each to the other, then it would seem that in enacting the Wilderness Act Congress engaged in an exercise of futility if the court is to adopt the view that mineral rights prevail over wilderness objectives. A mineral resource developer cannot proceed without making use of the surface of the land * * *. There is an inherent inconsistency in the Congressional Act and it falls in the lap of the court to determine which purpose Congress deemed most important and thus intended.

It becomes obvious here, and has been shown in a number of other situations—case in point, the Three Sisters in Oregon—that it is incumbent upon Congress to clarify what was intended in its original enactment of the Wilderness Act of 1964.

In my view, the only course at this juncture is to terminate all mining activities in wilderness areas. S. 1010 does this and is, therefore, a very necessary piece of legislation.

In the case of Oregon and the Three Sisters Wilderness, there is no conceivable way that the pumice can be mined without scarring and permanently devastating the area. There, such scars would take decades for repair by natural processes. If we do not act soon, some 50 years hence we'll be asking ourselves why we didn't, why we failed to take the opportunity to protect our wilderness areas, those areas already designated as such, mind you, in the manner intended by the

originators of the Wilderness Act. In the 92d Congress, after consultations with the U.S. Forest Service, the Environmental Protection Agency, and the President's Council on Environmental Quality, I became increasingly convinced that without specific legislation, there would be no means under present law to prohibit the U.S. Pumice Co. from desecrating a unique national wilderness area and destroying the geologic and scenic beauty of the feature known as Rock Mesa in the Three Sisters Wilderness. The highest values of this area are precisely those for which it was preserved; that is, the wilderness values inherent in its scenic beauty and geologic uniqueness. From my past efforts, I became increasingly certain that the problem of mining in wilderness areas must be addressed legislatively if we are to avoid the confusion which has resulted from time to time in matters of this sort. The issue revolves around deciding between mineral exploitation and wilderness preservation. In my mind, these elements are mutually exclusive. Mining is inconsistent with the wilderness concept.

Furthermore, it is incredible to me that of all the public, only miners have the right to go almost anywhere on public lands and stake out claims, contingent only upon a valid mining claim being established. No other special interest group has been so favored. By Senator Jackson's bill, we will be able to insure that the intrinsic values of wilderness areas are held intact, and I strongly urge the committee's favorable consideration of this very necessary piece of legislation.

Senator METCALF. At this time I want to ask if Senator Haskell, who is the chairman of the other subcommittee, the Public Lands Subcommittee, wants to make a preliminary statement?

Senator HASKELL. I have no preliminary statement, Mr. Chairman. The fact that we are jointly holding a hearing, I think, speaks for itself, since we are both interested in the legislation.

Mr. DELLENBACK. If I may, Mr. Chairman, I would say that I feel very pleased and honored to be with you, and I will expect that the testimony of the Congressman from Oregon will appear as far down the list as any Senator might care to have their testimony ahead of it. I fully expect this, and I defer to your, not only power of the gavel—

Senator METCALF. Your statement was exceptional and we are pleased to have it. You are excused. Go over and vote right in the House of Representatives.

Senator HANSEN. If the Congressman has time, Mr. Chairman, would he have time to answer a few questions?

Senator METCALF. Senator Hansen.

Senator HANSEN. I wanted first to accord my very good friend, the distinguished Senator from Oregon, the opportunity to interrogate our distinguished witness first because of their representing the great State of Oregon, but beyond that, I am interested in how you interpret Senator Jackson's bill, S. 1010. Would I be right in assuming that what this bill proposes to do is to restrict surveys and exploration of the wilderness or of areas that might be included within the wilderness system to activities by the Geological Survey and Bureau of Mines, and would exclude mining companies and people now interested?

Mr. DELLENBACK. Of course, I can't speak for Senator Jackson, but as I would read this, I read the proposals set forth in S. 1010 that the Secretary of the Interior and after consulting with the Secretary of Agriculture jointly dealing with only the national forest wilderness

areas that so far as this is concerned, in those areas they will replace prospecting rather than have prospecting as it exists at the present time. That is my interpretation of the second subparagraph.

Senator HANSEN. Nothing in this bill would preclude any person from entering into an area on foot and making such visual observations as he might be inclined to make? Then, if more intensive investigation was desired, permission would have to be granted by the Geological Survey or the Bureau of Mines?

Mr. DELLENBACK. It would be my understanding that the Geological Survey and Bureau of Mines would be charged with the responsibility of determining the mineral values, if any, that are present in those lands. This would not stop any—I couldn't imagine them by any stretch of the imagination stopping anybody from going through and examining visually, this type of inspection, but the type of inspection that is normally involved in prospecting per se.

Senator HANSEN. The second thing accomplished by S. 1010 would be to strike the date December 31, 1983, and insert in lieu thereof the date of enactment of this amendment, and strike the date January 1, 1984, and insert in lieu thereof the date of enactment of the amendment, to compress the period of time in which mining claims could be brought into being and could become valid?

Mr. DELLENBACK. That is my understanding, Senator Hansen. Actually, in this regard, S. 1010 adds a feature that is not in my H.R. 455 because I didn't have in H.R. 455 the first concept of replacing prospecting by the work of the Geological Survey and the Bureau of Mines. I dealt solely with the feature of bringing that 1983 date to the present and then, secondly, giving those additional rights of regulation and rulemaking to the Secretary of Agriculture. I am supporting this additional feature in S. 1010. It seems like a desirable thing, particularly when this survey is to be done on a planned basis by the department involved, and it makes clear the result of the survey shall be made available to the public and submitted to the Congress and the President. So we are talking about something that is not a hit-and-miss survey of these areas but a planned survey of these areas and then the information is not to be kept secret. It is to be made available to the lawmakers as well as to the public, and both of those are very fine additional features which I am only sorry to say were not in H.R. 455 at the time I introduced it.

Senator HANSEN. Thank you very much, Congressman Dellenback. Thank you, Mr. Chairman.

Mr. DELLENBACK. Thank you again, Mr. Chairman and members of the committee.

Senator METCALF. Thank you very much, Congressman Dellenback, for an informative statement.

Senator Hatfield.

Senator HATFIELD. Thank you very much, Mr. Chairman.

STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator HATFIELD. Before I make my formal statement, I would like to share with the committee two very excellent drafts that portray the problem that Congressman Dellenback and I will further

discuss, and that is the Rock Mesa Area of the Three Sisters Wilderness. You have the pumice that is proposed to be mined in open pit mining in these pictures right in view and in relation to the Three Sisters.

Mr. Chairman, I wish to give my full support for prompt enactment of S. 1010, which would ban the filing of mining claims in wilderness areas. My colleagues on the committee are aware of situations in Oregon which point up the need for this legislation.

It is hypocritical for Congress to wrestle with what I might call the purity standard in approving new wilderness areas, and then to allow such a monumental loophole in approving the filing of mining claims. I am aware of conditions existing when the Wilderness Act was passed by Congress, but I believe the situation has changed and this provision should be removed. Allowing mining can undo the very protection we seek when a wilderness area is created.

Members of this committee recall that when we reviewed my proposal to establish the Minam Wilderness Area, opponents cited limited existing inholdings and the fact that limited horse logging had occurred some 50 years ago as reasons why the bill should not be approved. Also, in administering the Mation Lake Area in Oregon's Mount Jefferson Wilderness, privy restrooms and a piped-in water faucet were removed because the Forest Service said they were inconsistent with the Wilderness Act. Absolute purity was to be the standard.

Both these problems received extensive press coverage throughout Oregon, and the people of our State are well aware of these pure and chaste interpretations of the Wilderness Act. The people of Oregon are just as aware of the threatened pillage of one of our State's most beautiful areas. I refer to threats of mining by U.S. Pumice Co. at Rock Mesa in the majestic Three Sisters Wilderness Area. These mining claims were filed originally within the scope of the section of the Wilderness Act that S. 1010 would change. The claims would allow mining pumice form a unique geological feature in a beautiful section of an existing wilderness area.

Put quite simply, the people of Oregon know from our experience that the Wilderness Act has a loophole large enough for a pumice truck to drive through. All members of the Oregon congressional delegation have expressed opposition to this mining, and it is strongly opposed throughout the State.

The legislation before our committee will not solve our problem at Rock Mesa. I recognize that we still will face the problem of existing mining claims in wilderness areas throughout the country. I support enactment of S. 1010 to preserve other wilderness areas from filing and mining new claims—the environmental havoc that now threatens our State. Pictures I have seen of pumice mining in California by this same company look like a barren and desolate moonscape.

These concrete examples touch upon a larger problem that I believe should concern this committee: confidence in government. At a time when people's faith in all government is eroding, we must help restore trust and believability. In reality, the mining provisions demonstrate that the Wilderness Act does not mean what it says. I would suggest, facetiously, that we might rename it the Wilderness and Mining Act, for this would be more candid in explaining the law. We should avoid

enacting laws and talking about the protections provided when such loopholes exist.

There is a need to allow mining in many areas of the country. Our Nation's mineral needs will continue to grow. A limit does exist, however, on the areas where such mining should occur. Wilderness areas must be a sanctuary from mining activity.

I hope Congress will approve legislation to insure that this country's wilderness areas do not become future strip mines.

Mr. Chairman, I would only emphasize one or two points that I made by recalling again to mind that in this very area about 2 years ago, we had a very tragic accident of some students who were in the area and one of the students was killed while in this very wilderness and the Forest Service would not permit first a helicopter to be flown in to fly the body out because they said that would be in violation of the Wilderness Act; the crisis had already passed. If the student had been injured, then it would have been appropriate to fly in a helicopter, but because a crisis was passed and the student was dead, they could bring the student's body out by other means.

To us that was a highly exaggerated interpretation of the Wilderness Act because it was in this very same area the U.S. Pumice Co. was pursuing its plans to mine this pumice, and the kind of trucks that would have to be used to go in there to bring out the pumice and other such things seemed highly inconsistent with this strict interpretation by flying out the body of a dead student with a helicopter.

The same thing is true with these privies because we have this Marion Lake area within the wilderness area within walking distance of a highway. Elderly people walk in there to a beautiful spot and they have the privies in there for the basic human needs, but once that was in the wilderness area, they yanked them out because they are manmade facilities. They now have taken an old well out where people after hiking could get a drink of water. They have ripped that out because that would not conform to the Wilderness Act, and now they are trying to drink water out of the lake, which could be contaminated and lead to illness.

The whole Wilderness Act has to be tied down to mean what it says. We interpret it so strictly in some respects and leave this great loophole on the mining claims in this same respect, and I don't think it is consistent.

Senator METCALF. Perhaps we could have the mining claim over there and we could then have the ordinary rest needs and at least a dipper so they could drink a little water.

Senator HATFIELD. If that is the only way I can get privies in there, I will support it. I want to say Ed Cliff, Director of the Forest Service, when we brought this matter of the helicopter to his attention, I want to say to his lasting credit he did send out a memorandum to correct this type of interpretation that had been placed on that particular place by the regional forester or the district forest supervisor. But it did occur, it did occur in this very tragic and yet very unreal way.

Senator METCALF. Do any of my colleagues want to interrogate the distinguished witness from Oregon?

Senator HASKELL. No, I think the distinguished witness from Oregon has articulated himself very well.

Senator HATFIELD. I thank my colleagues, and if you will excuse me, although I am not a member of this subcommittee, I am very interested in this legislation, and it will assist us now to have the markup to increase our staff allowances that we have pending before the Appropriations Committee. If you think that is a valid excuse——

Senator METCALF. Unless there is an objection, we certainly excuse you for that very meritorious reason.

Senator HANSEN. Mr. Chairman.

Senator METCALF. The Senator from Wyoming.

Senator HANSEN. Mr. Chairman, I ask unanimous consent that there may be included in the record at this point a wire I have received today from Robert B. Laughlin, the executive vice president of the Rocky Mountain Oil & Gas Association.

Senator METCALF. Yes. Without objection that will be included. [The wire referred to above follows:]

[Western Union Mailgram]

CASPER, WYO., July 17, 1973.

Senator CLIFFORD P. HANSEN,
Washington, D.C.

The Rocky Mountain Oil and Gas Association is concerned about S. 1010 which would prohibit oil and gas exploration and development in wilderness areas. Making Federal lands available for such exploration and development should be one of the highest priority objectives of national energy, land use, and natural resource policies.

We believe that multiple use should be the rule. Resource development and wilderness are not mutually exclusive aims. It would be a serious waste of natural resources and a mistake to bar any beneficial use of wilderness areas which does not unreasonably interfere with their wilderness character. Will you kindly submit these views for the record.

ROBERT B. LAUGHLIN,
Executive Vice President, RMOGA.

Senator METCALF. Without objection various materials that members of the subcommittee have received—letters, wires, and so on—that they wish to submit for the record will be included in the appendix of the hearing record.

The next witness is Dr. Vincent McKelvey, Director of the U.S. Geological Survey, Department of the Interior.

We are delighted to have you here and hear your testimony on this important legislation.

STATEMENT OF VINCENT E. MCKELVEY, DIRECTOR, U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

Dr. McKELVEY. Mr. Chairman, I appreciate this opportunity to represent the Department of the Interior and to participate in your consideration of legislation that would withdraw national forest wilderness areas from appropriation and disposition under the mining and mineral leasing laws.

S. 1010 would amend subsection 4(d) of the Wilderness Act by striking the provision permitting mineral prospecting and exploration in national forest wilderness areas and by changing the mineral entry and leasing deadline from December 31, 1983, to the day of enactment of this proposed amendment. The other provision in paragraph 2 providing for recurring mineral surveys by the Geological Survey and Bureau of Mines would remain intact.

The proposed amendment would immediately withdraw from the mining and mineral leasing laws, subject to existing rights, the 54 forest areas taken into the wilderness system by the act and the 11 forest areas subsequently added, altogether totaling about 10.7 million acres. Possibly of more importance would be its effect on areas that will be taken into the system after enactment of this proposed amendment.

There are presently 24 forest primitive area of about 4 million acres that have been proposed to Congress for wilderness, or that will be proposed before the September 1974 deadline. In addition, there are another 235 candidate areas of about 11 million acres now being reviewed by the Forest Service for wilderness suitability and 61 areas are already committed to study. Added to these are a number of proposals by Members of the Congress for other additions and there are 50 or more areas proposed for withdrawal in the acquired forests of the East. It seems reasonable to presume that in the years ahead there will be still more areas proposed for and taken into the wilderness system.

Wilderness areas of the national forests ultimately, then, will make up a large block of Federal land withdrawn from multiple use. Most of this acreage, of course, has no commercially producible minerals, but a conflict nevertheless exists in those small areas where there are mineral values.

Any review of present and pending national forest withdrawals would be incomplete unless considered in the light of other withdrawals of Federal lands, and in light of the administration's proposed Mineral Leasing Act of 1973 which is now under consideration by your committee. In the ongoing competition for special use of Federal lands, the Nation must begin to look critically at its material needs when considering such legislation as S. 1010. Special-use lands specifically withdrawn from location under the general mining law of 1872, those of National Park System, the National Wildlife Refuge System, and those under the Department of the Defense are essentially unavailable for mineral development; and those within Alaska that potentially could be withdrawn from mineral development under section 17(d)(2) of the Alaska Native Claims Settlement Act, altogether represent about 200 million acres of Federal lands whose mineral deposits could remain unavailable for orderly development.

As you know, the proposed Mineral Leasing Act of 1973 would substitute for present mining, mineral leasing and related laws a single statute for the development of all minerals on Federal lands through a leasing system. It would require lessees to submit plans of operation and reclamation prior to commencing operations and to comply with reclamation standards throughout their operations. Discretionary authority would be available to harmonize mineral activities with the needs of other land users and of the environment. This balanced approach would permit mineral exploration and production where appropriate, coordinate competitive uses of the land, provide a fair return to the public in the way of royalties, and most important, provide maximum feasible preservation of the environment.

The Wilderness Act has a major legislative shift from the multiple-use concept of the national forests. S. 1010 would undo the efforts of many groups in and out of Government to resolve the difficult questions that were involved in establishing the single-use classification

of wilderness. Many believe that the Wilderness Act would not have been passed had not subsection 4(d) provided a compromise between those in Congress who argued the need to consider mineral resources and those who argued total preservation. The Department of the Interior believes that the basic intent of Congress when it included the provision for mineral entry was to insure adequate mineral evaluations before final withdrawal. We are still in agreement with that intent.

The soundness of the intent of subsection 4(d) of the act—a concern for an adequate long-range mineral supply base for the Nation—has become clearly evident since the act was passed. Secretary Morton stressed the indispensability of minerals and energy in our way of life when he stated in the foreword of U.S. Geological Survey Professional Paper 820, U.S. Mineral Resources, “Mineral and mineral fuels are the physical source of most of the necessities, conveniences, and comforts of life in the United States today.” Without them there could be no industrial society and we would have to retreat to a more primitive way of life.

After decades of abundance, the 1972 trade deficit of \$4.1 billion in liquid fossil fuels awakened the Nation to the importance of domestic oil and gas supplies. If the trend of the past 20 years continues, by the year 2000 our trade deficit in primary minerals could be over \$100 billion. Growing U.S. mineral demands upon the rest of the world’s supply occurs at a time when other nations’ demands are rising at an even faster rate than our own. Commonsense dictates that the mineral resources of the United States must play their proper role in the global supply-demand balance. Orderly development of domestic resources must therefore remain in high priority. Just as we have learned that there are no cheap foreign supplies of oil and gas, we may soon learn that there are no cheap foreign sources of other minerals.

The joint mineral surveys of the Bureau of Mines and Geological Survey are not indepth mineral evaluations. Lacking time, funds, and most important, authority for detailed exploration, these studies do not prove or disprove the existence of mineral ore bodies. Areas of potential can be pointed out but detailed exploration rightfully belongs to the private sector that is best equipped to carry it out. If as intended in S. 1010, mineral withdrawals are made automatically when each of the remaining 24 primitive areas of nearly 4 million acres are added to the system, no time remains for the detailed exploration needed to identify producible deposits. This would also hold true for the 235 roadless areas, the 50 or more areas in the acquired forests, and the unknown number of other areas that surely will be proposed by the President and by Congress.

The 20-year period originally set by Congress for mineral evaluation of wilderness areas by those interested is half gone. As the act now stands, there will not be time to examine in the necessary detail the 11 million acres of possible new areas now identified for study, much less the additional areas yet to be identified. These were not considered by Congress when it set the 20-year deadline. To conform with the original intent of Congress we believe that rather than enact S. 1010, it would be in the national interest to keep these lands open subject to the regulations of the proposed Mineral Leasing Act of 1973, or to develop similar regulations that would apply to wilderness areas until the Mineral Leasing Act is passed.

Thank you, Mr. Chairman.

Senator METCALF. Thank you very much for your statement, Dr. McKelvey. It used to be that when anyone came up from one of the administrative agencies or the departments there was a statement that this has been submitted to the Bureau of the Budget, and later with the Office of Management and Budget, and is in conformity with the program of the President. Of late that disclaimer or statement has been omitted. However, has this been submitted and cleared by OMB?

Dr. McKELVEY. Mr. Chairman, the Department's position was reported in the Secretary's letter to the chairman of the committee, Mr. Jackson. The Department's position is the same as I have indicated here. The last paragraph of that letter says the Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Senator METCALF. Thank you.

Senator Haskell.

Senator HASKELL. I gather it would be your position that rather than shorten the period to the time of enactment, you would extend the period of mining location and exploration indefinitely in wilderness areas?

Dr. McKELVEY. No, Senator. The Department's position is to support the enactment of the Mineral Leasing Act of 1973 which would leave the Wilderness Act as it is now, but the dates would be unchanged. The effect of the passing of that act would be to provide for leases that might be issued between now and the closing date, 1983, and also to give discretionary control over the issuance of leases, not only in the wilderness areas but other areas also.

Senator HASKELL. How many claims have gone to patent in the wilderness areas between the date of enactment of the act and today?

Dr. McKELVEY. I am sorry Senator, I can't answer that question, and I don't know really if anyone can answer it accurately. I am uncertain as to the extent of that.

Senator HASKELL. How many claims have been filed during the same time period?

Dr. McKELVEY. I can't answer that, sir.

Senator HASKELL. If I remember correctly, to file a claim on public land, somewhere in the records of the Department of the Interior you have to file some type of document. Am I correct on that?

Dr. McKELVEY. I believe in this instance any such records would be kept by the Forest Service and perhaps Mr. McGuire might be able to answer that question.

Senator HASKELL. I will inquire of him. I have no further questions.

Senator METCALF. Senator Buckley.

Senator BUCKLEY. Dr. McKelvey, roughly speaking could you estimate what percentage of the total area considered prospective for petroleum would be included in the wilderness areas?

Dr. McKELVEY. Most of the wilderness areas are not favorable for the occurrence of petroleum. I am not able to give a quantitative estimate, but I think I could say with confidence that of the prospectively valuable areas for petroleum, only a small percentage are in the wilderness areas.

Senator BUCKLEY. So that if the Jackson bill is enacted, it would not have an appreciable influence on our capacity——

Dr. McKELVEY. That's right. It would be more in the case of other minerals.

Senator BUCKLEY. The bill provides that the surveys, the recurring surveys to be conducted by the Geological Survey and the Bureau of Mines would be conducted on a basis consistent with the concept of wilderness preservation. Would you interpret that to mean it would not be allowed to undertake any coring or anything of that sort?

Dr. McKELVEY. Those specific terms would have to be discussed with the Forest Service. I presume on an ad hoc basis. A lot would depend on the nature of the area, but certainly it would be the intent that such prospecting not damage the environment. We do very little core drilling. I don't believe that any has been done in conjunction with the work of the Bureau of Mines or the Geological Survey in the wilderness survey.

Senator BUCKLEY. The statement that Senator Jackson prepared that was at the beginning of the hearing, he states,

Furthermore, S. 1010 would in no way adversely affect the security of our Nation in terms of any national emergency. Section 4(d)(2) of the Wilderness Act directs that recurring surveys be made by the Bureau of Mines and U.S. Geological Survey to determine mineral values present in the national forest wilderness areas. Should this Nation ever be faced with a national emergency which can be met only by the extraction of minerals within the national forest wilderness areas, with the knowledge gathered through surveys required by section 4(d)(2), the Congress could act to make those minerals available for mining.

Do I gather from your testimony you feel the kind of surveys you would be permitted to conduct would not in fact provide us with the kind of information to enable us to meet the security problems?

Dr. McKELVEY. I think they would provide Congress and the general public with valuable information—are providing valuable information—on the general location of areas that are broadly favorable for the occurrence of mineral deposits. That helps a great deal, I think, in your decisions with respect to individual areas, and presently this information is utilized by the mineral industry in pointing to areas that deserve further exploration or prospecting or that would seem promising for further exploration. But there is a great difference between that and the kind of information that is needed to identify a specific deposit and determine whether the mineral occurs in producible quantities, commercially recoverable, and so on.

So what I think would happen in the event Senator Jackson describes is that, yes, indeed, there would be knowledge of areas in which prospecting and exploration might be undertaken but there might be some lag before there would be fruit from that work in the form of production that could ease the emergency situation.

Senator BUCKLEY. What might be the normal lag between the time when people start up a detail exploratory program in a prospective area and a time when a mine is generally in production, if one can generalize.

Dr. McKELVEY. I think it is risky to generalize too much on something of that sort, but I think at the very least one can say it would be a few years and, depending on the nature of the deposit and the nature of the enterprise, it would be as much as 10 years or even longer, particularly if research has to be involved to solve various problems that may be encountered along the way. Leadtimes of that period are not at all unusual and, as I said, a minimum of a few years is generally required for prospecting, exploration, and the development process.

Senator BUCKLEY. Thank you very much. I have no further questions.

Senator METCALF. Senator Hansen.

Senator HANSEN. On behalf of Senator Fannin I wish to address a few questions to the witness.

The U.S. Geological Survey conducts mineral surveys of some of the proposed and established wilderness areas. It has been stated that these surveys are adequate to make the minerals found available for mining in the event the Nation ever needs them. I realize, parenthetically, that Senator Buckley may already have asked this, but nevertheless let me follow through.

Please describe the nature of the mineral surveys which are conducted?

Dr. McKELVEY. Again, it depends somewhat on the area and will vary from place to place, but ordinarily the surveys consist of field reconnaissance which may involve, and generally does, reconnaissance geologic mapping. It also involves reconnaissance sampling including, in many areas, samples of stream water, stream sediment, soil, and rock which are tested chemically to determine the presence of elements that may be of commercial interest, not just in that particular sample, but as a clue to the possible presence of such deposits in the area.

Senator HANSEN. What is your opinion of the sufficiency of these surveys to discover mineral deposits which could be mined in the event of such national need?

Dr. McKELVEY. They are not adequate. It would only be in rare instances in which the work accomplished in these surveys would identify specific deposits and provide information on the deposits that would permit immediate development. As I indicated earlier, they would identify at least many of the areas, perhaps not all of them, but many of the areas in which there are favorable prospects for occurrence of minerals.

Senator HANSEN. The third question is a composite one. Let me read of it and then if you like, you can break it down into component parts.

Does the U.S. Geological Survey evaluate the potential for deposits that may be present in older rocks concealed by younger postmineral rocks at the surface? Can this be done by any method other than drilling or other subsurface methods? Does the survey of the U.S. Bureau of Mines involve drilling or subsurface exploration in connection with evaluation of the mineral potential in wilderness areas?

Would you like to respond to that question?

Dr. McKELVEY. I think I can respond to it, Senator. You can remind me if I overlook a part.

I think that when it comes to the matter of testing older rocks that are concealed beneath the surface, this is always difficult. For a really definitive testing, drilling or other forms of physical exploration are required. However, there are ways of obtaining clues to concealed deposits. I did not mention, in answer to the earlier question, geophysical surveys. In many areas, airborne magnetic surveys are undertaken and they help to identify certain kinds of mineral deposits, give a clue to their presence, or give a clue to the geologic structure of the area, such that some interpretations of the subsurface geology can be made.

Similarly, geologic mapping gives an approach in some areas to the understanding at least of the general nature of the geology of the subsurface.

The Navajo Indians have a name for the geologist, which I can't repeat, but, roughly translated, it means "he is the one who sees into the ground." He doesn't always do that very well, see very clearly, but there are both geological and geophysical approaches that help. But as I indicated at the outset, drilling or sinking a shaft, or means of actually physically encountering the rocks of the subsurface is the only certain way of identifying minerals at depth and the Geological Survey and the Bureau of Mines do not undertake that kind of work as a part of this program.

Senator HANSEN. I have completed addressing the questions posed by Senator Fannin. Now if I may read from the Code of Federal Regulations, section 3567.1-1, "Requirements for Preservation":

The provisions of the Wilderness Act do not prevent any activity, including prospecting within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with applications for mineral leases, licenses, or permits on lands which may be open to such applications, attention is directed to the fact that no such applications will be granted after December 31, 1983.

I note that presently there are five areas within the National Wildlife Refuge that are still open to mineral entry. These are, Cabeza Prieta, Kofa, Charles M. Russell, Clarence Rhodes and Cape Newenham. Within the National Wilderness Preservation System there are some six areas, the Three Sisters Wilderness in Oregon, the Glacier Peak Wilderness in Washington, the North Absaroka Wilderness in Wyoming, the Mazatzal Wilderness in Arizona, the Blue Range Primitive Area in Arizona, and the Black Range Primitive Area in New Mexico.

I guess with respect to the wild and scenic rivers areas the picture is rather confused. Mining is allowed within the component of this system. However, the Secretary may regulate mining and prospecting not perfected before a river's inclusion in the system. There are specific provisos for mining on Federal lands which restrict mining activities during certain Federal construction on the rivers. There is no active mining on any of the eight rivers already designated. Mining is currently being done in four of the study areas. Two probably will qualify for inclusion in the system. I refer to the Obed River Basin in Tennessee and the Little Beaver in Ohio. It is unlikely that any of the remaining areas will qualify for inclusion; namely the Clarion River, in Pennsylvania, and the Lower Allegheny, in Pennsylvania. I note that regulations issued by the Secretary must provide safeguards against pollution.

Within the National Park System I am informed that mining is allowed in any unit within the system where specifically provided in the enabling legislation. At the present time mining is allowed but not active in six units within the National Park System. These being the Mount McKinley, Alaska, Glacier Bay National Monument, Alaska; Coronado National Monument, Ariz.; Death Valley National Monument, Calif., and Crater Lake National Park, Oreg.

With respect to S. 425, a bill to regulate surface mining operations, it has been proposed by the majority staff that lines 5 to 15 on page 45 of the committee print No. 5 be stricken and that a new subsection be inserted:

No surface operations except those which exist on the date of enactment of this Act shall be permitted on any land within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails and the National Wilderness Preservation System and the Wild and Scenic Rivers System.

There are two other sections which I won't read, 2 and 3.

My question, Dr. McKelvey, is with respect to your testimony that there is yet a considerable amount of work to be done within those areas proposed for inclusion within the Wilderness System. I take it that you feel it is important that we know what mineral values may be contained within these areas.

Would you care to comment as to the appropriateness of the proposal to include within the surface mining bill the proposal that I have just read, submitted by the majority staff? I am not certain that I have made myself clear in asking so many things.

Dr. McKELVEY. I think I would not wish to comment on that without—

Senator HANSEN. If you would like, Dr. McKelvey, I would be happy to submit my questions to you in writing. However, I would be interested in your comments.

Dr. McKELVEY. I will be happy to respond, sir.

Senator METCALF. And the questions will be submitted and incorporated at this point in the record and the answer will be immediately forthcoming, if possible.

[The question and response follows:]

U.S. DEPARTMENT OF THE INTERIOR,
GEOLOGICAL SURVEY,
Washington, D.C., September 26, 1973.

HON. CLIFFORD P. HANSEN,
U.S. Senate, Washington, D.C.

DEAR SENATOR HANSEN: Enclosed are the answers to your questions that are to be inserted on page 50 of the record of the testimony of July 18, 1973, on the matter of Senate Bill 1010, to amend the Wilderness Act of 1964.

I was pleased to have had the opportunity to appear before the Joint Meeting of the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, and to discuss the relation of Bill S. 1010 to our work.

Sincerely yours,

VINCE, McKELVEY, *Director.*

Enclosure.

QUESTIONS TO DR. V. E. McKELVEY

a. Please describe the nature of the mineral surveys which are conducted.

Mineral surveys are of the reconnaissance type because large areas have to be examined in a short time. These surveys consist of field studies that include geologic mapping, to determine the distribution of the major rock types and their structural relations, as well as rock and geochemical sampling. Samples of stream water and sediment, soil, and rock are analyzed chemically for the presence of elements with potential mineral interest that may provide a clue to their presence in sufficient quantity to be considered targets for further exploration for mineral deposits in the area. Geophysical surveys, such as airborne magnetometer surveys, are also undertaken to help locate certain kinds of deposits, give clues to their size and depth beneath the ground surface, or give greater understanding of the geologic structures in the area. The record of all previous exploration and mining activities and all mine claims in an area are examined and evaluated by

the engineers of the Bureau of Mines. Where necessary, they present mineability appraisals of some areas.

b. *What is your opinion of the sufficiency of the surveys to discover mineral deposits which could be mined in the event of such national need?*

In the context of the question, our mineral surveys generally are not aimed at the identification of specific mineral deposits, and it is only in special instances when the work accomplished in these surveys has identified specific deposits of potential interest for immediate development. The basic objective of the Wilderness Program activities is to identify areas of anomalous concentrations of useful elements that may constitute favorable target areas worthy of more detailed exploration and development work by industry, both on the surface and in the subsurface, to identify an ore deposit suitable for commercial production. The time lag from exploration of such a target area to the identification of a deposit and on through the evaluation process to production varies, but for many metal mines the time lapse is now 20 to 20 years. Thus, national need cannot be immediately satisfied; the use of a mineral deposit requires long-range planning.

c. *Does the U.S.G.S. evaluate the potential for deposits that may be present in older rocks concealed by younger post-mineral rock at the surface? Can this be done by any method other than drilling or other subsurface methods? Does the Survey or the U.S. Bureau of Mines do any drilling or other subsurface exploration in connection with evaluation of the mineral potential in the wilderness or primitive areas?*

Truly definitive testing to ascertain whether mineral deposits are concealed beneath the surface in older rocks is always difficult and requires drilling, shaft sinking, and other forms of physical exploration. None of these activities is a part of the Geological Survey and Bureau of Mines surveys of the wilderness lands.

There are, however, means to obtain information about some mineral deposits in older rocks concealed by younger, unmineralized rocks. Geophysical methods, such as airborne magnetic surveys, aid in interpreting subsurface geology, particularly some buried igneous masses which may be mineralized, and the depth of burial of some mineral deposits. Geologic features of exposed rocks in areas surrounding the wilderness or primitive areas also can be projected into the covered areas. Thus, the Survey and the Bureau of Mines mineral surveys, as they are now conducted, even without the benefit of drill-hole data, can yield the information needed to determine many major target areas worthy of further exploration. Geochemical studies, in conjunction with geophysical surveys, may result in information that infers buried mineral deposits. However, only physical exploration will determine the true size and grade of such a deposit.

Senator METCALF. I am a little bit concerned about some of the practices adopted by the Geological Survey in administering the Wilderness Act, Dr. McKelvey. Senator Hansen, in his question mentioned, the Charles M. Russell Game Range. We have primitive areas that have to be reviewed under the wilderness bill and will either become wilderness or revert back to multiple use. We have other areas that may have wilderness values but haven't been incorporated into primitive areas.

Are you going forward in the survey to determine the mineral values for these various areas?

Dr. McKELVEY. Senator Metcalf, we are doing our best with our resources. I am not sure I understood the concern you mentioned at the outset. We, of course, do not administer the Wilderness Act. Our only part in this is the mineral surveys that we undertake in cooperation with the Bureau of Mines, but, yes, indeed, we are going forward. We have completed the work in all of the primitive areas. We have completed work in 12 of the 54 wilderness areas. And we think at the rate at which we are going—we are more or less keeping on the schedule laid out several years ago—we will complete this work as originally scheduled. But we are concerned about the study areas that are being added, the job is getting bigger and bigger and whether we will be able to survey all of the additions on the same schedule is beginning to be somewhat doubtful.

Senator METCALF. The job is a rather substantial one, of course, and as you say it is becoming bigger and bigger and so my original concern was that under what authority do you conduct your mineral surveys of existing wilderness areas in national parks and wildlife refugees where there can be no mining under the law? Why isn't the Geological Survey looking to primitive areas and looking to the areas where Congress has suggested that you make those geological surveys, instead of going to these areas where a geological survey had no importance?

Dr. McKELVEY. Senator Metcalf, we are not working in those areas. The Interior lands specifically have been excluded from our purview in the surveys of potential mineral resources in wilderness areas. We occasionally do geological work in the parks, but that has a completely different purpose not related to mineral appraisal.

Senator HANSEN. Would you yield?

Senator METCALF. Surely.

Senator HANSEN. A couple of years ago I introduced a bill to create a wilderness in western Wyoming. As I recall, Dr. McKelvey, it was a requirement that a mineral survey of the proposed area, be undertaken by the U.S. Geological Survey and a report filed prior to final action by the Congress. Is my recollection accurate on that point?

Dr. McKELVEY. I am not familiar with that particular case. That would be the case, however, with proposed wilderness areas in the forest system, but not the Interior lands. The decision of the Congress a few years ago, I have forgotten the year, was not to authorize us to undertake surveys of the Interior lands.

Senator HANSEN. Then you are saying that this is the policy for national forest lands proposed for inclusion in a wilderness area.

Dr. McKELVEY. That is correct.

Senator HANSEN. Thank you for yielding.

Senator METCALF. I am delighted to yield to the Senator from Wyoming. The Senator anticipated my next question.

Senator HANSEN. I beg your pardon.

Senator METCALF. That is quite all right. I led up to it in a proper manner. As I understand it, you are saying that you only have authority under the Wilderness Act to survey national forest wilderness lands? Isn't that what the law provides?

Dr. McKELVEY. It is not under the act, I believe, Mr. Chairman.

Senator METCALF. Where do you get the authority outside of the act?

Dr. McKELVEY. We have the authority in the act to conduct these surveys.

Senator METCALF. For national forest wilderness?

Dr. McKELVEY. Yes. And I am not sure whether the act is really specific about the Interior lands. I don't believe it was, but in any case Congress itself with an action initiated by the Senate Appropriations Committee decided that we should not undertake these surveys in the Interior lands and we are not doing them.

Senator METCALF. Do you have any further questions?

Senator HANSEN. No.

Senator METCALF. Thank you very much, Dr. McKelvey, for your appearance here and your testimony.

Dr. McKELVEY. Thank you, sir.

Senator METCALF. The next witness is an old friend of the committee. A very distinguished member of the administration and a man who has appeared before us many times. We are delighted to have John R. McGuire, the Chief Forester of the United States, appear.

**STATEMENT OF JOHN R. MCGUIRE, CHIEF, FOREST SERVICE,
DEPARTMENT OF AGRICULTURE**

Mr. MCGUIRE. Thank you, Mr. Chairman, members of the committee.

Senator METCALF. I want to clarify for the record that a proposal that was referred to earlier—the Mineral Leasing Act of 1973 is before the committee, S. 1040. I understand you are going to testify with relation the that bill, too.

Mr. MCGUIRE. I planned to do that.

Senator METCALF. Go ahead, sir.

Mr. MCGUIRE. I apologize for the lateness of the Department in submitting a report.

Senator METCALF. We will apologize for the lateness of the hour we ask you to appear, so let's get the apologies out of the way.

Mr. MCGUIRE. Thank you.

We appreciate this opportunity to participate in your consideration of legislation to amend the Wilderness Act to terminate the application of the mining and mineral leasing laws in national forest wilderness areas.

The Department of Agriculture supports the objective of providing a better means for dealing with the impacts of potential mineral development in connection with the management of national forest wilderness. We believe, however, that this objective can best be accomplished through enactment of S. 1040, the administration's proposed general revision of the mineral laws.

S. 1040 would generally repeal the 1872 mining law, and provides for disposition of minerals on Federal lands through a leasing system.

Under S. 1040, presently locatable minerals on generally all public lands, including units of the national wilderness preservation system, would be available for disposition at the discretion of the land managing agency. Subject to valid existing rights, minerals within wilderness would not be subject to disposal after December 31, 1983.

The national wilderness preservation system represents a system of unique and outstanding Federal lands which Congress has dedicated for a high order of preservation and protection. Because of the special values of these lands, we believe we should be in a position to weigh other resource values and needs, including mineral development, before new private mineral rights are perfected. Most of these mineral rights, by their very nature, are inconsistent with wilderness protection. The new leasing system we propose will provide the authority needed to balance wilderness and mineral values.

We recognize that important, presently undiscovered, mineral values could be involved in national forest wilderness areas, and that these minerals might eventually be considered in meeting anticipated national needs for critical mineral materials. The initial units of the wilderness system were designated in 1964 without a general and critical evaluation of mineral values involved. Accordingly, we be-

lieve that minerals in existing units of the wilderness system should be available for disposition on a discretionary basis until 1984, if such disposition is found to be in the overall public interest. This would be possible under our proposed leasing system.

Enactment of legislation along the lines of S. 1040 would also help eliminate uncertainties which now affect the mining operators who consider the conduct of operations within wilderness. Although these lands have been open for mineral entry since the enactment of the Wilderness Act in 1964, relatively little development has occurred. Proposals to explore or develop minerals within wilderness have often been met by strong and vocal public opposition. Conditions placed on operations, which we have deemed necessary to protect wilderness values, have also tended to discourage actual development. Under a leasing system, the conditions and terms governing mineral prospecting and subsequent development would be fully defined prior to the initiation of the proposed activity.

We strongly prefer that the general revision of the mining laws be adopted in lieu of limited legislation covering only wilderness. However, should the committee determine that it is necessary to deal with national forest wilderness at this time, we suggest consideration of a leasing approach that would authorize leasing by the Secretary of the Interior, with the consent of and subject to conditions specified by the Secretary of Agriculture to protect other values involved.

This concludes my testimony on S. 1010. I will be happy to answer questions you may have.

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

I was a little bit disappointed in your testimony on this bill. You come in and say that you prefer rather comprehensive legislation, S. 1040, which, would not only repeal the 1872 mining laws, but would also substantially change some of the existing leasing laws. Isn't that correct?

Mr. McGUIRE. That is correct, Mr. Chairman.

Senator METCALF. So what you are saying to us today is, well, let's not fool around with this little amendment, let's just pass the whole comprehensive amendment, that would get us into trouble with the major oil companies, get us into trouble with the major coal companies; get us into trouble with all of the mining people of America, get us into trouble with all the mining resources, and let's forget about an amendment to the Wilderness Act.

I had hoped that you would direct your attention today, Mr. McGuire, to this business of administration of the National Forest Wilderness Areas. That is why I suggested perhaps you tell me what your position is on the bill before us, S. 1010.

Mr. McGUIRE. Mr. Chairman, I hesitate to get you into trouble with anybody, but—

Senator METCALF. You and I both are going to get into trouble with S. 1040.

Mr. McGUIRE. What I am trying to say is our first preference would be to tackle the bigger problem. But we would have no objection if the committee wishes to tackle just the wilderness segment of the larger problem and we suggest that if you go the latter route that you consider approaching it via a leasing system rather than a straight withdrawal as the bill before you would provide.

Senator METCALF. What you are saying is we should adopt a mineral leasing system to replace the present location system.

Mr. McGUIRE. Either S. 1010 with withdrawal or under leasing would shut off further location and entry, so you accomplish that objective either way. We think that it is important for the wilderness managing agency to have more discretion as to what is done in these areas than we now have.

Senator METCALF. Are you now addressing yourself to the comments of Senator Hatfield about the rigidity of not being able to have privies in certain areas, or not being able to fly a body out, although you could fly a wounded person out, or something of that sort?

Mr. McGUIRE. No, sir, I was trying to avoid those topics, but I was talking about—he did make good sense in the point that we have more discretion in some places than in others. We feel we do need enough discretion in the case of mining so we can prohibit mining where the damage that we do to wilderness values far outweighs the benefits we might realize from the mineral development.

Senator METCALF. Of course, this is, as you point out, perhaps only a footnote, only as asterisk or a subsection of a very comprehensive leasing bill that may subsequently be enacted. On the other hand, as you have heard the testimony, there are areas that are immediately endangered by mineral exploration and areas of profound scenic values and outstanding recreational opportunities and it may be that we would want to just pass this section and give further study to the revision of a law that's been in existence since 1872. What would be the opinion of the Forest Service if we just adopt S. 1010 at the present time and held the other matters for future study and discussion in a subsequent section of Congress?

Mr. McGUIRE. Strictly from a Forest Service point of view, we would see great merit in your doing that. However, we would also be prompt to point out that you would be perhaps foreclosing the opportunity to identify and develop some of the mineral values in those 54 areas that were put into the system in 1964. We don't know what those values might be, and one could argue that the time might come when those values would be very high in some future national emergency, and we might want to change our minds. Admittedly, we could come back and ask you to change the law at that time. So, really, the only difference between what I am suggesting here and what we find in S. 1010 would be the amount of discretion that you are allowing to the Forest Service.

We would be able to act in the case of an emergency without coming back and asking for legislation. That is about the difference.

Senator METCALF. Senator Haskell.

Senator HASKELL. Chief McGuire, I certainly do appreciate your appearing here. I do have a couple of questions.

There is no question until you duly see the mineral you are not sure is there. On the other hand, the geological, geophysical, and other methods of surveying are pretty accurate and the bill specifically states that the Geological Survey will do what I suppose would be called reconnaissance geology. So, in view of that, I think perhaps I can't quite agree that we are locking up forever any mineral resources, but that is just a difference of opinion.

Senator METCALF. If the Senator will yield, the bill itself, S. 1010, on page 2 provides that national forest wilderness areas shall be surveyed on a planned recurring basis and so we are never locking anything up. There is a provision for recurring mineral surveys.

Mr. McGUIRE. Yes; I realize that, and I may have given the wrong impression. The present Wilderness Act provides for these surveys. However, the resources of the Geological Survey and Bureau of Mines for the past decade have been directed primarily to new wilderness candidates, to the primitive areas, particularly. That job will be done in 1974, next year, as far as national forests are concerned. However, there then will be after this a large number of other candidates.

I proposed a list of 235 new study areas which is now being considered by the public. These areas then will also require some surveying by the Bureau of Mines and the U.S. Geological Survey. There will be competition at that point as to whether the limited resources available for these mineral surveys are to be devoted to new candidates or whether we hold the new candidates in abeyance while we go back and look at the 9 million acres in the 54 areas that were blanketed in in 1964. We can't do it all at once, so this I guess is more specifically the problem and the generalization I was referring to.

Senator HASKELL. I just meant to bring out that these reconnaissance surveys will take place and will continue. More specifically, I asked from Dr. McKelvey the number of mining claims located between the dates of enactment of the Wilderness Act in wilderness areas and today. Do you happen to have that information?

Mr. McGUIRE. Well, there are now about 9,000 unpatented mining claims and about 7,650 acres of patented mining claims.

Senator HASKELL. I am asking only in wilderness areas already designated between the dates of enactment of the Wilderness Act and some recent date.

Mr. McGUIRE. We are not real certain. In the first place we have to look these up in local county courthouses where the claims are filed. We would estimate that there probably have been about 300 new claims per year.

Senator HASKELL. Would you be able to give the list of those and the areas they are in?

Mr. McGUIRE. I think we could do that.

Senator HASKELL. The only thing is I think it is pertinent, I don't want to put you to a lot of work, but I think it is very pertinent to find out whether there has been any real activity under this exemption that we are now asking be closed. I think that is pertinent information.

Mr. McGUIRE. I agree.

Senator HASKELL. I don't want to put you to unnecessary work, but I would like to get that information. When you say you estimate maybe there are 300 a year, that is just an estimate? You don't know whether somebody just went in and staked it and filed a location certificate with the county, whether they are really serious about it. So if it can be gotten relatively speedily and without too much expenditure of effort, I would appreciate it. I don't know, Mr. Chairman, whether you think it is pertinent or not?

Senator METCALF. I certainly think it is pertinent. I was going to ask you about that, Mr. McGuire. The intention of my proposed

amendment is that these people who have claims come in and record them with the Secretary of the Interior. So we won't have to go to every county courthouse all over the West to find out where a mining claim has been recorded.

Could you reasonably supply the information, and, again, I concur with Senator Haskell. You have a substantial cut in manpower about which I have already talked to you and I don't want to give you additional duties. Could you reasonably, without too much effort, supply at least an estimation or approximation for us.

Mr. McGUIRE. We will do our best, Mr. Chairman. You recognize, of course, that many of these claims may not be valid. We have not had occasion to challenge them particularly.

Senator METCALF. As I understood it, he asked about the claims that were staked and filed and recorded in accordance with law in the various county clerk's offices in the counties all over the West.

Mr. McGUIRE. I understand that, Mr. Chairman. Also I might add so far as we know none of the claims in wilderness areas have gone to patent since the Wilderness Act was passed. Secondly, there are, as far as we know, no producing mines and maybe only about two mines capable of production in wilderness areas at the present time.

Senator HASKELL. That is pertinent information. I have no further questions.

Senator METCALF. Subject to the limitations of your ability to provide that information without unduly burdening your district rangers, would you supply an approximation of the information submitted by Senator Haskell? They are going into a fire zone right now, and I don't want to have them trotting down to the various county courthouses.

Mr. McGUIRE. We will do so.

Senator METCALF. Without objection it will be incorporated in the record at this point.

[The information requested follows:]

MINING CLAIMS IN NATIONAL FOREST WILDERNESS

As of July 25, 1973, based on a considerable amount of factual data and good estimates where data was lacking, the number of mining claims staked in National Forest Wilderness Areas since their designation as wilderness is estimated to have been:

	<i>Claims</i>
Within the initial Wilderness System created on Sept. 4, 1964.....	2, 400
Within areas added to the Wilderness System since Sept. 4, 1964.....	200
Total to date.....	2, 600

Most (75 percent) of the claims staked have been in eight Wilderness Areas:

	<i>Claims</i>		<i>Claims</i>
Superstition, Ariz.....	794	Galiuro, Ariz.....	144
Jarbridge, Nev.....	370	Pecos, N. Mex.....	80
Mazatzal, Ariz.....	195	Maroon Bells-Snowmass, Colo....	62
Cabinet, Mont.....	167		
Washakie, Wyo.....	150	Total.....	1, 962

Senator HASKELL. Senator Hansen.

Senator HANSEN. I have two questions that Senator Fannin would have asked were he here.

We understand that one of the points made by the proponents of S. 1010 is that the mining industry has little interest in exploring wilderness areas. Is it your opinion that restrictions on access and on the use of mechanized equipment have seriously interfered with exploration in these areas?

Mr. McGUIRE. In my opinion the application of the Secretary's regulations has not had a serious effect on the legitimate miners. That is, it is true that compliance has raised costs to some extent, but I think the principal deterrent has been the wilderness designation itself. The miners recognize their efforts to exploit whatever they might find in the wilderness area are going to be costly because of public opposition, so they would be inclined, in my view, to spend their limited dollars for exploration in other areas.

Senator HANSEN. There are statistics published in annual reports of the Secretaries of Agriculture and Interior pursuant to the Wilderness Act—on the number of visitor-days of use made of wilderness areas each year. Does the Forest Service maintain any wilderness use records?

Mr. McGUIRE. We have records of visitor-days of use in wilderness areas, if I interpret your question correctly. I believe in 1972 it was between 6 and 7 million visitor-days out of a total use of the national forest of 178 million visitor-days. We can provide more detailed statements by year, if you like.

Senator HANSEN. The second question ties in with the first. In other words, is there any information on how much use this represents of the interiors of wilderness areas and how much is limited to their peripheries?

Mr. McGUIRE. I believe we have some statistics on that situation. Results from several studies indicate that 50 to 60 percent of all visitors to wilderness or primitive areas stay 24 hours or less. This accounts for approximately 22 percent of the total visitor-day use in these areas. During the 24-hour period, the visitor would not generally travel more than 5 to 10 miles inside the wilderness boundary.

Senator HANSEN. I have no further questions. I was keenly interested in your response to the earlier questions, Chief McGuire. Thank you very much.

Senator METCALF. Mr. McGuire, my proposed amendment would try to get some information about the claims in the wilderness areas which require that they be recorded by January 1, 1976, and the patent be filed by January 1, 1984, so we could clean up some of these things they be submitted to you and you have had an opportunity to read it. Do you have any comments on it?

Mr. McGUIRE. Your amendment, Mr. Chairman, is quite similar to S. 1040. In S. 1040 there would be a year allowed for notification to the Secretary that the claim existed and 3 years to apply for patent. I think with respect to your amendment we would have to explore a little further the question of whether there might be a taking involved. These claims are private property rights and I believe our chief hesitancy might be over the cost, if the courts did hold that we were taking some private rights.

Senator METCALF. You feel that the language that you have included in S. 1040 substantially arrives at the same result and doesn't have the doubt that you raise about this amendment?

Mr. McGUIRE. That is our feeling. We go up to the edge but we don't go quite over.

Senator METCALF. I hate to have you go to the edge. Anyway, the principle involved is substantially the same as the principle in 1040. I am certainly not wedded to any specific language nor to any specific dates, so I will ask the staff to try to make my amendment comply with your amendment, my amendment to S. 1010 comply to your amendment to S. 1040, and I will submit it to you and ask for a formal statement from you.

Thank you, Mr. McGuire, for your testimony here. For your advocacy of the administration's position for a comprehensive bill and for your forthright answer to our questions. We always appreciate having you.

Mr. McGUIRE. Thank you.

Senator METCALF. Our next witness is Mr. Raymond B. Holbrook, attorney at law, who is representing the American Mining Congress. Mr. Holbrook, we are pleased to have you here. We are pleased to have a representative of the American Mining Congress. Go right ahead.

**STATEMENT OF RAYMOND B. HOLBROOK, ATTORNEY AT LAW,
REPRESENTING THE AMERICAN MINING CONGRESS**

Mr. HOLBROOK. Thank you, Senator.

Chairman Metcalf, Chairman Haskell, and members of the committees, my name is Raymond B. Holbrook. I am attorney with the firm of Senior & Senior, Salt Lake City. For many years I was counsel, western operations, U.S. Smelting Refining & Mining Co. I am a member of the American Mining Congress Public Lands Committee and a past chairman of that committee; also a past chairman of the American Bar Association Section of Natural Resources Law. I appear here as a representative of the American Mining Congress.

The American Mining Congress is a national association of U.S. companies that produce most of the Nation's metals, coal, and industrial and agricultural minerals. The member companies operate on public and privately owned lands in all of the 50 States.

The American Mining Congress is opposed to enactment of S. 1010, a bill that would repeal the mining provisions of the Wilderness Act of 1964.

The law under which national forests are established provides for entry upon national forest lands for the purpose of prospecting, locating, and developing the mineral resources in the lands.

The mining industry strongly opposed provisions in the wilderness bill which would have denied the right of entry to lands that would be included in the wilderness system, for the purpose of prospecting, locating, and developing the mineral resources in these lands. The prime reasons for this opposition were:

First, the system was to include several million acres of national forest lands which have a high potential for the discovery of valuable mineral deposits. Mineral deposits are sparse and randomly distributed and they must be mined where they occur. When lands having a high potential for mineral development are withdrawn from operation of the mining and mineral leasing laws, the capacity of the Nation

to maintain its productivity of mineral raw materials is severely impaired. Such impairment has foreboding implications reaching deep into our economic structure.

Second, in view of the nondestructive nature of modern prospecting techniques and the small area of land utilized in a mining operation, the basic objectives of wilderness preservation and mineral production could both be achieved.

I recognize that the purist concept of wilderness could not be accommodated.

As enacted, the Wilderness Act provides that the U.S. mining laws and mineral leasing laws extend to wilderness areas until midnight, December 31, 1983; subject, however, to reasonable regulations prescribed by the Secretary of Agriculture. As noted, S. 1010 would repeal this provision upon enactment.

The preservation of the right to search for, locate, and lease minerals in the wilderness areas for approximately 20 years recognized: (1) that the Nation needs a reserve of mineral raw material; and (2) that the largely unexplored wilderness areas might contain deposits of valuable materials.

I think the basic question before these committees is have the premises for preserving the right to search for, locate, and lease minerals in wilderness areas for this 20-year period changed?

Since 1964, when the Wilderness Act was adopted, there have been three major Government studies of the Nation's mineral raw material.

1. The report to the President and to the Congress by the Public Land Law Review Commission, entitled "One third of the Nation's Land," released in June 1970. I am sure the Senators are familiar, in general, with that report. But I would like to point out some particular comments in it.

Before I do that, I would like to name the other two reports.

2. The first annual report of the Secretary of the Interior under the Mining and Minerals Policy Act of 1970, which was released in March 1972; and

3. The report of the National Commission on Materials Policy released June 28, 1973.

Senator METCALF. Yes, that report has not yet been printed. As I understand it, that report will be available shortly although just some typed copies were filed in order to comply with the June 30 date. Hearings will be held by this committee after the August recess on the report of the National Committee on Materials Policy.

Mr. HOLBROOK. With respect to the Public Land Law Review Report, these are brief quotes from that report:

(a) Our standard of living and our national defense are heavily dependent upon the availability of fuel and nonfuel minerals.

(b) In 1965, the western public land states, in which over 90 percent of the public lands lie, produced over 90 percent of the nation's domestic copper, 95 percent of the mercury and silver, 100 percent of the nickel, molybdenum and potash; and about 50 percent of the lead. In fact, most of the known domestic resources of metallic minerals other than iron are situated in the West.

(c) Mineral deposits of economic values are relatively rare and, therefore, there is little opportunity to choose between available sites for mineral production. Also, development of a productive mineral deposit is ordinarily the highest economic use of land.

Experience had demonstrated that mineral production requires less surface area than most other land uses.

The Senators have indicated some interest in the areas.

For example, in 1966 Arizona was the western state in which mining was conducted over the largest area. Nevertheless, only 0.13 of one percent of the state's area was actually used for this purpose. Therefore, a use preference is warranted by nature's sparse and random distribution of valuable mineral deposits and the vital relationship between our national welfare and assured supplies of minerals.

(d) It is in the public interest to acknowledge and recognize the importance of mineral exploration and development in public land legislation. Also, a decision to exclude mineral activity from any public land area should never be made casually or without adequate information concerning the mineral potential.

The First Annual Report of the Secretary of the Interior contains some startling figures and projections. In the 20-year period leading to 1970, the United States requirements of primary fuel and metallic and nonmetallic minerals doubled and its dependency on foreign sources of such minerals quadrupled, amounting to \$8 billion in 1970. The report forecasts that by the year 1985 the deficiency will reach an annual level of \$31 billion and by the year 2000 will reach an annual level of \$64 billion. These are clear indicators of the Nation's present mineral posture and the direction in which it is going.

The Secretary's report states:

Withdrawals of land available for prospecting and exploration may reduce the availability of supplies of mineral resources for the Nation's future needs. Despite conflicts on land use overlaps, national interests insist that careful consideration be given to each such parcel with the view to allowing the opportunity to extract minerals for the national need. Adequate knowledge of the mineralization of such lands must be acquired promptly.

The Report of the National Commission on Materials Policy expressed concern that the large-scale withdrawal of public land might swing the pendulum too far in the direction of nonuse and it urged careful consideration of classification of public lands for special purposes and of management decisions that restrict access to raw materials. The Commission also recommended that mineral surveys be completed before a decision is made to withdraw Federal lands permanently from production or seriously restrict exploration and economic development of their resources.

The sole purpose of S. 1010 is to terminate all prospecting in wilderness areas immediately upon enactment of the bill. In view of this Nation's need for minerals and the possible mineral potential of wilderness lands, they should not be so withdrawn from operation of the mining and mineral leasing laws.

For many years the American Mining Congress has included in its declaration of policy a statement to the effect that:

No areas should be closed to exploration for minerals or to mining in the absence of a compelling national interest.

The statement of the American Mining Congress recognizes that there may be circumstances which warrant closing an area to exploration and mining. In our opinion, there is no sound basis for closing all wilderness lands to operation of the mining and mineral leasing laws, but to the contrary there is a compelling national interest in keeping them open for the discovery and development of urgently needed minerals.

As previously noted, prospecting for minerals can be conducted without material land disturbance and only relatively small land areas are required for mining operations. Moreover, the Wilderness Act

expressly provides that application of the mining and mineral leasing laws shall be:

Subject to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling and production, and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purposes.

Under this provision, the Secretary of Agriculture can regulate operations under the mining and leasing laws so that they will not cause permanent or important damage to the lands or adverse effects upon the environment. The regulations should not unduly restrict the use of wilderness lands for mineral location and development as contemplated by the act.

Given an opportunity to search for essential minerals in potential lands, and to locate claims for the minerals under the mining laws, American industry has literally performed miracles in producing the minerals. This was demonstrated in the early forties, during World War II when the United States realized that the development of nuclear weapons could decide who won the war and embarked on a highly secret search for uranium in many parts of the world including Africa, Canada, and other areas where uranium had been discovered. Prior to formation of the Atomic Energy Commission on January 1, 1947, about 85 percent of the uranium acquired for atomic weapons came from foreign sources. Then the AEC started a program to encourage a search for uranium in the United States to guarantee a large enough supply for national security, and later for the big nuclear power program which is now underway. Prospectors and exploration engineers by the thousands responded to this critical need, and participated in the largest mining boom in the history of the United States, far surpassing the gold rushes in California and the Klondike. The result was discovery of enough uranium not only to take care of all military needs, and initial needs for nuclear power plants, but also to allow some for export to other nations. Over the past 20 years nearly 200,000 tons of uranium oxide—yellow cake—have been produced by American mining companies.

Congress recognized the role of private enterprise in providing essential minerals, in the Mining and Minerals Policy Act of 1970. Section 2 of that act reads, in part, as follows:

The Congress declares that 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 domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs.

The Secretary of the Interior concluded his first report under that act with this significant observation and recommendation:

The 1970 Mining and Minerals Policy Act establishes a policy of encouragement to private enterprise to step up domestic mineral supply. Removal of as many uncertainties as possible is requisite to such action.

There is presently limited exploration activity in wilderness areas and study areas, and it is expected that some of these lands will figure prominently in the exploration plans of many mining companies

prior to January 1, 1984, the date under the existing Wilderness Act when the mining laws and mineral leasing laws will cease to apply to wilderness lands. To cut that period short would be unfair to those presently engaged in exploration activities in wilderness areas and also to those planning such activities.

May I briefly summarize the position of the American Mining Congress by saying that it opposes S. 1010 because it would repeal the provision of the Wilderness Act which extends the mining laws and laws pertaining to mineral leasing to wilderness areas until midnight, December 31, 1983. The mining and mineral leasing laws should continue to apply to wilderness areas during this period because:

A. The Nation's demands for minerals is rapidly increasing:

B. Wilderness areas are likely places to prospect and explore for minerals; and

C. Nondestructive methods of prospecting and the small area of land utilized in mining operations, permit achieving the basic objectives of both wilderness preservation and mineral production.

Thank you.

Senator METCALF. Thank you very much, Mr. Holbrook, for a very important and persuasive statement on behalf of the American Mining Congress.

In view of your experience and your knowledge of resources law and your practice in this area, it is a most important statement, and we appreciate your coming here and presenting it to us.

Senator HASKELL.

Senator HASKELL. Thank you. As Senator Metcalf said, your law firm is well respected throughout the West, on mineral matters. Would I be correct if I assumed that your position was very much like Chief McGuire's, that you would prefer to see matter controlled by the administration bill, which is S. 1040? Would you favor that method?

Mr. HOLBROOK Senator, I tried to make it plain that we are opposed to this bill, but likewise the industry thinks that the mining law has served a great purpose, and if I understood the observation that was made, the proposal was it would be that public lands be placed only under the leasing system. So I don't like to be committed to those choices.

Senator HASKELL. I see. To you that is Hobson's choice, is that right?

Mr. HOLBROOK. That's right.

Senator HASKELL. In your statement, on page 5, you note: "No areas should be closed to exploration for minerals or to mining, in the absence of a compelling national interest." I think our record shows that one-half of 1 percent of public lands are in the wilderness areas, and it occurs to me that you can look at a wilderness area as a type of compelling national interest as well as mining now. This is a difference in viewpoint. The purpose of the Wilderness Act, I think you probably heard Senator Hatfield, was to set aside areas that were truly wilderness and obviously if there is active mining operations, this is inconsistent, and it seems to me, although obviously your organization wouldn't agree, that there is a compelling national interest to have wilderness areas and a compelling national interest to have metals but you can't have both in the same place, and that is the reason I

think that I have to favor S. 1010. I guess that is not a question. That is more of a statement.

Mr. HOLBROOK. May I just comment briefly on that, Senator?

Senator HASKELL. Yes, sir, certainly.

Mr. HOLBROOK. As I mentioned at the beginning of my statement, if we look at this purely—that is, from the standpoint of the purist concept of the wilderness area—I think your statement is true, they are incompatible. I have felt that that was not the real intent of Congress when they passed this bill. I think history shows that the House bill provided for a 25-year interval, and in committee it was changed to 19-plus years, I think about 19 years 4 months, in which search could go on for minerals; but with respect to the exploration work, as has been mentioned and as Mr. McGuire pointed out, surface exploration and reconnaissance work can be carried on with a very minimum of disturbance to the surface. The soil study, the geochemical studies. They take teaspoonfuls of minerals, of land surface at given intervals. Through geophysical studies, there are examinations. There should be no appreciable land disturbed. This work can be carried on. When we do get to the very basic exploration work that involves actual drilling or some way of getting a sample that can be looked at, then there is more. But industry, of course, is not about to carry on this kind of program unless it can see a pot of gold at the end of the rainbow, so there must be contemplated the possibility in the rare case, one of these reports said out of 1,000 properties that were presented for examination, maybe 100 would warrant looking at more closely, and out of that 100, only 1 would be looked at critically.

I referred to the fact in the State of Arizona the area that is involved in actual mining, of the entire State core area is only 0.3 of 1 percent. So the actual disturbances in the wilderness area could be very minimal even if they, if a mining operation were carried on that were restricted to that particular area.

In your State, Senator, there are mining operations in canyons that are scarcely visible at any distance. I have been in many of them.

Senator HASKELL. Yes; I think I know one of the ones you are referring to.

Mr. HOLBROOK. That is right, and beautiful unmatched areas as far as scenic is concerned.

Senator HASKELL. Even under the bill the USGS is directed to carry on, I suppose, reconnaissance surveys, but, of course, it would not be available for commercial mining or future detailed exploration until and unless it was declared a national interest. I do want to mention that you are quite right, of course, that in the House the original exemption was 25 years and it was cut down, but I would like to point out that Senator Jackson's statement for the record when he introduced the bill pointed out there was no exemption in the Wilderness Act as it originally went through the Senate some 10 years ago.

Mr. HOLBROOK. I think that was true. I read that somewhere. On that timelag that you mentioned and Dr. McGuire referred to, one of the most publicized and largest copper operations is the recent development of Anaconda in the Twin Buttes area of Arizona, and I get this information from reports as a stockholder. I think there must

have been at least 7 or 10 years from the time they started really serious consideration to the time there was any appreciable production and there is a long timelag before you get substantial production.

Senator HASKELL. From my experience I would certainly agree with you. I have no further questions. I want to express my appreciation for your coming here and in the past I have known various members of your firm and their excellent reputation. Thank you very much indeed.

Senator METCALF. Thank you, Senator Haskell. Thank you very much, Mr. Holbrook, for your interest.

Now, I am informed that Mr. Douglas Scott is going to present the testimony for the Wilderness Society.

STATEMENT OF DOUGLAS W. SCOTT, COORDINATOR OF SPECIAL PROJECTS, THE WILDERNESS SOCIETY; ACCOMPANIED BY HARRY CRANDELL, DIRECTOR OF WILDERNESS REVIEW

Mr. SCOTT. I am accompanied today by Mr. Harry Crandell, the director of Wilderness Review for the Wilderness Society.

Senator HASKELL. We are glad to have you both here. Go right ahead with your prepared statement.

Mr. SCOTT. I am Douglas W. Scott, coordinator of special projects for the Wilderness Society. The Wilderness Society is a national conservation organization now numbering more than 80,000 members. Our objective is to secure the preservation of an enduring national system of wilderness areas for the benefit of present and future generations of Americans. As an organization specializing in the field of wilderness preservation, we especially welcome this opportunity to present our views concerning S. 1010, Senator Jackson's bill to amend the mining provisions of the 1964 Wilderness Act.

The Wilderness Act is properly recognized as one of the great landmarks in American conservation policy. The act gave expression and substance to a national policy of preserving areas of the original American landscape as wilderness, not only for their recreational values, but as an important element of our culture, as scientific and educational resources, and as source of inspiration for all our people.

The 1964 Wilderness Act was, however, only a beginning. It set out the policy of wilderness preservation and established the National Wilderness Preservation System. It designated 54 initial wilderness areas, and set in motion a study program for considering additional areas within the national forests, national wildlife refuges, and national parks for possible designation as wilderness.

The challenge of fulfilling the high purposes of the Wilderness Act is not, however, one merely of studying and designating new units of land. We must also consider the degree to which we are, in fact, giving effective protection to wilderness areas against the variety of threats which would destroy or degrade their wilderness qualities and values.

At the time the Wilderness Act passed, certain special exceptions were provided to the overall policy of securely protecting wilderness areas. Among those special provisions were subsections 4(d) (2) and (3), which permit continued prospecting, claim locating, and mining within national forest wilderness areas.

Mr. Chairman, it is complete contradiction to find these mining provisions in the midst of an act to preserve wilderness. What they amount to is not simply a protection of prior established private right, which is something we have never objected to as in the case of grazing, but an open invitation and incentive for creating new and squarely incompatible private rights within areas supposed to be preserved for national important wilderness purposes. These special provisions cannot be said to represent the considered wisdom and judgment of the Congress that mining can be compatible with the national policy of preserving these areas as wilderness. These provisions represent, rather, an obvious and outrageous anomaly within the Wilderness Act, a fundamental flaw striking at the very substance of the high policy declared by that act and so widely understood and supported by the people. So long as these provisions remain in the act, they will memorialize our failure to complete the job of securely protecting "an enduring resource of wilderness."

As Senator Hatfield said this morning, the mining provisions demonstrate the act does not mean what it says.

Now we are nearly 10 years into the implementation of the Wilderness Act. From the perspective of today, we have an obligation to focus on the question: Are we in fact assuring strong and complete protection to these wilderness areas, or are there holes in the protection offered by the Wilderness Act which we should correct? These mining provisions are the major loopholes in the act—loopholes literally big enough to drive a truck through, even a pumice truck, as Senator Hatfield said.

As Senator Jackson said in introducing his proposed amendments:

The Wilderness Act of 1964 embodied the recognition of the unique environmental values of our Nation's rapidly dwindling wilderness and provided a mandate to us all to preserve those values. If we are to allow continued mineral locations, continued expansion of mining rights, within wilderness, then the purpose declared in the Wilderness Act mandate will not be fulfilled.

We believe it is now timely for this committee and the Congress to address themselves to the issue raised in this bill. The Wilderness Act is fundamentally flawed, and our wilderness program is fundamentally out of reasonable balance so long as we continue to offer the virtual blank check of the antiquated 1872 mining law for application within wilderness areas. The old mining law is bad enough in its impacts on the public lands generally, but to continue the application of that law within the area we declare to be of particular national significance for their wilderness values is simply an affront to commonsense.

In a recent court test concerning mining within the boundary waters canoe area, a unit of the National Wilderness Preservation System, the court held that these Wilderness Act provisions on mining constitute "fundamental inconsistencies."

A wilderness purpose plain and simply has to be inconsistent with and antagonistic to a purpose to allow any commercial activity such as mining within the BWCA.

It is clear that wilderness and mining are incompatible.

There is an inherent inconsistency in the congressional act and it falls in the lap of the court to determine which purpose Congress deemed most important and thus intended. In this court's opinion the wilderness objectives override the contrary mineral right provision

of the statute. Otherwise, the congressional act is a nullity. It does not seem to this court that it can presume that Congress intended a nullity.

To create wilderness and in the same breath allow for its destruction could not have been the real congressional intent.

S. 1010 proposes to amend section 4(d)(2) of the Wilderness Act to close designated national forest wilderness areas to further private prospecting—while permitting continued Federal mineral surveys. It would also amend section 4(d)(3) to immediately terminate the continued operation of the mining and mineral leasing laws within designated national forest wilderness areas. Patents could continue to issue for valid claims previously established—though, for claims established since 1964, the patent would extend only to the mineral itself and not the land surface. The amendment would leave in effect the various regulatory provisions of section 4(d)(3) which provide, among other things for restoration of mined lands.

The Wilderness Society welcomes S. 1010 and believes the steps it would take to correct the mining-in-wilderness problem are highly desirable and urgently necessary in the public interest. It is, of course, foolish to permit the creation of new mining rights within wilderness areas when public policy to preserve these areas has already been established and will, in the event of an actual mining threat, necessitate purchase of those mineral rights by the taxpayers. Withdrawing designated wilderness areas from further location is an altogether sensible step.

In addition to supporting the bill before the subcommittees today, we wish to suggest additional actions which Congress can and should now take to rectify the serious conflict between mining and wilderness values. An effective program to amend the Wilderness Act in this regard should also do the following:

1. Immediately withdraw from mining and mineral leasing:

- (a) The Federal lands within existing designated national forest wilderness areas, which 1010 does.

- (b) Future wilderness areas, effective on the date of their designation, including not only national forest areas, but also national wildlife refuge and national park wilderness areas, where these would otherwise be open to mining.

- (c) Federal lands classified as primitive areas which are subject to later congressional consideration for possible designation as wilderness.

- (d) Additional lands or interests therein later acquired within all such areas.

2. Improve the regulations and limitations on mining operations within all such areas where valid mining rights do exist.

3. End the requirement for annual assessment work on claims located within all such areas.

4. Require, as a condition to the continued validity of claims within all such areas, that each such claim be recorded within a reasonable time, and annually thereafter, together with the annual payment of a reasonable recordation fee.

5. Provide for the immediate forfeiture, without further affirmative action by the United States, of any claim within such areas which is not so recorded.

6. Require the holder of any claim, patent, or other inholding within such areas to provide reasonable advance notice of his intent to commence mining or other disruptive operations and empower the administrator with means to acquire the claim or inholding where destruction of wilderness values is threatened.

The general principle behind these proposals is simply this: the Congress should protect the public interest—and Treasury—against the creation or enhancement of any compensable rights within wilderness areas or areas under consideration for designation as wilderness, and should provide every reasonable regulation and control over any private operations within such areas which would be fundamentally damaging to the wilderness resource. Nor should the Congress provide incentives for destruction of wilderness values, as is now the case under the mining laws.

S. 1010 would provide for immediate withdrawal of national forest wilderness areas from new locations or mineral leases. We believe that withdrawal should also apply to national park and wildlife refuge wilderness areas, inasmuch as some parks, monuments, refuges, and wildlife ranges are now open to mining locations. Furthermore, it is simply common sense to withdraw the primitive areas from further locations during the time they are being considered for possible wilderness designation, in order to avoid the creation of new claims during the study period. We would note that the Wild and Scenic Rivers Act provides just such a withdrawal for the rivers being studied under that program, and the same protection is certainly appropriate for primitive areas.

Section 4(d)(3) of the Wilderness Act established a number of limitations and controls on mining operations within wilderness areas where valid rights already exist. We believe those controls can be simplified and strengthened, and would welcome the opportunity to furnish possible language to accomplish this purpose for the committee's consideration.

The 1873 mining law requires the holder of a claim to perform not less than \$100 worth of assessment work on his claim each year. Within wilderness and primitive areas, this requirement on valid claims is in effect, a requirement to destroy wilderness values. Often the destruction is needless in that much of the so-called assessment work bears little relation to any anticipated mining operation. Just last Labor Day, for example, I was in the Emigrant Basin Primitive Area, California—an area now before Congress for possible designation as wilderness—and watched the active destruction of wilderness values by dynamiting and bulldozing on a mining claim. I am convinced what I observed was simply "make-work" undertaken only because it is required by law. We strongly suggest that you provide that annual assessment work not be required within wilderness and primitive areas, and replace this requirement by a nondestructive recordation system for claim maintenance.

For all claims within wilderness and primitive areas, we recommend that you require the claim holder to file a notice, within a reasonable time and annually thereafter, of his intent to maintain his claim. This filing should also include important information about the claim and the claim holder, including a proper legal description. The recordation

should be filed not only in the county courthouse, but with the Secretary of the Interior and with the supervisor of the national forest or other land management unit in which the claim is located. A separate notice should be required on each claim, and each notice should also require payment of an annual recording fee of not less than \$100. Failure to file this notice by the first deadline and annually thereafter should constitute the immediate forfeiture of the claim and all rights thereto, without need for further action by any officer of the United States or the Congress. This requirement would quickly dispose of the many stale claims within wilderness and primitive areas and would similarly discourage the maintenance of fraudulent claims, including the very many recreational claims we believe are located within wilderness and primitive areas.

Finally, Mr. Chairman, we believe it is essential that the administrators of wilderness and primitive areas have the power necessary to quickly forestall mining operations or any other activity on claims or private inholdings which would constitute a threat to the wilderness environment. Under the Wilderness Act at this time, the administrator does not have the power of eminent domain, and is severely hampered in dealing promptly with such threats by the requirement of specific congressional authorization where he cannot obtain the owner's consent to acquisition. We believe this flaw in the act must be corrected, and propose that the holder of any claim, patent or other inholding within a wilderness or primitive area be required to provide reasonable advance notice of his intent to commence mining operations or other activities which would disturb the land surface or otherwise conflict with wilderness objectives. Upon his finding that such activities would damage the wilderness environment, the administrator should be authorized to acquire that claim or holding, by condemnation, if necessary.

Mr. Chairman, neither S. 1010 nor the additional provisions we have proposed can be considered as "radical" or "extreme" measures. These proposals do not deal unfairly with the mining industry, nor do they place the material well-being or security of the United States in any jeopardy. What they do, simply, is to restore a semblance of balance between wilderness values and mineral development. The conflict between these incompatible land uses, while it is fundamental, is limited to a relatively small portion of the lands of this country, and to a small portion of the Federal lands. Under existing circumstances, there is no balance—mining activity is given a virtual *carte blanche* even within our wilderness areas, with no means of testing the relative national interest when actual threats arise.

Mr. Chairman, we believe it is high time to amend the Wilderness Act to remove the anomaly regarding mineral locations and mining. We believe it will be desirable to go beyond S. 1010 to the further provisions we have proposed, thereby obtaining a package of improvements in the Wilderness Act which will afford proper protection to the public interest. We welcome these hearings and appreciate this opportunity to present our views.

We would like to suggest that you consider not only a one-time recording requirement, but thereafter an annual recording requirement, in which the claim holder would be required to pay an annual fee of a reasonable amount. I might note that today's equivalent of

\$100 of annual assessment work in 1972 is somewhat in excess of \$1,700.

Before concluding I would like to address myself to a number of points made by the witness earlier this afternoon. Frankly speaking for myself personally I find it abhorrent and we have administrators of agencies such as the USGS 13 years after the passage of the Multiple Use Act coming before the committee and talking about multiple use and how wilderness is a single use and how awful that is, but this kind of rhetoric was prevalent throughout the statement that Dr. McKelvey saw fit to offer today for the administration.

I might point out wilderness areas, as you well know, are not single use areas by any stretch of the imagination.

Further, I would like to comment briefly on the studies being done by the U.S. Geological Survey and the Bureau of Mines in the existing wilderness areas and in areas of the national forest under consideration.

It is certainly true that no such studies were at any time contemplated by this committee in creating the Wilderness Act in passing it out of the Senate on two occasions. There is no requirement in the law that such studies be carried forward in areas under consideration for wilderness. The legal requirement, as found in section 4(d)(2), requires recurring surveys in areas that have been designated as wilderness. It is true that there is a sentence in the conference report, I might add, in the statement on the part of managers for the House and not managers for the Senate, which seems to invite the agencies of the Federal Government to undertake these surveys.

Contrary to what Dr. McKelvey and Mr. McGuire had to say this afternoon, the surveys being undertaken are in our view entirely too thorough, entirely too complete. They are, in fact, nothing but an open subsidy to the mining industry to attach greater attractions to mineral areas in wilderness areas than the public domain, and in our view the committee would be well advised to undertake an inquiry into the cost to the taxpayers of the mineral surveys that have been conducted thus far. I think the cost-per-acre figure or how much money is being invested by the taxpayers in assessing mineral values would be a most useful thing to know.

I share the position stated by the chairman about what Mr. McGuire had to say this afternoon. It seems wholly contradictory for the administration to come before this committee and ask for the discretion to lease minerals in areas it has.

If we come to the point where mineral values are the only thing that stand between us and great jeopardy to our national security presumably the Congress in its wisdom will see that and act appropriately at that time, but to use the flimsy excuse of national security to allow the creation of compensable property rights and enhancement of rights in the areas that people have designated for protection as wilderness is simply an outrage and it is an outrage to commonsense.

In closing I would like to provide the committee for your record if you see fit, with a copy of an article which appears in the spring 1973 issue of our journal, the Living Wilderness. On the subject of wilderness and the mining law, this lengthy article goes into some detail in outlining the specific history of the case of the Uncompahgre Primitive Area in Senator Haskell's State, and the many claims entered there through the years and particularly as this area has been subject to consideration as it is for possible designation as wilderness.

In one part of this article the author reports upon the kind of subsidization that I am talking about with these mineral surveys when he points out the day after the filing of USGS's official mineral survey on the primitive areas, technicians from Texas Gulf, Inc. were brought into the Wilson Mountain Primitive Area by helicopter to quickly stake claims the USGS had fingered as the most promising.

This kind of subsidy to a private industry is an open affront to a public interest.

Senator METCALF. Thank you very much for a very eloquent and persuasive statement, Mr. Scott. I am delighted to have you appear with the statistics and material that you submitted. They will follow your remarks in the record. I am sorry we cannot reproduce the color photographs that you have.

I think that probably the time limitation has not permitted us to question any of the witnesses to much extent except that there have been rejoinders to most of the statements made, and I am delighted that you came here and testified in this manner. I hope that you will provide us with suggested amendments that you want to present to us.

Senator Haskell.

Senator HASKELL. Just one question, Mr. Scott. Would your organization by any chance have any information on the location activities by mining companies in wilderness areas? Remember, I asked Chief McGuire and Mr. McKelvey.

Mr. SCOTT. To my knowledge, no, the antiquated state of mining laws is such that it is almost impossible to come up with reasonable information of this kind—the searching of county courthouse records to find such.

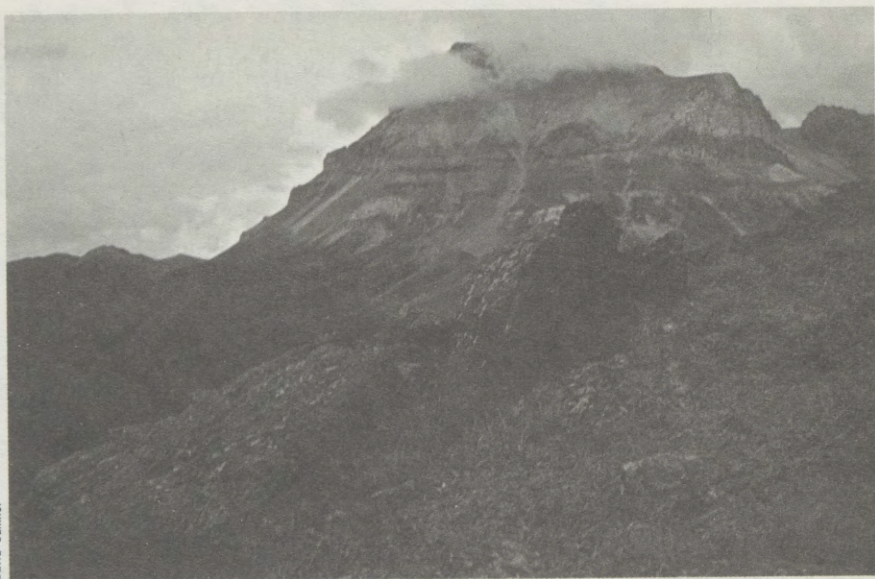
The article I am inserting in the record does provide some information about specific cases about the Uncompahgre Primitive Area.

Senator HASKELL. That is primitive, not wilderness. I thank you for your statement. I can't think of any questions that I would like to have you answer now but I do appreciate your statement very much indeed. Thank you.

Mr. SCOTT. Thank you very much.

Senator METCALF. Thank you for coming.

[The article referred to above follows:]



David Sumner

Claim stakes have been wedged into the face of 14,309-foot Uncompahgre Peak, all the way to the top.

WILDERNESS and the MINING LAW

Wilderness Act loophole is big enough for a bulldozer

by David Sumner

THE sight of a large Caterpillar D-6 bulldozer deep inside a remote alpine primitive area is an ugly portent.

The bright yellow machine sits near the center of a high, rolling expanse of tundra, surrounded on all sides by even higher mountains: Uncompahgre Peak—massive, stratified, prow-shaped, fortress-like; the delicate Wetterhorn with its sheer north face; a lesser summit named Matter-

horn, probably long ago by a homesick emigrant Swiss prospector; and Broken Hill—small and fractured, looking as though it had once been smashed by a giant hammer.

Good strong, tough mountain country.

No place for a bulldozer.

But there it rests—squat on the crest of a grassy divide some 12,400 feet above sea level. For the day (more likely the weekend), it is idle,

abandoned, alone. And, thank God, silent. However in the recent past, the thing has been busy enough, crawling up the old prospecting road (built in trespass sometime after World War II), doing a little blade work down below timberline, becoming a snowplow higher up.

As the machine had shoved aside the lingering drifts, it had lost its way and chewed uncertainly across the tundra, scarring a symmetrical track of gashes in the sod. Then it had meandered back to the road and strayed again. Atop the divide, the cat had simply gone round and round a few times and stopped—again on what once was unmarred alpine tundra. Bad enough that the infernal machine is in the primitive area in the first place; worse that it's been slovenly to boot.

Picture that bulldozer sitting there. Imagine it—a mechanized obscenity in the wild mountains—and you have a concise, crisp, vivid image of what's happening in the hauntingly beautiful Uncompahgre Primitive Area in southwestern Colorado.

You should also know this is exactly what can happen in *any* primitive area or wilderness that is, in the jargon of this day, "highly mineralized."

The absolute legality of it is what galls, angers, hurts most. A tough Forest Service district ranger (and there are some mighty good ones around) might raise some tactful objections to the 'dozer's wanderings across the tundra. And in turn, a conscientious prospecting outfit—there are a few of them, too, at least to a certain, rather limited point—might call its head field man to the carpet: "Keep it clean . . . we have a responsibility . . . our company image . . . the people . . . etc."

In simple fact, that bulldozer rummaging across the Uncompahgre Primitive Area in July 1971 was operating under a "Wilderness Prospecting Permit" granted by the U.S. Forest Service, and sanctioned by both the Mining Law of 1872 and the Wilderness Act of 1964. The same is true of the gas-powered core drilling rig of Texas Gulf, Inc. which last summer was helicoptered to the 12,400-foot level of the Wilson Mountains Primitive Area—a mere 15 miles south of the western reach of the Uncompahgre. Looking for mineral booty, and mining it when found—it's a *right* on this nation's public lands, not a privilege. Wilderness is no exception.

SOMEWHAT uniquely, the Uncompahgre Primitive Area lies in two units—the Uncompahgre to the east and the Sneffels to the west of the historic mining hamlet of Ouray. Above all else, this heartland of Colorado's San

Juan mountains is marvelously visual country. Its images have a peculiar and forceful way of first catching the eye, then etching themselves on the mind. Sharp, bold, vivid, indelible. This is especially true of the abrupt, distinctive peaks. Of these there are, roughly speaking, two kinds—classic and crazy.

The classic mountains of the Uncompahgre stretch west of Ouray in the form of the hulking, gray Sneffels massif. This is a long, sawblade rank of ridges and summits—13 major heights in all, topped by angular 14,150-foot Mt. Sneffels. It's a panorama of arrested grace—artistic, sculpted, seemingly designed to be exactly what should come to mind when someone says "mountain."

The crazy mountains lie to the east, defying rhyme, reason, order, proportion, logic. A madcap collection of forms strewn across a vast alpine plateau. The summits are skewed and tilted and heaved this way and that, lurching and lunging across the horizon as if the volcanism that made them had been abruptly stilled at the height of a violent turbulence. Uncompahgre Peak is the highest of this group at 14,309 feet; Wetterhorn Peak is next at 14,017.

But that is only the view from a distance. Viewed at close range, this primitive area assumes a different, more intimate face. For example, up behind Ouray and a bit below Mt. Sneffels is a high, 400-acre valley known as Yankee Boy Basin. Enclosed by a quartet of bone-faced peaks—Stony, Potosi, Teakettle, Gilpin—it is bisected by a small creek that twice breaks into glistening twin cascades.

Summer afternoon showers water the meadows of Yankee Boy almost daily, nurturing dense, dazzling wildflower gardens that are usually fullest in late June and early July. Broad acres unfold so thick with native blooms that it's impossible to walk through without trampling them. Columbine (blue), paintbrush (yellow high up; rosy near timberline; orange below), death-camas or wandlily (soft yellow-green), rose crown (maroon), Parry primrose (red to purple), nodding onion (pink) and the seemingly tropical green gentian—a lance-leaved biennial which grows to heights of seven feet and may carry several hundred delicate, greenish white blossoms at a single time.

The Uncompahgre teems with enclaves like this, and with others as different as they are unique. A few samples:

—Cow Creek Canyon, though it's impossible to imagine a cow of any kind in this steep, narrow, fluted cut. The creek itself bounds down what seems a continuous stair-step of waterfalls.

—A legion of fantastic goblin-like rock spires and turrets above the three forks of the Big Cimarron River (a pleasing footnote: in Spanish, the word *cimarron* means “wild” or “unruly”—a good name for these parts).

—Some pretty fair forests of aspen, spruce and fir—large enough to swallow up most of the summering mule deer and elk that often spend the winter months in plain view from U.S. Highway 550 which runs north from Ouray. Also plenty of rocky crags for one of Colorado's better herds of bighorn sheep.

—Rolling highlands of alpine tundra (much of the primitive area rises above 12,000 feet)—the delicate world above the trees that provides a textbook of diminutive and hardy adaptations like the arctic willow, a legitimate shrub even though it seldom grows to heights greater than a couple of inches.

The Wilson Mountains Primitive Area is also alpine country. Three of this compact cluster of peaks reach over 14,000 feet and number among the more notable climbing mountains in Colorado. El Diente (Spanish for “the tooth”) is usually rated the most challenging and pagoda-like, Wilson Peak the most graceful. But a 400-foot volcanic plug named Lizard Head is the foremost landmark here, whose sheer neck of rotten rock lies so loose it renders a truly safe ascent impossible.

The name Uncompahgre is Ute Indian for “hot water spring”—a reference to the warm flows that bubble from the earth just south of Ouray. The name *Wilson* honors the chief topographer of the pioneering Hayden Survey which first mapped much of this area back in the mid-1870s. Not surprisingly, both these primitive areas were born of a similar and related sequence of subterranean upheavals eons ago. Coincidentally now, both will have their final, formal wilderness hearings this year—the Uncompahgre late in the spring, the Wilsons a few months thereafter.

Predictably, the views presented on each will be the same. Mining interests, especially, will oppose any wilderness, or recommend minimal designation; a broad coalition of conservation groups will urge maximum areas; local views will largely reflect the historic interests deeply rooted in mining, but a number of local residents will be torn. Unfortunately, as one geologist from the Olympic Mountain area coolly observed a few years back, “the same conditions that give rise to mineral potential are also highly scenic.”

However, a larger, tougher question looms behind these two sets of hearings, one of the most difficult questions to confront the wilderness movement since it began working to round out

the national system under the provisions of the 1964 law. To start with, it will be a battle to get either area (or even parts of them) designated. But even if Congress and the President approve both, the action will do relatively little to curb the damage that appears imminent, and nothing at all to stop it. That's correct: wilderness classification will save neither the Uncompahgre nor the Wilsons.

Of all the national forest primitive areas in the western United States, none have spilled out mineral wealth like the Uncompahgre. From the early days of Colorado's wide-open San Juan silver rush in the 1870s well into this century, large chunks of the area bustled with mining activity. By 1920, this boom had largely subsided. And in 1932, when the Great Depression forced prospecting to its lowest ebb, the Forest Service established the Uncompahgre Primitive Area, primarily on the assumption that mining had run its course, but also with the expectation that many tax delinquent mining claims would return to public domain. The Wilson Mountains Primitive Area was established the same year under much the same assumptions. Although history has shown it to be less productive than the Uncompahgre, mining here did produce several good strikes, and at present about 3,200 acres of land lie under mining claims.

For the last 30 years, a pair of large, consolidated base metal operations for gold, silver, lead, zinc and copper have been the only significant mines near the Uncompahgre. But exploration has stepped up markedly, and so has talk of a new mining boom, hashed over and over in every bar, billiard hall, grocery store and barber shop within miles. Dreams, hopes, visions, fantasies: the soul food of an industry that nowadays thinks nothing of looking at thousands of properties and sinking 50 or more test core holes before opening a single mine. Prospectors, by definition, look for prospects, possibilities, maybes and ifs; it's a long way between them and reality.

It's an old axiom in this trade that the best place to look for a new strike is right next to an old and established one. And so the prospectors have returned to the Uncompahgre, armed with modern exploration equipment that can probe thousands of feet into the earth. Large firms and small, sound and fly-by-night, million dollar and penny stock are all scratching about the Uncompahgre for any loot they might find.

A one-page Forest Service memo of November 18, 1971 notes the following “in and near the Uncompahgre Primitive Area”:



David Sumner

Scene of a 1971 claim-staking blitz by Texas Gulf, Incorporated, the Wilson Mountains Primitive Area will be the subject of formal wilderness hearings this fall. Sunshine Mountain is in the foreground.

—16,000 acres in patented mining claims.

—1,792 more unpatented mining claims covering 35,840 acres, "the bulk of which were located after 1968."

—A total of 51,840 acres in "mineral lands."

—A list of 18 "major companies" with "mineral interests" in the area. Among these were Humble Oil and Refining ("now we're Exxon"), Bear Creek Mining Company (the prospecting subsidiary of Kennecott Copper), Anaconda Corporation and Kerr-McGee Corporation.

Particularly in the eastern, Uncompahgre unit where that bulldozer was ordered in to clear the snowdrifts in 1971, so that prospecting rigs could hustle in early, exploring is increasingly brisk. Wooden 4 x 4 claim stakes are now a familiar sight to hikers or backpackers seeking to enjoy the area. Some are wrapped with plastic blazered bunting for ready spotting; others are arcanelly marked in black crayon: COR#2 DIX 126, for example. The things are everywhere—rammed into the tundra, propped up with small cairns on the loose scree, running straight up the southeast face of Uncompahgre Peak, wedged into cracks in the rock.

Maps supplied by the U.S. Bureau of Mines show the overall picture more graphically: large blocks of 20-acre claims crawling over the contour lines, consuming some 8,000 new acres—mostly tundra, but also the very summits of Uncompahgre Peak, of Matterhorn and of Wetterhorn too.

What for? You name it. Uranium and molybdenum appear to be primary around those peaks, and both are often, though not always, mined from the surface with open pits. Molybdenum mining also commonly involves large, inordinately pale and deadly tailing ponds. In addition, there's always the eternally flickering hope of gold or silver, but that also depends on the fickle national and international pricing of these two metals. Manganese has also been mentioned. It's hard to tell. Miners are usually secretive about their findings, playing out their competitive games at the expense of the public lands, the wilderness.

In at least one new instance in the Uncompahgre, work has actually started. In the west unit, beneath the imposing shadow of Mt. Sneffels, the Douglas Petroleum Company of

Long Beach, California has begun to set up shop more than a mile inside the primitive area. It has opened an old road, benched off a broad expanse for a mill, and started preparing to rip gold, silver, lead and zinc from the belly of the mountain. In clearing for the millsite, a rubble of rocks and earth was shoved into what used to be a striking 75-foot waterfall.

And basically, it's all legal.

The Mining Law of 1872 is subtitled "An Act to Promote the Development of the Mineral Resources of the United States." It was a law for its own time, passed when the ordeal of post-Civil War reconstruction was the major socioeconomic reality of the day. In 1872, development truly did need promotion as a national policy. The act was designed to spur young men, and old, to "go West," buy a burro, load up and forge a new life in the wilds. (Many of its provisions were modeled on the Miners' Law of California, which, in turn,

procedures, he could proceed to do what he wished.

The first step was (and is) to stake out one or any number of 20-acre claims on the ground; these become lawful when a brief "location notice" is filed at the local county courthouse. Thereafter, a claimant can legally hang onto his plot or plots for as long as he wants. The only requirement is that he put in \$100 worth of "assessment work" annually—any kind of labor that contributes toward eventual mining: road work, digging, further prospecting, core drilling. (In 1890, when the average hourly wage was about 20¢, \$100 worth of "assessment work" was a sizeable undertaking. Today, a commensurate figure for this annual labor requirement would be in the neighborhood of \$2,500 per year per claim.) This provision forces a claimant to maintain an active interest in his claim, and it also limits him to the number of tracts he can logically keep up.

In some places, one claim has been staked atop another, over and over, until they're four or five deep. Periodically, prospectors get lost and file with the wrong county. And often the county clerks are less than diligent in their housekeeping.

had grown like Topsy, pieced together to deal with the instant chaos that accompanied the 1849 Gold Rush.)

May 10, 1973 marks the 101st birthday of this very same law, now in an advanced state of senility. A few minor amendments have disfigured it only slightly; the basic clauses and philosophy of so-called "free mining" remain quite intact. It is one of the tragic environmental anachronisms of our day.

Consider what has happened to the mining industry in the last century in terms of size, structure, wealth and technology. The lone prospector has effectively been replaced by corporate effort; modern open pit mines may be miles across, and sophisticated exploration equipment can probe thousands of feet deep into the earth. Whereas a legal concept like "access" once meant a crude pack trail, now it normally means a bulldozed jeep road. That the same statute can adequately deal with both sets of circumstances—1872 and 1973—is absurd.

In its simplest workings, the Mining Law of 1872 guaranteed the old-time sourdough ready access to any patch of federal land that attracted his eye. Thereafter, if he followed a certain set of

In recent years, however, the "assessment work" clause has also led to a spate of disruptive bogus bulldozing—for example, the yearly moving of a purposeless pile of dirt back and forth between point "A" and point "B," just to satisfy the antique letter of the law. Other nonsensical chewing of the land serves the same purpose.

A claim of this kind is *unpatented*, meaning the holder has all rights to the subsurface minerals. It's a lawful entity that can be sold, bought, traded, bartered, willed and taxed like an ordinary chunk of real estate. In both the Uncompahgre and the Wilsons, almost all the newer, post-World War II claims are unpatented; they give mining interests all the rights they need and, at least in Colorado, have the pleasant advantage of being non-taxable.

However, if an outfit spends \$500 working its unpatented claim, and if it discovers minerals that "an ordinary prudent man" would consider worth developing (actual proof is *not* required), then the firm can go right ahead and buy the works from Uncle Sam at no more than five dollars an acre. At that point, the claim becomes *patented*; the holder takes title just as he would when buying a house, and thereafter he can do

just as he wants. Today, this appalling arrangement is responsible for numerous blank spots, holes and "No Trespassing" signs inside the national forests—"private inholdings" they're called, and legally they're just as private as your own backyard. Large blocks of the Uncompahgre were patented in the boom days of the late 19th century; because of this, only a portion of the existing primitive area can now qualify as wilderness. Patented lands in the Wilsons are a somewhat smaller problem.

THERE is one final aspect of the 1872 Mining Law: unlike the rancher, who pays grazing fees (even if they're too low), the logger who pays stumpage fees or the vacationer who pays campground fees, the hard rock or metals miner pays nothing—no rents, no royalties, no premiums, no anything. (Royalties are paid on most non-metallic minerals—for example oil and gas—under terms of the Mineral Leasing Act of 1920.) Today, industry lobbyists doggedly maintain that "free mining" is a badly needed "incentive" and dourly prophesy that even a nominal payment would "only add fuel to the fires of inflation."

It takes a historian to make sense of this curious set of antique procedures and provisions; looked at in such a light they can be understood. But over the years, one old clause after another has proven unworkable, riddled with loopholes, damaging, or all three.

In the recent past the patenting procedure has opened the door to a rash of abuses. For example, a party could stake a "rich" claim of sand, gravel, cinders, clay, stone or pumice; it wasn't difficult to find at least one of these under absolutely any acre of national forest land in the United States. Thereafter, he could buy the land dirt cheap and then proceed to do just as he pleased. Build a summer cabin, a swimming pool, a gas station, a hotdog stand. Subdivide, speculate, or sell timber.

One case on a southwestern national forest saw a slick profiteer patenting "sand and gravel claims" at \$2.50 an acre, then peddling them for development soon after at \$2,500 per acre. In the Pacific Northwest, timber hustlers were ripping \$50,000 worth of Douglas fir from a single 20-acre "stone claim." It was also commonplace for opportunists to ferret out the locations of planned national forest campgrounds, scenic roads, timber sales and other developments; then file a mining claim across same; and then attempt to hold up the Forest Service: "You're goin' across my valuable mine land, and it'll cost you \$1,000 for an easement."

Around, even *in*, the Uncompahgre is a residue of old patented claims that have long since been mined out or proven barren. A decent law would have returned them to the public domain after they had served their intended purpose in private hands. But this very summer legitimate real estate firms will be selling off some of the more choice parcels as "your own recreational niche in the awe-inspiring Colorado mountains." Price tags will range to \$1,000 an acre or even higher.

Less scrupulous dealers will be doing likewise with lesser tracts, usually with an eye toward the unsuspecting out-of-stater willing to buy sight unseen. Inevitably, a few unfortunate victims will end up with patches of land that cannot be reached except by a five-mile vertical hike, or that lie in the paths of notorious killer avalanches, or are traversed by paved highways, huddled in the bottoms of canyons or 25 miles from the nearest power. Occasionally the Forest Service will be able to work out a land exchange with these unfortunate buyers, but more often they'll get stuck with white elephants.

Another continuing problem with the 1872 law is its lack of any provision requiring prospectors to tell anyone where or when they're staking claims. A century ago need for such a clause didn't exist, and neither, for that matter, did the Forest Service. But today, even the most diligent district ranger, or forest supervisor, or regional forester, quickly reaches his wits' end trying to draw a bead on claim activity in his area.

"We don't really have a handle on how many claims there are in the Uncompahgre," explained staff officer James Schoenbaum. "And we don't know exactly where they are."

To be sure, location notices must be filed at the local county courthouses. But their survey information is often incomplete, vague or misleading. In some places, one claim has been staked atop another, over and over, until they're four or five deep. Periodically, prospectors get lost and file with the wrong county. And often the county clerks are less than diligent in their housekeeping.

Forest Service regulations state that anyone locating a claim in a wilderness or primitive area must file written notice within 30 days with either the district ranger or the forest supervisor. This is not being done with any regularity.

"We haven't done our job educating the miners," explained another Forest Service official.

The Multiple Use Mining Law of 1955 helped clamp down on many of these abuses, giving the Forest Service fresh muscle to deal with some of the worst:

—No longer is it possible for a Shylock to patent “mining” claims for purposes other than mining.

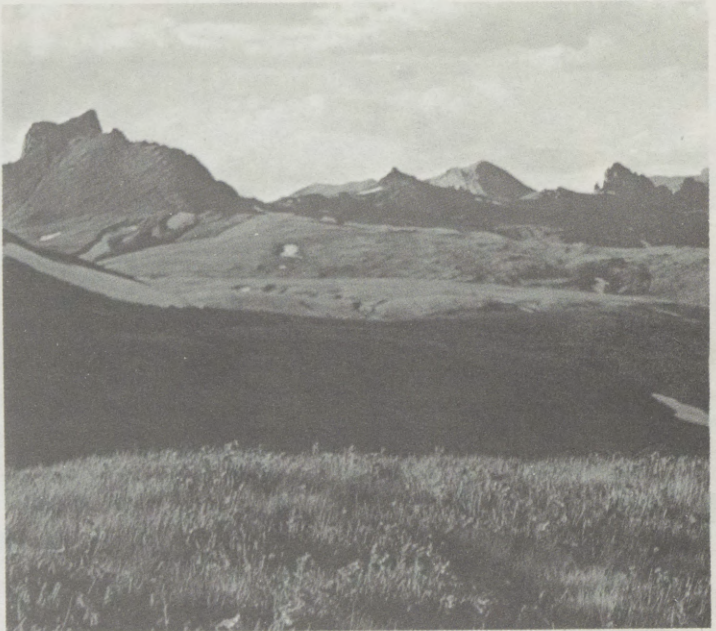
—In some cases, the Forest Service can actually contest (and if successful, invalidate) dubious mining claims, especially where potential for great environmental damage is coupled with lack of evident mineral discovery.

—The agency now has some control over what mining outfits do to the surface of the land: timber cutting, road building, the size of excavations, the general scuffling around.

But to this day, there is no stopping the miner on the national forests, and no denying him access. It makes little difference whether it's some godforsaken hole or the face and summit of a scenic wilderness landmark like Uncompahgre Peak. Furthermore, the 1872 law also applies to all wilderness areas—a situation made possible by a contrary grandfather clause in the 1964 Act which allows the staking of new claims until December 31, 1983, and mining on them indefinitely thereafter. This loophole is commonly and politely known as the “mining exception.”

The Forest Service's only control over the miners is a set of regulations authorized by the Wilderness Act. These strictures are designed simply to curb the more wanton and destructive excesses of prospecting and mining, and to require some clean-up work after the damage has been done. The purpose is to minimize impacts or, less euphemistically, make the best of a bad thing, a neat mess instead of a disheveled one.

These controls, modest though they be, are the stiffest that have ever been clamped on the mining industry in the United States (aside from prohibitions in national parks, monuments and wildlife refuges). The rules apply to both wilderness and primitive area prospecting, and also to actual mine development and operation. Their presence is a major reason for the mining



“The crazy mountains lie to the east, defying rhyme, reason, order . . .”

industry's general opposition to wilderness, its preference for “multiple use,” “intensive management,” anything that will continue its traditional and unfettered liberties on the public lands.¹

How tough actually are the wilderness regulations? In August 1971, the Forest Service authorized Humble Oil and Refining Company to prospect for uranium on 2,500 acres in the Mary Alice Creek and Broken Hill. Truck-mounted core-drilling rigs, four-wheel drive vehicles and helicopters are all sanctioned by the “operating plan,” which also includes such provisions as:

—“A prudent effort will be made to keep motorized travel to the existing roads, and all travel to an absolute minimum.”

—“Revegetation [of test core-drilling sites]

¹ For example, a mining industry front known as “The San Juan Multiple Use Committee” has surfaced in Ouray to combat any wilderness designation for the Uncompahgre. This group's prime ploy has been to raise the specter of a complete lock-out. “Wilderness . . . would in effect close down such activities as mining,” reads one piece of propaganda. The implicit lie is self-evident.



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will be done in a manner and with the species which the district ranger considers to offer the best chance of success. It will be repeated annually until such areas are accepted in writing by the Forest Service as satisfactorily revegetated and stabilized."

"All refuse, structures, works, materials and other evidence of project working shall be removed from national forest land following completion of the project. Garbage will be removed from national forest land currently. . . . No open pit type latrines will be permitted."

Humble also posted a \$5,000 performance bond with the American Insurance Company of Denver. In this particular case, no new roads were requested (an illegal route had been bulldozed into the general area by freelance U-boom prospectors back in the 1950s, kept alive by a stream of bullheaded trespassing jeeps since). However, if a road is judged essential for prospecting or mining the Forest Service prescribes exactly where and to what specifications it must be built.

Unquestionably, such regulations are an improvement over the pre-1964 days of no control,

rape and run. Unquestionably, too, these same regulations are cosmetic, somewhat loose, not at all preventive. However, over the years, the mining industry has balked at them—and it continues to lobby actively in Washington and the various state capitals against any further restrictions.

Speaking to the Northwest Mining Association in Spokane, Washington on December 1, 1972, Forest Service Chief John R. McGuire actually devoted most of his talk to *defending* his agency's modest regulation of mining access.

"I do think," he stated at one juncture, "that in many cases the preliminary prospecting work—for example, geophysical and geochemical surveys, geologic mapping, shallow drilling and surface sampling—should be done before a road or bulldozer

trail is built. It should no longer be condoned or customary to build a road simply to satisfy the first year's assessment work requirements. . . ."

"Is it not possible," McGuire later asked, "that your ingenious equipment manufacturers could design exploration machines in modules—even the very heavy core drills needed for deep prospecting—so they could be transported by helicopter or pack animals?"

IN the field, most of the larger, well-financed mining firms stick to Forest Service regulations reasonably well. Occasionally a bulldozer gets lost or overzealous, a jeep gets lazy, or some material gets left behind—an empty 55-gallon oil drum, a smashed or vandalized piece of equipment, scraps of this or that. "We've had to caution them about this," added Schoenbaum, speaking of the Uncompahgre.

However, the so-called "weekend miner"—that perpetual dreamer with \$500, a bulldozer and the misguided conviction that he knows gold when he sees it—is a more serious problem. So are a handful of the smaller, more desperate, underfinanced mining firms. Some persist in the old

belief that they can still barge onto federal land and do anything, just as long as they file an unpatented claim. Others try to dodge, hide or cut corners. As a result, the Uncompahgre National Forest, in the last few years, has had a nasty succession of illegal roads 'dozed across it—up to six miles, along the steep, erosive slopes of one small area. The Forest Service has filed suits on several of these alleged violations, and the court cases are now pending.

No one should imagine that the old "strike-it-rich" mystique has lost its potency in the West, even though today's prospecting often seems more of a latter-day parody than anything else. But the appeal of this worn-out, passed-by dream lingers on, fueled by the tenacity of hope, by the imagination of possibility and the clouded memory of an "old boy" who—sometime, somewhere—made it big, real big.

"If it happened to him, why can't it happen to me?" goes the tattered but forceful logic.

AROUND Ouray and the other one-time mine camps of the Uncompahgre country, there remain still a few red-eyed old prospectors eager to spin quasi-apocryphal yarns to anyone who will listen. Pathetic, warm, romantic and alluring. Come late spring, when the snows are pretty well melted and the mud is only ankle deep, these broken-down dreamers slip quietly into the mountains, armed with burro, rockhammer, pan, acid bottle and hope, looking for Sam's Lode, the Lost Clubfoot Mine, "just a few specks," the diamond as big as the Ritz, God knows what, anything that will sustain them. Most of them die penniless and the county has to bury them, but somehow the species seems to outlive the individuals who pass on.

While there's a taste of authenticity to these old buzzards—a note of charming nostalgia—there's little to ennoble a newer breed that feeds off the same antique dream. In the Superstition Mountains east of Phoenix, Arizona, in the Tonto National Forest, there's supposed to be gold.

"Apache gold," writes Edward Abbey, "Spanish gold and, most elusive of all, the Lost Dutchman Mine. . . . The Superstition Mountains are full of gun-happy cranks, truculent treasure hunters from faraway cities, all sorts of eccentric, unreliable freaks, misfits and oddballs attracted by the fame of the name of the place, coming here to live out their childhood fantasies of the Wild West."

David Sumner is a free lance writer and the conservation editor of *Colorado Magazine*.

"There's jillions of 'em in there," reports one beleaguered Forest Service official, "each one making his own little mess. There's no way in the world to keep track of 'em."

MINING industry lobbyists are very protective of the rights of these "little people"—realizing full well that the same law which allows the small hack miner to persist, and to scratch about at will, is also a meal ticket for the large corporations. It's good, sentimental propaganda, positively dripping with the sap of free enterprise, rugged individualism, self-reliance and the like, especially convincing in Washington and the press.

Curiously, the corporations themselves are not immune to this same old "strike-it-rich" mystique. Witness the flair exhibited by Texas Gulf, Incorporated, as it blitzed into the Wilson Mountains Primitive Area back in the fall of 1971. On a Friday, the U.S. Geological Survey released its official minerals study of the area as required by the Wilderness Act. The document reported that some copper was found during the field sampling, and further editorialized: "It seems to be a promising target for further work."

By the very next morning, four men from Texas Gulf had raced to the southwestern Colorado town of Durango. There they chartered a helicopter, loaded it with mining claim stakes, and were making ready for a flight into Navajo Basin, in the very center of the Wilsons. However, both the Forest Service and the Civil Air Patrol warned that avalanche danger and foul mountain weather made prospects of sudden death greater than prospects of a copper strike. So plans were somewhat revised: The chopper dropped down near the comparatively safe summit of 10,022-foot Lizard Head Pass and deposited the men from Texas Gulf, along with toboggans, 40 six-foot 4 x 4 survey stakes and a complement of winter camping gear. From there, the four modern sourdoughs took over, packing and hauling the works up into Navajo Basin on foot. The following Monday, they emerged from the snowy wilds, leaving behind stakes marking precisely 40 unpatented mining claims covering 800 acres at elevations from 12,400 to 13,600 feet above sea level. On the maps, this punches a long, rectangular hole square in the heart of the Wilson Mountains Primitive Area. Texas Gulf cleared its wilderness prospecting permit last spring, and core-drilling started in earnest last summer. More prospecting, this summer and perhaps next, will be necessary before a decision on actual mining is reached.

So in reality, it is not bulldozers and the prospect of mining alone that now threaten the Uncompahgre and the Wilsons. These are just the immediate manifestations of a deep-rooted national tradition that goes all the way back to a chill January morning in 1848 when an itinerant carpenter named James Marshall found a few small, glittering nuggets in a ditch at Sutter's Mill on the American River in California.

"Boys," he said to his fellow workers, "I think I have found a gold mine."

But that wasn't all.

It was the beginning of the "free mining" tradition in the United States. A tradition that has fostered an inordinate share of dreams, hopes, fantasies and illusions—and just enough strike-

the National Wilderness Preservation System areas that have the potential of dying?" He was speaking specifically of the Uncompahgre, on which his office soon will act, and by "dying" he meant "further degraded, perhaps desecrated, by mining."

It's a nagging, teasing question with numerous twists, variants, ramifications.

Lucas, of course, was pursuing his agency's well established purist—or fundamentalist, or literalistic—interpretation of the Wilderness Act: nothing save that which is absolutely wild shall be included in the national system. But he was also raising a very legitimate question: how is the Forest Service to administer lands "in such manner as will leave them unimpaired for future

**When do we start mining junkyards and scrap heaps in earnest?
After Uncompahgre Peak is a shambles? After the Wilsons
have spilled out all their copper? After some wandering, witless
dabbler stumbles blindly into the Lost Dutchman Mine?**

it-rich success to keep it vital, potent, strong. A tradition backed by a resilient old law that, to this very day, makes hardrock mining an uncontested *right* on the national forests—not just a privilege. A tradition that has achieved special status over all other considerations, over all other uses.

It will not die easily.

Predictably, the two Colorado primitive areas are not alone on their collision course with mining, as the following rundown amply shows:

—Three Sisters Wilderness, east of Eugene, Oregon. Prospects for pumice mining.

—Glacier Peak Wilderness, south of the North Cascades National Park, Washington. Known copper deposits.

—North Absaroka Wilderness, east of Yellowstone National Park, Wyoming. Possibilities for base metals mining.

—Mazatzal Wilderness, north of Phoenix, Arizona. Active interest in developing mines for copper, manganese and mercury.

—Blue Range Primitive Area, eastern Arizona. Copper, molybdenum, gold, other base metals.

—Black Range Primitive Area (proposed Aldo Leopold Wilderness), western New Mexico. A variety of base metals.

"Should we," recently asked Rocky Mountain Regional Forester, William J. Lucas, "place in

use and enjoyment as wilderness," as the law directs, when there's a gaping mine in the middle of the area (with a road leading to it)? There's nothing wrong with looking ahead to an obvious and nasty contradiction within the context of the existing laws.

But why stop there? There are broader ways of posing Lucas' question—more probing, less bound by the letter of the existing legal frame:

—Should an area be allowed to die in the first place, before it is formally considered for wilderness designation? In the case of the Uncompahgre and the Wilsons, can it be argued that intensive claim-staking and prospecting is an undue violation of the primitive areas and, *a priori*, impairs the land's qualifying for wilderness status? And is it therefore unlawful? This was the underlying logic behind the now famous East Meadow Creek case in Colorado, which halted a timber sale in a sector contiguous to the Gore Range-Eagles Nest Primitive Area until Congress and the President decided whether or not that sector qualified as wilderness. But the law *prohibits* logging in a wilderness, while allowing prospecting and mining.

—All right, can it be argued that any mining-related activity is, by definition, anathema to wilderness? And that, therefore, Congress and the President have created a muddled law? And

that, therefore, the courts must resolve the internal contradictions of that law?

This is exactly what U.S. District Judge Philip Neville ruled on January 4, 1973 in a case involving proposed copper and nickel prospecting in northern Minnesota's Boundary Waters Canoe Area.

"It is clear that wilderness and mining are incompatible," reasoned Judge Neville. "Once penetrated by civilization and man-made activities, [wilderness] cannot be regained for perhaps hundreds of years. The recovery period is meaningless for generations to come. The destruction is irreversible.

"A mineral resource developer cannot proceed without making use of the surface of the land," he continued. "Any use of the surface for exploration or extraction of minerals becomes an unreasonable use because the surface is no longer wilderness. . . . There is an inherent inconsistency in the Congressional Act and it falls in the lap of the court to determine which purpose Congress deemed most important and therefore intended. In this court's opinion, the wilderness objectives override the contrary mineral right provision of the statute."

Judge Neville's decision will be appealed, most certainly. But even if it stands, even if the notorious "mining exception" is stricken from the Wilderness Act, even if the reasoning of one judge in 1973 undercuts 125 years of American tradition—even if all this, other questions remain. Can this decision, for example, be extended to primitive areas? And if so, how? Will it be ruled that, because of special legal situations in Minnesota (the Mining Law of 1872 does not apply there), Judge Neville's decision is limited to that state?

These are matters for the courts, and how they are resolved will exert a profound and lasting effect on the entire wilderness movement in the United States.

But beyond them, even larger questions remain.

For one, mining is a private right which, at present, has priority over the public good on the public national forest lands, including primitive and wilderness areas. Somewhere down the road, Congress will have to develop broad policies on this fundamental conflict which is at the very core of much of today's environmental debate. What should happen when private rights clash with the public good in situations like the Uncompahgre, the Wilsons? Should private rights prevail as handily as they do today? Must the public good always take second place?

For another, how can we begin to make more rational choices between nth-unit production of non-essential consumer goods and the values in-

herent in an undisturbed wilderness? How long can we depend on digging minerals almost exclusively from the unbroken ground? When do we start mining junkyards and scrap heaps in earnest? After Uncompahgre Peak is a shambles? After the Wilsons have spilled out all their copper? After some wandering, witless dabbler stumbles blindly into the Lost Dutchman Mine? Some hard, tricky, intricate, subtle debate lies ahead.

That lone, ugly, yellow bulldozer pushing snowdrifts in the Uncompahgre back in July 1971 is no isolated event. Neither is the successful inclusion of the Uncompahgre and the Wilsons in the National

Wilderness Preservation System a sufficient or separate goal. Formal designation will "save" neither of these areas today; continued efforts will be needed to keep them "saved" tomorrow. More than any others in the United States, these two regions of "highly mineralized . . . highly scenic" mountain beauty focus a head-on conflict that may not be resolved for years to come.

WILDERNESS or minerals? Wilderness or gold, silver, uranium, molybdenum, copper, pumice, you name it. Wilderness or toasters, SSTs, telephones, bombs, balance of payments, power, prestige, posterity? Both at once? All at once?

Pity our poor grandchildren who may, once and for all, really have to decide.



David Sumner

Blue columbine in Yankee Boy Basin.

Senator METCALF. We will call on Mr. Brock Evans of the Sierra Club, who is our next witness. Mr. Evans is another old friend of the committee, and we are delighted to have you here to testify on this legislation.

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

Mr. EVANS. We appreciate the opportunity to appear before you today to discuss the most important subject of mining in wilderness. As you know, we have consistently maintained throughout the discussions of the wilderness issue that mining within any wilderness or primitive area is incompatible with the purposes of such areas, and should not be permitted. We have adhered consistently to this position through the long years of debate which led to the passage of the Wilderness Act in 1964. At that time we accepted the realities of the compromise which made it necessary to include mining within such areas, because that appeared to be the only way to establish the larger principle, which was the creation of a wilderness system.

Now we have that system, and nearly 10 years has passed. While we have been willing in a general sense to live with the fact of permitted mining in wilderness areas, we think that enough time has passed that it is proper we take another look at the situation.

We think that S. 1010 is deserving of environmentalists' support. In effect, this bill would strike out the section which permits further prospecting for mineral claims within wilderness and primitive areas and would instead institute a system of surveys conducted by the Departments of Agriculture and Interior of mineral values within wilderness and primitive areas. While it is important to point out that this bill in and of itself will not eliminate existing claims or patents, or the danger opposed to wilderness values by them, it is certainly a good first step toward the long-term goal of granting complete protection to the wilderness values for which these areas have been or will be set up.

While we can certainly support S. 1010, we would like to offer some further suggestions which, if incorporated into the substance of S. 1010 would greatly strengthen it and operate to guarantee even better protection of our few remaining wilderness and primitive areas.

First, we recommend that any new legislation incorporate a full grant of authority to the Administrator of wilderness or primitive areas to limit and regulate any mineral operations which may occur on valid existing rights within such areas to a degree sufficient to properly protect environmental values and the primary purpose for which the areas were established. We think this should specifically include controls and limits on the type of ingress and egress which can be permitted, and controls or standards requiring restoration of disturbed lands. We think this is a very important and necessary provision, because often most of the damage to a wilderness area can be done by the means of access to the mining claim, sometimes even more than the actual mining itself. To use one example in my direct experience as former Northwest representative of our organizations, one of the major issues in the long controversy over proposed open pit

copper mining within the heart of the Glacier Peak Wilderness in Washington State was the fact that the claims and patents in question were located 15 miles inside the wilderness boundary.

We heard a gentleman from the American Mining Congress claim a very small amount of land is involved in mineral claims, but what he omitted to say was the method of ingress and egress to the place can also take a great deal of land and effectively remove it from wilderness value.

The Kennecott Copper Co. proposed to build a long road up through the rain forests of the Suiattle River to get to the claims, an action which would have destroyed all the wilderness values along the way, far more even than the desecration of the open pit mine intended at the site. We think we have arrived at a point in time where the old destructive methods of access in such magnificent areas should no longer be permitted. We think we need a stronger statement than we now have and we would be pleased to work with the committee to this effect.

Second, we would urge that any legislation have a provision which removes the archaic and outdated \$100-per-year assessment work requirement. I think Mr. Scott presented this very well, too.

Senator METCALF. Would you suggest that we say they pay a \$100 fee for relocation every year rather than put the bulldozer in there to plow the road out or something?

Mr. EVANS. Some kind of fee to be paid every year would be much more preferable. That is about a day's worth of work with a bulldozer. It tears up the land and doesn't do anything. It would go in the Public Treasury.

Senator METCALF. We held some hearings last year in Montana on the beautiful high country just north of Yellowstone Park, on this very subject matter, where it was a remote area and destroyed many, many acres of land that were not even a part of proposed mining claims, just to make an access road or they lifted bulldozers in with helicopters and so forth and plowed around on one claim and moved over and worked on another claim so there were scars all over the mountainside.

Mr. EVANS. The country to the south of Lincol is in that same category.

Senator METCALF. This is Stillwater?

Mr. EVANS. Yes. The whole Stillwater country has been destroyed. Montana is one of the hardest hit places of all by this requirement.

This requirement, which many small prospectors feel it is necessary to prove up their claims has caused a great deal of damage to otherwise pristine areas, and it is unnecessary damage. It serves little purpose, and should be eliminated.

Third, we would recommend that any legislation include a requirement that all claims be recorded, not just with the local county authorities, but also with the appropriate Federal authorities, probably at the district office of whatever agency has jurisdiction over the lands in question.

I myself have engaged in several long searches of county records in an attempt to find out the exact ownership of mining claims, and I can testify from personal experience that it is a frustrating and inaccurate job. This also is an outdated requirement of the century-old mining

laws. And we recommend a provision which provides an automatic forfeiture of any claims if they are not so recorded, after proper and due notice has been given.

Fourth, we think it is imperative to deal in some proper manner with probably the worst problem of all—that of the commencement of mining operations on valid patents. We think that in view of the overwhelming public interest and concern for wilderness areas, and the equally overwhelming disapproval of mining operations within such areas, that at the very least, the Federal Government should have the right of first refusal before such operations may finally begin. Specifically, we recommend a minimum 60-day requirement on the part of the prospective miner, in which he must serve advance notice upon the concerned agency about his intention to commence mining operations. Then, and notwithstanding any other provisions of the Wilderness Act, the appropriate Secretary would be authorized to purchase the lands involved from the holder of the mineral interest, if it was in the public interest.

Finally, we recommend a long term program calling for surveys of all wilderness and primitive areas which have any outstanding mining claims, the purpose of which program would be to determine the true validity and economic worth for such claims. We are all aware of abuses of the mineral claims process, and this would be a final opportunity to eliminate those which have no justification whatsoever.

In my own experience in the Northwest for many years, I came up again and again against the threat to incredibly beautiful areas on the part of mining companies, large and small, or individuals, who somehow saw "gold in them thar hills," and were prepared to make full use of the archaic mining laws and the compromises within the Wilderness Act, to utterly destroy beautiful places that were either existing wilderness, or proposed for the same. I remember such places as Doubtful Lake, within the North Cascades National Park; Image Lake within the Glacier Peak Wilderness; Spider Meadows, in the same place; La Bohn Gap within the proposed Alpine Lakes Wilderness; Rock Creek Mesa within the Three Sisters Wilderness; Matterhorn Peak with the Eagle Cap Wilderness; Spar Lake within the Cabinet Mountain Wilderness; the Chetco River within the Kalmiopsis Wilderness; the Stillwater River in the Beartooth Primitive Area, and, of course, the famous—infamous—claims in the White Cloud Mountains of Idaho, now a part of the Sawtooth National Recreation Area.

Each time these threats came up conservationists who loved the land felt almost helpless in face of the antiquated mining laws, and their implications for utter disaster of some of the most beautiful places on the American Earth.

They were enraged that such destruction could be permitted to take place. They were amazed when they learned that, of all parts of the body politic, only mining interests have an almost unlimited and free rein to go anywhere they want on public lands and stake out claims for themselves for their private use. Timbermen cannot pick out pieces of prime forest on the public lands and turn them into their own logging preserves; recreationists cannot stake out a choice lake or portion of a fishing stream for their own use. Only miners and no one else have the unlimited right to go anywhere on public

lands, take what they want, make it their private property, and then use it in almost any way they see fit—even if it is the most splendid wilderness area on Earth—without regard to the consequences.

This tragic situation must be changed, and S. 1010 has a fine first step. We support it, and urge that the committee carefully consider and strengthen our recommendations.

Senator METCALF. Thank you very much, Mr. Evans, for your splendid statement, and for your understanding, especially of our northwestern areas. The committee is grateful to you for your appearance here today.

Senator Haskell.

Senator HASKELL. Thank you, Mr. Evans. I think your suggestion and Mr. Scott's, or yours specifically, on paying \$100 as a fee instead of going in and messing around—to my knowledge this so-called assessment work basically is a lot of nonsense in this day and age. I think that makes a great deal of sense to pay the \$100 to the Federal Treasury.

I have a little difficulty with your suggestion, however, on trying to eliminate validly existing claims in wilderness areas because it is virtually impossible to determine in advance the real value of the claim, and if it was a valid claim, a serious claim; you could do a terrible injustice to an individual who had a claim because it is either worth a tremendous amount or it is not worth anything. And it is impossible, at least in my experience and my knowledge of the subject, to have an intelligent evaluation of a claim that isn't being worked, so I just want to give you my reaction to that suggestion, and my reaction to your first suggestion, which I think we should consider, Mr. Chairman, very seriously.

Mr. EVANS. Could I respond to your very well-taken comments. We got into this a little bit in the question of claims in the White Cloud Mountains in Idaho, and if I recall correctly the Department of the Interior does have a test that they require for claims before they grant a patent. Not whether it has a valuable ore on it, but whether it is economically valuable. I think that goes to your point. My only point being that if it is possible to do this test and the Government does this, all we are suggesting is a large-scale program to do this for many of the tens of thousands of claims on national forest lands or wilderness areas which have doubtful validity. We can survey and see which were valid and which were not, not taking away any rights, but at least making the surveys. The Government seems unable to do it.

Senator HASKELL. I misunderstood you. Your suggestion is not that you condemn and take away, because to condemn and take away involves this process I am talking about of really not being able to make a real value judgment, put monetary value on it.

Your suggestion is merely where you have claims that are of doubtful title that they be eliminated.

Mr. EVANS. Actually I think I am suggesting two things. The fourth thing we called for would be the right of first refusal on the part of the Government. Let's use the *Image Lake* case where it is an outstanding place. It is the most beautiful place in the State of Washington. The Kennecott Copper Corp. would be required to give a 60-day notice they are going to begin mining operations and the

appropriate Secretary, if he determined it in the public interest, could have a way to purchase it in some way or another. That wouldn't apply to all claims. After the notice there would be a way to do it.

The second one was what you are referring to, and what I thought we were talking about, the large-scale survey, and to take a look at other claims elsewhere and see if they are in fact valid or not, and one referred to emergency cases. The other refers to the long ongoing program.

Senator HASKELL. I see your point. Thank you.

Senator METCALF. Thank you very much, Mr. Evans, for your appearance here and your other appearances before this committee.

Now, Mr. Richardson, we are delighted to have you here to represent the Arizona Mining Association. I should say that Senator Fannin and Senator Hansen on the Finance Committee are marking up a bill and every day we get little notes from Senator Mansfield saying, how are you getting along with that bill and with that one and when a markup comes and they have to have a quorum it is much more important that they be there than to read your testimony, so I am going to welcome you on their behalf.

STATEMENT OF JAMES K. RICHARDSON, PRESIDENT, ARIZONA MINING ASSOCIATION

Mr. RICHARDSON. Thank you, Senator Metcalf, Senator Haskell.

Senator HASKELL. Good to see you.

Mr. RICHARDSON. Good to see you, sir.

Mr. Chairman, my name is James K. Richardson and I am the president of the Arizona Mining Association, with offices at 111 West Monroe Avenue, Phoenix, Ariz. I am a mining engineer, having received a B.S. in mining engineering in 1932 from the University of Missouri-Rolla; and engineer of mining degree from the same institution in 1935, and a doctor of engineering from Michigan Technological University in 1969. With the exception of 4 years spent in the Armed Forces, my entire worklife has been within the mining industry. My experience has given me the opportunity to work closely on problems of exploration, development, and operation within the industry as well as within Government. During 1961 I was loaned by my then employer to the Defense Minerals Administration and served as Chief of the Copper Branch. As such, I was responsible for studying and recommending the feasibility of new copper production projects; the development of which would enhance this Nation's copper availability for defense needs.

I am speaking today in behalf of our member companies which produce from their Arizona operations more copper than is produced by all the other 49 States combined or by any other country in the free world. Their production of other vital metals as byproducts of their copper operations is such that Arizona's rank among metal producing States is No. 2 in molybdenum, No. 3 in silver and No. 4 in gold.

Our association strongly opposes enactment of S. 1010. Our opposition stems, basically, from the fact that it effectively closes the door to the exploration for and development of mineral raw materials in

the most promising areas extant in the United States. In order that the mining industry remain viable and competent to meet the demands made upon it by our national industrial needs, it is essential that it find and develop new resources of mineral materials as existing operable sources are exploited.

In the past surface exposures were the principal manifestation of mineral presence. These were historically found by the itinerant prospectors, later by geological studies, and today it is anticipated that mineral finds will largely result from geological inference coupled with electronic, geochemical, and similar exploration techniques, followed up by deep drilling and preliminary development to confirm or deny minable ore bodies.

The opportunities for mineral finds from surface manifestations are extremely limited today. Most such outcroppings in easily accessible areas have been seen. "Wilderness" is wilderness because it is inaccessible and has escaped the advances of man. It is inaccessible because it is generally rugged terrain so carved by erosion. It is rugged terrain because it is mountainous, and most of us are aware that it is mountainous because of the geologic events that formed the Earth's crust and left large segments of it to be carved by erosion into mountain ranges. The same geologic events that lifted segments of the Earth's crust to form mountains, also formed mineral deposits. Some of the former mountainous regions have been eroded to flatlands, and some remain as mountains. In either instance, those regions are the holding grounds where the fate of mineral raw materials availability will be decided.

The flatland areas in proximity to the mountainous regions are generally valleys with alluvial fill material which may cover deeply buried existing minerals, and such deep-seated mineralization is indicated by electronic prospecting data coupled with geologic inference. The nature of the specific type of mineralization, its grade, its extent, and its potential can only be determined by core drilling of deep holes and preliminary development work.

The Nation's known deposits of mineral raw materials are inadequate, and future supplies must come from subeconomic deposits—by today's standards—or from potential resources yet to be discovered, according to a recent report of the U.S. Geological Survey.

This report evaluating the Nation's mineral supplies, including more than 60 mineral and energy commodities, stresses that only a handful of mineral commodities for the Nation are in excellent shape for the long term. For a few others—asbestos, chromium, fluorine, and mercury—the country has only scant reserves. For most other minerals, our ability to meet projected needs to the end of this century will depend largely upon:

(1) Development and continued application of new methods of finding ore in order to locate geologically available but as yet undiscovered sources,

(2) Finding sources of energy to make such extraction feasible,

(3) Recycling and conservation in mineral production and use, and

(4) Imports from foreign sources.

In a foreword to the report, the Secretary of the Interior notes that minerals and mineral fuels "are the physical source of most of the

necessities, conveniences, and comforts of life in the United States today." And:

As a part of our response to the Mining and Mineral Policy Act of 1970, the U.S. Geological Survey provides in this volume the first overall assessment of mineral resources since that of the President's Material Policy Commission in 1952. For many minerals, the appraisals are preliminary at best, for not enough is known about their origin, distribution, or the geologic environments favorable for their occurrence to assess their potential now. But at the least, the appraisals represent a beginning, a takeoff from which we can expect to enlarge our knowledge of our mineral-resource endowment with advancing science and exploration.

In commenting on the report, the Director of the U.S. Geological Survey said that "there are some 'sobering' implications to be drawn from our assessment." The Director said:

The fact is that the future drain on our mineral supplies will become enormous. Even with a leveling off in growth in per capital consumption, it will be necessary to build a "second America" within the next three decades in the sense of having to duplicate or replace the physical plant built during all our history. Most of the raw materials needed for constructing such an undertaking will be drawn in large measure from resources that are now only subeconomic, or not even discovered.

Few, if any, of my associates hold the U.S. Geological Survey or the U.S. Bureau of Mines in greater esteem than I. Their technical competence and integrity are not questioned. I strongly suspect that these two bodies would be the first to admit, that limited as they are by budgetary and technical personnel, their inability to effectively evaluate those lands in the wilderness areas as to determine their mineral potential. Yet S. 1010 would hold them alone responsible to the public and the Congress for determining the mineral values present. It is our conviction that the continuing presence in this search and evaluation procedure of professional and technical personnel of mineral raw materials companies will add to the ability of these agencies to carry out a task otherwise well nigh impossible.

The suggestion has been made that there is no need to make the wilderness areas available for mineral exploration and development. The Eighth Annual Report on the Status of the National Wilderness Preservation System, September 21, 1972, and the U.S. Department of Agriculture Draft Environmental Statement on Selection of Proposed New Study Areas From Roadless and Undeveloped Areas Within the National Forests, show almost 25 million acres presently administered as wilderness in the public land States. This data does not include many other public land areas such as national monuments, game ranges, wildlife refuges, natural areas which are managed or proposed for wilderness. For example, the Forest Service manages 1.7 million acres as wilderness, in addition to established wilderness areas, primitive, and "new study" roadless areas. Not including the roadless new study areas, these areas administered as wilderness in the 11 Western States amount to approximately 10 percent of the national forests in those States. When the roadless areas are included, and until they are removed if found not to be suitable for wilderness, the areas administered for wilderness will be slightly less than 16 percent of the national forests in those States.

Senator METCALF. You are assuming here that all the roadless areas, all the primitive areas, all the areas set aside for wilderness study, will ultimately become wilderness areas.

Mr. RICHARDSON. I qualify them as presently administered, sir.

Senator METCALF. But most of those areas will not be found to have wilderness quality and will be returned to the multiple-use system.

Mr. RICHARDSON. I am delighted to hear that, sir.

Senator METCALF. Don't you believe that is what will happen?

Mr. RICHARDSON. There's been this constant growth in the wilderness system, sir.

Senator METCALF. I don't know whether it is astonishing or not. There's been a growth in the wilderness system, but substantially every time there has been a study most of the area has been found not to have wilderness qualities and has been returned not as wilderness but back to multiple use.

Mr. RICHARDSON. I will accept that, sir. Yes, sir.

Senator METCALF. Just so we understand what we are talking about. A whole lot of land has been set aside for study so that we don't destroy the wilderness qualities while we are studying it, but a good deal of that land is going to be returned to the multiple-use concept.

Mr. RICHARDSON. Senator, this bill, I would assume, and I can only assume this, sir, that if these are made into wilderness areas, these that are presently being administered as wilderness areas, if they are suitable, they are not available to the prospecting and easy entrance by the mining industry as has been stated here at the present moment.

Senator METCALF. As long as we understand.

Mr. RICHARDSON. You are adding to the problem by the USGS right now and these are the areas they are studying, sir.

Senator METCALF. It's been my experience, as we gradually study these areas and as these proposals come to Congress, we carve off many of the acres on the periphery of primitive areas and return those to multiple use.

Mr. RICHARDSON. Yes, sir.

Senator METCALF. I just wanted to get that clarified. When you said 25 million acres—

Mr. RICHARDSON. Presently, sir, my point is they are not easily accessible for this mineral exploration.

Senator METCALF. I agree, and I concur.

Mr. RICHARDSON. All right, sir. Thank you.

In addition to these roadless areas becoming potential wilderness areas, and presently being administered as wilderness areas, the Secretary of the Interior is required by the Wilderness Act to review roadless areas of 5,000 acres or larger within the national parks system and the national wildlife refuge system. This amounts to 28 million acres in the national parks and 26 million acres in wildlife refuges.

The story of the wilderness legislation is probably better known to most of you than I. With some hesitancy, I call your attention to the early history of the Wilderness Act.

The Wilderness Act, as posed by the House, limited to 25 years the applicability of the mining laws and all laws pertaining to mineral leasing in the national forest lands designated by the act as wilderness areas. Thus, all minerals in the national forest lands designated as wilderness areas would be withdrawn from location and leasing effective January 1, 1990.

The conference committee which resolved the differences between the House and Senate passed versions of the Wilderness Act decided that the applicability of the mining and mineral leasing laws to wilderness areas would expire December 31, 1983, with all minerals withdrawn effective January 1, 1984. The managers on the part of the House stated in the conference report, "The conference committee noted that, in the absence of compelling reasons to the contrary, a similar limitation of time should be placed on those primitive areas or portions of primitive areas that are in the future designated as wilderness areas." Although I recognize this statement to be a reflection of legislative intent, it is not a statutory requirement. Quite frankly, it has always been my personal understanding that these dates, "December 31, 1983" and "January 1, 1984" were the result of compromise and understanding between the environmentalists groups and the minerals industry. To close these wilderness areas to mineral activity as contemplated by S. 1010, that is "upon date of enactment," would appear to me to be a breach of good faith. To the best of our knowledge, there has been no change of policy and such actions affect investor confidence as well as that of those whose responsibility calls for maintaining the industry viable.

The Secretary of the Interior in his initial report of March 20, 1972, required under the Mining and Mineral Policy Act of 1970 states:

It is mandatory, therefore, as a matter of urgency, that policies be established and programs formulated and undertaken, to create the social and economic environment necessary to foster optimum development of our mineral resources—within prudent environmental constraints—to meet projected future mineral and energy requirements.

The closing of these richly promising areas without full and defensible knowledge of their mineral potential would certainly be diametrically opposed to optimum development, such closing of the door as proposed in S. 1010 would represent minimal development.

Assertions have been reported that the wilderness areas are not needed for mineral exploration and development due to the minimal acreage occupied by such areas as compared to the land mass of the United States—0.5 percent total. The logical question, therefore, becomes, "Who knows?" In our State of Arizona, whose national mineral importance has been pointed out earlier in this statement, less than 0.2 percent of our State's land mass is occupied by mining and its allied activities. The total acreage presently administered as wilderness in our State within national forests alone amounts to 1.6 percent of our State's land mass. Certainly such vast areas within the wilderness system have not been evaluated as to their mineral potential. Our geological and mineralogical knowledge of these areas remains so limited that we, who are in the business, recognize our inability to categorically state its mineral potential is nonexistent. It is alarming to contemplate Congress stating through such legislation as contemplated a present or future lack of national need.

Too well, I recall that period of time in 1951 when I served as Chief of the Copper Branch of the Defense Materials Administration. Our Nations, during the early stages of the Korean war, was undertaking a frenzied search for potential copper sources which would add to our national self-sufficiency. As a result of that serve procedure that went

on some of those properties are still in existence today and without them having been opened up it would have imperiled our war effort at that time. However, I question very much what went on in 1951, I question today, I don't think they served any particularly useful purpose in the Korean war because they weren't developable. We were not able to bring them into production rapidly enough to be of any use in that particular situation. I say this because Senator Haskell has asked this question several times of other witnesses.

With your indulgence, I would like to quote again from the Secretary of the Interior's report relative to national need as it may apply to the national land mass.

Industry and government at all levels must work together to assure a continued and expanding flow of mineral raw materials at reasonable costs from dependable sources. Obviously, the three and a half million square miles of the dry land area of the United States and the adjacent continental shelf are among the most reliable sources of supply.

Congress, in our estimation, should be, today, making every effort to make potential mineral land available in the United States for mineral activity. The erecting of barriers to exploration and mineral evaluation by the continuing and growing process of withdrawal does not seem to carry out national policy or further national need. This industrialized Nation should not be forced to depend upon unreliable foreign sources of supply but become as self-sufficient as possible.

I respectfully point out to this committee the fact that there is a vast difference between knowing the whereabouts of a mineral deposit and a producing mine. The time gap between finding an ore body and its being placed in operation is more often than not measured in decades. Anything which would impede that initial step, locating the mineral, is truly a disservice to our Nation. Many companies, I assure you, have spent millions of dollars unsuccessfully looking. Respectfully, I urge that you do nothing which would place further obstacles in the path of the ore finding process. S. 1010 closes many doors to our industry.

I can think of one mine where the claims were filed in 1918. It is a very fine mine today and a very profitable mine and it's only gone recently into operation because the economics of it made it possible to put that thing into operation, let's say, 40 years later, 50 years later. Actually it is now operative.

I would like to point out that I think someone else alluded to a thousand prospects, and you may narrow this down to 100 and you probably eventually would end up with maybe one, and I can assure you that that happens. I know of companies that I have been associated with, millions of dollars have been spent without an economic ore body.

Admittedly, our industry's determination to fulfill its commitments to American standards of living has led to conflicts with groups and agencies of opposing views. We are firm advocates of multiple or most beneficial use of public lands. A report dated July 10, 1972, by the Regional Forester of the California region of the Forest Service, following a roadless area review program, stated that 69 percent of the comments received at public meetings opposed the creation of additional wilderness areas because "they felt in general that the areas presently set aside in the wilderness were ample or even in excess

of that needed for the limited number of people using presently classified areas compared to the need for areas serving all resource users."

It is earnestly and most respectfully urged that serious and thoughtful consideration be given these views which have been presented in opposition to S. 1010. We earnestly believe that the enactment of this bill would not be in the best interest of the health and welfare of this Nation.

Senator METCALF. Thank you very much. We welcome you back. What do you think of the idea of charging a fee for annual renewal of a claim rather than carrying out assessment work?

Mr. RICHARDSON. If you are just doing assessment work for doing assessment work, this is one thing. But the requirement of a \$100 fee, if that is all that they are doing on that claim, I see absolutely no objection to this. But I do think that there are many people who spend more than \$100 on 1 claim to know what is within 50 claims. That is the only problem I have with that.

Senator METCALF. I agree, but hasn't it been your experience that a lot of this assessment work is not really directed toward mineral development and does unnecessary damage?

Mr. RICHARDSON. Of course. I have seen it, too. I can agree. Some of it, it is \$100 worth of work. It is just to prove a point. But I will say this, that I don't think you can close the door on the \$100 as a minimum per claim. Because if a responsible organization is going in to mine and looking earnestly for something they may spend \$10,000 on 1 claim to prove up 50 others.

Senator METCALF. I agree and I know of situations where a good deal of money has been spent from time to time on one claim, legitimate, valid exploratory work that ultimately resulted in a very profitable mine that was helpful to the minerals of the United States.

Mr. RICHARDSON. Senator, let me say to everyone in this room, some of these scars made on mountainsides are just as embarrassing to the mining companies as they are to the environmental groups, and we wish to God we knew a way to stop it, but we are in the same position and there isn't a way that we know of as long as the \$100 is required.

I think another greater fear that I have is the fact that the small man, and I am talking about what we always call the seed corn of the industry, this is the little man—I don't want you to picture him as a man with a burro because he is not here. I have heard people here today say that you can get into these wilderness areas on foot, but you can't carry all the equipment that you have got to have if you are going to find deep ore beds. You can't carry in on foot and I have tried. But most of your surface manifestations in easily accessible areas, somebody is looking at those things and this is what I am afraid is largely going to be available to the U.S. Bureau of Mines and the USGS surface manifestation. They can tell that that it is mineralized, but they can't tell you what you have got. You won't know the extent or anything else.

Senator METCALF. Senator Haskell.

Senator HASKELL. I think you asked the only question that I really had in mind. In other words, Mr. Richardson, from your survey point you wouldn't concur that in wilderness areas it would be perfectly possible to just pay a \$100 fee rather than do \$100 worth of work.

Mr. RICHARDSON. I qualify that, sir. I don't think you could flatly state, because if I am in there seriously——

Senator HASKELL. I understand that.

Mr. RICHARDSON. That is the point. I said I wouldn't have any idea. I wouldn't have any difficulty personally with Senator Metcalf's idea of forcing these registrations, the location notices into the Bureau of Land Management. I thoroughly agree with these people, these old stale claims, they ought to be out of the way, and I have talked to the old stale claims act, I think people would like it if there was one place you could find out you are not encroaching upon other people's rights.

Senator HASKELL. Thank you, sir. I do not have any questions. I appreciate your appearance.

Senator METCALF. I certainly appreciate your appearance here today, Mr. Richardson. You made a very eloquent and persuasive statement. Thank you very much.

The next witness is Mr. George Alderson, legislative director of Friends of the Earth.

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

Mr. ALDERSON. I am George Alderson, legislative director of Friends of the Earth, a national organization of 20,000 members, dedicated to the preservation, restoration, and rational use of the Earth. Our Washington office is at 620 C Street SE. Our president, David R. Brower, was one of those who led the 13-year campaign for enactment of the Wilderness Act, together with Howard Zahniser of the Wilderness Society. We consider the Wilderness Act one of the first, and most effective, environmental laws on the books.

Friends of the Earth heartily supports S. 1010, Senator Jackson's bill to amend the mining provisions of the Wilderness Act. The biggest loophole in the Wilderness Act was the provision allowing miners to keep on staking claims until 1984. This gave the miners 20 years, with a deadline at the end, to stake out claims in all the wilderness areas of the national forests. If any mineral deposits are not covered by such claims in 1984, it will be because they are unknown. The mining industry, resourceful as ever, will have claimed every inch of ground that has any significant mineral value. And they will be free to mine these claims, sacrificing the public values of wilderness to their own cupidity. The Mining Law of 1872 is in effect, almost unrestricted, in spite of the fact that these wilderness areas have been dedicated to wilderness purposes by the Congress to protect their public values as areas of unspoiled America.

The provision that allows the miners freedom to despoil the wilderness was enacted in 1964 at the insistence of a small minority in the U.S. Congress, consisting mainly of legislators who have since been turned out of office by their constituents. Miners are no longer in control of the Western States. We believe it is time to correct the mistake of 1964. It is time to enact a new law to control mining in our national wilderness areas.

This is an important goal because mining is the greatest single threat to our wilderness area. In the mountain country where most of the national forest wilderness areas are located, the scar of a mining

road or a tailings pile does not heal for decades. In the mountains of Utah and Colorado, for example, you can still see the damage caused by mining 50 to 100 years ago, and you see it from miles away.

Mining advocates sometimes boast of the small surface area they wreck, compared to the total area of a wilderness. The man who walks into an art gallery and slashes one of the paintings is also defacing only a small proportion of the painting, but no one is so foolish as to make the miners' argument in that case. The promise of money does strange things to one's logic.

The damage of mining is not only long lasting, but extensive in its effect upon public use of the wilderness areas. Let us move to curtail mining in the wilderness.

S. 1010 is a modest measure that has our full support. Its basic provision would change the deadline for mineral entry from December 31, 1983, to the date of enactment of this bill and it would thereby eliminate the staking of further new claims in wilderness areas and replace private prospecting with a program of Federal mineral surveys. It would also eliminate the great rush to stake out the wilderness that can be expected as the 1983 deadline draws near.

This is a vital objective, because the Forest Service is going to have enough problems protecting and managing the wilderness, without the added complication of thousands upon thousands of mining claims. The only claims that would be forestalled are those that are such far-out ventures that all the prospectors up to 1973 passed over them. All the important mineralized areas are already under mineral claim.

Friends of the Earth suggests that S. 1010 be strengthened by adding provisions to reduce the impact of existing claims, but from development of claims that have been in existence for years already. These claims would not be affected by S. 1010.

First, we favor legislation to abolish the requirement of \$100 worth of annual assessment work on each claim and to replace this with a requirement of annual recordation and payment of an annual recordation fee. The main purpose of the assessment work under the 1872 Mining Law was evidently as a criterion to distinguish between claims whose owners were still interested, and those whose owners were not. Failure to perform the assessment work left the claim open to new entry by another person.

The annual assessment work has become a joke. It is not a significant enough requirement to cause today's massive mining corporations any great concern. They probably pay for their assessment work out of petty cash.

But the assessment work is of great concern to the Forest Service and the public. It results in tremendous senseless damage to the wilderness. If a bulldozer goes in to do assessment work, it may leave a trail of disturbed alpine meadow behind. If the miners dig purposeless holes in the ground, they may be seen from far across the wilderness.

Let's abolish the annual assessment work requirement. We favor replacing it with a requirement that the claim holder annually record his claim with the Government, and pay a reasonable fee representing the 1973 value corresponding to the \$100 specified in the 1872 law. We believe this would be closer to \$2,500 at current values.

Second, Friends of the Earth urges that the provisions in section 4(d)(3) of the Wilderness Act be strengthened. This subsection laid

down specific do's and don'ts in development of mining claims within wilderness areas. It authorized the use of wilderness land for all sorts of facilities and uses not necessarily part of a mine, transmission lines, and processing facilities to timber cutting.

As we view the situation, mining may have to be permitted where valid claims already exist. But that does not mean that the ore has to be processed within the wilderness, with the attendant construction of mills and tailing ponds. It does not mean that miners have to cut timber within the wilderness. In fact, many activities contemplated under this subsection need not be done at the site of the mine. They can be done miles away from the mine, outside the boundaries of the wilderness. Thus essential minerals can be extracted, without the massive impact on the wilderness.

We urge the committee to write an amended section 4(d)(3) to tighten the controls to bar unnecessary activities in the wilderness.

Third, Friends of the Earth urges that the miners holding claims—patented or not—within wilderness areas be required to give 60 days' notice to the Forest Service before beginning to develop a mine, or before undertaking any other activity that will have an impact on the wilderness character of the surrounding lands. We would also apply this to all other private inholdings within wilderness areas. The Forest Service should be required to publish notice in the Federal Register of each such filing, in order to give due notice to the public.

Finally, the Forest Service should be authorized to take mineral claims on other inholdings through the exercise of eminent domain. We recognize that budget restraints are likely to severely limit the acquisitions under this provision, but the authority is badly needed. Eminent domain has a way of discouraging the kinds of outrageous development that can now be done with impunity by miners.

Mr. Chairman, we are happy to present these views in support of S. 1010, and we recommend amendments along the lines suggested above.

Senator METCALF. Would you, on behalf of your colleagues in the Friends of the Earth, submit the language, specific language, for your suggested amendments?

Mr. ALDERSON. We will attempt to do that.

Senator METCALF. Could you?

Mr. ALDERSON. Yes.

Senator METCALF. We seldom adopt specific language as submitted, but it is a very useful device to have various members of the subcommittee and the committee go to work and criticize and find some other alternative language that we can adopt.

Mr. ALDERSON. We would like to do that and we also have the highest regard for the subcommittee's expertise and the expertise of the staff on this. I think there is much familiarity with the ins and outs of these mining provisions within the subcommittee and the staff as there is within the organization.

Senator METCALF. It is easier for us to go to work on a specific amendment if we have somebody evolve such an amendment and then go to work on it. So if you will submit some language it would be helpful to the committee in its consideration of this bill.

Mr. ALDERSON. Thank you, Senator. We will do that. We think a great deal more land has been protected by the existence of eminent

domain powers than has been saved by the actual application of those powers.

[The material requested was not received in time to be incorporated into the record.]

Senator HASKELL. Do you realize the difficulty of evaluating mining properties?

Mr. ALDERSON. I was also involved in that White Clouds case and we realize there is a great problem there. We would hope with your familiarity there might be some way to come to terms with this.

Senator HASKELL. I don't think whether anybody is familiar with it is the point. It is just a very, very difficult thing to do with any degree of fairness to either side. I just raise that as a point, even as a comment.

Mr. ALDERSON. In the White Clouds case we had evidence of that because the mining company quoted sky high figures that were in the millions, and I forget how many millions.

Senator HASKELL. The trouble is until you are actually down and actually have done very detailed exploration work nobody knows, so I just raise that as a question. I think like some of our other suggestions I am not sure how practical this one is.

Mr. ALDERSON. I understand. I believe that is an area where the law needs to be developed a little further because I think we agree there is a real problem there but, as you indicated, we can't quite come to grips with it yet because of the evaluation problem. In any case we are happy to present views in support of S. 1010 and the recommended amendment. I did want to comment briefly on the stand of the administration because it was also a disappointment to us in view of some of the productive steps the Nixon administration has taken with respect to the wilderness program before. The stand that they took today could only be determined as a sell out to the mining industry because in their statements this afternoon they propose to undermine the whole purpose of the Wilderness Act by continuing mineral development in a way that was not contemplated in the 1964 act. They have also twisted the legislative intent of both the wilderness Act and the Multiple Use Act of 1960.

One of the witnesses said the Wilderness Act was a shift away from multiple use but nothing could be more inaccurate because the multiple use act of 1960 specifically mentioned wilderness as a part of the multiple use concept. So it is startling to see this kind of misinformation coming out of the Interior Department.

They also argue that the primitive areas which are being established as wilderness were not considered by Congress when the 1984 deadline was adopted, but that is also not true, as I think Senator Metcalf pointed out. The 20-year deadline was the result of long consideration and tied to the primitive area review procedure was the explicit requirement of the mineral survey by the USGS, wisely we think, as a substitute for further unnecessary disturbance by private mineral firms. So the administration has not only asked to leave the doors open, to open the doors further to mineral development not contemplated in the 1964 act, but they are trying to mislead Congress on the implications of the laws that have already been passed. We deplore that. We hope that there is room for reconsideration by the administration. Thank you very much, Mr. Chairman. I appreciate the chance to testify.

Senator METCALF. Thank you again for appearing before the committee, Mr. Alderson. We are always glad to have you. You are always welcome and you always have a helpful presentation.

Mr. ALDERSON. Thank you.

Senator HASKELL. I just join Senator Metcalf in thanking you and I also would join with him in saying we would appreciate suggested legislative language backing up your ideas.

Senator METCALF. You may work with the Sierra Club who also suggested that some amendment could be presented and with the Wilderness Society and suggest some specific language.

Mr. ALDERSON. I will certainly get together with the other groups and we may be able to come up with something. Thank you.

Senator METCALF. Our next witness is Mr. W. J. Walker, senior staff geologist, with the Phelps Dodge Corp. You can go ahead and after your statement is over I will put in the record the remarks by Mr. George B. Munroe, the president of Phelps Dodge Corp. at the Joint Judicial Conference, Eighth and Tenth Circuits of the United States, at Colorado Springs, Colo., on June 29, 1973.

Without objection this will follow his statement and I will put it in.

STATEMENT OF W. J. WALKER, SENIOR STAFF GEOLOGIST, PHELPS DODGE CORP.; ACCOMPANIED BY JERRY L. HAGGARD, ESQ., OF EVANS, KITCHEL & JENCKES, ESQS., PHOENIX, ARIZ.

Mr. WALKER. It is my pleasure to appear before you. My name is Woodville J. Walker. I am senior staff geologist for the western exploration office of Phelps Dodge Corp., Douglas, Ariz. I have spent 37 years in mineral exploration, mostly in the Western United States. I am presenting this statement on behalf of the Phelps Dodge Corp.'s western exploration department. We are strongly opposed to S. 1010.

Our opposition is for the same reasons stated by committees of this Congress, by Federal commissions, and by high officials of the executive branch against similar mineral withdrawal proposals. S. 1010 would close to mineral exploration and development, immediately upon its enactment, more than 10 million acres of land presently within wilderness areas. To remove this amount of land from resource development availability, when national resource shortages are beginning to appear, is serious enough. But what is more serious, is that lands presently being studied and proposed for addition to the wilderness system encompass areas many times larger than those presently designated as wilderness. We recognize that S. 1010 is limited to existing wilderness areas, but let us not entertain any illusions that wilderness areas established in the future would escape its provisions once the principle has been legislatively established.

In these times when the United States is facing increasing deficits between its mineral supplies and mineral demands any contemplated action which would eliminate the resource availability in tens of millions of acres, must be considered drastic. Therefore, I am sure that the members of this subcommittee will consider and balance carefully the reasons presented by those who have urged against blindly eliminating lands for resource development and the reasons presented by the proponents of S. 1010.

I would like briefly to review some of those reasons, considering first, those which have been given in opposition to such a policy as S. 1010 would establish. The question of whether wilderness areas should remain open for mining at least for a period of time was, of course, first addressed by the U.S. Congress and the Senate-House Conference Committee which approved the final form of the Wilderness Act of 1964. This question was extensively debated prior to and during 1964. It was the conclusion then that the national interests required that each wilderness area established by that act should be left open for mineral exploration until 1984 and after 1984 for the development and mining of any minerals which may have been found. The conference committee also stated its expectation that each future designated wilderness area should be available for mineral exploration for a similar period of 20 years after its date of establishment. Further, the conference committee recognized that wilderness areas should not even be established before a meaningful determination is made of their mineral resources:

The conference committee expects that the mining industry and the agencies of the Department of the Interior will explore primitive areas so that when legislation pertaining to such primitive areas is considered at a later date Congress will have the benefit of professional technical advice as to the presence or absence of minerals in each area.

Notwithstanding this clearly expressed intention of the conference committee, mineral exploration has been discouraged to the extent of prohibiting effective exploration programs from being conducted in candidate wilderness areas. A case history of such an attempted exploration program is attached to this statement. So this Nation is faced not merely with S. 1010 closing established wilderness areas, but we are faced also with all candidate areas being practicably closed even before they are established by Congress as wilderness areas.

Because it was the conclusion of Congress in 1964 that wilderness areas should be left open for mineral activities, one should expect that the introduction of S. 1010 9 years later is based on developments during that period which should cause Congress to come to a different conclusion. Instead, the information which has developed reinforces Congress' original conclusion. Pursuant to the Mining and Minerals Policy Act of 1970, the Secretary of the Interior issues the first annual report on the minerals position of the United States in March 1972. Among the findings in this report was the forecast that by 1985 the value of the metals demanded in the United States—\$27.7 billion—will more than double the value of the domestic supply, and by the year 2000, the value of the demand—\$50.2 billion—will be 3.5 times the domestic supply. The ramifications these deficits would have on our domestic economy, national defense, balance of payments, and international relations are great, and uniformly harmful. This would seem to dictate that instead of closing more and more lands to resource development, the reverse must be the case—more and more lands must be made available for the finding and development of mineral resources to supply our Nation's needs.

The Public Land Law Review Commission submitted its final report and recommendations to Congress and the President in June 1970. More than 4 years and \$7 million were spent conducting studies and considering the positions of all of the diverse groups which have

interests in public land management, but much of the legislation which has been introduced since 1970 indicates little awareness of the Commission's recommendations. S. 1010 is an example of this.

One finding made by the Commission is particularly relevant to S. 1010. After discussing the vital importance of public lands to this Nation's mineral supply, the Commission found:

A decision to exclude mineral activity from any public land area should not be made casually or without adequate information concerning its mineral potential.

S. 1010 would exclude mineral activities from public land areas both casually—because this is blanket-type legislation—and without adequate information concerning the mineral potential of those areas, because many of these areas have not been adequately explored.

Recently, Assistant Secretary of the Interior Wakefield, in a speech at Phoenix, Ariz., on April 26, 1973, expressed the error of this sort of policy. He said:

In particular, we need good comparative data on the extent, nature, and economic significance of land use for mining and other activities to permit an intelligent choice of land selections for wilderness or other recreational purposes. If we aren't able to identify promising mineral areas before public land is withdrawn from mineral entry, that land may be lost for years as a part of our mineral resource base.

Most recently, the National Commission on Materials Policy recognized in its report and recommendations issued on June 28, 1973 that the removal of public lands from resource development by large scale withdrawals may be going too far and it urged that careful consideration be given to withdrawals which remove materials from our Nation's supply.

It is for these reasons that we are convinced, and we believe Congress will become convinced, that the United States cannot afford to blindly lock up tens of millions of acres for the sole use of an extremely small minority, at least without continuing to make these areas available for the exploration and development of their resources. There are indications that this opinion is being shared by an increasing number of persons. For example, a report dated July 10, 1972 by the California Region of the Forest Service, on the public hearings for the Forest Service roadless area review program, states that the public meetings held from May 18, to May 26, 1972 in Pasadena, Fresno, Oakland, Sacramento, Redding, and Eureka, Calif. revealed that 69 percent of the comments received opposed the creation of additional wilderness areas for the reason that:

They felt, in general, that the areas presently set aside in wilderness were ample or even in excess of that needed for the limited number of people using presently classified areas compared to the need for areas serving all resource uses.

The regional forester reported that only 23 percent of those commenting supported more wilderness in California. In our opinion, the question is when, not whether, Congress and the administrative agencies will recognize that this Nation cannot afford the extravagance of land nonuse which S. 1010 would carry out.

Turning to the reasons assertedly justifying S. 1010 which were expressed in the statement introducing the bill: One of those reasons was that closing wilderness areas will not cause a significant reduction in our mineral supplies because the present wilderness system covers less than 0.5 percent of the Nation's total acreage and, in the years

ahead, fewer and fewer areas will be added to the wilderness system. It was further observed that our Nation's mineral wealth is not confined to this tiny fraction of our land base. These statements are true but they avoid the point.

Our hard rock mineral resources appear to be concentrated in 11 Western States and Alaska, which contain approximately 1.1 billion acres. Therefore, present wilderness areas alone occupy about 1 percent of the total area available in this country for most likely mineral development.

While I certainly hope it is true that, at some time in the years ahead, fewer and fewer areas will qualify for inclusion in the wilderness system, the present wilderness system of more than 10 million acres is only a fraction of what it can become. There are almost 4 million acres of primitive areas and more than 10.7 million acres of roadless areas which the Forest Service is studying to propose as wilderness areas. There are approximately 27.8 million acres in the national park system and 26 million acres in wildlife refuges which are candidate wilderness areas. These figures do not include Bureau of Land Management lands, which are being withdrawn as nonstatutory wilderness areas. This amounts to 78.5 million acres, or 6 percent of the total of our Western States including Alaska, or 11 percent of the Federal lands in those States which are candidates for wilderness. To eliminate resource development from this amount of our lands having the most mineral potential, for use or nonuse of a small minority of our population, is an extravagance which this country cannot afford.

In justification of S. 1010, it was stated that minerals can and should be obtained elsewhere than from wilderness areas. I am sure the members of this subcommittee are aware that minerals cannot be mined wherever a land use planner decides it is appropriate to put a mine. They can be mined only where they occur, and their occurrence is extremely rare. Moreover, some of the areas being considered for wilderness have high potential for mineral development. For example, the proposed Cabeze Prieta wilderness area covers 1,160 square miles of southwestern Arizona, the State which produces more than one-half of our Nation's copper supplies, is being considered for wilderness without even a mineral study being made.

During the past 20 years there have been a number of important deposits of porphyry type discovered in the western United States. Most are of porphyry copper type, but two are important for their molybdenum content. Thirteen are located in Arizona, one in New Mexico, one in Washington, one in Idaho, two in Nevada, two in Wyoming, and one in Colorado. The concentration of discoveries in Arizona reflects the concentrated exploration effort in this great copper area.

It is important to note that the porphyry copper deposit in Washington and one of those in Wyoming are in wilderness areas, as is the molybdenum deposit in Idaho. The second porphyry copper deposit in Wyoming is separated from the wilderness by an enclave into the wilderness.

Perhaps the best way to look at S. 1010 is the effect it may have on the ratio of discoveries. If we include Kerwin, Wyo., 4 of the 21 important porphyry discoveries of which I am aware are in wilderness areas.

I have emphasized the porphyry deposits, but there is potential for other metals, including gold, in these areas.

In support of S. 1010 it was stated that removing the wilderness areas from further mineral activities will not affect the security of the Nation because these areas will continue to be surveyed by the Geological Survey and Bureau of Mines and, "with the knowledge gathered through those surveys Congress could act to make those minerals available for mining in a national emergency." Again, the errors in this statement are several. First, to my knowledge, no mineral surveys are being conducted on any areas established or recommended as wilderness except national forest primitive areas and primitive-type areas. According to present policy, this means that any wilderness areas to be established from the national forest roadless areas and the candidate lands under the jurisdiction of the Interior Department, amounting to more than 54 million acres, are not considered as areas which the Wilderness Act requires to be surveyed for their mineral potential. For example, the proposed desert wilderness area in Nevada consisting of 2,253 square miles and the proposed Cabeza Prieta wilderness in Arizona consisting of 1,160 square miles are being considered for wilderness areas notwithstanding that no mineral survey has been conducted in either area.

I want to cover the USGS's work. I am personally acquainted with Dr. McKelvey as with many members of the USGS and we use their work as a basis for ours. The only geological evaluation as presently applied in wilderness and wilderness-candidate areas by the USGS and USBM consists essentially of geologic mapping and surface sampling together with some broad aerial geophysical surveys. This largely restricts the type of work done by the USGS and USBM personnel to direct surface indications. This is rarely sufficient—favorable host rock in the Blue Range primitive area, for example, lies under more than 2,000 feet of postmineral volcanic cover. The results of this type of study, plus analysis of geochemical sampling results provide only a basis to proceed with subsurface investigations to determine the mineral potential of the areas. Subsurface work requires exploration by drilling or underground procedures to provide material for direct analysis. It should be borne in mind that areas of interest based on results of studies of rock alteration or of geochemical sampling are usually very large in comparison to the potential target. Drilling is expensive and every effort is made to better define a target area before starting this type of program.

The assumption implied in the concept of evaluation of mineral potential by the USGS is that all mineralized areas will be indicated by surface evidence. Furthermore, the implication is that this evidence will directly indicate the presence of economic concentrations of minerals. Both of these assumptions are incorrect. As mentioned in the preceding paragraph, surface geological evidence, including sampling, can only indicate an area of interest meriting further study, either below the area samples or to one side, or possibly under a cover of younger postmineral rocks.

Surface sampling or mapping cannot show the presence of a significant mineral deposit, or even of an area of interest if the rocks exposed at the surface are younger in geological age, and hence are postmineral in relation to the postulated deposits. Consequently, surface studies

of the type conducted by the USGS and USBM are meaningless in the study of areas of postmineral cover. Reliance must then be placed on various geophysical techniques which can indicate anomalous areas, or on geological reasoning and projections of known geological conditions to provide targets which must then be tested by drilling or direct subsurface sampling to determine even the potential for a commercial mineral deposit.

The personnel in Bureau of Mines and Geological Survey are diligent in their work, but they lack the equipment, time, manpower, and money to undertake full-scale mineral exploration. We believe it would be significant for this subcommittee's consideration of S. 1010 to obtain from the Geological Survey and Bureau of Mines an opinion as to how long it would take after a national emergency arises to find and develop a mine in the wilderness, based either on their present surveys or on subsequent hurried exploration efforts.

Another justification given for the passage of S. 1010 is that mining and mineral location activities in wilderness areas have generated major conflicts between industry and environmentalists. I can only encourage this subcommittee and Congress to weigh the validity of this justification in light of the resource needs of our country and whether these major conflicts are created by a major part of our population or only by a small but vocal minority of elitist environmentalists. I believe these conflicts can be created only by the public not realizing that the metallic products bought from store shelves can be made only from the materials produced from the ground. I shudder to think what the ultimate extension of using such a justification would be on each facet of our Nation's industry which comes into conflict with such groups.

Finally, it is purported that the passage of S. 1010 will solve an economic problem because the public will not tolerate mining in wilderness areas and the Government will find it necessary to purchase the mining rights. First, this subcommittee should consider carefully again whether it is a majority or small minority of the public which will not tolerate mining in wilderness areas. Second, we must remember that a compensable property right can be acquired under the mining laws only if a commercial orebody is discovered. Therefore, this argument is saying that even in those rare cases where an economically producible ore deposit has actually been found in a wilderness area, the policy of the United States should be that wilderness use shall prevail and the mining shall be prohibited.

It is too often assumed that leaving the wilderness system available for mineral exploration and development somehow totally jeopardizes or eliminates the wilderness character of all wilderness areas. This is an "either-or" position which appeals to public emotions, but it's not true. Some of the existing and proposed wilderness areas will probably never be touched because they have little mineral potential. The exploration of other areas having little mineral potential would normally be delayed for many years until other more promising areas are explored. But even those that have a present mineral exploration interest can accommodate exploration because the traces of these activities, if done properly, can be practically eliminated within a very few years after the exploration project is completed except, of course, in those rare cases when a commercial mineral deposit is discovered.

Of each 1,000 mineral prospects which are initially explored by reconnaissance methods, I would estimate that 900 are eliminated from further consideration. Of the number which are selected for more intensive exploration such as by drilling methods approximately 99 of those are eliminated by further exploration. Therefore, only 1 of each 1,000 prospects explored may result in the development of a mine. For a copper porphyry-type deposit, for example, such a mining development might utilize, at the most, six sections of land. Many wilderness areas could accommodate such a development without a noticeable deterioration of the remaining part of the area. Using the Cabeza Prieta proposed wilderness in southwestern Arizona, for example, if one mine were found and developed in that area, these six sections utilized for mining would leave the remaining 1,154 square miles or 99.5 percent of the area as wilderness.

Senator METCALF. Just a moment. That isn't quite fair. You are going to have to have roads in there.

Mr. WALKER. This point has been made.

Senator METCALF. It is just not the exact area of the mine that is a matter of concern. It is a matter of access and the use of timber on the area and all of the other surrounding uses that would expand that specific statistic. I don't know whether it would be a substantial amount of land, but every year when I am privileged to go home and visit my constituents and so forth, I drive through areas that have been scarred and mined and even if the five sections or six sections there are old tailing dumps and you go in the panhandle of northern Utah and you can hardly drive through some beautiful territory without seeing these kinds of scars and I understand what you are saying, but we can't just brush it off, just the surroundings of the mine itself.

Mr. WALKER. I think this is true. What we really have to consider is when we develop a mining area in the wilderness, then it is going to require some planning to have less impact on it. This is certainly something that is going to be done, but it can be done.

Senator METCALF. I am sorry I interrupted you. That is a position that you just can't say, well, it is just the area of the mine itself. If there is a mine in the Stillwater, there will be miles and miles of road through wonderful recreational and timbered areas that will have to be developed to haul out that ore or we will have a processing plant in there, tailing tumps and so forth right there that will expand the operation of the mine.

Mr. WALKER. Actually when I am talking about 6 square miles, I am including the mine, the town, the smelter, the dumps, tailing ponds, all facilities. Certainly there is some impact of a road meandering some beautiful country but the road itself can be beautiful, too, and it can provide access for distribution of people into areas of the wilderness not otherwise accessible.

I wish to conclude not merely by expressing my opposition to S. 1010 but to propose that substitute legislation be introduced which would eliminate the 1984 closure of wilderness areas and which would clearly require the executive agencies to allow exploration and development in wilderness-type areas under the reasonable conditions which are consistent with use of the land for mineral exploration and development.

Senator METCALF. Thank you very much. Your story of one individual case history will also be incorporated as part of your remarks and I think it is an eloquent illustration of what you are talking about.

I welcome you here. I think that you, the corporation you represent, the corporation Mr. Richardson represents, the great Annaconda operations in the State of Montana have made an outstanding contribution to the wealth and welfare of this country. You have no better friend in the mining industry than the men who serve on this Interior Committee. We are certainly representative of the West and we have some understanding of the problems you have presented to view here, and it is very helpful to us to have you tell us, make constructive criticism of this legislation or other legislation before us, and present the kind of statements you presented today. Thank you very much.

Senator HASKELL.

Senator HASKELL. I have one question, Mr. Walker. You heard the suggestion that the \$100 assessment, this of course is subject to Mr. Richardson—I understand his point, that when you really go to do some work you spend much more than \$100 a claim, but right now the way the law reads, a suggestion has been made by various environmental organizations that maybe the \$100, instead of being done on the ground would be paid as a fee. This would not preclude, of course, valid claims explorations. How do you react?

Mr. WALKER. I think it would be a mistake for this reason. In the first place, the original intent for having \$100 worth of assessment work was to make people demonstrate their good faith in the property by working on the property. All the \$100 registration fee, annual registration fee, will do will be to encourage land speculation. Somebody goes out and locates some ground and they try to get somebody like Phelps Dodge or Anaconda or somebody else to go in and do some work, so they are speculating on the land. You are going contrary to what the intent was in the 1872 law.

My feeling would be a better proposal would be either that you have a rental which accelerates or some proposal where the work could apply as we frequently do now, we do 2 years' work back to back. This is where we are investigating, but we are not quite ready to initiate a large program and we want to hold it. I think the \$100 rental fees should be looked at very carefully. It may really work adversely. What will happen is that people who hold ground now in an area which we might be wanting to explore and can't explore because we can't make a deal with those people, they could hold that ground until the expiration, 1983, and it might never be adequately explored.

Senator HASKELL. They could hold the ground under even S. 1010, they could hold the ground until 2000 even under 2010.

Mr. WALKER. If they were valid claims.

Senator HASKELL. Assuming they are valid claims, yes.

Mr. WALKER. I think there is going to be some close looking at these claims after 1983.

Senator HASKELL. Do you agree with some of the suggestions by the environmental organizations that some of these claims be looked at with the idea of disposing of ones that are not valid?

Mr. WALKER. Yes; but this brings up a very difficult point. The only way that exploration work can be done, I mentioned it in my statement, I wanted to bring this point home, that many of the major deposits in recent years have been discovered in areas which are entirely covered. No valid claims could be located. You can't have a

discovery on those claims until you get a drill down to the premineral rock and find the ore. So it is quite easy to go in and say this claim is not valid, especially if it is in postmineral rock, but it may have a good exploration potential in the underlying rock. So this is the kind of thing that could easily be knocked out.

Senator HASKELL. At least it would knock out the invalid claims. The law now says you have to have discovery.

Mr. WALKER. What we are really interested in is some provision that would require people to go in and make a discovery if they have a valid claim.

Senator HASKELL. Would you go along with Senate bill 1040?

Mr. WALKER. No.

Senator HASKELL. No further questions.

Senator METCALF. I thought that Senator Haskell was going to ask the question about the Forest Service testimony. They said let's not dilly dally with a little footnote to a bill. Let's pass S. 1040 and get rid of some of these things. As I understand it, you wouldn't be in favor of that either.

Mr. WALKER. Well, no, not with that particular type of legislation. I think the thing that bothers me is what we are doing, putting the power to make decisions on someone's shoulders or in somebody's hands who may not really be qualified to make the decisions. Should this be a mining operation or should it be something else. I have prepared some figures at a talk I gave a couple of years ago, and I figure that each copper deposit found cost about \$25 million in somebody's money to finance, and this gets back to some of the questions that some of these environmental people have brought here.

For example, the evaluation of White Cloud. We have a large investment in each deposit before we find it simply because we have been spending a lot of money over a long period of time. Therefore, we are prepared to take some pretty long risks when it comes to exploring that particular project. I don't think it would be fair to have somebody else be able to say, no, this should not be done.

Senator METCALF. I am inclined to agree with that position, but today the situation is that we say that just anybody that comes along and locates a mining claim and puts up a fair affidavit for discovery and does exploratory and assessment work every year, that private individual, no matter what his skill, what his background, what his experience, can move in on public lands and do what he wants to with those lands. Now, we don't even give the Chief of the Forest Service of the United States that authority. We don't give the USGS that authority. We give just any private individual that comes around that authority, and I agree with you that we should restrict some of that.

Mr. WALKER. I think the mining industry knows that regulations can only be beneficial to the mining industry so long as the regulation is not prohibitive.

Senator METCALF. Well, I certainly agree with that, too. You shouldn't have a prohibitive regulation, but you shouldn't allow people just willy-nilly to go in and exploit public domain in the guise of mining. I think you would deplore that just as much as I.

Mr. WALKER. Right.

Senator METCALF. I was going to call on Mr. Haggard. There are other committees on the Hill that have Arizona people and Arizona counsel, and so I am glad that we were able to have an Arizona counsel here today, too, Mr. Haggard.

Do you have anything to add?

Mr. HAGGARD. No, I haven't, particularly in view of your call for a vote.

Senator METCALF. Thank you very much. Thank you both. We have a vote pending. We have ended at just the right time; and if there are any observations or suggestions that any of you have to this legislation, the record will be kept open and you will submit it for the record. Thank you very much.

[The statement of George B. Munroe and "A Case History of Mineral Exploration Efforts in a Primitive Area" follow:]

REMARKS BY GEORGE B. MUNROE, PRESIDENT, PHELPS DODGE CORP., AT THE JOINT JUDICIAL CONFERENCE, EIGHTH AND TENTH CIRCUITS OF THE UNITED STATES, COLORADO SPRINGS, COLO., JUNE 29, 1973

In discussing this morning the relationships between mining, the environment, and the laws which aim to protect the latter, I am going to speak mostly about hard-rock mining in the Western States. I recognize that will be outside of the boundaries set by the title of our meeting, "Energy and the Environment", but the relationship of the subjects is clear and direct. More importantly, this limitation will both allow us to bring some of the problems into sharper focus, and also permit me to restrict my remarks to an area in which I have some direct experience.

"Mining" is a term much like "farming" or "manufacturing" or "law": it encompasses a broad range of activities many of which are very dissimilar, bound together by a common purpose—in our case, the winning of metals and minerals from the earth. The business of my company, Phelps Dodge Corporation, is mining copper—one of the family of nonferrous metals which also includes, for example, lead, zinc, gold and silver. The family does not include iron ore, coal, sand and gravel, or the many mine products, such as phosphates, generally referred to as industrial minerals.

Notwithstanding their many basic differences, and to a greater degree than many other industries, all facets of mining must cope with the problems and responsibilities of man's relationship with his environment, for mining, almost by definition, must alter the natural environment. I don't mean by this that you have to create an unhealthy or unsightly mess in order to mine, because you don't; but neither is it realistic to pretend that large quantities of minerals and metals can be removed from the earth's crust without any change being made in it. This alone is enough to assure that mining will meet head-on the direct thrust of environmentalism.

I know that the members of the bench here this morning need no formal announcement of the fact that the confrontation between environmental and economic goals has begun. Many of you have already been called upon to referee various aspects of that confrontation.

Quite clearly, the nation is moving toward a new system, not yet fully defined, of measuring and regulating the impact of man's activities on the environment. But many of the concepts that will form that system have yet to be clarified, and many of the policies and rules have yet to be developed.

Observers, such as Dr. William Dresher, Dean of the College of Mines of the University of Arizona, have placed, correctly, in my opinion, the move toward increased concern for our environment as part of a fundamental shift in our society, perhaps as basic as that of the industrial revolution of the last century—a shift which is expected to result in a "post-industrial society", the parameters of which are not yet fully known.

While we are in the midst of this reordering, there must be, and is, considerable conflict among competing goals and confusion over what rules should be applied—not only in the environmental area but across a broad range of our activities and institutions. I have no doubt that much of the conflict and confusion will ultimately have to be resolved by the courts.

Whatever social fabric we finally find has been woven, however, it will certainly not be "post-industrial", if by that term one means that the industrial base of our society will be supplanted by something else. Properly, the term is no more than a time reference indicating a point at which the industrial system will have matured to a stage where relatively few of our people can run it and still provide all necessary goods and materials, and reasonable affluence, for all. But it is important to remember that this shift does not signal a rejection of technology, but rather has been made possible, and necessary, by technological advance.

Nonetheless, as people are more and more removed from the productive activities that support the nation's economy, they become increasingly oblivious to the fact that raw materials form the base of our entire economic and social structure. Man creates no matter; every single item we use derives from a natural resource. When national economies are relatively simple, this fact is readily apparent. Therefore, government policies in developing nations often aim to develop natural resource industries. In our own country, the Mining Law of 1872 serves as a good example of this. But in a complex economy, such as we have today, the important role of natural resources, although more vital than ever, is not so easily perceived. Other national needs and wants can appear more important, and governmental policy may no longer wholly support—and may even frustrate—resource development.

Therefore, one of today's major tasks of hard-rock mining management is to get the social and economic importance of our industry back before the people and their lawmakers, so that this can be balanced against environmental considerations in the formulation of national policy. In the case of our industry, there are two major areas of conflict with the environmental movement. The first of these is the area of land use: in order to find and develop mineral deposits, the mining industry must have access to land and some form of secure tenure, when an orebody is found, to bring it into production. These needs conflict with, and are imperiled by, the environmental movement's efforts to restrict development. Spurred by environmental concerns, much recent legislation, legislative proposals and administrative rulings have thus been aimed at restricting mining; taken together, they constitute potentially the most dangerous problem which mining faces. The second major conflict area is air quality control with respect to smelter emissions of sulfur dioxide—also a subject of great dispute and serious import, which may, however, finally be nearing resolution.

A fundamental fact of the mining business is that our orebodies are finite and nonregenerative. Every ton of metal produced by a mining company diminishes its reserve by that much, so that a mining company's ability to grow, and even its ultimate existence, depend on its success in finding new reserves to replace what it has mined and sold. But what is a "reserve" depends on the interrelationship between economics, technology and the nature of mineralization, and there is no reason why my industry cannot continue to supply newly-mined metals to meet any future requirements, if we have access to favorable targets for exploration.

Therefore, continued access to land of favorable geologic character, to explore for economic mineralization, is of great importance both to the mining industry and to the future needs of our economy. In this country, the most favorable geology for hard-rock discovery is in the Western States, and there a majority of the land is public land, administered by the federal government. In the six major hard-rock mining states of Arizona, Idaho, Montana, Nevada, New Mexico and Utah, there are over 200 million acres in the public domain. A key concern of the mining industry today is to maintain its freedom to explore these public lands and to develop what, if anything, may be found there, in the face of the current trend to withdraw these lands from mineral exploration and development.

Withdrawals of land from mineral entry take many forms, administrative and legislative. Probably the most significant—and certainly the most pertinent to the subject of today's discussion—are those under the Wilderness Act of 1964 and by Forest Service administration of other lands under the Wilderness principle. The intent of the Wilderness Act, of course, is to preserve against man's activities certain portions of our public lands in a state of wilderness. As such, it probably represents the major success to date of what might be termed the elitist element of environmentalism—that element which is concerned not so much with securing the health and welfare of our total citizenry as with preserving satisfactions which relatively few are in a position to enjoy.

At present, some 10 million acres of Western public lands are in the Wilderness System. As you may be aware, the Act provides that, at least with respect

to the initial 9 million acres in the system, the land remains open for mineral exploration and location until the end of 1983, subject to regulation by the Forest Service. There is no doubt that this provision is at odds with the pure Wilderness concept. In fact, the U.S. District Court, District of Minnesota, found the incompatibility so great that in *Izaak Walton League v. St. Clair*, decided this past January, it construed the provision right out of the Act. Although I believe the District Court's statutory construction in *St. Clair* is rather strained, there is no doubt that the Court correctly sensed a basic conflict within the Act. Nevertheless, the clear intent of Congress, back in 1964, was to provide a balancing mechanism to prevent the Act from denying the nation access to its mineral wealth; I think that was a sound decision.

To date the Forest Service has had little success in developing regulations which would effectively provide that balance. The regulations governing access for exploration, attempting to resolve the incompatibility, have effectively stopped exploration activity on the lands subject to the Act.

While much of the 10 million acres is not a prime exploration target, it is still far too large a portion of our land to close to the search for minerals. Moreover, land continues to be added to the system, and, additionally, the Forest Service now administers nearly 4 million acres of primitive lands, and more than 10 million acres of so-called "roadless" areas, as if they were part of the Wilderness System, until it is decided whether or not that land should be included in the system.

Let me give you a case history, from my company's own experience, of an effort to explore in a primitive area. Near the eastern border of Arizona, in Greenlee County, is Phelps Dodge's major mine—Morenci—the second largest copper mine in North America. It produces about 120,000 tons of copper annually, and together with a new mine we are now developing adjacent to it, has reserves of over 1 billion tons of ore. Just to the south, in Safford, is a highly mineralized area where another Phelps Dodge mine is being developed. Just to the north is the Blue Range Primitive Area. All share the same geologic environment favorable to the existence of porphyry copper orebodies, but there is one major geological difference. In the Blue Range, the favorable host rock is covered by over 2,000 feet of barren, post-mineralization volcanic rock; at Morenci and Safford, much of that volcanic rock has been eroded away, leaving the mineralized area more readily accessible.

As a result, much exploration and mineral development activity has been conducted in the Morenci and Safford areas, and virtually none in the Blue Range. At Phelps Dodge, we had done preliminary work there and had identified it as an obvious area of future interest. In 1969, faced with the prospect that the Blue Range would soon be considered for inclusion in the Wilderness, with its mineral potential still unknown, we decided to try a limited exploration program, to test, if nothing more, our belief that a favorable geologic environment for copper ore existed under the barren volcanic rock.

Our geologists selected a location, slightly more than a mile inside the primitive area, which seemed a likely spot to drill a deep hole through the volcanics into whatever lay below. We staked some claims in December 1969, and asked the Forest Supervisor for a permit to drill the hole and build a temporary road to move the drill rig in and out.

A flurry of correspondence ensued, with our people responding to various Forest Service requests for information. At the request of the Forest Service, we moved the location of the proposed hole to a point only 1200 feet inside the primitive area. In April 1970, our claims lapsed for lack of discovery work, and we relocated them. In June, the Forest Service advised us that consultations with the Council on Environmental Quality indicated that a permit to build the one-third of a mile temporary road and to drill one hole constituted a major federal action significantly affecting the quality of the human environment, so that the Section 102 procedures of the National Environmental Quality Act of 1969 were operative. Accordingly, the Forest Service contacted 17 additional government agencies to ask their views on the project, and an impact statement was prepared. In August, our claims lapsed a second time and were relocated.

In October 1970, we finally received a permit, posted a bond, and began to build our access trail. The purpose of the drill hole was two-fold. First, to penetrate the volcanics and see what was underneath. Second, to conduct a radial induced polarization test from down in the hole, to see if any anomalous response might signal a possible orebody in the area. When the hole reached 2,730 feet below the surface, it broke through the volcanics and, as hoped, into rock types

similar to those associated with the great Morenci ore deposit. It also intersected measurable traces of copper above background values, and the downhole induced polarization survey picked up a definite anomaly. Our geologists were pleased and encouraged.

The drilling program was completed in April 1971. By August we finished our reclamation work, and today it is hard to tell we were ever there. By September 1971 the results of our program had been analysed, and the drilling of a second hole, to test the anomaly, was authorized by management.

To date, we have not succeeded in obtaining a permit to drill it. I shan't bother you with the details of our efforts; they are basically similar to those involved in the earlier drill hole. This time, the only major differences were that our proposed temporary access road was 3.8 miles long, and that we had a much more favorable target—although an anomalous response to an I.P. survey is more often caused by worthless pyrites than by copper mineralization.

We told the Forest Service of our plans in October 1971, and the spring of 1972 saw renewed activity. New claims had by then been located, over the anomaly. The Forest Service undertook another Section 102 environmental impact statement, with appropriate ancillary procedures. The claims lapsed, and have been renewed, three times. Lawyers have corresponded and opined at length. Last month the final impact statement was issued, concluding that helicopter access would be preferable to our proposed road.

Last week we were advised our permit application was denied, but a new one, based on using helicopters to bring in the drilling equipment, would be favorably received. Helicopters, we figure, would add about \$80,000 to—and more than double—the cost of the project, without, in our opinion, any commensurate ecological benefit. The substantive application of the procedural Section 102 provisions, moreover, raises substantial legal questions. At this point, we haven't decided what response to make. My own feeling is that it is not worth further legal involvement—that we should either take the Forest Service terms or fold the project. On balance, I would favor the former, but we've still got some thinking to do.

In any event, it is quite clear to me that, should we do the planned drill hole, unless it turns up something very promising, Phelps Dodge's exploration of the Blue Range will be ended—at least so long as the area is administered as a wilderness. Not because it will not remain a promising target—for it will—but because the time and expense, not only of money but also of valuable talent, that would be involved simply cannot be justified. That would be unfortunate—not only for Phelps Dodge, but also for the country. Copper is a vital basic resource, and all trends indicate a strong need for increased reserves and production in the years ahead.

I am not implying, by these remarks, that all our public lands should be turned into copper mines. I do believe, however, that substantially all of them should be open to look for mineralization. Modern exploration can be conducted with little surface disturbance. Moreover, economic mineralization is a very rare phenomenon, and, obviously, an ore body must be mined where it is discovered. In the vast tracts of public lands only a small fraction will ultimately prove to contain mineralization of mining grade. Even if we were to find and mine all economic mineralization on the public lands, it is unlikely that any significant diminution of recreational and other uses would result. And the new mines would make a contribution to the national economy far greater than those of competing land uses, most of which can be readily fulfilled without locating them on top of ore deposits.

By way of illustration of the very small area used by hard-rock mining, consider the State of Arizona. No other country in the free world produces as much copper each year—nearly 900,000 tons in 1972. Yet all the copper mines of Arizona, and their related processing facilities and waste dumps, use less than 150,000 acres—about 0.2% of Arizona's total land.

In my opinion, public land administration should include a presumption in favor of mining where that land use is in conflict with another, and should also seek to encourage the search for new mineralization. That presumption should be rebuttable in appropriate instances, but the point is that mining, including exploration, should be an encouraged use of our public lands.

There is little evidence that today this is in fact the case. A great many bills are being introduced in Congress, on a number of key issues involving mining and the public, which could further impede mineral development, very possibly to a greater extent than intended by their sponsors. The issues include, among others, land use

planning, surface mined land reclamation, and revision of the Mining Law of 1872. Each has its own perils for mineral development. Land use planning legislation, if not carefully conceived, can inadvertently work to the detriment of unknown subsurface resources. In mined land reclamation, the major danger is that hard-rock open pit mining will become entangled in provisions aimed at coal strip mining-operations which are very dissimilar. Regarding the Wilderness, hearings will be held next month on S. 1010, Senator Jackson's bill to close those areas entirely to mineral exploration and development. I'll turn to mining law revision in a moment.

Many of the bills have a common withdrawal concept which, as it is usually stated, I believe is wrong. In general, the concept is that "areas of critical environmental concern" should be closed to development. The definition of these areas differs somewhat from bill to bill, but a common thread would include areas where "irreversible damage" could result from development. One can understand what the legislators are trying to state: the concept that there may be some lands which would carry a higher value to our people if left undisturbed than the value which could be obtained from the products of development. But the language of these bills, at least to date, states only the first half of the balancing equation and is silent on the second. Yet, as I noted at the outset, all mining activity must affect the land, and for much land which could be irreversibly affected by mining, the value of development will far outbalance the damage. Somehow, this must be reflected in any legislation evolving from the bills, or else the courts and administrators who interpret those laws will be forced to impede and deny much of this country's future mineral development, by the same logic and rules of construction that turned Section 102 of the National Environmental Policy Act into something far beyond what the legislators were probably thinking about when they wrote it.

Turning to the Mining Law of 1872, that law has been under heavy attack by environmentalists. While it has, on the whole, served the nation well and underlies our historically strong position in mineral production, the law has shortcomings and must be brought up to date. Several bills have been introduced in this and past Congresses to repeal it and enact a new mining law.

In general, the bills would substitute a leasing system for the present ownership—or patent—system of mineral development. In my opinion, this change of form need not, of itself, have any adverse effect on future mineral development, if certain important criteria are met. But it is essential that any new law should provide open access to the public lands to explore for minerals and, if a valuable mineral deposit is discovered, the right to develop it on terms known in advance. To the extent that these conditions are not met, we are likely to find an ever-diminishing portion of our mineral requirements satisfied from domestic sources.

It is obviously important that as new laws are written to reflect environmental concern they expressly place that concern in the intended relationship to the other national policies and needs on which it may impact. I think there are encouraging signs this is beginning to be done, probably because the failure of earlier environmental legislation to do so adequately is causing unnecessary disputes and unintended results.

Moreover, in the area of environmental law, where emotion runs high and rules of standing to litigate are eased, it is also important to construct legislation carefully, to remove, as far as possible, internal inconsistencies and high-sounding, but inaccurate, statements of purpose. For example, a number of recent mined land reclamation bills would provide systems of regulation to *minimize* and *control* mining's adverse effects, but also have "purpose" sections which declare grandly that the intent is to *prevent* those adverse effects. How is a court to deal with such a bill? The task of construction is not always easy, in such a situation, as *Ruckelshaus v. Sierra Club* attests.

While the greatest long-term danger to the viability of the domestic mining industry by way of conflict with environmental objectives is with respect to mining's access to the public lands, the most intense area of confrontation over the last few years has been over bringing mining's smelting facilities into compliance with the requirements of the Clean Air Act.

This is a subject of great importance, but I would hope it is not to be a problem of continuing conflict, since basically it involves reaching agreement on the most satisfactory way to alter existing facilities to respond to the law. Much progress has been made, although I suspect that a few years from now the courts will be called upon to make the final adjudication. To give you a general idea of the past and present of this dispute, I will give you a second, and my last, case study. It concerns the Phelps Dodge smelter at Douglas, Arizona.

Phelps Dodge operates three copper smelters in Arizona, of which Douglas is the oldest. What a smelter does, basically, is to take copper-bearing material and melt it, taking advantage of the different physical and chemical properties of different substances to separate out the copper. Because most copper ore is a sulfide mineral of one sort or another, sulfur is another major component of the material introduced into the smelter, where it is burned off in gaseous form—principally as sulfur dioxide.

The Douglas smelter was built over 60 years ago, primarily to handle the production of the Phelps Dodge mines in nearby Bisbee, which today are nearing the end of their productive lives. The mines and smelter have long provided by far the principal economic support for the entire neighboring area of Southeastern Arizona, directly on the Mexican border. After the Bisbee mines have closed, the smelter's continued operation would be a substantial benefit to the Douglas community, and because there is a scarcity of smelting capacity in the United States, it is reasonably clear that the smelter could operate into the indefinite future, even without Phelps Dodge ore, by expanding the service it presently renders as a custom smelter for other mines in Southern Arizona.

By 1970, however, it also was clear that future operation of the smelter would require control of its emissions—both particulate and sulfur oxides. Unfortunately, the regulatory scheme got off on the wrong foot, and has ever since been tottering, more or less off balance, as it attempts to recover the proper direction. We started out badly, I believe, because our national enthusiasm for what was then an exciting new cause demanded quicker action than could be based on sound analysis and was not willing to balance any offsetting or complicating considerations. The new federal agency—NAPCA, since merged into EPA—which was set up to handle the federal air quality program was long on commitment to its mission, but understandably short on knowledge and experience. The mining industry was no more experienced, and its knowledge, which was considerable, had not yet been focused.

In any event, Arizona, which early in 1970 adopted ambient air quality standards for sulfur dioxide which, through subsequent amendments, have remained more stringent than the Federal standards, held a hearing in April 1970 to set an emissions control standard for copper smelters. At that time, NAPCA staff had concluded that 90 percent of the sulfur put into any copper smelter should be captured and not emitted into the atmosphere, and apparently believed the cost of this for the entire industry would be considerably less than what it ultimately developed would be Phelps Dodge's cost to modify either one of its two larger smelters. NAPCA representatives advised the Western smelting state authorities of their conclusions.

The hearing probably marked the low point for our industry. The smelter operators, as a group, were allocated the same few minutes to be heard as any other person or group which wanted to speak. Our spokesman was soundly jeered. The first Earth Day was only five days away, and many residents of metropolitan Arizona were forcefully antismiter in the mistaken belief—or false hope—that the growing air pollution of Phoenix and Tucson was caused by the smelters, and not by emissions of their own making. The Arizona Board of Health adopted the 90% requirement; each smelter was accorded approximately three years to come into compliance.

After the hearing, it was quite evident to Phelps Dodge and its smelting competitors that the viability of the industry was badly threatened by the misinformation coming from NAPCA. Singly and through our trade association we began belatedly to respond—putting together as much of the correct data as we could amass, and talking to everyone we could find who would listen to us: NAPCA, Commerce, Interior, Congress, state governments, the press, almost anyone. And slowly we made a little progress. Of our efforts, Professor William Rodgers, an articulate environmentalist and Professor of Law at the University of Washington, has said: "In these days of gentle persuasion and subtle innuendo, there is something refreshingly candid about the copper producers, whose politics, like their technology, is nineteenth century vintage." He meant this as a slur, of course, to mock our efforts and make them seem somehow wrong. But there was no need to adopt any devious tactics that would have been more appealing to his sophisticated tastes. We were being unfairly sandbagged and we yelled, and at least some people listened.

Under the 90% regulation, it soon became clear the Douglas smelter had a very limited future. Douglas smelts about 8% of the country's annual production of copper, but nonetheless, as the engineering estimates were developed for a plan to comply with the regulation, we were forced to conclude that the costs were of such

magnitude that they could not be economically justified. The capital costs alone were estimated at \$74 million, for a plan which included a substantial reduction of the smelter's capacity—but which could not include any guarantee that the regulation would in fact be met.

At the end of 1970, the Clean Air Act was extensively amended. The EPA was created, and empowered to set national standards for ambient air and issue guidelines for the states to meet them. Each state was to apply the guidelines to develop its own plan to implement the standards, and if it failed to do so adequately, the EPA was authorized to take the job over. The EPA issued its guidelines on August 14, 1971, and therein modified its position on 90% sulfur removal by copper smelters slightly—but enough, we felt, to give Douglas a fighting chance.

In October, Phelps Dodge petitioned Arizona to reconsider her regulations, and in December, the Arizona Board of Health had a second hearing on them. We were given a much fairer amount of time than at the earlier hearing, and presented our case in considerable detail. Representatives from the City of Douglas and of our smelter employees and their unions appeared to support us. The Board took the matter under study. After that study, it held a third public hearing, in May 1972, adopted new regulations governing smelter emissions, and filed its implementation plan with the EPA. Basically, the new regulations called for positive emission controls, either by capture of the sulfur or by permanent reduction of its input, in an amount calculated to bring the ambient air in each smelter area within the federal annual primary standard, and beyond that an additional program of control, the form of which could be selected by the operator, to bring the ambient air within the stricter state ambient standards.

Douglas, we figured, could operate under such regulations. Even reducing the smelter feed enough to meet the primary annual standard would still permit the smelter to operate effectively, and the total cost for emissions controls—now principally for particulates but also including an intermittent control system for SO_2 —would drop from \$74 million to about \$17 million—a cost which could be justified. The regulations also, our attorneys thought, fitted very well the requirements and intent of the federal Clean Air Act.

But last July, the EPA surprised us by rejecting Arizona's plan, and those of most of the other Western states having smelters, and proposing substitute regulations. Under these, Douglas would again have been required to capture 90% of its sulfur, or shut down. This time, however, that percentage had been calculated especially for Douglas, allegedly based on air quality readings made in the area by the Arizona Department of Health. Each other smelter had its own different requirements, depending on these readings.

When we looked closely into the proposed regulation for the Douglas smelter, a rather surprising fact quickly appeared: the supposed "readings" on which the fate of the smelter rested were taken from a malfunctioning air monitor which was removed from service as "defective" the very next day. Similar aberrational measurements had been used for many of the other smelters. Poor staff work had again placed the EPA, and our industry, in an unnecessary and perilous position.

Hearings were held on the EPA proposals last September, and their deficiencies were quite thoroughly documented. Arizona declined to adopt the EPA proposals, and EPA has not done so either, to date. The EPA staffs in Durham and Washington have since had them under review and revision.

The hearings, I am sure, made senior EPA officials aware of the very inadequate staff work that had gone into the proposals. Moreover, one of our competitors, The Anaconda Company, put the proposal with respect to its smelter in Montana, and procedures followed at the hearing on it, before the U.S. District Court for the District of Colorado, where it sued to enjoin EPA from promulgating any final regulation based on them. Judge Winner, therefore, if he is here this morning, is now having to listen to this narrative for the second time—for Anaconda's experience was very similar to ours, right down to the misuse of inaccurate readings. He granted the injunction, in *The Anaconda Company v. Ruckelshaus*, with a very forceful opinion which again underscores the necessity for professionalism, competence and sound procedure in the administration of regulations of such far reaching effect. And I hasten to add that, as the agency has gained experience and expertise, it has made very significant progress toward these goals.

EPA's continued indecision to date, however, is increasingly awkward for Phelps Dodge, for under Arizona law we must continue to work to bring Douglas into compliance with Arizona's regulations, on a fairly strict timetable, and at a cost of some \$17 million. Yet those regulations have not been accepted by EPA,

and the money being spent daily on our control program is at the risk of total loss, should EPA affirm its present proposal and mandate the smelter's closing.

In my opinion, nearly all of the complexities just described were unnecessary and wasteful, not only in manhours and money, but also in lost progress on emission programs. The entire dispute has been not on whether smelter areas should enjoy the ambient air standards set for the nation, but how best those standards should be reached, and to me the position of EPA has therefore always seemed illogical. As far as Douglas is concerned, although Phelps Dodge can't justify the expense of trying to comply with EPA's proposal, we think we can meet the ambient standards for a cost we can justify, and we are willing to put up \$17 million in the belief we are correct, even though the plant can be subsequently shut down if our program doesn't work. It seems to us EPA should at least let us try.

There are some lessons which might be drawn from this conflict, the most important of which is to emphasize the care with which EPA must handle its very great power. Regulations involving large social and economic costs must be based on careful study of all the factors involved, and should not rest on an assumption that any error on the side of its mandate to improve our environment will be acceptable.

The thrust of my remarks this morning has been two-fold. First, Congress in considering environmentally oriented legislation, must take care—greater care than has sometimes been taken in the past—to assure that all intended balances with other goals and necessities are explicit, and that purposes and objectives are realistically, rather than idealistically, drafted. Secondly, the EPA, and other government agencies dealing with environmental matters, must maintain a high level of professional competence and objectivity and base their rule-making on a careful weighing of the costs of any proposed requirement against the benefits sought to be achieved.

Continued inattention to these imperatives must serve ultimately to obstruct progress on environmental protection and, even more important, could critically impair the social and economic strength of our country. Before we move into our new post industrial era, it would be well to reflect on what the industrial era has meant to us. Pollution, say some; creeping suburbia, say others; and the list of disadvantages can be made nearly endless. But industrialization has also meant the benefits of electrification, modern transportation and communications, power to replace much of man's physical labor, and countless other advances which have ameliorated many of the adversities which have afflicted earlier generations of mankind. To me, the following statistics far more than offset all the disadvantages, real and imagined, of our system: in 1900, when these benefits were still in early stages of availability, a white child born in this country had, at birth, a life expectancy of 47.6 years; a non-white child could expect to live only 33 years. In 1970, a white child at birth had a life expectancy of 71.7 years, and a non-white's had nearly doubled to 64.6 years.

I know of no reason why further advances should not continue into our new post industrial age—indeed, further advance is assured, if we can improve the opportunities of the many Americans still living in poverty. But we must remember that what has been gained has been because of our industrial age, not despite it, and that the winning of our natural resources—not only hardrock minerals but also energy resources and all the others—made this possible. Mineral development will be as important to the welfare of our citizens in the future as it has been in the past—and it can and should be conducted in a manner which will minimize environmental damage, as has not always been done in the past.

But we must always remember that man cannot take mineral wealth from nature, and obtain its benefits, without changing nature in some degree. The object of environmental regulation must be to keep that change within acceptable limits, balanced against the gains derived from it—and its ultimate test should always be whether what we can gain from a regulation is more valuable than what we can lose.

A CASE HISTORY OF MINERAL EXPLORATION EFFORTS IN A PRIMITIVE AREA

JULY 18, 1973.

Near the eastern border of Arizona, in Greenlee County, is Phelps Dodge's major mine—Morenci—the second largest copper mine in North America. It produces about 120,000 tons of copper annually, and together with a new mine

now being developed adjacent to it, has reserves of over 1 billion tons of ore. Just to the south, in Safford, is a highly mineralized area where another Phelps Dodge mine is being developed. Just to the north is the Blue Ridge Primitive Area in the Apache National Forest. All share the same geologic environment favorable to the existence of porphyry copper orebodies, but there is one major geological difference. In the Blue Range, the favorable host rock is covered by over 2,000 feet of barren, post-mineralization volcanic rock; at Morenci and Safford, much of that volcanic rock has been eroded away, leaving the mineralized area more readily accessible.

As a result, much exploration and mineral development activity has been conducted in the Morenci and Safford areas, and virtually none in the Blue Range. Phelps Dodge has done preliminary work there and had identified it as an obvious area of future interest. In 1969, it was decided to try a limited exploration program, to test, if nothing more, the belief that a favorable geologic environment for copper ore existed under the barren volcanic rock.

A location was selected slightly more than a mile inside the primitive area, which seemed a likely spot to drill a deep hole through the volcanics into whatever lay below. Phelps Dodge located claims in December 1969, and asked the Forest Supervisor for a permit to drill the hole and build a temporary trail to move the drill rig in and out.

A flurry of correspondence ensued, with Phelps Dodge responding to various Forest Service requests for information. At the request of the Forest Service, the location of the proposed hole was moved to a point only 1200 feet inside the primitive area. In April 1970, the claims lapsed for lack of discovery work, and they were relocated. In June, the Forest Service advised that consultations with the Council on Environmental Quality indicated that a permit to build the one-third of a mile temporary trail and to drill one hole constituted a major federal action significantly affecting the quality of the human environment, so that the Section 102 procedures of the National Environmental Quality Act of 1969 were operative. Accordingly, the Forest Service contacted 17 additional government agencies to ask their views on the project, and an impact statement was prepared. In August, the claims lapsed a second time and were relocated.

In October 1970, the permit was finally issued, a bond was posted and the building of an access trail was commenced. The purpose of the drill hole was two fold. First, to penetrate the volcanics and see what was underneath. Second, to conduct a radial induced polarization test from down in the hole, to see if any anomalous response might signal a possible orebody in the area. When the hole reached 2,730 feet below the surface, it broke through the volcanics and, as hoped, into rock types similar to those associated with the great Morenci ore deposit. It also intersected measurable traces of copper above background values, and the downhole induced polarization survey picked up a definite anomaly.

The drilling program was completed in April 1971. By August the reclamation work was finished, and today it is hard to tell any exploration had been conducted there. By September 1971, the results of the program had been analysed, and the drilling of a second hole, to test the anomaly, was authorized by management. In October, Phelps Dodge advised the Forest Service of its plans to continue the exploration by drilling another hole. This time, the only major differences were that the temporary access road was to be 3.8 miles long, and there was a much more favorable target—although an anomalous response to an I.P. survey is more often caused by worthless pyrites than by copper mineralization.

The spring of 1972 saw renewed activity. New claims had by then been located, over the anomaly. The Forest Service advised Phelps Dodge that a new permit would be required which would constitute a new major federal action requiring another Section 102 environmental study and impact statement, with appropriate ancillary procedures. The claims lapsed, and have been relocated, three times. Lawyers have corresponded and opined at length. The final impact statement was issued in May, 1973, concluding that helicopter access would be preferable to a trail.

On June 14, 1973, one year and eight months after first contacting the Forest Service, Phelps Dodge was advised that its permit application was denied, but a new application with detailed operating plans based on using helicopters to bring in the drilling equipment, would be favorably considered. Helicopters would add about \$80,000 to—and more than double—the cost of the project, without any commensurate ecological benefit.

It is quite clear that, should the planned hole be drilled, unless it turns up something very promising, Phelps Dodge's exploration of the Blue Range will be ended—at least so long as the area is administered as a wilderness. Not because it will not remain a promising target—for it will—but because the time and expense, not only of money but also of valuable talent, that would be involved simply cannot be justified. That would be unfortunate—not only for Phelps Dodge, but also for the country. Copper is a vital basic resource, and all trends indicate a strong need for increased reserves and production in the years ahead.

Senator METCALF. We will be recessed subject to the call of the Chair.

[Whereupon, at 5:45 p.m., the hearing was recessed, subject to the call of the Chair.]

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APPENDIX

[Under authority previously granted, the following statements and communications were ordered printed:]

STATEMENT OF THE WESTERN OIL AND GAS ASSOCIATION

Mr. Chairman and Members of the Subcommittee: This statement is presented on behalf of the Western Oil and Gas Association, a petroleum industry trade organization whose member companies produce, market and refine 90% of the crude oil, natural gas and associated hydrocarbon substances in the six western states of California, Oregon, Washington, Alaska, Arizona and Nevada. The principal offices of the Association are in Los Angeles, California.

The bill under consideration today, S. 1010, seeks to amend the Wilderness Act in two important particulars. First, it would eliminate the present right to conduct prospecting within national forest wilderness areas. Second, it would terminate application of the mining and mineral leasing laws as they currently apply to national forest lands within the wilderness system.

For nearly five years our industry, in conjunction with other natural resource industries, opposed enactment of wilderness legislation. The question of whether this country needed an additional restrictive type of land classification was endlessly debated at public hearings held throughout the western states. On two separate occasions, September 6, 1961 and April 9, 1963, the Senate passed wilderness bills only to see the House of Representatives reject them for what we felt were good and sufficient reasons. Finally, in 1964 both the Senate and House passed wilderness legislation and, following an unusually long conference, the present Wilderness Act was created and subsequently signed by the President. The Conference Committee's work resulted in an admitted compromise which provided that the mining and mineral leasing laws would remain applicable to areas of the national forest included in the wilderness system until December 31, 1983. The bill under discussion today, S. 1010, seeks to undo that compromise.

We are opposed to the enactment of S. 1010 and believe that your Subcommittee, after full and complete study, will concur.

It seems to us that small but constructive step towards eliminating the nation's current hard minerals and petroleum shortage would be to leave unchanged Sections 4(d) (2) and (3) of the Wilderness Act.

Section 4(d) (2) of the Act, which provides for prospecting within national forest wilderness areas, is a helpful tool for those whose business it is to find new commercial mineral deposits. The built-in restraint found in the present language of this section, i.e. that prospecting must be conducted "in a manner compatible to the preservation of the wilderness environment" should allay the fears of those who regard mineral prospecting as a threat to the environment. While the provisions of Section 4(d) (2) have not been frequently used by our industry in the years since enactment of the Wilderness Act, the occasion may arise at any time where industry exploratory efforts on non-federal lands would be greatly influenced by surface investigations of wilderness areas in the vicinity. We believe, the minerals industry, as a matter of principle, should have the same rights of scientific investigation as any other segment of society. By the proposed amendment of Section 4(d) (2) found in S. 1010 you deny us equal status.

The bill, S. 1010 provides that two competent federal agencies, the Bureau of Mines and the Geological Survey will survey the mineral potential of wilderness areas in the national forests "on a recurring basis" and make available their findings for public and governmental use. While the present language of Section 4(d) (2) also provides for such surveys it is important to make a distinction between the cursory examination of land to determine potential mineral value and the careful analytical approach taken by private enterprise seeking to meet a need—in this case for new mineral reserves. The concept that national forest

wilderness areas should serve as a natural resource "deep freeze" is erroneous. At such time as the nation might critically need these resources time would not permit their development. It must be remembered that a lead time, measured in years, is necessary to transform raw geologic data into productive mineral development.

The existing 14.3 million acres of national forest wilderness represent but one of several wilderness classifications under the Wilderness Act. The Fish and Wildlife Service has presently classified 103,000 acres as wilderness and there are pending wilderness proposals from this department totaling 800,000 acres. The National Park Service has classified 200,000 acres as wilderness but have an additional 28 million acres of proposed lands under study. All of these lands are either presently closed to mineral entry, or will be closed if classified as wilderness. Finally, the Forest Service, in addition to the existing 14.3 million acres already classified as wilderness, is studying 11 million additional acres for possible inclusion in the wilderness system.

We see a trend towards wholesale inclusion of public lands in the wilderness system irrespective of the merits of such inclusion simply as a means of holding federal land in a status of "no development". The Public Land Law Review Commission held that areas to be considered as national forest wilderness should possess some "unique" qualifications over and above mere "wildness". We agree.

To close 60 to 100 million acres of America to mineral exploration for any reason is unwarranted. To close 14 million acres of national forest wilderness areas to exploration under the mining and mineral leasing laws at this state in our history, is dangerous. Surface geological investigations can be conducted over millions of acres without harm to the environment. At most, a very small amount of this acreage would be of sufficient interest to warrant subsurface geological investigation, which also can be conducted with minimal impact on the environment. If the data obtained from these investigations warrant the drilling of a well only a few acres are affected; should the drilling of a well result in the discovery of a major oil field it is likely that only a few thousand acres, of the million initially explored, would be productive. It is imperative that we restore some national sufficiency as regards hard rock minerals and non-renewable resources. Who is to say that lands presently included in the wilderness system, as well as those under consideration for inclusion, do not possess substantial reserves of crude oil and natural gas, oil shale, tar sands, geothermal steam, gold, silver, copper, etc. Wilderness figures to date indicate that these millions of acres are being and probably will continue to be used by a comparative handful of Americans. We believe ample wilderness exists and will remain to satisfy the needs of these people. The proposed amendments to the Wilderness Act encompassed in S. 1010 are not in the national interest.

NL INDUSTRIES,
MINING & EXPLORATION DEPARTMENT,
Golden, Colo., May 14, 1973.

Senator HENRY M. JACKSON,
Senate Office Building, Washington, D.C.

SIR: Thank you for your letter of May 1, 1973 in which you indicated that "Our Nation's mineral wealth is not confined to this tiny fraction of our land base." (i.e. Wilderness Areas).

I feel it is important to remember that the geologic forces which have worked upon the earth's crust to produce areas of great scenic and aesthetic value are, very often, the same geologic forces which have resulted in the chemical deposition of valuable mineral deposits.

In order to make intelligent judgments regarding the relative aesthetic value of existing wilderness areas compared to say, the social and economic value of mineral deposits located in the wilderness areas, an adequate period of time for making this assessment (as provided for in existing legislation) should be permitted. Former "wilderness-area-selection-processes" can be evaluated more accurately to determine if the land-use alternatives were adequately studied before selection as a wilderness area.

I strongly support the concept of "wilderness areas", but only if the alternative uses of the land have been honestly and accurately considered before "wilderness" designation.

If the mineral potential of existing wilderness areas has been (1) thoroughly evaluated and (2) determined to be of little consequence prior to selection, then it is highly unlikely that the mining location and mineral leasing statutes will be applicable in any event.

On the other hand, if the "wilderness-area-selection-process" has not carefully evaluated the mineral potential, the time period permitted under present law should be sufficient to point this out.

For these reasons I urge you to reconsider your position with respect to S. 1010.

Sincerely,

BROWER DELLINGER.

SALT LAKE CITY, UTAH, August 7, 1973.

Senator HENRY JACKSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: It is with considerable disappointment and dismay that I have learned of your efforts to change the agreed-to 1984 date for final foreclosing of mineral entry into wilderness areas. This move breaks faith with the mineral industry of the United States which reluctantly went along with the Wilderness Act in 1964. It also endangers the mineral supply position of the United States which daily is becoming more precarious. It is my feeling that our Congress would better devote its efforts to finding ways to promote mineral production in the United States rather than hindering it as your move will do.

Yours very truly

ERNEST L. OHLE.

TOMBSTONE EPITAPH,
Tombstone, Ariz., July 5, 1973.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS OF THE SENATE,
Senate Office Building,
Washington, D.C.:

For nearly a quarter of a century I have been actively engaged in mining and prospecting, along with the newspaper business.

I am alarmed as more and more inroads are made upon the rights of the general public on our so-called Federal Lands. It appears that through bureaucratic directives and minor changes in the laws, little by little the concept of the greatest good for the greatest number is being changed to follow the desires of a comparatively few vocal and well-monied groups.

Today I am particularly concerned about Senate Bill 1010 which would eliminate the right of citizens under the Wilderness Act to prospect within the wildernesses through certain dates, as provided by law.

Many miners have already expended considerable time, effort and money in programs of exploration for minerals, as provided by law, in the Wilderness areas. Certainly it is unjust to cut them off in the midst of programs that they initiated under the law.

I respectfully suggest that Bill S. 1010 die through lack of action.

Cordially,

WAYNE WINTERS, *Editor,*
President, Arizona Small Mine Operators Association.

IDEAL CEMENT CO.,
Denver, Colo., July 17, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

SENATOR METCALF: Ideal Cement Company, a Division of Ideal Basic Industries, Inc., is a major producer of portland cement in the United States. We do not favor passage of S. 1010, a bill introduced by Senator Jackson to provide for the termination of the application of Mining and Leasing laws in Wilderness Areas. We offer the following comments and request that they be made part of the Hearing record.

Recent developments, such as the energy crisis strongly emphasize the critical needs for raw materials and fuels that are required to sustain our present and future economy. The mining industry must be allowed to develop our natural resources in order to maintain the economic and military strength needed for the well-being of our citizens. The mineral deposits, by their very nature, of our nation must be developed where they are found. Commercial ore deposits are rare.

Amendment of the Wilderness Act of 1964, as proposed by S. 1010, would remove thousands of acres from access, currently open to mineral exploration until December 31, 1983. New exploration techniques are being developed and are necessary for new discoveries of mineral deposits which, because of their depth or characteristics, have not been discovered to date. It would appear to be poor conservation to remove this acreage from exploration and mining in this time of need.

The Wilderness Act, in its original form, was consummated by knowledgeable persons, after much study and consideration. Under present conditions, it exemplifies the concept of multiple use, which we endorse, and represents a workable compromise between the mining industry and preservationists.

If the mineral potential of our nation is to be realized the mining industry should have reasonable access to these lands as now provided for in the Wilderness Act, not only until December 31, 1983, but longer.

As a member of the American Mining Congress, we support and endorse their testimony on this important matter.

Sincerely yours,

V. E. WESSELS,
Senior Vice President.

IDAHO MINING ASSOCIATION,
Boise, Idaho, July 16, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuel, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: The Idaho Mining Association, which represents virtually all of the mining, mineral processing and exploration operations in Idaho, respectfully requests that the hearing on July 18 before your subcommittee on minerals, materials and fuels record this statement of its strenuous opposition to the enactment of S. 1010, which would repeal those provisions of the Wilderness Act (Stat. 78 890) which extend the application of the mining and mineral leasing laws in wilderness areas to December 31, 1983.

It is our sincere conviction that this legislation is unwise, unwarranted and definitely not in the public interest at a time when practically all authoritative studies and projections—including the very recent final report of the National Commission on Materials Policy—point to an impending crunch in mineral raw material supplies, national and world-wide, that will pale the current energy shortage by comparison. The outlook holds grave implications for our nation's already perilous imbalance of payments, its monetary integrity and, in fact, its economic stability. Foreign prices of many metals, including silver, lead and zinc which Idaho produces in substantial quantities, are currently well above our government-controlled domestic prices, and, as domestic sources of supply decline, our increased reliance on foreign sources will unquestionably push foreign prices higher.

The critical need for a strong domestic mining industry and for the encouragement of private enterprise in the development of domestic mineral resources was clearly and forthrightly recognized by Congress in the enactment of the National Mining and Minerals Policy Act about three years ago. To literally "lock-up" the potential mineral resources on vast acreages of public lands in wilderness areas would be, in our view, a direct violation and contradiction of that policy.

In its final report entitled "One Third of the Nation's Land," the Public Land Law Review Commission recognized with considerable emphasis that our national welfare, our standard of living and our survival as a leading nation depend heavily on the assured availability of fuel and nonfuel minerals. The Commission also recognized that mineral production is ordinarily the highest economic use of land because the amount of surface area disturbed by such production is minute in relation to its vital contribution to the national and public welfare.

In the absence of a clearly demonstrated, overriding national interest, we believe that wilderness areas would remain available for mineral exploration and development. The relative rarity of economic mineral deposits would seem to provide adequate assurance that such a policy would not endanger any substantial amounts of wilderness acreage.

More than 75,000,000 acres of public land are now in wilderness areas or potentially eligible for wilderness designation—in primitive areas, national parks, wildlife refuges and national forest "roadless" areas (now under study for wilderness suitability and currently managed as such.) This constitutes approximately

10% of the total federal lands. Much of this land is regarded as geologically favorable, with good to excellent potential for mineral production.

In Idaho almost 20 per cent of our national forest lands and more than 10 per cent of our total federal lands are in wilderness areas or eligible for such classification as primitive or "roadless" study areas. Much of this land is highly favorable for mineral deposition.

We believe it would be a serious mistake and a distinct disservice to the public interest to foreclose mineral exploration and development in wilderness areas at the time of classification. The record of the administrative agencies and the congress, in recommending and approving additions to the wilderness system since passage of the act, is not at all conducive to any feeling of optimism that recognized mineral areas will be excluded from such classification in the future.

The need to preserve tens of millions of acres of public lands in a wilderness status has not been established by any credible study or any projection that did not assume a stable and growing national economy with ample supplies of mineral raw materials. On the other hand, the imperative need for assured supplies of these materials has been clearly demonstrated by the current energy squeeze.

In view of the mineral supply shortage that is widely anticipated in the not-too-distant future, it would seem to us more logical—and would better serve the national interest—to extend indefinitely, rather than terminate now, the provisions of the Wilderness Act which permit the exploration, evaluation and development of mineral deposits in wilderness areas under appropriate restrictions that assure minimum disturbance of the adjacent and surrounding wilderness environment.

Very truly yours,

A. J. TESKE, *Secretary.*

FORT COLLINS, COLO., July 13, 1973.

HON. LEE METCALF,

Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Senator Jackson's proposed amendment to the Wilderness Act is but one of many pieces of legislation that threaten to sap the strength of this nation and eventually, bring about her downfall. Today, we seem more concerned with luxuries than we are with the vital needs of this nation.

This bill (S. 1010) will forever lock up the very mineral commodities needed for a strong economy and a vital defense. Examination of the Secretary of the Interior's report as issued under the direction of the Minerals Policy Act of 1970 shows very vividly the scarcity of most mineral resources this nation uses for her needed production of goods and services. Huge tonnages of raw materials that are available within our boundaries are imported at untold cost, reflected in unemployment, continued devaluation of the dollar, and reduced national security.

We Americans have frequently criticized the people of India who, though starving, won't eat the cows that roam their streets and land because they are considered sacred. I fail to see the difference, except in degree, between setting aside a cow that is needed by an individual to survive and in setting aside a mineral deposit that is needed by a nation to survive.

We are presently on the uncomfortable fringes of an energy crisis that promises to become increasingly serious before it improves. The shortsightedness that precipitated this crisis has laid the groundwork for comparable shortages in minerals. Mistakes that brought about the energy crisis are being repeated with regularity in the field of minerals.

Why is it so difficult to understand the truth that "Minerals can be mined only where they are found"? Agricultural crops, cities, factories, highways, and even Wilderness areas can, within reason, be located in a number of different areas. But, if you want a ton of lead ore you don't select the most "appropriate" site and start digging—no, you go to the place where the ore lies. This truth applies to all mineral commodities.

One of Senator Jackson's arguments for prohibiting mining in Wilderness areas is that they constitute a minute portion of the nation's total land area— $\frac{1}{2}$ of 1%. If every acre contained an equal amount of mineral resources, this argument might be valid. Unfortunately, the very forces that uplifted the earth's crust to form the lofty mountains appreciated as wilderness also produced the circumstances that favored the deposition of minerals. Wilderness and ore bodies frequently coincide. The Wilderness areas may well be less than $\frac{1}{2}$ of 1% of the nation's total surface acreage, but they also contain a much larger percentage of our total mineral reserves.

Lest there be concern about the mining industry leveling the entire 14.3 million acres now designated as Wilderness to sea level, let it be understood that only a very small percentage of these lands contain mineral deposits of economic size. Mining throughout the entire nation since its inception has used about 2/10ths of 1% of the total expense of the country.

According to Senator Jackson, an inventory of the mineral resources found in Wilderness areas will be maintained by the government, and needed deposits can be worked during periods of "National Emergencies". There are two fallacies in this thinking: (1) the time required to bring a virgin mineral deposit into production is at least two to five years. An enemy of this nation could have victory long before one ton of ore could be produced. (2) Wilderness area mineral determinations presently made by the Bureau of Mines and the Geological Survey are, by their own admission, substandard and inaccurate. Due to the lack of manpower, time and money, these agencies are incapable of accurately determining the existence and extent of commercial ore bodies in Wilderness areas. Detailed exploration to locate and define ore bodies can best be done by private enterprise.

Promoters of Wilderness stress its "spiritual, educational, aesthetic, recreational and scientific values", and the need for the land for our posterity. I have no quarrel with these high ideals so long as they are not pressed to the ridiculous. The few thousands of acres of Wilderness that would ever qualify for mining will not wipe out these worthy goals. Even mined areas eventually go back to wilderness. There will always be virgin areas of land not needed by civilization available for coming generations for their solitude.

Sir Winston Churchill once said:

"The duty of governments is to be first of all practical. I am for makeshifts and expediency. I would like to make the people who live on this world at the same time as I do, better fed and happier generally. If incidentally I benefit posterity—so much the better—but I would not sacrifice my own generation to a principle—however high or a truth however great."

While I do not presume to speak for this gentleman and statesman in this particular situation, I do not feel that he would have sided with Senator Jackson on S. 1010.

I would appreciate it if this letter were made part of the hearing record of S. 1010.

Sincerely,

THOMAS C. SERSEN.

ALLIED CHEMICAL CORP.,
Morristown, N.J., July 17, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, Washington, D.C.

DEAR SENATOR METCALF: The critical need for raw materials and energy to sustain our present and future standard of living has been stressed in government and industry studies and reports, such as "First Annual Report of the Secretary of the Interior under the Mining and Minerals Policy Act of 1970". The current energy crisis re-emphasizes these needs. Minerals must be discovered and exploited where they are found in the earth.

S. 1010 would remove thousands of acres from access, currently open to mineral exploration until December 31, 1983. It is poor conservation to remove this acreage from exploration and mining when known reserves are rapidly depleting and when the present economy demands more raw materials to maintain the standard of living that Americans enjoy today. S. 1010 also would stop exploration plans and commitments made under the mining provisions of the present Wilderness Act.

The amendment under consideration also conflicts with the Mining and Minerals Policy Act of 1970 (PL 91-631) which states:

" . . . it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in . . . the orderly and economic development of domestic mineral resources . . . "

If new subsurface orebodies of the United States are to be discovered and mined, the mining industry should have access to these lands, not only until December 31, 1983, but longer.

In summary, I believe careful consideration should be given to the potential adverse effects this amendment could have on not only the mining industry, but also the total economy of the United States.

WILLIAM C. RUCH,
Executive Vice President.

GARDNER-DENVER Co.,
Denver, Colo., July 12, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR: Recent gasoline shortages, power failures and increased prices for mined metals force this country to expand the search for minerals.

Bill S. 1010, if passed, would reduce exploration, repeal mining provisions and in general; would have ill effects on our nation.

Accordingly, we wish to go on record as being strongly opposed to proposals of this bill. The future economy of many people in our company, along with large numbers of residents of Colorado depend on an active and producing minerals industry.

Very truly yours,

J. L. PAYNICH,
District Manager.

GRAND JUNCTION COLO., July 5, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials, and Fuels, Committee on Interior and Insular Affairs, Washington, D.C.

DEAR MR. METCALF: Although I do not now, nor expect to have any personal interest in lands which would be affected by repeal of the mining provisions of the Wilderness Act, I strongly oppose such repeal based on over 25 years experience in the mining field during which I have gained a broad knowledge of the increasing needs of the nation for minerals and the decreasing ability of the mining industry to supply these needs.

It is quite obvious to persons acquainted with the facts that the best interests of the public at large will not be served if the mining industry is further hampered in its efforts to supply our needs, even though a limited number of persons purporting to speak for the public so strongly support such action.

I appeal for consideration of the interests of those many millions of people who will be affected but who do not speak out at times like these because they are not aware of the effect it will have on them.

Thank you for your consideration of my opinion on this matter.

Yours very truly,

C. P. MARTIN.

CONTINENTAL OIL Co.,
Denver, Colo., July 17, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: Inasmuch as it is impossible for me to testify at the July 18 hearing on the Amendment to the Wilderness Act, I would like to submit the following statement.

The United States is not presently self-sufficient in many critical minerals essential to our country. The Wilderness Act of 1964, as written, allows mineral exploration until December 31, 1983, and 1983 should continue to be the target date. I see no logical mandate to change the timetable. The USGS and Bureau of Mines have not completed their survey and assessment of all the areas involved. The loss of ten year's time to survey the mineral potential of the national forest wilderness areas would have a catastrophic impact on each citizen of the United States.

Statistics indicate that the odds against finding a good, commercial, orebody are heavily weighted against us, which makes the chances of a mining operation in a wilderness area or elsewhere quite remote. Nevertheless, the Congressional leadership and the minerals industry should have a priority concern for the evaluation and assessment of the mineral potential, along with the USGS and Bureau of Mines, before closing the gate and locking out the industry. Meanwhile, utilization of the proposed wilderness will not be hindered or impaired.

Have we learned the lesson in our current energy crisis that foreign supplies of necessary commodities cannot always be depended upon and are often used as a big political stick.

Thank you for the opportunity to state briefly my personal views of the minerals industry on this proposed amendment. You may recall that I was a resident of Billings, Montana from 1962-1967 and we had the opportunity to meet on a number of occasions.

Very truly yours,

A. P. LORFING,
Manager of Lands, Minerals Department.

LAKEWOOD, CALIF., July 11, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials, and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: I have read news releases reflecting that you will be having public hearings on July 18 for the purpose of receiving testimony on Senate Bill 1010 which would repeal the mining provision of the 1964 Wilderness Act. Although it is impossible for me to offer testimony at this hearing, I respectfully request that you make this letter a part of the hearing record.

I have a grave concern for the tremendous deficit of balance in the nation's spending with a large portion of this deficit being required to buy mineral commodities from foreign countries to supply our nation's need. If mining is repealed as provided in Senate Bill 1010, large quantities of acreage which are very geologically favorable for the development of natural resources will be eliminated thus worsening our need for mineral import and consequently worsening our balance of paid deficit.

I am further concerned about the repeal of mining in wilderness lands as a result of having read the first and second annual reports submitted by the Department of Interior under Public Law 91-631. It is difficult for me to understand why Congress would seriously consider adding to the shortage of minerals by catering so dominantly toward environmentalists who are totally irresponsible in their demands to limit or prohibit exploration by requesting land withdrawals and sponsoring legislation which will increase the costs and lessen the potential for mineral exploration.

I respectfully request that you let the hearing record on Senate Bill 1010 reflect that I am definitely against prohibiting mining under the 1964 Wilderness Act but rather that this right be extended beyond its current expiration date of December 31, 1983.

Cordially yours,

OMER R. HUMBLE.

AMERICAN FORESTRY ASSOCIATION,
Washington, D.C., July 23, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Senate Committee on Interior and Insular Affairs.

HON. FLOYD K. HASKELL,
Chairman, Subcommittee on Public Lands, Senate Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

DEAR SENATORS METCALF AND HASKELL: Although we did not present testimony on S. 1010, an act to amend the mining provisions of the 1964 Wilderness Act—at the hearings on July 18th, The American Forestry Association would like to go on record in support of S. 1010, and respectfully request that this letter be inserted in the hearing record as our position statement.

The American Forestry Association is one of the nation's oldest citizen conservation organizations, with a long history of concern for the passage of sound mining legislation.

Our support of S. 1010 is based on the premise that mining and the activities associated with it are incompatible with the very values for which the wilderness system was established. It is doubtful that anyone could seriously argue otherwise. The current mining exemption in the 1964 Wilderness Act was accepted by conservationists only as a last resort to secure passage of the bill.

The rationale for the exemption is to allow for the location of strategic mineral deposits which might be essential to our national security in time of emergency.

We believe there are better ways to accomplish this purpose, for under the exemption, private parties can not only locate such deposits, but until 1983 may stake a claim and bring it to patent, thus actually creating inholdings in national forest wilderness areas where none now exist; inholdings, we might add, with maximum potential for damage to the very sensitive resource called "wilderness."

Under the provision of S. 1010, mineral surveys would be conducted on a planned recurring basis by the Geological Survey and the Bureau of Mines. USGS Director Dr. Vincent McKelvey has testified that his agency lacks the time and authority for detailed exploration, and that private activity should continue in order that the exploration may be made before newly identified areas are designated as wilderness. We wonder why it would not be possible for Congress to grant the USGS the authority and the funds needed for them to do the total job. Time would become a lesser factor then, since the USGS could make its explorations even after an area were designated as wilderness.

Although we also support the complete repeal of the 1872 mining laws and the substitution of a leasing system as has been proposed in S. 1040, we do not feel that mining operations under even the most stringent lease would be any more compatible with wilderness than would be a patented claim. Mining is mining, and wilderness is wilderness. The two simply are not compatible.

If S. 1010 is enacted, and subsequently it is deemed necessary to mine within a national forest wilderness, Congress can deal with the situation on a case-by-case basis.

In summary, the American Forestry Association supports S. 1010 and urges its enactment.

Thank you for giving these comments your consideration.

Yours truly,

WILLIAM E. TOWELL,
Executive Vice President.

EARTH SCIENCES, INC.,
Golden, Colo., July 18, 1973.

Hon. LEE METCALF,

Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: Earth Sciences, Inc. offers the following comments on S. 1010, to amend the Wilderness Act of 1964 and requests that these comments be made part of the Hearing Record.

1. We endorse the principles of the Wilderness Act of 1964. Our geologists, as part of their jobs, spend more time in Wilderness areas of this country than most other citizens. They strongly support maintaining the beauty and integrity of our natural heritage, and are well qualified, *by experience*, to speak on this matter.

2. Our mineral programs in the Western U.S. have been and are being carried out in an environmentally sound manner. We are practicing environmentalists, not picture-book ecologists. *In this regard, our track record with governmental agencies and local populations is excellent and unblemished.*

3. Many mining people and environmental groups are finding out, often to their great surprise, that mineral development and environmental protection are mutually compatible once these groups learn to talk to each other. More and more projects are demonstrating this.

4. The United States is in the midst of an energy crisis. It appears headed for a mineral resource crisis as well. Withdrawal of Wilderness lands from mineral entry does not make current or projected economic sense, particularly since mining and environmental causes can be made compatible. In addition, withdrawal of these resources would clearly be short-sighted from a national defense viewpoint. For this reason we strenuously oppose the proposals, such as S. 1010, which would repeal the mining provisions of the Wilderness Act.

5. Withdrawing these lands from mineral entry is a negative solution to a postulated problem. It would be equivalent to abandoning nuclear power because of a fear of the "bomb". Your committee has the opportunity to do something positive for all persons in this controversy, not just one side. Isn't this what the art of government is about?

Sincerely,

DOUGLAS N. STEVENS, *President.*

MONTANA BUREAU OF MINES AND GEOLOGY,
Butte, Mont., July 11, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: The Senate Subcommittee on Minerals, Materials and Fuels will take testimony on S. 1010 at a hearing on July 18, 1973.

I am opposed to Senate Bill 1010 because as I understand it this bill would repeal the mining provisions of the Wilderness Act. These provisions now permit the location of mining claims in the Wilderness Areas until 1983. Many of the Wilderness Areas have not been well searched by modern techniques for minerals. The possibility of locating claims in these areas is a powerful incentive to further exploration in these areas.

Sincerely,

RICHARD B. BERG,
Economic Geologist.

GREAT FALLS, MONT., July 16, 1973.

Senator LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR: This letter is to register my opposition to part of S. 1010 which I understand would repeal provisions of the Wilderness Act of 1964 regarding mining.

When part of the Wilderness Act itself provides for mineral survey of proposed wilderness areas, it appears unnecessary to allow unrestricted access to every mineral exploration company.

The Congress less than 10 years ago established law making possible these wilderness areas for future generations. If there were an urgent national need for the minerals in these areas, that would be a valid reason for allowing application of U.S. Mining Laws within their boundaries, but not now.

Sincerely,

RALPH POMNICHOWSKI.

WESTERN MONTANA MINING ASSOCIATION,
Helena, Mont.

Senator LEE METCALF,
Washington, D.C.

DEAR LEE: We of Western Montana Mining Association are concerned of the passage of S. 1010.

If this bill were to pass much of mineral potential would not be thoroughly prospected. Thus making a dim future for expanding the use of our natural resources to produce the minerals necessary for our country. This would certainly hinder the growth of Montana.

We certainly appreciate your efforts to have this bill killed.

Sincerely,

HORACE HAND, *Manager.*

DENVER, COLO., July 12, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, U.S. Senate, Washington, D.C.

DEAR SENATOR: May I start by explaining that since 1908 I have practiced Mining Engineering and Geology in Colorado and most extensively in the San Juan Mining Region; a proven Mining District that is larger than the States of Massachusetts and Connecticut, combined.

It was my privilege to be a United States Mineral Surveyor from 1908 to 1952.

I represent as President, the Mystery Gold Mining Co. and as Trustee the Stockholders of the North Star Sultan Mining Co., with a combined stockholders list of over 4000 people, living in many parts of the United States.

We have valuable patented productive mining property in San Juan County. The difficulty of finding the ore in wilderness areas is well known to me. I have prospected many of them.

It seems to me that we are in present danger of going too far in limiting the possibilities of searching for and finding unknown and unexpected ore deposits. We need new ones at the present time, to augment the exhaustable supplies now reaching the rapidly diminishing processing plants, enroute to market. Some mines like the Sunnyside of U.S. Smelting and the Smuggler Complex of Newmont, have responded continuously since the 1980's when their present locations were wilderness, inhabited only by harassing indians.

I think the thousands of acres that might be removed from prospecting and exploration by S. 1010 should be left as is until 1983, to be sure a short enough time to initiate other rounds of inquiry for new mining Districts.

I know what it means to make a strike or discovery in theretofore unexplored territory; to be able to break out and handle good ore that has been produced there perhaps millions of years ago. Ore, the Crystals of which are shiny and perfect although brought to surface for the first time. Truly these products of the darkness are the flowers of the Mineral Kingdom.

We need greater supplies of domestic minerals and metals. I fear that we as a Mining Industry, have been too smug in our enjoyment of past successes, by telling each other, but failing to tell the public, you as well as others, how very important the Mining Industry is. I hope we are not too late to be forgiven for this.

Sincerely yours,

WARREN C. PROSSER.

DAY MINES, INC.,
Wallace, Idaho, July 13, 1973.

HON. LEE METCALF,

Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: The original Wilderness Act (78 Stat. 890) provided for 20 years of ingress and egress for the purpose of evaluating minerals. Since the passage of this bill Congress has not provided adequate funds for cataloging the possible contained minerals. Further, it is even doubtful that the non-mineral values will be cataloged within the remaining 10-year period. It would be a breach of good faith on the part of your Senate Committee to reduce the remaining approximate 10-year period by any length of time. In fact, it should be greatly extended, at least by the time lost because of bureaucratic impediments.

At the present time our country is facing a balance of payments deficit which most knowledgeable individuals believe will increase in staggering proportions unless a realistic approach is taken—soon. This country is not self-sufficient with regard to many of the minerals we consume, nor do we have alternative sources readily available. Our country needs a sound economy in order to curb pollution and provide for the needs of our citizens. Locking up our mineral resources and denying access before learning the extent and location of those resources certainly will not assure instant minerals for future generations. The opportunity to "visit the unique and irreplaceable ecological values of wilderness" may be lost should a dire need for the minerals be experienced in the future.

The same set of circumstances has existed in the mineral industry that is presently causing problems in the petroleum industry. We, domestic miners and producers, cannot control our own prices; they are set by world markets or governmental edict, whichever is worse for the domestic miner. The more tampering our government does with available mineral sources and prices the more acute will be our mineral shortage. At the present time (under Phase III) domestic copper is selling in the United States for 60¢/lb; in foreign countries copper sells for 90¢ U.S. Domestic zinc (under Phase III) is selling in the U.S. for about 20¢/lb while foreign zinc sales in the U.S. up to 39¢/lb are being reported.

We are in a period of government controlled prices, with the inherent danger of shortage and black markets. How much better it would be if it were a period of abundance at a reasonable price. You and your Committee are in a position to strike the balance between the vocal few who are pushing for more wilderness areas, and the American majority that prefers a better life in reasonable balance with the environment, or you can set the stage for potential re-entry of the four horsemen due to lack of energy and minerals.

Legislation which you gentlemen of the Subcommittee on Minerals, Materials and Fuels recommend in bills such as S. 1010 can have a far-reaching and disastrous effect on the economy if they are ill-considered and passed because of political expedience.

Yours very truly,

W. M. CALHOUN, *President.*

THE COLORADO MINING ASSOCIATION,
Denver, Colo., July 11, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: The Colorado Mining Association offers the following comments on S. 1010, to amend the Wilderness Act of 1964, and requests that these comments be made part of the Hearing record.

The Colorado Mining Association is a voluntary trade association, founded in 1876 and incorporated in 1897. Its membership, numbering 108 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. In 1972 there were over 600 active mineral operations in Colorado, employing in excess of 11,200 persons at the primary production level.

The Association endorses the principles of the Wilderness Act of 1964. However, we strenuously oppose proposals, such as S. 1010, which would repeal the mining provisions of the Wilderness Act.

The critical needs for raw materials and fuels to sustain our present and future economy has been stressed in numerous government and industry studies and reports, such as, the "First Annual Report of the Secretary of Interior under the Mining and Minerals Policy Act of 1970", and "United States Mineral Resources", USGS Professional Paper 820. Recent events have reemphasized these needs.

The Association membership recognizes its responsibility to assist in continuing to provide metals, minerals and fuels, which are necessary to the well-being of our Nation.

However, minerals, by their very nature, must be discovered and mined where they are. Ore deposits are rare indeed. Statistics suggest that the odds are over 10,000 to 1 against finding a good orebody.

Amendment of the Wilderness Act, as proposed in S. 1010, would remove thousands of acres from access, currently open to mineral exploration until December 31, 1983. Sophisticated exploration techniques such as alteration zone studies, geophysical and geochemical surveys, satellite photo studies, and remote sensing, are necessary for the discovery and delineation of commercial mineral deposits, which, because of their depth or configuration, have not been discovered to date. It appears to be poor conservation to remove this acreage from exploration and mining in this time of need. It would also halt exploration plans, programs, and commitments made under the mining provisions of the present Wilderness Act.

The amendment under consideration also appears to us to be in conflict with the Mining & Minerals Policy Act of 1970 (PL 91-631), which declares, in part, "... that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in ... the orderly and economic development of domestic mineral resources, reserves, ...".

If the elusive subsurface mineral potential of these lands is to be realized, the mining industry should have reasonable access to these lands, not only until December 31, 1983, but longer.

Sincerely yours,

DAVID R. COLE,
Secretary and Manager.

AMERICAN PETROLEUM INSTITUTE,
Washington, D.C., July 23, 1973.

HON. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials and Fuels, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: In reference to the hearings held by the Subcommittee on Minerals, Materials and Fuels on July 18, the American Petroleum Institute wishes to offer for the record its views on S. 1010, "A Bill to amend the Wilderness Act."

We oppose the passage of S. 1010 in its present form because we believe its provisions clearly contradict one of the wisest and most farsighted decisions which the Congress made in its deliberations on the Wilderness Act (Public Law 88-577).

Congress decided in enacting the Wilderness Act that the national forest wilderness areas should not be locked up forever for single-purpose use until their

potential mineral values had been determined. The specific provisions of the Act to implement that decision are three-fold: (1) Section 4(d)(2) directs the Secretaries of Interior and Agriculture to determine the mineral value of the lands; (2) the same section permits information-gathering activities, including prospecting for mineral resources in national forest land if such activity is carried on in a manner compatible with the preservation of the wilderness environment; and (3) Section 4(d)(3) keeps the national forest wilderness areas subject to the mining and mineral leasing laws until midnight, December 31, 1983.

The effect of these provisions is to allow for surface determination of mineral values by the Departments of Interior and Agriculture; to allow subsurface testing by private industry if such testing is consistent with the goal of environmental protection; and to allow for development of significant mineral deposits.

The 88th Congress recognized, in enacting the Wilderness Act, that all three elements are integral to the desired result. The theory apparently underlying S. 1010—that surface analysis is sufficient because any resources discovered can be developed when needed—will not withstand scrutiny. To begin with, surface analysis alone cannot adequately demonstrate the presence or absence of mineral deposits. To be meaningful, it must be accompanied by subsurface tests. In addition, subject to a number of variables, there is at least a three-to-five year time lag between the time a deposit is found and the time the resource can be moved to the marketplace. Thus, delaying development until “the need arises” can be expected to delay placing energy in the hands of those who need it—the consumers—until three to five years *after* the need was recognized.

The wisdom of the decision of the 88th Congress is especially apparent today. At a time when every gallon of petroleum we need but cannot produce domestically must be purchased from foreign sources, it is essential that access be permitted to any and all potential sources of domestically located petroleum, both known and yet to be discovered.

Enactment of S. 1010 would have the opposite effect. Rather than allowing access to potentially valuable lands, it would close those lands permanently to mineral exploration and development, regardless of the ability of the petroleum industry to conduct its operations in a manner minimally disruptive to the natural environment.

The petroleum industry is committed to the protection of the environment. Our record demonstrates that the industry has lived up to that commitment. At the same time, however, we have a responsibility to find and develop our domestic energy resources to the fullest extent possible under accepted rules of environmental behavior. We cannot carry out that responsibility if vast areas of federal lands are to be put into a permanent “deep freeze” before it is determined whether they contain valuable sources of the energy which our nation is demanding in ever-increasing amounts.

There are currently 14.6 million acres of land classified as wilderness areas. Another 39.8 million acres are under consideration for inclusion. At the present time, it is not known whether mineral deposits of commercial significance underlie these acres. If this legislation should pass, we may never know the answer to that question. We cannot afford to take the risk that the answer will be negative.

Both the surface and subsurface resources of the federal lands are vital national assets which must be developed at a rate adequate to meet public demand. To provide for less is to ignore both the short-term and long-term interests of the American people. For this reason, we oppose passage of S. 1010.

Sincerely,

FRANK N. IKARD.

SALT LAKE CITY, UTAH, March 27, 1973.

HON. WALLACE F. BENNETT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BENNETT: We trust that you will vote against Senator Jackson's S. 1010, for its passage in both houses would cause the nation to wonder if Congress is not also dominated by the manic thinkers so ably described by Herman Kahn.

In these times of energy crises, food crises, and impending mineral crises (even if Canada does not shut the door on us) we should be declassifying such restricted use areas and putting them back into full multiple use according to Public Law 86-517.

Well regulated and managed public land under multiple use can become far more beautiful and productive in terms of recreation, fish and game, lumber, livestock, fuels, and minerals than the most pristine beautiful of wilderness areas. This, of course, will require firm but reasonable regulations and management on the part of government specialists in geology, forestry, wildlife, agriculture, and recreation. It would be a job blending the best talents of a new Department of Natural Resources which should include much of the present Interior Department and Agriculture Department.

We appreciate the efforts of the majority of you Utah gentlemen in Washington, D.C., to develop the full energy potential of Lake Powell and to make the Rainbow Bridge available to a wider range of people than the elite dudes of the Kennedy type would like.

We trust, also, that you will help defeat S.B. 982 which is sponsored by Kennedy. This is the kind of law that would-be dictators need.

Yours very truly,

DOOLEY P. WHEELER, Jr.

LAS VEGAS, NEV., July 30, 1973.

Hon. FLOYD K. HASKELL,
Chairman, Subcommittee on Public Lands, Senate Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: This is to let you know that I am opposed to S. 1010, an act to amend the Wilderness Act to prohibit mineral exploration in wilderness areas now instead of 1983. Most of the wilderness boundaries have been pretty carefully set to exclude zones of mineralization, and there have only been a very few exceptions where this has developed into a problem. I believe these exceptions can be handled by regulations under existing authority to minimize adverse effects, both administrative regulations as well as various environmental laws.

In mining operations we are talking in terms of only 25 years, or 50 at most, whereas wilderness is a long term forever thing which, given a little time is a renewable resource. I don't believe any mining operation in a wilderness area today, properly regulated, will have any adverse effect 100 years from now or 500 years from now. In fact, it could lend interest to a wilderness area for some time to come. I have had the experience of visiting the White Clouds area in Idaho, and the only other persons I saw in the entire area were at the site of an old, abandoned mining operation of 50 years ago.

There is also a danger that S. 1010 is only the beginning. The wilderness zealots have put enough pressure on the Forest Service to force the agency to identify some 55 million acres of presently unroaded national forest land, and once S. 1010 is passed the next step will make it apply to these as well. I am in favor of as much multiple use management of the public lands as possible, and think it would serve better if S. 1010 were quietly put to sleep.

I would appreciate it if my views could be made part of the record.

Sincerely yours,

VIRLIS L. FISCHER.

SPARKS, NEV., March 15, 1973.

Hon. ALAN BIBLE,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR BIBLE: I am a professional geologist engaged in exploration for metallic minerals in the western United States, and have been working in Nevada, Utah, and California for the past 14 years. During my professional career I have seen increasing awareness by responsible persons and firms in the exploration and mining industry of ecological and wilderness values on our public domain.

Senator Jackson has introduced a bill (S. 1010) which would immediately close off the Wilderness Areas from prospecting, exploration, and development of natural resources under the mining laws. These are rights which are guaranteed by the Wilderness Bill until 1984.

Senator Jackson's amendment to the Wilderness Bill is unnecessary and undesirable for several reasons. The mining industry can learn to co-exist with wilderness values, and is presently doing so in many areas of designated or de facto wilderness. In addition to aesthetic considerations, good housekeeping is good business, and responsible sectors of the industry realize this. If they do not, there is legal machinery available to enforce applicable regulations.

In addition, time does heal the wounds of the earth, and there are areas of previous mineral production in all the forested land of the United States where one can practically walk over formerly productive mines and never be aware of them.

We have become a mineral have-not nation; to lock up natural resources of any sort, while we become dependent on foreign sources, is inconsistent with sound national fiscal policy.

S. 1010 would provide for recurrent mineral surveys by government agencies; I submit that the Geological Survey and Bureau of Mines cannot, have not, and will not, make such a survey of a Wilderness area which is useful to assess true mineral potential. These agencies simply do not possess the "state of the art" in exploration technology.

Again I urge you to defeat S. 1010 and help make us self-reliant in raw materials.

Very truly yours,

PETER H. HAHN.



