
RELIEF IN CASES OF CONTRACTS CONNECTED WITH
PROSECUTION OF THE WAR

FEBRUARY 11, 1927.—Committed to the Committee of the Whole House on the
state of the Union and ordered to be printed

Mr. WINTER, from the Committee on Mines and Mining, submitted
the following

REPORT

[To accompany S. 3641]

Your Committee on Mines and Mining, to whom was referred S. 3641, a bill to amend an act entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, having considered the same, hereby report favorably thereon and recommend that the bill do pass with the following amendments:

Page 2, line 16, after the word "for," change the period to a colon and insert:

And provided further, That if and when any claimant shall desire to appeal from the judgment and decision of the Secretary of the Interior upon any claim upon which money has been paid to and received by such claimant upon his claim, then before he shall have the right to appeal to the Court of Claims and as a condition precedent to his taking the appeal, he shall enter into a good and sufficient bond, signed by himself and good and sufficient sureties and payable to the Secretary of the Interior, conditioned, that should the court of appeals find that more money had been paid to the said claimant upon his claim than he was entitled to receive thereon, that said claimant will repay to the Secretary of the Interior for the use of the Government, such sum of money as he shall have received upon his said claim in excess of the finding and judgment of the court of appeals.

Strike out all of section 3 and of section 4, and insert the following as section 3:

SEC. 3. That section 5 of the act entitled "An act to provide relief in cases of contracts connected with the prosecution of the war and for other purposes, approved March 2, 1919, as amended," commonly referred to as the war minerals relief act, is hereby amended to authorize and direct the Secretary of the Interior to determine, adjust, liquidate, and pay net losses resulting from moneys expended or obligations incurred for the purchase or lease of property acquired for the production of, or in the preparation to produce either manganese, chrome, pyrites, or tungsten, and also to determine, adjust, liquidate, and pay net losses

arising from money paid or due to be paid for interest only on borrowed capital not to exceed the legal rate of interest in the State where the obligations was incurred: *Provided, however*, That the determinations, adjustments, liquidations, and payments of the net losses herein authorized and directed to be made shall be made by the Secretary of the Interior in conformity to and in compliance with, and not otherwise, all the provisions and regulations of said section 5 of the act approved March 2, 1919, as amended, the same as if the net losses herein authorized and directed to be determined, adjusted, liquidated, and paid had been originally incorporated and included in the net losses of said section 5, as amended: *And provided further*, That nothing herein contained shall be construed as permitting the consideration of any claim herein authorized unless such claim shall have been presented for determination, adjustment, liquidation, and payment under said section 5 of the act approved March 2, 1919, as amended, in compliance with the provisions and requirements of said section 5, as amended.

Page 3, line 14, strike out figure "5," and insert 4.

Page 3, line 17, strike out the figure "6" and insert 5.

Page 3, line 21, strike out "a sum greater than \$1,000, or, in the case of awards under".

Page 3, line 22, strike out "this act over \$10,000 in amount".

The committee has held numerous hearings on S. 3641, having heard witnesses representing the Secretary of the Interior and the War Minerals Commission delegated by him to hear and make findings for awards under section 5 of the act approved March 2, 1919, as amended, "to provide relief in cases of contracts connected with the prosecution of war, and for other purposes", claimants and their attorneys, former members of the Mines and Mining Committee of the House, and other Members of Congress. After full discussion and consideration, it was determined that justice and equity and the laws heretofore passed required this additional clarifying legislation. It is believed by the committee that, with the striking out of sections 3 and 4 of the Senate bill, and the substitution thereof of section 3, the bill does not broaden the scope of the original act, as amended, and permits no new items to be filed. In this respect the bill has been narrowed and restricted.

Section 3 of the bill, as passed by the Senate, broadens the original act in that it makes use of the word "necessaries" which word does not appear in the original act. It also provides that all claimants could ask for a reconsideration of claims as originally filed and claim additional awards on any and all items heretofore disallowed by the Secretary.

This committee also decided to eliminate section 4 for the same reason that it amended section 3 and for the further reason that the original act of March 2, 1919, limited the time in which claims could be filed to the final date of June 2, 1919, whereas section 4 as passed by the Senate in effect would extend the date of filing claims to 30 days after the passage of this amendment.

The new section 3, being an amendment inserted by the House Committee, directs the Secretary of the Interior to include in "net losses" losses resulting from moneys expended or obligations incurred for the purchase or lease of property acquired for the production of, or in the preparation to produce, either manganese, chrome, pyrites, or tungsten, the minerals named in the original act, and losses resulting from money paid or due to be paid for interest only on borrowed capital, not to exceed the legal rate of interest in the State where the obligation was incurred. Losses of this character had been excluded by the Secretary and the War Minerals Commission in their awards

under the original act as amended. Said section 3 carries out in express words the original act as interpreted by the District Court of the District of Columbia, affirmed by the District Court of Appeals in the case of *Work, Secretary of the Interior, v. United States, ex rel, Rives*, decided January 7, 1924 (295 Fed. 225). Notwithstanding that the United States Supreme Court reversed these courts and their action in granting a mandamus, on the ground that the original act made the decision of the Secretary of the Interior final and mandamus would not therefore lie, the interpretation of those courts is persuasive and convincing that under the statute it was the intention of Congress to allow for losses incurred by reason of money paid for property. We are further convinced that the original act is not broadened by the provision in this bill to include as part of net losses, interest on borrowed capital.

There are 396 claimants for losses suffered on the items of "purchase of property and leases" and "interest on borrowed capital" who will be permitted to again present their claims already filed and have them considered. There are 80 claims for less than \$200 each; 45 from \$200 to \$500; 38 from \$500 to \$1,000; 34 from \$1,000 to \$1,500; 30 from \$1,500 to \$2,500; 68 from \$2,500 to \$5,000; 42 from \$5,000 to \$10,000; 37 from \$10,000 to \$25,000; 10 from \$25,000 to \$50,000; 12 in excess of \$50,000.

These claimants are from nearly every State in the Union. They have been long suffering and patient, but justifiably persistent in view of the long delay that has occurred and the refusal of substantial parts of their claims under the misinterpretation of the law and the intention of Congress. On the whole, they have received less than 35 per cent payment of their losses. It is thought that the passage of S. 3641 may obtain for them an additional third of their expenditures. There should be no further delay. Justice should now be done.

It is further thought by the committee that under this act, if passed, the Secretary of the Interior will be enabled, under section 3 as amended and substituted by the committee, to make final awards, and that a very small percentage of the claimants will exercise their rights under sections 1 and 2 of the bill, to appeal to the Court of Claims. In this connection, a further protective amendment has been inserted by the committee, making provision that as a condition precedent to the taking of an appeal, claimant must enter into a good and sufficient bond to insure recovery by the Government in the event that the courts should determine that a lesser award should have been given claimant than had already been paid him by the Secretary on his claim, or such item of claim as remains in controversy in the appeal.

In view of the years of delay, the number of claimants, and the fact that many of them were reduced to ruin and poverty through these losses which they were guaranteed would be repaid, it is respectfully submitted that this bill should be passed at this session.

There are hereto appended a copy of section 5 of the original act approved March 2, 1919, the amendment thereto, approved November 23, 1921, the act of June 7, 1924, authorizing payment, the report of Senator Oddie from the Committee on Mines and Mining of the Senate accompanying S. 3641, and the report of the Secretary of the Interior, dated January 10, 1927.

Sec. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said act of October fifth nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however*, That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of \$8,500,000: *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Approved, March 2, 1919.

[PUBLIC—No. 99—67TH CONGRESS]

[S. 843]

AN ACT To amend section 5 of the act approved March 2, 1919, entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the act approved March 2, 1919, entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "Provided, That, all claimants who, in response to any personal, written, or published request demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said act.

"If in claims passed upon under said act awards have been denied or made on rulings contrary to the provisions of this amendment or, through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Approved, November 23, 1921.

[PUBLIC—No. 249—68TH CONGRESS]

[S. 2797]

[An act to authorize the payment of claims under the provisions of the so-called war minerals relief act]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called war minerals relief act, entitled, "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, the limitation in said act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

Approved, June 7, 1924.

[Senate Report No. 475, Sixty-ninth Congress, first session]

Mr. Oddie, from the Committee on Mines and Mining, submitted the following report:

The Committee on Mines and Mining, to whom was referred the bill (S. 3641), having considered the same, report favorably, with amendments, and recommend that the bill do pass.

[S. 3641, Sixty-ninth Congress, first session]

A BILL To amend an act entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of section 5 of the act entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, as reads "that the decision of the said Secretary shall be conclusive and final, subject to the limitations hereinafter provided," and so much of said section 5 as reads "that nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States," are hereby repealed.

SEC. 2. That section 2 of the said act is hereby made applicable to claims filed under section 5 of the said act in the same manner and in all respects, similar to the application of said section 2 to section 1 of the said act: *Provided, however,*

That in cases where final decisions of the Secretary of the Interior have been heretofore rendered, said appeal to the Court of Claims shall be made within ninety days after the passage of this act; and in all cases where final decisions of the Secretary of the Interior have not heretofore been rendered appeals from such decisions to the Court of Claims shall be made within ninety days after such decisions shall have been rendered by said Secretary: *And provided further*, That no acceptance or acquittance by any claimant of or for any settlement made heretofore by the said Secretary shall prevent or estop any appeal to the said Court of Claims, as herein provided for.

SEC. 3. That the Secretary of the Interior is hereby authorized and directed to include in his adjustments and payments in each claim all items of net loss, including moneys expended or obligations incurred for or in connection with the purchase or lease of property and money paid and due to be paid for interest on borrowed capital: *Provided, however*, That in every case in which expenditures were made or obligations incurred they shall be clearly shown to have been so made or incurred in good faith in connection with the production of or in preparation for the production of the necessaries named in the said act, in compliance with governmental demand, request, solicitation, or appeal, as heretofore provided in the said act, as amended.

This committee also had before it the bill S. 4 (by Mr. Oddie) and S. 3188 (by Mr. Pepper) amending the act entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended—the so-called Dent Act.

The bill S. 3641, the passage of which is recommended by the committee consolidates the essential and desirable provisions of S. 4 and S. 3188. A consolidation of these provisions into one bill was deemed advisable by the committee to conserve the time of the Senate by placing before it for consideration a single bill relating to matters at present affecting war minerals relief claimants.

The proposed legislation amends the fifth section of the war contracts law (an act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes, approved March 2, 1919)—the Dent Act, so-called.

Section 1 of that act provided for the payment by the Secretary of War of claims arising from express or implied agreements resulting from solicitation by governmental agencies, but not executed in conformity with statutory requirement.

Section 2 of that act provided for recourse to the Court of Claims by dissatisfied claimants.

Section 5 of that act (as amended by the act of November 23, 1921, Public Act No. 99) provided for payment by the Secretary of the Interior of losses sustained through compliance with any request, demand, solicitation, or appeal—whether personal, written, or published—from any Government agency mentioned in the Dent Act, to produce pyrites, tungsten, manganese, or chrome, but did not provide for recourse to the Court of Claims.

The discrimination between these two classes of claimants should be corrected.

There is no reason for believing the intention of the Sixty-fifth Congress to have been the making of a distinction in the same act between those citizens who cooperated with the War Department under section 1 of the Dent Act and those complying with the solicitation or demands of the Interior Department and other departments or establishments of the Government under the provisions of section 5 of the same act; but this apparent inadvertence of Congress has caused many complications and much hardship to the claimants of the latter class and is the reason for the many appeals which it has been necessary to make to Congress in behalf of the so-called war minerals claimants.

It is certain that unless claimants under the fifth section of the act of March 2, 1919 (the Dent Act), are placed on the same basis as claimants under section 1 of that act by enabling controverted questions of law and of fact arising in connection with the settlement of war minerals claims to be determined and adjudicated by court decisions, Congress may expect the presentation for its consideration of a large number of private bills from practically every State in the Union.

The subject matter of the proposed legislation has been frequently before Congress since the passage of the war measure of October 5, 1918 (Public Act No. 220, 65th Cong.), which was—

"An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

This act authorized the President to take over, or otherwise cause to be operated mines, smelters, and reduction and other plants for the production of approximately 40 mineral substances, termed "necessaries"—or to contract for their production—for the duration of the war and for two years thereafter, and appropriated \$50,000,000 for the purpose.

While this legislation was pending in Congress the situation became particularly acute with reference to obtaining needed supplies of manganese, tungsten, chrome, and pyrites; and, to meet the crisis, the Department of the Interior and other governmental agencies solicited divers persons to undertake their production at personal expense—not only urging this as a patriotic duty, but, as a further inducement, promising them—

(a) To maintain current prices for these minerals for the duration of the war and for two years thereafter.

(b) To maintain embargoes on their import.

(c) To issue licenses restricting their import and use.

(d) To throw the entire influence of the administration behind the passage of the then pending act of October 5, 1918, the passage of which producers were assured would insure the safety of express contracts for production for a period of two years after the termination of the war.

None of these assurances given this class of producers of war necessities materialized; but, on the contrary, within approximately two months after the armistice, embargoes were lifted, imports were permitted, prices dropped, and practically all of those who responded to solicitation or demand from the Government sustained losses which brought many of them to the verge of bankruptcy.

These producers then urged that the provisions of the act of October 5, 1918, be utilized for their relief; but the then Secretary of the Interior is reported to have believed that inasmuch as that act was a strictly war measure, and because the application of its provisions to the then existing situation might cause much adverse economic disturbance throughout the steel industry, the request of these claimants could not properly be complied with. To avoid these objections, the then Secretary did, however, agree, on behalf of these producers, to recommend the passage of what has since been known as the war minerals relief bill, and which was added to the war contracts law—the so-called Dent Act—as section 5, containing the war minerals relief provision, giving the Secretary of the Interior authority to receive and determine so-called war minerals claims.

The Secretary of the Interior, however, of necessity—although, in the opinion of this committee, without the legal authority therefor—delegated the authority with which this act of Congress clothed him to a commission, which, through rules and procedure set up by it, proceeded to declare what the law should be—as distinguished from what the act specifically stated it to be—and through its decisions created precedents for future action on war minerals claims which have resulted in much injustice and damage to this class of volunteer war producers. Many of the decisions of this commission seem to indicate its assumption of authority to pass upon the wisdom of the law rather than to determine whether or not these claimants were entitled to the relief which Congress intended to provide for them.

Evidence of the light in which the House of Representatives viewed these decisions of the commission and its administration of the Dent Act in connection with these claims is found in House Report No. 762 (66th Cong. 2d sess.), from the Committee on Mines and Mining of that body, from which the following quotation is made:

"The committee is of the opinion that the commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the act, and the application of the provisions of the law to the facts."

While the commission has long since been dissolved, these early rules and decisions have prevailed in the later administration of the act. The precedent thus established have hampered succeeding Secretaries of the Interior—reluctant to overrule the practice of a predecessor—and these questionable precedents have since served and are continuing to serve as guides in the settlement of war minerals claims.

The language of the act clearly shows it to have been the intention of Congress to reimburse all losses sustained in the production of these four commodities when production followed governmental request or demand—that the outstanding principle which should govern in passing upon these claims was that of "request and compliance"; and that when these facts were established, the losses sustained should be reimbursed.

Because Secretaries of the Interior were obliged to delegate their authority and the exercise of discretion to subordinates in administering war minerals relief, and because those to whom such delegation of authority and discretion was made do not appear to have properly interpreted the intent of Congress in enacting that relief legislation, these subordinates failed, in the opinion of this committee, to accord to the principle of "request and compliance" contained in the law its due and proper weight in the consideration of these claims.

As a substitute for this principle, the Interior Department set up that of differentiation between various kinds of loss, notwithstanding the fact that the original act distinctly specified that "net loss" should be the determining factor in passing upon and settling these claims. In the opinion of this committee, therefore, the department erred, first, in failing to apply the principle set forth in the original act; second, in substituting another principle; and third, in incorrectly interpreting and applying the second principle of settlement, arbitrarily selected as the basis of action.

This position of the Interior Department is the cause for the great and continued dissatisfaction which has developed in connection with its administration of war minerals relief. In the report of the Committee on Mines and Mining of the House of Representatives above mentioned, notice of this policy and practice was taken in the following language:

"* * * the War Minerals Commission, to whom the Secretary * * * delegated his authority * * *"

It has long been a settled question that discretion, judgment, and authority vested in a particular administrative officer by an act of Congress can not be delegated. It would seem too obvious for argument that the manifold duties of the Secretary of a great department of the Government like that of the Interior Department would physically preclude the giving of his personal attention to matters of this character. Therefore, it is desirable and proper that, if authority must be delegated in the matter of deciding questions of law, it should, in the interest of legally safeguarding the rights of claimants and of efficient administration, be delegated by Congress; and it also seems desirable and proper that in the delegation of such authority, it should be vested in an agency which will determine the issues involved in accordance with the usages and practices of law and equity, that is, in a court.

That such matters, in the opinion of Congress, were intended to be decided in this instance under well-known and long-established legal and equitable principles, is evident from the following language of Public Act No. 99 (67th Cong.), amending the Dent Act relating to war minerals claimants and their relief:

"* * * as they (the claimants) * * * are in justice and equity entitled to."

The passage of this bill will not result in any undue or extended litigation, in the opinion of this committee. It is believed that very few cases will go to the court, and that the very few which may go to the court will be in the nature of test cases. The committee is also of the opinion that the enactment of the legislation recommended herein will entirely relieve Congress of future requests for additional assistance to the claimants under the various acts relating to the production of war minerals.

In this connection, it seems pertinent to again quote from House Report No. 762 (66th Cong., 2d sess.):

"While the committee has given consideration to the matters set out above, another consideration that moved the committee was the necessity, from the standpoint of the Government and of Congress, to have all of these claims finally adjudicated at a time when the facts were easily available. If this is not done, judging by the experience of the past, Congress would be called upon to consider private claims bills covering the claims of the different dissatisfied claimants; and not only from the standpoint of Congress is this to be avoided, but from the standpoint of the Government it is thought best to have these contentions finally reviewed now and finally settled."

It is difficult to avoid the conclusion that, had this recommendation of the House committee been followed in the administration of war minerals relief, that matter would not now be engaging the attention of the Congress.

Section 3 of the bill recommended for passage retains administrative jurisdiction in the Secretary of the Interior, clarifies possible ambiguities in the original bill, and will enable the Secretary to settle promptly and equitably the greater part of the claims in dispute.

DEPARTMENT OF THE INTERIOR,
Washington, January 10, 1927.

Hon. JOHN M. ROBSION,
Chairman Committee on Mines and Mining,
House of Representatives.

MY DEAR MR. ROBSION: I am in receipt of your letter of January 6, 1927, asking for a report on S. 3641, a copy of which you inclosed.

Under date of May 22, 1926, a report was made to you on S. 3641, which bill as it passed the Senate on April 19, 1926, materially amends the so-called war minerals relief act.

After my report to you on S. 3641 under date of May 22, 1926, it is my understanding an amendment was proposed in your committee to S. 3641 as passed by the Senate, and on June 23, 1926, you asked for a report on this proposed amendment, which is the same proposed amendment as now submitted to me by you for report under S. 3641.

In compliance with your request of June 23, 1926, I submitted to you, on June 26, 1926, a report on the proposed amendment to S. 3641, and I now herein send to you a copy of my report of June 26, 1926.

In your letter of January 6, 1927, just received, you make no reference to my report of June 26, 1926, but call for a report on the same bill reported on by me under date of June 26, 1926. Since my report of June 26, 1926, nothing has happened to cause me to change my opinion, and that report covers your present request.

The proposed amendment is a substitute for S. 3641 as passed by the Senate, and is an improvement over that bill in that it limits the payment to (1) "net losses resulting from moneys expended or obligations incurred for the purchase or lease of property acquired" and (2) "net losses arising from money paid or due to be paid for interest only on borrowed capital not to exceed the legal rate of interest in the State where the obligation was incurred."

The proposed substitute reduces the number of items for which net losses may be paid to two items, viz, net losses on property and interest, and if any legislation is to be enacted by the Congress it is recommended that the legislation limit the net losses to these two items of property and interest as contained in the proposed amendment. This recommendation is made without my approval of the proposed amendment and is offered only in the event the Congress determines to legislate further upon the subject of war minerals relief. I call attention, however, to the fact that the proposed amendment provides for the payment of "net losses arising from money paid or due to be paid for interest" without fixing a time for the termination of the interest, and if this bill should become a law in its present form interest would be reimbursed to the claimant from the time of the incurrence of the claimant's obligation to pay interest to the time of the adjustment and payment by the Government, provided the interest had not previously been paid by the claimant. This means that interest yet unpaid and now running must be reimbursed by the Government although approximately eight years have elapsed since the armistice. Some earlier and definite date, possibly the date of the armistice, should be fixed for the ending of interest to be reimbursed by the Government, in the event of legislation by the Congress.

Very truly yours,

HUBERT WORK.



THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
CHICAGO, ILLINOIS

MEMORANDUM FOR THE RECORD

DATE: [illegible]

TO: [illegible]

FROM: [illegible]

SUBJECT: [illegible]

[The remainder of the page contains several paragraphs of extremely faint, illegible text, likely a technical report or laboratory notes.]

RELIEF IN CASES OF CONTRACTS CONNECTED WITH
PROSECUTION OF THE WAR

FEBRUARY 17, 1927.—Ordered to be printed

Mr. ROBSION of Kentucky, from the Committee on Mines and Mining, submitted the following

MINORITY REPORT

[To accompany S. 3641]

SECRETARY OF THE INTERIOR AND DIRECTOR OF BUDGET OPPOSE

The chairman and other members of the Committee on Mines and Mining desire to point out to the membership of the House some reasons why S. 3641 as amended should not be approved by the House.

The Secretary of the Interior, who was charged with the administration of this act and its amendment, after a most careful review of the whole question, expressed his unqualified disapproval of S. 3641 in his report hereinafter set out, dated May 22, 1926, and the Director of the Budget has likewise reported that this proposed legislation is in conflict with the financial program of the President.

The majority report insists that S. 3641 has been amended materially in this committee since it passed the Senate. The Secretary of the Interior and the Director of the Bureau of the Budget have likewise expressed their unqualified disapproval of the bill as amended. Your attention is called to the report of the Secretary, dated June 26, 1926, copied in this minority report.

CLAIMS ATTORNEYS ACTIVE

The original act was passed by Congress and approved March 2, 1919. Many claimants filed their claims and millions of dollars were paid out under that act. Some of the claimants, of course, did not get all that they desired and, of course, were not satisfied with the action of the Secretary of the Interior and the commissioners. In 1920 a concerted effort was made by certain claims attorneys and others to amend and broaden the organic act. This was accomplished by an act approved November 23, 1921. Many other claims

were filed and altogether more than twelve hundred were reviewed and acted upon and several millions of dollars more were paid to claimants under the act as amended. There was no attempt at that time by Congress to write into the law losses incurred for the purchase of lands or leases or to pay interest on money put in the purchase of lands, leases, and the production of the minerals mentioned in the original act.

After these claimants had secured all they could under the amendment approved November 23, 1921, a new campaign was set in motion to secure a further amendment and enlargement of the provisions of the original act and its amendment. The bill now before the House is the combination of many years of active and persistent efforts on the part of a number of claims attorneys and others. They have found this to be fat pickings and they have spared no pains in promoting this legislation. It remains to be seen if the Congress will follow the leadership of these active claim attorneys in making a further raid on the Treasury in connection with this matter.

GREATLY ENLARGES ORGANIC ACT AND AMENDMENT

In reading the majority report you might be led to believe that S. 3641 does not enlarge the organic act, but is merely a clarifying amendment expressing the will of Congress in the organic act and amendment. This is not the case.

Under the original act and amendment thereto, the decision of the Secretary of the Interior on the disposition of any claim was final. This bill repeals that provision of the organic act and amendment and authorizes claimants who are dissatisfied with the decision of the Secretary of the Interior to carry their case to the Court of Claims and to all other courts above the Court of Claims. It in effect changes the status of these claims from mere gratuities as declared by the Supreme Court of the United States to legal claims against the Government and makes it possible to have all of these 1,200 or more claims that have already been tried and disposed of by the Secretary of the Interior during the eight years that this act has been administered and all other claims that may be adjudicated by him under this proposed legislation, involving as much as \$11,000,000, to be tried out de novo in the Court of Claims and carried even to the Supreme Court of the United States. Of course, this greatly enlarges and broadens the scope of the original act and the amendment thereto.

It was held by the Secretary of the Interior and the commissioners who have adjudicated these claims that the original act and amendment did not authorize the Government to pay for losses incurred by the claimants in the production of manganese, chrome, pyrites, or tungsten or the payment of interest on borrowed money to engage in the business of producing these minerals. This bill directs the Secretary of the Interior to allow and pay the losses for these two items, and as the Secretary of the Interior points out, will cost the Government at least \$2,500,000. It will be observed that this is a further extension and broadening of the original act, and if this bill is approved by Congress it will mean a drain on the Treasury of not less than \$2,500,000 and with a possibility of an expense of

\$10,000,000 and the additional charge of administering the act and the expense involved in hundreds of cases in litigation through the Court of Claims and on to the Supreme Court of the United States.

SECRETARY LANE, COMMISSIONERS SHAFROTH AND FOSTER

These claims attorneys and their clients now insist that it was the intention of Congress to allow these claims for losses incurred for the purchase of lands and leases and interest on borrowed capital in producing these four minerals. The act does not so provide. These attorneys and their clients insist that the Secretaries and commissioners who have administered this act have not properly interpreted the intention of Congress and have not properly construed the act and the amendment thereto. We ask who was it that first construed this act? It was Secretary Lane, who was Secretary of the Interior during the war and at the time the original act was passed, and who had more to do with the passage of this act than any other one person. He was aided in construing this act by Commissioners Foster and Shafroth. Mr. Foster was a member of the House and chairman of the Committee on Mines and Mining when the act was passed. Senator Shafroth was likewise a Member of the Senate when this legislation was passed and took a prominent part in bringing about its passage in the Senate.

Now, these three men, Secretary Lane, Congressman Foster, and Senator Shafroth, who first construed this act, had more to do with bringing about this legislation than any other persons, and they undoubtedly knew more about what was the intention of Congress when the act was passed nine years ago than these lobbyists and other persons who are now trying to have this Congress to say what the Congress meant that acted on this proposition nine years ago. Secretary Lane and Commissioners Foster and Shafroth took the position that Congress did not intend to include the two items now embraced by section 3 of the bill reported to the House and which will cost the Government at least \$2,500,000.

Secretary Fall, who was a practical mining man himself, and his commission construed the act as did Secretary Lane and his commission. Secretary Work and his commission have construed this act in the same way.

SUPREME COURT UPHOLDS SECRETARIES LANE, FALL, AND WORK

It is true that the District Court of the District of Columbia held that Secretaries Lane, Fall, and Work were in error in denying losses for the purchase of property and leases and interest, but this same District Court of the District of Columbia held that it had jurisdiction to entertain appeals from the Secretary of the Interior in administering this act, but the Supreme Court in a decision written by Judge Taft in the case of Work, Secretary, *v.* Rives, held that the District Court of the District of Columbia did not have jurisdiction on appeals from the decision of the Secretary of the Interior and in effect says that it was not the intention of Congress to embrace losses for the purchase of property, leases, and interest, because none of these claimants had any express or implied contract

and were merely beneficiaries, and what Congress had given to them was merely gratuities without any legal obligation on the part of the Government.

NO EXPRESS OR IMPLIED CONTRACT

The so-called Dent Act was approved March 2, 1919. Sections 1 and 2 of that act provide for the adjudication of certain claims by the Secretary of War, and in case a claimant is dissatisfied it grants him an appeal to the courts.

Section 5 of that act relates to these war mineral claims and makes the decision of the Secretary of the Interior final. These claims attorneys and some of their clients insist that the war mineral claimants should have the same right of appeal as those claimants had whose claims were adjudicated by the War Department, and for that reason they insist upon section 1 of this bill repealing that part of the act giving the Secretary exclusive jurisdiction and section 2 of this bill granting appeals from the decision of the Secretary of the Interior to the Court of Claims and other courts above the Court of Claims, but you will observe that there is a wide difference between the claims presented to the War Department and the war mineral claims.

In order to have a claim allowed by the War Department under that act, the claimant must establish a contract with the Government either express or implied. In other words, the War Department could not consider anything except a legal claim or obligation against the Government. These war mineral claimants were merely beneficiaries. Congress has given them gratuities. They admit that they had no contract with the Government either express or implied. The most they contend is that the Government is under moral obligation to take care of their losses. The decision of the Supreme Court by Chief Justice Taft in the case of *Work, Secretary, v. Rives* is very illuminating on this subject and we quote it in part as follows:

The above summary of section 5 clearly shows that Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good. It was a gratuity based upon equitable and moral consideration. Congress did not wish to create a legal claim. It was not dealing with vested rights. It did not, as it did with the claims for supplies and services directly furnished the Government under the first and second sections of the (Dent) act make the losses recoverable in a court, but expressly provided otherwise. It dealt with the subject with the utmost caution. It hedged the granting of the equitable gratuity with limitations to prevent the use of the statute for the recovery of doubtful or fraudulent claims or merely speculative losses. Congress was occupying toward the proposed beneficiaries of section 5 the attitude rather of the benefactor than of a debtor at law. Congress intended the Secretary to act for it, and to construe the meaning of the words used to describe the elements of the net losses to be ascertained and to give effect to his interpretation without the intervention of the courts.

We, who think this legislation is unwise and unjust to the taxpayers, at the hearing, inquired of these claims attorneys and some of their clients if they were willing to write into this bill the same provisions covering the payment of claims under sections 1 and 2 of the Dent Act, and they admitted if any such provision was written into the bill that they could not recover any sum and that it would defeat their alleged claims.

CLAIMANTS PROPOSE TO SUE THEIR BENEFACTOR

It is admitted that those who are to be benefited by this legislation are not legal creditors of the Government. They have no legal claim against the Government; they are nothing more than beneficiaries of the Government's bounty; they are donees. The Government in disbursing to them millions of dollars has acted merely as a benefactor and a donor without any contract, express or implied, or any legal obligation to pay these claimants any sum of money.

As Congress, when this act was passed, knew that the Government was acting only in the capacity of a benefactor, it had the right to limit and did limit the manner in which these benefactions should be determined and paid. As Justice Taft points out:

It (Congress) dealt with the subject with the utmost caution. It hedged the granting of the equitable gratuity with limitations to prevent the use of the statute for the recovery of doubtful or fraudulent claims or merely speculative losses. Congress was occupying toward the proposed beneficiaries of section 5 the attitude rather of the benefactor than of a debtor at law. Congress intended the Secretary to act for it without intervention of the courts.

Now, after these beneficiaries received all they could receive under the act of March 2, 1919, and the act of November 23, 1921, embracing more than \$7,000,000, they now have the hardihood to ask Congress to enlarge the provisions of that act in section 3 of this bill so as to include two other classes of losses that were not contemplated by the original act or amendment, and after all these claims have been reviewed twice they propose to have all these claims reviewed again, and what they can not get after a third review of all these claims they want Congress to give them the further right to go into the courts and sue their benefactor. A most amazing proposition. There would be no objection interposed if the claimants had a legal obligation against the Government.

THESE CLAIMANTS HAVE BEEN GIVEN UNUSUAL CONSIDERATION

These claimants represent the producers or those who attempted to produce manganese, chrome, pyrites, or tungsten and claimed they were urged by the Government to produce these minerals during the war. The producers of iron, coal, lead, and various other minerals were likewise urged by the Government to produce them in large quantities. The farmers were urged to produce corn, wheat, meat, and other farm products. Timber and lumber men were urged to produce their products. The war ended suddenly. Thousands of producers of coal, iron, lead, wheat, corn, meat, lumber, and other products suffered great losses and were forced into bankruptcy.

Tens of thousands bought Liberty bonds at 100 cents to the dollar who were forced to sell their Liberty bonds at as low as 85 cents to the dollar. It could be urged that the Government was under a moral obligation to take care of these losses, but no act of Congress has been passed making good their losses.

Congress by the act of March 2, 1919, placed the producers of manganese, chrome, pyrites, and tungsten in a favored class to themselves. They themselves admit and the Supreme Court declares that they had no contract either expressed or implied with the Government and the Government was under no legal obligation to pay

to them any losses they may have sustained. Yet by the act of March 2, 1919, we granted them a gratuity of millions of dollars. They were still not satisfied. They returned to Congress, and November 23, 1921, Congress granted them a further gratuity of millions of dollars. They are still not satisfied and are back to Congress nine years after the war insisting upon Congress granting them many more millions of dollars and give them the right to go into the courts after their claims have been reviewed three times by three Secretaries of the Interior and many commissioners and force their benefactor to defend hundreds of suits through the courts. We agree with the Secretary of the Interior that this character of attempt to loot the Treasury further should be brought to a close. The Secretary points out that this act and its amendment have been just administered, the bureau has been closed out, and if we now pass this bill we will open up the whole subject and all the claims again, requiring an army of people to readminister this act.

About the only claim for interest is what is known as the Pratt claim. The Pratt folks have already received about \$700,000 out of these funds for losses. He now is insisting on more than \$300,000 for interest on his losses. There are tens of thousands of persons who lost during the war who would be satisfied to receive the principal of their losses without interest, but these beneficiaries can not be made satisfied. Who is going to make good the loss to the wife and children who gave up the husband and father? Who is going to make good the loss to the fathers and mothers who gave up their sons for their country?

These claimants are the favored of the favored of all those who lost in the great war. The chairman of this committee and other members of the Committee on Mines and Mining strongly feel that this proposed legislation is unfair to the Government and is unfair to the taxpayers, and respectfully ask that it be not given favorable consideration by the House.

THE SECRETARY OF THE INTERIOR,
Washington, May 22, 1926.

HON. JOHN M. ROBSION,
*Chairman Committee on Mines and Mining,
House of Representatives.*

MY DEAR MR. ROBSION: In compliance with your wishes, there is submitted herewith for consideration by your committee, a report on S. 3641, which bill, as it passed the Senate, on April 19, 1926, amends very materially the so-called war minerals relief act.

The war minerals relief act of March 2, 1919, under which adjustment and payment of claims were begun, has twice been amended in important respects. In November, 1921, it was amended to permit claimants to establish stimulation through published appeals and in other ways than by specific request of the Government agencies named in the act; it was amended to admit for consideration claims deposited in the mails within the time prescribed by the act, though not received by the Secretary of the Interior within the time so prescribed; it was amended to admit claims in which notice of intent to file were given within the time limit although actual filing of the claims within the prescribed limit did not appear; and it was further amended to permit correction of "miscalculations." In October, 1923, when the lower courts held that purchase price of property and interest on borrowed capital should be reimbursed, it became clear that under such interpretation of the act all net losses could not be paid in full without exceeding the amount of the appropriation.

The Secretary of the Interior then suspended payments and advised Congress of the situation, whereupon Congress repealed that part of the act which provided that the payment of awards and cost of administration incident thereto should not exceed \$8,500,000. With the restriction removed, payments were resumed, and as the Supreme Court of the United States subsequently, in the cases of *Works v. Rives* (267 U. S. 175) and *Work v. Chestatee Pyrites and Chemical Corporation* (267 U. S. 185), held that the finding of the Secretary of the Interior that the purchase price of property and interest on borrowed capital were not repayable, was one committed to his exclusive jurisdiction and in the absence of proof that such finding was arbitrary and capricious, was conclusive and not subject to review by the courts, the Secretary was enabled to conclude the work of adjustment of the 1,268 claims filed under the act and its amendments, and at the finish there remained an unexpended balance of the appropriation of approximately \$925,000. In announcing the completion of the work, the view was expressed, and it is here repeated, that every claimant received full and fair consideration; that all were privileged to present such evidence in support of their claims as they were able to supply, and that the payment in every claim was the full amount to which the claimant was entitled under the law. If any claimant failed of reimbursement, it was because of his inability to establish a loss under the act. The present situation is that all claims are regarded as closed, and none will be reopened or have further consideration except by mandate of a court or by reason of further legislation by Congress.

With this brief history of war minerals legislation and administration, attention is turned to S. 3641, which bill is before your committee and concerning which you desire a report. The proposed bill changes and enlarges the present law in the following respects:

Section 1: The existing law provides that "the decision of the Secretary shall be conclusive and final, subject to the limitations hereinafter provided," and that "nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States." The bill before you repeals these provisions.

Section 2: This section of the proposed bill permits claimants who may be dissatisfied with the decisions of the Secretary of the Interior to appeal to the Court of Claims. In all cases where decisions have already been rendered by the Secretary appeal must be made within 90 days after the passage of the act. In claims wherein decisions of the Secretary have not heretofore been rendered, appeals from such decisions must be made within 90 days after such decisions shall have been rendered. All appeals are governed by section 2 of the act of March 2, 1919. No bond is required. The section gives the Court of Claims full jurisdiction.

Section 3: This section might appear to have for its purpose reimbursement of losses incurred in the purchasing of mine property and mine leases and for interest actually paid or due to be paid on borrowed capital, but the fact can not go unnoticed that, if this is the only purpose of the section, its language is not as plain, direct, and unmistakable as that appearing in S. 4, introduced in the Senate at the present session by the author of the bill which you are now considering. S. 4 had for its sole purpose the allowance of losses in the purchasing of property and leases and for interest on borrowed capital. It provided for such repayment by making the war minerals act, as amended, applicable to claims for purchase price of property and leases and interest on borrowed capital. It simply added these items to those which theretofore universally had been considered and reimbursed, they to be considered exactly as other admissible items were commonly considered. Section 3 of the bill before you provides that the Secretary shall "reconsider his findings or awards and make an award or additional awards in each claim for such net loss as claimants may have incurred in good faith and are in justice and equity entitled to, by reason of producing or preparing to produce the necessaries named in said act, as amended, in compliance with governmental request, solicitation, or appeal, including moneys expended or obligations incurred for or in connection with the purchase or lease of property and money paid or due to be paid as interest on borrowed capital." This language covers much before it relates to purchase price of property and interest. In fact, it only includes these items at the close of the paragraph. By stressing "good faith" and "justice and equity" it would seem to say that a strong showing as to these would govern and compel repayment, thus placing commercial importance and other requirements of the present act in the background.

Regardless of the fact that the bill only repeals certain provisions of the present law, it will be contended, under this language, that findings in all claims

must be reconsidered, and that all losses connected with the operation must be repaid, whether for prospecting, financing, or what not, provided only that they were incurred in good faith, under stimulation. It will also be observed that the minerals named in the act of March 2, 1919, are not so named in this section, but are referred to as "necessaries," that term being used in the original \$50,000,000 act which provided for increased production and distribution of half a hundred ores, minerals, metallurgical products, and chemical compounds, all of which were called necessities. If the purpose of thus connecting the present legislation with the national defense act is not to lay the foundation for the admission of losses on other minerals than those named in the war minerals relief act, and for the admission of alloys or manufactured products, then its intent is not clear. As to the entire section, it may be said that, if its only purpose is to validate losses on purchase of property and interest payments, the purpose ought to be stated in plain, unmistakable terms. And as to interest, it should be made clear whether usurious interest, which may have been exacted during the war, is to be reimbursed, or only an amount which would represent lawful interest actually paid or due to be paid. It should also be made clear that "interest" is not to be held to mean bonuses or commissions paid in addition to interest in the securing of capital. Attention is called to the fact that the bill carries no specific appropriation and that, therefore, the expenditures under it are only limited by the general provisions which it contains. It is highly important, therefore, that the legislation be as clear and definite in its meaning as it is possible to make it.

Section 4: In the adjustment of claims under the existing law, claimants who had filed their claims or given notice of intent to file within the time prescribed in the act were permitted to amend the filing in any particular, the only restriction being that they confine the amendment to the operation described in the original filing. They were not permitted to include other operations which would, in fact, constitute a new claim. Section 4 provides that any claimant who suffered net losses which were not included in the claim as filed, because not known at the time of filing, may amend the claim within 30 days from the passage of this bill, and it will then be mandatory upon the Secretary to adjust the amended claim under the limitations of the act. This amendment is far-reaching and would be correspondingly costly. It would permit claimants who were awarded and paid their net loss to the time of the armistice to now show that the value they placed on the property and equipment for salvage purposes, or the value which was put upon it by the Government, was not realized by them in the disposition of the property, and they would demand further reimbursement notwithstanding that years have intervened since the adjustment, and that the property may have depreciated through use, age, or neglect. It possibly would be making the Government responsible for bad management, changes in the conditions of the industry in the years since the war, or many other things for which it should not be so held. As an illustration of the effect of this amendment, it may be said that one claimant filed a claim under the original act for losses amounting to \$131,000 incurred in a mining operation in Minnesota; that the claim was prosecuted on this basis, and that it was not until late in 1922 that claimant sought to amend the claim to include three-quarters of a million dollars of the alleged loss in an operation in a far distant part of the world, no mention of which had been made in all the years in which he had been heard before the War Minerals Commission. Of course, it was denied as constituting a new claim. Section 4 would admit this new claim and compel its adjustment regardless of the provisions of the present law. Its enactment undoubtedly would result in the filing of many amendments. It has been estimated that to reimburse the purchase price of property and interest would cost the Government \$2,500,000. The adoption of section 4 would vastly increase these figures.

Section 5: This section provides that no claim shall be subject to review or adjustment under section 236 of the Revised Statutes as amended. Evidently it is meant to prevent the Department of the Treasury from having a part in the adjustment of claims.

Section 6: This section limits the amount attorneys or agents may charge for prosecuting claims under the act.

The bill before your committee is the third bill introduced in the present session proposing to amend the war minerals act. I have felt compelled to disapprove the first two in the belief that the adjustments which have been made under the act and its amendments in the years which have elapsed since the war have done substantial justice to all claimants, and that there was not sufficient warrant for enlarging the act and entering upon a course of reexaminations and

readjustments the cost of which could only be estimated but which certainly would entail a heavy drain upon the Treasury of the United States. This bill is even more objectionable than those previously reported upon, it is wider in scope, would reopen more claims and involve items not heretofore allowable under the act or any of its amendments, and would in my opinion far exceed in cost any estimate heretofore made.

I therefore recommend that the bill do not receive favorable consideration by your committee.

I am advised by the Director of the Bureau of the Budget that the proposed legislation is in conflict with the financial program of the President.

Very truly yours,

HUBERT WORK.

DEPARTMENT OF THE INTERIOR,
Washington, June 26, 1926.

Hon. J. M. ROBSION,
*Chairman Committee on Mines and Mining,
House of Representatives.*

MY DEAR MR. ROBSION: I am in receipt of your letter of June 23 inclosing for report a proposed amendment to S. 3641.

The department has previously submitted adverse reports on S. 3641, S. 3188, and S. 4, all designed to extend further relief to war mineral claimants. The amendment proposed to S. 3641 confines the proposed relief to moneys lost through the purchase of property and to moneys paid for interest, thus narrowing the scope of the proposed measure and reducing the proposed payments thereunder to approximately \$2,500,000, and to this extent is less objectionable than the other measures named. However, as previously reported, all claims under the existing law have been adjusted, and the department does not feel warranted in recommending the payment of alleged losses not provided for in the original legislation or its amendments at this time, more than seven years after the close of the war.

The Director of the Bureau of the Budget advises that "the proposed legislation is in conflict with the financial program of the President."

Very truly yours,

HUBERT WORK, *Secretary.*

JOHN M. ROBSION.
W. H. SPROUL.
WM. WILLIAMSON.



