The original documents are located in Box 56, folder "9/28/76 S2371 Regulation of Mining within the National Park System" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

9/28/76

APPROVED
SEP 28 1976

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day: October 2

September 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: S. 2371 - Regulation of mining within the National Park System

Posted 9/29/76

archives 9/29/76

Attached for your consideration is S. 2371, sponsored by Senator Metcalf and eight others.

The enrolled bill would close six ares of the National Park System to further mineral claims under the Mining Law of 1872 and would provide specific authority to the Secretary of the Interior to regulate the exercise of existing valid mineral claims in those areas. The six units of the National Park System affected are: Glacier Bay National Monument, Alaska; Death Valley National Monument; California; Coronado National Memorial, Arizona; Mount McKinley National Park, Alaska; Organ Pipe Cactus National Monument, Arizona; and Crater Lake National Park, Oregon.

A detailed description of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 2371 at Tab B.

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

SEP 23 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2371 - Regulation of mining within the National Park System
Sponsor - Sen. Metcalf (D) Montana and 8 others

Last Day for Action

October 2, 1976 - Saturday

Purpose

Closes six areas of the National Park System to further mineral claims under the Mining Law of 1872, and provides specific authority to the Secretary of the Interior to regulate the exercise of existing valid mineral claims in those areas.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Council on Environmental Quality	Approval
Department of Commerce	No objection
Department of Justice	Defers to Interior

Discussion

This enrolled bill affects six units of the National Park System which are open to mineral entry under the Mining Law of 1872. These are: Glacier Bay National Monument, Alaska; Death Valley National Monument, California; Coronado National Memorial, Arizona; Mount McKinley National Park, Alaska; Organ Pipe Cactus National Monument, Arizona; and Crater Lake National Park, Oregon.

Under the Mining Law of 1872, mineral deposits in lands within the public domain were opened to exploration and purchase by citizens of the United States. Mineral rights on individual tracts of land could be patented by any eligible claimant. In legislation authorizing the creation of the six National Park System areas affected by S. 2371, the Congress specifically provided that these lands would remain open to mineral development under the mining laws. Although mining operations exist in other National Park System areas, all areas other than the six in question here are closed to further entry, location, and patent under the mining laws.

Currently, among the six areas, active mineral production is limited to Death Valley National Monument and Mount McKinley National Park. There are presently 10 producing surface mines in the Death Valley National Monument area. In 1974, approximately 3% of our annual domestic production of boron minerals as well as nearly 1% of our annual domestic production of talc were mined from the Death Valley National Monument area. Mineral production within Mount McKinley National Park is limited to a single antimony ore mine, yielding approximately 100,000 tons per year.

Several hundred patented and unpatented claims have been established in Glacier Bay and Organ Pipe Cactus National Monuments. Claims within the Glacier Bay area comprise approximately 1% of known domestic nickel reserves. Significant copper reserves have also been discovered. The U.S. Geological Survey and the Bureau of Mines are currently conducting an extensive mineral survey of the Glacier Bay National Monument. Although some areas of the Organ Pipe Cactus National Monument have been explored, there is no existing mineral production. There are no existing claims in either Coronado National Memorial or Crater Lake National Park.

Description of the bill

S. 2371 would prohibit, subject to valid existing rights, further mineral development in these six

areas. Valid existing rights would be defined to include not only patented mining claims but also unpatented claims which have been located and maintained in accordance with applicable mining laws. The Secretary of the Interior would be required to determine the validity of all unpatented claims in the Glacier Bay, Death Valley, Organ Pipe Cactus, and Mount McKinley areas, and within two years of enactment, submit to the Congress a report on the estimated cost of Federal acquisition of existing valid claims. Within the same period, the Secretary would also be required to make recommendations for adjusting the boundaries of the Death Valley and Glacier Bay units in order to exclude significant mineral deposits and to decrease possible acquisition costs.

The enrolled bill would also provide specific statutory authority to the Secretary of the Interior to prescribe such rules and regulations as he deems necessary for governing the exercise of existing valid mineral claims in any area of the National Park System for the purpose of preserving the scenic, historic, or other valuable characteristics of such lands. In order to prevent additional immediate damage to areas either now in production, or available for production, the bill would establish a four-year moratorium on new surface mining in Death Valley, Mount McKinley, and Glacier Bay. Mining operations commencing prior to the date of enactment, however, would be permitted to continue, at a rate not to exceed the average annual production for calendar years 1973, 1974, and 1975. Claimholders who suffer a loss as a result of the provisions of the Act would be permitted to seek compensation for alleged takings in Federal court.

Other provisions of the enrolled bill include a financial disclosure requirement affecting Department of the Interior employees with policy responsibilities under this Act, as well as a requirement that the Advisory Council on Historic Preservation submit to the Congress within two years,

a report on the actual and potential effects of surface mining activities on natural and historic landmarks both within and outside of the National Park System.

Considerations and views

In committee hearings, the Administration indicated general support for S. 2371 and related bills, subject to:

-- keeping Glacier Bay National Monument open to location, entry and patent under the mining laws pending completion of a mineral survey currently being conducted by the U.S. Geological Survey and the Bureau of Mines;

-- making all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims subject to reasonable regulations prescribed by the Secretary of the Interior; and,

-- allowing mining with respect to valid existing claims.

In reporting on S. 2371, both the House and Senate Interior Committees cited the potentially serious adverse environmental impact on scenic National Park System lands of unrestrained surface mining activity. The reports noted that improvements in mining technology, making large scale open pit operations economic, were unforeseen thirty years ago when these areas were opened to mineral exploration and development. The issue posed was whether the scenic and other environmental values of these areas were sufficient to outweigh the costs of closing off further mineral development.

Interior notes in its attached enrolled bill letter that, with the exception of closing Glacier Bay to mining, S. 2371 adequately addresses the Administration's concerns. Accordingly,

Interior concludes that:

> "By their very definition, units of the National Park System are considered to have outstanding natural and historic significance -- unique values which are deemed worthy of special consideration and which exceed those other uses to which a particular resource might be put.
>
> "The Congressional mandate in the Organic Act of the National Park System is 'to conserve the scenery and the natural and historic objects, and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.' Accordingly, we recommend that the President approve this enrolled bill ."

On balance, we concur in Interior's recommendation for approval. While we recognize the need to improve the mineral sufficiency of the Nation, preservation of our National Park System's natural environment is also an important national goal.

Paul H. O'Neill
Acting Director

Enclosure

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

SEP 2 2 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in response to your request for the views of the Department of Commerce concerning S. 2371, an enrolled enactment

> "To provide for the regulation of mining activities within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes."

S. 2371 would subject all valid existing mineral rights on claims within areas of the National Park System to regulation by the Secretary of the Interior in order to protect such areas. In addition, certain specified National Park System areas would be closed to entry under the Mining Law of 1872, subject to valid existing rights. Provision is made for determination of the validity of mining claims in the specified areas and recommendations to Congress on the acquisition of such claims by the Secretary of the Interior. Existing mining activity within these areas could continue for an interim period, subject to certain limitations.

The bill provides for the recording of all mining claims under the Mining Law of 1872 within National Park System areas with the Secretary within one year. Claims not so recorded would be presumed abandoned and void. Provision is also made for reporting by the Secretary to the Advisory Council on Historic Preservation of any mining activity which threatens natural or historical landmarks, with a request for advice as to measures that may be taken by the United States to mitigate or abate such activity.

The Department of Commerce has no objection to approval of this legislation by the President.

Approval of S. 2371 would not increase the budgetary requirements of this Department.

Sincerely,

General Counsel

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 23 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on S. 2371, "To provide for the regulation of mining activity within, and to repeal the application of the mining laws to, areas of the National Park System, and for other purposes."

Enrolled bill S. 2371 would prohibit, subject to valid existing rights, the exploration, mining and purchase of all valuable mineral deposits within any area of the National Park System. (The term "valid existing rights" includes not only patented mining claims but also unpatented claims which were validly located and have been maintained as required by the mining laws.) S. 2371 provides that the Secretary of the Interior may promulgate such rules and regulations as he deems necessary and appropriate for governing the exercise of valid existing rights of mining and exploration, in any area of the National Park System, for the protection and management of any such area.

The bill places specific restraints on the exercise of valid existing rights within Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument for a period of four years. With respect to these areas, no further disturbance is to be made of any lands which had not been significantly disturbed for the purpose of mineral extraction prior to February 29, 1976. The intention of this section is prohibit new mining operations to commence in these three units of the National Park System during this period of time. With respect to ongoing mining operations, the Secretary may permit, in a case by case basis, some enlargement of the existing excavation of a given mine if he finds this is necessary to continue the production from the particular mine at an annual rate not exceeding the average production rate over the period 1973 through 1975. Any necessary minimum enlargement for this purpose would still be subject to regulation by the Secretary. The net effect of this section is to permit the controlled operation of currently active mines within these areas during the next four years, while minimizing the disturbance to the area caused by such operations.

The bill also protects valid existing rights in the three areas covered in section 4 by waiving the requirements for annual assessment work on all unpatented claims within these areas. This precludes the necessity for any further surface disturbance of these claims during the next four years.

The Secretary is also required to make a validity determination of the unpatented claims in Death Valley, Glacier Bay, and Organ Pipe National Monuments, and in Mount McKinley National Park, within two years after enactment of this legislation. The Secretary is to submit his recommendations to the Congress as to whether any of the valid claims or patented rights should be acquired by the United States. His recommendations are to be accompanied by estimates of the acquisition costs of these rights, as well as a discussion of the environmental consequences of permitting mineral extraction from these areas.

The Secretary also has four years to make a similar study with respect to Crater Lake National Park, Coronado National Memorial, and Glacier Bay National Monument.

Under S. 2371, all mining claims within the boundaries of units of the National Park System must be recorded with the Secretary of the Interior within one year after the enactment of this legislation. Any claim not recorded will be presumed to be abandoned and void. Recordation would not make an otherwise invalid claim valid. The Secretary is to publish a notice of this requirement to record claims in both the Federal Register and in appropriate newspapers in the vicinity of the areas involved within 30 days following enactment.

The bill permits any claimholder to bring a cause of action for any loss resulting from the operation of this legislation. It also requires officers and employees of the Interior Department who perform any function under this bill to file annually statements of any known financial interest in the persons subject to this bill or who receive financial assistance under the bill. This provision is identical to a provision which covers Interior and the Federal Energy Administration in the Energy Policy and Conservation Act of 1975 (P.L. 94-163).

With the exception of the repeal of the law which permits mining activity in Glacier Bay National Monument, this bill is in accord with the recommendations of this Department's report on H.R. 9799 and S. 2371 to the House and Senate Interior and Insular Affairs Committees, respectively. The moratorium provisions of S. 2371, as the bill was introduced in the Senate, have been deleted. As discussed above, section 4 of the enrolled bill permits the continuation of ongoing mining operations in Death Valley, Mount McKinley and Organ Pipe Cactus where the surface has been significantly disturbed for mineral extraction prior to February 29, 1976. The Secretary may permit, on a case by case basis, enlargement of these present existing excavations if he finds that this is necessary to continue the production from that particular mine at an annual rate not exceeding the average production rate over the period 1973 through

1975. The bill provides that within two years of enactment, the Secretary of the Interior shall study and submit to Congress his recommendations for modification, or adjustments to the existing boundaries of the Death Valley National Monument and the Glacier Bay National Monument to exclude significant mineral deposits and to decrease possible acquisition costs.

With respect to the repeal of the law permitting exploration and mining in the Glacier Bay National Monument, this Department recommended that the Congress defer consideration of Glacier Bay until the Geological Survey and the Bureau of Mines completes a mineral survey of the monument which is currently in progress. As enrolled, S. 2371 would permit the continuation of this mineral survey and require the Secretary to make recommendations to the Congress based on the results of the survey.

Glacier Bay National Monument is known to contain a variety of mineral deposits, but its largest known mineral deposits are nickel and copper deposits. According to Bureau of Mines statistics, the 20 patented mining claims within the monument contain reserves of about 500,000 tons of nickel. A resource of unknown but possibly larger size may exist beyond the limits of present drilling. This is an important part of the U.S. nickel reserves. In the U.S., nickel is currently mined only at Riddle, Oregon, where reserves are one-fifth those at Glacier Bay. There may be as much as 6 1/2 billion tons of nickel-bearing rock (extremely uncertain owing to scanty exploration) averaging about 0.21% nickel in deposits in northern Minnesota. These deposits are not being mined because of environmental and state restrictions. Annual imports of nickel are 170,000 tons or 71% of domestic consumption.

Furthermore, S. 2371 will not have any affect on the status quo of the 20 patented mining claims within the monument. S. 2371 will not affect valid existing rights in the Glacier Bay National Monument. Only new mineral exploration and the patenting of new claims within the monument will be prohibited by this bill. It also should be noted that these 20 patented claims were patented in 1958 and there has been no production of minerals from these properties since that time. The Department has refused to permit the claim owners to build a mill to concentrate the ore within the monument.

By their very definition, units of the National Park System are considered to have outstanding natural and historic significance--unique values which are deemed worthy of special consideration and which exceed those other uses to which a particular resource might be put.

The Congressional mandate in the Organic Act of the National Park System is "to conserve the scenery and the natural and historic objects, and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Accordingly, we recommend that the President approve this enrolled bill.

Sincerely yours,

Assistant Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

September 23, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request I have examined a facsimile of the Enrolled Bill, S. 2371, a bill "To provide for the regulation of mining activity within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes."

The bill declares that all mining activities on patented or valid unpatented mining claims in the National Park System shall be regulated by the Secretary of the Interior. In particular, the enrolled bill would amend or repeal several statutes under which mineral exploration and development are permitted in six areas of the National Park System. (Valid unpatented mining claims are excluded from this withdrawal from mineral development.) These areas are Death Valley National Monument, Glacier Bay National Monument, Mount McKinley National Park, Crater Lake National Park, Organ Pipe Cactus National Monument, and Coronado National Memorial.

A 4 year moratorium on surface disturbance beyond that existing on February 29, 1976, is imposed by Section 4 of the bill. However, existing excavations for mining development may be enlarged during the moratorium upon the Secretary's finding of necessity to maintain average annual production levels.

During the first year of the moratorium all mining claimants must record their claims with the Secretary. Failure to so record renders the claim void for abandonment. Within the first 2 years of the moratorium the Secretary is required by Section 6 of the bill to determine the validity of the claims so recorded among the approximately 53,750 unpatented mining claims

in these six areas. Also, the Secretary must report to Congress his recommendations as to acquisition, including the cost and environmental consequences of mining, of patented or valid unpatented claims. His recommendations are to include boundary adjustments to Death Valley and Glacier Bay National Monuments, where most of the claims exist, so as to exclude significant deposits from the monuments and decrease possible acquisition costs.

Section 7 requires similar validity determinations and recommendations within 4 years after enactment for unpatented mining claims within Crater Lake National Park, Coronado National Memorial, and Glacier Bay National Monument. An apparent discrepancy exists between Section 6 (2 years for validity determinations) and Section 7 (4 years) in that Glacier Bay National Monument is included in both.

The enrolled bill also protects designated significant historical and natural landmarks threatened by surface mining. The Secretary is obligated to notify those engaging in incompatible surface mining and to report the same to the Advisory Council on Historic Preservation. The council is itself compelled to recommend within 2 years any legislation necessary to protect natural and historical landmarks from adverse activities, such as surface mining.

Finally, any owner of a patented or unpatented mining claim in the National Park System may bring an action in a federal district court for any compensable taking resulting from the Act, orders, or regulations. The courts are required to expedite such claims and the Secretary must promptly and carefully consider any offers to sell made by mining claimants in Glacier Bay, Death Valley and Organ Pipe National Monuments, and Mount McKinley National Park.

An additional proviso requires annual reporting by some Interior employees with certain direct or indirect financial interests in mining claims within the National Park System.

Several discrepancies and potential difficulties appear in the enrolled legislation. We have already noted the inclusion of Glacier Bay National Monument in Sections 6 and 7 of the bill, with their different periods for validity adjudications, and we recognize the practicable impossibility of completing those adjudications for the thousands of claims which may be registered with the Secretary.

A more important problem exists with regard to Section 11 of the enrolled bill. This section permits anyone owning an unpatented mining claim, or land the title to which was originally acquired by a mineral patent, to invoke the jurisdiction of a federal district court. However, there is no indication as to how or by what means any award for a compensable taking is to be made.1/ Furthermore, there is no jurisdictional limit on the amount of any claim to be considered by the district court, nor does it appear that trial by jury would be avoided.

Subject to these potential difficulties which may arise in litigation, the Department of Justice defers to the Department of the Interior as to whether the bill should receive executive approval.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General

1/ E.g., the Redwood National Park Act, 16 U.S.C. 79a, 79c(b)(2), directs, upon a judicial finding of a compensable taking, that payment be made from a fund administered by the Secretary of the Treasury, or through an exchange of lands by the Secretary of the Interior, or a combination of payment and land exchange.

To: J. Johnston
9-24-76
8:30 p.m.

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

SEP 23 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2371 - Regulation of mining within the National Park System
Sponsor - Sen. Metcalf (D) Montana and 8 others

Last Day for Action

October 2, 1976 - Saturday

Purpose

Closes six areas of the National Park System to further mineral claims under the Mining Law of 1872, and provides specific authority to the Secretary of the Interior to regulate the exercise of existing valid mineral claims in those areas.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Council on Environmental Quality	Approval
Department of Commerce	No objection
Department of Justice	Defers to Interior

Discussion

This enrolled bill affects six units of the National Park System which are open to mineral entry under the Mining Law of 1872. These are: Glacier Bay National Monument, Alaska; Death Valley National Monument, California; Coronado National Memorial, Arizona; Mount McKinley National Park, Alaska; Organ Pipe Cactus National Monument, Arizona; and Crater Lake National Park, Oregon.

Under the Mining Law of 1872, mineral deposits in lands within the public domain were opened to exploration and purchase by citizens of the United States. Mineral rights on individual tracts of land could be patented by any eligible claimant. In legislation authorizing the creation of the six National Park System areas affected by S. 2371, the Congress specifically provided that these lands would remain open to mineral development under the mining laws. Although mining operations exist in other National Park System areas, all areas other than the six in question here are closed to further entry, location, and patent under the mining laws.

Currently, among the six areas, active mineral production is limited to Death Valley National Monument and Mount McKinley National Park. There are presently 10 producing surface mines in the Death Valley National Monument area. In 1974, approximately 3% of our annual domestic production of boron minerals as well as nearly 1% of our annual domestic production of talc were mined from the Death Valley National Monument area. Mineral production within Mount McKinley National Park is limited to a single antimony ore mine, yielding approximately 100,000 tons per year.

Several hundred patented and unpatented claims have been established in Glacier Bay and Organ Pipe Cactus National Monuments. Claims within the Glacier Bay area comprise approximately 1% of known domestic nickel reserves. Significant copper reserves have also been discovered. The U.S. Geological Survey and the Bureau of Mines are currently conducting an extensive mineral survey of the Glacier Bay National Monument. Although some areas of the Organ Pipe Cactus National Monument have been explored, there is no existing mineral production. There are no existing claims in either Coronado National Memorial or Crater Lake National Park.

Description of the bill

S. 2371 would prohibit, subject to valid existing rights, further mineral development in these six

areas. Valid existing rights would be defined to include not only patented mining claims but also unpatented claims which have been located and maintained in accordance with applicable mining laws. The Secretary of the Interior would be required to determine the validity of all unpatented claims in the Glacier Bay, Death Valley, Organ Pipe Cactus, and Mount McKinley areas, and within two years of enactment, submit to the Congress a report on the estimated cost of Federal acquisition of existing valid claims. Within the same period, the Secretary would also be required to make recommendations for adjusting the boundaries of the Death Valley and Glacier Bay units in order to exclude significant mineral deposits and to decrease possible acquisition costs.

The enrolled bill would also provide specific statutory authority to the Secretary of the Interior to prescribe such rules and regulations as he deems necessary for governing the exercise of existing valid mineral claims in any area of the National Park System for the purpose of preserving the scenic, historic, or other valuable characteristics of such lands. In order to prevent additional immediate damage to areas either now in production, or available for production, the bill would establish a four-year moratorium on new surface mining in Death Valley, Mount McKinley, and Glacier Bay. Mining operations commencing prior to the date of enactment, however, would be permitted to continue, at a rate not to exceed the average annual production for calendar years 1973, 1974, and 1975. Claimholders who suffer a loss as a result of the provisions of the Act would be permitted to seek compensation for alleged takings in Federal court.

Other provisions of the enrolled bill include a financial disclosure requirement affecting Department of the Interior employees with policy responsibilities under this Act, as well as a requirement that the Advisory Council on Historic Preservation submit to the Congress within two years,

a report on the actual and potential effects of surface mining activities on natural and historic landmarks both within and outside of the National Park System.

Considerations and views

In committee hearings, the Administration indicated general support for S. 2371 and related bills, subject to:

-- keeping Glacier Bay National Monument open to location, entry and patent under the mining laws pending completion of a mineral survey currently being conducted by the U.S. Geological Survey and the Bureau of Mines;

-- making all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims subject to reasonable regulations prescribed by the Secretary of the Interior; and,

-- allowing mining with respect to valid existing claims.

In reporting on S. 2371, both the House and Senate Interior Committees cited the potentially serious adverse environmental impact on scenic National Park System lands of unrestrained surface mining activity. The reports noted that improvements in mining technology, making large scale open pit operations economic, were unforeseen thirty years ago when these areas were opened to mineral exploration and development. The issue posed was whether the scenic and other environmental values of these areas were sufficient to outweigh the costs of closing off further mineral development.

Interior notes in its attached enrolled bill letter that, with the exception of closing Glacier Bay to mining, S. 2371 adequately addresses the Administration's concerns. Accordingly,

Interior concludes that:

> "By their very definition, units of the National Park System are considered to have outstanding natural and historic significance -- unique values which are deemed worthy of special consideration and which exceed those other uses to which a particular resource might be put.
>
> "The Congressional mandate in the Organic Act of the National Park System is 'to conserve the scenery and the natural and historic objects, and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.' Accordingly, we recommend that the President approve this enrolled bill ."

On balance, we concur in Interior's recommendation for approval. While we recognize the need to improve the mineral sufficiency of the Nation, preservation of our National Park System's natural environment is also an important national goal.

Paul H. O'Neill
Acting Director

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

September 24, 1976

MEMORANDUM FOR JAMES M. FREY
OFFICE OF MANAGEMENT AND BUDGET

SUBJECT: S. 2371, An Enrolled Bill, "to Provide for the Regulation of Mining Activity Within, and to Repeal the Application of Mining Laws to Areas of the National Park Service, and for other purposes."

This is in response to your request for the Council's views on the enrolled bill.

S. 2371 provides for regulating all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within all areas of the National Park System. Further, it repeals laws allowing entry under the Mining Law of 1872 in Crater Lake National Park, Mount McKinley National Park, Death Valley National Monument, Glacier Bay National Monument, Coronado National Memorial and Organ Pipe Cactus National Monument.

A four-year moratorium of mining activity on previously undisturbed lands is imposed for Death Valley, Mt. McKinley and Organ Pipe Cactus. With a finding by the Secretary, enlargement of an existing excavation would be allowed in order to maintain the average annual rate of production for the calendar years 1973, 1974, and 1975.

Within two years of enactment the Secretary is directed to determine the validity of mining claims in Glacier Bay, Death Valley, Organ Pipe Cactus, and Mt. McKinley and to recommend to Congress which valid claims and patented claims the U.S. should acquire. There is also provision for possible boundary adjustments for Death Valley and Glacier Bay.

Within four years the Secretary is directed to determine the validity of mining claims within Crater Lake and Coronado.

Recordation of all mining claims within the entire NPS is required and those not recorded shall "conclusively presumed to be abandoned."

There is no authority provided to regulate mining in historic districts or historic landmarks; however, there is provision for the Secretary to submit a report to the Advisory Council on Historic Preservation with a request for the advice of the Council as to possible mitigating measures by the U.S. on a case-by-case basis. Additionally, the Advisory Council is directed to submit a report to Congress detailing how to best protect natural and historic landmarks from mining activities.

The bill would direct the holder of a claim who believes he has suffered a loss to sue in a U.S. district court for compensation. The bill directs the court to expedite consideration of any claim brought pursuant to the bill. The Secretary is directed to give prompt attention to any offers made by owners of valid claims or patents. Finally, there are separability and sunshine clauses.

The Council on Environmental Quality strongly recommends that the President sign the enrolled bill. Presently the Park Service has uncertain authority to regulate mining activity and in many cases does not know where all the mining claims on NPS areas are located. This bill provides clear authority to regulate mining and requires recordation of all mining claims. The bill does not preclude further mining activity in Glacier Bay; it provides for validity determinations of the mining claims within Glacier Bay and provides for possible boundary adjustments of both Glacier Bay and Death Valley.

Steven D. Jellinek
Staff Director

ACTION MEMORANDUM

Date: September 25 Time:

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 28 Time: noon

SUBJECT:

S. 2371-Regulation of mining within the National Park System

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

__X__ For Your Comments

____ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

Da: September 25 Time: 1000am

FO: CTION: George Humphreys ✓ cc (for information): Jack Marsh
Max Friedersdorf Jim Connor
Bobbie Kilberg Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 28 Time: noon

SUBJECT:

S. 2371-Regulation of mining within the National Park System

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__X__ For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

I concur approval
Ankl

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Date: September 25 Time: 1000am

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 28 Time: noon

SUBJECT:

S. 2371-Regulation of mining within the National Park System

ACTION REQUESTED:

____ For Necessary Action

____ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

__X__ For Your Comments

____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

approve Kilberg 8/28/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

September 27, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF

SUBJECT: S.2371 - Regulation of mining within the National Park System

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

Calendar No. 542

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-567

REGULATION OF MINING ACTIVITIES WITHIN AREAS OF THE NATIONAL PARK SYSTEM

DECEMBER 16 (legislative day, DECEMBER 15), 1975.—Ordered to be printed

Mr. METCALF, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 2371]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 2371), to provide for the regulation of mining activity within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended, do pass.

The amendments are as follows:

1. On page 1, after line 2 insert the following:

That the Congress finds and declares that—

(a) the level of technology of mineral exploration and development has changed radically since the enactment of the Mining Law of 1872, and as a result of these technological advances, the continued application of the Mining Law of 1872 to those areas of the National Park System to which it applies, conflicts with the purposes for which they were established; and

(b) all mining operations in areas of the National Park System should be conducted so as to prevent or minimize damage to the environment and other resource values, and, in certain areas of the National Park System, surface disturbance from mineral development should be temporarily halted while Congress determines whether or not to acquire any valid mineral rights which may exist in such areas.

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2. On page 1, line 3, strike "That in" and insert "SEC. 2. In" and insert "for" between "preserve" and "the", and renumber all following sections.

3. On page 1, line 5, strike "National Environ-" and all of lines 6 through 9, and insert in lieu thereat the following "Act of August 25, 1916, as amended (16 U.S.C. 1) and the individual organic Acts for the various areas of the National Park System, all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System shall be subject to such regulations prescribed by the".

4. On page 2, line 2, strike "protection" and insert in lieu thereof the word "preservation".

5. On page 2, strike all of lines 3 and 4 and insert "SEC. 3. Subject to valid existing rights, the following Acts are amended or repealed as indicated in order to close these areas to entry and location under the Mining Law of 1872:".

6. On page 3, line 6 strike "three" and insert "four".

7. On page 3, strike all of lines 8 and 9, and insert in lieu thereof "any patented or unpatented mining claim which is located within the boundaries of Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument shall not".

8. On page 3, line 11, strike the period and insert: ": *Provided, however*, That the provisions of this section shall not apply to surface disturbance caused by extraction of minerals from lands the surface of which had been significantly disturbed for the purpose of mineral extraction prior to September 18, 1975.".

9. On page 3, line 14, strike "3" and insert "4".

10. On page 3, starting with line 16, strike all of sections 5 and 6 through page 4, line 5, and insert in lieu thereof the following new sections:

> SEC. 6. Within two years after the date of enactment of this Act, the Secretary of the Interior shall determine the validity of any unpatented mining claims within Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park and submit to the Congress recommendations as to whether any valid or patented claims should be acquired by the United States.
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> SEC. 7. Within four years after the date of enactment of this Act, the Secretary of the Interior shall determine the validity of any unpatented mining claims within Crater Lake National Park, Coronado National Monument, and Glacier Bay National Monument, and submit to the Congress recommendations as to whether any valid or patented claims should be acquired by the United States.
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> SEC. 8. All mining claims under the Mining Law of 1872, as amended and supplemented (30 U.S.C. chapters 2, 12A, and 16 and sections 161 and 162) which lie within the boundaries of units of the National Park System shall be recorded with the Secretary of the Interior within one year after the effective date of this Act. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which

> was not valid on the effective date of this Act, or which becomes invalid thereafter.
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> SEC. 9. (a) Whenever the Secretary of the Interior finds on his own motion or upon being notified in writing by an appropriate scientific, historical, or archeological authority, that a district, site, building, structure, or object which has been found to be nationally significant in illustrating natural history or the history of the United States and which has been designated as a natural or historical landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for or removal or production of minerals or materials, he shall notify the person conducting such activity and submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a national landmark, to the Advisory Council on Historic Preservation, with a request for advice of the Council as to alternative measures that may be taken by the United States to mitigate or abate such activity.
>
> (b) The Council shall within two years from the effective date of this section submit to the Congress a report on the actual or potential effects of surface mining activities on natural and historical landmarks and shall include with its report its recommendations for such legislation as may be necessary and appropriate to protect natural and historical landmarks from activities, including surface mining activities, which may have an adverse impact on such landmarks.

I. PURPOSE

S. 2371 deals with the only areas of the National Park System in which mineral development is permitted under the Mining Law of 1872. The six areas involved are: Crater Lake, and Mount McKinley National Parks; Death Valley, Glacier Bay and Organ Pipe Cactus National Monuments; and Coronado National Memorial.

S. 2371 would do three things:

(1) repeal the seven acts of Congress which make the Mining Law of 1872 applicable to these six units of the National Park System (Section 3);

(2) provide express and broad authority for management by the Secretary of the Interior of mineral development on patented and unpatented mining claims within all areas of the National Park System (Section 2); and

(3) impose a four-year moratorium on further surface disturbance within Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park in order to give the Secretary of the Interior an opportunity to determine the validity of existing mining claims and give the Congress an opportunity to decide whether to acquire any valid mineral rights in order to prevent further damage to these areas (Section 4).

II. BACKGROUND AND NEED

The spectacular scenic and natural values of six units of the National Park System, particularly Death Valley National Monument,

are being threatened by mineral development. This development is being carried out under the Mining Law of 1872 which, many years ago by special acts of Congress, was made applicable to six units of the park system. In addition to Death Valley, the other areas involved are Crater Lake and Mount McKinley National Parks, Coronado National Memorial and Organ Pipe Cactus and Glacier Bay National Monuments.

The Committee believes that the time has come to repeal these special laws so as to assure the preservation of these national treasures. The lands now subject to these laws total approximately 7.1 million acres, over 20 percent of our National Park System.

APPLICATION OF THE MINING LAW OF 1872

As an aid to the committee in its consideration of S. 2371, the Congressional Research Service was asked to review the legislative history of the specific laws being repealed. That review was printed in the Congressional Record on September 26. It indicates that the Congress opened these lands to mining because of the minimal impact of the exploration and mining methods of the time. Certainly present technology and mining methods, particularly large open-pit mines, for relatively low grade deposits, were not contemplated.

LIMITATIONS ON MINERAL DEVELOPMENT ON FEDERAL LANDS

The Committee is aware that there has been some concern expressed by the mining industry and some officials of the Department of Interior over placing additional limitations on mineral development on Federally-owned lands.

The significant issue is not how many acres are withdrawn from some or all forms of mineral development. There is a fallacy in a mere aggregation of figures. The real questions are: What are the purposes of the withdrawals? Do the existing withdrawals reflect our current national needs and priorities? Has too much land been withdrawn from mineral development?

According to the Department of the Interior, implementation of the Alaska Native Claims Settlement Act accounts for almost two-thirds of all lands currently withdrawn. Of this less than 25 percent is available for some sort of mineral entry or lease. After completion of Native selections and conveyances this should increase to about 50 percent or some 100 million acres. Depending on the results of congressional action on the Department's recommendations for new National systems, discussed below, an additional 10–50 million acres could become available.

The land selection processes of the Alaska Statehood Act of 1958 and the Alaska Native Claims Settlement Act of 1971 will result in approximately 145 million acres of Federal land in Alaska being permanently removed from the application of the Federal mineral development laws. However, the Committee assumes that most of these lands will be available for mineral development under the laws of the State of Alaska and under agreements with Native land owners.

The Committee believes that the Congress needs the best possible information about all the resource values of public lands when it is

considering limiting their use. In evaluating resource values, the needs for lands and the uses to which they may be put must be subjected to careful evaluation. For areas of Federal land managed under the multiple use principle, it may be necessary in certain situations to deny one use, such as mineral development, so that other uses may make an optimum contribution in the public interest. Conversely, in other cases it may be necessary to adjust other uses so that minerals may be developed in order to achieve the maximum public benefit.

Withdrawals have been and are being made not to prevent mining or mineral leasing per se, but to protect a value (e.g., a national park) or permit another valuable program to be implemented (e.g., the Trans-Alaska Oil Pipeline Corridors). The Committee believes that the very high scenic and natural values of lands placed in the National Park System justify the limitations on mineral development which have been imposed in the past. More importantly, these values mandate the repeal of those laws making applicable to six areas of that system the most outmoded and environmentally unsatisfactory public land statute—the Mining Law of 1872.

The approximately 31 million acres of the National Park System comprise just over 4 percent of the approximately 800 million acres of Federal lands and minerals. The 7.1 million acres in the six areas of the National Park System currently subject to location of mining claims under the 1872 Mining Law have been available for mineral exploitation for over 100 years. Much information is available about their mineral values. (See e.g., An Assessment of Mineral Resources in Alaska, Committee Print, July 1974.) As pointed out elsewhere in this report, the Committee is aware of the borate and talc resources in Death Valley National Monument and the large nickel deposit underlying the Brady Glacier in Glacier Bay National Monument.

The Committee is, however, convinced that, subject to valid existing rights, mineral development pursuant to the Mining Law of 1872 should not be allowed to continue in our National Park System. There are many areas of public land containing valuable minerals which are not within the National Park System. The Committee believes that public land mineral deposits *outside* the National Park System should be developed before those *within* the National Park System.

RELATIONSHIP OF S. 2371 TO "NATIONAL INTEREST AREAS" IN ALASKA

The Committee is currently considering legislation to add anywhere from 40 to 105 million acres of public lands in Alaska to either the national forest, national park, national wildlife refuge or national wild and scenic rivers systems. These proposals stem from the provisions of Section 17(d)(2) of the Alaska Native Claims Settlement Act of 1971.

It was suggested to the Committee that Mount McKinley National Park and Glacier Bay National Monument be excluded from S. 2371 because these proposals are pending. Some are concerned that S. 2371 would prejudge the issue of mineral development within the additions to the four national systems in Alaska which the Congress will undoubtedly be making during the next few years.

The Committee action in recommending enactment of S. 2371 in no way should be considered a prejudging the issue of what activities

or land management systems should be adopted with respect to currently pending Alaska "national interest area" proposals. The Committee's action does reflect its view that (1) mineral development under the Mining Law of 1872 is not an appropriate use of lands in the National Park System and (2) our park system is a *national* system which must be preserved for the benefit of all the people.

PAST AND PRESENT MINING ACTIVITY

Mining activity occurs in varying degrees in the six areas of the National Park System affected by S. 2371. The extent of the mining activity in each of these areas and the available mineral survey data on each as reported by the Department of the Interior may be summarized as follows:

Death Valley National Monument—In 1974, approximately 3 percent of our annual domestic production of boron minerals and 100,000 tons of talc were mined from the monument area, which represents less than 1 percent of our annual domestic production. Although a complete mineral study has not been made of this monument, gold, silver and tungsten mineralization are also known to occur in the area. There are presently an estimated 50,000 unpatented mining and millsite locations within the monument. There are 267 patented mining claims covering 7,106.83 acres within the monument.

According to the National Park Service, various companies with strip mining operations inside Death Valley Monument have substantially increased their activities since introduction of the bill—so much so that it appears that the longer the delay in enacting S. 2371, the more likely it will be that irreparable damage is done to areas such as Gower Gulch, and the view from Zabriskie Point.

Although Tenneco, the sole producer of borates in the Monument, has withdrawn its claim stakes in Gower Gulch, another party has, in the meantime, staked a claim in the same area, apparently with the intention of initiating production. Among the talc producers, Pfizer has increased its stripping rate about 2.5 times over what it was between January, 1972 and October of this year. According to reports from the Park Service, Pfizer has stripped some 15 acres recently and intends to begin two additional mines, one in November and another before the end of the year, and is now operating on a 6-day work week where it was once on an on-and-off basis. Similarly, Cypress has stripped 5 acres since the last week of September and is now on a 7-day week. Johns-Mansville, although it has not increased its stripping, plans to open a new mining area soon.

Mount McKinley National Park—There are an estimated 300 unpatented mining and millsite locations within the park and no patented mining claims. The current mineral production in the park is from a surface mine and consists of approximately 100 tons of antimony ore per year having a gross value of $60,000.

Glacier Bay National Monument—An estimated 270 unpatented mining and millsite locations and 20 patented mining claims are within the monument. While there has been little production of minerals from these properties, mining claims within the monument are said to contain resources of one billion pounds of nickel, representing about one percent of total U.S. nickel resources, and 600 million pounds of copper. A variety of other minerals, including molybdenum, gold, titanium and iron are also present.

No mining is taking place now. Newmont Mining Corporation has been exploring a deposit of approximately 1 billion pounds of nickel and 600 million pounds of copper in its claims underlying Brady Glacier, on the east flank of the Fairweather Range about 12 miles north of Dixon Harbor.

The Geological Survey and the Bureau of Mines are currently undertaking a mineral survey of the monument, pursuant to an Administration recommendation that such a survey be completed before proposing any lands therein for inclusion in the Wilderness System.

Docking facilities in Dixon Harbor would be essential to the development of the nickel-copper deposit. A biological study of Dixon Harbor area has been completed and submitted by the Park Service.

The possibility of gold and other metallic deposits northwest of Dixon Harbor has not been verified but has aroused concern over mining in that vicinity being encouraged if the Dixon Harbor dock facility were constructed.

Aside from Riddle, Oregon, deposits, the other major resource is located in the Duluth Cabbro Complex in northeastern Minnesota, being an estimated, but as yet unverified total of 6.5 billion pounds.

Organ Pipe Cactus National Monument—There are approximately 3,000 unpatented mining and millsite locations within this national monument and no patented claims. Although there is now some ongoing exploration activity within the monument, there is no production of any mineral. Exploration for copper has been carried out by Asarco, Inc. over the past 51 years, with copper in evidence but reportedly not in sufficient concentration to justify mining.

Pangea Resources, Inc. testified that it is now undertaking drilling in the Copper Mountain area anticipating if successful the development of an underground mine. The cost of the exploratory hole is said to be $100,000.

There are approximately 3,000 unpatented claims and millsite locations within the monument.

Coronado National Memorial—There are no unpatented mining claims within the memorial. Some mining claims were located within the memorial in the past, as evidenced by some old mining cuts and open pits. There has been no mining activity within the memorial since it was created in 1952. Geological evaluation of the area does not indicate sufficient mineralization to support any further mining activity.

Crater Lake National Park—There are no unpatented or patented mining claims or locations within the park and, thus, there is currently no mining activity within the park.

PRODUCTION OF BORATES AND TALC

Since the current serious threat to scenic values within Death Valley National Monument is posed by strip mining for borates and talc, it is important to consider the importance of the Death Valley production in the perspective of national material needs and the

evident trend toward reliance upon imports for many of our essential mineral needs.

Borates

The Department of Interior has reported that approximately 3 percent of domestic production of boron minerals was mined from the Death Valley National Monument area in 1974, including 80 percent of domestic colemanite production. Colemanite, which is the less common grade of borate, is largely interchangeable with other borates, each requiring different modifications of the manufacturing process, although Colemanite is preferable for use in certain products.

According to the Bureau of Mines, the boron industry is well established in the United States with reserves adequate for 84 to 120 years at expected rates of growth. Although the largest producer is a subsidiary of a foreign-based company, three other U.S. companies also produce substantial quantities of boron minerals. In time of emergency rapid expansion of boron production by two companies at Searles Lake might be difficult because recovering boron compounds from Searles Lake brines is a complicated process involving many byproducts and coproducts. This would not be true with U.S. Borax, the dominant producer, nor with Tenneco, a relatively newcomer. Processes for recovering usable boron compounds either from bedded deposits or underground brines or brine lakes are not expected to change significantly by the year 2000.

Colemanite, which is produced by Tenneco, contains calcium as well as boron in the proper proportions to enter directly into the manufacture of heat-resistent glass and fiberglass, whereas most U.S. boron products require some calcium to be added. If the large Turkish boron deposits continue to take over more of the free world boron demand as well as some of the U.S. demand, the period of adequate domestic boron supply may be substantially lengthened.

Demand for boron minerals and compounds continued to be high for most of 1974, particularly in the glass wool area. However, the market weakened near yearend, because of recession. Despite a major strike, output did not suffer greatly, although it declined from 1,225,000 short tons of boron minerals and compounds in 1973 to about 1,185,000 tons. Prices were raised four times during 1974, which explains why overall output value attained $128 million, up $16 million over that in 1973. The United States has been the foremost world producer for years, although Turkey has been gaining ground as the No. 2 producer.

California supplied most of the boron minerals, with the bulk of the output controlled by a British company. Sodium borates were extracted primarily from an open-pit mine at Boron, owned by the U.S. Borax & Chemical Corp., and secondarily from the brines of Searles Lake under Kerr-McGee Chemical Corp. and Stauffer Chemical Co. In 1974 U.S. Borax announced a program to raise output by about one-third in 3 or 4 years. Kerr-McGee moved ahead on its new soda ash plant (although this may not necessarily have a borate cycle) and bought Stauffer Chemical's plant in October. Tenneco Oil Co., which produces relatively small tonnages of calcium borates from its deposit at Death Valley in Inyo County, California, had its first good

year through raising colemanite production and initiating ulexite production.

Imports of colemanite, all from Turkey, were 21,214 short tons valued at $852,000, up from 18,216 tons. U.S. exports of boric acid were 35,740 short tons valued at $8.8 million in 1974, down from 41,407 tons valued at $6.9 million in 1973. Exports of refined borates, however, showed a sharp increase: 218,107 tons valued at $33.8 million in 1974 and 168,826 tons valued at $19.4 million in 1973. These figures only tell about half the story, since unrecorded exports of crude borates were larger than refined borates and boric acid combined. Most exports went to Western Europe and Japan, as usual.

Boron compounds are used extensively in manufacturing glass, particularly the heat-resistent types, vitreous enamel, soaps, cleansers, detergents. Borax is added to fertilizers as an essential plant nutrient. Boron compounds are also used in weed killers, fluxing materials, alloy steels, radio tubes, solar batteries, dying materials, plasters and paints, spray nozzles, bearing liners, furnace parts, nuclear reactor control elements, catalysis in silicone production, plasticizers, fire retardants.

In 1967 the General Services Administration sold the entire inventory of colemanite, amounting to 67,571 long dry tons which had been acquired from Turkey by the Commodity Credit Corporation in exchange for surplus agricultural products.

Talc

According to the Bureau of Mines, U.S. mine production of talc-group minerals, with a record of 14 annual increases in the last two decades, has almost doubled in tonnage since 1955 and has more than doubled in total value during that period. Apparent consumption of talc minerals in the United States, although expanding less consistently than production, reached a level in 1974 that was higher by almost one-half than that of 1955. Domestic demand for talc and related minerals is expected to increase at an average annual rate of about 4% through 1980.

U.S. imports of talc for consumption have remained comparatively stable and have shown no evident trend, either upward or downward, for many years. In contrast, U.S. exports of tale minerals have grown notably in recent decades; the tonnage exported in 1974 was approximately 6 times more than in 1955, and the corresponding total value was more than 8 times greater. The United States is self-sufficient in most grades of talc and related minerals.

There were over 30 producing companies in 1974, the 10 largest of which supplied 85 percent of the total output; Vermont, New York, Texas, Montana, and California leading in that order among the 14 States where talc minerals were produced, accounted jointly for nearly 90 percent of the yearly total. Most of the crude material was processed for sale or use in about 35 grinding mills operated by 29 firms in 11 States.

Talc-group minerals were consumed domestically in ceramics, paint, paper, refractories, building materials, insecticides, toilet preparations, rubber products, and various minor applications. Talc and related minerals are subject to competition from each other, from Kaolin,

fuller's earth, limestone, and other inorganic fillers, and from feldspar for ceramics, as determined partly by price and partly by performance.

MINERAL SURVEYS IN GLACIER BAY NATIONAL MONUMENT

The Administration recommended that Glacier Bay National Monument be left open to entry, location, and patent under the 1872 mining law, pending the completion of a mineral survey of the monument by the United States Geological Survey. Due to be completed in 1978, this survey will determine, among other things, the feasibility of extracting nickel deposits located under Brady Glacier.

The Committee retained the provision of S. 2371 which would repeal the 1936 Act applicable to Glacier Bay.

In making this decision, the Committee noted the following:

(1) Twenty patented mining claims are located on the Brady Glacier nickel deposit and repeal of the 1936 Act would have no effect on them;

(2) The Solicitor of the Department of the Interior has determined that, in view of the 1936 Act specifically opening the monument to the 1872 mining law, the Secretary does not have authority to withdraw areas within the monument for mining entry; and

(3) Absent repeal of the 1936 Act, new claims could be located without restriction, creating the possibility of additional inholdings in environmentally sensitive areas of the monument. The Department's mineral survey could guide the location of such claims. The Mining Law of 1872 was designed to provide a strong incentive to mineral exploration on Federal land by private citizens. Thus, Government mineral surveys are inconsistent with the application of the 1872 law.

The Committee has consistently distinguished national parks and monuments from areas of the national forests where mining is permitted. In considering wilderness proposals for national forest land, where under the Wilderness Act the 1872 mining law applies until 1984, the Committee and the Congress have required mineral surveys. However, in national parks and monuments, where mineral entry is not generally permitted, the Committee has not required and indeed the Administration has not generally suggested mineral surveys prior to wilderness designation.

The Committee wishes to reiterate its views that mineral surveys are not needed prior to wilderness designation in national parks and monuments.

III. Legislative History

S. 2371 was introduced by Senator Metcalf on September 18, 1975. Senators Bumpers, Cranston, Hatfield, Jackson, Johnston, Packwood, Schweiker and Tunney are cosponsors of the bill.

A public hearing on the bill was held before the Full Committee on October 7, 1975.

Three related bills are pending in the House of Representatives: H.R. 9799, H.R. 9931, and H.R. 9953.

A related bill (S. 2273) was introduced during the 93rd Congress by Senator Goldwater.

IV. Committee Recommendation and Tabulation of Votes

The Senate Committee on Interior and Insular Affairs, in open business session on December 12, 1975, by majority voice vote of a quorum present, recommends that the Senate pass S. 2371 if amended as described herein. Senators Fannin, Hansen, and Bartlett voted against the recommendation.

V. Committee Amendments

The following is a brief explanation of each of the Committee amendments:

1. Page 1, after line 2: New section 1 sets forth Congressional findings and declarations. Among other things, these indicate the need for repeal of the old laws and for the temporary and limited moratorium on surface disturbance in three areas of the national park system set out in Section 4.
2. Page 1, line 3: Technical conforming amendment.
3. Page 1, line 5: Adds reference to the Organic Act of the national park system which, among other things, expressly states that the "fundamental purpose" of the system is to "conserve the scenery and the natural and historic objects and the wild life therein. . . ." Also clarifies intent that this section apply to all mineral development activity within areas of the National Park System.
4. Page 2, line 2: Conforms language to the Act of August 18, 1970 (16 U.S.C. 1a–1) relating to management of the National Park System.
5. Page 2, lines 3 and 4: Technical amendment.
6. Page 3, line 6: Provides for four-year moratorium (rather than three) on surface disturbance. This would allow two years for Congressional action after receipt of the recommendations from the Secretary of the Interior called for by section 6.
7. Page 3, lines 8 and 9: Limits the moratorium to the three areas of the park system which the Administration indicates are currently threatened by mining activity.
8. Page 3, line 11: Adds a "grandfather clause" which exempts from the moratorium surface disturbance caused by extraction of minerals from lands which had been significantly disturbed prior to the date of introduction of S. 2371.
9. Page 3, line 14: Conforming amendment.
10. Page 3, line 16: New section 6 directs the Secretary of Interior to determine, within two years, the validity of unpatented mining claims in the three most threatened areas of the park system and to recommend to Congress whether valid or patented claims should be acquired.

New section 7 imposes the same requirements for the other three areas of the park system with a four-year deadline.

New section 8 requires recordation of all mining claims within the boundaries of areas of the national park system within one year. Unrecorded claims would be void.

New section 9 requires that the Secretary of Interior bring to the attention of the Advisory Council on Historic Preservation, which

was established by Congress in 1966 (16 U.S.C. 470i), any threatened destruction of a national landmark by surface mining.

It also requires the Advisory Council, within two years, to submit to Congress its recommendations for legislation designed to protect natural and historical landmarks from activities, including surface mining, which may have an adverse effect on such landmarks.

VI. Section-by-Section Analysis

Section 1. The meaning of this section is clear.

Section 2. This section gives the Secretary of the Interior broad authority to promulgate rules and regulations governing all activities resulting from exercise of mineral development rights on patented or unpatented mining claims within any area of the National Park System. This provision applies to all such claims including those located or patented prior to enactment of the seven laws being repealed. The Committee wishes to stress this point because they believe that the Secretary has been very lax in the exercise of his current authority. The Committee intends that this authority be exercised in a manner which will assure that the primary values of these areas are preserved.

Section 3. The meaning of this section is clear. The phrase "valid existing rights" applies to valid unpatented mining claims. Patents could be issued for these claims despite the repeal of the special laws.

Section 4. This section prohibits for a period of four years after the date of enactment of the Act any surface disturbance for purposes of mineral exploration or development of any lands within a patented or unpatented claim located in Death Valley and Organ Pipe Cactus National Monuments, and Mount McKinley National Park. This moratorium does not apply to surface disturbance caused by extraction of minerals from lands which had been significantly disturbed by mineral extraction prior to the date of introduction of S. 2371 (September 18, 1975).

The Committee adopted this cutoff date for the "grandfather clause" in order to discourage any surface disturbance designed to circumvent the protection afforded by the moratorium. The acceleration of surface disturbance activity in Death Valley National Monument since introduction of S. 2371 is described in the Background and Need section of this report.

The Committee expects the Secretary of the Interior to keep them informed about any potentially destructive mining activity in all units of the National Park System. This has not been done in the past, particularly with respect to the substantial increase in mining exploration and development which has taken place in Death Valley during the last 3 or 4 years.

The Committee cannot understand why it had to learn about the present serious situation in Death Valley through newspaper articles rather than reports with recommendations for legislative action from the Secretary of the Interior.

The Department of the Interior in its October 6 report on the bill stated that the more stringent moratorium in the bill as introduced "could constitute a 'taking' of existing rights without compensation.

The Department is opposed to what is likely an unconstitutional interference with valid existing rights. . . ." The Department's conclusions about the "likely" constitutionality of a moratorium were not supported with any rationale either in the report or during oral testimony.

The fifth amendment of the U.S. Constitution provides that "private property" shall not "be taken for public use without just compensation." Although the "taking" issue arises from the U.S. Constitution, in practical application it has primarily involved land use controls exercised by local governments as subdivisions of the States. The courts are increasingly inclined to regard restrictions on the use of property as "regulation", the exercise of police power to protect public health, safety or welfare, rather than a taking.

Although there are a number of tests used, the courts most frequently look at how much economic loss the government's action has caused the landowner. Obviously, the thorny issue is how much economic harm is necessary for "regulation" to become a "taking". The Supreme Court has stated that there "is no set formula to determine where regulation ends and taking begins" *Goldblatt* v. *Hempsted*, 369 U.S. 590, 594 (1962). In *Goldblatt*, the Court upheld the challenged government regulation which prohibited certain mining practices and required owners to fill mined areas without providing compensation for the resulting economic loss. There are numerous court decisions involving State or local government restrictions or absolute prohibitions on mining which have been upheld as regulation. The courts have also treated measures designed to protect significant natural features of the land as regulation. This is particularly true where the legislative history demonstrates a considered value judgment on the part of the legislature.

In *Izaak Walton League* v. *St. Clair* (4 ERC 1864) the Court held that the Wilderness Act of 1964 banned all mineral activity in the Boundary Waters Canoe Area, even though the ban effectively eliminated the value of mineral rights held by individuals. The court found this ban reasonable and within the power of Congress to regulate use of the public lands because it had a rational basis and bore a substantial relation to a valid public purpose. This decision has not been overturned.

It is the Committee's opinion that the moratorium provision of this section is a constitutional exercise of Congress' power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ." (U.S. Const., Art. IV Sec. 3, Cl. 2).

Furthermore, the Committee believes that the moratorium is a reasonable regulation of the rights conferred by the United States upon holders of valid mining claims. The moratorium provision in S. 2371 does not completely extinguish any rights but merely defers their exercise. It is clearly analogous to a situation considered by the Supreme Court in two decisions.

In the first, the Court held that Congress could not react to the wave of foreclosures on farm mortgages created by the depression by taking away holders of the mortgages right to foreclose them some day and sell the farm at public auction. *Louisville Joint Stock Bank* v. *Redford*, 295 U.S. 55 (1935)

Congress then amended the law to provide simply for a 3-year stay on the right to foreclose, and the amended statute was upheld. *Wright* v. *Vinton Branch of Mountain Trust Bank*, 300 U.S. 440 (1937).

The same principle has been applied where bankrupt railroads that lose money by continued operation are concerned. Here, of course, the continued operation at a loss is at the expense of the securities' holders who own the railroad. Yet just last year the Supreme Court acknowledged that although the right of the owners to eventually realize the full value of their property by ceasing operation and selling it could not be entirely denied, that right is qualified by the requirement that a railroad estate suffer interim losses for a reasonable period of time pending good faith efforts to develop a feasible reorganization plan if the public interest in continued rail service justified the requirement. *Blanchette* v. *Connecticut General Insurance Corp.* 95 S. Ct. 335, 348 (1974).

Section 5. This section is designed to protect valid existing rights by waiving, for any mining claims affected by Section 4, the requirements for annual assessment work which would normally apply to all mining claims. The moratorium established in section 4, would preclude surface disturbance caused by such assessment work.

Section 6. This section is designed to give the Congress information upon which to base a decision whether to acquire valid unpatented and patented claims in the three areas listed in the section.

Section 7. This section allows the Secretary of the Interior four years to accomplish the same purpose as set forth in section 6 for the three areas listed in the section.

Section 8. This section requires that all mining claims under the Mining Law of 1872 and lying within boundaries of the National Park System be recorded with the Secretary of the Interior within one year after the effective date of the Act. Claims not so recorded would be presumed to be null and void. Recordation would not make an otherwise invalid claim valid.

Section 9. This section provides that the Secretary of the Interior shall take certain action for the prevention or mitigation of damage by surface mining activities to lands or objects which have been designated as natural or historical landmarks, and requires the Advisory Council on Historic Preservation to report to Congress within two years from the effective date of the section on actual or potential effects of surface mining activities on such landmarks together with recommendations for ameliorative legislation.

The Committee is concerned not only with surface mining in areas which have been established as parts of the National Park System, but in other areas which have been recognized nationally for their unique natural or historical value. The Department of the Interior maintains registeries of natural and historical landmarks which have been found to be nationally significant in illustrating the history and natural history of the United States. Many of these landmarks, such as the historic Green Springs Plantation in Virginia, are on private land, however, and there is no protection available from surface mining activity. Where historic landmarks are threatened by Federal actions, the Congress has provided a review procedure involving the Advisory

Council on Historic Preservation. The Committee believes the Council should be given the opportunity to advise the Secretary of the Interior when private surface mining activity threatens a national landmark.

The language would not prevent such private surface mining, but it would provide a forum in which the Secretary and the Congress could consider alternative means of mitigating or abating the potential harm.

VII. Cost and Budgetary Considerations

In accordance with section 252(a) of the Legislative Reorganization Act of 1970, the Committee provides the following estimates of cost:

Section 6 of S. 2371 requires the Secretary of Interior to determine, within two years, the validity of unpatented mining claims within Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park and submit recommendations to the Congress as to whether any valid or patented claims within these areas should be acquired by the United States. These determinations are estimated to cost as follows:

Park or monument	Cost of determining validity of claims	Cost of estimating value of valid or patented claims
1. Death Valley	$700,000	$400,000
2. Organ Pipe Cactus	150,000	200,000
3. Mount McKinley	150,000	200,000
Total	1,000,000	800,000

Section 7 requires a similar determination for the three other areas of the national park system by the Secretary within 4 years after enactment of S. 2371. Estimated cost of this provision follows:

Park or monument	Cost of determining validity of claims	Cost of estimating value of valid or patented claims
1. Walker Lake	None	None
2. Coronado	None	None
3. Glacier Bay	$200,000	$200,000
Total	200,000	200,000

There are no land acquisitions authorized by S. 2371. The provisions of Sections 6 and 7 are designed to provide information upon which Congress will decide whether lands should be acquired.

VIII. Executive Communication

The legislative report received by the Committee from the Department of the Interior setting forth its recommendations relating to S. 2371 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 6, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the request of your Committee for our views on S. 2371, a bill "To provide for the regulation of mining activity within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes."

We recommend against enactment of this bill, but we would support legislation which contained features discussed on page 5 of this report.

S. 2371 provides that the surface use of mineral land locations within any areas of the National Park System is subject to such rules and regulations as may be prescribed and published by the Secretary of the Interior for the protection and management of those areas. Section 2 of the bill amends or repeals provisions of existing law which permit mining within six areas of the National Park System. Section 3 of the bill provides that for a period of 3 years the surface of any land included within any mining claim located or patented in accordance with the foregoing provisions of law in the six areas referred to shall not be disturbed for purposes of mining exploration or development. Section 4 suspends the requirements for annual expenditures as to claims subject to the 3-year moratorium. Section 5 directs the Secretary of the Interior within 90 days to submit to the Congress an estimate of the funds and manpower needed to determine the validity of any mining claims within Death Valley and Glacier Bay National Monuments, together with recommendations as to whether any valid claims should be acquired by the United States. Section 6 of the bill directs the Secretary to submit the same information to the Congress with respect to Crater Lake and Mount McKinley National Parks and Coronado and Organ Pipe Cactus National Monuments, within one year.

The three year moratorium provision in Section 3 of the bill could constitute a "taking" of existing rights without compensation. This Department is opposed to what is likely an unconstitutional interference with valid existing rights and considers the possibility of compensation for such rights to be economically infeasible. For this reason, we are opposed to Sections 5 and 6 of S. 2371 which provides for recommendations from the Secretary as to whether any valid claims in these six park areas should be acquired by the United States. This is a totally unworkable concept considering the probable economic costs of such a "buy out".

S. 2371 concerns six areas of the National Park System which are open, by statute, to location, entry, and patent under the mining laws of the United States. The six areas mentioned in the bill are: Glacier Bay National Monument, Alaska; Death Valley National Monument, California; Coronado National Memorial, Arizona; Mount McKinley National Park, Alaska; Organ Pipe Cactus National Monument, Arizona; and Crater Lake National Park, Oregon. Mining activity occurs in varying degrees in these areas. The extent of the mining activity in each of these areas and the available mineral survey data on each area is as follows:

(*1*) *Glacier Bay National Monument, Alaska.*—Although more mineral survey data is needed in order to evaluate the full mineral potential of this area, this national monument is known to contain a variety of mineral deposits, including copper, molybdenum, nickel, gold, titanium, and iron. The mining claims within the monument contain resources of one billion pounds of nickel, but this represents only 1 percent of the total U.S. nickel resource, and 600 million pounds of copper. There are an estimated 270 unpatented mining and millsite locations, and 20 patented mining claims within the monument. There has been very little production of minerals from these properties. The U.S. Geological Survey and the Bureau of Mines, of this Department, are currently cooperating in the conduct of a mineral survey of the monument.

(*2*) *Death Valley National Monument, California.*—In 1974, approxmately 3 percent of our annual domestic production of boron minerals and 100,000 tons of talc were mined from the monument area, which represents less than 1% of our annual domestic production. Although a complete mineral study has not been made of this monument, gold, silver, and tungsten mineralization are also known to occur in the area. There are presently an estimated 50,000 unpatented mining and millsite locations within the monument. There are 267 patented mining claims covering 7,106.83 acres within the monument.

There are a total of 10 producing mines in Death Valley National Monument. Current production from those mines is talc, and ulexite and colemanite which are boron minerals. There are three talc companies producing from the monument and all have alternate sources of this material outside the monument. Tenneco is the sole producer of ulexite and colemanite within the monument, and the company has filed new claims on ulexite and colemanite deposits outside the monument as well as within it. Death Valley contains the only known significant domestic reserves of the specific high grade borate colemanite. This area supplies 80% of domestic colemanite production, which is used in the manufacture of filament grade fiberglass; it could continue the present rate of production for at least 100 years on known reserves within the monument.

Borates and talc represent the total current mineral production from Death Valley National Monument. Their production from the monument has a market value of nearly $25 million annually. The main impact on the monument is the use of open pit methods to mine borates (including ulexite and colemanite) by Tenneco that began in 1971, and older talc mines. Tenneco's Boraxo pit now is some 3,000 feet by 600 feet and is 220 feet deep, while its Sigma pit is 500 feet by 400 feet, and is more than 15 feet deep. Both are being enlarged by ongoing mining and the spoil or waste dumps are highly visible from the scenic road to the Dante's View overlook. Other even larger Tenneco deposits in the same general area of the monument have proven reserves of borates, but have not been developed for production as yet.

Talc production from the monument is currently nearly 100,000 tons per year. Talc reserves in the monument are estimated to be sufficient to sustain production for over 25 years.

(3) *Coronado National Memorial, Arizona.*—There are no unpatented or patented mining claims within the memorial. Some mining claims were located within the memorial in the past, as evidenced by some old mining cuts and open pits. There has been no mining activity within the memorial since it was created in 1952. The geological evaluation of the area does not indicate the presence of sufficient mineralization to support any further mining activity.

(4) *Mount McKinley National Park, Alaska.*—There are an estimated 300 unpatented mining and millsite locations within the park and no patented mining claims. The current mineral production in the park is from a surface mine and consists of approximately 100 tons of antimony ore per year having a gross value of $60,000.

(5) *Organ Pipe Cactus National Monument, Arizona.*—There are approximately 3,000 mining and millsite locations within this national monument and no patented claims. Although there is now some ongoing exploration activity within the monument, there is no production of any mineral.

(6) *Crater Lake National Park, Oregon.*—This National Park may be technically open to location, entry, and patent under the mining laws of the United States. There are no unpatented or patented mining claims or locations within the park and, thus, there is currently no mining activity within the park. The Act of May 22, 1902 (32 Stat. 202) that established Crater Lake National Park stated that "Crater Lake National Park shall be open, under such regulations as the Secretary of the Interior may prescribe, to all scientists, excursionists, and pleasure seekers and to the location of mining claims and the working of the same." However, the Act of August 21, 1916 (39 Stat. 522), provided that the Secretary of the Interior shall make rules for the protection of the property therein "especially for the preservation from injury or spoilation of all timber, mineral deposits other than those legally located prior to the date of enactment of this Act, natural curiosities, or wonderful objects within said park. . . ." Since the Act of 1916 did not specifically repeal the mining language in the 1902 Act, there is some confusion in the law as to whether Crater Lake National Park is open to mining activity.

In 1974, this Administration transmitted legislative proposals to the 93d Congress which recommended that certain portions of Death Valley National Monument, Crater Lake National Park and Organ Pipe Cactus National Monument be included in the Wilderness Preservation System. In addition to including these areas of the National Park System within the Wilderness System, each of our legislative proposals specifically closed the entire park or monument to location, entry and patent under the mining laws by providing for the repeal, subject to valid existing rights, of the statute which extended the mining laws to each park or monument.

Furthermore, this Administration's proposed "Alaska Four Systems" legislation contains a provision for the repeal, subject to valid existing rights, of the statute which opened Mount McKinley National Park to mining.

With respect to the Glacier Bay National Monument, in 1974, the Administration recommended that a mineral survey of the national

monument be completed before proposing any lands therein for inclusion in the Wilderness System. The U.S. Geological Survey and the Bureau of Mines are conducting such a mineral survey pursuant to this recommendation.

Although we are cognizant of the problems of mineral sufficiency and the need for increased mineral production in the future, we also recognize the need for preserving the natural environment of our National Park System.

While we cannot recommend enactment of S. 2371, we would support the enactment of legislation which contained the following provisions:

1. A provision which would, subject to valid existing rights, amend or repeal provisions of existing law which permit location, entry and patent under the mining laws within 5 areas of the National Park System: Death Valley National Monument, California; Coronado National Memorial, Arizona; Mount McKinley National Park, Alaska; Organ Pipe Cactus National Monument, Arizona; and Crater Lake National Park, Oregon. ("Valid existing rights" includes not only patented mining but also unpatented claims which were validly located and have been maintained as required by the mining laws.) We would recommend that Glacier Bay National Monument not be included pending completion of the mineral survey currently being conducted by the U.S. Geological Survey and the Bureau of Mines.

2. A provision which would make all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims in the five parks or monuments, specified above, subject to reasonable regulations prescribed by the Secretary of the Interior. Such regulations should govern surface and subsurface mining activities, reclamation, and ancillary operations in these five specified areas to protect and preserve their natural, scenic, and historic values. The Secretary should be authorized to require appropriate performance bonds to assure compliance with such regulations. A mandatory mining claim recordation requirement should be included in such a bill that would require the recordation with the Secretary of the Interior, of all mining claims under the Mining Law of 1872 within one year after the effective date of enactment or within 30 days of the location of a claim, whichever was later. Any mining claims not so recorded should be conclusively presumed to be abandoned and void.

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

Sincerely yours,

NATHANIEL REED,
Assistant Secretary of the Interior.

IX. Minority Views of Senators Fannin, Hansen and Bartlett

Of the approximately 120 national parks and national monuments, mineral exploration and extraction under the Mining Law of 1872 has been permitted by Congress in only six. S. 2371, if adopted, will close these. What has happened since Congress specifically carved out these six exceptions? Have we now accumulated such large stockpiles of the minerals contained in these six areas that we no longer require further exploration and development? Have we discovered other sources to meet our needs? Or perhaps we no longer have the same degree of industrial reliance on these materials?

One would think that an affirmative answer to one of the three latter questions would be prerequisite to undoing the acts of previous Congresses, yet the record is barren of any such affirmation. To the contrary, the record shows that these areas contain at least 14 valuable minerals that the Bureau of Mines forecasts will be in short supply within the next 25 years. Among these, for instance, is nickel. Yet one of the areas to be closed is Glacier Bay National Monument, which is known to contain approximately one billion pounds of nickel (the largest known deposit in the United States), as well as 600 million pounds of copper.

We are largely ignorant of the other mineral resources available in Glacier Bay, but a geological survey is presently underway there which should be completed in about two years. Since there seems to be no urgent necessity to include Glacier Bay within the bill, it certainly seems logical that we should wait to find out what we are locking up before we throw away the key.

Death Valley, too, is rich in valuable mineral resources. It contains the only known significant domestic reserves of the high grade borate, colemanite. This substance is used in the manufacture of textile grade fiberglass. We submit, therefore, that at the very minimum, reference to Glacier Bay and Death Valley should be stricken from the bill.

We wish to emphasize that we do not advocate mining in national parks and monuments. To the contrary, the withdrawal of public lands for such uses, where appropriate, is of the most legitimate reasons for withdrawing land. But this fact demonstrates the great care which must be taken when drawing the boundaries of proposed national parks and monuments in the first place.

In this case, Congress was apparently fully aware that these six areas contained valuable mineral deposits when it permitted the application of the Mining Law of 1872. In reasonable reliance on these exceptions, mineral producers have made great investments in these areas in an effort to develop the mineral resources contained there. We submit that it would be patently unfair, and probably unconstitutional, to impose the moratorium provided for in this bill, thereby

denying the producers the right to develop their lawfully established claims. In this regard, the Department of Interor has testified:

> There is no question that Congress has the authority to impose surface use restrictions on mining activities under either the Property Clause or the Commerce Clause of the Constitution. However, the United States cannot deprive an owner of his property without compensation, *United States* v. *North American Transportation and Trading Company*, 253 U.S. 330 (1920), and a valid mining claim is property even before it is patented. *Wilbur* v. *U.S. ex rel Krushnic*, 280 U.S. 306 (1930). Accordingly, if there is a complete prohibition on surface mining enacted, and no feasible or prudent alternative exists to effectively mine a claim, then a strong argument may be made that a property interest has been taken.

It must be noted that regulations have been prescribed by the National Park Service under the organic National Park Act, as amended, and under the National Environmental Policy Act. We favor the imposition of strict regulations which will make the exploration and development of these minerals conform to procedures which are environmentally acceptable and which will not have a signficantly adverse impact on the park.

Thus, while we do not approve of mining in national parks and monuments, previous Congresses have invited reasonable mineral exploration and development in these six areas, and we do not believe we have either the legal or ethical right now to deprive these producers of their property without just compensation. Accordingly, we will offer an amendment on the Floor to provide for such just compensation.

But even beyond the six specified areas that will be closed to further mineral development, this bill raises a larger and more important question: The wisdom of a piecemeal withdrawal policy with no thought or study given to the cumulative effect of such withdrawals on our nation's mineral reserves. In hundreds of separate, uncoordinated acts creating military bases, wildernesses, wildlife preserves, national parks and monuments and others, more than 390 million acres of public lands have been closed to exploration under federal mining laws and over 520 million acres have been closed to exploration under federal mineral leasing laws. These acreage figures represent 53 percent and 64 percent, respectively, of all the public land available in this country, and much of this withdrawn land is in the western United States where mineral deposits of economic significance are most likely to occur. S. 2371 withdraws yet another 7 million acres of potentially mineral-rich land from our ever-diminishing supply of mineral resources.

Nor can the minerals that lie beneath these withdrawn lands be considered a "stockpile" which may be called upon when other domestic sources are depleted—or when foreign suppliers decide to curtail their exports. It generally takes five to twenty years to bring a major mineral deposit into production.

The dependence of a healthy economy on an abundant supply of raw materials is self-evident. In this regard, U.S. Geological Survey

has forecast that within the next 25 years the United States will be 100 percent dependent on imports for 12 essential mineral commodities, more than 75 percent dependent for 15, and more than 50 percent dependent for 26 commodities.

Yet we continue to risk the creation of foreign cartels which could artificially alter prices or withhold supplies entirely. Every acre of mineral-rich land that we close to exploration and development increases our reliance and dependence on the good graces of these foreign sources. One need only reflect on the events of the past few years to discover the folly of such reliance.

In 1968, only about 17 percent of our public land had been withdrawn; as noted above, in the past seven years, that figure has more than tripled. We must not continue to mortgage the economic security of our future generations through uncoordinated land use restrictions.

Since there is now more public land withdrawn from mineral development than is open, we must advance the multiple-use concept wherever applicable. The mining industry will have to accept reasonable restraints on its activities while the preservationist will have to accept the fact that somewhere in that million acre natural area, there is a mine. The boundaries of future parks and monuments and wilderness areas must be drawn accordingly.

The defeat or amendment of S. 2371 should signal the halt to more public land withdrawals until an inventory of this nation's mineral resources can be completed and a systematic and coordinated land use policy developed. If we continue this ad hoc approach of depriving ourselves, bit by bit, of our limited mineral resources, oblivious to the cumulative effect, future generations will surely pay the price for our short-sightedness.

PAUL J. FANNIN.
CLIFFORD P. HANSEN.
DEWEY F. BARTLETT.

X. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the standing rules of the Senate, changes in existing law made by the bill, S. 2371, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Crater Lake National Park

SECTION 3 OF THE ACT OF MAY 22, 1902 (32 STAT. 203; 16 U.S.C. 123)

SEC. 3. That it shall be unlawful for any person to establish any settlement or residence within said reserve, or to engage in any lumbering, or other enterprise or business occupation therein, or to enter therein for any speculative purpose whatever, and any person violating the provisions of this Act, or the rules and regulations established thereunder, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, and shall further be liable for all destruction of timber or other property of the United States in consequence of any such unlawful act: *Provided*, That

said reservation shall be open, under such regulations as the Secretary of the Interior may prescribe, to all scientists, excursionists, and pleasure seekers [and to the location of mining claims and the working of the same]: *And provided further*, That restaurant and hotel keepers, upon application to the Secretary of the Interior, may be permitted by him to establish places of entertainment within the Crater Lake National Park for the accommodation of visitors, at places and under regulations fixed by the Secretary of the Interior, and not otherwise.

Mount McKinley National Park

SECTION 4 OF THE ACT OF FEBRUARY 26, 1917 (39 STAT. 938; 16 U.S.C. 350)

[SEC. 4. Nothing in this Act shall in any way modify or effect the mineral land laws now applicable to the lands in the said park.]

SECTION 2 OF THE ACT OF JANUARY 26, 1931 (46 STAT. 1043; 16 U.S.C. 350a)

[SEC. 2. That hereafter the Secretary of the Interior shall have authority to prescribe regulations for the surface use of any mineral land locations already made or that may hereafter be made within the boundaries of Mount McKinley National Park, in the Territory of Alaska, and he may require registration of all prospectors and miners who enter the park: *Provided*, That no resident of the United States who is qualified under the mining laws of the United States applicable to Alaska shall be denied entrance to the park for the purpose of prospecting or mining.]

Death Valley National Monument

THE ACT OF JUNE 13, 1933 (48 STAT. 139; 16 U.S.C. 337)

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the mining laws of the United States be, and they are hereby, extended to the area included within the Death Valley National Monument in California, or as it may hereafter be extended, subject, however, to the surface use of locations, entries, or patents under general regulations to be prescribed by the Secretary of the Interior.]

Glacier Bay National Monument

THE ACT OF JUNE 22, 1936 (49 STAT. 1817)

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in the area within the Glacier Bay National Monument in Alaska, or as it may hereafter be extended, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.]

Coronado National Memorial

SECTION 3 OF THE ACT OF AUGUST 18, 1941 (55 STAT. 631; 16 U.S.C. 450Y–2)

SEC. 3. The Secretary of the Interior, under such regulations as shall be prescribed by him, which regulations shall be substantially similar to those now in effect, shall permit—

[(a)] Grazing of livestock within the memorial area to the extent now permitted within the said area when such grazing will not interfere with recreational development authorized by this Act.[; and

(b) Prospecting and mining within the memorial area, when not inconsistent with the public uses thereof. Rights to minerals in the area shall not extend to the lands containing such minerals, but the Secretary of the Interior shall grant rights to use so much of the surface of the lands as may be required for all purposes reasonably incident to the mining and removal of the minerals.]

Organ Pipe Cactus National Monument

ACT OF OCTOBER 27, 1941 (55 STAT. 745; 16 U.S.C. 450Z)

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That within the Organ Pipe Cactus National Monument in Arizona all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.]

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-1428

PROVIDING FOR THE REGULATION OF MINING ACTIVITY WITHIN, AND REPEALING THE APPLICATION OF MINING LAWS TO, AREAS OF THE NATIONAL PARK SYSTEM, AND FOR OTHER PURPOSES

AUGUST 13, 1976.—Ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

SUPPLEMENTAL AND DISSENTING VIEWS

[To accompany S. 2371]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 2371) to provide for the regulation of mining activity within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 3, line 14, strike out "repealed;" and insert in lieu thereof:

> repealed except with respect to the following described area of such monument: the area which is between the following described line on the east and the Pacific Ocean on the west, comprising approximately five hundred and thirty-one thousand acres: the area bounded on the east by a line extending north-northwesterly from the west shoreline of Taylor Bay, along the easterly limits of the rock outcrops and nunataks on the west side of Brady Glacier, to the large rock outcrop (elevation 4148) at the divide between Brady Glacier and Reid Glacier; thence westerly to Mount Bertha; thence west northwesterly to Mount Orville; thence northwesterly and northerly along the divide of the Fairweather Range to Mount Wilbur, Lituya Mountain, Mount Salisbury, and Mount Quincy Adams;

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Page 3, line 20, strike out "subsection (b), and subsection (b); and" and insert in lieu thereof:

subsection (b), and ~~by repealing~~ subsection (b); and.

Page 3, beginning on line 24, strike out all of Section 4 and insert a new Section 4 reading as follows:

SEC. 4. For a period of four years after the date of enactment of this Act, holders of valid mineral rights located within the boundaries of Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument shall not disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February 29, 1976: *Provided*, That if the Secretary finds that enlargement of the existing excavation of an individual mining operation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, the surface of lands contiguous to the existing excavation may be disturbed to the minimum extent necessary to effect such enlargement, subject to such regulations as may be issued by the Secretary under Section 2 of this Act. For purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

Page 4, line 20, strike out "States." and insert in lieu thereof:

States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands. The Secretary shall also study and within two years submit to Congress his recommendations for modifications or adjustments to the existing boundaries of the Death Valley National Monument to exclude significant mineral deposits and to decrease possible acquisition costs.

Page 5, line 2, strike out "States." and insert in lieu thereof:

States, including the estimated acquisition cost of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands.

Page 5, at the end of line 12, add the following:

Within 30 days following the date of enactment of this Act, the Secretary shall publish notice of the requirement for such recordation in the Federal Register. He shall also publish similar notices in newspapers of general circulation in the areas adjacent to those units of the National Park System listed in Section 3 of this Act.

Page 6, lines 14 through 18, strike out all of Sec. 10 and insert in lieu thereof the following:

SEC. 10. If any provision of this Act is declared to be invalid, such declaration shall not affect the validity of any other provision hereof.

Page 7, following line 4, insert a new Sec. 12 as follows:

"SEC. 12. Nothing in this Act shall be construed to limit the authority of the Secretary to acquire lands and interests in lands within the boundaries of any unit of the National Park System. The Secretary is to give prompt and careful consideration to any offer made by the owner of any valid right or other property within the areas named in section 4 of this Act to sell such right or other property, if such owner notifies the Secretary that the continued ownership of such right or property is causing, or would result in, undue hardship.

PURPOSE

S. 2371 [1] affects the six units of the National Park System which are open to mineral entry under the Mining Law of 1872. Enactment of S. 2371, as reported by the Committee on Interior and Insular Affairs, would:

1. Close five of the affected areas, as well as a portion of Glacier Bay National Monument, to further mineral entry, subject to valid existing rights;
2. Provide specific authority for the Secretary of the Interior to regulate the exercise of the valid mineral rights existing within the National Park System;
3. Institute restraints on continued production from existing operations, and delay the commencement of new mining activities for a four-year period, with respect to three of the areas;
4. Require the Secretary to submit studies to the Congress which will examine the consequences of further mining operations within these areas, and which will include both the estimated acquisition costs of the valid claims and any recommendations he may have for boundary adjustments; and
5. Require reporting by the Advisory Council on Historic Preservation of the actual and potential effects of surface mining on any national historic or natural landmark.

BACKGROUND

Recognition of an area as a national park or national monument is generally considered to be the highest form of protection which the Congress can give an area of Federal land. These units of the National Park System are selected for their outstanding natural and historic significance to the Nation. By their very definition, these

[1] S. 2371, amended, passed the United States Senate on February 14, 1976. Related legislation introduced in the House and considered by the Committee in its deliberations included: H.R. 9540 and H.R. 9799 by Representative Seiberling; H.R. 9824 by Representative Young of Florida; H.R. 9923 by Representative Skubitz; H.R. 9937 by Representative Seiberling and cosponsored by Representatives Anderson of California, Bancus, Brown of California, Broyhill, John L. Burton, de Lugo, Drinan, Edgar, Edwards of California, Gude, Harrington, Hechler of West Virginia, Howard, Hughes, Krebs, Long of Maryland, Meeds, Mink, Ottinger, Roncalio, Scheuer, Solarz, Tsongas and Young of Georgia; H.R. 9953 by Representative Udall; H.R. 10753 by Representative Seiberling and cosponsored by Representatives Abzug, Bedell, Blouin, Boland, Carr, Corman, Cotter, Dellums, Dingell, Eilberg, Esch, Hawkins, Helstoski, Holtzman, Keys, Lloyd of California; and Maguire; H.R. 10754 by Representative Seiberling and cosponsored by Representatives McCloskey, McHugh, Mikva, Miller of California, Moakley, Moorhead of Pennsylvania, Moss, Patterson of California, Rodino, Roe, Ryan, Stark, Vanik, Vigorito, and Weaver and H.R. 11092 by Representative Udall.

components of the National Park System are considered to have unique values which are deemed worthy of special consideration, and which exceed those other uses to which the resource might be put.

This deliberate choice is generally made by the Congress whenever any addition is made to the National Park System. Americans have the Grand Canyon of the Colorado River as a National Park rather than as another location for hydroelectric development. We have chosen to protect a portion of the magnificent redwoods of Northern California rather than commit them to timber production. In each case, Congress has determined that such consumptive resource uses should be foregone in order that these examples of our heritage might be preserved.

Along with other resource uses such as water development projects, timber harvesting, and agricultural production, mineral extraction is generally precluded within our National Parks. Yet the Mining Law of 1872 still applies to six of the approximately 300 units of the system. Crater Lake and Mount McKinley National Parks; Death Valley, Glacier Bay and Organ Pipe Cactus National Monuments; and Coronado National Memorial are all still subject to mineral exploration and development.

These six areas were classified as open to mineral entry by specific legislation, generally at the time they were first authorized. Currently, only Death Valley National Monument and Mount McKinley National Park contain ongoing mineral production. Glacier National Monument contains both patented lands and valid claims, while Organ Pipe Cactus National Monument includes some valid claims.

Death Valley offers an example of the impact of mineral activity within these areas. At the time that the monument was opened to mineral entry, it was recognized that a significant aspect of the history of this area was the role of the prospector. By leaving the monument open to the Mining Law of 1872, it was anticipated that the picturesque figure of the prospector and his burro would continue to be a part of the scene.

But evolving mining technology has altered this situation radically. In recent years, major surface mining operations using massive earthmoving equipment have begun within the monument. Where once the impact of mineral exploration and development was hardly noticeable, the very character of Death Valley is now threatened with serious alteration. Congress is therefore faced with the choice of either placing limits on future mineral development in the area, or of acceding to the continuing alteration of this unique natural feature, which includes the lowest point in the western hemisphere, 282 feet below sea level.

These recent developments have precipiated an examination of the appropriateness of continuing the operation of the mining laws in any of these National Park System areas. The Mining Law of 1872 is a disposal statute. Yet it is being applied to areas that have been identified and set aside for their natural, scenic, and historic qualities. The issue addressed by S. 2371 is whether or not this fundamental conflict can continue.

Brief Explanation of Moratorium Provision

Under the terms of section 4 of the bill, for a period of four years, claimholders in the Death Valley, Organ Pipe Cactus and Mount McKinley areas are prohibited from disturbing the surface of any lands for the purpose of mineral exploration or development which had not been significantly disturbed for mineral extraction prior to February 29, 1976. For existing operations, however, the legislation permits the continuation and even the enlargement of individual mining operations, subject to such regulations as the Secretary deems warranted, in order to maintain production at an annual rate of production not exceeding the average annual rate for calendar years 1973, 1974, and 1975.

The Committee recognizes that the Constitution requires that just compensation be paid whenever private property is taken for public purpose. Existing law and the terms of this bill safeguard this Constitutional guarantee. In all of the areas covered by this measure, the Congress expressly provided that the exploration for, and development of, the mineral values would be subject to such rules and regulations as the Secretary of the Interior might promulgate. Obviously, from the beginning, the Congress contemplated that such activities should be conducted in a manner compatible with the purposes for which the areas were being established.

It is reasonable to conclude that the Congress—which has the responsibility for the use and disposition of the public lands—has the authority to suspend an activity within the national parks until it has a reasonable opportunity to determine whether such a use is consistent with the public interest in preserving such areas for the use and enjoyment of present and future generations. That is all that the provisions of section 4 attempt to do. It attempts to maintain the status quo until all aspects of the public interest can be determined.

In the meantime, as recommended by the Committee, S. 2173 protects the interests of the claimholders involved. Section 5 expressly waives all existing requirements to perform annual assessment work on claims located within the areas involved, thus eliminating the possibility that would otherwise exist that the claims could be invalidated. Added to this, section 12 directs the Secretary to promptly and carefully consider any offer to sell any private rights within the three areas if he is notified that the continued private ownership of such rights is causing, or would result in, undue hardship. But, most importantly, section 11 permits any claimholder to take his case to court and to recover just compensation if he can show that he has suffered any loss as a result of the enactment of this legislation.

It is contemplated by the terms of the bill that the Secretary will determine within two years the validity of the claims and recommend to the Congress whether or not they should be acquired or, perhaps, be excluded from the boundaries of the area involved to the extent that such an alternative is feasible. The remaining two-year period is to allow the Congress to review the Secretary's findings, conduct its own studies, and develop and consider any further provisions of law that it determines appropriate.

To the Members of the Committee, this seems to be a reasonable exercise of its power to regulate new uses of lands within the National Park System. Such a moratorium is not unduly disruptive of the rights of any claimholders, since they are already subject to such

regulations as the Secretary may prescribe, since other remedies are available to them in hardship cases, and since adequate legal recourse is provided to any aggrieved person, if the circumstances warrant such action. The moratorium, in and of itself, constitutes no compensable taking of private property in the sense of the Fifth Amendment.

Section-by-Section Analysis

Section 1 makes a finding and declaration by the Congress that the continued application of the mining laws of the United States to any units of the National Park System is in conflict with the purposes for which they were established, particularly in light of the changing technology of mineral exploration and development. Furthermore, where mining operations do occur within units of the System, they should be conducted in such a manner as to prevent or minimize any damage to the area. Surface disturbance from such operations should also be temporarily halted in certain areas while Congress makes a determination of the need to acquire any valid rights which may exist.

Section 2 provides that the Secretary of the Interior shall have the specific authority to regulate all activities resulting from the exercise of valid existing mineral rights within any area of the National Park System. This management control by the Secretary is in accord with his responsibility to preserve the natural values of these areas, as expressed in the Act providing for a National Park System and the individual Acts establishing individual areas.

Section 3 amends or repeals certain Acts in order to close five areas of the National Park System to mineral entry and location under the Mining Law of 1872. Valid existing rights held within these areas would not be abrogated, however, and patents could still eventually be issued for such valid claims. The six areas to be closed by action of this section are: Crater Lake National Park, Mount McKinley National Park, Death Valley National Monument, Coronado National Memorial, and Organ Pipe Cactus National Monument.

In the case of Glacier Bay National Monument, most of the area is also closed to mineral entry. As amended by the Committee, however, the westernmost portion of the monument, as described by reference to particular landscape features, will continue to be subject to the 1936 Act which opened the area, with certain restrictions, to the action of the mining law.

Section 4 places specific restraints on the exercise of valid existing rights within Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument for a period of four years. With respect to these areas, no further disturbance is to be made of any lands which had not been significantly disturbed for the purpose of mineral extraction prior to February 29, 1976. This date was adopted by the Committee as a reference point to establish the extent of the altered lands at a specific time. The National Park Service has conducted an aerial photographic inventory of these areas as a means of detailing the limits of the disturbed areas on or about that specific time.

The intention of the Committee in approving this section is that no new mining operations will be permitted to commence in these three units of the National Park System during this period of time. With respect to ongoing mining operations within these areas, the Secretary

may permit, on a case by case basis, some enlargement of the existing excavation of a given mine if he finds this is necessary to continue the production from that particular mine at an annual rate not exceeding the average production rate over the period 1973 through 1975. Any necessary minimum enlargement for this purpose would still be subject to regulation by the Secretary. The net effect of this section is to permit the controlled operation of currently active mines within these areas during the next four years, while minimizing the disturbance to the area caused by such operations. No new mining operations would be permitted to commence during this time. Ongoing production from underground mining operations would not be affected by this section.

Section 5 protects valid existing rights in the three areas covered in section 4 by waiving the requirements for annual assessment work on all unpatented claims within these areas. This precludes the necessity for any further surface disturbance of these claims during the next four years.

Section 6 requires the Secretary to make a validity determination of the unpatented claims in Death Valley and Organ Pipe National Monuments, and in Mount McKinley National Park, within two years after enactment of this legislation. The Secretary is to submit his recommendations to the Congress as to whether any of the valid claims or patented rights should be acquired by the United States. His recommendations are to be accompanied by estimates of the acquisition costs of these rights, as well as a discussion of the environmental consequences of permitting mineral extraction from these areas. He is also to consider the possibilities for any boundary adjustments at Death Valley National Monument which would exclude significant mineral deposits and thereby decrease possible acquisition costs within this area. Any recommendations he may have for such adjustments should include an assessment of the impact of such changes on the scenic and natural values for which the monument was established.

Section 7 allows the Secretary four years to make a study similar to that in section 6 with respect to Crater Lake National Park, Coronado National Memorial, and Glacier Bay National Monument.

Section 8 requires that all mining claims within the boundaries of units of the National Park System must be recorded with the Secretary of the Interior within one year after the enactment of this legislation. Any claim not recorded will be presumed to be abandoned and void. Recordation would not make an otherwise invalid claim valid. The Secretary is to publish a notice of this requirement to record claims in both the Federal Register and in appropriate newspapers in the vicinity of the areas involved within 30 days following enactment.

Section 9 requires the Secretary to notify a person conducting any surface mining activity which may damage or destroy a designated national natural or historic landmark of the possible consequences of such activity. The Secretary is also to make a request from the Advisory Council on Historic Preservation for advice on any measures that may be taken to mitigate the impact of such activity. The Council is also to make a report to the Congress within two years which details the effects of surface mining activities on national landmarks, including any recommendations for legislation which may be necessary and appropriate to protect such landmarks from activities adversely affecting these areas.

Section 10 is a separability provision which states that if any provision of this legislation is declared invalid, such determination will not affect the remainder of the Act.

Section 11 permits any claimholder to bring a cause of action for any loss resulting from the operation of this legislation. The appropriate United States District Courts are to have jurisdiction to hear and decide such actions, and the court is to award just compensation if it finds that any such loss does, in fact, constitute a compensable taking of property. Consideration of any claims brought pursuant to this section is to be expedited by the court.

Section 12 reaffirms that nothing in this legislation is intended to further limit the authority of the Secretary to acquire private lands and other interests within units of the National Park System. In addition, the Secretary is to promptly and carefully consider any offer of sale of such interests within Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument, upon notification by such owner that the continued private ownership of such interests is causing or would result in undue hardship. While no requirement is made that the Secretary must purchase such holdings, an owner of property, the use of which is temporarily restrained by this legislation, would in this way be assured of an opportunity to negotiate with the Secretary for what could be a mutually desirable sale.

LEGISLATIVE HISTORY

The inconsistency associated with the application of the mining laws of the United States to national parks and monuments has been recognized for years. The Public Land Law Review Commission, in making its comprehensive report in 1970, recognized that it is not in the national interest to permit mining operations within these areas. The Commission went on to recommend that Congress repeal the statutes which opened these lands to mineral entry, and that all nonconforming uses in such areas be prohibited by law. It should be noted that, of the more than 100 new units which have been added to the National Park System over the past two decades, not a single such area has been established subject to mineral entry.

Interest during this Congress in the status of the six existing areas which are still subject to the mining law was sparked by the rapid expansion of surface mining in Death Valley National Monument. This clear and immediate threat to the visual integrity of the valley led to the introduction of legislation in both the Senate and the House of Representatives. House hearings were conducted by the Subcommittee on National Parks and Recreation on October 6, 1975. The Administration witness for the Department of the Interior testified in support of the legislation, while recommending certain amendments.

During the hearings, much testimony was received concerning the importance of the mineral deposits within the National Park System, which totals less than one percent of the land area of the United States. Of the six individual units now open to mineral entry, only one, Death Valley, is presently contributing significant production. Current borate mining within the monument represents about three percent of ongoing United States production, some of which is exported. Approximately one percent of the annual talc production of the country also comes from the monument.

The Committee took up the Senate-passed bill, S. 2371, for purposes of further debate. At the request of several members of the Committee, a field inspection was made of Death Valley, allowing interested members to make an on-site assessment of the impact of current operations on the national monument.

It should be emphasized that, as amended by the Committee, S. 2371 does *not* halt ongoing mineral production in Death Valley. Ongoing mining operations may continue in production, and existing surface mining operations may even expand in area, if necessary, to allow a constant level of production to be maintained.

For the next four years following the date of enactment of S. 2371, new surface disturbances for the purpose of mineral production within Death Valley and Organ Pipe National Monuments, and within Mount McKinley National Park, will be prohibited. The Committee considers this temporary suspension of new activity to be a responsible exercise of regulatory authority which will permit the collection of data upon which the Congress may make informed decisions.

The Committee also adopted by a vote of 22 to 19, an amendment which exempts the westernmost portion of Glacier Bay National Monument from the effects of the closure of the remainder of the monument to mineral entry. Under this amendment, this portion of the monument, which is now undergoing a mineral survey by the Department of the Interior, would remain open to the filing of additional claims.

In ordering S. 2371 reported, the Committee reaffirms its ongoing concern that the greatest possible protection be given to the National Park System. Although there are resource values associated with practically all national park lands, these areas have been established by the Congress for the express purpose of preserving their scenic beauty unique natural characteristics. S. 2371 is a necessary step in assuring that all these lands will receive the full protection which will preserve their scenic and natural values.

COST

S. 2371 does not authorize any additional amounts for land acquisition or development purposes. The central thrust of the bill is simply to withdraw the affected lands from further mineral entry. Existing valid rights are not affected, except for the carefully limited restraints as discussed in this report. The legislation was also specifically amended by the Committee to clearly state that the existing authority of the Secretary to acquire lands within the National Park System is not to be affected by the enactment of S. 2371. There will be some administrative expense to the National Park Service in carrying out the studies required by S. 2371, but these costs will be a relatively small part of normal agency operating funds.

BUDGET ACT COMPLIANCE

No significant impact on the budget is expected from enactment of this legislation. It should be pointed out that once Congress receives the studies required by S. 2371, it will have the information needed to consider the possibility of directing the Secretary to acquire the outstanding valid mineral rights in these areas. Such an action in the

future could amount to a considerable Federal expense. The current legislation, however, will simply provide the Congress with the estimated cost of such acquisitions, so that an informed decision may be made at a later date.

Inflationary Impact

S. 2371 permits continued mineral production in those instances where it now occurs within the National Park System. No inflationary impact should result from its enactment. Some operating funds will be committed by the National Park Service to conduct the studies required by the legislation, but these will mainly amount to a reordering of priority assignments for some agency personnel.

Oversight Statement

The hearings and inspection trip conducted by the Committee included a review of the past administration of the National Park System areas which are affected by this measure. Earlier legislative history regarding the statutes opening these lands to mineral entry was also reviewed. No recommendations were submitted to the Committee pursuant to Rule X, Clause 2(b)(2).

Committee Amendments

The amendments adopted by the Committee are as follows:

1. Although the Act of 1936 which opened the area to mineral entry is specifically repealed, the westernmost portion of Glacier Bay National Monument will continue to be subject to the provisions of that Act insofar as mineral entry is concerned.
2. A technical change is made to clarify the repealer of the provision opening Coronado National Memorial to mineral entry.
3. A revision is made to section 4 which provides that areas within Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park which were not disturbed as of February 29, 1976, are not to be disturbed for a four-year period in order to allow the Secretary to make the studies called for in this legislation and to permit the Congress to consider his recommendations. A proviso allows enlargement of existing mining operations as necessary to continue current mineral production.
4. Additions are made to ensure that the studies required by sections 6 and 7 will include the estimated acquisition costs of any valid or patented claims, as well as a discussion of the consequences of mining operations in those areas. The Secretary is also to submit any recommendations he may have for boundary changes at Death Valley National Monument.
5. A requirement is made that the Secretary will publish notices in the Federal Register and in appropriate local newspapers to publicize the requirement that mining claims be recorded with the Secretary.
6. A revised separability section is inserted conforming to language used in recent legislation.

7. A new section is added to the legislation, specifically stating that nothing in the measure shall limit the existing authority of the Secretary to acquire lands within the National Park System. The Secretary is also instructed to consider offers to sell private lands or interests within the three areas affected by the restraining language of section 4.

Committee Recommendation

On June 8, 1976, after adopting the amendments as discussed above, the Committee on Interior and Insular Affairs, meeting in open session, ordered reported S. 2371, as amended, by a recorded vote of 34 ayes, 5 nays, and 1 present. The Committee recommends that the bill, as amended, be approved.

Departmental Report

The favorable report of the Department of the Interior on H.R. 9799, dated October 3, 1975, and the supplemental report dated April 6, 1976, are here printed in full:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., October 3, 1975.

Hon. James A. Haley,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: This responds to the request of your Committee for our views on H.R. 9799, a bill "To prohibit certain incompatible activities within any area of the National Park System, and for other purposes."

We recommend enactment of H.R. 9799 if amended as suggested beginning on page four of this report.

H.R. 9799 would prohibit, subject to valid existing rights, the exploration, mining, and purchase of all valuable mineral deposits within any area of the National Park System. (The term "valid existing rights" includes not only patented mining claims but also unpatented claims which were validly located and have been maintained as required by the mining laws.) Section 2 of the bill repeals provisions of existing law which permit mining within 5 areas of the National Park System. Section 3 of the bill provides that the Secretary of the Interior may promulgate such rules and regulations as he deems necessary and appropriate for governing the exercise of valid existing rights of mining and exploration, in any area of the National Park System, for the protection and management of any such area.

H.R. 9799 concerns five areas of the National Park System which are open, by statute, to location, entry, and patent under the mining laws of the United States. The five areas mentioned in the bill are: Glacier Bay National Monument, Alaska; Death Valley National Monument, California; Coronado National Memorial, Arizona; Mount McKinley National Park, Alaska; and Organ Pipe Cactus National Monument, Arizona. Mining activity occurs in varying degrees in these areas. The extent of the mining activity in each of these areas and the available mineral survey data on each area is as follows:

(1) Glacier Bay National Monument, Alaska.—Although more mineral survey data is needed in order to evaluate the full mineral potential of this area, this national monument is known to contain a variety of mineral deposits, including copper, molybdenum, nickel, gold, titanium, and iron. The mining claims within the monument contain resources of one billion pounds of nickel, but this represents only 1 percent of the total U.S. nickel resource, and 600 million pounds of copper. There are an estimated 270 unpatented mining and millsite locations, and 20 patented mining claims within the monument. There has been very little production of minerals from these properties. The U.S. Geological Survey and the Bureau of Mines, of this Department, are currently cooperating in the conduct of a mineral survey of the monument.

(2) Death Valley National Monument, California.—In 1974, approximately 3 percent of our annual domestic production of boron minerals and 100,000 tons of talc were mined from the monument area, which represents less than 1 percent of our annual domestic production. Although a complete mineral study has not been made of this monument, gold, silver and tungsten mineralization are also known to occur in the area. There are presently an estimated 50,000 unpatented mining millsite locations within the monument. There are 267 patented mining claims covering 7,106.63 acres within the monument.

There are a total of 10 producing mines in Death Valley National Monument. Current production from these mines is talc, and ulexite and colemanite which are boron minerals. There are three talc companies producing from the monument and all have alternate sources of this material outside the monument. Tenneco is the sole producer of ulexite and colemanite within the monument, and the company has filed new claims on ulexite and colemanite deposits outside the monument as well as within it. Death Valley contains the only known significant domestic reserves of the specific high grade borate colemanite. This area supplies 80 percent of domestic colemanite production, which is used in the manufacture of filament grade fiberglas; it could continue the present rate of production for at least 100 years on known reserves within the monument.

Borates and talc represent the total current mineral production from Death Valley National Monument. Their production from the monument has a market value of nearly $15 million annually. The main impact on the monument is the use of open pit methods to mine borates (including ulexite and colemanite) by Tenneco that began in 1971, and older talc mines. Tenneco's Boraxo pit now is some 3,000 feet by 600 feet and is 220 feet deep, while its Sigma pit is 500 feet by 400 feet, and is more than 75 feet deep. Both are being enlarged by ongoing mining and the spoil or waste dumps are highly visible from the scenic road to the Dante's View overlook. Other even larger Tenneco deposits in the same general area of the monument have proven reserves of borates, but have not been developed for production as yet.

Talc production from the monument is currently nearly 100,000 tons per year. Talc reserves in the monument are estimated to be sufficient to sustain production for over 25 years.

(3) Coronado National Memorial, Arizona.—There are no unpatented or patented mining claims within the memorial. Some mining claims were located within the memorial in the past, as evidenced by some old mining cuts and open pits. There has been no mining activity within the memorial since it was created in 1952. The geological evaluation of the area does not indicate the presence of sufficient mineralization to support any further mining activity.

(4) Mount McKinley National Park, Alaska.—There are an estimated 300 unpatented mining and millsite locations within the park and no patented mining claims. The current mineral production in the park is from a surface mine and consists of approximately 100 tons of antimony ore per year having a gross value of $60,000.

(5) Organ Pipe Cactus National Monument, Arizona.—There are approximately 3,000 unpatented mining and millsite locations within this national monument and no patented claims. Although there is now some ongoing exploration activity within the monument, there is no production of any mineral.

There is a sixth area (not covered in H.R. 9799) of the National Park System which may be technically open to location, entry, and patent under the mining laws of the United States: Crater Lake National Park in Oregon. There are no unpatented or patented mining claims or locations within the park and, thus, there is currently no mining activity within the park. The Act of May 22, 1902 (32 Stat. 202) that established Crater Lake National Park stated that "Crater Lake National Park shall be open, under such regulations as the Secretary of the Interior may prescribe, to all scientists, excursionists, and pleasure seekers and to the location of mining claims and the working of the same." However, the Act of August 21, 1916 (39 Stat. 522), provided that the Secretary of the Interior shall make rules for the protection of the property therein "especially for the preservation from injury or spoilation of all timber, mineral deposits other than those legally located prior to the date of enactment of this Act, natural curiosities, or wonderful objects within said park. . . ." Since the Act of 1916 did not specifically repeal the mining language in the 1902 Act, there is some confusion in the law as to whether Crater Lake National Park is open to mining activity.

In 1974, this Administration transmitted legislative proposals to the 93d Congress which recommended that certain portions of Death Valley National Monument, Crater Lake National Park and Organ Pipe Cactus National Monument be included in the Wilderness Preservation System. In addition to including these areas of the National Park System within the Wilderness System, each of our legislative proposals specifically closed the entire park or monument to mining activity by providing for the repeal, subject to existing rights, of the statute which extended the mining laws to each park or monument.

Furthermore, this Administration's proposed "Alaska Four Systems" legislation contains a provision for the repeal, subject to valid existing rights, of the statute which opened Mount McKinley National Park to mining.

With respect to the Glacier Bay National Monument, in 1974, the Administration recommended that a mineral survey of the national monument be completed before proposing any lands therein for inclusion in the Wilderness System. The U.S. Geological Survey and the Bureau of Mines are conducting such a mineral survey pursuant to this recommendation.

Although we are cognizant of the problems of mineral sufficiency and the need for increased mineral production in the future, we also

recognize the need for preserving the natural environment of our National Park System.

Accordingly, we support the enactment of H.R. 9799 if it is amended as described below:

1. We recommend that the title of H.R. 9799 be revised to read as follows:

"To provide for the regulation of mining activity within and repeal the application of the mining laws to certain areas of the National Park System, and for other purposes."

2. We recommend that section 1 of the bill (page 1, lines 3 thru 6) be deleted and that the following language be inserted in lieu thereof:

"The Congress finds and declares that—

(a) The level of technology of mineral extraction and development has changed radically since the enactment of the Mining Law of 1872, and the application of that law to areas of the National Park System, and as a result of these technological advances, the application of the mining law to these areas may conflict with the purposes for which they were established;

(b) Mining operations in certain areas of the National Park System affect interstate commerce, and the well-being, security and general welfare of the Nation, and should be conducted in an environmentally sound manner."

3. We recommend that page 1, line 7 the words "The following statutes are hereby repealed" be deleted and that the following words be inserted in lieu thereof:

"Subject to all valid existing rights, the following Acts are amended or repealed as indicated in order to close these areas to entry and location under the mining laws of the United States:"

4. We recommend that all of section 2(1) be deleted and that the following language be inserted in lieu thereof as a new section 2(1):

"(1) The first proviso of section 3 of the Act of May 22, 1902 (32 Stat. 203; 16 U.S.C. 123), relating to Crater Lake National Park, is amended by deleting the words '. . . and to the location of mining claims and the working of same'."

5. We recommend that on page 2, line 10 the following language be inserted just before the semicolon:

"and section 2 of the Act of January 26, 1931 (46 Stat. 1043; 16 U.S.C. 350a), relating to Mount McKinley National Park;"

6. We recommend that section 3 on page 2 be deleted in its entirety and that the following language be inserted as a new section 3:

"SEC. 3. Within the boundaries of Crater Lake National Park, Death Valley National Monument, Coronado National Memorial, Mt. McKinley National Park and Organ Pipe Cactus National Monument, all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims shall be subject to regulations prescribed by the Secretary of the Interior.

(a) Such regulations shall provide, insofar as practicable, for the protection, preservation and reclamation of the lands, the scenic, natural and historic objects, and the wildlife within these specified areas of the National Park System.

(b) As soon as possible following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations governing surface and subsurface mining activities, reclamation, and ancillary operations in these specified areas of the National Park System. The Secretary is authorized to require appropriate performance bonds to assure compliance with such regulations.

(c) Within the areas mentioned in Section 2, all mining claims under the Mining Law of 1872, as amended and supplemented (30 U.S.C. Chapters 2, 12A, and 16 and sections 161 and 162) shall be recorded with the Secretary of the Interior within one year after the effective date of this Act or within thirty days of location of a claim, whichever is later. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which was not valid on the effective date of this Act, or which becomes invalid thereafter."

Our first amendment would merely clarify our objectives in this legislation by providing an appropriate description of the bill in the title.

The second amendment would provide Congressional recognition of changes in mining technology during the past century and of the effect of mining in certain areas of the National Park System on interstate commerce. This amendment would be an assertion by Congress of its constitutional authority under the commerce clause to regulate mining activities on privately owned lands as such activities affect interest commerce.

Our third amendment would preserve valid existing rights in those areas in the Park System which would be closed to future mining by section 2 and would expressly state that by repeal of these statutes these units of the System would be so closed.

Our fourth amendment would, first, delete the Glacier Bay National Monument from consideration in the bill. We believe that the mineral survey of Glacier Bay National Monument should be completed before any action is taken to close the area to mining. Secondly, the new section 2(1) which we proposed would delete the language in the 1902 Act which left Crater Lake National Park open to mining activity.

Our fifth amendment is merely a technical amendment to repeal both statutes that are currently applicable to mining in Mt. McKinley National Park.

Our sixth amendment would provide basic authority for the Secretary to prescribe regulations governing mining activities within these specified units of the National Park System.

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

Sincerely yours,

NATHANIEL P. REED,
Acting Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 6, 1976.

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

DEAR MR. CHAIRMAN: On October 3, 1975 we transmitted our views to your Committee on the introduced bill H.R. 9799, a bill "To prohibit certain incompatible activities within any area of the National Park System, and for other purposes." The following day we reported on

similar legislation, S. 2371, to the Senate Committee on Interior and Insular Affairs. On February 4, 1976 the Senate passed S. 2371, and we understand that your Committee will shortly be marking up S. 2371 as amended by your Subcommittee on Parks and Recreation.

Although we strongly supported this legislation to close certain units of the National Park System to entry, location, and patent under the mining laws, we urged against such action with respect to Glacier Bay National Monument in Alaska. In our report on H.R. 9799 we explained that in 1974 the Administration had recommended the completion of a mineral survey of Glacier Bay National Monument before proposing any land therein for inclusion in the National Wilderness System. Pursuant to that recommendation the U.S. Geological Survey and the Bureau of Mines are presently conducting such a mineral survey. We, therefore, recommended that the bill be amended to delete Glacier Bay from consideration because we continued to believe that a mineral survey of the national monument should be completed before any action is taken to close the area to mining. We made a similar recommendation to the Senate Committee with respect to S. 2371. We wish to reiterate our firm belief that Glacier Bay National Monument should not be included in this legislation so that the Administration and the Congress will have the benefit of the information derived from the ongoing mineral survey before any action is taken to close the monument to mining.

For your information, I am enclosing a copy of our report on the introduced bill H.R. 9799. That report also contains a more detailed explanation of the available mineral data with respect to Glacier Bay National Monument.

Sincerely yours,

TOM KLEPPE,
Secretary of the Interior.

Enclosure.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CRATER LAKE NATIONAL PARK

ACT OF MAY 22, 1902 (32 STAT. 203; U.S.C. 123)

* * * * * * *

SEC. 3. That is shall be unlawful for any person to establish any settlement or residence within said reserve, or to engage in any lumbering, or other enterprise or business occupation therein, or to enter therein for any speculative purpose whatever, and any person violating the provisions of this Act, or the rules and regulations established thereunder, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, and shall further be liable for all destruction of timber or other property of the United States in consequence of any such unlawful act: *Provided*, That said reservation shall be open, under such regulations as the Secretary of the Interior may prescribe, to all scientists, excursionists, and pleasure seekers [and to the location of mining claims and the working of the same]: *And provided further*, That restaurant and hotel keepers, upon application to the Secretary of the Interior, may be permitted by him to establish places of entertainment within the Crater Lake National Park for the accommodation of visitors, at places and under regulations fixed by the Secretary of the Interior, and not otherwise.

MOUNT McKINLEY NATIONAL PARK

ACT OF FEBRUARY 26, 1917 (39 STAT. 938; 16 U.S.C. 350)

* * * * * * *

[SEC. 4. Nothing in this Act shall in any way modify or effect the mineral land laws now applicable to the lands in the said park.]

* * * * * * *

ACT OF JANUARY 26, 1931 (46 STAT. 1043; 16 U.S.C. 350a)

* * * * * * *

[SEC. 2. That hereafter the Secretary of the Interior shall have authority to prescribe regulations for the surface use of any mineral land locations already made or that may hereafter be made within the boundaries of Mount McKinley National Park, in the Territory of Alaska, and he may require registration of all prospectors and miners who enter the park: *Provided*, That no resident of the United States who is qualified under the mining laws of the United States applicable to Alaska shall be denied entrance to the park for the purpose of prospecting or mining.]

* * * * * * *

DEATH VALLEY NATIONAL MONUMENT

ACT OF JUNE 13, 1933 (48 STAT. 139; 16 U.S.C. 447)

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mining laws of the United States be, and there are hereby, extended to the area included within the Death Valley National Monument in California, or as it may hereafter be extended, subject, however, to the surface use of locations, entries, or patents under general regulations to be prescribed by the Secretary of the Interior.]

GLACIER BAY NATIONAL MONUMENT

ACT OF JUNE 22, 1936 (49 STAT. 1817)

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the area within the Glacier Bay National Monument in Alaska, or as it may hereafter be extended, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals

and under such general regulations as may be prescribed by the Secretary of the Interior.][1]

CORONADO NATIONAL MEMORIAL

ACT OF AUGUST 18, 1941 (55 STAT. 631; 16 U.S.C. 450y–2)

* * * * * * *

SEC. 3. The Secretary of the Interior, under such regulations as shall be prescribed by him, which regulations shall be substantially similar to those now in effect, shall permit—

[(a)] Grazing of livestock within the memorial area to the extent now permitted within the said area when such grazing will not interfere with recreational development authorized by this Act. [; and

(b) Prospecting and mining within the memorial area, when not inconsistent with the public uses thereof. Rights to minerals in the area shall not extend to the lands containing such minerals, but the Secretary of the Interior shall grant rights to use so much of the surface of the lands as may be required for all purposes reasonably incident to the mining and removal of the minerals.]

* * * * * * *

ORGAN PIPE CACTUS NATIONAL MONUMENT

ACT OF OCTOBER 27, 1941 (55 STAT. 745; 16 U.S.C. 450z)

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the Organ Pipe Cactus National Monument in Arizona all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.]

SUPPLEMENTAL VIEWS

The overwhelming (34–5) Committee vote in favor of S. 2371 clearly shows the concern of the members for the threat posed by stripmining in some of our greatest National Parks. The purpose of the National Park System is to preserve, intact, the best of our nation's natural and historical treasures for present and future generations. Mining, particularly stripmining such as is occurring in a massive way in Death Valley National Monument, is incomparable with the concept of our national parks.

The legislation is fair and reasonable. It would protect all valid existing rights and allow present mining, under Federal regulations, to continue. Most important, it would call a halt to the staking of new claims and thus prevent even wider devastation in the future.

[1] The intention of the Committee amendment (approved by a vote of 22 to 19) is to repeal the authority to locate and patent any new mining claims within the boundaries of Glacier Bay National Park but to retain in effect the provisions of the Act of June 22, 1936 (49 Stat. 1817) with respect to the area specifically delineated by section 3(e) of this legislation.

We are dismayed, therefore, at the Committee's decision to exclude the western coast of Glacier Bay National Monument in Alaska from the provisions of the bill. The vote on this was close (22–19). Debate on the issue was intense, and often misleading. Despite what opponents have stated, the inclusion of Glacier Bay would not have had any significant effect on current levels of mineral production or on the nation's economy.

Indeed, the monument contains but a tiny fraction of the nation's nickel—an estimated 200 million tons in Glacier Bay, compared to six and a half billion tons in Minnesota. No nickel mining has yet occurred in the monument, and it is still uncertain as to whether the minerals can be recovered economically.

At present there are 270 unpatented and 20 patented claims in the area excluded from the bill. The bill would not have prevented the mining of these claims. Unlike the provision for Death Valley, there would have been no added restrictions on mining, even temporarily. Existing Federal regulations would remain unchanged.

The bill would, however, have prevented the staking of new claims. This is essential because of the nature of the mining laws—which allow anyone to stake a claim and, if the claim is patented, gives the owner actual title to the land. A ban on new mineral entry is especially important now, as the Department of the Interior is conducting a mineral survey prior to proposing wilderness designation for the monument. When information from the survey becomes available, prospecting for claims may intensify, causing degradation to many parts of the monument and the loss of the very qualities which the Wilderness Act was intended to preserve.

Visits to Glacier Bay as a whole have grown tremendously in the past few years, from 6,000 in 1961 to 47,000 in 1974 and 71,000 in 1975. Seven years ago there was only one cruise ship in Glacier Bay, while this year there were 110 ships bringing in 54,000 people. Although the coast is less frequented, it is as accessible, by ship or plane, as any other visited area of the monument.

The western coast of Glacier Bay is not an icy wasteland, devoid of scenic, recreational, and wildlife values. It is, on the contrary, one of the most spectacularly beautiful areas of the monument. The beaches are used for both hiking and fishing. The area contains 23 percent of the monument's wildlife habitat (211,000 acres) and is the travel route for most of the park's wildlife, such as brown bears and wolves.

Glacier Bay's coastline is 132 miles long, extends out 3 nautical miles and encompasses 312 square miles. It is the only de facto coastal wilderness along the Gulf of Alaska which is free of incompatible activities. It is, furthermore, the only wild, completely protected sea/land interface within the entire Pacific Rim, from the tip of the Aleutians, to Baja, California.

All of Glacier Bay National Monument should be given the protections contained in S. 2371. The legislation is not an extreme measure. It is a compromise that protects existing private interests while assuring that they do not have priority over the public interest. This pro-

tection is as much needed in Glacier Bay as it is in Death Valley or any of our other great national parks.

JOHN SEIBERLING,
MO UDALL,
PATSY T. MINK,
TENO RONCALIO,
JOSEPH P. VIGORITO,
JIM WEAVER,
JONATHAN BINGHAM,
BOB KASTENMEIER,
BOB CARR,
GEORGE MILLER,
PHILLIP BURTON,
BOB ECKHARDT,
JAMES FLORIO,
PAUL E. TSONGAS,
ALAN STEELMAN.

DISSENTING VIEWS

S. 2371, as reported by the Committee, contains restrictions on future mineral exploration and mining in Death Valley National Monument which can only be construed as an environmental overkill that will ultimately hurt the country. Many advocates of a mining ban in the Monument evidently do not appreciate the size of the area that would thus be withdrawn from further mineral productivity—an area larger than the total combined acreage of all five California National Parks: Yosemite, Sequoia, Kings Canyon, Lassen Volcanic, and Redwood. Minerals currently being removed from the Monument constitute a significant contribution to the American economy, and prohibition of their continued production will inevitably lead to increased costs to the consumer and to increased dependence on foreign mineral supplies. Data received from the U.S. Bureau of Mines reflects the seriousness of our dependence on imports of the mineral colemanite from Turkey. At the present time, we import approximately 35 per cent of our domestic consumption of colemanite from Turkey but as a result of the prohibition which will ultimately become effective in the Monument, the U.S. will be importing 100 percent of its colemanite in the reasonably near future. In addition, the other critical borate mineral, ulexite, which is also currently being produced solely from the Monument will be precluded from satisfying domestic consumptive demands. Where do we go from here?

The withdrawal of the opportunity to mine on public lands is an accelerating phenomenon that must be slowed or reversed if the United States is to continue to supply a significant proportion of its own mineral resources. It is a serious matter to carry out withdrawals of the public lands without adequate knowledge of the values being lost. It is an incomparably greater mistake to enact legislation which would sacrifice, not merely the possible existence, but indeed the known existence, of valuable mineral resources that are essential to maintaining the delicate balance between mineral supply and demand in this country.

We do not support this legislation and encourage our colleagues, should it reach the floor of the House, to reject it.

STEVE SYMMS,
DON YOUNG,
SAM STEIGER.

○

S. 2371

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To provide for the regulation of mining activity within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares that—

(a) the level of technology of mineral exploration and development has changed radically in recent years and continued application of the mining laws of the United States to those areas of the National Park System to which it applies, conflicts with the purposes for which they were established; and

(b) all mining operations in areas of the National Park System should be conducted so as to prevent or minimize damage to the environment and other resource values, and, in certain areas of the National Park System, surface disturbance from mineral development should be temporarily halted while Congress determines whether or not to acquire any valid mineral rights which may exist in such areas.

SEC. 2. In order to preserve for the benefit of present and future generations the pristine beauty of areas of the National Park System, and to further the purposes of the Act of August 25, 1916, as amended (16 U.S.C. 1) and the individual organic Acts for the various areas of the National Park System, all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System shall be subject to such regulations prescribed by the Secretary of the Interior as he deems necessary or desirable for the preservation and management of those areas.

SEC. 3. Subject to valid existing rights, the following Acts are amended or repealed as indicated in order to close these areas to entry and location under the Mining Law of 1872:

(a) the first proviso of section 3 of the Act of May 22, 1902 (32 Stat. 203; 16 U.S.C. 123), relating to Crater Lake National Park, is amended by deleting the words "and to the location of mining claims and the working of same";

(b) section 4 of the Act of February 26, 1917 (39 Stat. 938; 16 U.S.C. 350), relating to Mount McKinley National Park, is hereby repealed;

(c) section 2 of the Act of January 26, 1931 (46 Stat. 1043; 16 U.S.C. 350a), relating to Mount McKinley National Park, is hereby repealed;

(d) the Act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447), relating to Death Valley National Monument, is hereby repealed;

(e) the Act of June 22, 1936 (49 Stat. 1817), relating to Glacier Bay National Monument, is hereby repealed;

(f) section 3 of the Act of August 18, 1941 (55 Stat. 631; 16 U.S.C. 450y–2), relating to Coronado National Memorial is amended by replacing the semicolon in subsection (a) with a period and deleting the prefix "(a)", the word "and" immediately preceding subsection (b), and by repealing subsection (b); and

(g) The Act of October 27, 1941 (55 Stat. 745; 16 U.S.C. 450z), relating to Organ Pipe Cactus National Monument, is hereby repealed.

SEC. 4. For a period of four years after the date of enactment of this Act, holders of valid mineral rights located within the boundaries of Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument shall not disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February 29, 1976: *Provided*, That if the Secretary finds that enlargement of the existing excavation of an individual mining operation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, the surface of lands contiguous to the existing excavation may be disturbed to the minimum extent necessary to effect such enlargement, subject to such regulations as may be issued by the Secretary under section 2 of this Act. For purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

SEC. 5. The requirements for annual expenditures on mining claims imposed by Revised Statute 2324 (30 U.S.C. 28) shall not apply to any claim subject to section 4 of this Act during the time such claim is subject to such section.

SEC. 6. Within two years after the date of enactment of this Act, the Secretary of the Interior shall determine the validity of any unpatented mining claims within Glacier Bay National Monument, Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park and submit to the Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands. The Secretary shall also study and within two years submit to Congress his recommendations for modifications or adjustments to the existing boundaries of the Death Valley National Monument and the Glacier Bay National Monument to exclude significant mineral deposits and to decrease possible acquisition costs.

SEC. 7. Within four years after the date of enactment of this Act, the Secretary of the Interior shall determine the validity of any unpatented mining claims within Crater Lake National Park, Coronado National Memorial, and Glacier Bay National Monument, and submit to the Congress recommendations as to whether any valid or patented claims should be acquired by the United States.

SEC. 8. All mining claims under the Mining Law of 1872, as amended and supplemented (30 U.S.C. chapters 2, 12A, and 16 and sections 161 and 162) which lie within the boundaries of units of the National Park System shall be recorded with the Secretary of the Interior within one year after the effective date of this Act. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which was not valid on the effective date of this Act, or which becomes invalid thereafter. Within thirty days following the date of enactment of this Act, the Secretary shall publish notice of the requirement for such recordation in the Federal Register. He shall also publish similar notices in newspapers of general circulation in the areas adjacent to those units of the National Park System listed in section 3 of this Act.

SEC. 9. (a) Whenever the Secretary of the Interior finds on his own motion or upon being notified in writing by an appropriate scientific,

historical, or archeological authority, that a district, site, building, structure, or object which has been found to be nationally significant in illustrating natural history or the history of the United States and which has been designated as a natural or historical landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for or removal or production of minerals or materials, he shall notify the person conducting such activity and submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a national landmark, to the Advisory Council on Historic Preservation, with a request for advice of the Council as to alternative measures that may be taken by the United States to mitigate or abate such activity.

(b) The Council shall within two years from the effective date of this section submit to the Congress a report on the actual or potential effects of surface mining activities on natural and historical landmarks and shall include with its report its recommendations for such legislation as may be necessary and appropriate to protect natural and historical landmarks from activities, including surface mining activities, which may have an adverse impact on such landmarks.

SEC. 10. If any provision of this Act is declared to be invalid, such declaration shall not affect the validity of any other provision hereof.

SEC. 11. The holder of any patented or unpatented mining claim subject to this Act who believes he has suffered a loss by operation of this Act, or by orders or regulations issued pursuant thereto, may bring an action in a United States district court to recover just compensation, which shall be awarded if the court finds that such loss constitutes a taking of property compensable under the Constitution. The court shall expedite its consideration of any claim brought pursuant to this section.

SEC. 12. Nothing in this Act shall be construed to limit the authority of the Secretary to acquire lands and interests in lands within the boundaries of any unit of the National Park System. The Secretary is to give prompt and careful consideration to any offer made by the owner of any valid right or other property within the areas named in section 6 of this Act to sell such right or other property, if such owner notifies the Secretary that the continued ownership of such right or property is causing, or would result in, undue hardship.

SUNSHINE IN GOVERNMENT

SEC. 13. (a) Each officer or employee of the Secretary of the Interior who—

(1) performs any function or duty under this Act, or any Acts amended by this Act concerning the regulation of mining within the National Park System; and

(2) has any known financial interest (A) in any person subject to such Acts, or (B) in any person who holds a mining claim within the boundaries of units of the National Park System;

shall, beginning on February 1, 1977, annually file with the Secretary a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary shall—

(1) act within ninety days after the date of enactment of this Act—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within such agency which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section or any regulation issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.