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VOLUME VI

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DISCUSSION: MINERAL RESOURCES

Relative merits of the leasing system versus the location system.

**Environmental protection safeguards of the Recommendations
versus the public and private demands for minerals to increase
production and growth.**

Classification of minerals as a possible type of environmental control.

MR. MARTZ: For 20 years I have witnessed a debate concerning the leasing system and the retention of the location system. It occurred to me that here was an area in which the Commission was particularly ingenious; it found the proposal that would maintain the terminology of the location system and yet secure all the advantages of the leasing system. We should take a little time to have someone speak for the recommendations of the Public Land Law Review Commission.

MR. PEARL: I will not attempt to do exactly that, but maybe I can explain some of the things that have been discussed. First of all, Bob Swenson has commented on the need of a further study of the environment. This was fulfilled during our research program. The study has already been made.

Another statement you made, Bob, was about the new environmental agency under the Reorganization Act and procedure quoted by the President which solved some or all of your objections in connection with the mineral chapter. I am not exactly certain how this would happen because nothing that I saw in the reorganization package would take any jurisdiction over minerals away from the Department of the Interior. The Commission's *Report* was explicit in saying that this is where the responsibility should remain. The United States Geological Survey is going to evaluate these programs. The fact is that knowledgeable mineral people are going to look at these

to see that they are in accord. There is no intention as far as the Commission is concerned to have the plans reviewed by any of the other agencies. The need is to adhere to certain environmental standards which would be enforced by the agency or department having jurisdiction over the mineral development.

Clyde Martz put his finger on a lot of this when he said that we are preserving the terminology but actually retaining the leasing system. In our discussion we talked about a hybrid system. The fact is that there is an emotional issue here. A lot of people in the West go out and look for minerals on public land. It was the feeling, belief, and desire of the majority of the members of the Commission that this should be continued. This was the first cleavage in the consensus report and the separate views that there should be a right to a self-initiated claim of some kind in order to protect the small "individual" independent, who might not be able to develop his find and who may have to sell out to a big company, or go into partnership in order to get financing. The Commission wanted to preserve his right because, as indicated in the study made for us by the University of Arizona on mineral resources, many of the most significant discoveries have been made by the small prospector even though the development and production came through large companies. So this was an attempt to do exactly what had been recommended—not to get a leasing system, but to correct the deficiencies of the existing system. This was what the Commission thought that it had achieved.

One of the points that was stressed by Roger Hansen was the domestic sources of supply. If you do not believe that it is necessary to develop domestic sources of supply, then you must disagree with the Commission's consensus position. The Commission was of the opinion that it is essential to bolster our domestic sources and not to rely on imports. The situation being what it is we cannot afford to rely on imports. Therefore, it is necessary to supply the incentive for people to go out and seek domestic sources of supply.

Once we had covered the need for domestic sources of supply, we came to the next question of how it is accomplished. But if you did not agree with the need for development of do-

mestic sources then you did not have to come to that next question. Well, Roger Hansen agreed with the necessity of exploration by public and private means but maybe not development. I know that all of you realize that there is not any private capital that would be interested in investing a lot of money for exploration and development and then have to stop and not be able to produce. What is really intended is a public program. The fact of the matter is, however, right now in the order of priorities Government would not supply the money. Appropriations would not be available. The Commission recommended that uninvestigated areas should be surveyed at public expense to discover if there are mineral deposits. The survey should be conducted with the view of having no present intent to develop. However, if there is ever any need for the deposits at some future date, the survey will show that they are there, but remember that this is part of the Commission's long-range view. The Commission was realistic in knowing that there would not be any appropriation for that type of thing today. This then is where there could be a search of public areas or domestic sources of supply that have been withdrawn, and will be withdrawn in the future. In those areas that are not withdrawn, the only way to get them surveyed, from the viewpoint of developing domestic sources, is to encourage the private sector. The only way the private sector is going to do that is if they have the promise of what Joe Geraud called the fulfillment of the expectation. This is a very good example of it.

It is in this stage that the Commission came up against other problems: at what point does development begin and at what point does production begin? This is what the recommendations are to get away from in the present deficiencies of discovery in mining law. The Commission's recommendation was rather specific on the terminable fee in the mineral interest. The patent to the mineral deposit would go to the patentee, and he could develop and produce from that ore line. He would then have an option of acquiring the fee of the surface by paying the full market value. If he should not exercise that option by failing to become the owner of the surface, the patentee would have to give up the mineral interest which he has acquired at the cessation of production or a reasonable

period of time. If he does not have enough interest, desire, or ambition to go ahead and buy the surface, then he would not protect it. If he does not produce within a reasonable time there should be a reversion to the United States government. The Commission did not suggest what the period of time might be. The time period was discussed by the Commission and various periods were suggested. Because of the different type of ore bodies and the different situations which might arise, this was considered to be a matter which could be best worked out as a detail in the legislative process. At that time the mining industry could offer guidelines as to what a reasonable period of time might be.

This brings us to the question of the rationale of having a patent instead of going all the way to the leasing system. Additionally, there is the practical matter of protecting the individual and trying to get a practical, dynamic result adopted. The mining industry believes that it must have the patented mineral deposit as against the leasing system. Its reasoning is that, if it needs to shut down because of the price fluctuations, it should be able to shut down for any period of time it feels necessary. If an enterprise owns a fee to the surface by purchasing it for full value, it would be able to do that. What the commissioners, who have put in separate views, have said is that this type of protection might be built into a leasing system. Well, it could be built into a leasing system, a leasing system that we know today. This is what the mining industry is concerned about because for the most part the previous recommendations have required the application of the 1920 leasing system to all minerals. There are certain circumstances in which the only way to extend an oil and gas lease after the initial term is to have a producing well. This frightens the mining industry. They may not want to produce at a certain time since the history of the cycle affects the prices of the industry.

A few words are in order about the environment. I think maybe we did the Commission a disservice in the chapter on mineral resources if it is subject to the interpretation that Roger Hansen may have given you. By the same token I think it is realistic. The Commission's basic premise was the

standard of no degradation of the environment. Anytime there is a deviation from the standard, the Commission is going to point it out. In the chapter on mineral resources the Commission said you cannot have any mining activity without having some impact on the environment. I think Roger agrees with that. Then the Commission said it became a matter of reconciling the impact of discovery with the demand of the environment and also the task of restoration after production is completed. But restoration does not necessarily mean to put the land back in the condition it was in before the mining started. Instead it means to rehabilitate and restore it to useable form, recognizing the fact that every mining activity has some impact on the environment. It is necessary to find the means of controlling or establishing the best method of getting the greatest protection for the environment under the lease circumstances. This was exactly what the *Report* called for. There was nothing in the *Report* to indicate that there would not be a continual overseeing of the environmental controls. As a matter of fact, it was just the opposite. It said the controls are to prevade every stage of exploration, development, and production from commencement to termination. In effect, the strictest environmental controls possible would be imposed cosistent with idea that it is essential to have additional sources of domestic supply. If you disagree with that then I say that we have a basic cleavage.

MR. BARRY: I would like to comment on some areas that the *Report* did not cover. We all recognize minerals are very important in our lives. Even speaking as a conservationist, it would be absurd to say that all mining must cease because it does some damage, or to say that no damage would be tolerable under some situations. Aren't there some classifications that can be made? In 1955, Congress elected to set aside certain common varieties of sand and gravel. They simply said you cannot tear up the environment for that kind of mineral. I think that was a very good decision, but it seems to me that it ought to be extended a lot further. There are some important minerals that are not on short supply, yet they are available for development and location on public lands. No one really needs them, and their mining does a lot of damage. The

benefit does not outweigh the injury which is sustained. Someone ought to start appraising what these values are. One way of ascertaining the value would be to make some type of classification of minerals. I have something in mind that might be a common variety. It is the blemish which occurs on the east side of Pike's Peak. I do not remember whether the mining claims were located prior to 1955 or not. Castle Concrete Company went into the Garden of the Gods with bulldozers and tore it all down and mined amalgam or some type of an aggregate which they mix with asphalt to put on highways. Now I contend that type of activity should be confined to some other place than the Garden of the Gods or some scenic beauty like Pike's Peak. We investigated that incident to determine whether some kind of a public value could be introduced to stop that operation. We finally concluded under the existing mining laws we could not do anything about it. As further emphasis for the previous point, all this assumption about the executive usurping is not true. The legislative department has turned over to the guy with the bulldozer the full choice of what is to happen to the public land. Before anyone can do anything about it, the guy in the bulldozer has already acted. Congress has invited him to do so and nobody can stop him. He has torn up the landscape and no one has any say about it.

Returning to the previous point concerning the classification of minerals, something ought to be done about this. This could even be extended to important minerals. The example of low grade copper deposits that are being exploited in the hope that something will turn up when there isn't even a shortage of copper is indicative of the problem. Low grade molybdenum is another example. These are useful minerals but ones in which there is not a shortage of supply. All over the West there are minerals which are not valuable because it is too expensive to haul them to the rail head. There are plenty of sources close to the mills, so the problem should not even exist. The same rules should not apply to these minerals that apply to those that are really the sinews of America, those we need to keep them in production at all times.

This brings me to another consideration. Who should hold the reservation of minerals for future generations? This is a current problem. I think what Mr. Sherwood said in reference to whether there should be future development poses the real question. Why should the present hierarchy of mineral companies be able to insure their future existence and prosperity by preempting decisions to be made by those generations ahead of us concerning the management of those minerals? Why should they be permitted to locate something and then sit on it for 200 years because it is not presently worth working? The public should continue to hold those reservations. Indeed, this is my view of what the 1872 act means. I think that is one reason why there is some enthusiasm in the mining industry to change that act. As interpreted by the *Golden* case one of the things that the 1872 act provided was that a mineral deposit must be marketable. The only way that this test can be met is to prove that it is marketable today or in the reasonable future. But, to suggest that someone can sit on half a cent per ton copper because 150 years from now that is going to be useful and exploited, and to imply that a particular company is still going to be in existence 150 years from now so that they will be the ones that realize the profit, seems to me to be setting up some type of hierarchy of people in this country. This is a hierarchy in which the people, who happen to be the present owners of everything in perpetuity, will continue in perpetuity to be the holders of this property, and will be able to disrupt the reasonable expectations of everyone, including the poor, who might someday aspire to own something themselves. I think the same fallacies exist in the grazing situation. Just because somebody's granddaddy owned the grazing rights does not mean that he should own them today. What if somebody's granddaddy was a cowboy and did not even own a ranch. Maybe he would like to own a ranch someday.

MR. RAGSDALE: Well, let him buy it.

MR. HANSEN: This is probably dirty pool, but in the section on recreation on page 214 there is a sentence which I

would like to quote. Imagine reading this in the section on mining:

Since recreation on public lands has been treated as a free good in the past, the demand for it tends to expand indefinitely as long as more developments are provided. This is not a good basis for allocating scarce tax dollars to alternative uses of the public land.

Admitting this is a quote out of context or whatever you will call it, I think that this is what Frank Berry was talking about and what I was talking about. With this propensity to equate location and exploration with immediate development, I would certainly never say that we have a big national inventory and no development. Of course that is ridiculous and irresponsible. There are some types of minerals which should never be developed, but we should still have an inventory of their location.

MR. PEARL: One of the Commission's specific recommendations is that minerals subject to a leasing system should be identified and specified by legislation. All others should be disposed of by sale. This method would eliminate the uncertainty. By this recommendation certain minerals which are now subject to a location system would not thereafter be subject to a location system. The Commission's recommendation would take care of this because in the legislative process the opportunity would be given to identify the minerals—to identify specifically those minerals which should be subject to the leasing system in the location system.

Clyde Martz in his remarks on mining took exception to the Commission's failure to choose among alternatives and to recommend specific solutions. The concept was established that in making these recommendations the Commission should have the sole responsibility of making specific recommendation. The Commission felt that it would only create diversion if recommendations were coming up from contractors, consultants, and others. There was a fear that these reports would be made public, which they were, and thus foreclose the Commission's options and create criticism of an unnecessary nature. Accordingly, the decision-making recommendation method was reserved for the Commission alone.