II

101st CONGRESS
2D SESSION

S. 2891

To authorize and direct an exchange of lands in Colorado.

IN THE SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 10), 1990

Mr. WIRTH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

Pg. 42
44

A BILL

To authorize and direct an exchange of lands in Colorado.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. FINDINGS AND PURPOSES.**
4 (a) The Congress finds and declares that—
5 (1) certain lands currently administered by the
6 White River National Forest, Colorado, which com-
7 prise approximately two hundred and seventeen acres
8 and are commonly known as the Mt. Sopris Tree Nurs-
9 ery have been tentatively identified as surplus property
10 suitable for sale by the United States;
11 (2) such lands lie in Eagle County and in close
12 proximity to Pitkin County in an area of Colorado that

1 is experiencing rapid population growth and escalating
2 real estate prices which are adversely affecting the
3 availability of lands for the development by the coun-
4 ties of affordable public recreational and administrative
5 facilities;
6 (3) the Mt. Sopris Tree Nursery property is ideal-
7 ly located to serve Forest Service administrative needs
8 and to meet the needs of Pitkin and Eagle Counties to
9 provide affordable public recreational facilities and
10 other public services in an area of the counties where
11 such facilities and services are currently lacking or in
12 very short supply;
13 (4) Pitkin and Eagle Counties are offering to
14 convey to the United States approximately one thou-
15 sand three hundred and forty-four acres of patented
16 mining claim properties owned by the counties within
17 or adjacent to the White River National Forest, includ-
18 ing approximately six hundred and seventy-nine acres
19 of inholdings within the Holy Cross, Hunter Frying-
20 pan, Collegiate Peaks, and Maroon Bells Snowmass
21 Wilderness Areas;
22 (5) the patented mining claim properties being of-
23 fered to the United States by the counties are valuable
24 national forest inholdings, which if acquired by the
25 United States, will facilitate national forest administra-

1 tion, further the purposes of the National Wilderness
2 Preservation System, and protect other lands within
3 the National Forest System with important wildlife,
4 scenic, watershed and recreational values.
5 (b) It is the purpose of this Act to authorize and
6 direct—
7 (1) that the Secretary of Agriculture retain ap-
8 proximately thirty-one acres of the Mt. Sopris Tree
9 Nursery property to meet future administrative needs
10 of the White River National Forest;
11 (2) that the Secretary of Agriculture convey to
12 Pitkin and Eagle Counties, Colorado, the balance of
13 the Mt. Sopris Tree Nursery property, comprising ap-
14 proximately one hundred and eighty-six acres, for re-
15 tention and use by the counties for the development of
16 public recreational facilities, the protection of riparian
17 lands, wildlife habitat and public access along the
18 Roaring Fork River, and such other public purposes as
19 the counties determine appropiate; and
20 (3) that in return for making a conveyance of val-
21 uable lands to the counties, the Secretary of Agricul-
22 ture shall acquire inholdings within the White River
23 National Forest, including inholdings within four desig-
24 nated wilderness areas, which the Congress believes

1 possess public values equal or greater to the public
2 values of the lands being conveyed to the counties.

3 **SEC. 2. RESERVATION TO SECRETARY OF AGRICULTURE.**

4 Upon enactment of this Act there are hereby reserved to
5 the Secretary of Agriculture as part of the White River Na-
6 tional Forest for such a period as the Secretary of Agricul-
7 ture determines appropriate approximately thirty-one acres of
8 land, as generally depicted on a map entitled "Mt. Sopris
9 Tree Nursery Administrative Site", dated April 1990. Such
10 lands may be utilized for National Forest administrative pur-
11 poses, or for open space, recreational or other purposes con-
12 sistent with facilities on the adjoining lands transferred to
13 Pitkin and Eagle Counties, as the Secretary of Agriculture
14 deems appropriate. In the event the Secretary ever deter-
15 mines that such lands are no longer necessary or desirable for
16 retention in National Forest ownership he may dispose of
17 such lands under authorities applicable to the National Forest
18 System: *Provided, however,* That prior to any such disposal
19 the Secretary shall first offer to sell or exchange such lands
20 to the counties at fair market value.

21 **SEC. 3. CONVEYANCE TO PITKIN AND EAGLE COUNTIES.**

22 Within six months of the date of enactment of this Act,
23 the Secretary of Agriculture is directed to convey jointly to
24 Pitkin and Eagle Counties, Colorado, without monetary com-
25 pensation, all right, title, and interest of the United States in

1 approximately one hundred and eighty-six acres of lands, as
2 generally depicted on a map entitled "Mt. Sopris Tree Nurs-
3 ery—Conveyance to Pitkin and Eagle Counties", dated April
4 1990. It is the intention of Congress that such lands shall be
5 retained and used by the counties for public recreation and
6 recreational facilities, open space and riparian habitat protec-
7 tion, fairgrounds, and such other public purposes as the coun-
8 ties determine appropriate. It is further specified that the
9 patent issued by the Secretary of the Interior for such lands
10 shall reserve in perpetuity to the public the right of access in
11 and along the Roaring Fork River for fishing and other recre-
12 ational use as determined appropriate by the Secretary of
13 Agriculture in consultation with the counties: *Provided, how-*
14 *ever*, That the Secretary of Agriculture may transfer adminis-
15 tration of such access and use to the counties or to such other
16 State or local units or branches of government, or private
17 nonprofit organizations, as the Secretary in consultation with
18 the counties determines qualified and appropriate to fulfill the
19 purposes of the reservation. In the event the counties ever
20 sell, exchange, or otherwise dispose of all or a portion of the
21 lands acquired pursuant to this section or lease them for pur-
22 poses inconsistent with the intentions of this Act, all proceeds
23 of such sale, exchange, disposal, or lease shall accrue to the
24 United States and shall be considered money received and
25 deposited pursuant to the Act of December 4, 1967 (and

public facility?

1 commonly known as the Sisk Act), or the Secretary of Agri-
2 culture may elect to reacquire, without compensation to the
3 counties, any or all portions of such lands as he determines
4 appropriate prior to their sale, exchange, disposal, or lease.

5 **SEC. 4. COUNTIES' CONVEYANCE TO UNITED STATES.**

6 (a) In consideration of the valuable lands to be conveyed
7 to Pitkin and Eagle Counties, Colorado, pursuant to section
8 3 of this Act, upon receipt of title to the lands specified in
9 section 3, the counties shall immediately convey by quitclaim
10 deed to the Secretary of Agriculture, and the Secretary shall
11 accept all right, title, and interest of the counties in approxi-
12 mately—

13 (1) one thousand two hundred and ninety-one
14 acres of lands owned by Pitkin County within and ad-
15 jacent to the boundaries of the White River National
16 Forest, Colorado, as generally depicted on maps enti-
17 tled "Pitkin County Lands to Forest Service", num-
18 bered 1–11, and dated April 1990; and

19 (2) fifty-two acres of lands owned by Eagle
20 County within and adjacent to the boundaries of the
21 White River National Forest, Colorado, as generally
22 depicted on maps entitled "Eagle County lands to
23 Forest Service", numbered 12–14, and dated April
24 1990.

(b) Upon their acquisition by the Secretary of Agriculture, such lands shall become a part of the White River National Forest (or in the case of portions of parcels 39, 40, and 41 depicted on map 9, and a portion of parcel 54 on map 12, part of the Gunnison and Arapaho National Forests, respectively) for administration and management in accordance with the laws, rules, and regulations generally applicable to lands acquired for incorporation in the National Forest System: *Provided, however,* That such lands shall be permanently withdrawn from disposition under all laws pertaining to mineral leasing on acquired lands. Lands acquired within the boundaries of the Holy Cross, Hunter Fryingpan, Collegiate Peaks, and Maroon Bells-Snowmass Wilderness Areas shall also henceforth be incorporated in and deemed to be a part of their respective wilderness areas and shall be administered in accordance with the provisions of the Wilderness Act governing areas designated as wilderness.

SEC. 5. MISCELLANEOUS PROVISIONS.

(a) As all lands to be conveyed pursuant to this Act will henceforth be retained and utilized for public purposes by either Pitkin or Eagle Counties or the Secretary of Agriculture, and as the Secretary will retain an interest in the lands to be conveyed pursuant to section 3 of this Act should they ever be used by the counties for purposes not intended by this Act, and as preliminary appraisals of the lands identified in

used by counties not intended use

1 sections 3 and 4 indicate that the values of the lands being
2 offered by Pitkin and Eagle Counties are approximately
3 equal to or exceed the values of the portion of the Mt. Sopris
4 Tree Nursery to be conveyed out of Federal ownership, the
5 exchange and transfer of properties authorized and directed
6 by this Act may be consummated without appraisals of the
7 lands involved or the cash equalization payments normally
8 required for exchanges of lands pursuant to section 206 of the
9 Federal Land Policy and Management Act of 1976, as
10 amended (43 U.S.C. 1716).

11 (b) Lands acquired by the Secretary of Agriculture pur-
12 suant to section 4 of this Act shall become part of the Na-
13 tional Forest System and all right, title, and interest in such
14 lands shall immediately vest in the United States upon the
15 issuance of a deed to the United States by Pitkin or Eagle
16 Counties. Any person or party who may thereafter question
17 the right, title, or interest of the United States to such lands
18 is entitled within eighteen months of the date of enactment of
19 this Act to name the United States as a defendant in a civil
20 action to adjudicate a disputed right, title, or interest. Any
21 such civil action shall be brought in the United States Dis-
22 trict Court for the District of Colorado and the complaint
23 shall set forth with particularity the nature of the right, title,
24 or interest which the plaintiff claims against the United
25 States, and clearly specify the precise circumstances, laws,

1 Secretary of Agriculture for use for National Forest pur-
2 poses. If at some future date they shall cease to be used for
3 National Forest purposes they shall automatically revert to
4 the jurisdiction of the General Services Administration.

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II

101ST CONGRESS
2D SESSION

H. R. 2566

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, JANUARY 23), 1990
Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. DEFINITIONS.**
4 As used in this Act, the following terms shall have the
5 following meanings:

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wish to correct what may appear as an inconsistency. While all five of these villages would have been ineligible under 43 U.S.C. 1610(b)(3), because a majority of the residents were non-Native based on Bureau records, the final Departmental decision with respect to eligibility on Tenakee was not for that reason. In the Tenakee decision, as well as in the Ketchikan decision, both villages were determined ineligible because they were not listed in Section 16 of ANCSA (43 U.S.C. 1615). The decisions referred to are those of the Alaska Native Claims Appeal Board (ANCAB) in VE 74-60 and LS 77-33, which can be provided for the record upon request.

Those decisions, in reviewing the legislative history (see Senate Report 92-405, p. 160) state that Congress considered treating unlisted Southeast Alaska villages the same as the listed villages (just as they did for villages outside Southeast in 43 U.S.C. 1610(b)(3). Since Congress considered this once and chose not to provide for that opportunity (see Senate Report 92-581, p. 44), we believe it is inappropriate now, after twenty years, to attempt to review that history and arrive at a judgment of equity on those actions.

While section 6 of S. 2543 limits the study to five locations in Alaska, we are concerned that the bill would establish a precedent, thus opening the door for other non-Native communities to request a similar study claiming that they now, 20 years later, have a significant Native population with a separate historical identity. The ANCSA was intended to settle all Alaska Native claims. The compromises agreed to in achieving that settlement should not be disturbed.

The legislation if enacted, would require an extensive review and analysis in order to make an equity determination. If an inequity is determined then the bill requires that the Department identify lands, assets, and funding to remedy the inequity followed by legislative recommendations necessary to implement these findings. The entire study is supposed to be accomplished by January 1, 1991 (less than four months away), at an undetermined cost with no identified funding. It is doubtful that any study could be completed within that timeframe. We testified earlier that the timeframe on H.R. 5092 was too short when it provided until June 1, 1991, to complete the work needed.

If Congress feels a study is truly needed, we would be willing to consider a more limited review of the administrative records and legislative history for the purpose of comparing how these five communities and others were listed and treated under ANCSA, and report our findings to Congress.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

Senator WIRTH. We would like to receive from you, Mr. Hayes, the Bureau's quite specific comments following up on the suggestion you had at the end of your testimony. If we could get that from you, that you would be willing to consider a different kind of review. We would like to have your thoughts on what that should include.

Mr. HAYES. You are looking for a written supplement to the record?

Senator WIRTH. That would be terrific. You made the suggestion that you would be happy to do it. We are taking you up on your good offer.

Mr. HAYES. We would be happy to do that.

[The information referred to was not received.]

Senator WIRTH. If we could, Mr. Penfold, we would like to get from you your comments on the magnitude of the in lieu selections that are still unresolved. Could we get that for the record?

Mr. PENFOLD. Yes, sir, we would be happy to provide that.

Senator WIRTH. We would also like to have some notion from you of your reaction to what I understand is the alternative language going through the House of Representatives. That would be very helpful.

Mr. PENFOLD. Yes, sir.

[The information referred to follows:]

e United States reserve certain interest in their lands we do not believe that ng these interests equalizes the values in the exchange. The most appropriate on is for the counties to convey lands of equal value to those which they re-

ner significant, and potentially costly problem, in the exchange as described 91, is that the counties do not have clear title to much of the lands they are to the United States. The counties acquired title to the offered lands tax delinquency proceedings and title is colored due to filing of intervening im deeds. The counties are unable to provide title insurance without resolu- the color of title 12 on these lands. Without the benefit of title insurance, the ment assumes the reish of known title problems which could, assuming the ase analysis divest the Government's title or create a potential statutory

dition to the question of clear title, the bill as introduced provides that the States assume the financial and legal burdens and liabilities of clearing title. 5(b) obligates the United States to expend public funds to defend title to lands which is known to be colored. The United States might expect to be as defendant in 30 to 50 separate quiet title suits or claims of taking as a f this subsection. The Department of Agriculture Office of the General Coun- ses that costs to the United States for actions in Federal Court could be sig- ly higher than the $300,000 estimate that the Counties expect to expend for actions in State Court.

are other problems with the bill as introduced. S. 2891 requires the ex- be completed within 6 months of enactment. This time limitation is insuffi- complete the NEPA process and other required studies.
ill also limits management options on lands to be acquired by the United The bill contains confusing language pertaining to mineral leasing on ac- ands and restricts management options on lands outside classified Wilder- uld be unduly restricted. The bill legislates the highest and best use of the be retained by the United States to the detriment of the public interest. so believe that the number of acres proposed for retention by the Forest nay be inaccurate.
S. 2891 was introduced, we have been working with the Counties to adminis- achieve the objectives of the Forest Service and both Counties. Some has been made, but work remains to be done. We will continue to work Counties to administratively achieve an exchange in the public interest. epartment of Agriculture has the administrative authority to exchange th the counties as provided in our regulations at 36 CFR 254, Subpart A. ve the proposed land exchange would be in the public interest if Pitkin and unties take the steps necessary to clear title to the lands proposed for con- to the United States.
oncludes my prepared statement and I would be pleased to answer the Sub- ee's questions.

EMENTAL STATEMENT CONCERNING S. 2816, A BILL TO DISCLAIM ALL RIGHTS, TITLE, AND INTEREST IN AND TO CERTAIN PRIVATE LANDS

A SHORT HISTORY

n lieu selection" provision of the organic Act of June 4, 1897 (30 Stat. 36), the owners of lands within a Forest reservation to relinquish the tract to ed States and select "in lieu thereof" an equal acreage of public lands. The 1901 amendments required that selections be confined to vacant, surveyed, ineral public lands which are subject to homestead entry.
uestionable practices arose in filing of relinquishments and making "in tions" and in 1905, Congress enacted the Act of March 3, 1905 (33 Stat. ch repealed the Forest Lieu Selection provisions of the 1897 Act. When the arch 3, 1905 was passed, however, it caught various tracts of land in all reconveyance. The Act protected the rights involved in all lists of selec- on file in the (General Land Office), but made no provision for reco- r lands caught in the intermediate stages. As a result of the lieu selection many tracts of land were relinquished to the United States. In most of s, patents to the land selected "in lieu thereof" were granted and the base quished to the United States. In regard to some of the lands relinquished ernment, however, either the application for the lieu land was not filed.

Federal retention of the majority of these lands for public uses. We believe that relief would be appropriate in those specific instances where there are actually persons who have owned and occupied the lands in the belief that the Government had relinquished or disclaimed title to them or their predecessors in title in the past.

We recommend that the Secretary of Agriculture be given limited discretionary authority to issue quitclaim deeds premised upon the incidence of ownership reflected in the following guidelines:

(1) The United States has previously disclaimed the subject land, by letter or deed; and

(2) No in-lieu lands or payments have been selected or received; and

(3) The tract has been occupied in good faith under color of title, and the land has been carried on local tax rolls and taxes have been continuously paid by the person claiming ownership.

(4) The United States has treated the tract as private lands.

These guidelines are consistent with cases we have dealt with subsequent to the Sisk Act of 1960. In about six cases, we have recommended, and legislation has been enacted, for the relief of persons who met these criteria. In these cases the lands had been held and transferred as private land by successive owners, taxes had been paid and succession of title was clear.

Since we testified before the House National Parks and Public Lands Subcommittee in June on the House companion bill of S. 2816, we have been working with the Subcommittee and Department of the Interior to prepare acceptable substitute language. We would be happy to work with this Subcommittee, as well, to draft substitute language.

In summary, we assure the Subcommittee of our strong desire to provide relief, where such relief is truly warranted, but the Department of Agriculture cannot support the wholesale disclaimer of valuable Federal assets such as S. 2816 would require. We recommend that the criteria described above be incorporated in any direction developed by Congress to provide equitable relief while protecting the valid interests of the United States.

S. 2891, LAND EXCHANGE WITH PITKIN AND EAGLE COUNTIES, COLORADO

S. 2891 would authorize and direct an exchange of lands in Colorado and a transfer of administrative jurisdiction of the White River National Forest Supervisor's Headquarters in Colorado. It would authorize the Secretary of Agriculture to convey approximately 186 acres of an administrative site known as the Mt. Sopris Nursery, which is an acquired site located outside the boundaries of the White River National Forest, to Pitkin and Eagle Counties, Colorado for approximately 1,344 acres of patented mining claims purportedly owned by the Counties. The Nursery Site is located in Eagle County while approximately 1,291 acres of the nonfederal lands are located in Pitkin County, and approximately 52 acres of nonfederal lands are located in Eagle County.

It also authorizes a transfer of administrative jurisdiction for the White River National Forest Headquarters in Glenwood Springs, Colorado from the General Services Administration (GSA) to the Forest Service. This transfer would involve about 1/2 acre of land and an historic office building.

The Department of Agriculture supports the concept of acquiring most of the county lands by exchange, but opposes enactment of S. 2891 as introduced. We have significant concerns about a number of provisions of the bill.

While acquisition of much of the county land would enhance management of the White River National Forest, some is not suitable for addition to the National Forest System, and some are only minimally acceptable. About 671 acres of these lands are located within the boundaries of the Holy Cross, Hunter-Fryingpan, Collegiate Peaks, and Maroon Bells-Snowmass Wilderness Areas. Approximately 178 acres of other county lands have important wildlife, scenic, watershed, and recreational values. However, approximately 12 acres are not suitable for addition to the National Forest System, and 433 acres are only minimally acceptable for addition to the National Forest System.

Although some acres of the Mt. Sopris Nursery Site were determined to be appropriate to exchange, several acres of the Nursery Site are still valuable and needed for Forest Service administrative site purposes.

The most significant concerns about S. 2981 include disparity in value between the lands to be exchanged and the condition of title to the nonfederal lands.

The value of the Federal lands far exceeds the value of the county lands. Qualified appraisers estimate that the Federal lands proposed for conveyance in S. 2891 are far more valuable than the county lands. Although language in the bill proposes

ith regard to the magnitude of in-lieu selections that are still unresolved, the ɜau of Land Management (BLM) estimates that it has 7,037 acres of land on :h title is disputed. Of these 7,037 acres, the United States would want to retain acres located within Sequoia and Kings Canyon National Parks, that have an nated value of $30,000. The other lands are either shown on our title records as oelonging to the United States, or are in an area not necessary for Federal man- nent. Our administrative costs in doing title searches, issuing disclaimers and ng county recording fees would be in addition to the $30,000.

; to my reaction to the alternative language going through the House of Repre- atives, H.R. 4429 was passed by the House on October 10, 1990. We have not blished an official position on that bill. However, it seems that some of the pro- ıns of that bill are biased towards the in-lieu claimants, although most of the is workable. We are concerned with sections 2(d)(2)(B) and 2(d)(3) of H.R. 4429. Department of the Interior should not be placed in a position of adjudicating artment of Agriculture lands. However, we believe H.R. 4429 is a more workable than S. 2816.

enator WIRTH. Mr. Henson.

:xcuse me. Jake, do you have any kind of statement you would : to make?

enator GARN. I do, but please go ahead and complete this panel t.

enator WIRTH. Thank you. Mr. Hanson.

ɪTEMENT OF LARRY HENSON, ASSOCIATE DEPUTY CHIEF, OREST SERVICE, DEPARTMENT OF AGRICULTURE, ACCOMPA- IED BY GORDON SMALL, DIRECTOR OF LANDS, FOREST SERV- ːE; AND JAMES SNOW, DEPUTY ASSISTANT GENERAL COUN- EL, NATURAL RESOURCE DIVISION

Ir. HENSON. Thank you for the opportunity to offer our views on se bills.

am accompanied today by Gordon Small, Director of Lands, est Service, and James Snow, Deputy Assistant General Coun- Natural Resource Division, U.S. Department of Agriculture.

n an effort to be brief, I would like to summarize the testimony the four bills.

:egarding S. 2474, land exchange for the Homestake Mining npany, the Department of Agriculture supports the concept of uiring, by exchange, the Homestake Mining Company lands in Black Hills National Forest.

Ve oppose the bill as currently drafted, however, due to several stantive problems. In June we testified before the House Interi- Subcommittee on National Parks and Public Lands and the ıse Agricultural Subcommittee on Forests, Family Farms and ergy on H.R. 4567, the House companion to S. 2474. At those rings we expressed concerns about mineral and water rights as y affected Spearfish Canyon and the provisions of the bill con- ning the landfill.

ince the hearings in June we have been working with Homes- e Mining Company to resolve our concerns and have made good gress. We have agreed that Homestake could retain all mineral its for the 12,274 acres conveyed to the United States, subject to Secretary's regulations in 36 CFR 251.15.

Iomestake has agreed to a no surface occupancy restriction for acres in Spearfish Canyon. This restriction protects the ripari- fisheries and the aesthetic values being acquired in Spearfish ıyon.

The concerns we expressed in our earlier testimony about the water flow have also been addressed. Our concern about the transfer of the landfill have been addressed, as well. Homestake and Summit County have offered to pay $25,000 for the landfill and the county has proposed to indemnify the United States against any liability through a hold-harmless agreement authorized under section 107(e) of CERCLA.

We are satisfied with the substitute language reported out of the House Interior Subcommittee on National Parks and Public Lands and the House Agricultural Subcommittee on Forest, Family Farms, and Energy on H.R. 4567.

Should S. 2474 be amended in similar ways, we could support the exchange.

Regarding section 6 of S. 2543, study of five native villages and ANCSA, the administration is opposed to S. 2543. We concur with testimony given before the House Interior and Insular Affairs Committee by Patrick Hayes of the Bureau of Indian Affairs on July 31, 1990 and the testimony just presented by BIA.

We would make the following points. We believe that native claims were extinguished upon passage of ANCSA. It seems inappropriate now, after nearly 20 years, to upset the apple cart by second-guessing the carefully negotiated legislation. We are concerned that National Forest system lands and programs could be severely impacted should a study determine inequity and a settlement be proposed. It is likely that land for additional entitlements would come from the Tongass National Forest leading to adverse affects on public resource values in Southeast Alaska.

The study will likely set a precedent. History has shown that when we say let us explore whether these groups merit a better deal, other parties will ask for the same treatment. In any settlement each participant hopes for a better deal.

For these reasons we are opposed to enactment of S. 2543.

Regarding S. 2816, land selections in lieu of Forest Reserve lands. The Department of Agriculture opposes enactment of S. 2816. The bill purports to correct inequities whereby the Government received lands at the turn of the century for which the landowners were never paid or lands they selected were never conveyed.

We reject the contention that there are longstanding inequities affecting all of these lands. In effect, S. 2816 provides that the United States pay claimants, at fair market value, for lands that were made part of the National Forests by the Sisk Act of 1960 and have been protected and administered by the United States as public lands for years.

We believe it provides a potential windfall to some of the current claimants at taxpayers' expense. Congress has passed legislation on three occasions to compensate or reconvey lands to the original owners, heirs, or assigns of the lands involved. Some of the current claimants have title connected to the original grantors, but many of them have acquired a speculative title through tax sales or other mechanisms.

We acknowledge that there are some cases in which private parties should be given relief. We belief that relief is appropriate where persons have exercised normal use and occupancy of the land believing that they owned it. Since we testified before the

Interior Subcommittee in June on H.R. 4429, the House
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tinue to work with the counties to achieve an exchange in
blic interest.

concludes my prepared statements, Mr. Chairman.

prepared statement of Mr. Henson follows:]

ED STATEMENT OF LARRY HENSON, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

hairman and members of the subcommittee:

you for the opportunity to offer our views on these bills.

S. 2474, LAND EXCHANGE WITH HOMESTAKE MINING COMPANY

4, Homestake Mining Company Exchange, would authorize an exchange of
South Dakota and Colorado and a transfer of lands in Colorado. It would
e the Secretary of Agriculture to convey approximately 1,450 acres of Na-
orest System lands in Colorado and South Dakota to Homestake Mining
y in exchange for approximately 12,274 acres of land owned by Homestake
Dakota. All but about 40 acres of the National Forest System lands are
n Summit County, Colorado.

4 would also authorize a transfer of about 325 acres of National Forest
land to Summit County at no cost. This would transfer the Summit County
currently on National Forest System lands to the county.

and exchange for 12,274 acres of Homestake Mining Company land would
ntly enhance management of the Black Hills National Forest. These lands
several thousand acres of quality wildlife habitat. Acquisition of about 20
Spearfish Creek would be an outstanding addition to the National Forest
providing valuable recreational, scenic, natural, and wildlife resources to

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dition to the question of clear title, the bill as introduced provides that the
States assume the financial and legal burdens and liabilities of clearing title.
5(b) obligates the United States to expend public funds to defend title to
lands which is known to be colored. The United States might expect to be
as defendant in 30 to 50 separate quiet title suits or claims of taking as a
f this subsection. The Department of Agriculture Office of the General Coun-
ses that costs to the United States for actions in Federal Court could be sig-
ly higher than the $300,000 estimate that the Counties expect to expend for
actions in State Court.

are other problems with the bill as introduced. S. 2891 requires the ex-
be completed within 6 months of enactment. This time limitation is insuffi-
complete the NEPA process and other required studies.
ill also limits management options on lands to be acquired by the United
The bill contains confusing language pertaining to mineral leasing on ac-
ands and restricts management options on lands outside classified Wilder-
uld be unduly restricted. The bill legislates the highest and best use of the
be retained by the United States to the detriment of the public interest.
so believe that the number of acres proposed for retention by the Forest
may be inaccurate.
S. 2891 was introduced, we have been working with the Counties to adminis-
achieve the objectives of the Forest Service and both Counties. Some
has been made, but work remains to be done. We will continue to work
Counties to administratively achieve an exchange in the public interest.
epartment of Agriculture has the administrative authority to exchange
th the counties as provided in our regulations at 36 CFR 254, Subpart A.
ve the proposed land exchange would be in the public interest if Pitkin and
unties take the steps necessary to clear title to the lands proposed for con-
to the United States.
oncludes my prepared statement and I would be pleased to answer the Sub-
ee's questions.

EMENTAL STATEMENT CONCERNING S. 2816, A BILL TO DISCLAIM ALL RIGHTS, TITLE, AND INTEREST IN AND TO CERTAIN PRIVATE LANDS

A SHORT HISTORY

n lieu selection" provision of the organic Act of June 4, 1897 (30 Stat. 36),
d the owners of lands within a Forest reservation to relinquish the tract to
ed States and select "in lieu thereof" an equal acreage of public lands. The
1901 amendments required that selections be confined to vacant, surveyed,
nineral public lands which are subject to homestead entry.
questionable practices arose in filing of relinquishments and making "in
tions" and in 1905, Congress enacted the Act of March 3, 1905 (33 Stat.
ch repealed the Forest Lieu Selection provisions of the 1897 Act. When the
arch 3, 1905 was passed, however, it caught various tracts of land in all
reconveyance. The Act protected the rights involved in all lists of selec-
n on file in the (General Land Office), but made no provision for reco-
or lands caught in the intermediate stages. As a result of the lieu selection
many tracts of land were relinquished to the United States. In most of
es, patents to the land selected "in lieu thereof" were granted and the base
nquished to the United States. In regard to some of the lands relinquished
vernment, however, either the application for the lieu land was not filed.

Our Spearfish Canyon Owners Association is composed of persons with long-time love and concern for the canyon. As an example, I was born in Mitchell, South Dakota, and can remember vacationing in the canyon in a friend's cabin, and catching my first trout in the stream at eight years of age. My father, who was superintendent of schools in Sioux Falls, was able to purchase a one room and porch cabin in 1952 (Homestake Lease #79), added on to it as a place to retire to, and all of our family made great use of this place. When my parents passed on, the three sons were involved, and my younger brother moved to the canyon from Chicago, did some more fixing up, and was followed by my son, who had returned from Vietnam as a carrier pilot, and thought of this place as a "bit of heaven!" He did some more fixing, and then I retired after a quarter of a century as a psychological consultant to business and industry, and my wife and I returned to South Dakota, did some more renovations, and this is now my home—although I do head for Arizona when the snow starts to deepen. (By the way, I can still catch those beautiful trout in this stream after sixty-three years).

It is the hope of our organization that those who are writing this land exchange bill are taking the long view of maintaining Spearfish Canyon, as our organization is. We have a magnificent trout stream, which requires little support from state and federal fisheries. Our canyon is riparian, the stream open to all visitors, the hills and valleys full of wild flowers. Last week I counted nine busy muskrats in the stream by the house, plus two otter, and innumerable deer visit our salt lick across the stream from our cabin. The water of Spearfish Creek is pure drinking water, providing an essential source for Lead, Deadwood, and Spearfish. Right now the canyon is full of visitors from all points, coming to see the fall color changes that are unbelievably spectacular.

Present Homestake Mining officials have provided us with strong statements relating to preserving this great canyon, indicating no plans to increase water usage, and no plans for surface mining in the canyon. We have great confidence in the integrity of this Homestake management.

As one takes a long look toward the future of Spearfish Canyon, there are some concerns that need to be voiced. Is the language in this land exchange bill sufficiently tight to assure that, should a corporate raider gain control of Homestake, the canyon will not be invaded by a commercial developer or a greedy mine-owner? I have seen several examples of beauty in this United States that has been ruined by the intervention of those motivated by short-ranged greed. Having been in the business world for better than twenty-five years, I can certainly think of any number of people/organizations, whose eyes would flash dollar signs if they looked carefully at all of the resources of this beautiful canyon. We believe that we can work with the United States Forest Service to see that this does not happen.

Our organization supports the land exchange bill, as we have seen it in the form of H.R. 4567 (as amended). I do not know how you can use your language-writing skills to safeguard this canyon for another century, but it is our hope that you can.

I will be happy to respond to any questions.

Senator WIRTH. We thank you very much, Mr. Fort, and I hope that you will go down to Senator Daschle's office and harass him in the appropriate way. Will you do that?

Mr. FORT. We have been there already.

Senator WIRTH. Good for you.

Mr. FORT. Come out and flyfish in our place. We have beautiful flyfishing.

Senator WIRTH. We are going to get to flyfishing country in just a minute.

Before the two of you leave, do you have any comments on the Mt. Sopris land exchange issue that you would like to——

Mr. HARR. No, sir.

Senator WIRTH. Good, you are very wise not to get into that one. Thank you both very much for being here, we appreciate it.

Let us move on to S. 2891. Who do we have here? We have Gary Wright, and who are you representing, Mr. Wright?

Mr. WRIGHT. I represent a number of landowners who legally own and actually possess some of the property that Pitkin County is proposing to trade.

Senator Wirth. Is Mr. Blanning one of those people?
Mr. Wright. Yes, sir, he is.
Senator Wirth. What does Mr. Blanning do?
Mr. Wright. He is a mine developer and he is a citizen of Pitkin County.
Senator Wirth. And he owns a lot of corporations or the president of a lot of corporations?
Mr. Wright. I do not know that "a lot" is correct. Two or three, anyway.
Senator Wirth. Is he president of the Aspen-Western Corporation?
Mr. Wright. I am not sure if he is president of that.
Senator Wirth. Could you provide for the record?
Mr. Wright. Yes, I will.
Senator Wirth. Is he president of the Aspen-Western Mining Corporation?
Mr. Wright. I do not know what office he holds. I believe he is affiliated with that company.
Senator Wirth. Could you give us that?
Mr. Wright. I could get that information for you.
Senator Wirth. Could you give us that for the record?
Mr. Wright. Yes, sir.
Senator Wirth. Is he the person who incorporated the New)phir Mining Company?
Mr. Wright. That was before my time. Again, I would be happy o——
Senator Wirth. Could you provide that for the record? And do ou know who it was that incorporated the Tourtelotte Park lining Company?
Mr. Wright. No, sir, I do not.
Senator Wirth. Is not that another one of the Aspen-Western nveyees?
Mr. Wright. I am not intimately familiar with all the transacons that have taken place, but I would certainly be willing to get y information that you would like.
Senator Wirth. Well, there is a chain of alleged land transfers at is in here, and I just think we want to make for the record no it is that we are talking about.
How about the Park Tunnel Mining and Milling Company?
Mr. Wright. I believe that was a corporation that was created ring the mining days around the turn of the century, and I am t certain——
Senator Wirth. What is Mr. Blanning's relationship to that, do u know?
Mr. Wright. I am not certain.
Senator Wirth. Well, maybe you could provide all of that for the ord, because all of those companies appear related to the land ie and the ownership issue. And I think if you look, at least as as the research that we have been able to do, if you look carey at that, they are all the same person.
But, in any case, Mr. Wright, I just wanted to establish that you resent Mr. Blanning.
Ir. Wright. Among others, yes.
enator Wirth. I understand.

Fine, why not give us your statement for the record, and summarize in whatever way you think is appropriate. We have your statement here, which I have had the opportunity to read with all the points that you make, so we will include that in full as part of the record.

STATEMENT OF GARY A. WRIGHT, ESQ., WRIGHT & ADGER, ASPEN, CO

Mr. WRIGHT. Thank you. My name is Gary Wright. I represent landowners who legally own and actually possess a number of the properties Pitkin County proposes to trade. I am here to oppose the bill because it ignores the individual citizen's property rights.

I have been an attorney in private practice in Aspen since 1979, and I have been involved in many quiet title cases. I have twice prevailed in the Colorado Court of Appeals against Pitkin County's claim of ownership. I now represent three different defendants against whom Pitkin County has been in quiet title litigation.

I have represented numerous clients in quiet title claims with Pitkin County over the past decade. In every one of those cases, my clients ultimately kept at least a portion of the property in question.

Section 4(a) of the bill should require a warranty deed and title insurance from Pitkin County. To accept less would be irresponsible based on the title history of these properties. Further, the bill should correctly describe these properties by claim name, mineral survey number, as well as the mining district in which they are located.

It is not appropriate to withdraw these properties from mineral leasing. Most if not all of these properties were patented as mineral claims and contain mineral discoveries. There is absolutely no reason to prevent multiple use within the National Forest system.

Section 5(3) should be deleted in its entirety. The value of property is independent of what someone paid for it. The law is well settled in the area of condemnation and legislative takings, and this bill should not change it. If an individual has better title to a piece of property, current law and practice should govern. I believe it is absolutely not the Federal Government's role to clean up Pitkin County's title mess.

What is the effect of the statute of limitations? It is well settled, pursuant to Colorado law, that the statute of limitations for challenging title to a tax deed is 5 years. However, it is equally well settled that this statute of limitations does not apply against parties in possessions. For all cases, when a party other than the county is in possession of the property, the statute of limitations does not protect the county. The standard of possession is that which is appropriate for similarly situated lands.

Many individuals have purchased these claims for good and valuable consideration with the reasonable belief that the county's title is based on a void tax deed. They have taken possession. Some have had the properties surveyed and had the survey recorded. Most have tried to pay taxes or been informed that such an attempt would be futile. Some have even constructed improvements on their property.

With few rare exceptions, Pitkin County only has a vague idea exactly where these claims are located. The facts of these cases prevent the county from prevailing on their claim based on the statute of limitations.

What is the legal effect of the county's refusal to accept taxes when tendered? In the late 1970's, the county attorney wrote a memorandum to the treasurer instructing that no taxes should be accepted on certain properties. The county attorney knew that many of the tax sales at which these properties were struck off to the county did not conform with the law and were void or voidable.

The legal effect of refusal by the county to accept taxes under such circumstances has yet to be resolved. However, Colorado strongly suggests, in its legal history, that the county treasurer must accept any and all taxes tendered.

What is the relevance of the State's legislative intent of using tax sales to return properties to the tax roles? The purpose of permitting the State to sell private property is based on the legislative mandate that taxes are necessary to promote the common good.

It is the law—the law in Colorado limits what a county may do with properties that are acquired by tax deed. It provides, and I quote: "The Board of County Commissioners has the power to rent, lease, or sell such property so acquired as provided in this section."

It does not authorize the county to hold these claims as it has done in this county for over 80 years in some cases.

What is the effect of the county's ownership of these properties as an investment or when not used for governmental purpose? This question is answered by *Farnik* v. *Board of County Commissioners of Weld County,* which directs us, and I quote again: "Promptly upon acquiring real estate not needed for county purposes, steps should be taken to sell the property as provided and required by law. All county-owned property not needed for the use of the county should be sold promptly and as soon as lack of need is apparent."

What are the consequences of the county's failure to follow the statutes in effect when these properties were sold for back taxes? It is well established in Colorado that the law in effect at the time of a sale for back taxes governs its validity. In each and every case, where Pitkin County failed to follow the law in effect at the time of the sale, their title is void or voidable against the party in possession.

The most important question is who really owns these properties today. In most cases, it is not Pitkin County. As a matter of law, void tax deeds do not convey any title. The Federal Government has no business rewriting Colorado law for Pitkin County to clean up its title mess.

In most of these cases, Pitkin County will not be determined to have good title. This certainly would be a reasonable inference, based on their based litigation and settlement history.

This bill, if passed, will put the Federal Government in the position to spend substantial sums to defend Pitkin County's void titles. This bill, if passed, would rewrite Colorado law to the detriment of bona fide owners.

Thank you for the opportunity to speak today. I hope you consider my points carefully and reject this bill and protect private citi-

zens' interests. I will submit the additional written testimony you have requested within 7 days. Thank you.

[The prepared statement of Mr. Wright follows:]

PREPARED STATEMENT OF GARY A. WRIGHT, ESQ., WRIGHT & ADGER, ASPEN, CO

MT. SOPRIS TREE NURSERY—PITKIN & EAGLE COUNTY MINING CLAIMS

My name is Gary Wright. I represent landowners who legally own and actually possess a number of the properties Pitkin County proposes to trade. I am to oppose the exchange because it ignores the property rights of my clients who have good title to the property proposed to be traded. I am here to try to assure that the United States receives good title to the properties deeded to it and further to ask that the bill respect the individual citizens property rights. I am here to specifically address several legal issues concerning title problems which exist on all or many of the "County Claims." [1]

I have been interested in Aspen's development and history since I made it my home in 1974. I have been an attorney in private practice since 1979. Although I have maintained 1 general practice, I have been involved in many quiet title cases.

I have twice prevailed in the Colorado Court of Appeals against Pitkin County's claim of ownership based on the statute of limitations. I now represent three different defendants against whom Pitkin County has pending quiet title litigation on patented mining claims located on the back of Aspen Mountain. I have represented numerous clients in quiet title litigation with Pitkin County over the past decade. In every one of those cases my clients ultimately kept at least a portion of property in question.

RE: CONGRESSMAN CAMPBELL'S BILL

Based on the review of the House version of the Bill introduced by Congressman Campbell on June 28 consider the following:

Generally:

1. Provide notice in the area newspapers giving citizens the opportunity to dispute Pitkin County's alleged title. This Notice should give the name and mineral survey number along with the township, range and section of every claim.
2. Mail a Notice to the address given by the Grantee in the most recent deed of record to any property to be included in the exchange.

Specifically:

Section 3: Deed restrict the property in perpetuity to the uses for which the Counties propose: that is: public recreation and recreational facilities, open space and riparian habitat protection, fairgrounds and such other public purposes.

Further. Deed restrict the property to reserve in perpetuity to the public the right of access in and along the Roaring Fork River for fishing and other recreational use.

Section 4: (a) require a Warranty Deed and title insurance—to require less would be irresponsible.

Particularly:

given knowledge that the County's title is derived from tax sales not conducted consistent with statutes; and,

given knowledge that many of these claims are possessed by individuals with "color of title"; and.

given knowledge that the County has refused taxes from many individuals who may have better title than the County; and,

given knowledge that the County has failed to locate, survey or take possession of these properties—in some cases for over eighty years; and.

given knowledge that the County has not even been able to obtain title insurance.

Under these circumstances no reasonable purchaser would accept a quitclaim deed without title insurance from Pitkin County for these properties—why should the United States of America?

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[1] There are 172 claims which comprise approximately [illegible]100 acres to which Pitkin County asserts ownership rights contrary to other individuals who are in legal possession of the claims

Further, the bill should correctly describe these properties. They are properly le-
gaily described by claim name and mineral survey number as well as the mining
district in which they are located.

It is not appropriate to withdraw these properties from mineral leasing. Most if
not all of these properties were patented as mining claims. Many contain valuable
mineral discoveries. While it is appropriate to prevent the use of Public Lands in-
consistent with a Wilderness designation--there is absolutely no reason generally to
prevent multiple use within the National Forest System.

Section 5: raises some serious questions that must be satisfactorily answered
before this bill should be allowed to become law.

1. How can the mere fact that title is transferred by quitclaim deed to the United States avoid granting citizens who may have better title their due process and other Constitutional rights?

2. Why should the unwarranted or uninsured conveyance shift the burden to the claimant when Colorado law may provide otherwise?

3. If the statute of limitations does not run against a party in possession based on Colorado law,[2] why should this act of Congress change this protection?

4. Is it fair and appropriate to make citizens travel over a hundred miles to litigate their title claims after Federal governmental acquisition when before such transfer sole jurisdiction rested in the county where the property is located?

Section 5. (3): should be deleted in its entirety. It is likely unconstitutional and it
is certainly unfair. The value of a piece of property is independent of what someone
paid for it. The law is well settled in the area of condemnations and legislative tak-
ings—why should it be any different in this case. If an individual has better title to
a piece of property, current law and practice should govern. Whatever its good faith
intention may have been—this provision is a sham to be used to take a citizen's
property without due process or just compensation.

IT IS NOT THE FEDERAL GOVERNMENT'S ROLE TO CLEAN UP PITKIN COUNTY'S MESS

RE: LEGAL ISSUES AFFECTING TITLE

There are several significant legal questions which must be resolved to determine
rightful ownership in these cases. It is accurate to say that the there are no Colora-
do statutes or cases that resolve these questions.

I will address the unsettled legal questions and explain how their resolution im-
pacts the title to the "County Claims". I will submit a written list of 172 "Disputed
Claims" that I am aware exist. There may be more. These issues are:

1. The effect of the Statute of Limitations.

2. The significance of a citizen's possession and the installation of improvements on the property.

3. The consequence of the Counties' refusal to accept taxes tendered.

4. The relevance of the State's legislative intent of using tax sales to return properties to the tax roles.

5. The effect of the County's ownership of these properties as an investment or when not used for a governmental purpose.

6. The consequences of the County's failure to follow the statutes in effect when these properties were sold for back taxes.

7. Who really "owns" these properties today?

1. What is the effect of the Statute of Limitations? It is well settled pursuant to
Colorado law that the statute of limitations for challenging title to a tax deed is five
years.[3] It is equally well settled that this statute of limitations does not apply
against parties in possession.[4] For all cases when a party other than the county is
in possession the statute of limitations does not protect the County.

2. What is the significance of a citizen's possession and the installation of im-
provements on the property? The significance is that it bars the application of the
statute of limitations. The standard of possession is. that which is appropriate for
similarly situated lands.[5] Many individuals have purchased these claims for good

[2] See *Welsh* v. *Levy*, 612 P.2d 80 (1980).
[3] Colorado Revised Statutes § 39-12-101.
[4] See *Welch* v. *Levy*, above footnote 2.
[5] See *Concord Corp.* v. *Huff*, 355 P.2d 73 (1960), and *Anderson* v. *Cold Spring Tungsten, Inc.*, 8 P.2d 756 (1969).

and valuable consideration with the not unreasonable belief that the County's title is based on a void tax deed—and taken possession. Others have inherited them from their parents or grandparents who never received the legally required notice of the tax sale. Some have had the property surveyed and had the survey recorded. Many have occupied the property—if even only for a picnic. Most have tried to pay taxes or been informed that such an attempt would be futile. Some have even constructed improvements on their property.

In most cases Pitkin County has only a vague idea exactly where these claims are located. Last summer they posted a few random signs on the back of Aspen Mountain proclaiming ownership. Such conduct and possession prevents the County from prevailing on their claim of title based on the statute of limitations and possession.

3. What is the legal effect of the Counties' refusal to accept taxes when tendered? In 1978 then County Attorney Sandra Stuller wrote a Memorandum instructing the treasurer that no taxes should be accepted on certain claims because they belonged to Pitkin County. She knew of the County's recent loss is the 1970 case of *Board of County Commissioners, Pitkin County* v. *Blanning.*[6] She also knew that many of the tax sales at which these properties were struck off to the County did not conform with the law and were void or voidable. The legal effect of the refusal by the County to accept taxes under such circumstances has yet to be resolved. However, Colorado law suggests that a county treasurer must accept any and all taxes tendered.[7]

4. What is the relevance of the State's legislative intent of using tax sales to return properties to the tax roles? The purpose of permitting the State to sell private property is based on the legislative mandate that taxes are necessary to promote the common good. It would be unfair to government to bear the burden of providing services without all property owners bearing their share—hence the tax sale concept. The legislature, even more than one hundred years age, recognized the need for due process.

The law in Colorado limits what a County may do with properties acquired by Tax Deed. CRS § 39-11-143 provides such powers and limitations:

> "(2) The Board of County Commissioners has the power to rent, lease or sell such property so acquired as provided in this section."

It does not authorize the County to hold land without offering it for sale for over seventy years as Pitkin County has done in many cases.

5. What is the effect of the County's ownership of these properties as an investment or when not used for a governmental purpose? This question is answered by *Farnik* v. *BOCC, Weld County,*[8] which directs that:

> "Promptly upon acquiring real estate not needed for county purposes, steps should be taken to sell the property as provided and required by law. . . . All county owned property not needed for the use of the county should be sold promptly and as soon as lack of need is apparent." (at 475)

In *Farnik* the Court held that Weld County's retention of the mineral/oil and gas rights when they resold the surface was void and concluded that, as a matter of law, the mineral estate must be immediately offered for sale.[9]

6. What are the consequences of the County's failure to follow the statutes in effect when these properties were sold for back taxes? Pitkin has claimed title to numerous mining claims for decades. For example the Alaska Lode was illegally struck off to the County on December 12, 1908. This was done without offering the claim again on December 13, as required by law. Worse, the certificate lists the owner as: "unknown". A modicum of investigation would have disclosed the record owner. Fifty-two years later in March 1960 the County Commissioners requested a Deed to them be issued. Four years later on March 18, 1964 a deed was executed.

It is well established in Colorado that the law in effect at the time of the sale governs its validity.[10]

7. Who really "owns" these properties today? In most cases it is not Pitkin County. As a matter of law void tax deeds do not convey title.[11] It has always been a appropriate for the judge or jury to determine the facts of a case and how the law should be applied to them. The Federal Government has no business rewriting Colorado law for Pitkin County to clean up this title mess. It is possible that in many of

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[6] *Board of County Commissioners* v. *Blanning,* 479 P.2d 404 (1970).

[7] See *Miller* v. *First National Bank of Englewood,* 435 P.2d 599 (1968) and, *Concord Corp.* v. *Huff,* footnote 5 above.

[8] *Farnik* v. *Board of County Commissioners, Weld County,* 341 P.2d 467, (1959).

[9] See also *City of Boulder* v. *Stoffle,* 487 P.2d 601 (1971).

[10] *Wigton* v. *Bedinger,* 283 P.2d 645 (1955).

[11] See *Concord Corp.* v. *Huff,* footnote 5 above.

these cases Pitkin County will not be determined to have good title. This certainly would be a reasonable inference from their past litigation and settlement history.

Thank you for the opportunity to speak today. I hope you consider my points carefully and modify this bill to protect the citizens who claim these properties and well as to protect the United States.

Senator WIRTH. Thank you very much, Mr. Wright.

We have a vote on and I am going to have to go over and over and vote and come back, so we will be in recess momentarily. We will then go to Mr. Tim Whitsitt, the Pitkin County attorney, and then to Mr. Dick Gustafson, commissioner in Eagle County, who is accompanied by Mr. Budd Gates and Mr. Jim True, of Eagle County and Pitkin County.

So if that is acceptable, if you will hang on a minute—Mr. Whitsitt, we will include your statement in full in the record and I suspect that you may have comments on Mr. Wright's testimony, and Mr. Wright will want to listen to your comments, so we can get that back and forth for the record.

It has also been suggested to me that the gentleman that I was asking about, Mr. Blanning, is, in fact, here. Is that correct?

Mr. WRIGHT. Yes, sir, he is.

Senator WIRTH. We probably do not have to wait for 7 days for the record. Mr. Blanning, do you want to come up and join us at the table and identify yourself for the record?

Mr. BLANNING. James C. Blanning, Jr., Aspen, Colorado.

Senator WIRTH. Are you the president of the Aspen-Western Corporation?

Mr. BLANNING. Yes, sir, I am.

Senator WIRTH. Who is the president of the Aspen Mining Corporation?

Mr. BLANNING. I am.

Senator WIRTH. And that was one of the Aspen-Western's conveyees, is that correct?

Mr. BLANNING. Yes, and Aspen Mountain properties that have strictly to do with the Aspen Ski Company-held properties——

Senator WIRTH. Who incorporated the New Ophir Mining Company, which is another one of the Aspen-Western conveyees?

Mr. BLANNING. As I remember, it was a person by the name of Dean Young.

Senator WIRTH. When was that done?

Mr. BLANNING. 1978, I think, or 1979.

Senator WIRTH. What is your relationship to that company? Do you have any relationship?

Mr. BLANNING. Right now it is a very complex situation in that the company was dropped as held——

Senator WIRTH. You do have a relationship with the company?

Mr. BLANNING. I have had a relationship——

Senator WIRTH. Who incorporated the Tourtelotte Park Mining Company, which is another Aspen-Western conveyee?

Mr. BLANNING. Yes, that is another one and has strictly to do with Aspen Mountain Ski Area.

Senator WIRTH. Who incorporated that one?

Mr. BLANNING. I cannot say for sure. I believe—I think I was involved with that.

Senator WIRTH. You do not remember whether or not you incorporated it, but you were involved in it?

Mr. BLANNING. I think I might have incorporated it, but I would not swear to it.

Senator WIRTH. Who is the vice president of the Park Tunnel Mining and Milling Company, which is another one of the Aspen-Western conveyees?

Mr. BLANNING. That also has to do with Aspen Mountain directly. Park Tunnel is——

Senator WIRTH. Who is the vice president of the company?

Mr. BLANNING. It depends on which one you are talking about.

Senator WIRTH. Are you a vice president of that company?

Mr. BLANNING. No, I do not think so——

Senator WIRTH. Do you have a relationship with that company?

Mr. BLANNING. I did have a relationship.

Senator WIRTH. So you have or had a relationship with all of these companies, and they are all involved in the title that Mr. Wright was here testifying about, is that right?

Mr. BLANNING. Yes.

Senator WIRTH. I see. Well, that is good, I am glad to have that all on the record and I will be back shortly. Appreciate it.

And then we will go to you if we can, if we can do that, Mr. Whitsitt.

Senator WIRTH. If the subcommittee could come back to order. I was told that Congressman Owens—Wayne, welcome. Would you like to come—we have finished all of the committee's activities, except that related to the Pitkin County, Mount Sopris land exchange, which I bet you did not come to talk about. You can if you would like.

Mr. OWENS. Well, we Members of Congress, as the Chairman knows, can talk about anything, whether we know anything about it or not. If, in fact, you impose that kind of a limitation on what we said in this, we would all be out of business, Mr. Chairman.

Senator WIRTH. This is the Senate, so you really get into the flow of it.

Mr. OWENS. That is correct.

STATEMENT OF HON. WAYNE OWENS, U.S. REPRESENTATIVE FROM UTAH

Mr. OWENS. I appreciate your willingness to deal with Kokapelli National Outdoor Theater. This was an idea which occurred to us last year, when my administrative assistance was visiting in Southeastern Utah and we went to Senator Garn and got his enthusiastic endorsement and the rest of the delegation, and we are delighted to have the chance to visit with you about it today. This is a very worthwhile project, an outdoor performance park in an incredibly beautiful, pristine area close to the City of Moab.

As the author of a major wilderness bill in Utah, as you know, Mr. Chairman, I am sometimes accused of not caring about Southern Utah's economic future, but this kind of a project blends economics, the environment, and aesthetics, and it makes a lot of sense.