DO THE MINING LAWS NEED REVISION?

Most of the members of this panel have publicly answered the question posed today, and all who have have answered it in the affirmative.

I would venture to go a little further, and suggest that a similar unanimity could likely be obtained on some of the evils which need correction by revision of the mining laws -- using the mining laws to get surface title for non-mining purposes, most importantly.

A year ago at this same meeting, I undertook to analyze the problem, and concluded that revision of the mining laws, even to take care of evils universally conceded to require attention, was virtually impossible for one vital reason. That reason, in my analysis, was that the "mining law", the juridical structure which governs the acquisition of title to minerals on the public domain, has lost its mooring to the law-making authority, the Congress. I suggested in effect that we've built a mining law by interpretation that Congress wouldn't ratify as its own, and thus we have no agreed starting point for the process of revision.

I feel that the enactment of Mr. Aspinall's bill to create a Public Land Law Review Commission would furnish an appropriate forum for not only testing the efficacy of my conclusion, but more importantly, for defining the metes and bounds of the legitimate interests of the mining industry to the end that it participates in the Nation's prosperity; and for translating that definition into a public lands mining policy which Congress can adopt as the law of a prosperous land.

But in the meantime, and as an interim measure, I suggest that an exploration claims bill could be devised which would effectively meet some of the requirements for improvement, and which could attract support not only from the industry, but from public interest and conservation groups concerned with the identified evils.

Let me outline what I think are appropriate guidelines for such an effort:
First, I do not think it necessary to tamper with the 1872 Act in order to have an exploration claim bill. If the Public Land Law Review Commission is authorized, revision of the basic Act could be taken up by Congress based upon the Commission's report.

Second, there is a wide area of common interest between the United States as public land manager, and the mining industry. For example, both sides know that given the technological improvements in geophysics, geochemistry, and the like, prospecting in 20 acre units is not always the most efficient approach. Pressing modern exploration into the strait-jacket of 1872 methods often involves uneconomic activity by industry, and from the Government's standpoint, unnecessary damage to the surface sometimes results. Similarly, it is widely recognized that a larger geographic area is needed in the early stages of exploration than may be needed for mining. Early accommodation to this need may result in more conservative demands for surface at later stages and thus leave more of the surface available for other uses over a longer period of time.

Third, national needs for resources dictate that operators have a reasonable time to develop markets for new materials, particularly in the non-metallics. I've had the feeling that development of new minerals will be aided if the rigidity of our discovery rules were modified. On the other hand, a severe standard often has been necessary to prevent non-mining surface acquisition. We ought to try to accommodate both objectives.

Fourth, it is desirable that the public domain be cleared of title-clouding unpatented mining claims which are not reasonably related to mining objectives. This can best be done, it seems to me, by furnishing some incentive for the industry to cooperate. Rigidity on discovery has tended to preclude cooperation. The sword of Damocles hanging over the bona fide locator who's not sure he can prove discovery under current rulings or current market conditions ought to be removed.

Fifth, an exploration claim bill ought to contemplate significant acreages. In this category, I would think that a basic exploration claim should be a section in size, and possibly up to eight sections permitted to one claimant in one State. I also think claims should conform with our rectangular public land survey system.

The statement of guidelines only lays a foundation. Having set them up, I undertook before coming to this meeting, to try my hand at devising language to implement them. The effort raised more questions than it answered. No purpose would be served by unveiling my draft, since it has no status beyond being a vehicle for discussion with, among others, your public lands committee.

The dialogue is happily now opened. I've assured the Committee, and I assure you, that the Department, so far as I know, has no doctrinaire commitment to any proposal, or any language. My contribution is to suggest, in conclusion, that government, the mining industry, and the public generally have many common objectives. We ought to try to get together.