Hadam Chairman, members of the Committee:

As Congressman Johnson has pointed out to you, his bill, H. R. 10773, deals with a rather aggravated situation arising out of the application of the mining law of 1872 and the local laws and regulations which that act contemplates. We are concerned with use and occupancy of mining claims for other than mining purposes, where the claims have been relinquished or invalidated as mining claims, or where they appear to be subject to invalidation. The basis for invalidation is usually that there has not been a discovery of a valuable mineral, or that all the valuable ore has been mined out.

As the Department's report points out, the problem is of a wider geographical incidence than the "Mother Lode" country of California. Although the greatest number of "problem cases" is in Northern California, Colorado, Idaho, Oregon, Washington and South Dakota contribute on the order of an estimated one to two hundred cases each. The problem exists on both public domain and O. & C. lands administered by the Department of the Interior, and within the national forests.

In considering the desirability of legislation of this type, we have attempted to see the problem, not just as an administrative headache for a landlord, but also from the affected citizens' point of view. In the mountain West, as the members of this Committee well know, there
is a strong tradition supporting the right of a private citizen to go
upon the public lands, to stake a mining claim, and thereafter to have
and retain a property interest immune to interference from all the
world. The right of the government to challenge has been recognized,
but the government traditionally has been patient with mining locators,
and locators and their successors in interest have felt secure in their
ownership and right to possession.

Unpatented mining claims are taxed. In some instances, patents
probably would have issued at one time if applied for. After occupancy
has continued on unpatented claims for a generation or more, the citizen
tends to regard threatened action by his government to vest him on the
grounds that there has been no discovery of valuable minerals as un-
reasonably technical and arbitrary.

In addition, of course, hardship situations exist. Unpatented mining
claims change hands in pretty much the same way as neighboring patented
claims. Subsequent purchasers who have paid value for the land and im-
provements for subdivided portions of claims may have been on notice --
but they may also have been senior citizens of limited means, unable or
unwilling to hire lawyers, and financially and emotionally unable to
resist federal/county proceedings. Particularly is this true if the
citizen is given no reasonable assurance that his title can be regularized
on terms which appear reasonable to him.

The United States Government as a proprietor, of course, has a duty
to prevent unauthorized use of public lands and to collect amounts owing
to the Government by way of penalties or charges for unauthorized use.

Local administrators, attempting to find alternatives or relief for the hardship cases, have faced a dilemma -- if the premise of ouster is invalidity of the claim, he cannot assure the citizen who signs a relinquishment that the government will not pursue remedies based on trespass liability. And trespass liability in some cases might exceed the present fair market value of both the land and improvements -- for both of which the citizen may himself have paid full value.

Mr. Johnson has presented a bill which seems to us to be a reasonable legislative approach to solution of the problems presented. The bill in essence would authorize the Secretary to convey for a consideration the whole or a part of the Government's interest in five acre or smaller portions of the mining claims, and in doing so to take cognizance of various alleviating factors such as the type and duration of the use and occupancy, the fact that a prior purchase was made for full value, and other equitable circumstances. Consideration to be paid could range from the fair market value as of the date of enactment down to 50 percent of such fair market value.

If this should be infeasible, owing to a countervailing public interest in retaining the land in Federal ownership, the occupant otherwise entitled to such equitable consideration would be preferred in acquiring available small tracts elsewhere.

Eliminated from consideration would be the most serious stumbling block to settlement under existing legal authorization -- the nature and
extent of the duty to collect all charges for past use and occupancy, and the administrative infeasibility of collection in any event.

There may be two schools of thought as to what the United States ought to assert as claims against the citizens occupying these unpatented claims. One viewpoint, is that the use of an unpatented mining claim located prior to July 23, 1955 (P.L. 167) for purposes unrelated to mining, constitutes a trespass against the United States.

If this is the premise, then the duty is to charge damages from the commencement of occupancy for non-mining purposes.

But we do not believe that this bill, if enacted, could or should be considered as legislative condonation of trespass. Prior to the passage of P.L. 167, the general assumption prevailed, supported by the views of virtually all the mining lawyers in the West, that mining claimants had full use of the claims including the surface thereon and that such rights continued until in appropriate proceedings they were declared or acknowledged void. It was only in the 1955 act that the Congress set forth the principle that mining claims were to be used for mining purposes only. In the implementation of this bill we will, of course, conform to the principle of the 1955 act. We will not waive willful violations in the matter of waste or depletion such as involved in the removal of timber not related to mining purposes.

We think it appropriate that the Congress recognize that the government's interest in prudent management of public land be considered satisfied by the procedures which the bill provides. The Government gets
at least fifty percent and up to full market value of the land as of the date of enactment. The land is put into unquestioned ownership, either public or private, removing administrative difficulties to the Government and simplifying title procedures in the states and counties. The committee's mandate to end trespass on the public lands will be effectuated. Lands which ought to be on the tax rolls will go on the tax rolls.

As I have indicated, of course, the countervailing interest in retained public ownership is provided for -- for recreational purposes, for wildlife conservation, and for other public purposes. Where such is indicated and where a lesser estate in the land will not suffice, the Government makes a bona fide attempt to find other public land for claimants who are entitled to consideration under the standards provided in the bill.

The Department is of the view that Congressman Johnson's bill is a considerate and thoughtful approach to the solution of a complex and thorny problem. The procedures outlined in the bill evidence a thorough understanding of the public land laws and their administration.

I would like to have Mr. Fred Fishman of the Legislative Counsel's office, who has had wide experience in the field both as a lawyer and land administrator and Mr. William Schafer of the Bureau of Land Management mining staff, answer any legal or technical questions which arise out of this bill as presented to you.