

Campaign for Rock Mesa:

How Faith, Hope & Charity Saved the Three Sisters Wilderness

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Rock Mesa from Le Conte Crater

Photo by Ronald Eber

The Untold Story of Rock Mesa

A review of the nation’s mining laws about a 1966 open-pit mine proposed by Kennecott Copper in the heart of the Glacier Peak Wilderness concluded that “no other Mining Law controversy of such dramatic proportions has erupted in congressionally designated wilderness.”² This conclusion clearly missed the major controversy that unfolded at the same time over an open-pit

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² *The Mining Law – A Study in Perpetual Motion*, John D. Leshy, Resources for the Future, Inc. 1987, p.235. Also see: *An Open Pit Visible from the Moon: The Wilderness Act and the Fight to Protect Miners Ridge and the Public Interest*, Adam Sowards, University of Oklahoma Press, 2020.

pumice mine at Rock Mesa in the Three Sisters Wilderness of Oregon. It may not have gained the same national notoriety as the one at Glacier Peak, but in Oregon it certainly was a shocking threat. Here now is the complete untold story of the campaign to save Rock Mesa.

Introduction

From 1961 to 1983, a broad coalition of Oregon conservationists led a political and legal campaign to prohibit a proposed mine for block pumice at Rock Mesa in the Three Sisters Wilderness. The controversy was primarily about whether the claims were legally valid as required by the General Mining Act of 1872 and not the environmental consequences of the proposed mine or area's wilderness values. The validity of the claims was not settled until 1981 when a mining contest decision was issued that made possible the political decision to eventually purchase of the valid claims.³

In 1961 when the claims were filed, the administrative wilderness label applied to the area by the United States Forest Service (USFS) did not limit mining activities or other noncompatible uses. It meant little. The Forest Service had almost unfettered discretion to regulate the extent of the proposed mine or access to it under the Multiple Use Sustained Yield Act of 1960. They got to decide what was in the public interest, and neither the Congress nor the public could get them to respond to other interests they did not want to recognize or believe were consistent with their mission. The Wilderness Act (1964), National Environmental Policy Act (NEPA 1970), Endangered Species Act (1973) and the National Forest Management Act (1976) did not exist and were just distant dreams.

This story demonstrates just how unprepared the Forest Service was to administer the compromise built into the Wilderness Act that both required the preservation of wilderness and permitted mining. The Wilderness Act included this political compromise that was impossible to administer. When additional environmental laws were enacted during the course of this controversy, the Forest Service struggled with these new limitations on their decision-making authority as they tried to address the issues involved. Here is the story of how the conservation community pressured the Forest Service to confront this policy conflict and to overcome impossible odds and ultimately prohibit the mine and protect the Three Sisters Wilderness. The story also explains how the conservation community evolved into a movement learning along the way new political and legal tactics for how to protect the wilderness.⁴

³ Decision document in United States of America, Contestant v. United States Pumice Company, Contestee and the Wilderness Society, et. al., Intervenor. United States Department of the Interior, Office of Hearings and Appeals, Oregon # 17005, Harvey C. Sweitzer Administrative Law Judge dated September 29, 1981 and cited in the notes as "Mining Contest Opinion."

⁴ This article is the first complete written history of the political and legal controversy about the proposal to mine pumice at Rock Mesa in the Three Sisters Wilderness from 1961 to 1983. Previously there were only a few partial reports about the controversy including: Rakestraw, Lawrence and Mary. "*History of the Willamette Forest*, U.S. Department of Agriculture/Forest Service, 1991, pp.97-98 & 146; McCloskey, Michael. *Conserving Oregon's Environment: Breakthroughs That Made History*, Inkwater Press, Portland, 2013; McCloskey, J. Michael. *In the Thick of It: My Life in the Sierra Club*, Island Press / Shearwater Books, Washington, 2005; Merriam, Lawrence C. *Saving Wilderness in the Oregon Cascades: The Story of the Friends of the Three Sisters*, Eugene, Oregon 1999 and Joslin, Les. *The Wilderness Concept and the Three Sisters Wilderness – Deschutes & Willamette National Forests*, Oregon Wilderness Association, Bend, Oregon 2000, pp. 37-38 & 70-71.

The Guardians of the Wilderness

Rock Mesa is a lava flow within the Three Sisters Wilderness on the western flank of the South Sister in the Cascade Mountains. These mountains are a series of volcanic peaks stretching from Mount Lassen in northern California all the way through Oregon and Washington to Mount Lytton in Canada. The volcanic nature of the range is the direct result of the collision of the North American and Pacific continental plates - which gave rise to the scenic volcanic peaks, lava flows, wild rivers and hot springs.

The Oregon portion of the Cascades is home to lush forests, powerful rivers and abundant wildlife with twenty-two (22) designated wilderness areas comprising 1.1 million acres, one (1) National Park (Crater Lake) and two (2) National Monuments. The Three Sisters are volcanic peaks in the Central Cascade Mountains. The Klamath people called the Cascades *Yamakiasham Yaina* literally “the mountains of the northern people.” Oregon “Natives” living in the area referred to the tract around the Three Sisters as the *Clamite*. Early settlers first named these peaks Faith, Hope and Charity and only later as the North, Middle and South Sisters.⁵

The Central Cascades include large masses of obsidian that may be the youngest volcanic rocks of the entire region. The most unique and extensive mass of obsidian and pumice is at Rock Mesa and covers about one and one-half square miles that initially spread from a vent in successive waves. Alexander McBirney, then Chair of the Geology Department at the University of Oregon said that Rock Mesa “is the finest and most complete example of a continental volcanic assemblage in the Northwest.” Because of the block pumice present, mining claims covering most of the Mesa were filed in 1961 under the Mining Act of 1872.⁶

The primary legal and political issue for the next twenty years was whether all or some of these mining claims were valid and if so, how and on what terms access to them would be permitted. The central focus of the conservation campaign to protect Rock Mesa was the conflict between the long recognized natural values of the Three Sisters Wilderness and the expected devastation from the potential open pit pumice mine.

Faith in Wilderness

Conservationists have always had a deep and abiding faith in wilderness. The central tenet of their faith from the beginning of the conservation movement has always been: “in wilderness is the preservation of the world.”⁷ Oregonians have shared this longstanding faith and appreciation for the extensive wild forests of the Cascades since the earliest days of settlement. Long before there were established wilderness areas, national monuments, national forests, or more than just one national park – Yellowstone – there was interest in the wild forests of the Pacific Northwest for public recreational use.

⁵ McArthur, Oregon Geographic Place Names, pp. 133-137 and 725-726.

⁶ Claims filed September 25, 1961, at Rock Mesa in the Deschutes and Willamette National Forests in Lane and Deschutes Counties, Oregon, Mining Contest Opinion, p. 194.

⁷ *Walking*, Henry David Thoreau, Beacon Press, 1991, and originally published in *Atlantic Monthly*, 1862.

Two of the earliest explorers and leaders were William Gladstone Steel (founder of the Oregon Alpine Club in 1884 and later the Mazamas mountaineering club in 1894) and Oregon Legislator and Supreme Court Judge John Waldo. As early as 1886, Steel led a successful effort to convince President Cleveland to protect the land around Crater Lake in the southern end of the Oregon Cascades. Judge Waldo in 1889, while in the Oregon Legislature proposed that the core of the Cascade Range be “set apart and kept free and open forever...as a public reserve or park, and for no other purpose.”⁸ The Reserve was to extend 12 miles on either side of the crest of the Cascades from the Columbia River to just north of the California border. The primary purpose was to protect Oregon’s forests and the headwaters of its principal rivers from the increasing claims of land speculators, livestock grazing, and timber interests.

By 1893, their joint efforts were instrumental in convincing President Cleveland to designate 4,400,000 acres as the Cascade Forest Reserve (now divided into several National Forests). The new Reserve closely followed the lands proposed earlier by Judge Waldo including lands around the Three Sisters as well as around Crater Lake that was later designated as a National Park in 1901.

Even with this historic designation, timber interests initiated a campaign to reduce the size of the Cascade Reserve in 1896. However, a joint effort led locally by the Mazamas in Oregon and nationally by John Muir and the Sierra Club protected the Reserve and especially the area around the Three Sisters. In the 1920s and 1930s, the U.S. Forest Service began to develop a wilderness policy and administratively establish what they called “Primitive Areas.” No actual incompatible uses like mining or grazing were prohibited. Later they began to re designate these areas as either “Wilderness” (if 100,000 acres or larger) or “Wild” areas (if smaller). The Three Sisters was administratively designated by the Forest Service as a Primitive Area in 1937, re-designated as Wilderness in 1957 and incorporated into the National Wilderness system by Congress with the passage of the Wilderness Act in 1964.

Despite these administrative designations and Congressional action, the Rock Mesa area in the Three Sisters Wilderness was not protected from the danger of an open pit mine. The Wilderness Act did not terminate prior valid mining claims located under the Mining Act of 1872 and permitted new claims for twenty years until December 31, 1983. The Mining Act grants unprecedented rights to prospectors to certain minerals on public lands that supersede the provisions of all Federal land management laws and explicitly those of the Wilderness Act.

The Claims

Ten (10) mining claims comprising 1460 acres for the block pumice were filed on Rock Mesa in September 1961 by Sheldon Fay and Associates under the Mining Act of 1872.⁹ Once these claims were located and a valid discovery established, the claimant was entitled to access by road or motorized vehicle. The claims were later transferred to the United States Pumice Company (USPC) in August 1962.

⁸ Oregon Journal of the House 1889, House Joint Memorial No. 8, pp. 118-120, 350.

⁹Op. Cit. Mining Contest Opinion, note 6.

The Mining Act is fairly straightforward with a three-step process for securing the right to mine: First, mark a mineral deposit that identifies your claim site with corner stakes and rock piles and file the location with the local county and if in a wilderness area, the Forest Service. A claim is considered “located” if it is marked and its location is recorded with the appropriate authorities. It permits access to conduct a minimum amount of annual work to maintain possession of the claim. Second: prove the discovery of a valid mineral deposit by demonstrating you can market the mineral at a profit. This is known as having a “valid discovery” which is the key requirement for getting permanent access to the claims for mining and to use motorized vehicles and equipment. Third: once there is a valid discovery, the claimant can request to patent the claim. A patent transfers ownership of the land covered by the claims to the claimant. This was limited to only include the mineral deposit but not the surface estate in designated Wilderness Areas by the 1964 Wilderness Act.¹⁰

Before the public first learned about the claims and possible mining in early 1963, the Forest Service had already notified the claimant of his “rights, as well as certain restrictions which apply to mining activity in Wild, Wilderness and Primitive areas” with a special emphasis on the restriction “prohibiting the use of motorized equipment.” “Once a claim is ‘located’ and its ‘validity’ established, the claimant is “entitled to ingress and egress by road and motorized vehicle.” Finally, the claimant was told to submit an application for an access road if they believed “that discovery of a valuable mineral deposit” was made and they planned to develop the claim. The Forest Service further explained that once the application was received, they would send a government mineral examiner to examine the claims. The claimant immediately applied for access and agreed to meet with the mineral examiner the following summer as the area was then covered in snow.¹¹ The claimant stated that they needed to “keep up the required assessment work” even though it would be “some time before the property will be put into production.” The Forest Service replied and reiterated that the request for access and use of motorized vehicles cannot be acted upon until a determination is made about the validity of the claims and after a mineral examiner sent by the regional office in Portland visited the claims next summer (1962).¹²

As promised, the mineral examination was done in August, 1962 by Mr. Milvoy Suchy for the Forest Service. His report determined “the claims must be considered valid at this time” and that until further work on the claims discloses that all, some or parts of the claims are not valid, “I believe that all of the claims should be considered valid.” In September 1963, he again examined the claims and confirmed his initial determination.¹³

¹⁰ See generally Comment: *Closing the Mining Loophole in the 1964 Wilderness Act*, 6 ENVLT. 469 (1975) by Dennis Elliott and L. Craig Metcalf and Toffenetti, *Valid Mining Rights and Wilderness*, 20 Land & Water L. Review 31 (1985), *The Wilderness Act’s Impact on Mining Activities: Policy Versus Practice*, 76 Denver U.L. Rev. 591-92 (1999) and *McMaster v. United States*, 731 F.2d 881 (9th Circuit, 2013).

¹¹ Because Rock Mesa is located in the high Cascades, it is subject to heavy snowfall and access is limited to mid-August to mid-October at best.

¹² Letters from Deschutes National Forest to claimant dated October 27, 1961, reply from claimant dated November 6, 1961 and further reply by Forest Service dated November 21, 1961 summarized in Mining Contest Opinion, pp. 194-197.

¹³ Mineral Examination Reports by Suchy and Plog dated February 19, 1963 and January 28, 1964 summarized in Mining Contest Opinion at pp. 197-198 and printed in full in Report of the Hearings before the Subcommittee on Minerals, Materials and Fuels of the Senate Committee on Interior and Insular Affairs, Ninety-Second Congress, First Session on S. 1784, September 13 and 14, 1971, (Senate Hearing Record, pp. 55-59).

Thus, before the public had any idea about these claims or the possibility of mining at Rock Mesa let alone the opportunity to review, comment or object, the Forest Service notified the claimants that their mineral engineer's report determined that all the claims should be considered valid and motorized vehicle access permitted. This Report and determination stymied the efforts of the Forest Service, Congress and conservationists to resolve this controversy for the next twenty years. In fairness, the Forest Service was not under any legal obligation in 1961-62 to notify the public or ask for their comments or concerns about the claims or the engineer's report as environmental laws now require. When word eventually got out, the public and conservationists were alarmed and the campaign to protect Rock Mesa began.

The Campaign Begins

The driving force in any conservation campaign is the "radical amateur."¹⁴ The Three Sisters Wilderness area was blessed by a group of amateur activists that dedicated their personal time and efforts to protect the wilderness. However, up against the Mining Act they needed all the help they could get because the legal tools and political acceptance taken for granted by conservationists today did not exist. Brock Evans of the Sierra Club said: "we felt sort of helpless at that time and did not know what to do."¹⁵

Once they learned of the threat, the "amateurs" quickly became astute tacticians and began to mount a very professional campaign to protect the Three Sisters Wilderness. Word of the new claims emerged in early 1963 shortly after the Forest Service declared them valid. The Friends of the Three Sisters¹⁶ approached Mike McCloskey, then the NW Representative of the Federation of Western Outdoor Clubs (FWOC) in Eugene, Oregon, to check with the Forest Service about the rumors of mining claims at Rock Mesa. McCloskey's inquiries led to the first public acknowledgment of the claims by the Forest Service and the possibility of the mining and harm to the wilderness area. At this point Mike McCloskey said conservationists didn't know "what course of action to take."¹⁷

At a meeting of the local Izaak Walton League in Eugene, Larry Worstell of the Willamette National Forest explained to those present that "there's nothing in Federal law to prevent a California mining company from working pumice claims" in the wilderness area. Later in the meeting Mr. Worstell said the Forest Service would have "no controls" over the mining operation and the land would belong to the mining company.¹⁸

¹⁴ *John Muir and His Legacy: The American Conservation Movement*, Stephen Fox, 1981, Boston, Little Brown, p. 333

¹⁵ Testimony by Brock Evans on H.R. 1784, Senate Hearing Record, pp. 35-37. Brock Evans was the PNW Representative of the Sierra Club in Seattle from 1967 to 1973.

¹⁶ The Friends of the Three Sisters was formed in 1954 by Karl and Ruth Onthank and other concerned conservationists in the Eugene, Oregon area to defend the Three Sisters Wilderness and restore lands eliminated from the area including the French Pete Creek. See generally - *Saving Wilderness in the Oregon Cascades: The Story of the Friends of the Three Sisters*, Lawrence C. Merriam, Eugene, Oregon 1999.

¹⁷ *Los Angeles Firm Planning Operation to Dig Pumice from Wilderness Area and Firm Details Plans to Mine in Wilderness*, Eugene Register Guard articles dated January 16 and 17, 1963.

¹⁸ *Pumice Mine Claims Legal*, Eugene Register Guard dated February 27, 1963.

Needless to say, this terrified the local conservation community and led McCloskey to file a first of its kind appeal of the Forest Service's determination on behalf of the Friends and other conservation groups. As part of the appeal, McCloskey met with the Forest Service and urged them without success to challenge or contest the validity of the claims. The Forest Service took the position that if just one claim was valid, the claimant would have the right to an access road and thus there is no reason for protesting the claims.¹⁹ They were concerned that if the claims were declared null and void, they could be immediately relocated and likely result in much greater damage to the area. McCloskey felt that the Forest Service should make sure "the letter of the law" was followed by the mining company in reviewing the claims and not be concerned with land management problems."²⁰ The Forest Service was again advised that "the Federal Government's interests would not best be served by contesting these mining claims at this time."²¹ The local *Eugene Register Guard* in an editorial against the proposed mine said that while legal it was not necessary because pumice was not a "scarce mineral" or "vital for the national welfare." "Keep power shovels out of places like Rock Mesa and keep the big trucks off Wickiup Plain."²²

Now that the Forest Service had determined the claims were valid and access with motorized equipment and vehicles permitted (promises the pumice company relied upon) there began a series of letters back and forth between them²³ about how such access could be provided. The Bureau of Land Management (BLM) also became concerned about the validity of the claims despite the prior Forest Service determination.²⁴ No doubt because of the public opposition, the pumice company agreed to cooperate with the Izaak Walton League and do their assessment work by hand. They were notified by the Forest Service that this was "very much appreciated." Between 1964 and 1969/70 little appears to have occurred besides the pumice company's annual assessment work to maintain its claims.

The Friends of the Three Sisters believed that the Forest Service always took a middle course of action between contending interest groups.²⁵ In this case, the USPC wanted to protect any valid existing rights to its claims and gain access to them. The conservation community wanted to protect the Three Sisters Wilderness at all costs and did not believe any of the claims were valid. They wanted the Forest Service to directly contest the claims and block USPC's access to provoke a legal fight that the conservationists could join. But the mining engineer's determination that the claims were valid boxed in the Forest Service. The middle path for them was to not contest the validity of the claims since they had already told USPC that at least some were valid. They

¹⁹ Memorandum to 'The File' dated June 19, 1963, Office of General Counsel, Department of Agriculture, Portland summarized in Mining Contest Opinion, pp. 6-7.

²⁰ Ibid. and Mining Contest Opinion, pp. 96-97

²¹ Letter from Acting Solicitor of the Department of Interior to the Assistant Attorney General, Lands Division dated May 28, 1964 summarized in Mining Contest Opinion, p. 5.

²² *Miner Go Home*, Register Guard Editorial dated February 23, 1963.

²³ Letters between Forest Service and USPC summarized in Mining Contest Opinion, pp. 201-206.

²⁴ Op. Cit. Rakestraw in Note 2, supra. The BLM concerns were incorporated into the Forest Service allegations in the mining contest finally filed in 1977 but were rejected by the Administrative Law Judge (see later sections *Mining Contest – Finally* and *Reaction and Resistance* sections supra).

²⁵ *Saving Wilderness in the Oregon Cascades: The Story of the Friends of the Three Sisters*, Lawrence C. Merriam, Eugene, Oregon 1999, p. 9.

believed that there was no way to win a battle to stop the mining because their regulatory options were limited by the 1872 Mining Act. Instead they would try and manage the access they believed had to be permitted, the extent of any mining and how the site was restored to best protect the wilderness character of the Rock Mesa area. However, their regulatory tools were not very strong and left them with a weak hand until the rules of the game changed in major ways.

Game Changers

Wilderness Act

On September 3, 1964, President Lyndon Johnson signed into law the Wilderness Act (Pub. L. 88-577) which established a national wilderness preservation system and empowered the Forest Service to adopt all rules needed to preserve the designated wilderness. It also included exceptions for prior valid mining operations, which raised many new issues for the Forest Service to resolve before any access could be granted to the Rock Mesa claims.²⁶

Specifically, the Act only permitted “mineral activities and surveys and prospecting compatible with the preservation of wilderness.”²⁷ It also authorized “reasonable regulations for ingress and egress where essential,” the use of “mechanized ground equipment” and “restoration as near as practical of surface disturbed in performing mining.” Finally, it restricted any patents to only convey title to the mineral deposits and not the surface land.²⁸

These new provisions provided the Forest Service with more legal and regulatory tools to control any access or other mining issues and highlighted the need to finally determine the validity of the claims.

National Environmental Policy Act of 1969 (NEPA)

The National Environmental Policy Act (NEPA) was signed into law by President Nixon on January 1, 1970 (Pub. L. 91-190). It established a new national policy for government agencies to “use all practicable means and measures to create and maintain conditions under which man and nature can exist in productive harmony.”

Most importantly it required “detailed statements” assessing the environmental impact and alternatives to “major Federal actions significantly affecting the quality of the human environment” (commonly called environmental impact statements or an EIS).²⁹ Although not heralded at the time, the requirement to prepare an EIS became one of the most significant legal requirements affecting the actions and programs of the Forest Service and other Federal

²⁶ 788 Stat. 890, USC 16 Ch 23.

²⁷ USC 16 Ch 23, Sec. 1133(d)(2)

²⁸ USC 16 Ch 23, Sec. 1133(d)(3)

²⁹ 83 Stat. 852, USC 42 Ch 55.

agencies. It clearly slowed the effort by USPC to begin a mining operation or build an access road to its claims at Rock Mesa.³⁰

Emerging Wilderness & Environmental Movement

During the mid to late 60's a new environmental awareness emerged especially after the publication of *Silent Spring* by Rachel Carson in 1962. After the passage of the Wilderness Act in 1964, there was a perfect storm of major national and northwest regional conservation issues that inspired and motivated local conservationists to stay involved and fight for the cherished wilderness areas. These included blocking dams in the Grand Canyon (1965-66) and an open pit copper mine at Miners Ridge in the Glacier Peak Wilderness (1966), the long running campaigns to establish the North Cascades and Redwoods National Parks in 1968 and legal action to block the Disney Ski Resort in Mineral King next to Sequoia National Park (1969).³¹

There were also several significant Oregon issues and campaigns that complemented the higher profile national campaigns. These include citizen led efforts to preserve the public beaches along Oregon's coast, block dams in Hells Canyon, establish the Oregon Dunes National Recreation Area and protect wilderness areas and ancient forests in the Cascades especially the seminal campaign to protect French Pete from logging and restore it to the Three Sisters Wilderness Area. This later campaign involved many of the same conservationists involved in the Rock Mesa issue and together they worked on both of these issues at the same time. One of the high points was the student march from the University of Oregon to the headquarters of the Willamette National Forest to "Save French Pete and Rock Mesa" in 1971.³²

Endless Pressure

³⁰ Letter from Forest Service to U.S. Pumice Company on need for an EIS, June 23, 1971 summarized in Mining Contest Opinion, p. 207.

³¹ *The Place No One Knew – Glen Canyon on the Colorado*, Eliot Porter edited by David Brower, Sierra Club – Ballentine Books; 1968; *Grand Canyon of the Living Colorado*, Edited by Roderick Nash, Sierra Club – Ballentine Books, 1970; *The Last Redwoods and the Parkland of Redwood Creek*, Francis Lydet, Sierra Club – Ballentine Books, 1969; *The Wild Cascades – Forgotten Parkland*, Harvey Manning edited by David Brower, Sierra Club – Ballentine Books 1965; *An Open Pit Visible from the Moon: The Wilderness Act and the Fight to Protect Miners Ridge and the Public Interest*, Adam Sowards, University of Oklahoma Press, 2020; *Should We Also Flood the Sistine Chapel so Tourists can get Nearer the Ceiling?*, Sierra Club Grand Canyon Battle Advertisement, June 1966.

³² *Hells Canyon – America's Deepest Gorge – The Inside Story of an Impossible Victory*, Larry Williams, Brock Evans & Doug Scott, Greater Hells Canyon Council, 2018; *Conserving Oregon's Environment: Breakthroughs That Made History*, Michael McCloskey, Inkwater Press, Portland, 2013; *Drawing Lines in the Forest, Creating Wilderness Areas in the Pacific Northwest*, Kevin Marsh, UW Press, Seattle, 2007 and *Oregon's Beaches: A Birthright Preserved*, Katheryn Stratton, Oregon State Parks and Recreation Branch, 1977; "Save French Pete" *The Wilderness Campaign that Launched a Movement*, Oral History – Video & Transcript, April 3, 2010, Sierra Club Oregon Chapter Archive, Special Collections, Knight Library, University of Oregon, Eugene.

Brock Evans preached to the conservation community that successful campaigns require “endless pressure – endlessly applied.”³³ This truism was about to be put to the test as rumors of a largescale mining operation circulated in the Bend/Central Oregon area in the early 1970’s. Since 1961 when the claims were first filed, the miners said it would be “some time before the property will be put into production.”³⁴ Estimates of about ten (10) years were suggested. By 1970, the clock was running out before U.S. Pumice would want to begin mining at Rock Mesa. After hearing from its members about this, the Pacific Northwest Chapter of the Sierra Club, the Oregon Environmental Council and the Oregon Wildlife Federation prepared for the fight to come.³⁵

In early 1971, it was anticipated that the Company would want to commence mining in the near future based on their earlier comments and projections about the need for more pumice. The next two years (1971 and 1972) would turn out to be extraordinary years in the campaign to protect the Three Sisters Wilderness. Conservationists organized to gain political and public support from elected officials as well as civic and business groups to oppose mining at Rock Mesa. They hoped that this would pressure the Forest Service to protect the Three Sisters Wilderness to the full extent permitted under the law.

The *Bend Bulletin* first sounded the alarm with an article explaining what would happen if mining occurred at Rock Mesa. It pointed out that the Forest Service could do nothing to stop it because it was legal under the Mining Act. The Forest Service was “not happy about” the proposed mine but “can’t do anything to keep U.S. Pumice from mining its claims.” When Bob Gaston, the *Bend Bulletin*’s Managing Editor, suggested that the Forest Service deny access and force the company to sue to get the issues resolved, their response was that they would lose if they did.³⁶

Bob Gaston was not satisfied with the Forest Service’s position and wrote to Senator Bob Packwood asking for help. Gaston asked if Packwood could introduce legislation to ban mining in wilderness areas or find out if the newly passed National Environmental Policy Act (NEPA) could help keep the miners out.³⁷ Packwood was very interested and took the lead in the Oregon Congressional delegation in trying to block any mining.

Packwood immediately contacted the EPA to find out what if anything they could do. He also contacted the Forest Service and their reply just noted the that the filing of the claims was legal in wilderness areas under both the Wilderness and Mining Acts. Numerous additional news articles were published throughout Oregon and Packwood noted that the “mail is running heavy

³³ *Fight & Win: Brock Evan’s Strategies for the Eco-Warrior*, Brock Evans, Barclay/Bryan Press, 2014, p.25 and *Endless Pressure – Endlessly Applied, The Autobiography of an Eco Warrior*, Brock Evans with George Venn, Wake Robin Press, La Grande, Oregon, 2020

³⁴ Letter from Sheldon Fay to Deschutes National Forest dated November 6, 1961 and noted in Mining Contest Opinion, p. 4.

³⁵ Resolutions by OEC, (November, 1970), OWF – June 20, 1971) and Sierra Club Pacific Northwest Chapter - March 1970.

³⁶ “*Three Sisters May Be Mined – Despite Forest Service’s Objections*,” *Bend Bulletin*, February 19, 1971

³⁷ Letter from Bob Gaston to Senator Bob Packwood, February 24, 1971 reprinted in Congressional Record - Senate, Vol. 117, No. 64 dated May 4, 1971, p.6180.

on this issue.” The news articles demonstrated the broad support to ban mining in the Three Sisters Wilderness. The *Eugene Register Guard* declared that the Three Sisters Wilderness was “in danger of rape far greater than even logging” ... because “mined areas do not grow back.”³⁸

Packwood’s interest and the “persistent Bend area residents who badgered him and other lawmakers” led to the introduction of two bills to protect wilderness areas from mining under the mining laws. One was for all designated wilderness areas (S. 1783) and the second was just for the Three Sisters Wilderness (S. 1784). Hearings were set for early September in Washington D.C. The *Bend Bulletin* warned “it’s doubtful conservationists can muster the strength to pass [them].” It warned that the Forest Service should not relax because the bills have been introduced. “They’ve got to do what they can, including being taken to court if necessary, to protect the wilderness from U.S. Pumice Co.”³⁹

Conservation groups sent out word to their members about the bills and to mobilize the public. The Friends of Three Sisters announced a public meeting in Eugene and organized a field trip and camp out at Rock Mesa on July 4th. Packwood wrote to many conservationists in Oregon to encourage support for his bills and for attendance at the Senate hearings. More articles were published, and support to block any mining increased. In response to public interest and concern Packwood held an informal public meeting in Bend to give people a chance to speak who could not make it to the hearings in Washington DC. Support for his bills came from the Bend Chamber of Commerce, local concerned citizens, The Friends of Three Sisters and other PNW and national conservation groups.⁴⁰

All the publicity by Senator Packwood, press and from the conservation community apparently had some impact on the Forest Service’s resolve. In June, the Forest Service informed USPC that an EIS would be needed and that they would need at least 18 months to prepare and complete the study. They requested that the company submit their application for access and an operating plan for the mining with enough time for the Forest Service to prepare the required EIS.⁴¹ In addition, they sent their mining engineer and others to visit the U.S. Pumice mine in California in order to gather information about the nature and extent of that mine in anticipation of preparing the EIS. But the Forest Service was walking a very fine line. Responding to Senator Packwood, they noted that they did not support the exception for mining included in the Wilderness Act but understood the Congressional compromise which “we must honor.”⁴² As we will see, they were unprepared about how to do this. They did support withdrawing the Three Sisters from future claims but wanted his bill to include specific language to permit the purchase of valid existing mineral rights.

³⁸ *Keep Out*, Eugene Register Guard, May 4, 1971; *Hands of the Sister Mister*, Oregon Journal, dated February 23, 1971, *Stop All Mining*, Salem Capitol Journal, April 30, 1971, *The Miners Will Blast Away*, Bend Bulletin, April 13, 1971 and *Reward Your Friends*, Bend Bulletin, April 29, 1971 and all reprinted in Congressional Record – Senate, Vol. 117, No. 64 dated May 4, 1971, p. 1679; and Senate Vol 117, No. 73, pp. 7190-91.

³⁹ *Miners Will Blast Away*, Bend Bulletin, April 13, 1971

⁴⁰ Capital Journal (Salem Oregon), August 30, 1971

⁴¹ Letter from Forest Service to USPC dated June 23, 1971 cited in Contest Opinion, p.207.

⁴² Letter from John R. McGuire, Associate Chief US Forest Service to Senator Bob Packwood, August 6, 1971 reprinted in Senate Hearing Record, pp. 3-4.

However, this was a bit self-serving on the part of the Forest Service since they had already told the company the claims were valid. Further their mining engineer was concerned that all the publicity and opposition by conservation groups was unfair to the company and did not recognize their cooperation in not pressing their right to access their claims. These varied positions exposed the internal differences between the local forest supervisors (Deschutes & Willamette), the Lands and Minerals staff in the regional office in Portland and the Chiefs Office in Washington D.C. Here again, the Forest Service was working the middle between the public and the Congressional push to prohibit mining while at the same time looking supportive of the actions of the Pumice Company.

Congressional Quagmire

Oregon's Congressional delegation wanted a quick and simple legislative way to block the proposed mine. Senator Packwood's one paragraph bill (S. 1784) was intended to do just that by giving authority for the Forest Service to buy the valid claims and prohibit any future claims in the Three Sisters Wilderness. Although legally simple, this approach was politically complex and with all the politicians, interest groups and agencies involved, quickly turned into a quagmire that took many years to sort out.

Even before the hearings began there was a disagreement between Senator Packwood, Congressman Al Ullman (whose district included the part of Rock Mesa in Deschutes County) and Legislative Council over whether S. 1784 did what the Senator said it would. They disagreed about whether the bill's language clearly authorized and required the Forest Service to buy USPC's valid claims (patented or unpatented). This was apparently resolved with an amendment proposed by Packwood and further clarified by a companion bill Ullman introduced in the House. Later, Senators Mark Hatfield of Oregon and Senator Frank Moss of Utah introduced yet another bill (S. 2845) to authorize the purchase of the claims which only added to the confusion regarding how to proceed.

Senate Hearings

Chaired by Senator Frank Moss of Utah, the public hearing was finally held on September 13th and 14th, 1971 in Washington, DC by the Subcommittee on Minerals, Materials and Fuels of the Senate Committee on Interior and Insular Affairs. Joining Senator Moss were Senator Packwood and Senator Ted Stevens of Alaska. Testimony and statements were presented and submitted by a wide range of interests in support of Senator Packwood's Three Sisters Bill, S. 1784. It was an impressive showing of unprecedented united and bipartisan opposition to the proposed mine by Oregon's Congressional delegation and business and conservation groups from Oregon.⁴³

⁴³ Hearings before the Subcommittee on Minerals, Materials and Fuels of the Committee on Interior and Insular Affairs, United States Senate, Ninety-Second Congress, First Session on S. 1784, September 13 and 14, 1971, Washington D.C.: Government Printing Office, 1971 and cited as Senate Hearing Record.

Senator Packwood opened the hearing noting that Rock Mesa was a “geologic wonder” and by “itself, would be worth saving.” Unfortunately, he also restated the Forest Service determination that “the claims are valid. There is no doubt about that.”

He then went on to say: “I am more convinced than ever that without specific legislation at this time, there is no means under present law to prohibit the U.S. Pumice Company from desecrating a unique national Wilderness area and destroying the geologic features and scenic beauty of Rock Mesa for all time by mining block pumice under its valid mining claims.”⁴⁴

Senator Mark Hatfield joined Packwood in sponsoring S. 1784 and stated that Oregonians reacted to the threat of the pumice mine with “disbelief and anger.” While noting his good working relationship with the Forest Service, he went on to say, “I think the Forest Service is being more attentive to the needs of the mining industry than to the needs of the people.” While the Forest Service plans to “limit access to some heavily-used Wilderness areas in order to preserve the wilderness quality...I only wish they showed the same enthusiasm toward halting this threat of mining.”⁴⁵

Congressman Ullman also supported the intent of the bill but explained a slight difference with his companion bill in the House. His bill clearly would permit the purchase of all existing claims including “unpatented” claims. Although not likely, unpatented claims could be mined and Ullman wanted to take “every precaution in preserving the wilderness quality of the Three Sisters.”⁴⁶

The Federal agencies, mainly the Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA) and the Forest Service all agreed that while NEPA applied and an EIS would be needed to address the impacts of any access roads or related facilities, it could not prevent any mining operations. Resolution of the conflict would require preventing any future claims and buying any valid existing mining rights. While the agencies expressed their opinions about what was needed to resolve the conflict, the Nixon Administration’s position was not known.

Summary of Testimony and Significant Statements

In addition to the expected support from the usual national, statewide and local conservation groups, individuals and organizations from Oregon made the long and expensive trip to DC to testify. Over 50 statements were submitted in support of S. 1784 opposing the proposed mine at Rock Mesa. Only two opposed the legislation and supported mining; the United States Pumice Company and the American Mining Congress (AMC) for the mining industry.⁴⁷

There were also many statements from business and trade associations that one would not expect to support the bill and oppose mining Rock Mesa. These included the Chamber of Commerce for

⁴⁴ Ibid. Senate Hearing Record, pp. 10-11

⁴⁵ Senate Hearing Record, p. 6.

⁴⁶ Ibid, Senate Hearing Record, p. 78

⁴⁷ Ibid. Senate Hearing Record pp. 11 and 81.

Portland and Bend Areas, the American Forest Association (AFA) and Oregon Jaycees. The AFA stated it as clearly as anyone:

“A wilderness area with a commercial mining operation within its bounds ceases to be a wilderness. No matter how careful or conscientious the operator, no matter how stringent the environmental safeguards, there is no way that the roadbuilding, excavation, and hauling activities can be made compatible with the nearly absolute natural conditions essential to a true wilderness experience.”⁴⁸

A significant photo/slide presentation was made by Don L. Hunter from Eugene, Oregon on behalf of the Friends of the Three Sisters Wilderness. Mr. Hunter was an audio/visual specialist for the University of Oregon and showed his photo/slide show throughout Oregon on behalf of protecting the Three Sisters Wilderness. His show emphasized protecting the French Pete drainage and old growth forest from logging and restoring it to the wilderness area and protecting Rock Mesa from mining. As he said: “My purpose today is to bring to the committee some of the aspects of the Rock Mesa Area and the Three Sisters Wilderness Area that you cannot put on paper and that is even difficult to capture in photographs.” The Committee and Senator Packwood and Senator Stevens were impressed and found the photos helped them better understand the issues and area in question.⁴⁹

Two of the most interesting and representative statements came from two Oregon attorneys. First was Oregon State Senator Donald S. Wilner from Portland⁵⁰ and second was Owen Panner from Bend.⁵¹

Wilner strongly opposed any mining of Rock Mesa and that the “committee should face the issue presented by an open pumice mining in the Three Sisters Wilderness Area in Oregon head on.” He also was the first to question whether or not all the claims were valid. But regardless, “if we have to pay for the pumice to stay in the ground, we should.”⁵²

Owen Panner represented two very diverse groups: the Bend Chamber of Commerce and Jon Kemp, President of the Friends of the Three Sisters Wilderness Area and explained their support for S. 1784. He reiterated that “Oregon is in a state of shock” about the proposed mining, that the area is considered “sacred” and how the mining claims “were not known until less than a year ago when they became exposed to public scrutiny.” He agreed with Senator Packwood that “we know of no opposition to his bill in Oregon and almost every major newspaper in the State has supported the idea of stopping mining in the area.” Interestingly he went on to state that “I have been amazed at the number of people in Oregon, conservative law-abiding citizens who said to me literally... ‘there will be no mining in this area...’ The president of one of the most conservative manufacturing companies said to me... ‘I will be the one laying in the road when they start.’ And he is not kidding. The people have a real dedicated affection to this area.” He

⁴⁸ Ibid. Senate Hearing Record, p. 21

⁴⁹ Senate Hearing Record, p. 19

⁵⁰ Later an attorney for the intervenor conservationists

⁵¹ Later appointed as a Judge for Oregon’s U.S. District Court by President Carter in 1980.

⁵² Senate Hearing Record, pp. 16-18.

ended by calling on the mining company to join with the areas residents in an effort to find a solution.⁵³

Another warning not to trust the Forest Service to protect the wilderness area came in a terse letter from Irving Brant a former advisor to President Franklin D. Roosevelt (FDR) on the establishment of Olympic National Park and other conservation matters. Brant related the history of the Forest Service's dismal record managing pumice mining at Monocraters in California and warned that the destruction going on there will certainly come to the Three Sisters if the pumice mine is permitted.⁵⁴

Finally, four stalwarts and of the Oregon conservation community came to testify. These were Larry Williams, Executive Director of the Oregon Environmental Council (OEC);⁵⁵ Brock Evans, NW representative of the Sierra Club;⁵⁶ Douglas Scott, representing the Wilderness Society;⁵⁷ and Roger Mellem, representing the University of Oregon Outdoor Program and its conservation offshoot, Nature's Conspiracy.⁵⁸ All four were before and after these hearings leaders in Oregon's efforts to protect wilderness throughout the Cascades.

Larry Williams of the OEC testified on behalf of over 75 conservation, planning and sportsman organizations as well as over 1500 individual Oregonians. He expressed their concerns about the proposed mine and the loophole in the 1964 Wilderness Act which allowed mining in wilderness areas. He noted how Congress has been reluctant to deal with the huge problems such an operation presents and how the threat of an open-pit mine by Kennecott Copper Company in the Glacier Peak Wilderness in Washington had now moved to Oregon. He wondered why such a mineral could be more valuable than this wilderness when "it is used for kitty litter and for gardens and other nonessential uses?"

Williams also called for greater transparency by the U.S. Pumice Company and the Forest Service about the proposed mine. He objected that the company was withholding information about its mining operation in California, its refusal to speak with the press after countless

⁵³ Senate Hearing Record, pp. 23-30.

⁵⁴ "Forest Service's 'sorry record' on Monocraters Bodes ill for Rock Mesa," *Eugene Register Guard*, September 12, 1971, reprint of letter from Irving Brandt to Senator Bob Packwood, also in Senate hearing Record, p. 91. For more on Brandt see: *Adventures in Conservation with Franklin D. Roosevelt*, Irving Brandt, Northland Publications, 1989 and Douglas Brinkley, *Rightful Heritage – Franklin D. Roosevelt and the Land of America* (New York: Harper Collins, 2016).

⁵⁵ Larry Williams was Chair of the PNW Chapter of the Sierra Club in 1968, helped found the Oregon Environmental Council (OEC) and was its first Executive Director from 1969 to 1978. He was instrumental in the OEC campaigns to enact Oregon's nationally recognized bottle deposit law, establish the Hells Canyon National Recreation Area and protect wilderness areas in the Cascades.

⁵⁶ Brock Evans was the PNW representative for the Sierra Club from 1967 to 1974. He was leader in the campaigns to establish the North Cascades National Park, block dams in Hells Canyon, organize local opposition to logging French Pete. Brock was then becoming the leading advocate for wilderness and mentor to thousands of future leaders for the wilderness movement in the Pacific Northwest.

⁵⁷ Doug Scott was an organizer for the Wilderness Society and then succeeded Brock as the PNW representative for the Sierra Club and later its National Conservation Director.

⁵⁸ Roger Mellem began as a talented wilderness organizer for the Survival Center at the University of Oregon, the Acting PNW representative of the Sierra Club in 1973, a founder of its Oregon chapter in 1978, and longtime board member and president of Washington Wild.

inquiries and how the Forest Service censored and withheld from public review their own report about their visit and inspection of the California mine site.⁵⁹ The Forest Service bowed to the request of the company's President, Mr. Wayne T. Miles to withhold any information from the press and conservation groups because it "could lead to only a more unfavorable image of his mining companies."⁶⁰ This was especially troubling since all this information would become public in any yet to be completed environmental review (EIS). The new NEPA/EIS process required that all environmental impacts be fully disclosed to the public for review and no longer be considered privileged information just between the mining company and the Forest Service. Clearly the Forest Service had not made the transition to the more public process that the new NEPA/EIS process now required.

Brock Evans, NW representative of the Sierra Club also represented the Federation of 170,000 persons. He pointed out that "this entire situation points up once more the imperative and urgent need to change the mining laws of 1872. It is incredible that 100 years later only miners, out of all groups of the body politic, still have the right to go almost anywhere on public lands; and if they find ore, to in effect make those lands their private property – for almost no compensation to the public, and all too often – as here and in many other places in the Northwest – with great destruction of public values."⁶¹

Doug Scott testified for the 70,000 members of the Wilderness Society and expressed their total "support for Senator Packwood's bill S. 1784" and his amendment to authorize acquisition and condemnation for the Rock Mesa area. Scott made clear that this issue was not only special for Oregonians but it also "raises the fundamental question that the Wilderness Act left open – the issue of deciding between mineral exploitation and wilderness preservation. Clearly the two cannot be mixed." He pointed out that this fundamental conflict has been clearly demonstrated by the proposed open-pit copper mine in the Glacier Peak Wilderness in Washington State and for molybdenum in the White Cloud Mountains of Idaho. In conclusion, Scott declared that, "we have every confidence that the American people simply are not going to tolerate mining invasions of their 'preserved' wilderness areas" and concluded that maybe "the Three Sisters must be the case where the general question is debated and settled."⁶²

Roger Mellem was a student leader for conservation and wilderness at the University of Oregon representing the Outdoor Program and Nature's Conspiracy of about 1000 concerned students and conservationists.⁶³

⁵⁹ Senate Hearing Record, pp. 32-35.

⁶⁰ Ibid. as well as letter from Holly Jones to Richard Noyes dated October 6, 1971. The letter also noted that the company refused to permit Dan Wyant and a Register Guard photographer onto their lands but that Dan fooled them by hiring a helicopter to get aerial shots. "it would make your spine shiver to see the stirp mining!" Holly Jones was a librarian and Richard Noyes a Professor of Chemistry both at the University of Oregon and longtime Sierra Club activists.

⁶¹ Senate Hearing Record, pp. 35-37.

⁶² Senate Hearing Record, pp. 79-80.

⁶³ Roger was one of the prime organizers in 1969 and 1971 of two student marches from the University to the headquarters of the Willamette National Forest in Eugene, Oregon advertised as the "Save French Pete Rally and Rock Mesa Preservation March." In the spirit of the times, hundreds of students marched and chanted in support of wilderness and against logging the French Pete valley and mining Rock Mesa, heard speakers like Sierra Club leader

Like other student activists of his day, Mellem did not hold back and spoke truth to power. He pointed out that mining Rock Mesa “would be another example of how the corporate states operate for an industry to be allowed to desecrate our wilderness by mining at the same time the use of that area by people is being restricted.” He echoed others when he decried that the 1964 Wilderness Act had a “loophole big enough to drive a mining truck through.”⁶⁴ Adding that “unless this bill passes, mining could take place in the Three Sisters Wilderness as a legal crime. If this occurred, it would be an unforgiveable act of desecration. Please see that it does not.”⁶⁵

Mining Company and Industry Oppose Any Legislation or Compensation

Only one person personally testified in opposition to S. 1784: Mr. T. Wayne Miles, President of the U.S. Pumice Company and Featherrock, Inc. The American Mining Congress submitted a written statement for the record opposing the bill as well. In hindsight, it is interesting to consider but not surprising that just one company and industry blocked legislation that had unanimous support from the Oregon delegation and the public.

Mr. Miles opposed any legislation that would block future mining claims in the Three Sisters Wilderness and especially the condemnation and purchase of their existing claims. He said that any condemnation was “a radical departure from existing policy” and “establishes a precedent that could affect all property rights presently existing in any wilderness area.” He asserted that the company’s holdings were “valid claims under the law.” After thanking the Forest Service for their cooperation, he quoted their report that the company had “been very cooperative with the Forest Service - to its own disadvantage.” He noted how they had done their “required assessment work by primitive methods, sending in men on horseback with pick and shovel, rather than using powered equipment which we would have been entitled to do.”⁶⁶

Finally, he complained that he had just been notified about the hearings on September 9th with little time to prepare for the hearing and that the notices were only published in the Oregon papers which he did not get. This despite the fact that the hearings were announced in May, there were numerous articles about the proposed mine and opposition to it and that the company did not respond to the many requests for comment from the Oregon press. To this the *Register Guard* in an editorial asked: “Where have you been?”⁶⁷

The short statement submitted by the American Mining Congress demonstrated their power to block such legislation without even making an appearance before the Committee. For them the bill was “contrary to the intent of certain provisions for mineral development in wilderness areas

Mike McCloskey, mountain climber Willi Unsoeld – Counter Culture author Ken Kesey (the Merry Prankster) and music by Mason Williams.

⁶⁴ Repeated from *Hands off the Sister Mister*, Bend Bulletin, February 23, 1971

⁶⁵ Senate Hearing Record, pp. 37-40

⁶⁶ Senate Hearing Record, pp. 11-15.

⁶⁷ *Rock Mesa is Still Threatened*, Eugene Register Guard, September 16, 1971.

by the Wilderness Act of 1964” and “set a dangerous precedent.” They clearly did not want to compromise the concession they won with the passage of the Wilderness Act and to keep fighting these types of conflicts in the future. Further, they opposed the “extinguishment of valid claims existing within the Three Sisters Wilderness.” They cited favorably the Public Land Law Review Commission report that encouraged the “exploration, development and production of minerals in public lands.”⁶⁸ This report was prepared under the watchful eye of Congressman Wayne Aspinall, Chair of the House Interior Committee and who only permitted the passage of the Wilderness Act with the exemption and loophole that allowed mining. No one doubts that the opposition from the mining industry ensured Aspinall’s opposition and apparently what killed the bill.⁶⁹

Nevertheless, the public hearings clearly demonstrated the overwhelming opposition in Oregon to any mining at Rock Mesa and their support for the integrity of the Three Sisters Wilderness. Senator Packwood was “very encouraged” by all who submitted statements and appeared in person. However, the mining industry’s formidable opposition to Senator Packwood’s bill, S. 1784, led conservationists to continue their efforts to generate more public pressure to oppose the proposed mine and support legislation. The Friends of the Three Sisters Wilderness sponsored Don Hunter to present his slide show about the Rock Mesa controversy and campaign to groups around the state. Students organized a two-year anniversary “Save French Pete Rally and Rock Mesa Preservation March” from the University of Oregon to the headquarters of the Willamette National Forest in Eugene. Meetings were held at OSU in Corvallis and in Salem.⁷⁰ Another student group at the University of Oregon, *Mits Off* (Mining in Three Sisters Obliterates Flora and Fauna) organized a door-to-door petition campaign in the Eugene-Springfield and Bend areas urging support for Senator Packwood’s S. 1784 and a similar bill by Representative Ullman in the House.⁷¹ In addition, they urged that letters be sent to the Chair of the House Interior Committee, Wayne Aspinall of Colorado and Oregon Representative John Dellenback who was a member of that committee⁷².

Conservationists Shift Strategy

Up to now, conservationists with strong support from the Oregon Congressional Delegation focused their efforts on blocking the mine with a legislative fix because the Forest Service did not want to directly challenge the claims of the U.S. Pumice Company. The Forest Service asserted that the claims were valid and all they could do was limit access or the impact of the mine. Not only the company but Senator Packwood also relied on their determination. At the Senate Hearings he emphatically stated: “The claims are valid. There is no doubt about that. The

⁶⁸ Senate Hearing Record, pp. 81-82.

⁶⁹ Turner, James Morton. *The Promise of Wilderness: American Environmental Politics since 1964*, University of Washington Press, 2012, pp. 30-35.

⁷⁰ *Students Offer Programs to Protest Pumice Mine*, Salem Statesman Journal, October 25, 1971 and *Save French Pete Rally and Rock Mesa Preservation March* University of Oregon Outdoor Program Event Poster set for November 18, 1971.

⁷¹ Ullman got a helicopter tour of Rock Mesa by the Forest Service after the Senate Hearings, Capitol Journal September 22, 1971.

⁷² *Prevent Mining at Rock Mesa – Keep Miners’ Mits Off*, Announcement for Door-to-Door Petitioning on October 23-29, 1971 and Letter from Doug Hofstadter, Mits Off Campaign Coordinator to University of Oregon Students, October 20, 1971.

Forest Service confirmed it. I think that even the most ardent defenders of protecting the Three Sisters Wilderness will reluctantly admit the U.S. Pumice Co. claims are valid.” However, this was no longer true and maybe never was. Once those concerned learned more about the claims and the cursory review conducted by the Forest Service, they began to question not only whether the claims were correctly “located” but whether there was a “valid discovery” of a valuable mineral deposit.

Oregon State Senator Don Wilner testified that he questioned “the status of the U.S. Pumice Claim” and pointed out that “the Bureau of Land Management has not established that a ‘prudent man’ can conduct a profitable operation on the claim. There has been no final validation to my knowledge.”⁷³

Prior to the Senate Hearings, Frank Barry, Professor of Law at the University of Oregon School of Law and former Solicitor for the U.S. Department of Interior⁷⁴ volunteered to review the claims during the Summer for the conservationists. He wanted the Forest Service to contest the legal validity of the claims based on a new geologic study prepared at his request and discussions with Professor Taylor at Oregon State University (OSU) that the pumice at Rock Mesa isn’t worth the effort or costs of mining it.⁷⁵ The Report was prepared by Douglas Stoesser and Frederick Swanson, Ph.D. candidates in Volcanology and Geology at the University of Oregon. In December of 1971, Barry met with Senator Packwood and Congressman Ullman to discuss the report’s findings. Packwood agreed with Barry and wrote to Supervisor Zane Smith of the Willamette National Forest and Forest Service Chief, Ed Cliff in support of Barry’s request to contest the claims. “As long as there is a shadow of a doubt as to the validity of the claims, I feel a mining contest should be filed,” Packwood said. “We are dealing with a unique, natural resource dear to the heart of all Oregonians.”⁷⁶

Barry then made a formal request to the Forest Service in a letter to Zane Smith in January of 1972 asserting that the claims are invalid based on the Stoesser and Swanson Geologic Report.⁷⁷ Barry’s letter to Zane Smith sets forth the law about the validity of mining claims and that the geologic information now available “points to the high probability that the Rock Mesa pumice is not a valuable mineral deposit” under the 1872 Mining Law. Further, he critiques the Forest Service reports prepared by Mr. Suchy in 1963 & 1971 and its conclusion that the claims were valid. He believed that the Suchy Reports are just his opinion and not based on adequate examination of the claims at Rock Mesa especially in light of the new information. Barry explained that the Forest Service report misunderstood the law by assuming that the claims must be considered valid until proved invalid which he asserted is the exact opposite of the law. Barry stated that “it is up to the company to prove it is entitled to Rock Mesa and it is the duty of the Forest Service, as guardian of the public’s interest in the wilderness, to not permit the unlawful private appropriation of Rock Mesa.” Finally, he urged Forest Supervisor Smith to “recommend

⁷³ Senate Hearing Record, pp. 16-18.

⁷⁴ Part of Barry’s job when at Interior was to contest questionable mining claims.

⁷⁵ Letter from Holly Jones to Richard Noyes dated October 6, 1971.

⁷⁶ “*Rock Mesa Claimed Valueless for Mining*, Dan Wyant of Register Guard, January 1972.

⁷⁷ Letter from Frank Barry to Zane Smith, Willamette National Forest, January 20, 1972 and “*Geology of Rock Mesa, Three Sisters Wilderness Area, Oregon*. Field work was done in October, 1971 and is referred to as the Stoesser-Swanson Report.”

the immediate filing of a Mining Contest before the Department of Interior against the claims, challenging their validity upon the ground that they are not supported by a discovery.” Smith reacted to the report and discussion with Barry favorably. “I felt that what he’s put together so far is pertinent and interesting. It is probably enough to justify a request for adjudication. He’s no novice in this.”⁷⁸

Zane Smith continued: “From my point of view, the report offers new evidence that seems to be relevant. But I am not a lawyer nor mining engineer. The position of the Forest Service is to fairly administer the mining claims, but if there is any doubt as to their validity, then it is almost automatic that the claims would be referred to the Bureau of Land Management for adjudication.”⁷⁹

At this point, the Forest Service could have proceeded to finally end this controversy by formally contesting the validity of the claims with an administrative hearing held by a neutral third party. However, this would have been awkward because it would require them to challenge and question the determination made by their own Mining Engineer, Milvoy Suchy, in 1963. Once again, they were not prepared to do this. Instead the Forest Service hired another mining engineer, Mr. Leslie Richards to once again evaluate whether any of the claims were valid.⁸⁰

Further, the Chief of the Forest Service (John McGuire) once again assured the company that “there was no question as to the validity of these claims” and that it was simply a matter of how they were going to resolve this problem of paying for these claims. They planned to stand by their previous reports and advice from the Justice Department that the claims were valid. From their standpoint, there “was only one issue to resolve and that was to determine the fair market value of the claims that should be paid” to the company.⁸¹

The real question was how to determine the value of the claims and this would plague the parties for several years to come and delay the final outcome. According to Barry this was not good. Even though the claims were not valid now because they could not be profitably mined, they could become valid in the future. “The pumice could be found useful for some other purpose; supplies elsewhere may be so depleted that Rock Mesa pumice may become marketable, etc.”⁸²

In June, Congressmen Al Ullman and Wendell Wyatt announced that the Forest Service and U.S. Pumice Company had “tentatively agreed” to a proposal on how to settle the dispute over the mining claims at Rock Mesa. The agreement was for the Forest Service, the mining company and Frank Barry to meet and try to reach an agreement on the geologic and economic factors needed to determine if the claims were valid. They agreed to this meeting because Ullman and

⁷⁸ *Challenge to Rock Mesa Mining Claims Seen by Forester*, Dan Wyant of Register Guard, dated January, 21, 1972.

⁷⁹ “*Rock Mesa Claimed Valueless for Mining*,” Dan Wyant of Register Guard, January 1972. Interestingly, conservationists already knew that Zane Smith was “dead set against the mining in the Three Sisters as we are” and was apparently willing to “stick his neck out” and make the “suppressed” Forest Service report of their recent tour and inspection of the U.S. Pumice Company mine in California available. Letter from Holly Jones to Richard Noyes dated October 6, 1971.

⁸⁰ Mining Contest Opinion, p. 10.

⁸¹ As reported in the Mining Contest Opinion, pp.61-62.

⁸² Personal letter from Frank Barry to Dr. Richard Noyes, dated February 11, 1972.

Wyatt realized that none of the legislation so far proposed would pass. Ullman announced: “I’ve said it before and I’ll say it again, Rock Mesa will not be mined. But if it is determined that the claims are valid and have some value, I believe the company should be compensated for its investment. If no value is found, the Forest Service should immediately contest the claims. And in any case, the Forest Service should move quickly to withdraw the area from any more claims.”⁸³

Although there was no grand bargain between the parties as a result of the Ullman/Wyatt summit, at least one significant action resulted from the meeting. In June, the Forest Service finally applied to have 2400 acres in the Three Sisters Wilderness around Rock Mesa withdrawn and closed to further mineral entry and claims.⁸⁴ They proposed to withdraw this area as a unique geological formation of national and international significance. It was registered with the BLM on June 26, 1972, which establish the date of withdrawal and the closure of the area to any further mineral claims.⁸⁵ Because of an objection from Oregon’s State Geologist and the U.S. Bureau of mines that the area was not “unique,” the Forest Service amended its withdrawal to cover a larger area of 6200 acres based on a different statute in 1976 and resubmitted this expanded application in 1979.⁸⁶ The details about this disagreement between the Forest Service and Oregon officials is not important but the date of the initial filing was. Now on or before June 26, 1972, all claims must comply with the requirements of the 1872 Mining Act to be considered a valid discovery in order to remain valid and not be subject to the withdrawal.⁸⁷

Oregon Gets Involved

Up to this point, the controversy involved local citizens, conservation groups and the Oregon Congressional delegation working to oppose the proposed mining at Rock Mesa. Now Oregon state officials began to get involved. State Treasurer and future Governor Robert Straub spoke out to oppose any mining at Rock Mesa: “The mining industry can be trusted to cohabitate with wilderness users about as much as a wolf can be trusted to lie down with lambs.” Straub made clear that mining had “no place in the pristine stillness and beauty of the Rock Mesa area. There is no way to compromise that fact. The two uses cannot co-exist.”⁸⁸ Later as Governor he reaffirmed this position. Like Governor Tom McCall, Straub was a staunch conservationist but more passionate about protecting Oregon’s forested wilderness than McCall.⁸⁹ Governor McCall was the leader for cleaning up the Willamette River and curbing air and water pollution.

⁸³ News Release by Congressman Al Ullman, 2nd District, Oregon dated June 13, 1972 and reported in Earthwatch dated June 1972.

⁸⁴ Letter from T.K. Cowden, Assistant Secretary of Agriculture to Rogers C.B. Morton, Secretary of the Interior, June 22, 1972 and *Mining Exclusion Proposed for Rock Mesa*, BLM News, February 21, 1973

⁸⁵ Mining Contest Opinion pp. 9-10.

⁸⁶ Letter from Bob Bergland, Secretary of Agriculture to Cecil Andrus, Secretary of the Interior, January 10, 1979.

⁸⁷ Mining Contest Opinion, pp. 9-10 and 157.

⁸⁸ Greater Oregon (Albany, Oregon), December 24, 1971. Straub continued to oppose mining at Rock Mesa when he became Governor in 1975.

⁸⁹ Governor Tom McCall was strong supporter for tougher regulations to limit air and water pollution. *Conserving Oregon’s Environment: Breakthroughs That Made History*, Michael McCloskey, Inkwater Press, Portland, 2013;

In August 1971, Edward Harms Jr. a member of the State Environmental Quality Commission (EQC) brought the Rock Mesa controversy to the Commission for discussion and showed slides of the area. The Commission unanimously agreed to support Senator Packwood's bill, oppose any mining in the Three Sisters and "resolved to use all legal means, remedies and authority to prevent such operations." The EQC then directed the staff of the Department of Environmental Quality (DEQ) to draft regulations to establish either a permit system or specific standards for air, water and noise emissions applicable to mining that would effectively prevent such mining. But it was noted that there were unresolved issues about Oregon's authority to adopt such regulations because of conflicts with Federal law.⁹⁰

Governor McCall had recently appointed L.B. Day as the Director of the DEQ because he wanted someone who would be aggressive in taking on the polluters even those who might intrude into the wilderness.⁹¹ L.B. Day was the perfect person for what McCall wanted.⁹² Day was considered "a master of intimidation." He "berated witnesses" who came before him and was considered a "bully." But he had McCall's support. McCall understood – and admired – Day's talent for bombast. It gave the DEQ exactly the tenor McCall wanted."⁹³

Day did not hesitate and immediately asked the Oregon Attorney General, Lee Johnson, about the State's authority to regulate air, water and noise emissions in the Three Sisters Wilderness. The Attorney General concluded: "the Department of Environmental Quality may impose regulations for the abatement and control of air and water pollution and noise resulting from mining activities in wilderness areas."⁹⁴ Soon, the EQC adopted regulations that would require mining techniques "that are noiseless, smokeless and don't dirty up the waters." "But such mining methods are believed non-existent."⁹⁵ Day said the company can mine "but only with a pick, a shovel and a mule."⁹⁶

The Rules declared "the policy and purpose of the DEQ to maintain the environment of wilderness areas essentially in a pristine state and as free from air, water and noise pollution as is practically possible..."⁹⁷ The rules were vigorously opposed by the Associated Oregon Industries (AOI) on behalf of the mining industry that feared this idea might be adopted by other states. "That's why the regulations are so controversial," Day said.⁹⁸ "It's a landmark, make no mistake about it and if we make this stick, a number of states will be taking a look," Day declared.

Whether Oregon could make the rules "stick" was never tested since the mining company never got its operating plan for the proposed mine approved by the Forest Service and thus never applied for any permits before the controversy was settled in 1983. The EQC declined to join the

⁹⁰ "Environmental Body Joins Mining Battle" Jerry Uhrhammer, Register-Guard, September 15, 1971.

⁹¹ Fire at Eden's Gate, Brent Walth, p. 325-326.

⁹² He had been a labor organizer of cannery workers for the Teamsters and then a member of the Oregon House of Representatives.

⁹³ Op. Cit. Walth, p. 326.

⁹⁴ 35 Or. Op. Atty. Gen.1042, 1972, January 21, 1972.

⁹⁵ *Strict Wilderness Rules Ok'd*, Jerry Uhrhammer, Register-Guard, February 15, 1972.

⁹⁶ Op. Cit. Walth, p.326 and Earthwatch Oregon August/September 1974.

⁹⁷ Oregon Administrative Rules (OAR) Chapter 340, Division 13 effective March 1, 1972.

⁹⁸ *Wilderness Area Rules' Landmark'* Jerry Uhrhammer, Register-Guard, (no date)

initial mining contest in 1977 because the agency preferred to wait and defend its rules in a state court or proceeding where it would be in full charge of the case.⁹⁹

All that was determined by the Administrative Law Judge in the legal contest decided in 1981 (see later section) was that the Oregon rules “do not unreasonably regulate mining of the Hermans claims” and the company’s costs of compliance is a matter to be considered in evaluating their legal validity. However, the Judge also found that the effect of the Oregon rules on the company’s costs of operation could not be determined until the Forest Service approved an operating plan for the mine. The Administrative Law Judge also determined that he was not the proper forum to decide whether the rules complied with other Federal or constitutional law issues.¹⁰⁰

OSPIRG Enters the Battle

In the summer of 1972, Jeffrey Kleinman, a 2nd year law student at the University of Oregon was awarded an internship by the Oregon Public Interest Research Group (OSPIRG) and the Western Interstate Commission for Higher Education, to research the controversy at Rock Mesa. OSPIRG was established in 1971 by students at the University of Oregon that were inspired by Ralph Nader’s promotion of the public interest in consumer affairs and environmental protection.¹⁰¹ Mr. Kleinman visited the Rock Mesa area to personally inspect the claims in order to better understand the issues involved.¹⁰² However, he was not alone. There he met and discussed with geologists from the Forest Service and USPC the issues surrounding the validity of the claims. The geologists were there to jointly examine the claims and to take further pumice samples for study and analysis as a result of the Ullman/Wyatt summit and the company’s meetings with the Chief in order to determine once again whether there had been a valid mineral discovery.¹⁰³

Mr. Kleinman submitted his two-part report in November. The first was to examine whether a public interest group like the Friends of Three Sisters Wilderness could establish “standing” to seek administrative or judicial review of a determination approving the claims. The second examined whether the claims were a “valid mineral discovery” under the Mineral Act of 1872. He concluded that “standing” could be established and that the evidence in the Stoesser-Swanson Geology Report prepared for Frank Barry did not support the Forest Service’s determination that the claims are valid discoveries of a valuable mineral deposit.

Mr. Kleinman concluded by observing that “mining law may be pursued beyond its book bound complexities.” He notes meeting Mr. Miles, the President of the USPC on horseback on the Pacific Crest Trail near Rock Mesa and that he did his best to avoid any of his questions. Mr. Miles “then rode off into the sunset en masse with his companions.”¹⁰⁴

⁹⁹ As noted in letter from Bill Ellis to Joe Richards, EQC Chair dated April 10, 1982.

¹⁰⁰ Mining Contest Opinion pp. 154-156 and 220-222.

¹⁰¹ See *A Man with 1000 Friends – Henry Richmond in A Generous Nature – Lives Transformed by Oregon*, Nancy Cottrell Houle, OSU Pres, 2019, pp. 149.

¹⁰² *Rock Mesa and the Courts: A Hypothetical Preview*, Jeffrey Kleiman, OSPIRG Reports, November 1972

¹⁰³ Mining Contest Opinion, p. 62

¹⁰⁴ Op Cit. OSPIRG Report, p. 3.

In December, OSPIRG expanded on Kleinman's report and submitted a detailed analysis of a new geologic report prepared for the Forest Service by Mr. Richards. His report once again "concluded the claims to be valid" but also concluded that if the Oregon (EQC) Wilderness Regulations were imposed "the pumice deposit could not be mined profitably." Richards also questioned whether the regulations could be applied to invalidate an otherwise valid mining claim. The Forest Service planned to use this report to reevaluate whether the mining claims were valid.¹⁰⁵

OSPIRG objected to the Forest Service's continued position that the claims were valid and provided a detailed critique of the new report. The OSPIRG review and critique was done by Henry Richmond (Staff Attorney) in conjunction with Professor E.M. Taylor, Department of Geology, Oregon State University, Professor Frank Barry, School of Law, University of Oregon, Professor Alexander McBirney, Frederick J. Swanson, Department of Geology, University of Oregon, Douglas Stoesser, Doctoral Candidate, Center for Volcanology, University of Oregon and Jon Kemp, President, Friends of Three Sisters Wilderness, Eugene, Oregon. The OSPIRG critique asked 167 questions to show that the new report is "filled with vague wording, unsubstantiated statements and unreliable conclusions." Finally, OSPIRG urged the Forest Service to "reverse its Rock Mesa record" because "no substantial evidence exists which establishes the validity of the U.S. Pumice Claims" and "to answer the questions unanswered by Mr. Richard's report, as well as all other reasonable doubts" about the validity of the claims and thus need to initiate contest proceedings without further delay.¹⁰⁶ Despite this very significant and credible challenge to the proposed pumice mine by OSPIRG, the Forest Service delayed giving any permission for the mining while it continued to reevaluate the validity of the claims and was simply not prepared to initiate an administrative contest and let the controversy drag on for another ten (10) years.¹⁰⁷

In the Summers of 1973 and 1974, Mr. Richmond and Professor Taylor of OSU returned to examine the claims at Rock Mesa. In 1976, after continuing delays, OSPIRG renewed its objections and again urged the Forest Service to contest the claims.¹⁰⁸

To Contest or Not Contest

Since the claims first became public in 1963, local conservationists, the Oregon Congressional delegation, OSPIRG and others strongly urged the Forest Service to contest the validity of the

¹⁰⁵ As reported in the Mining Contest Opinion, p.10 and *U.S. Report Concludes Pumice Claim is Valid*, Statesman Journal, November 17, 1972

¹⁰⁶ OSPIRG News Release Dated December 6, 1972 and OSPIRG letter from Henry Richmond, Staff Attorney to Theodore Schlapfer, Regional Forester, December 5, 1972 and *OSPIRG Asks Pumice Report Be Rejected*, Statesman Journal, December 7, 1972.

¹⁰⁷ In a recent interview, Henry Richmond recalled his role and OSPIRG's in this controversy and suggests that after the group's investigation and submittal of its geologic information to the Forest Service, they "denied the permit" for the mine. Op. Cit. Houle, p. 151. However, as will be explained in the remaining sections of this report, the Forest Service never denied any permits for the proposed mine at Rock Mesa but only told the Pumice Company that a formal application was needed and an EIS had to be prepared. The political and legal controversy continued until it was resolved by Congress and the parties in 1983.

¹⁰⁸ *Forest Service Prodded for Rock Mesa Response*, Statesman Journal, July 26, 1976.

mining claims so their value could be determined and then purchased in order to protect the Three Sisters Wilderness. Despite ten (10) years of prodding and cajoling, the Forest Service was no closer to figuring out how to proceed. Two reasons could explain this: (1) a formal contest proceeding would be embarrassing since they would have to question and challenge the determination made by their own Mining Engineer in 1963; or (2) they were just trying to wear down the pumice company with endless studies and requests for more information in the hope that they would just give up. We may never know but in the next few years there was a continual back and forth between the company wanting to secure its claims and start mining and Forest Service requests for more information while both parties did more geological examinations of Rock Mesa. The Company was warned in the Fall of 1972 “that it might have bitten off more than it can chew,” and could get buried by the Forest Service “in red tape, paperwork and environmental impact statements...” One paper concluded its editorial wondering whether “U.S. Pumice might get the point.” Apparently not because the exchanges continued.

While the parties kept talking about the possible purchase of the claims or what additional information was needed, they also kept getting ready for the legal mining contest. Since the initial geologic report was done for the Forest Service by Milvoy Suchy in 1962 there was an endless stream of geologists examining Rock Mesa. The Forest Service had studies done by Leslie Richards in 1971 which was critiqued by OSPIRG, and then by Alan Grant and Elwin Magill in 1975. U.S. Pumice Company had studies done by John Splane in 1965, 1972 and again in 1978. Arthur Still examined the claims in 1975, 1976, 1977 and 1978. Conservationists had a study done by Frederick Swanson and Douglas Stoesser in 1971 and OSIRG had Professor Paul Taylor of OSU check the claims in 1973 and 1974.¹⁰⁹ These were all done so each group could support its position about the validity of the claims.

By the summer 1974, conservationists were losing patience with the Forest Service and wanted to get them to resolve this matter. Frank Barry then went over their head directly to the Secretary of Agriculture urging him to get the Forest Service to initiate a mining contest. But nothing seemed to move the Forest Service to expedite the matter.

In July U.S. Pumice informed the supervisors of the Deschutes and Willamette National Forests that it intended to move heavy equipment into the area using the existing access road from Devil’s Lake including a large front loader and a Dodge 600 truck with the intent to keep the equipment onsite and to commence a full-scale mining operation by 1975. Senator Packwood’s reaction was direct and to the point: “I promise the people of Oregon I am going to do everything possible to stop this. We are not going to let this area be desecrated by pumice mining.”¹¹⁰ The Forest Service Regional Forester in Portland responded that company’s notice would be treated as a formal request for access and a notice of operation and that they would begin to prepare an EIS once they an operating plan was submitted. They also reiterated that it would take about 18 months to prepare the EIS. They also reminded the company of the need to address the Oregon Wilderness regulations.¹¹¹

¹⁰⁹ Mining Contest Opinion, pp. 6-8.

¹¹⁰ Mining Contest Opinion pp. 208-209 and *Firm Wants to Take Gear into Wilderness*, Albany Democrat-Herald, August 7, 1974.

¹¹¹ Mining Contest Opinion p. 210.

Meanwhile both the Forest Service and Pumice Company hired more geologists to evaluate the claims.¹¹² And once again the Chief of the Forest Service assured the company that its claims were valid.¹¹³ Soon after being elected, Congressman Jim Weaver in a letter to BLM Director Bob Berglund pushed them to finalize the withdrawal of Rock Mesa from future mining claims wondering what was taking so long to process the Forest Service's 1972 request.¹¹⁴ Finally, by September 1975 U.S. Pumice submitted a draft initial plan of operation to assist everyone in evaluating the claims. Apparently, the parties continued to discuss a possible buyout of the claims and the push to start the mine was put on hold pending the purchase discussions. But nothing came of this and the controversy languished again through the inaction of the Forest Service and Pumice Company.

By 1976 nothing was going to occur until the parties either agreed on a purchase price for the claims or the Pumice company filed its operating plan for review by the Forest Service. OSPIRG once again renewed its push to get the Forest Service to contest the claims because it does not believe that the claims can be mined profitably. The Forest Service delayed granting permission for the mining pending the new geologic reports. Reporting on this renewed activity, the *Salem Statesman Journal* concluded that: "If the Forest Service hadn't allowed the matter to drag on for years, OSPIRG wouldn't have had reason or opportunity to step into the breach. If the OSPIRG reports are substantiated, the Forest Service has an obligation to begin legal proceedings to invalidate the claims and remove this threat to one of Oregon's most scenic areas."¹¹⁵

Again Oregon Congressman Jim Weaver pushed for a solution and in a letter to Forest Service Chief John McGuire urged it to release their latest report and evaluation of the mining claims because "the public has a right to know on what basis [they] will decide whether Rock Mesa claims are valid or not."¹¹⁶ Weaver and the rest of the Oregon delegation were in support of withdrawing the Rock Mesa area from mineral entry and forbidding any mining there should other ways to prevent the mining fail.¹¹⁷ Getting tired of waiting on the Forest Service, on October 7, 1976, the U.S. Pumice Company finally requested approval of the initial draft operating plan submitted the previous year.¹¹⁸ There quickly followed another exchange of letters between the Forest Service and Pumice Company about delaying the costly preparation of the an EIS pending the outcome of the ongoing purchase negotiations and completion of the patent process. This led the Pumice Company to finally submit its request to patent the claims after which the Forest Service replied that "a hearing for validity is the next step."¹¹⁹

However, nothing seemed to happen and in May 1977, the Pumice Company once again requested information from the Forest Service about the preparation of the EIS. The Forest

¹¹² *U.S. Mulls Buying Rock Mesa Claims*, Albany Democrat-Herald, August 9, 1975.

¹¹³ Mining Contest Opinion p.10

¹¹⁴ *BLM Balking on Rock Mesa*, Earthwatch Oregon, August/September 1975.

¹¹⁵ *Forest Service Prodded for Rock Mesa Response*, Statesman Journal, July 26, 1976.

¹¹⁶ *Mining Report Release Asked*, The Capital Journal, August 3, 1976.

¹¹⁷ See *Rock Mesa: More Than a Pile of Pumice*, Bob Wazeka, Sierra, January/ February 1979

¹¹⁸ Mining Contest Opinion, p. 11.

¹¹⁹ Mining Contest Opinion p. 11 and 211, and *Mining Claims at Rock Mesa*, Earthwatch Oregon, December 1976.

Service replied that it was still waiting for the completion of the patenting process so that there could be further negotiations for the then patented claims prior to the preparation of an EIS. It further noted that it had not received a copy of the company's application to patent the claims from the BLM but that it would file for a validity determination with the BLM shortly. Congressman Jim Weaver met with the Chief of the Forest Service, John McGuire and was told that a mining contest would soon be filed and that expanded mineral entries will be prohibited. Weaver went on to say that such action was "a positive step toward settlement" and he hoped "the result will ensure that no mining will disturb the natural environment of Rock Mesa."¹²⁰ The complaint to initiate the mining contest was finally filed August 25, 1977, sixteen (16) years since the claims were first located in 1961.¹²¹

The Mining Contest – Finally - Let's Get Ready to Rumble

Now that the official administrative mining contest was filed there was finally a possibility that the validity of the claims could be determined and the dispute between the mining company, Forest Service and conservationists expeditiously settled. Until the validity of the claims was settled, Congress could not negotiate or compensate the mining company for the value of the valid claims, if any. But like everything else in this story, even this did not come easily or quickly. At a pre-hearing conference in June 1978, the conservationists¹²² filed a motion to intervene as full parties to the contest. Despite conservation group interventions in many other types administrative and court proceedings, the Judge denied their motion and would only permit them to participate as *amicus curiae* (Friends of the Court). While this permitted them to participate in a limited way it denied them the right to participate as full parties, including the right to present witnesses, cross examine other witnesses, appeal an adverse decision or most importantly participate in any settlement of the case. On appeal, the Interior Board of Land Appeals upheld the denial (37 IBLA 153, October 1978) and the conservationists decided to appeal this decision in Federal Court. Meanwhile the Judge held ten (10) days of hearings in Portland in October and November 1978 where the conservationists participated as *amicus curiae* under protest. The Forest Service and Pumice Company presented extensive and detailed evidence at the hearings. Conservationists were finally permitted to intervene as full parties in May 1979, (*Wilderness Society, et. al. v. Andrus*, Civil No. 79-0296 (DDC. May 30, 1979). They declined the opportunity to request reopening the hearing but did file briefs along with the other parties to conclude the contest proceedings in April 1980.

The Administrative Law Judge, Harvey C. Sweitzer, issued his decision on September 29, 1981 exactly twenty (20) years after the mining claims were filed. It is very comprehensive 230 - page decision that addresses all the factual and legal issues needed to determine which claims were valid under the Mining Act of 1872. The primary issues raised about the validity of the claims involved was whether they were properly located, marked and surveyed, and whether there was a profitable mineral discovery.¹²³ These issues had been present and raised to the Forest Service

¹²⁰ *Mining in Rock Mesa*, Earthwatch Oregon, February 1977.

¹²¹ *BLM Challenges U.S. Pumice Claims*, Earthwatch Oregon, October 1977.

¹²² The twelve (12) intervenors were: The Wilderness Society, McKenzie Flyfishers, Obsidians, Friends of the Three Sisters, Oakridge Audubon Society, McKenzie Guardians, Federation of Western Outdoor Clubs, Sierra Club, Northwest Environmental Defense Center, Oregon Student Public Interest Research Group (OSPIRG), Survival Center and Oregon Environmental Council (OEC).

¹²³ *Mining Contest Opinion*, pp. 11-15.

since 1963 by conservationists and the Oregon Congressional delegation in their concerted efforts to get them to contest the validity of the mining claims.

The Judge determined after a detailed analysis and evaluation of the conflicting geologic evidence presented that 54% of the claims were invalid (790 out of 1460 acres). Comparing the list of claims the Forest Service contested as invalid with those claims invalidated by the Judge shows that with only a few exceptions those who pressed the Forest Service to challenge the validity of the claims were right.

The central question about the validity of the claims was whether there was an adequate quantity and quality of a bulk pumice that could be profitably marketed. If this was demonstrated, then there was a valid mineral discovery. To do so, the Forest Service and conservationists argued that the costs of compliance with the Oregon environmental rules had to be considered. The Judge agreed that the Oregon rules “do not unreasonably regulate mining of the Hermana claims” and the company’s costs to comply had to be considered in evaluating their legal validity.¹²⁴ The record also included the finding by the Forest Service geologist Leslie Richards that such compliance meant that the “pumice deposit could not be mined profitably.” He also did not believe that such compliance could “invalidate an otherwise valid mining claim.”¹²⁵

Despite these determinations, the Judge frankly ducked these issues. He deferred his review because he believed that the effect of the Oregon rules on the company’s costs of operation could not be determined until the Forest Service approved an operating plan for the mine. But the company could not turn in an operating plan until they had a valid mineral discovery which of course required a determination of what the costs of compliance with the Oregon regulations would be. The Judge also ducked deciding if these Oregon regulations could invalidate valid claims because they were preempted by other Federal or constitutional law issues.¹²⁶ So around and around it went. The “Catch 22” of “Catch 22’s.”

Reaction and Resistance

While a vindication of their long campaign and effort to pressure the Forest Service to reevaluate and contest the claims neither the conservation community or OSPIRG considered the decision a complete victory. No one focused on the 54% of the claims that were invalidated but rather the remaining 670 acres that were found to be valid and that could still be mined. The Three Sisters Wilderness remained in harm’s way. The reaction from the conservation community, Congressional delegation and Oregon press was swift and outraged. Joe Walicki of the Wilderness Society stated: “Without a doubt, I can tell you the environmentalists will go to court.”¹²⁷ Thirteen (13) groups headed by the Friends of the Three Sisters Wilderness quickly filed their appeal followed shortly by the Forest Service and Pumice Company.¹²⁸

¹²⁴ Mining Contest Opinion, p. 154.

¹²⁵ Ibid. p.10.

¹²⁶ Ibid. p. 156 and 220-222.

¹²⁷ *3 Sisters Claims Upheld*, Gordon Todd for the Statesman Journal, October 9, 1981.

¹²⁸ *Pumice Mining Faces Appeal* Statesman Journal, October 28, 1981 and *Forest Service and Company Plan to Appeal*, Statesman Journal, November 11, 1981.

Newspapers statewide reported on the renewal of the controversy. The *Salem Statesman Journal* wrote: “Every legal process should be involved to keep this from happening, including another attempt by Senators Mark Hatfield and Bob Packwood to get Congress to prohibit the pumice mining, while compensating U.S. Pumice Company, if it has a valid legal claim.” The *Journal* noted that now they were Chairmen of powerful Senate Committees and Representative Aspinall is gone. In Churchillian prose, Jon Kemp made clear the conservationist’s resolve to not give up: “We will appeal the Judge’s decision, we will take the case to federal courts, we will seek legislative action from state and federal governments, we will camp in front of bulldozers.” And Sierra Club attorney, Buck Parker said “we will do everything we can do to protect it.”¹²⁹ The *Eugene Register Guard* and Portland *Oregonian* both editorialized against further mining.¹³⁰

Then to everyone’s surprise and against the urgings of Senators Hatfield and Packwood, the Forest Service changed its mind and dropped the appeal. Conservationists were stunned and made clear that they were pressuring Senators Hatfield and Packwood for legislation. “We want a bill that will buy out those claims,” said Ronald Eber, Chair of the Oregon Sierra Club Chapter. “If anybody can do it, Hatfield can.”¹³¹ The Forest Service’s Carlin Jackson said that after further review that there was “no reasonable basis for appeal, no reasonable chance of success.” But political pressure from the new development-oriented Reagan administration was suspected. “The legal issues are the same now as they were in the original challenge said Andy Kerr of the Oregon Wilderness Coalition. “We see this as a reaction to the change of administrations. It obviously shows that congressional action is necessary.”¹³²

De Ja Vu All Over Again

Conservationists had to effectively begin the campaign to block the mining all over again because it had dragged out for 20 years. New attorneys had to be located and hired, group members had to be reminded about the details and need for action and funds had to be raised to pay for all this. Longtime activists in Eugene, Jon Kemp, Holly Jones and Dick Noyes began to work with the leaders of the Oregon Wilderness Coalition (OWC) to prepare a public information and fundraising campaign. The OWC sent out an issue update and appeal for funds to its members and summarized the campaigns needs well: “The Rock Mesa struggle is on two fronts. First, we must continue our legal challenge to the validity of the claims.” “Ultimately, however, the issue will be won in Congress. We must conduct an aggressive public education campaign and convince Oregonians of the immediate threats to Oregon’s heritage. This effort must culminate in legislation introduced by Oregon’s Senate and House delegation and passed by Congress.”¹³³

Meanwhile the Sierra Club Chapter worked to find a new attorney to carry on the appeal since Frank Barry had retired. Jeffery P. Foote with the Law Office of John Haugh was retained to

¹²⁹ *Rock Mesa – Longstanding Controversy over Wilderness Minerals may be Decided without Considering Environment*, Gordon Todd for Statesman Journal, November 8, 1981.

¹³⁰ *Rock Mesa Fight Must Go On*, Eugene Register Guard, December 5, 1981 and *Don’t Strip Mine for Bunion Buffers*, Portland Oregonian, December 9, 1981.

¹³¹ *Forest Service Gives in on Rock Mesa Verdict*, Statesman Journal, December 2, 1981.

¹³² *Service Drops Wilderness Suit*, Oregon Journal, December 3, 1981.

¹³³ OWC mailing to its members dated February 3, 1982.

handle the appeal. Jeff was also a vice president of Friends of the Earth. He was assisted by Ben Fetherston, Jr. and Gail Achterman a leading expert on mining law.¹³⁴ Briefs were filed and focused on how the Judge's decision did not adequately consider the full costs to comply with Oregon's environmental regulations when deciding whether there was a valid mineral discovery.¹³⁵ Essentially the issues the Judge had avoided. But the appeal was really just a holding action until funds from Congress could be secured to buy them.

With the appeal filed, a new campaign began to convince the Congressional delegation and especially Senator Hatfield and Representative Les AuCoin (both on their respective Appropriations Committees) to secure adequate funding to finally buy up the valid claims. This was especially important on the House side since many of the members from Oregon were new to this controversy. Veteran members Les AuCoin and Jim Weaver along with newly elected Ron Wyden were all strong and active supporters. Only conservative Representative Denny Smith opposed the need to buy the claims at this time because of the Federal budget deficit.¹³⁶ Fortunately, both the Sierra Club and Wilderness Society had lobbyists in Washington D.C. who could press the case directly with Oregon's Congressional delegation and other key members for the volunteer leaders and other local groups back home.¹³⁷

A new brochure was prepared by the coalition of conservation groups making the appeal and Don Hunter resurrected his slide show from 1971 to reeducate and motivate the next generation about the fight to protect the Three Sisters Wilderness. His shows were viewed at the Sunriver and Inn at 7th Mountain resorts near Bend. During the Summer of 1982, the Friends of the Three Sisters Wilderness and Obsidians organized a "hike-in" along the Pacific Crest Trail to raise funds for the ongoing appeal.

Once the Forest Service dropped out of the appeal conservationists urged them to negotiate with the Pumice Company to resolve the controversy. But the Forest Service once again delayed doing anything and wanted to await the resolution of the appeal. Only after the appeal was decided and the Pumice Company submitted a proposed operating plan could they determine whether an economical mining operation under state environmental regulations could be approved. However, it was the conservationists' position that the costs to comply with state environmental regulations was a primary factor in determining whether an economical mining operation could be conducted in the first place. These costs needed to be evaluated before there was a valid mineral discovery and not afterwards.

Further, the Forest Service did not believe it was appropriate to get an appraisal until after the appeal was settled. They did not want to evaluate the value of or purchase "unpatented claims" since they could be refiled afterwards. This of course was not what the conservationists wanted or requested and ignored the fact that the Rock Mesa area had already been withdrawn from any

¹³⁴ Gail Achterman was with another law firm and could not take the lead on the case herself. Gail later was the Natural Resource Advisor to Oregon Governor Neil Goldschmidt from 1987 to 1991. Gail received numerous awards, including the Richard Neuberger Award from the Oregon Environmental Council.

¹³⁵ Intervenor's Statement of Reasons, IBLA 82-146 dated February 1, 1982.

¹³⁶ Letter from Representative Denny Smith to Ronald Eber, Oregon Sierra Club, February 26, 1982

¹³⁷ The Sierra Club had Jim Mahoney in Washington D.C. and Jim Blomquist its NW Representative in Seattle and the Wilderness Society had Charles Clusen in Washington D.C. and Jean Durning its NW Representative in Seattle.

further mining claims back in 1972 and renewed in 1976 and 1979.¹³⁸ Conservationists wanted them to appraise the “670 acres of pumice claims determined patentable by Judge Sweitzer” and that “this should be done in consultation with the U.S. Pumice Company and agreement reached so that legislation can be pursued.”¹³⁹

The Forest Service continued to believe they could manage the conflict between mining and wilderness protection and once again put off doing the work needed to help resolve the conflict. Richard Worthington, Regional Forester, told Ronald Eber that the Forest Service “will be hard to deal with” regarding access to Rock Mesa for any mining. But there was no need to wait for a request for access or further environmental studies since both the conservationists and Pumice Company were prepared to have the remaining claims purchased by Congress. The Forest Service’s “wait and see” attitude was now a clear impediment to any resolution of the conflict. Clearly the conservationists and pumice company were going to have to resolve this matter on their own and not expect the Forest Service to help.

Oregon Reconsiders Joining the Appeal

In early 1982, the City of Bend and a group of concerned citizens from Central Oregon requested the Oregon EQC again familiarize itself about the Rock Mesa controversy since it could come before it in the coming year if the appeal or other efforts to block the proposed mine failed. Director William (Bill) Young briefed the Commission in June and informed them that he intended to discuss the matter with the Governor’s office “to determine if and how the State of Oregon should involve itself.” About the same time, Ronald Eber had occasion to meet with Bill Young at the Capitol in Salem in the course of his work.¹⁴⁰ He informed Bill that while the conservationists appreciated his interest in the mining controversy, the real aim of the appeal was a holding action until Congress could appropriate funds to buy any valid claims. Bill replied that the legal fight should continue and no money paid to the pumice company. Ron Eber told him that if he was willing to raise the significant funds needed to continue the litigation or work on any remand, then that would be fine but otherwise they were going to pursue an aggressive legislative campaign. At that point, the conversation ended.¹⁴¹ The EQC did not intervene in the conservationist’s appeal.¹⁴²

Resolve and Resolution

¹³⁸ Letter from Ronald Eber, Oregon Sierra Club for Rock Mesa Appellants to Richard Worthington, Regional Forester, December 14, 1981 and reply by Jeff Sirmon, Regional Forester to Ronald Eber, Oregon Sierra Club, February 8, 1982.

¹³⁹ Letter from Ronald Eber, Oregon Sierra Club for Rock Mesa Appellants to Richard Worthington, Regional Forester, December 14, 1981.

¹⁴⁰ Mr. Eber (the author) was a Rural Lands Policy Specialist for the Oregon Land Conservation and Development Commission from 1976 to 2008.

¹⁴¹ Author’s memory of conversation at that time.

¹⁴² The reasons for this are not known by the author; however, it is well known that Governor Atiyeh was not a strong supporter of wilderness protection, the state’s land use program or environmental regulations and took a lax approach to them. This cannot be determined without an examination of the Governor’s files or those of EQC at the Oregon State Archives.

It was now clear that the conservationists and pumice company were going to have to work out a way to get Congress to support buying any valid claims and to resolve the controversy. The State of Oregon was not going to get involved at this point and the Forest Service was not going to get more involved until the appeal was resolved and a plan was submitted by the pumice company. Thus, the attorneys for the pumice company and the conservationists began meeting to explore ways to resolve the controversy. Jeff Foote represented the conservationists and Wendell Wyatt (former Oregon congressman) now represented the U.S. Pumice Company.

First, they worked together to support the efforts of the Congressional delegation to provide the funds need to buy the claims. A letter was sent to the Oregon delegation by all the conservation organizations which recognized that “the most certain way to resolve the controversy and avoid mining activities in this fragile area, would be for the Federal Government to acquire all of the interests, if any, of the U.S. Pumice Company in Rock Mesa. Accordingly, we support Congressional or other governmental action to acquire at a fair and reasonable price, all legally established interests of the U.S. Pumice Company.”¹⁴³ The U.S. Pumice Company conveyed a similar message and their attorney Wendell Wyatt made several trips to Washington to work on the appropriation.

The response from the delegation was positive.¹⁴⁴ In addition, Senator Hatfield responded that he was looking “carefully at the possibilities for funding through the Land and Water Conservation in the FY 1983 budget.” He also indicated that funds were “extremely limited” under the Reagan Administration.¹⁴⁵ In contrast, the Forest Service still indicated that it wanted to wait for a decision on the appeal and continued to resist the purchase of “unpatented mining claims.”¹⁴⁶ However, Senator Hatfield and Representative AuCoin were not willing to wait any longer. AuCoin got an amendment into the House bill and it passed the House smoothly and Senator Hatfield ensured that it was retained in the Senate bill and in Conference.¹⁴⁷ Thus they succeeded in getting the funds needed for the purchase of the claims at Rock Mesa into the Interior Appropriation Budget bill.¹⁴⁸ The 1982 Lame Duck Congressional session finally approved the Interior Appropriations bill with \$2 million dollars designated for the purchase of the “patented claims” in the Three Sisters Wilderness.¹⁴⁹ Victory was in sight but what appeared close and easy to finalize was still going to be a challenge to accomplish.

The Devil in the Details

¹⁴³ Letter from Jeffery Foote on behalf of all Appellant conservation groups to each member of the Oregon Congressional Delegation dated July 13, 1982

¹⁴⁴ See letters from Representative Wyden, July 28, 1982 and Senator Hatfield, August 25, 1982 both to Jeffery Foote. Representative Deny Smith continued his opposition, letter to Jeffery Foote dated July 15, 1982.

¹⁴⁵ Letters from Senator Hatfield to Jeffery Foote, August 25, 1982.

¹⁴⁶ Letter from Max Peterson, Chief of the Forest Service to Wendell Wyatt, September 21, 1982.

¹⁴⁷ Personal communication with Les AuCoin to author July 20, 2020.

¹⁴⁸ Letters from Jeff Foote to Ronald Eber dated November 12, 1982 and December 2, 1982.

¹⁴⁹ Amendment No. 98 in the Conference Report for HR 7356, *Making Appropriations for the Department of Interior and related Agencies for Fiscal Year Ending September 17, 1982* and *Victory and Promise*, Chair’s Report by Ron Eber, Oregon Conifer, February 1983.

Now that Congress had approved the funds it was time to close the deal. The Forest Service finally agreed to conduct an appraisal “to make sure they can justify the expense” based on the assumption that the appeal will be dismissed. This had been requested much earlier by the conservationists but the Forest Service moves slowly. Once the appraisal was complete and the Forest Service determined they could spend the money (never mind the Congressional appropriation) it was necessary for the parties to agree on the procedures needed to dismiss the appeal, patent the claims (i.e. transfer their ownership to the pumice company) and then repurchase the claims in a simultaneous fashion. Attorneys for the conservationists and the pumice company planned to meet without the Forest Service and develop a process that protected all parties.¹⁵⁰

What transpired next was a very carefully crafted step by step process with reciprocal confidence building steps between the parties to resolve the conflict. The first step was to stay the appeal while an impartial appraisal was conducted by an individual agreed to by the pumice company and the Forest Service. It was understood that as long as it appraised at \$2 million or above the U.S. Pumice Company would accept this amount as long as the Forest Service did so as well. If it did not, then all commitments and agreements were off.¹⁵¹ Based on this commitment, the parties agreed to Stay the appeal.¹⁵² While waiting for the appraisal, the conservationists continued their fund-raising efforts in the event any problems arose. This time made it possible to pay their legal fees which were generously discounted by Jeffery Foote.

The appraisal was completed by May and valued the claims at \$2,500,000 which was an amount agreed to by both the pumice company and Forest Service (Region 6 and Washington offices).¹⁵³ The next and final steps involved how to patent the claims, and repurchase the claims by the United States. The Bureau of Land Management (BLM) that handles the patent process said it would take about a month to prepare the patent deeds once the appeal was dismissed.¹⁵⁴ However, the conservationists did not want to drop the appeal only to have some bureaucratic snafu delay or scuttle the purchase of the claims or possibly the pumice company would change its mind. The appeal was all the leverage conservationists had to ensure the purchase and sale was completed and assurance that the deal would occur.

The assurances were provided. At the request of the Pumice Company, the Forest Service and BLM agreed to provide a letter to the conservationists outlining their intentions to transfer the claims, complete the payment and repurchase them. Next the conservationists and pumice company agreed to have the appeal documents returned to the Portland BLM office so that they could prepare the patent documents. Once the documents were ready and the deeds prepared in a form acceptable to the Forest Service along with a letter from the Forest Service agreeing to buy these claims upon the issuance of the patent, the conservationists would agree to dismiss the

¹⁵⁰ Letter from Jeffery Foote to Ron Eber, Oregon Sierra Club, January 6, 1983.

¹⁵¹ Letter from Wendell Wyatt to Jeffery Foote, February 1, 1983.

¹⁵² *Motion to Stay Appeal Granted*, United States v. United States Pumice Co., IBLA 82-146, February 8, 1983.

¹⁵³ Letter from Jeffery Foote to Ron Eber, Oregon Sierra Club, May 19, 1983 and Wendell Wyatt to Jeffery Foote, June 8, 1983.

¹⁵⁴ *Ibid.* Wyatt to Foote, June 8, 1983.

appeal.¹⁵⁵ All the letters were received clearly committing the pumice company to sell the patented claims back to the United States of America and the Forest Service's acceptance to purchase them for the agreed to price of \$ 2 million dollars.¹⁵⁶ U. S. Pumice agreed to sell the patented claims back to the United States of America on July 15, 1983, and on July 19, 1983. The Interior Department of Land Appeals dismissed the conservationists' appeal in *United States v. U. S. Pumice Company*, IBLA 82-146 based on the parties stipulated motion that issues between them were resolved.¹⁵⁷ The Bureau of Land Management issued the patents for the mining claims to the U.S. Pumice Company on July 22, 1983.¹⁵⁸ This initiated the agreed upon transfer of the valid claims and for the preparation of the deeds for the return sale to the United States. Would they complete the deal? Everyone held their breath.

The Wilderness Made Whole

Finally, on July 26, 1983, the wholeness and integrity of the Three Sisters Wilderness was assured by the routine and mundane recoding of the patent documents and deeds transferring the valid mining claims to and from the U. S. Pumice Company and the United States in Deschutes and Lane Counties.¹⁵⁹ Senator Hatfield and Congressman Les AuCoin issued a joint statement announcing the successful completion of the purchase and the blocking of any pumice mining at Rock Mesa in the Three Sisters Wilderness. "To have allowed the mining of Rock Mesa to take place would have resulted in a degradation of the Three Sisters Wilderness – one of our nation's most scenic wilderness preserves – and would have violated the spirit, if not, the letter of the law," AuCoin said. Senator Hatfield added that "mining of pumice in one of the nation's most treasured wilderness areas would have made a mockery of the wilderness system." Holly Jones a longtime wilderness leader and Vice Chair of the Oregon chapter of the Sierra Club noted that "this is a great moment for conservation and the protection of wilderness in Oregon. It culminates 20 years of persistence and dedication by concerned conservationists to have final protection for the Three Sisters Wilderness."¹⁶⁰ The frontpage headline in the Eugene Register Guard with a full-page photo of Rock Mesa below the South Sister said it all: "Rock Mesa Saved from Mining – Forest Service Acquires Deeds, Ends Long Fight."¹⁶¹

The Sierra Club and other groups thanked the Oregon Congressional delegation for all their hard work to protect the Three Sisters Wilderness from mining. Andy Kerr for the OWC praised Congressmen Les AuCoin and Jim Weaver as well as Senator Hatfield for their work to get the

¹⁵⁵ *Stipulated Motion to Return Documents to the Oregon Office of the BLM*, *United States v. U.S. Pumice Company*, IBLA 82-146, June 14, 1983.

¹⁵⁶ Letter from Wendell Wyatt to Jeffery Foote, June 15, 1983 and Letter from Carlin Jackson, Forest Service Director of Lands and Minerals to Wendell Wyatt with copy to Jeffery Foote, June 22, 1983.

¹⁵⁷ *Stipulated Motion to Dismiss Appeal and Dismissal Orders*, *United States v. U.S. Pumice Company*, IBLA 82-146, July 15 and 19, 1983.

¹⁵⁸ Patent Order from United States of America to U.S. Pumice Company No. 36-83-0015, July 22, 1983.

¹⁵⁹ Patent No. 36-83-0015 recorded in Deschutes County (# 83-12236) on July 26, 1983 at 10:57 AM immediately followed by the Warranty and Quit Claim Deed (# 83-12237) both Vol. 21, pages 153-177 and then certified copies of both Patent and Deeds recorded in Lane County (# 8325953) and (# 8325954), Reel 1255 R.

¹⁶⁰ *Oregon's Rock Mesa Saved*, Eugene Register Guard and Statement from Senator Mark Hatfield's office both dated July 26, 1983

¹⁶¹ Eugene Register Guard, July 27, 1983 and also see *Rock Mesa Safe at Last*, Oregonian, July 29, 1983.

legislation passed. Senator Packwood, long a champion to protect Rock Mesa, made clear that “the Oregon Chapter of the Sierra Club was instrumental in the fight to preserve this unique geological area.” Finally, it must be noted that much of the credit for bringing this matter to a close, goes to the two attorneys who worked out all the procedural details needed to resolve this longstanding controversy. Wendell Wyatt for the U.S. Pumice Company praised Jeffery Foote for his cooperation and the great job he did for his clients. He noted that it “was difficult for both sides to do it” and still protect their clients’ interests. Jeffery Foote credited Wendell Wyatt for being able to quietly and efficiently get the matter resolved. “Your hard work in Washington and at home in fashioning this compromise and selling it to the powers that be is very much appreciated by my clients and myself.” Because our very limited budgets, “there is simply no way we could have accomplished anything in Washington without your leadership.”¹⁶²

The Long, Winding and Rocky Road to Success

Twenty years is a long time to engage the public in order to sustain a conservation campaign. Its success was a testament to the dedication of all those involved. Between 1961 and 1983 major new environmental laws took effect that changed the awareness of elected officials, public opinion and concerned citizens. Nationally and especially in Oregon this affected the course of this controversy. The overlap and mix of these significant changes luckily put the right people in the right place at the right time to resolve this controversy.

It began before the passage of the Wilderness Act or the National Environmental Policy (NEPA) Act. Earth Day inspired the environmental movement and increased public support for conservation and environmental issues that made possible the concerted campaign to protect the Three Sisters Wilderness from an open pit pumice mine. This in turn required the Forest Service to change. Most significantly their decision-making culture was dramatically altered. In 1961, they only administered the antiquated Mining Act of 1872 subject to their sole discretion under the Multiple Use Sustained Yield (MUSY) Act of 1960. The Forest Service got to balance any competing resource values and determine what was in the public interest. Public participation was not encouraged or appreciated. The passage of new environmental laws and the public’s increased interest and demand to participate in and sometimes appeal or legally contest resource management decisions was a real challenge to the agency.

The conservation community evolved from small local clubs of outdoor enthusiasts and back packers to larger national and statewide organizations with more youthful environmental activists willing to challenge the quiet diplomacy of the traditional groups. As the law changed and new legal precedents established, new tactics and organizing techniques were developed to conduct the public campaigns needed to protect the wilderness and other environmental values. Despite these changes, many of the early activists remained involved in this controversy and provided guidance to the activists who became involved later. These early leaders were Jon Kemp of the Friends of the Three Sisters Wilderness and Richard (Dick) Noyes and Holly Jones of the Sierra Club who remained active for the duration of the twenty-year campaign. Those mentored by these seasoned activists have been mentioned throughout this story.

¹⁶² Letters between Wendell Wyatt and Jeffery Foote, August 1 and 2, 1983.

Finally, the political composition of the U.S. Congress and the Oregon delegation changed dramatically. The most important change in the Congress was the retirement of Representative Wayne Aspinall the pro mining Chairman of the House Interior and Insular Affairs Committee. Aspinall was the architect of the deal that permitted the Wilderness Act to pass as long as it continued to permit mining. This “compromise” gave birth to this controversy in the first place. He was shortly followed by Mo Udall who strongly opposed strip mining and supported wilderness preservation.

For Oregon, there were four Senators (Morse, Neuberger, Hatfield and Packwood) and nine different Representatives (Aucoin, Dellenback, Duncan, Green, Smith, Ullman, Weaver, Wyatt and Wyden). Their terms overlapped so that they were there at both active and inactive times of the controversy. Fortunately, key members who supported protecting the Three Sisters were there during those times when needed. These primarily were Senators Packwood and Hatfield and Representatives AuCoin, Ullman, Weaver, Wyatt and Wyden. While the key members were all very supportive of protecting the Three Sisters, their political affiliations and philosophies challenged their abilities to influence the Forest Service and find a viable solution between the mining company and conservationists. However, at the key moment in 1981 when the validity of the claims was settled by the administrative mining contest, Senator Mark Hatfield was now Chair of the powerful Senate Appropriations Committee and Representative Les AuCoin was a member of the House Committee and most importantly on its Interior Subcommittee. Together with the almost unified support of the rest of the Oregon Congressional delegation they were able to secure the funds needed to buy the valid claims and finally end the controversy. This effort was also greatly aided by the legal counsel for the U.S. Pumice Company, former Representative Wendell Wyatt who used his political experience to help pass the legislative appropriation.

One thing that did not change during the twenty years was the unwillingness of the U.S. mining industry or the U.S. Pumice Company to communicate with the public, conservation community or speak to the press. The American Mining Congress (AMC) also did not cooperate despite warnings from the Chief of the Forest Service that this was a “radically different age.” He urged them to “take the public into your confidence, keep them informed and involved” because “mining in wilderness is going to take all the skill, technology and ingenuity that we can bring to bear on it.”¹⁶³ The AMC saw any legislative solution as a defeat that would set a dangerous precedent. Such precedents would only lead to more conflicts, controversy and Congressional battles. They won their compromise that permitted mining to continue in wilderness areas and they were not willing to give that up as long as they had the power in Congress to block any such deals or even compensation.

The U.S. Pumice Company, while cooperating with the Forest Service in order to curry their favor, consistently refused to answer repeated requests for information from the Oregon press corp., provide any information about their plans or operation in California and either withheld such information or did not permit the Forest Service to release any information to the public or press. The Forest Service bowed to the request of the company’s President, Mr. Wayne T. Miles

¹⁶³ Presentation of Forest Service Chief Edward P. Cliff to the American Mining Congress conference *Mining and the National Forests*, San Francisco, October 22, 1969.

to withhold any information from the press and conservation groups because it “could lead to only a more unfavorable image of his mining companies.”¹⁶⁴ They had their claims and were prepared to defend them. They resented the public’s interest and concern about their mining plans. Only when they lost half of their claims in the Mining Contest, did they decide as they say: *to take the money and run*.

Lessons Learned

What lessons are there that can be applied to future campaigns based on the twenty years of political and legal battles to block an open pit pumice mine in the Three Sisters Wilderness? Two major tactical concepts stand out. Each of these supported the other and were applied as events unfolded during the campaign. There had to be public pressure on the Forest Service to block the pumice mine including possible legal action until a legislative solution was possible. Each of these tactics had to be used at different times or simultaneously given the issues currently before the Forest Service and the prospects for a political solution.

Endless Pressure – Endlessly Applied - Endlessly

Brock Evans always advised local conservationists that success in protecting wilderness resources or blocking destructive development activities required “endless pressure – endlessly applied.” Looking at the twenty (20) year duration of the Rock Mesa campaign, Brock’s mantra proved prophetic. Clearly the pressure needed to be applied endlessly. Starting when the conservationists learned about the threat of mining in the Three Sisters Wilderness, they began to apply pressure on the Forest Service to evaluate the claims and protect the wilderness. Initially Mike McCloskey attempted to appeal the first decision to validate the claims. Although the appeal was unsuccessful, it served to publicize the issue and serve notice that the conservationists were serious in their opposition. Continuous pressure was needed to get the large bureaucratic Forest Service to respond to Congress, the conservationists and act in the public interest given the inherent conflict between in the Wilderness and Mining Acts.

Buying Time

Over the years it became fashionable and effective to challenge mining claims and other environmental threats in administrative appeals or in court. But Doug Scott always warned that “lawsuits don’t win you anything – they just buy you time.” No matter what the agency or court says the law means, you will have to defend that interpretation in the legislative arena. If you can’t defend it, the development forces will just change the law or bleed you dry in further proceedings. Doug reminded Oregon groups that the court challenges to the validity of the mining claims could provide the time needed to secure the funds from Congress to buy the claims. As this campaign demonstrated, time was needed to succeed. Clearly endless pressure was required to get the Forest Service to initiate a mining contest and strategic appeals provided the time needed to gain support for the final legislative solution.

¹⁶⁴ Senate Hearing Record, pp. 11-15.

Faith – Hope – Charity

The widespread public and political support for the Three Sisters Wilderness for over twenty years was unprecedented. The threat and the fear of losing the integrity of the area was real. Success was not foreordained. To sustain this campaign required a great deal of faith and hope by the conservation community. Many if not most of those who opposed the pumice mine and fought to protect the Three Sisters Wilderness simply could not let it be destroyed even though they had never been there or to Rock Mesa (including the author).¹⁶⁵ It was important to know it was still there and part of our “geography of hope.”¹⁶⁶

Pressure and time can yield diamonds and in public campaigns it can lead to success as it did here. The sacred and precious Three Sisters Wilderness in Oregon remains whole. The conservation community would not permit its destruction by a pumice mine at Rock Mesa. Twenty years of commitment and dedication made possible the endless pressure needed to succeed. Faith in wilderness – Hope for Success and Congressional Charity saved the Three Sisters Wilderness.

Acknowledgements

The author thanks the many friends and colleagues who were not only participants in the Rock Mesa campaign but provided valuable insights into their work and took the time to review and offer comments and suggestions for this history. These include Larry Williams, Michael McCloskey, Brock Evans, Dough Scott, Roger Mellem, Jim Blomquist, Joe Walicki, Gary Tepfer, Jeffrey Kleinman, Frederick J. Swanson, Andy Kerr, Jeffery P. Foote and Ben Fetherston, Jr. John D. Leshy, Emeritus Professor, Hastings College of the Law, University of California provided valuable insights into the workings of the Mining Act of 1872 and its relationship to the Wilderness Act. Lane County Commissioner, Peter Sorenson and Peggy Good in the Clerk’s Office who helped to locate the critical and previously unseen deed records that documented the patent and sale of the mining claims to and from the United States public domain. Peter also provided his insights when working as an assistant to former Congressman Jim Weaver.¹⁶⁷ I am also indebted to the review and comments from former Congressman Les AuCoin and Senator Bob Packwood who both provided critical support to the campaign and to its successful resolution in 1983. Zane Smith, graciously provided comments on the reactions he had as the former Supervisor of the Willamette National Forest. Finally, I want to extend my very grateful thanks to Adam M. Soward, Professor of History, University of Idaho, who took

¹⁶⁵ During the campaign to protect Rock Mesa, I had not visited that specific area of the Three Sisters Wilderness. In 2004 I was able to do so. I went camping with my son David to finally see the place I fought to protect. Hiking in, we met the USPS Wilderness Ranger who wanted to see our permits and find out more about our trip and why we chose this area to visit and camp out. I told him that we came because of my involvement to get the claims purchased in 1983. He said he had heard of this controversy but did not know if the claims had actually been purchased. I assured him they were and the idea for this manuscript was born.

¹⁶⁶ The “Wilderness Letter” from Wallace Stegner to Outdoor Recreation Resources Review Commission, December 3, 1960.

¹⁶⁷ In a note to the author about his work on the Rock Mesa issue, Jim Weaver explained that he was deeply involved in protecting Oregon wilderness and French Pete but much less with Rock Mesa. He goes onto say: “All my colleagues were the reverse – the tough issues they ducked. Rock Mesa (a motherhood deal) they jumped on.” Letter from Jim Weaver to Ron Eber, January 2012.

the time to review and comment on my drafts and provide important insights on the campaign based on his scholarship and book about the similar mining controversy at Miners Ridge in the Glacier Peak Wilderness area.

Sources

Explanatory Note

This history is primarily based on the Oregon Sierra Club Files of Ronald Eber (author) who as Chapter Chair in 1981 to 1983 coordinated the Club's and Oregon Conservation Community's response to the mining contest decision, its appeal and the effort to get funding from Congress that ensured the purchase of the mining claims at Rock Mesa. These files include the author's correspondence, legal briefs and memos, Mining Contest Opinion, news clips cited from 1963 to 1983, OEC Earthwatch, Sierra Club Conifer and Group newsletter articles, items copied from the OEC files at the Oregon Historical Society in Portland, the files Dick Noyes and Holly Jones provided to the author in 1981 and other misc. documents and notes. These will comprise a distinct set of files at the Oregon Chapter archive at Special Collections – Knight Library at the University of Oregon.

Archival Collections

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Sources for Further Research

Due to the closure of research libraries and limited access during the Covid-19 pandemic of 2020, some archival sources were not available to the author but could yield further details for sections of this story. These are:

1. Brock Evans Papers, Special Collections, University of Washington, Seattle especially the files and papers of Michael McCloskey that are part of this collection. They include many files regarding the Rock Mesa controversy while he was the Sierra Club's PNW Regional Representative and his work with the Friends of the Three Sisters.
2. Holly Jones Papers, Special Collections, University of Oregon, Eugene which include his files for these events from when he was a Sierra Club leader in Oregon. There are also records for the original PNW Chapter of the Sierra Club included with his papers.
3. Sierra Club Northwest Office Records. Special Collections, University of Washington, Seattle
4. Forest Service records and files for the Deschutes & Willamette National Forests, Region 6 records and national records of the Chief's office with respect to the many meetings and internal communications about this controversy between 1961 and 1983.

Photos & Documents

Rock Mesa



Looking down from South Sister

Photo by Don Hunter



Photo by Joe Walicki

NW Sierra Club Representatives Who Worked on Rock Mesa Campaign – 2010

Mike McCloskey – Brock Evans – Roger Mellem – Doug Scott – Jim Blomquist

S. 1784

IN THE SENATE OF THE UNITED STATES

MAY 6, 1971

Mr. PACKWOOD introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

Relating to mineral resources in lands comprising the Three Sisters Wilderness, Oregon.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That on and after the date of the enactment of this Act, all
4 federally owned mineral deposits in non-Federal lands, and
5 all mineral deposits in any federally owned lands, within the
6 exterior boundaries of the Three Sisters Wilderness, Oregon,
7 are withdrawn from all forms of appropriation under the
8 mining laws of the United States and from disposition under
9 all laws of the United States relating to exploration, location,
10 development, leasing, mining, processing, or other utilization
11 of mineral resources.

II

Senate Hearings on S 1784 - 1971



Brock Evans – Doug Scott – Roger Mellem – Larry Williams

THE OUTDOOR PROGRAM

Presents

A COMMUNITY HAPPENING:

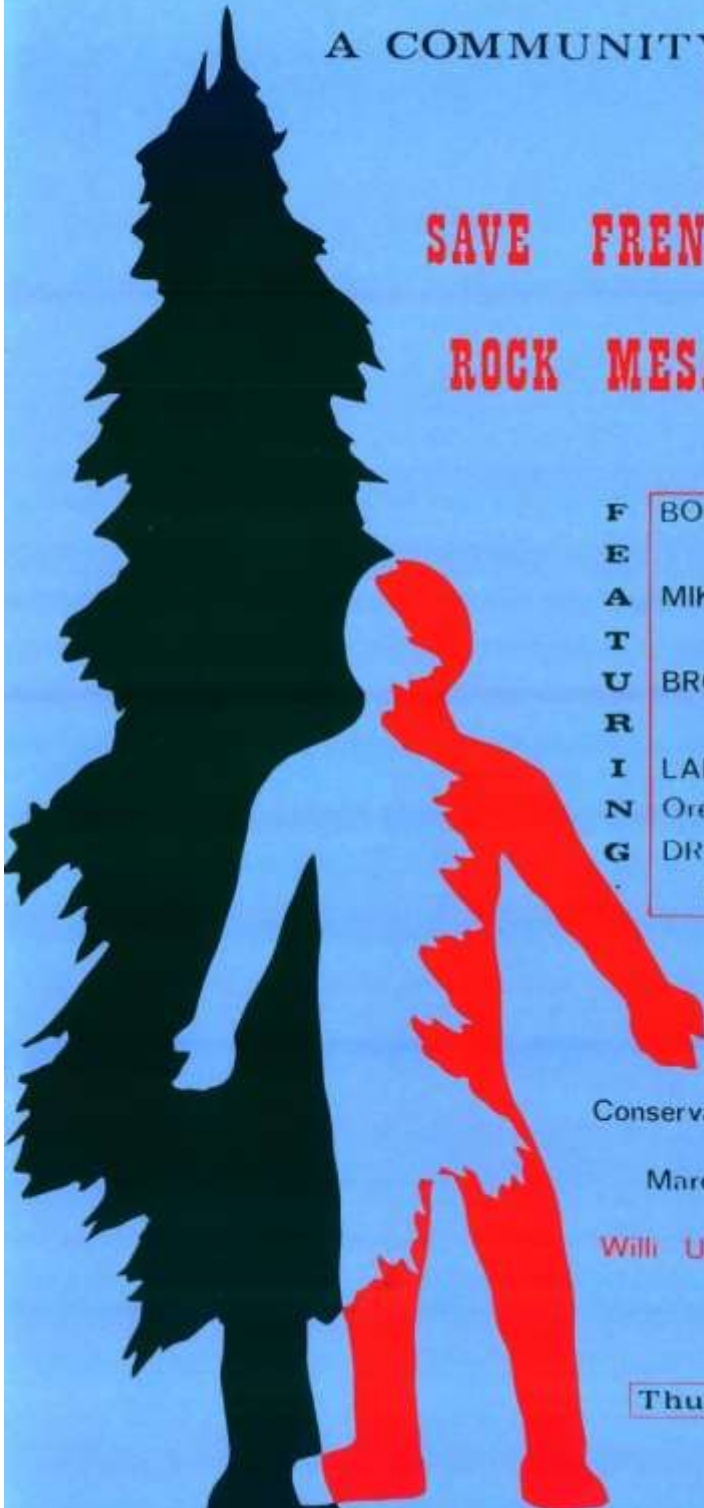
THE SECOND
ANNIVERSARY

SAVE FRENCH PETE RALLY
and
ROCK MESA PRESERVATION
MARCH

F BOB PACKWOOD
E U.S. Senator
A MIKE McCLOSKEY
T Sierra Club, San Francisco
U BROCK EVANS
R Sierra Club, Seattle
I LARRY WILLIAMS
N Oregon Environmental Council
G DR WILLI UNSOELD
1963 Mt Everest Expedition

- 1:30
Conservation Panel EMU Ballroom
- 3:00
March Begins In Front Of EMU
7:30 -
Willi Unsoeld Speech 150 St

Thursday, November 18, 1971



Rock Mesa Campaign Brochure – 1982

History of the Rock Mesa caper

- 1960—Ten placer claims were filed on 1460 acres encompassing the entire Mesa and about 365 acres on Wickiup Plain.
- 1962—U.S. Pumice Co. purchased the claims from the locators.
- 1971—Senator Bob Packwood introduced two bills banning mining in the Wilderness. The bills died in committee.
—The Oregon State Department of Environmental Quality established environmental standards for Wilderness areas prohibiting pollution of air and water and limiting noise.
- 1972—University of Oregon researchers studied the pumice deposits on the Mesa and concluded the claims to be economically invalid.
- 1973—E.M. Taylor, Professor of Geology, Oregon State University, studied the pumice deposits and confirmed this conclusion.
- 1974—Senator Mark Hatfield introduced a bill to save Rock Mesa. The bill died in committee.
- 1975—The Forest Service contracted with a geologist and a mining engineer to study the quantity and quality of the pumice deposits on the Mesa.
- 1976—U.S. Fish and Wildlife Service, Department of Interior, opposed mining Rock Mesa.
- 1977—The Bureau of Land Management acting on behalf of the Forest Service challenged the validity of the claims.
—The Administrative Law Judge excluded conservationist testimony from the validity hearing.
- 1978—Twelve local and national environmental organizations filed a suit for the right to intervene in the hearings. They won the suit and submitted legal briefs.
- 1981—Interior Dept. Administrative Law Judge Sweitzer issued his decision that 670 acres contain sufficient quantities of valuable minerals to be valid claims.
—We are appealing his decision to the Interior Board of Land Appeals, Department of Interior.

YOU can help

Rock Mesa, the integrity of the Three Sisters Wilderness, and the recreational opportunities on adjacent National Forest lands **can be preserved**. You can help in several ways:

1. Write a letter or post card:

It need be only a few words, typed or legibly hand written opposing mining Rock Mesa in the Three Sisters Wilderness, addressed to our two Senators and to the Congressman from your district.

SENATORS

Senator Mark O. Hatfield
Senator Bob Packwood
Senate Office Building
Washington, D.C. 20510

CONGRESSMEN

Congressman Jim Weaver
Congressman Denny Smith
Congressman Les AuCoin
Congressman Ren Wyden
House Office Building
Washington, D.C. 20515

2. Financial help

It is an expensive fight. We need your help to finance current legal fees and public education projects. Is the integrity of the Three Sisters Wilderness worth, to you, the price of a hamburger, dinner for two, a pair of boots, a fishing rod, a camera? Make out your check to: The Friends of the Three Sisters Wilderness, Rock Mesa Fund and mail to 271 West 12th Avenue, Eugene, OR 97401.

3. Phone Eugene 344-0675

- For more information,
- For additional copies of this brochure to give to friends and colleagues.
- For a speaker to address your organization or group of friends.
- To volunteer your help with mailing and distributing brochures in your area.
- **Please give us a call.**

AN

OPEN-PIT PUMICE MINE

IN THE

THREE SISTERS WILDERNESS

???



ROCK MESA

Open-pit mining on Rock Mesa in the heart of the Three Sisters Wilderness

U.S. Pumice Co. of Burbank, California, plans to develop an open-pit mine on Rock Mesa to remove a non-strategic mineral, block pumice. The pumice is of two commercial grades, abrasive and decorative. Abrasive products include scouring blocks for grills, toilet bowls and swimming pools; and cosmetic aids for removing bunions and calluses. Decorative pumice is sold for veneer pasted on walls of buildings and as boulders for landscaping features. The residue is sold for kitty litter and briquettes for gas fired hamburger grills.

A steep, switchback road will be built into the Wilderness from Century Drive at Devils Lake up to Wickiup Plain and across the meadows to Rock Mesa. For the next 10 to 20 years, day and night, all summer long, front-end loaders on the Mesa will be loading pumice into heavy-duty trucks. Wilderness visitors on Wickiup Plain will be confronted with two-way truck traffic. Local residents and tourists will have to contend with 30 miles of congested traffic on Century Drive from Devils Lake to Bend. Air pollution, visual confusion and noise will destroy the Wilderness and recreational values of the mountains, forests, meadows, streams and lakes in the area.

After the pumice has been removed, this private property could be sold. Mining claims in the Sierra Nevada and the mountains and deserts of many western states have been subdivided and sold for summer homes and resorts. Someone could purchase Rock Mesa and construct a private castle in the heart of the Three Sisters Wilderness.

Destroy Rock Mesa for kitty litter and scouring blocks?

—or—

Preserve the pristine Three Sisters Wilderness for future generations!



The law and Rock Mesa

The Mining Law of 1872 is a collection of traditions, practices and local laws then current. This law still gives to individuals and corporations license to purchase valid claims on public lands for \$2.50 per acre. The buyer must prove claim boundaries have been properly staked and recorded and that there is sufficient mineral "that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine."

The land and its surface and mineral resources then become private property. The owner of private property surrounded by public land must be allowed to construct "reasonable" access across public land to that property.

The Wilderness Act of 1964, intended to define, protect and preserve Wilderness, was passed after being amended because of mining lobby pressure. Mineral prospecting is permitted and claims can be established until January 1, 1984. These valid claims can then be mined.

Must we sell Rock Mesa to U.S. Pumice Co.?

The Mesa

Rock Mesa, located at the base of 10,350-foot South Sister in Oregon's Three Sisters Wilderness is the unique result of a volcanic event similar to the present dome-building activity on Mount St. Helens. About 2000 years ago a vent in the volcano opened and in a series of pulses extruded molten glass (obsidian) and other lavas. Some of the molten obsidian contained gases which resulted in a frothy mix. When cooled, this left small hollows or bubbles producing lightweight foamed glass (pumice). Each pulse forced the preceding extrusions outward from the vent forming a series of concentric ridges.

Quoting Alexander R. McBirney, Professor in the Center for Volcanology, University of Oregon: "South Sister and the cones and domes around its base has become a model for a major type of eruptive sequence in which an andesitic cone is closely associated with late eruptions of strongly contrasting lavas. Each year I take our new students to visit the area. In 1968 an international conference of geologists met in Bend and special excursions were made to the Rock Mesa area."

The only other formation comparable to Rock Mesa in the United States, perhaps anywhere on this planet, occurred at Mono Craters, east of Yosemite in the Sierra Nevada. Mono Craters has been destroyed by U.S. Pumice Co.

The Pacific Crest National Scenic Trail is located along the west side of the Mesa, where obsidian cliffs rise 100 feet beside the trail. The Mesa, adjacent LeConte Crater, and other cones and domes rise from Wickiup Plain, a gentle area of flowered meadows, clear streams and alpine forests. It is prime wildlife habitat for mule deer and Roosevelt elk, for pika, pine martin, marmot, wolverine, black bear, gray jay, Clark's nutcracker and golden eagle.

Is the loss of these valuable resources justifiable?

Conference Report for HR 7356, Amendment No. 98, Making Appropriations for the Department of Interior and related Agencies for Fiscal Year Ending September 17, 1982

97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
 2d Session } { No. 97-978

MAKING APPROPRIATIONS FOR THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1983, AND FOR OTHER PURPOSES

DECEMBER 17, 1982.—Ordered to be printed

Mr. YATES, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7356]

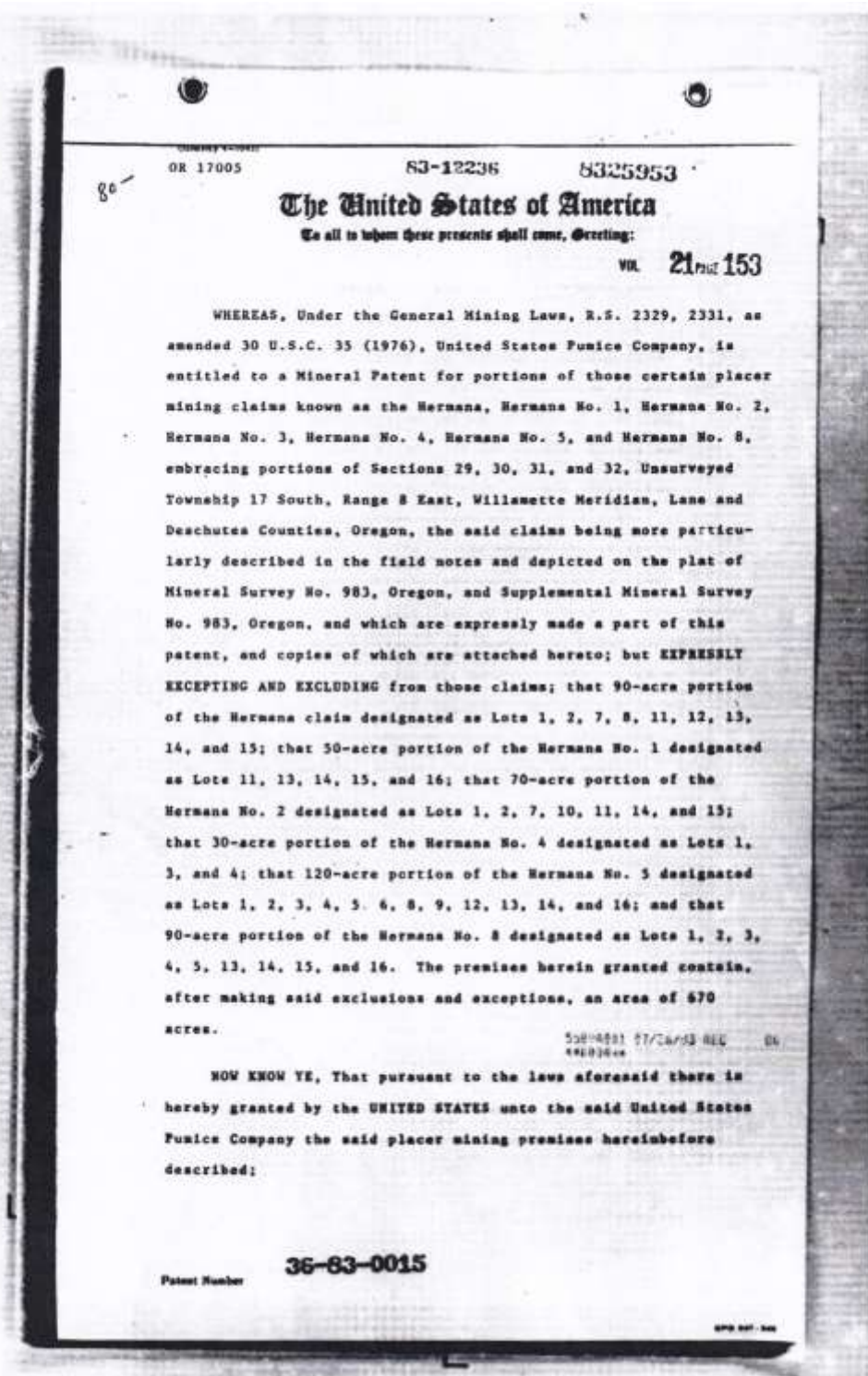
The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7356) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1983, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

32

Ausable River—Huron-Manistee NF, Mich.....	2,000,000
Three Sisters Wilderness (Rock Mesa).....	
Ore.....	2,000,000
Sawtooth NRA, Idaho	4,700,000
Total.....	56,877,000

The Three Sisters Wilderness acquisition funding is for patented claims only and the first Sawtooth NRA property is the Piva property.

Patent Deed – US/BLM to U.S. Pumice Company



OR 17005

83-12236

8325953

86

The United States of America

To all to whom these presents shall come, Greeting:

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WHEREAS, Under the General Mining Laws, R.S. 2329, 2331, as amended 30 U.S.C. 35 (1976), United States Pumice Company, is entitled to a Mineral Patent for portions of those certain placer mining claims known as the Hermans, Hermans No. 1, Hermans No. 2, Hermans No. 3, Hermans No. 4, Hermans No. 5, and Hermans No. 8, embracing portions of Sections 29, 30, 31, and 32, Unsurveyed Township 17 South, Range 8 East, Willamette Meridian, Lane and Deschutes Counties, Oregon, the said claims being more particularly described in the field notes and depicted on the plat of Mineral Survey No. 983, Oregon, and Supplemental Mineral Survey No. 983, Oregon, and which are expressly made a part of this patent, and copies of which are attached hereto; but EXPRESSLY EXCEPTING AND EXCLUDING from those claims; that 90-acre portion of the Hermans claim designated as Lots 1, 2, 7, 8, 11, 12, 13, 14, and 15; that 50-acre portion of the Hermans No. 1 designated as Lots 11, 13, 14, 15, and 16; that 70-acre portion of the Hermans No. 2 designated as Lots 1, 2, 7, 10, 11, 14, and 15; that 30-acre portion of the Hermans No. 4 designated as Lots 1, 3, and 4; that 120-acre portion of the Hermans No. 5 designated as Lots 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, and 16; and that 90-acre portion of the Hermans No. 8 designated as Lots 1, 2, 3, 4, 5, 13, 14, 15, and 16. The premises herein granted contain, after making said exclusions and exceptions, an area of 670 acres.

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44103000

NOW KNOW YE, That pursuant to the laws aforesaid there is hereby granted by the UNITED STATES unto the said United States Pumice Company the said placer mining premises hereinbefore described:

36-83-0015

Patent Number

SPD 897 - 500

8325953

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TO HAVE AND TO HOLD said mining premises, together with all rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said grantee above named and to its successors and assigns forever;

EXCEPTING AND RESERVING TO THE UNITED STATES from the land so granted a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945 (1976); and

SUBJECT TO the following conditions and stipulations:

- A. That the grant hereby made is restricted in its exterior limits to the boundaries of the said mining premises, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may have been discovered within said limits subsequent to and which were not known to exist on November 12, 1976; and
- B. That should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits be claimed or known to exist within the above-described premises on November 12, 1976, the same is expressly excepted and excluded from this patent. (30 U.S.C. 37.)

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.



GIVEN under my hand, in Portland, Oregon the TWENTY-SECOND day of JULY in the year of our Lord one thousand nine hundred and EIGHTY-THREE and of the Independence of the United States the two hundred and EIGHTH.

Harold A. Berube
Chief, Branch of Lands and Minerals Operations

Patent Number **36-83-0015**

Deed of Sale – U.S. Pumice Company to United States

16- 8325951

83-12237

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WARRANTY AND QUITCLAIM DEED

UNITED STATES PUMICE COMPANY, a corporation duly organized and existing under the laws of the State of California, Grantor, conveys and warrants to THE UNITED STATES OF AMERICA and assigns, Grantee, the following described real property free of encumbrances except as specifically set forth herein situated in Unsurveyed Township 17 South, Range 8 East, Willamette Meridian, Deschutes and Lane counties, Oregon:

Hermana mining claim as patented under U.S. Patent No. 36830015 and as described in U.S. Mineral Survey No. 983, Oregon, and Supplemental Mineral Survey No. 983, Oregon, but excluding that 90-acre portion of the claim designated as Lots 1, 2, 7, 8, 11, 12, 13, 14, and 15;

Hermana No. 1 mining claim as patented under U.S. Patent No. 36830015 and as described in U.S. Mineral Survey No. 983, Oregon, and Supplemental Mineral Survey No. 983, Oregon, but excluding that 50-acre portion of the claim designated as Lots 11, 13, 14, 15, and 16;

Hermana No. 2 mining claim as patented under U.S. Patent No. 36830015 and as described in U.S. Mineral Survey No. 983, Oregon, and Supplemental Mineral Survey No. 983, Oregon, but excluding that 70-acre portion of the claim designated as Lots 1, 2, 7, 10, 11, 14, and 15;

Name of Mining Claim	County	Described More Fully in Mining Records		Page
		Book	Reel	
Hermana	Lane	182		61D
Hermana amended	Lane		212D	
Hermana #1	Lane	182		61D
Hermana #1 amended	Lane		212D	
Hermana #1	Deschutes	2		7
Hermana #1 amended	Deschutes	2		37
Hermana #2	Lane	182		61D
Hermana #2 amended	Lane		212D	
Hermana #3	Lane	182		61D
Hermana #3 amended	Lane		212D	
Hermana #4	Lane	182		61D
Hermana #4 amended	Lane		212D	
Hermana #5	Lane	182		61D
Hermana #5 amended	Lane		212D	
Hermana #6	Lane	182		61D
Hermana #6 amended	Lane		212D	
Hermana #6	Deschutes	2		8
Hermana #6 amended	Deschutes	2		38
Hermana #7	Deschutes	2		9
Hermana #7 amended	Deschutes	-2		39
Hermana #8	Deschutes	2		10
Hermana #8 amended	Deschutes	2		40
Hermana #9	Lane	182		61D
Hermana #9 amended	Lane		212D	

The administering agency for the Grantee is the Forest Service, U.S. Department of Agriculture.

The true consideration for these conveyances is \$2,000,000.00.

Dated this 15 day of July, 1983.

UNITED STATES PUMICE COMPANY

By T. Wayne Miles
T. Wayne Miles, President



STATE OF CALIFORNIA,)
County of LOS ANGELES) ss.

On this 15th day of JULY, 1983, before me appeared the within named T. WAYNE MILES, President of United States Pumice Company, and acknowledged that he is authorized to execute the foregoing instrument and that he did so in his capacity as such officer.

Adrienne R. Stuart
Notary Public for California
My Commission expires:



Rock Mesa saved from mining

Forest Service
acquires deeds,
ends long fight

By RON BELLAMY
Of the Register-Guard

A long fight to protect the Rock Mesa area of Oregon's Three Sisters Wilderness from pumice mining is over.

Oregon Congressman Les AuCoin and Sen. Mark Hatfield announced Tuesday that the U.S. Forest Service has acquired, for \$2 million, the mining deeds to 670 acres of Rock Mesa held by the United States Pumice Co.

The deeds transferring ownership were filed Tuesday in Lane and Deschutes counties, ending more than a decade of controversy over proposed mining in the wilderness area.

"To have allowed the mining of Rock Mesa to take place would have resulted in the degradation of the Three Sisters Wilderness — one of our nation's most scenic wilderness preserves — and would have violated the spirit if not the letter of the law," AuCoin said. "With this action, the threat is lifted for good."

Rock Mesa is a volcanic formation near the base of the South Sister Mountain in the Three Sisters Wilderness in the Cascade Mountains. The mining claims are divided between Lane and Deschutes counties and are located about 45 miles east of Eugene.

"We're obviously very pleased," said Andy Kerr, associate director of the Oregon Natural Resources Council, a coalition of environmental organizations that includes groups that fought the validity of the mining claims. However, Kerr adds today, "we think it took too long."



A \$2-million settlement has ended mining threat at Rock Mesa, the volcanic pumice formation at the base of South Sister in the Three Sisters Wilderness.

AuCoin, a Democrat from Oregon's 1st District, introduced legislation last year in getting the legislation passed. Kerr said. Officials of the pumice company accepted the decision that Congress made last year.

Editorials

The Oregonian

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FRIDAY, JULY 29, 1983

Rock Mesa safe at last

Some news stories seem never to end. Here is one long-running one that finally has, and with a good outcome:

It is the 12-year struggle of environmentalists, the U.S. Forest Service and members of Oregon's congressional delegation to prevent the U.S. Pumice Co., a California concern, from exercising its right to mine pumice from Rock Mesa in the Three Sisters Wilderness.

In the end, American taxpayers, by act of Congress, bought out the company's 670 acres of patented land for \$2 million, and the company donated all other mineral rights it had on the mesa. The deal was completed July 26.

Hot battles are being waged all over the West over how much public land should be set aside as wilderness, but few disagree with the basic premise that at least some land is far more valuable in its natural state than it ever would be developed with roads, buildings, clutter and clutter. If any land meets the criteria of choice wilderness, the surroundings of Rock Mesa do.

The mesa is a pile of gray and brown volcanic rock close to the south foot of the imposing snowy dome of the South Sister. One of the most heavily used hiking trails of the Three Sisters Wilderness runs nearby. The light, frothy pumice lies on top of the mesa, several hundred feet above the surrounding meadowy plain.

There is a commercial market for that pumice — that's why the pumice company was able to sustain its claims against a courtroom challenge — but for what? For marginal products like hamburger grill cleaners and bunion scrapers.

The cost to the environment to extract that rock would have been to drive a road three miles into the wilderness and up onto the mesa, install noisy, dusty mining machinery and haul out the boulders in trucks pulling onto the scenic, tourist-heavy Cascade Lakes Highway, which skirts

the wilderness west of Bend. And when the company was through mining the rock, it still would have owned the land and could have put it into condominiums or any other legal use, squarely in the middle of the wilderness.

The trade-off would have been a perfect illustration of the truth that not everything that is legal is right.

The special privileges for mining claims are the biggest loophole in the Wilderness Act. One



of the key compromises necessary to win passage of that law by Congress in 1964 was to allow the filing of new mining claims in wilderness areas for another 20 years.

Happily, that provision will expire Dec. 31. Thereafter no new mining claims can be filed in wilderness areas, but pre-existing valid claims, such as U.S. Pumice Co. had, can still be worked.

For the relatively small cost of locating and proving the claims on public land, U.S. Pumice comes away with a \$2 million private return. It may seem an unjust application of antique mining laws that long ago should have been changed to meet modern conditions. Still, they are the laws, and the preservation of the peace and beauty of the Three Sisters Wilderness is worth the price.