A Radical Proposal

SAVING THE WILDERNESS

Will the need for strategic minerals spell the death of America's wilderness? Environmentalists think so—and defense-minded congressmen are reinforcing those fears. But there *is* a way to have our minerals and keep our wilderness too.

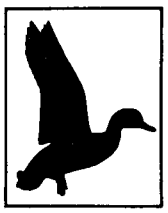
By John Baden and Richard Stroup

The free enterprise system as it works in practice excludes [some] goals. Does anybody believe the mining and chemical companies are going to keep the water and air clean without a hard shove from government?

—Joseph Kraft,
syndicated columnist, April 1981

You better believe the oil companies behaves themselves on Rainey.

—Lonnie Legé, manager,
Rainey Wildlife Sanctuary



MARSHLAND, LIKE THE desert, does not appeal to everyone. *Swamp* is not a word that conjures up visions of beauty in everyone's minds, but for some, Vermilion Parish in Louisiana is the most beautiful place in the world. If you don't mind the mosquitos, you can take a boat into the flat, wet land of the Cajuns to see a part of the world that is hauntingly alluring. If you take a shallow-bottomed bateau into the marsh on a winter morning before the sun rises, there is much beauty.

Mist obscures the horizon as the traveler navigates around locust, cypress, and clumps of roseau cane. As the morning light increases, the startling colors of marsh flowers—fiery orange and yellow and dry bone white—become noticeable. Deer run wild where the bayou turns to firm ground. The predawn light might reveal armadillo, muskrat, otter, mink, nutria, or any one of hundreds of different birds that love the marsh or the alligators that seek out those "critters," as the Cajuns say, for breakfast.

But the real show doesn't start until the sky turns lavender with the rising sun. The sun through morning fog is the signal for thousands of snow geese to prepare for flight. Flexing the muscles of their wings, the birds begin to whip the air. Tens of thousands of small thuds turn into a thundering of goose wings, yet they remain on the ground. Finally they lift off. Their honking adds to an already almost overpowering noise as squadrons of geese launch and take up flight formation. On some mornings the sky may fill with 20,000 snow geese; on others there are an awesome 60,000 geese in the air, blanketing normal conversation.

Patrick Cox, a free-lance writer, assisted the authors with researching and writing this article.

When the morning flight ends in the National Audubon Society's Rainey Wildlife Sanctuary, a visitor may decide to take the long way home and see more. The sanctuary is and has been a haven for many different species, stringently protected from the human species; even tourists are not welcome in the Rainey preserve. But journalists with the right credentials may take an escorted tour into the marshland to see one of the most startling sights on the whole preserve. Leading you down the right bayou, through the right swamp land, around the nesting grounds of beasts both fur and fowl, the Cajun guide can bring you to man-made islands of steel and concrete: natural gas wells.

Gas wells in terrain managed by professional, dedicated environmentalists may seem almost as out of place as free drinks at an AA meeting. What happened to the hostility that has come to exist between resource developers and conservationists? Have the lion and the lamb laid down together in the same field?

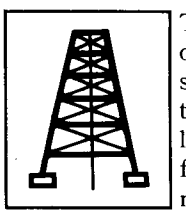
On the national front, nothing could be further from the truth. Ever since Reagan was elected president—and especially since he appointed James Watt secretary of the Interior Department—environmental groups have been concerned that their victories of the '60s and '70s will be reversed. And industry voices, counting on a sympathetic ear, have stepped up their complaints that pro-environment resource and antipollution policies are hamstringing the US economy.

Now, the battle is moving to the strategic metals front. Citing the economy and national security, some people are pointing with alarm to America's growing dependence on unstable or antagonistic foreign sources, not only for petroleum, but for many minerals, as well. In 1980 Rep. James Santini (D-Nev.) held hearings on the strategic metals situation in his Mines and Mining Subcommittee. He also urged the Interior Department to study the problem, but its report, with a recommendation that domestic production be stimulated, was a source of embarrassment to President Carter. After an unsuccessful attempt to get Interior not to release its report, Carter ordered a National Security Council review, not yet completed, of US minerals dependence.

The Reagan administration, however, came into town with definite ideas about the situation. From his confirmation hearings on, Interior Secretary Watt has laid emphasis on forming a federal policy toward strategic metals. (The executive has been enjoined by Congress to do this since the Mining and Minerals Policy Act of 1970 was passed, but it has never done so.)

The first prong of such a policy, Watt has made clear, is to make public lands more accessible to mining. And that worries those who would have portions of the country preserved and protected as wilderness. "Interior Seeks Government-wide Policy; Environmentalists Fear Mineral Raids on Public Lands"; "Sides Square off over Hayakawa's Wilderness Development Bill"; "Reagan's Drive to Open More Public Lands to Energy Firms May Spark Major Battle"—these have not been unusual news headlines in the past few months.

But the gas wells in the Rainey Wildlife Sanctuary may be the answer in microcosm to the confrontation now coming to a head. The significance of the Rainey wells may not be obvious at first, but it is our belief that they point the way to a solution both for those who fear that America is courting disaster by keeping crucial minerals locked away because of environmental concerns, and for preservationists who fear that their hard-won gains may be swept away in the face of a national minerals shortage.

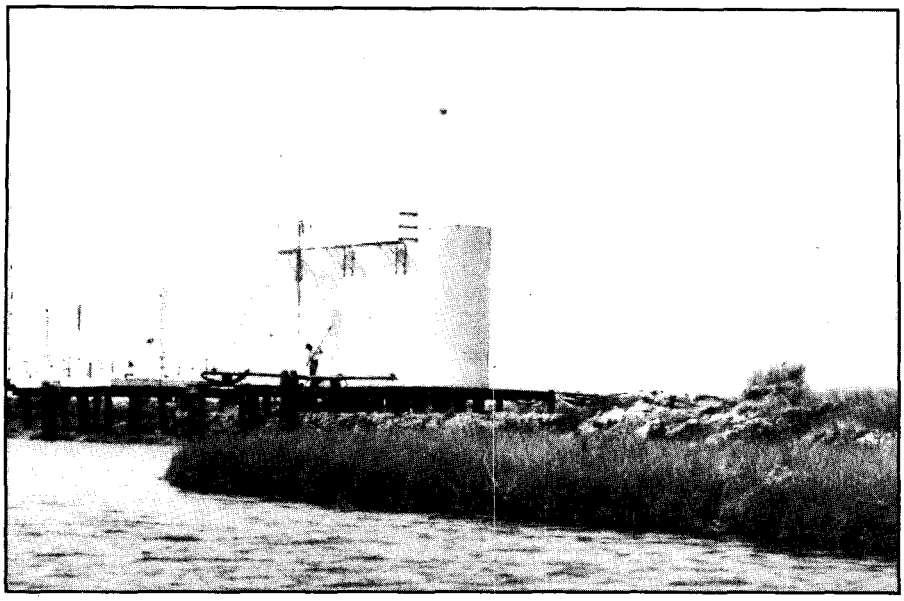


THE ANXIETY OF THOSE on the pro-development side is based on the fact that the United States is largely dependent on foreign sources for natural materials that enable people to travel, receive medical care, be entertained, or even work at the jobs that provide money for groceries. Even agriculture, dependent on machines and transport, would be drastically affected by a cut-off of mineral supplies.

Ever since the Arab oil embargo of 1973, the possible cut-off of petroleum to the United States has been the inspiration of conjecture about military intervention overseas in the case of another stoppage. Yet imports account for less than half of America's oil consumption.

By contrast, imports account for from 70 to as much as 100 percent of at least a dozen minerals essential to US industry.

John C. Meyers/Picture Group



John Williams

In the middle of the Rainey Wildlife Sanctuary, gas wells

More than 50 percent of half a dozen other essential minerals come from foreign sources. (See box, p. 31.) Observers grow even more edgy when examining the particular sources of crucial metals—mostly the Soviet Union and southern Africa. With the exception of Australia, which has a limited potential for increased export, most of the foreign sources are politically unpredictable.

The major deposits of chromium, for example, are in South Africa, Zimbabwe, and the Soviet Union. Allen Gray, technical director of the American Society of Metals, warns, "A cut off of our chromium supply could be even more serious than a cut off of our oil supply. We do have some oil, but we have almost no chromium." In fact, the United States imports 91 percent of its chromium. If it were not available for transformation into stainless steel, surgical equipment, and ball bearings, the American way of life would take a quick and nasty turn.

The possibility of economic disruption of serious proportions is one source of increased activism by those who would like to ensure prosperity for Americans. If the use of foreign minerals in American industry were to diminish slowly, there would be a gradual realignment of prices and products. But a sudden cut-off would not allow for gradual readjustment, and *chaos* becomes a word with legitimate function.

Also disconcerting to many, however, is the effect a minerals shortage could have on national security. Jet aircraft and high-technology components of military hardware are particularly dependent on minerals supplied largely from Communist-controlled or politically unstable areas of the world.

For those who would welcome the implications for the US arms build-up, however, there is little consolation in the minerals situation. As long as the government considers an uninterrupted flow of resources worth fighting for—and that is a good part of the rationale for the Carter-initiated and Reagan-embraced Rapid Deployment Force—there is danger that the American military will "secure our vital interests" in case of an interruption of that flow. Members of the defense community warn that in the event of a "minerals war"—the strategic denial of minerals to the United States by foreign powers—the United States could not maintain "limited warfare" for any extended period of time. The inference is that the only option outside of surrender would be "unlimited warfare."

Is the problem that US sources of strategic minerals have been depleted by previous mining activities? On the contrary, contends John P. Morgan of the US Bureau of Mines, who says that "the U.S. could be virtually self-sufficient in all but a few minerals, such as chromite." His opinion is shared by many, including Sen. Harrison Schmitt (R-N.M.), a geologist and former astronaut. "Nature endowed us with unbelievably vast natural resources," he notes, "most of which have not been tapped."

In its report at the conclusion of hearings on strategic minerals, Representative Santini's subcommittee pointed out several factors that have contributed to the increasing foreign share of US mineral supplies: US tax policies that fail to encourage capital formation, health and safety regulations that increase the cost of production, antitrust legislation that is supposed to encourage competition but actually discourages mineral production, and restrictions on or prohibition of mining on federally owned land. It is the latter—what Santini's report calls the public land access problem—that is now the focus of hot debate and that is our concern here.

The federal government owns one-third of the land area of the United States, and it happens that much of that acreage is concentrated in mineral-rich states. Alaska is 89 percent federally owned; Nevada, 86 percent; Utah, 66 percent; Idaho, 64 percent; Oregon, 52 percent. A 1977 Interior Department report estimated that 42 percent of public lands have been declared off-limits to any mining for minerals and that mining activity has been greatly restricted in 16 percent and moderately restricted in another 10 percent. Santini's report estimates that further withdrawals of land since 1977 have made those figures 10-15 percent low, with the prospect of more withdrawals under the National Wilderness Preservation System and other federal programs. This is the vast acreage that Interior Secretary Watt has vowed to open up to mining activity under "a national strategic minerals policy . . . that protects American jobs and investments, improves our balance of trade, revitalizes the nation's economy, and provides for the security of foreign minerals imports."

A 1977 Interior Department report estimated that 42 percent of public lands have been declared off-limits to mining for minerals.

LINED UP AGAINST Watt and the industries whose interests he is charged with serving are people who have fought hard to have the government preserve large portions of American land in pristine or near-natural states. Historically, they are latecomers. There was so much wilderness land around until the last century that few thought of undeveloped land as an asset. Aside from occasional and largely transitory disturbances of the land by Indians, the vast bulk of what is now the United States was pristinely primeval. While it may have been heaven for Druids, however, given the tools of the day it was hell for settlers.

When Tocqueville was traveling on the fringe of civilization and announced his desire to venture into the primitive forest for *pleasure*, the frontiersmen considered him insane. Many of those who did daily battle with nature had grown to hate and fear it. Wilderness was something to be subdued to make way for civilization.

The writing of this period is permeated with the association of wilderness with evil. On the eve of settlement Michael Wifflesworth wrote that the new land was a "wasting, howeling wilderness,/ Where none inhabitants/But hellish fiends, and brutish men/That devils worshiped." The idea of wilderness as enemy persisted long after the pioneering way of life was over, until, during the 19th century, a more favorable approach began to take hold.

Throughout our history, wilderness has been an unpriced asset. Initially, there were no charges to its users because it had a negative value. Today, there are no charges despite its positive

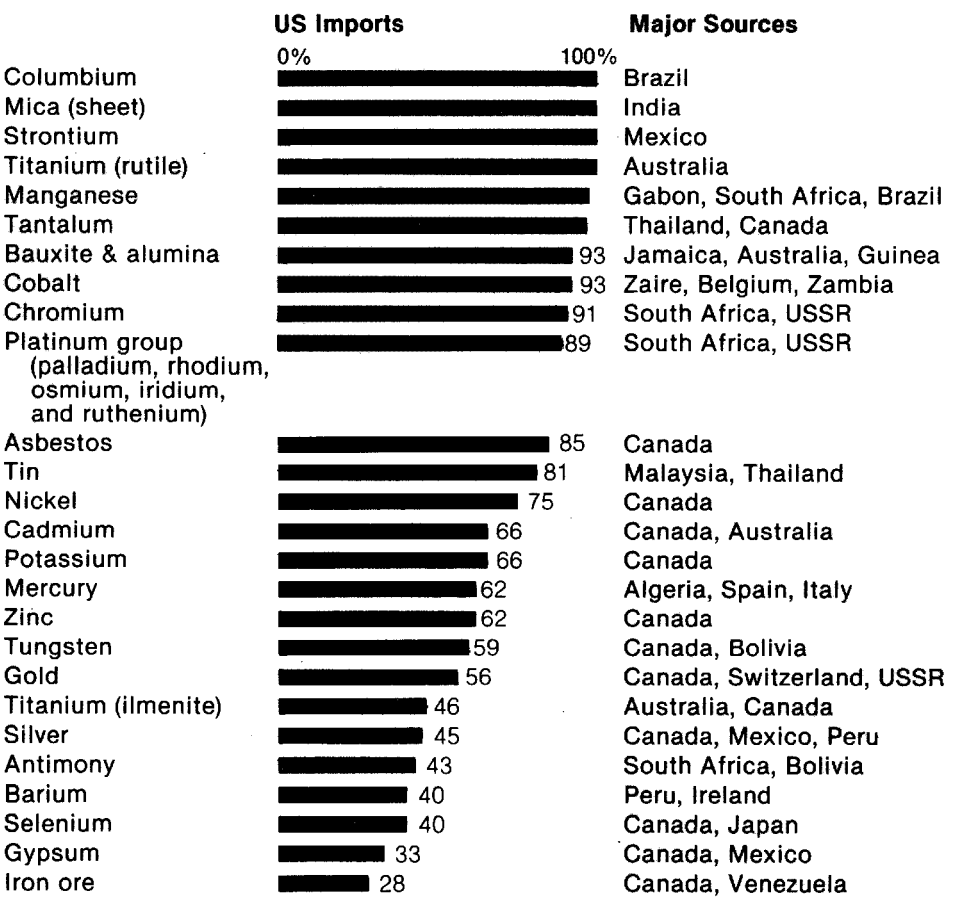
HOW STRATEGIC ARE THEY?

Tantalum, antimony, iridium, palladium—they sound exotic, almost poetic. Yet they and a host of other minerals, some of them—asbestos and zinc, for example—more familiar on the tongue, are essential materials in a long list of ordinary products that contribute to our well-being: magnets, steel and stainless steel, automobile antipollution devices, jet engines, drill bits, surgical equipment, petrochemical refineries, glass-processing equipment, nontoxic paint, computer hardware, and so on and on. Such materials will also be vital to energy sources being developed in an attempt to reduce our dependence on imported oil: geothermal and ocean thermal energy, coal gasification and liquefaction, oil shale and tar sand development, fission and fusion.

For many of the essential minerals, however, the United States must rely in whole or in large part on foreign countries (see chart)—many of them unfriendly and volatile. Political disturbances in Zaire, for example, which harbors 65 percent of the non-Communist world's supply of cobalt — have precipitated manic-depressive changes in price over the last three years. The only domestic source of platinum-group metals is recycling; the rest is imported, mainly from the Soviet Union and South Africa.

Chromium, 91 percent imported, is used mostly in stainless steel, for its excellent properties of corrosion resistance and hardness at relatively low cost. "A chromium embargo by the USSR and Zimbabwe would bring the entire industrial world to its knees in just six months," says Rep. James Santini—as much because of its use in medical equipment as because of its use in automobiles.

The current worries about import dependence are put in perspective by William Dresher, dean of the College of Mines at the University of Arizona and a consultant to the National Science Foundation. In 1950, he points out, "this country depended on imports to meet half or more of its needs for only four of thirteen basic industrial raw materials....In 1979, imports accounted for more than half of nine of these same thirteen mineral commodities." In those two decades, the United States moved from "a positive balance of trade in minerals to a deficit of more than $9 billion."



Source: US Bureau of Mines.

value. When the majority of land was wilderness, the marginal value of an incremental unit was zero or negative. Its primary value lay in being able to convert its resources into marketable products. Only to Henry David Thoreau, John Muir, John Audubon, and a few others who were considered eccentrics did wilderness also have value as a good to be enjoyed in and of itself. Today, their appreciation of wilderness is shared by many more, yet there are no charges to its users despite its positive value.

As incomes rose in the United States, so did the amount of time Americans spent on recreation. This trend is accelerated by an increasing marginal tax rate on earned incomes—the more money you make, the smaller the part of it you get to keep. A logical reaction is to increase the use of resources that have no direct user fees for the consumer. Those who use wilderness for recreational or aesthetic purposes are not charged for or taxed on the benefits they derive from it.

Along with the increased recreational demand for wilderness, however, there was an increased demand for land for other uses. Thus some of the supply of wilderness was being withdrawn at the same time as demand for it was increasing. Both of these factors acted to increase the value of wilderness. Obviously, rare wilderness ecosystems would demand a high price if they could be owned and exchanged like other goods.

gressional designation.

Probably the first suggestion in the United States that land be set aside as wilderness was made in 1833 by George Catlin in a letter published in a New York newspaper. In 1844 New York State created a forest preserve by constitutional amendment, and in 1872 Yellowstone National Park was established. The idea that wilderness should be protected was beginning to gain support. By 1933, 63 primitive areas had been established on Forest Service (Department of Agriculture) land, ranging from 5,000 to over 1 million acres.

With passage of the Wilderness Act of 1964, 9.1 million acres of land were protected from development—including any and all mining activity—and the Forest Service was enjoined to recommend further areas for congressional designation as wilderness. Section 2(c) of the act defines wilderness as

> *an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvement or human habitation, which is protected and managed so as to preserve its natural conditions.*

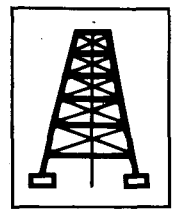
The section specifies that wilderness must show no substantial mark of man,

There is a very real danger that environmental concerns will be swept away in a rush to supply America with vital resources.

But they can't. By 1950, many of the areas we could consider wilderness were already public land and thus not available for sale. But this meant that wilderness lovers could not keep such areas away from other users simply by outbidding them in a market. Instead, the increasing value of wilderness generated a movement to save it via the political process.

For politicians, it was an ideal situation. Because the areas were not privately owned, condemnation proceedings with their attendant costs were not required. Land could be set aside for users of wilderness as wilderness simply by congress provide opportunities for solitude and primitive recreation, and be of at least 5,000 acres and may (but need not) "contain ecological, geological, or other features of scientific, educational, scenic, or historical value." In 1976 the Interior Department's Bureau of Land Management (BLM) was brought into the recommending process. By 1980, a total of almost 80 million acres had been set aside as wilderness.

In addition, 62 million acres being considered for wilderness classification under the Forest Service's Roadless Area Review and Evaluation (RARE II) process must legally be treated as wilderness until RARE is completed and Congress has acted on any recommendations (Congress has as much as 11 years to do so). Likewise, 60 million acres in the comparable BLM program have been set aside as Wilderness Study Areas. In sum, though many environmentalists worry that there is not enough land designated as wilderness, the total is hardly trivial.



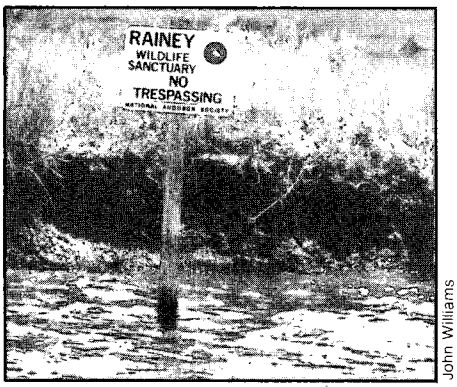
GIVEN THE HISTORY OF government as protector of the environment, however, it is not surprising to see environmentalists concerned about the Reagan administration's promise of stepped-up development of public lands under BLM supervision. For years, government has failed to act as the protector of individual rights against invasion of the body and destruction of property by pollutants. Only recently has it begun to stop gross violations of rights occasioned by the "externalities" or waste products of its own and business activities. One need look no further than the pollution of the Great Lakes or the cancer-ridden communities in Utah that were subject to atomic tests by the American military. Moreover, government powers of eminent domain and taxation have been used to build railroads, dams, pipelines, and nuclear plants where they may never have been built if developers had been left to pay the full costs of moving people off land desired for projects and if the actual users of projects had been required to pay for the costs of development.

Nor has government's management of publicly owned resources provided examples of enlightened stewardship. Whether the strategic minerals situation is brought to a head by an actual emergency or by the threat of one, it is clear that, as long as the bone of contention is access to public lands, *government* will decide how mineral exploitation will be carried out. That could be, in common terms, bad news. Theoretically, we would predict as much, but actual examples of what has come to be known as the "tragedy of the commons" are more helpful in understanding the problems with government ownership and management of resources.

Wilderness advocates would do well to examine the fate of the American bison. While cattlemen in the old west jealously

guarded and improved the quality and size of their herds, buffalo were being slaughtered for their tongues because, since no one owned them, no one had the incentive (the possibility of reaping benefits in the future) to protect them. Whale populations have suffered because of the same lack of clearly defined and enforceable property rights.

The timber industry is criticized for logging ecologically sensitive areas. The very fragility of those areas, however, guarantees that they would have remained untouched were it not for government intervention. Slow-growing, sparsely timbered areas are a no-win investment for companies that have to absorb the whole cost of logging. But, typically government helps them out. Here in Montana, for example, areas have been logged that nobody could have touched without *government-built roads.*



John Williams

The sanctuary is run for the wildlife

Besides causing 90 percent of the erosion associated with logging in areas that may take decades to reforest, the roads cost the taxpayers—thousands of dollars per thousand board feet of lumber taken out of one area. The loggers sold that lumber for only about $42 per thousand board feet. Obviously, if they had had to pay for their own roads, they would never have logged in this area.

Also in Montana, the government recently hired a professional hunter to kill cougars that were supposedly killing livestock. Few of the ranchers in the area would have launched a massacre of that scale. There is a grudging respect for the wildcats, which rarely prey on stock unless they are injured or too old to make it in the wild.

On the other hand, there are examples of situations handled politically in this country—with dubious results—that are handled through a system of private ownership in other parts of the world—with admirable results. Scotland has no government agency to protect water quality. Yet its streams run as pure and clean as any of us would have American streams. How does it happen? Individual Scots have clearly defined and transferable (saleable) rights to the streams, so incidents of pollution or diversion constitute damage to individuals, not failure to meet government standards, and are treated as such in the courts.

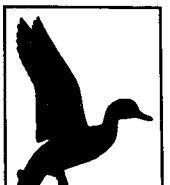
As long as the bone of contention is public lands, *government* will decide how mineral exploitation will be carried out, and that could be bad news.

Property rights make a difference because they provide an incentive to manage a resource—whether a forest, a herd, a stream, or a parcel of land—in such a way as to maximize the long-run return to the owners. Government-owned resources, in contrast, are subject to political (not owners') decisionmaking, which tends to be short-sighted. Current benefits and costs are more easily discernible by the electorate than are future benefits and costs, and the politicians respond accordingly.

The results of this sort of decisionmaking can be very significant. Economists refer to the costs to society of misallocation of resources as "opportunity" costs: when resources are used in any way, opportunities to use them in other ways are forgone. If the federal government were to declare the materials used to make this magazine "public" property for the sake of producing a consumer information pamphlet on the recreational benefits of Army Corps of Engineering projects, the opportunity cost to society would be the loss of this magazine.

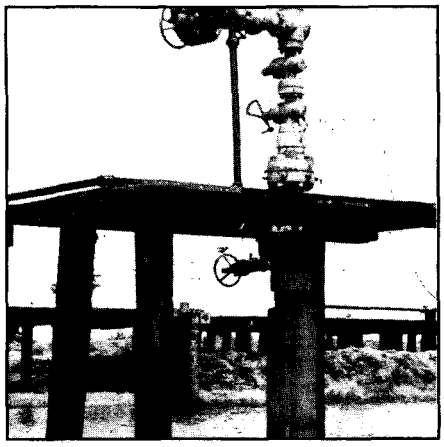
In the case of wilderness designation, there are very significant opportunity costs. Because minerals are not extracted from protected lands, society pays the price of wilderness lands in terms of goods that are not produced and in higher prices for the goods that are produced. In addition, jobs that would be created with an increase in mineral resources never materialize. Likewise, there are opportunity costs to, say, allowing a resort to be built on wilderness land: some people will not now be able to enjoy wilderness, and jobs attendant to caring for that tract as wilderness will no longer be available. If wilderness users were charged, society would also pay a price in terms of higher user charges for the enjoyment of remaining wilderness areas.

While in the past two decades environmentalists have succeeded in making people aware of opportunity costs associated with the use of land, now people are becoming increasingly aware of the opposite costs. There is a very real danger that environmental concerns will be swept away in a rush to supply the United States with vital resources. That is certainly not our wish. In an ideal system, we would have the economic costs of any ecologically motivated action taken into account. But we would also have the ecological costs of any economically motivated action taken into account. Which takes us back to the natural gas wells on Audubon property. Has private ownership made a difference there?



THE LARGEST OF THE Audubon Society's wildlife sanctuaries is 10 miles south of Intercostal City, in Vermilion Parish, Louisiana. The 26,800 acres of marshland are a haven for migrating snow geese, which coexist with nutria, mink, armadillo, and alligators. The Rainey Wildlife Sanctuary is a superbly successful attempt to accommodate "the critters in the marsh," as the Cajun manager of the sanctuary, Lonnie Legé, says.

The sanctuary is run for the sake of the wildlife, especially the geese, and visitors are politely encouraged to visit other bird refuges with facilities for observation. If you do gain access to Rainey, you go into the swampland with Legé or some of his relatives. If you travel to the right place, you will see the facilities of three oil



John Williams

Close-up of gas well in Rainey

companies currently operating a half dozen gas-producing wells, bringing the National Audubon Society close to a million dollars of revenue a year in royalties. In another, drier, area of the sanctuary, you could see cattle grazing for a per head fee to the owners.

The inherent contradiction between the situation at Rainey and the pleas of environmentalists to maintain an increasing amount of pristine wilderness is sharply defined. An Audubon pamphlet speaks calmly of the situation. "There are oil wells in Rainey which are a potential source of pollution, yet Audubon experience in the past few decades indicates that oil can be extracted without measurable damage to the marsh. Extra precautions to prevent pollution have proven effective."

Audubon officials involved with the project are more enthusiastic. John "Frosty" Anderson, the director of Audubon's Sanctuaries Department, is aware of environmentalists' charges that Audubon has been "bought off by big oil." "There's no denying that [Rainey mineral royalties] are significant in terms of revenue for Audubon," he says. But "The relationships we have had with oil companies over the years have been very satisfactory. As long as we know what precautions we want them to take, we have had no trouble in getting them to comply. We probably require them to take extra precautions simply because it is a wildlife sanctuary and we have a membership of over 400,000 who would be very irate if we polluted our own environment, our own land, our own sanctuary. The companies have leaned over backwards.

"After they've finished their drilling and they still have their equipment, if we need a job done with a drag line, they're usually happy to do it. So we have had some levees constructed and flumes installed so that we have water control that we could not have afforded if we would have had to pay for it." Consolidated Oil and Gas is one of three oil companies operating on the sanctuary. Lonnie Legé, speaking of their part in improving by tenfold the capacity of certain areas of the marsh to sustain wildlife, says, "They was real cooperative."

The Audubon Society oversees all activities in the sanctuary. An Audubon lawyer and geologist are involved with any development that could prove harmful to the marshland. O. R. Carter, the geologist employed to look out for Audubon interests, says, "I am very proud of the way industry has responded to Audubon's requirements. The Rainey preserve is the ideal way to manage lands in this country. To my way of thinking, the word is always *conservation*, in crucial minerals as well as the surface and wildlife. I don't know an area that minerals are being taken out of that is not of ecological concern. . . . The object is to manage it in such a way that maximum conservation is accomplished on all levels."

Speaking of government lands, Carter says, "There is undoubtedly a lot of land that the federal government has that could be returned to private hands, and there is no reason for the mineral resources to be tied up. We will all have to learn to replace and use things ultimately, but there's no reason that we should have to return to the dark ages to do it. [There is a] fantastic amount of acreage that the federal government owns, and the present laws are certainly a deterrent to developing desperately needed minerals on those acreages. . . . Returning government land to private property is the only way we can ever get the maximum utility from it. As a matter of fact, I think it's the only way to get the maximum utility of the *ecology*."

Such strong statements are not forthcoming from the public relations department of the Audubon Society. Frosty Anderson, the director of the Sanctuaries Department, is willing to admit, though, that government is probably the environmentalist's greatest enemy. And he finds it "ironic that the new administration has made a big issue of getting the government off our backs, but subsidized agriculture will probably be around for four more years at least, and it's ruining potentially productive land. We're paying to have our environment deteriorate."

Speaking of conservatives, Anderson says: "Some of the massive water management projects—real boondoggles, like

John Williams

Lonnie Legé, manager of the Rainey Sanctuary, and his brother

the Garrison Diversion Project in North Dakota being built to irrigate roughly 250,000 acres—will by their own figures destroy 225,000 acres of already productive land that admittedly uses dry land farming. The great, strong promoter has been a hide-bound Republican, Senator Milton Young. It is ironic that *conservative* and *conservation* are not spelled with the same *c*."

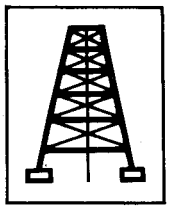
> "We have a membership who would be very irate if we polluted our own environment, our own land, our own sanctuary."

The Rainey preserve was given to the Audubon Society by the estate of Paul J. Rainey in 1924. No drilling was done until the mid-'50s. There was no protest from members at the time, and the managers of the preserve simply went about the business of selling the drilling rights, though their present lawyer says that their lack of expertise at the time led them into some less-than-market-value deals. That has changed now, and Audubon is working out similar arrangements in other areas.

The Michigan Audubon Society plans to extract oil from a preserve there. In South Carolina, the society is attempting to maintain a hardwood forest area for a profit without the aid of potentially dangerous insecticides or destructive logging methods.

The drilling of an exploratory well at an Audubon preserve in Florida, however, has come under environmentalist attack. Though the platform will take up about one acre of nonsensitive land out of 11,000 acres in the preserve, Audubon is being heavily criticized for allowing the drilling, despite the fact that they only hold 25 percent of the mineral rights and could not stop the drilling if they tried.

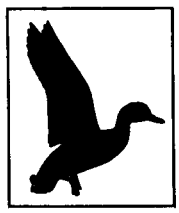
Besides providing revenue for the ecological groups, enhancing their ability to acquire other lands, private ownership of lands enables them to use management techniques that would be illegal or impossible on government lands. The Rainey preserve, for example, uses controlled burning to encourage growth of the three-cornered grass that geese relish. Grazing is strictly controlled on the 8,000 acres of Rainey that are suitable for cattle. The herds not only represent another source of revenue but actually improve the environmental quality of the sanctuary by passing seed and breaking up the ground for plants that geese prefer. Frosty Anderson notes that on private preserves, "We are not forced to take the short-term attitude." Referring to biologists he knows who work for government preserves, he relates that "friends who insisted on enforcing grazing restriction for the long-run good of the land were somehow or another transferred to another refuge." He says government's Bureau of Land Management just doesn't have the clout to stand up to political pressures to use public lands, bringing on the familiar "tragedy of the commons."



THE NATURE CONSERvancy is another important group that buys and manages ecologically sensitive areas. A recent fundraiser emphasized: "We don't sue or picket or preach. We simply do our best to locate, scientifically, those spots on earth where something wild and rare and beautiful is thriving, or hanging on precariously. *Then we buy them.* We're good at it. In less than three decades we've acquired—by purchase, gift, easement and various horse trades—Rhode Island, twice over." The conservancy keeps about half the land it acquires, donating the other half to the government or local conservation groups. At least one of the reasons that they give land to the government is that the government doesn't often condemn its own land for some construction project or road.

One of the conservancy's most popular preserves is a bird refuge in Arizona, the Mile Hi/Ramsey Canyon Preserve. Cottages, pet-boarding facilities, and tours are available for a price. The project turns a profit and benefits other NC activities. Walt Matia, assistant director of stewardship, describes it as "a good, though atypical, example of making a preserve pay for itself." He adds that "certain lands can be managed with better results and at lower costs than can be done through a public agency," but he believes this is "probably the result of fewer regulations and public expectations and not any magic of free enterprise." Of course, the lack of regulations and exaggerated expectations are indeed part of the "magic of free enterprise."

Nature conservancy turns down land every year from potential contributors because it does not fit in with their overall plans. But if the owners don't mind having the NC sell the donated land to buy other, more crucial, real estate, they will accept it. This conservationist group, at least, doesn't seem to mind a little horse-trading. It is that sort of rational behavior that is at the heart of our proposal.



THE AMERICAN POLITical system is avowedly experimental. We here suggest an additional experiment. Assume that there is an area that may be developed for mining or that may be classified as wilderness. Under the current system, environmental interest groups may be expected to ignore the opportunity cost of wilderness classification and advocate this disposition of the land. Incremental units are added to the wilderness system, and the land is available for low-density recreation. In addition, the supply of valuable minerals is reduced, there is increased reliance on foreign sources for that mineral, and the price and uncertainty of its availability increase. Given the high degree of interdependence in the United States, nearly all citizens may be expected to pay this uncalculated opportunity cost. The self-interest of wilderness advocates imposes a cost on the rest of society. On the other hand, if miners prevail, they frequently destroy wilderness values, again without compensation to the rest of society.

What we propose is that lands presently included in the Wilderness System be put into the hands of qualified environmental groups such as the Sierra Club, the Audubon Society, and the Wilderness Society in exchange for (1) their agreement that in the future no wilderness areas be established by

political fiat and (2) either their development of the acquired land (according to their own rules, of course, as in the Rainey case) or their clean-up of an environmentally degraded area be equal in size to the wilderness area acquired. The result would be that these areas, vast portions of which are currently closed to all mining activity, would be managed by groups with the expertise to weigh potential damage to the ecology against potential profits. (Existence as a membership organization might be a suitable criterion for qualifying as an environmental group.)

As a mental exercise, assume that an environmental interest group such as the Sierra Club is given fee title—full and transferable ownership—to wilderness land. This organization then has the opportunity to lease mineral rights and obtain the royalties. How would the organization behave? Assuming that the managers of the interest group are intelligent and dedicated individuals, they will attempt, in accord with their values, to maximize *their* potential value from the resource. Given that they have a *general* interest in wilderness values and that they are not totally oriented toward any specific land area, they will carefully evaluate the contribution that this land can make to their goals.

For example, if the area has a titanium deposit that is expected to yield $1 million worth of benefits, they would consider developing it. The basic questions they confront would include: (1) How much revenue will such an activity yield? (2) How much additional wilderness land may we buy with this income? (3) Is there a way to manage these lands that will permit mineral extraction while minimizing the impact on the wilderness features of the land?

Under these circumstances, as opposed to public ownership, the wilderness groups would be forced by self-interest to consider the opportunity cost of total nondevelopment. Further, rather than resolutely opposing the extraction of any commercially valuable resources from the land, they would focus on obtaining these resources while maintaining to the optimal degree the wilderness character of the area. Different incentives lead to different behavior.

Extraction of mineral or energy resources does not necessarily result in ecological wipeout, of course. Mining is not simply despoliation, although it can be. There are tremendous variations in the impact of alternative kinds of mining on an area, and the potential variation is much higher. (This is especially true for extraction of energy resources.)

Nor is it likely that many large mineral deposits would coincide with areas of *critical* environmental concern. Mining, by nature, has to be a very concentrated activity to pay. The total acreage mined for nonfuel minerals in the United States in the last 50 years is less than a million acres. According to Representative Santini's report to Congress, 90 percent of the free world's mineral requirements are supplied by less than 1,200 mines. So a small area of wilderness land in mineral production could make a tremendous difference in terms of America's mineral independence.

If an environmental group decided that the minerals in a particular area could not be extracted without greater damage to the land than the benefits of extraction, the group would simply be required to make improvements on an equivalent amount of land that had been damaged by previous activities of others now long gone. Conservationist groups could thus add to their stock while using their pool of voluntary labor to repair land that has not recovered from, say, primitive mining techniques.

One can conclude that rational managers of these groups would choose land that would enable them to do the most good in terms of their organization's goals. They could simply choose title to ecologically sensitive areas, but they would very likely consider the alternative uses to which the land might be put. Land that has a high economic value can be mined now or later, and it would be logical for the groups to opt for mineral-valuable land simply to ensure that it is developed according to ecologically sound standards. And they might choose to ignore ecologically crucial areas and go right for the most valuable mineral lands in order to raise the money to buy other sensitive areas. The end product—increased supply of minerals—is the same, and that end is accomplished in a way that moves the institutions of our society away from government solutions to a system of private property and choice.

This small change in the rules of the federal wilderness/minerals game could yield enormous social benefits. With land in private hands, all parties concerned become much more constructive in their thinking and language. Instead of discrediting the goals of others, the question becomes: How can our desires best be achieved at *least* cost to others? The owner thinks this way in order to capture more revenues, selling off the highest-valued package of rights consistent with his own goods. Similarly, a buyer of rights to mine, or a buyer of easements to conserve, wants to purchase his valued package at the least cost to the seller and thus to himself.

Also, the unlimited wants of every party are forced into priority classes. The *most important* land rights will be purchased; declarations that every contested acre is "priceless" become suitably absurd. Even people in single-minded pursuit of profits or of wilderness goals will act *as if* other social goals mattered. Indeed, they may *seek out* higher-valued uses of their own acreage, using profits to obtain new means to satisfy their own narrow goals. And after all, it is our actions, not the worthiness of our goals, that concerns the rest of society. ◻

Private ownership of lands enables environmental groups to use management techniques that would be illegal or impossible on government lands.

John Baden and Richard Stroup founded and direct the Center for Political Economy and Natural Resources at Montana State University. Baden is a political scientist; Stroup, an economist. Patrick Cox, their research associate for this article, has a B.A. in economics; he is a free-lance writer and REASON*'s Spotlight columnist.*

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By Morgan Norval

Kept Critics

Did you know that your tax dollars are funding lobbyists for increased government regulation?

During the past 3 years the Federal Trade Commission has been doling out hundreds of thousands of dollars to various self-proclaimed public interest groups who then appear before the FTC Commissioners and commend them and their latest regulatory scheme as being a remarkable effort by the Commission to protect the public interest.

In reality, I have found there is far more personal interest and far less "public interest" in the administration of this program than is permissible under the statutes that control the FTC. . . .

—Sen. Alan Simpson (R-Wyo.),
Congressional Record, Feb. 7, 1980

Since the Federal Trade Commission was established in 1914, one of its primary responsibilities has been to investigate complaints involving allegedly fraudulent or deceptive business practices. For the first 60 years of its life, the FTC handled such matters on a case-by-case basis. Standard agency practice was to investigate a complaint against a specific business firm and, if warranted by the facts, take action against the offending firm.

Often the action took the form of a directive to the firm not to engage in the questionable business practices in its future business dealings. That is, the FTC functioned essentially as a police force pursuing individual wrongdoers and not as a quasi-legislative body issuing rules and regulations requiring compliance from all the businesses within an industry, whether or not they had ever engaged in questionable practices.

All this changed dramatically a few years ago with the enactment of the Federal Trade Commission Improvements Act of 1975, more commonly known as the Magnuson-Moss Act. Now the FTC can and does issue sweeping rules and regulations that apply industry-wide and not just to specific firms engaged in "unfair or deceptive" practices. And what is an unfair practice? Under Magnuson-Moss, it is whatever the FTC finds or decides is unfair practice. Unfair practice is in the eye of the beholder.

Prior to Magnuson-Moss, the FTC had to show that the questionable practices it was investigating were actually "in commerce," or being done. Magnuson-Moss, however, allows the FTC to act if it thinks some business practices would "affect commerce." That opened up a whole new ball game. As FTC Commissioner Paul Rand Dixon put it, "There isn't anything you can do in the United States today that doesn't affect commerce, so we have been moved right down to every act in every state in every city."

Tacked onto this awesome grant of authority in 1975 was an innocent-sounding little amendment—the public participation amendment. Like the proverbial road to hell, it was paved with good intentions. The amendment authorized the FTC to "provide compensation for reasonable attorney's fees, expert witness fees, and other costs of participating" in the FTC's trade regulation rulemaking proceedings. The rationale: to open up FTC rulemaking to the public by reimbursing the expenses of groups that otherwise could not afford to participate.

The legislative history of the public participation provision—often called "intervenor funding"—illustrates how a lot of laws end up on the books. The amendment was added to the bill in the House-Senate conference committee. As a result, there were no hearings on the matter and no floor debates in either house. It was simply inserted into the conference report and became law when Congress passed and President Ford signed the act in 1975.

DISCRETIONARY FUNDING

Who gets to take part in FTC proceedings under this program? The exact language of the intervenor funding amendment gives the FTC a good deal of discretion in administering the program. The compensation provision states:

> *The Commission may, pursuant to rules prescribed by it, provide compensation for reasonable attorney's fees, expert witness fees, and other costs of participating in a rulemaking proceeding under this section to any person (A) who has, or represents, an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and (B) who is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceedings.*

With this wording, Congress granted the FTC considerable freedom to choose those on whom to bestow its largess. Naturally, the temptation looms large to parcel out intervenor funds to favored groups and individuals.

Would the FTC succumb to the danger warned of by John W. Gardner, former head of Common Cause? "Public participation proposes direct assistance," noted Gardner. "If the concept of conflict-of-interest means anything, then there is danger in potential critics of an agency being financed by the very agency they criticize. We could easily create a class of kept critics, and damage the future of an independent public interest movement."

Like Adam in the Garden of Eden, the agency has yielded to temptation. The history of the FTC's intervenor funding program—which has so far handed out nearly $2 million—is one of helping its friends and ignoring its adversaries. The result has been an almost total anti-business, pro-regulation bias in the allocation of what are, after all, taxpayers' funds.

In testimony before Congress in 1979, it was brought out that supporters of more regulation of business received 95 percent of the intervenor funds distributed by the FTC between November 1978 and May 1979. And in seven major trade regulation rule proceedings during that time, the commission funded *only* advocates of the proposed rule. The subjects of those proceedings and the grants involved were:

- *children's advertising (kid/vid)*—18 grants totaling over $133,000, including more than $32,000 to the group that originally petitioned the FTC to initiate the rulemaking (Action for Children's Television/Center for Science in the Public Interest);
- *used cars*—two grants totaling over $17,000;
- *food advertising*—one grant, over $3,000;
- *over-the-counter drugs*—two grants, over $7,500;
- *antacids*—four grants, over $26,000;
- *insulation*—five grants, over $14,800;
- *funerals*—eight grants, over $18,500.

When it comes to receiving FTC money, it seems that friends make out a lot better than enemies.

MUTUAL BENEFITS

The FTC's behavior is not that difficult to understand, of course. Despite what many people think, bureaucrats are human beings, so they generally make decisions based on what will benefit them the most. In this respect they are no different from ordinary consumers and business people.

Eight favorite groups received two-thirds of all public participation funds doled out by the FTC in 1979.

Like those who toil in the private sector, bureaucrats are interested primarily in enhancing their salaries, working conditions, power over others, reputations, and prestige. Thus, they can be expected to be keenly interested in possibilities for action that increase their chances for promotion, raises, and growing influence.

Naturally, when the passage of Magnuson-Moss expanded the jurisdictional base of the FTC's power, the bureaucrats were not hesitant to move into the new territory. Adding to the momentum was the Carter administration's infusion of "consumer activists" into the upper levels of the bureaucracy. At the top, of course, was Michael Pertschuk, appointed FTC chairman in 1977. Pertschuk had been chief counsel to the Senate Commerce Committee when it was headed by Sen. Warren G. Magnuson, a favorite of the consumer movement. Pertschuk was the chief architect of many federal consumer laws, including the Magnuson-Moss Act.

Pertschuk's appointment delighted the consumer movement, for now they had one of theirs on the inside. The prospects seemed bright for advancing consumerism. The FTC and the consumer movement could work together for the mutual benefit of both parties. The agency would gain more bureaucratic turf by issuing new trade regulation rules under the expanded powers granted it by Magnuson-Moss. And the consumer groups would gain in prestige as regulations advocated by them were adopted by the FTC.

This symbiotic relationship was enhanced by the new ace up the FTC's sleeve—the public participation funding program. The FTC now had at its disposal a device whereby it could reward the very consumer groups that would be most likely to support its proposed new rules and regulations.

This is precisely what happened. The FTC has been very generous to a select few groups that share its penchant for more and more governmental regulation. The record shows that eight favorite groups received two-thirds of all public participation funds doled out by the FTC in 1979:

- *Center for Public Representation*—three grants for over $16,700 to testify in two proceedings, children's advertising (kid/vid) and thermal insulation;
- *Consumers Union/Committee for Children's Television*—three grants totaling over $39,000 on the kid/vid rule;
- *Americans for Democratic Action*—over $31,400 via five grants to support four rulemaking efforts (eyeglasses, over-the-counter drugs, health spas, and the funeral industry);
- *Community Nutrition Institute*—three grants for the kid/vid rule for a total of $33,368;
- *National Consumers League*—over $28,000 for two proceedings (care labeling and food advertising);
- *Action for Children's Television/Center for Science in the Public Interest*—over $32,700 from four grants for the kid/vid rule;

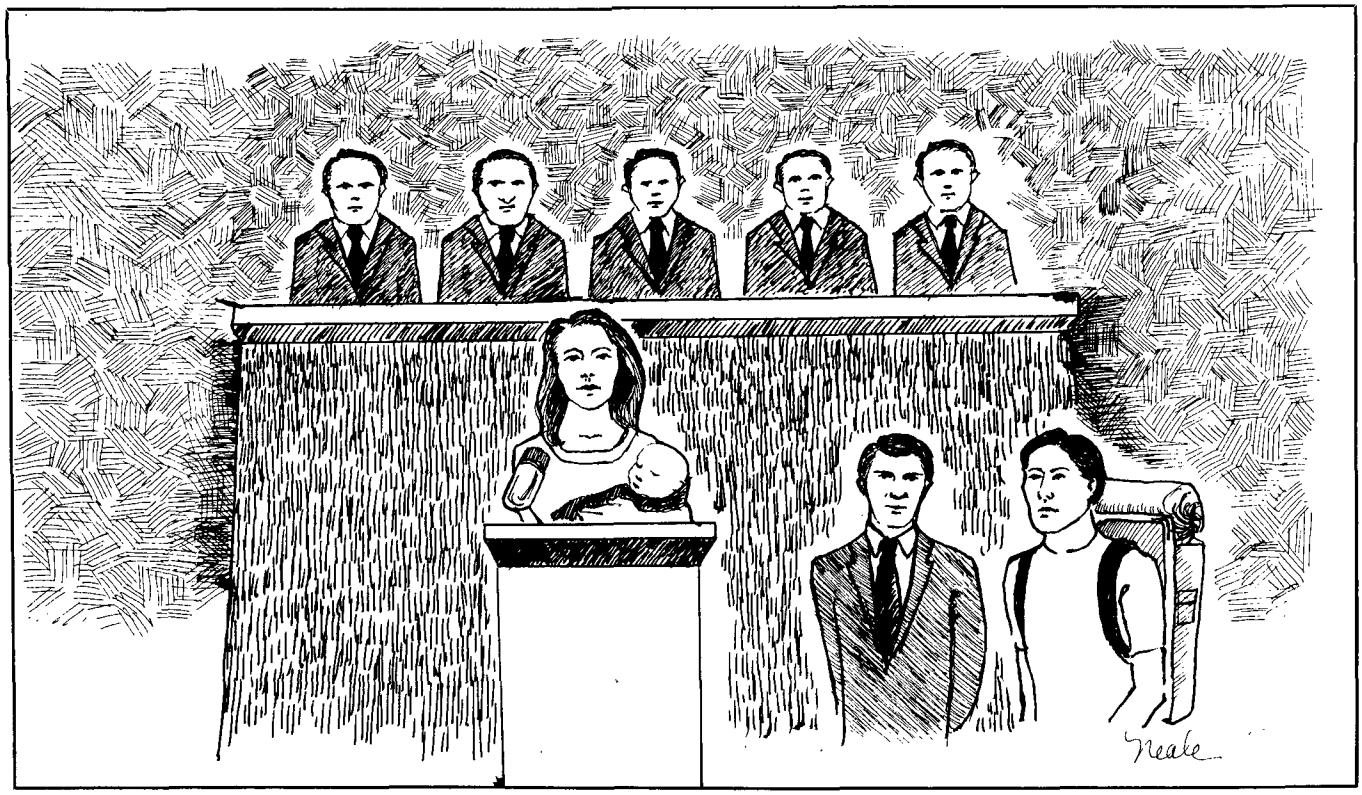


Illustration by Melissa Neale

- *Council on Children, Media, and Merchandising*—over $31,500 from five grants for three rulemaking proceedings (antacids, food advertising, and kid/vid);
- *Center for Auto Safety*—three grants for over $18,000 to support two proposed rules (mobile homes and used cars).

PAYING FOR EXPERTISE?

Aside from the incestuousness of this relationship between the FTC and its paid supporters, there are other questionable features of the intervenor program. Was this small corps of ideological soul-mates even qualified to speak out on particular rules under consideration by the FTC?

Take, for example, the Council on Children, Media, and Merchandising, an organization that seemed to depend on the bounty of the FTC for its sustenance. It consisted of a single individual and had no dues-paying members. But from 1976 through the middle of May 1979, this "organization" received $185,839 in FTC intervenor funding to participate in rulemaking proceedings on antacids, food advertising, over-the-counter drugs, and children's TV advertising.

The Council's founder and principal member, Robert Choate, was astute enough to take advantage of the legal plum handed to him by the FTC. Choate understands how the game is played in Washington: "Washington is an organization town. The first question asked of one going to his or her government with other than a purely personal matter is 'who are you with?' " So Choate created an organization to be with, consisting of himself and 13 others listed on a letterhead—an "ad hoc group," he called it in a letter to the FTC.

"We could easily create a class of kept critics," warned John Gardner.

So a clever Washington entrepreneur can create a paper organization. To qualify, however, for a large grant for extensive participation in FTC rulemaking proceedings, it would seem that an organization would have to have sufficient expertise. In fact, evidence shows that small groups that receive intervenor funding often end up farming out most of its participation functions to persons or organizations not eligible themselves for compensation—outside law firms, survey research companies, or individual experts-for-hire.

The Community Nutrition Institute, for example, received over $40,000 from the FTC to participate in the children's TV advertising proceedings. It was small—no paid members—and turned around and hired Opinion Research Corporation of New Jersey to conduct a personal opinion survey. The presiding officer in these FTC proceedings cited serious flaws and discrepancies in the survey, however. Likewise, the small San Francisco-based Safe Food Institute received over $12,000 to conduct a survey that was later found by the FTC not to be valid.

The problem with consumer groups as sources of expertise has been pointed out by Stephen Breyer in the *Harvard Law Review*. "Consumer groups, often in an adversary posture toward industry, tend to have the least experience of all," he noted. "Though they may appeal to competing elements within industry for help, they frequently are dependent upon the agency and outside experts for information."

And not just outside *experts*. According to C. C. Clinkscales, director of the National Alliance of Senior Citizens, proponents of the FTC's hearing aid rule were reduced to advertising for witnesses to testify before FTC hearings. In cities where the hearings were sched-

uled, they took out newspaper ads reading: "If you bought a hearing aid in the last 30 days, you were probably cheated. The U.S. Government wants to know about it." The National Council of Senior Citizens, sponsor of this ad, was given $46,734 in intervenor funding by the FTC.

MONIED INTERVENORS

Other groups receiving intervenor funds have been large organizations with substantial budgets. They could hardly be considered poor and in need of taxpayers' money to participate in the FTC's rulemaking proceedings.

Americans for Democratic Action, for example, has been awarded $177,000 in intervenor funding to participate in five separate proceedings. This group has a national membership in the neighborhood of 75,000 people and an annual budget exceeding $1.6 million.

The Sierra Club shared an award of $28,241 with four other environmental groups to participate in a rulemaking activity (the proceedings on thermal insulation). It has around 183,000 dues-paying members who come up with $25 a year. This gives the Sierra Club financial resources of at least $4.5 million annually.

The Environmental Defense Fund, one of the groups sharing the insulation grant with the Sierra Club, is able to maintain offices in Washington, D. C., New York City, Denver, and Berkeley, California. It takes a lot of money to keep four offices open in four major cities. Yet the FTC felt this organization needed taxpayers' funds to participate in its rulemaking process.

Consumers Union, another recipient of intervenor funding, has an operating budget of nearly $24 million. It has a staff of almost 400 and publishes the magazine *Consumer Reports*, with a circulation exceeding 2 million. This needy organization shared with another group $73,900 from the FTC just to participate in the children's advertising proceeding.

How can an organization with that amount of revenue be qualified to receive these funds? It is quite easy, Mark Silvergelb, director of CU's Washington office, told the Senate Subcommittee for Consumers in September 1979. "Consumers Union does not receive from its subscribers $23 million dollars primarily to support participation in either Federal Trade Commission rulemaking or any other forum." He went on to point out that Consumers Union's primary function is to publish its magazine, and it only devotes a small part of its operating budget to advocacy activities. "If you divert more than what is financially sound to nonrevenue producing activities [appearing before the FTC], you eventually reduce your ability to carry on both kinds of activities, revenue and nonrevenue producing, and you simply waste away the base of the organization's financial abilities."

Mr. Silvergelb is onto something, only he is probably not aware of its implications. If Consumers Union is concerned about diverting money into, as he calls them, "nonrevenue producing activities," what about the businesses that stand to be directly affected by the FTC's proposed rules? Won't *they*, out of necessity, maybe even to stay in business, have to divert money into nonrevenue producing activities—such as taking part in FTC rulemaking proceedings? If Mr. Silvergelb's group can't divert funds from Consumers Union without affecting its program, might not the businesses facing potentially devastating FTC regulation be up against the same problem?

The FTC could now reward the very consumer groups that would be most likely to support its proposed new rules.

WHAT THE BILL COMES TO

What has all this activity actually cost? During its first three years, the FTC intervenor funding program soaked up $1.8 million in taxpayers' money. The program virtually ground to a halt in mid-1979, as Congress kept the FTC on a short budgetary leash during nearly a year of grueling oversight hearings. The tough hearings eventually led to a rather mild FTC reform bill that slapped the agency's wrists for regulatory excess over such matters as the kid/vid rule but left its basic powers unscathed.

Since that time, however, few new trade regulation rules have reached the public participation stage. As a result, additional intervenor funding since mid-1979 has added up to only $187,000 so far, making the total expenditure since the program's inception just under $2 million.

This figure may seem like a drop in the bucket when compared with the billions our government seems determined to spend on all sorts of schemes and programs. Yet, the $2 million is just one part of existing and envisioned intervenor funding spread throughout the government (see box, p. 41). In the 96th Congress alone, nearly 50 bills to establish intervenor programs were introduced. Although one of its champions—Sen. John Culver (D-Ia.)—was retired to private life last November by his constituents, the concept lives on. Its new hero is Sen. Edward Kennedy (D-Mass.), who has been active in trying to create a government-wide intervenor funding program since 1976.

In addition to the seemingly small amount spent so far on intervenor funding, its end product, rules regulating business, can have tremendous cost impact upon the consumers of this nation. Increased business costs resulting from the rules are passed on to the consumer in the form of higher prices for goods and services.

Since consumers are also taxpayers, they end up getting stuck with both tabs—the original (tax) cost of the governmental process and the increase in the costs of goods and services resulting from the action of the government. Joyce A. Legg, a taxpaying consumer from Virginia hit the nail squarely on the head when she told Rep. Herb Harris (D-Va.) in a letter that, "as a consumer, I have not been fleeced one tenth as much as I have as a taxpayer."

EXPENSIVE RULES

A good example of how FTC rules can raise costs to the consumer was its trade regulation rule "Labeling and Advertising of Home Insulation," the so-called R-value Rule announced in August 1979. The purpose of the rule was to mandate the disclosure of insulation capacity in labeling, advertising, and promoting home insulation products. The R-value is supposed to be a scientific measurement of thermal resistivity—the higher the R-value, the greater the insulation power.

There was one fly in the ointment, however. Testing to determine R-values

THE TIP OF THE ICEBERG

The FTC is not the only federal agency with an intervenor funding program. The FTC program's only distinction is in having been around the longest. Among the agencies with active clones of the FTC's prototype program are the following:

Agency	*FY 1980 Spending*
Consumer Product Safety Commission	$25,033
Community Services Administration	Spending embedded in individual projects; no current total available (but spent $1.5 million in FY 1978)
Department of Energy	$2,834,000
Environmental Protection Agency	$7,215
Food and Drug Administration	$20,000
National Oceanographic and Atmospheric Administration	Spending embedded in individual projects; no current total available.

is a complicated process overseen by the National Bureau of Standards (NBS) and the American Society of Testing and Materials (ASTM). The science of testing various thicknesses of the many and varied types of insulating products is still in its infancy. Just before promulgating its rule, the FTC switched from one R-value test to another and imposed new mandatory testing requirements. Until recently, meeting these changed requirements was beyond the capability of existing testing equipment and methods, a point made to the FTC by the NBS, the ASTM, the Department of Energy, and other experts in the field of thermal-insulation testing.

In the 96th Congress alone, nearly 50 bills to establish intervenor programs were introduced.

The FTC turned a deaf ear to these protests and proceeded with the rule. If it were to go into effect without proper equipment and standards, warned Stanley L. Matthews, president of the Mineral Insulation Manufacturers Association, it "will increase the cost to consumers of insulation by as much as $90 million."

Fortunately, the 10th Circuit Court of Appeals put a hold on the FTC's rule; Congress reaffirmed that hold in its FTC reform bill. The National Bureau of Standards hopes to have standard calibrated equipment and samples available sometime this year.

In other recent action the FTC is proposing a set of rules requiring new warranties on the sale of mobile homes. "This is a classic case of over-regulation," says Walter L. Benning, president of the Manufactured Housing Institute. "Every one of our homes must be inspected by agents from the Department of Housing and Urban Development before they can be sold. No other house in America must go through such rigorous inspection." The FTC estimates that its rules would increase the cost of a mobile home by only $100-$125, but Benning figures it would be more like $2,000 per home.

The cost to the consumer of the FTC's originally proposed used car rule requiring dealers to inspect 14 systems of the automobile and to disclose the results on a window sticker ("OK," "Not OK," or "We Don't Know") was pegged, during Senate testimony, at between $1 billion and $10 billion, depending on how the cost of the inspection and any subsequent repairs is calculated. Evidently, the cost seemed too high even to the FTC, for in April 1981 it approved only a twice watered-down rule requiring used car dealers to put in writing whatever warranties are offered and to disclose "major defects."

Attempts by the FTC to break up the cereal industry would, if successful, have serious economic consequences. According to Phil Leonard, United Rubber Workers Political Education Director, it "will mean over 2,600 jobs will be lost" in the cereal industry alone. In addition, Mr. Leonard pointed out, if the FTC proceeded with its proposal to ban children's advertising on TV, jobs in the toy industry would be lost.

THE COST OF THREATS

Mr. Leonard's latter fear is moot because in its 1980 FTC reform bill Congress forbade the FTC from issuing any ban on children's television advertising. But the mere announcement by the FTC that it is considering a rule can have detrimental effects upon the chosen industry.

The agency has proposed a rule that would allow health club members the right to cancel their membership contracts, for any reason (or no reason at all), at any time during the life of the contract. This rule would have disastrous effects upon the health spa industry because its ability to raise both long- and short-term capital depends upon pledging accounts receivable, in the form of membership contracts, to banks and other lenders for credit. The FTC's proposed rule would, in effect, make a health club contract a useless, nonbinding, one-party document that no lending institute would accept as collateral.

According to the September 1979 Senate testimony of Richard Wood, president of the Golden Life Physical Fitness Centers, when the FTC announced its proposed rules, "Abruptly, the financing for my Odessa [Texas] center was withdrawn, leaving me with no source of short-term working capital or expansion funds. Despite a delinquency rate of only two percent, I could not convince bankers or finance company executives to reinstate my financing. They were frightened by the severe nature of the FTC rule which calls for giving consumers the unilateral right to cancel their retail installment agreement with me at any time for any or no reason."

Wood was forced to ask prospective consumers to pay in advance for the entire term of their contracts. As a result, business at Wood's Odessa facility has dropped 50 percent and it has not shown a profit. The Texas gym is being carried by Wood's other clubs in New Mexico.

Dr. Reynold Sachs, a professor of managerial economics at American University in Washington, D. C., testified that

"the proposed trade regulation rule would make it all but impossible for the typical health spa operator to obtain external debt financing . . . [and would] lead to an increase in the number and frequency of bankruptcies and insolvencies . . . . consumer prices would increase by an estimated 100 to 200 percent."

HITTING THE LITTLE GUYS

Other direct costs to business are more difficult to measure. For example, consider the cost involved in the sheer amount of paperwork involved in FTC rulemaking proceedings. The average record of a proceeding is 25,000 pages; some exceed 50,000 pages.

How can a businessman, especially a small businessman, wade through that morass of paperwork and still devote sufficient time to his business? Clearly, it is beyond the means of the average business owner. And although large corporations can hire teams of lawyers to do the job, such expenses are passed on to the consumer.

It is not the large corporation, however, that is the typical target of FTC activity. The FTC is a bureaucracy employing 700 lawyers that seems to thrive on hassling the small businessman. As Dr. F. M. Scherer, former director of the FTC's Bureau of Economics, told a 1976 hearing before the House Small Business Subcommittee: "What I have learned since joining the Commission staff is that many attorneys measure their own success in terms of the number of complaints brought and settlements won. In the absence of broader policy guidance, therefore, the typical attorney shies away from a complex, long, uncertain legal contest with well-represented giant corporations and tries to build up a portfolio emphasizing small, easy-to-win cases. The net result of these broad propensities is that it is the little guys, not the giants who dominate our manufacturing and trade industries, who typically get sued."

Among the indirect costs of FTC rulemaking is the time lost by businesses in trying to comprehend the proposed FTC action, fighting it, or both. Any time spent on these activities is time *not* spent on providing goods or services desired by consumers, which means higher prices for the ones that are provided.

The heavy-handed intrusion of the FTC into the affairs of business also generates a climate of fear. Zealous defenders of the regulatory agencies will applaud this, saying the businessman will be too scared to try any shady tactics. (This is a dubious assertion because anyone who is bent on fleecing consumers is not likely to be overly deterred, if at all, by some FTC regulation.) But the other side of the coin is that the climate of fear also makes entrepreneurs have second thoughts before developing and introducing new goods and services that may be better and cheaper than those currently on the market.

CURBING THE FTC

The FTC's use of public funds to hire advocates of its position on proposed industry-wide rules is a gross abuse of its powers and of the taxpayers' money. As Senator Simpson told his colleagues in 1979: "In a free society it is intolerable that the taxpayer should be required to finance private lobbying groups, who often take positions opposed by a vast majority of our citizens."

The FTC is still peopled by those who have admitted to carrying out a vendetta against whole industries.

Unfortunately, Simpson's words had little effect upon his Senate colleagues last year when they passed their weak-kneed FTC reform bill. When they finally approved the agency's budget the intervenor funding program was continued, with but two restrictions: the amount that any one group can be awarded is now limited to $50,000, and 50 percent of the grant funding must now go to business interests.

The reform bill took several other steps to restrain the FTC, namely allowing new FTC regulations to be vetoed by a vote of both houses of Congress and restricting somewhat the proposed FTC regulations on children's TV advertising, voluntary codes and standards, trademarks, cooperatives, life insurance, and funeral homes. In other words, the big boys with the political clout won a reprieve from the FTC. But Congress left the small businessman still exposed to the agency's awesome powers.

The FTC intends to use that power. After the legislation was signed into law, Chairman Michael Pertschuk told the Associated Press, "We intend to go ahead with everything Congress hasn't specifically stopped us from going ahead with." In spite of the change of administrations, the FTC is still peopled by those who have admitted to carrying out a vendetta against whole industries. They are ready, willing, and able to dream up new rules to regulate business, as Pertschuk has admitted. They can still dole out money, although now on a reduced basis, to hire groups to speak for their proposed rules and regulations.

Last February the Reagan administration sent shock waves through the Federal Trade Commission. The Office of Management and Budget recommended that the FTC's current fiscal 1981 budget be cut by 13 percent and its 1982 budget by 24 percent. OMB also urged that the intervenor funding program be abolished.

The latter, however, is a creature of the Congress. Congress conceived intervenor funding, gave birth to it, annually nourishes it with taxpayers' funds, and regularly contemplates cloning it for other federal agencies. It is up to Congress, not the OMB, to get rid of the little monster it created.

The time is rapidly approaching when, according to former Atty. Gen. Griffin Bell, "if the Republic is to remain viable, we must find ways to curb, and then to reduce, this government by bureaucracy." A good place to start would be to abolish the practice of intervenor funding. ◧

Morgan Norval is a Washington-based freelance writer. This article was sponsored by the Sabre Foundation Journalism Fund.

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

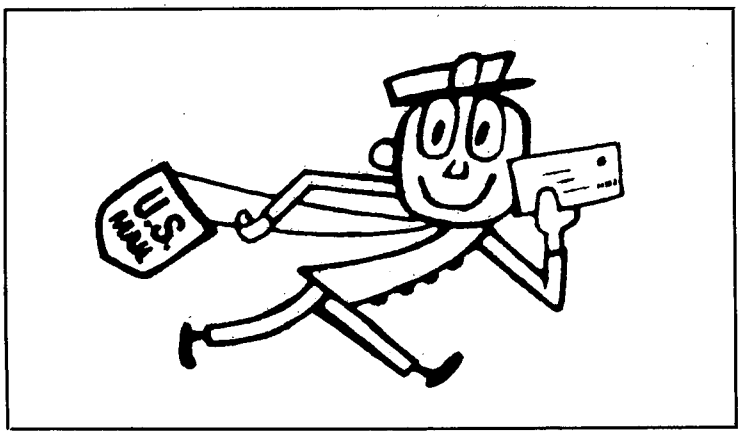
—Justice Louis Brandeis

By Byron Farwell

What Can Be Said for Nine Digits?

Zip!

WHO NEEDS THE PROPOSED nine-digit zip code? The Postal Service, says the Postal Service. Well... consider the source.



Nine digits can create just one short of a billion numbers. That's enough combinations to give every man, woman, and child in the United States his or her own personal zip code with more than 750,000,000 combinations left over. In fact, nine digits are enough to give a zip to everyone who has ever lived in this country. Every postman and every postal box could have a number and only six digits would be needed—seven at most.

If the zips were distributed geographically, nine digits still seems to provide an excessive number of combinations. The United States and all its territories and possessions contain only 3,619,623 square miles; each square mile could have its own zip code with 6,380,376 left over. On the other hand, why not go whole hog and use 10 digits? Then every quarter of an acre of mountain, desert, and plain could have a postal zip. A letter could be precisely directed to the crater of Mt. St. Helens, your favorite parking space, or a particular spot in the bottom of the Grand Canyon.

It seems curious that no one has suggested using longitude and latitude. Then, cities, towns, and states could be eliminated. This in itself would save postal workers an untold amount of labor. Those folk who find it tedious to read long words such as *Ohio* and insist we write *OH* would surely welcome this change.

Of course, if letters were used instead of digits, zips could be shortened considerably. Twenty-six letters can be made into a greater number of five-letter combinations than can nine digits. Of course, the Postal Service's reluctance to use letters of the alphabet is quite understandable. Some of the combinations of letters would spell words, you see, and some might be X-rated—old Saxon words that, although Judge John M. Woolsey described them as "words known to almost all men and, I venture, to many women," they would undoubtedly prove offensive to many. Even worse, the use of letters might lead some misguided citizens to think they could address letters in simple English.

Mr. Walter E. Duka, assistant postmaster in charge of communication, whose job it is to extol the virtues of the nine-digit zip, says that the greatest advantage to these magic numbers is that they will save postal employees 16,000 manyears of work. Allowing for weekends, vacations, holidays, and sick leave, we can reckon this to be about 31 million personhours. This seems a curious argument when compared with the number of hours ordinary citizens will spend looking up the numbers and writing or typing them.

Ignoring for the moment the exigencies of all businesses, industries, foundations, and bureaucracies, if just 50 million individuals mailed only 100 letters, checks, and packages in a year, and they required, on average, only a single minute to find and write down the nine-digit zips, they would spend more than 83 million personhours (or about 43,000 manyears, to use the preferred postal image). In other words, we of the hoi polloi would spend considerably more time than the postal workers would save.

In fact, though, these are imaginary statistics. According to the US Postal Service, it processes 105 billion pieces of mail every year. Since much of this is machine-processed, let us assume that, on average, only *three seconds* would be required to find and apply the zip. This would still require 87.5 million personhours, or 45,000 manyears. Much as we all want to save postal employees their hard work, we can still wonder at the cost.

(Continued on p. 53.)