Energy Insider by William Engdahl

The Carolina minerals battle goes into federal court

On Jan. 12, U.S. Federal District Judge Woodrow W. Jones heard the case of the Southern Appalachian Multiple Use Council et al. v. Bergland, Secretary of Agriculture. The case, heard in Asheville, North Carolina, was continued to Jan. 24, at which time a decision will be handed down that could affect hundreds of thousands, if not millions, of acres of mineral and forest resources under the jurisdiction of the U.S. Forest Service of the Department of Agriculture.

This legal action is presently the major challenge before the courts against a process implemented in 1977 by then-Agriculture Secretary Bob Bergland. The process, known as RARE II, is the second phase of a Roadless Areas Review and Evaluation process begun in the early 1970s. Two other major challenges, in California and in Wyoming, were both decided against the agriculture secretary. Under the no-growth policies of the Carter administration, the RARE II process was the umbrella under which some 10.8 million acres of forest lands have been withdrawn from traditional "multiple-use," while their suitability for permanent "pristine" status was presumably being studied by the government.

I have covered earlier aspects of this particular North Carolina case (*EIR*, Nov. 11, 1980) because of the importance of what is at stake. The fact that the case has come into court one year after suit was filed, and more than three years after development was halted by the RARE II process, makes it worthwhile to review the substance of what's at stake.

Regardless of the outcome of the decision on Jan. 24 (both sides are expected to appeal), the case underscores one of the most important policy questions which incoming Agriculture Secretary John Block must address.

In 1977, a remarkably persistent geologist Jack B. Brettler, ran smack into RARE II. I say persistent, because it has been principally through his sustained efforts that the case last Monday in the U.S. District Court in Asheville took place.

Arguing on behalf of the secretary of agriculture was a young attorney from Civiletti's Justice Department who seemed to have a close relationship with the two representatives from the virulently antigrowth Sierra Club, arguing on behalf of the wilderness process as "friend of the court." The Sierra Club has been one of the prime movers and architects of the entire RARE II process, whose seeds were actually sown under the tenure of Nixon Interior Secretary Kleppe in the early 1970s and continued under Carter's tenure by Cecil Andrus.

Resources at stake

In 1977, Jack Brettler filed for routine permission for a prospecting permit on behalf of Appalachian Properties, Inc. for mining of olivine in a 331-acre portion of the Nantahala National Forest of North Carolina. Brettler says the area contains the largest reserves in the East of the mineral olivine, which is necessary in steel-making and making linings for high-temperature furnaces.

This started what a representative from the Sierra group called the "loudest" protest in the nation against the controversial RARE II process. Brettler spurred other groups into action, including representatives of the area's substantial forest products industry—which for years had purchased timber from the nearby forests—the U.S. Farm Bureau, and conservationist groups.

Since the RARE II withdrawals, most lumbermen were now forced to go as far away as Mississippi, at five times greater transportation cost, according to the estimate of one leading industry representative, John Veach, former national president of the Forest Products Association.

In presenting its argument against the government land lockup, the principal attorney for the developmentalists and conservationists, Hamilton Horton III, asked for a mandatory injunction to stop the illegal lockup. Horton argued that Congress had explicitly reserved for itself the authority to determine what should or should not be called wilderness areas. It, in fact, had listed 16 specific areas east of the Mississippi (100th meridian) to be designated wilderness, and another 17 specific areas on which the President and his Department of Agriculture had a five-year deadline to determine and recommend as appropriate for possible wilderness.

That deadline, under terms of the Eastern Wilderness Act of 1975, had expired on Jan. 5, 1980. As Horton argued persuasively, one such area in North Carolina, in the Craggy Mountain National Forest, had not even today been presented to Congress for classification, while Bergland's office seemed to ignore the explicit Eastern Wilderness statute and impose his own criteria to stop development of some of the nation's richest energy and mineral, as well as forest and grazing lands.

In the narrowest sense, at issue before the court is a de facto wilderness designation arbitrarily imposed, in flagrant violation of specific law, on lands estimated by the government's U.S. Geological Survey (USGS) to contain immense mineral resources. The area in North Carolina's Pisgah National Forest alone contains enough uranium to fuel 10 to 15 1,000-megawatt nuclear plants for their entire 30-year life. This is the energy equivalent of more than 4.65 billion barrels of oil. The olivine resources are estimated to be the richest source in the entire eastern U.S.

Last spring, USGS further cited the area stretching along much of this "wilderness" study area, the Appalachian Overthrust belt that runs down from New York State to Georgia, as containing substantial and largely unexplored oil and gas reserves similar to those of the vast Rocky Mountain Overthrust that is the source of much recent activity.

AMOCO applied for leases on some 229,000 acres in July 1979 to explore for needed oil and gas. To date, despite the positive recommendation of the local Forest Service director, Bergland's office in Washington, as well as the Department of Interior, has sat on the application. The Bureau of Land Management (BLM) is presently sitting on at least 200 applications for oil and gas leases in North Carolina alone, more than 450,000 acres. In addition, because of RARE II, they are holding up further leases on untold oil and gas reserves in Georgia, Virginia, and Tennessee. One spokesman referred to this as a "lockup of the entire National Forest system in the Eastern United States."

In a response—made available to me through a constituent—to an inquiry from North Carolina Sen. Jesse Helms, the BLM last month replied that these oil and gas lease applications accumulating over the past two years have "preliminary status report almost complete." And then? "[T]his office [BLM—ed.] will request title and environmental reports from the Forest Service." And then? Assuming the applications are in order, "the case files are transmitted to Denver for clearance by the oil and gas investigative task force." This latter body is a witchhunt apparatus set up last year primarily to hinder noncompetitive leasing for oil and gas by Interior Secretary Andrus and the Justice Department (see *EIR*, March 25, 1980).

Of course, as the BLM explained to the senator, this is not the "final step." Before that could happen, the USGS must make a "known geological structure check" (KGS). If there is found to be a KGS, the lease application must be rejected as noncompetitive. When do they expect this all to be complete? "We estimate that these offers will be processed by mid-1982." That is, merely four years after they were filed!

The 37 steps

Let me draw the point out a little further. I have been given an official flow chart titled "Mineral Leasing on Acquired Land" for merely the Eastern Region of the Bureau of Land Management and the U.S. Forest Service. The document, which in reduced form is more than two feet long, is subtitled, "simplified sequence of interactions [sic]." Under this "simplified sequence," an applicant for mineral exploration rights, even if wilderness was *not* involved, would have to successfully complete an interlocked series of no fewer than 37 steps, including application for prospecting permit, environmental assessment, submission of exploration plan, issuance of "OK to start exploration" and so on. By now, we are at step 13 of 37, with no end in sight—and an actual lease has not even been issued.

To expedite out of this morass, Jack Brettler, through the offices of Rep. Lamar Gudger, assembled representatives of all government—state, local, and federal—agencies involved in review process at his proposed exploration site. Some 13 different agencies were present, from the Forest Service, the Conservation Division of the USGS, the Department of Interior Fish and Wildlife division, the State of North Carolina Department of Cultural Resources (to make sure it did not interfere with any ancient Indian burial grounds), etc.

Most geologists do not share the remarkable tenacity of Brettler. And even he expressed doubt that this insane morass can be reversed before a tiny minority of self-appointed defenders of some pristine state of nature succeed in destroying the opportunity for this nation to survive.