

## MINERAL KING: A REMOTE CALIFORNIA VALLEY AND MODERN ENVIRONMENTALISM

By John S. Caragozian

Mineral King is a high glacial valley in California's Sierra Nevada. It is accessed by one narrow, 25-mile-long road – supposedly with 698 curves – that reaches the 7,800-foot valley floor. From there, trails climb toward alpine lakes, passes, and 12,000-plus-foot peaks.

The valley has a campground and a few old wood cabins. It is deserted during winter, as the road is unplowed and snow depths can exceed ten feet.

Half a century ago, this remote valley was the subject of litigation that changed the U.S.'s entire environmental movement.

Native Americans knew of Mineral King for millennia. Whites first glimpsed the valley in 1862. A decade later, gold and silver were discovered, triggering the first of several mining booms. By 1873, the first road had been constructed to the valley, but it was so rough and steep that most equipment and other supplies were transported on horse- or mule-back, rather than in wagons. See Louise Jackson, "Beulah: A Biography of the Mineral King Valley of California," 3-4, 11-27 (1988).

By the turn of the century, the mining booms faded. Transportation into the valley remained slow and dangerous; lodes were on sheer mountainsides; the ore was difficult to smelt; and winter snows triggered avalanches.

In 1908, the Sequoia National Forest was created, and it included Mineral King. See Daniel Selmi, "Dawn at Mineral King Valley: The Sierra Club, Disney Company, and the Rise of Environmental Law," at 7 (2021). National Forests – then, as now – are managed by the U.S. Forest Service, under the Department of Agriculture. National Forests may be used for multiple purposes such as grazing, mining, hunting, and logging, in addition to recreation and preservation.

In 1926, Sequoia National Park (originally created in 1890 to protect redwood groves from logging) was expanded. In contrast to National Forests, National Parks are administered by the National Park Service under the Department of Interior; National Parks, in turn, are dedicated to preservation, especially of wilderness. Mineral King, owing in part to old mining claims, was not included in the expanded National Park, but ended up remaining in the National Forest and bordered on three sides by the Park.

Mineral King then slumbered. It had few visitors, despite Tulare County taking over and improving the road into the valley.

After World War II, downhill skiing became popular in America, and the U.S. Forest Service permitted dozens of ski resorts on National Forest lands, among them Mammoth Mountain and Palisades Tahoe (formerly Squaw Valley). In 1949, the Forest Service proposed permitting a ski

resort at Mineral King, which had abundant skiable terrain. The Sierra Club – then a small, California-centered organization focusing on traditional conservation and outdoor recreation – supported the proposal. *Id.* at 10-11, 105-06.

In 1953, the Tulare County Board of Supervisors also endorsed the proposal. That same year, the Tulare Chamber of Commerce hosted a meeting of public and private officials, all of whom supported skiing at Mineral King. The proposal stalled, however, for lack of an all-season road into the valley.

Enter Walt Disney, the founder of what was then named Walt Disney Productions (now the worldwide entertainment/media conglomerate Walt Disney Company). Disney enjoyed skiing, and the Forest Service encouraged him to consider developing Mineral King. Once again, however, the lack of an all-season road stalled momentum.

Still, Disney Productions and other private entities continued to assess Mineral King's skiing potential. The road problem might be solved with major improvements to the existing road, and, in 1964, the National Park Service conditionally approved such improvements across 11 miles of the road that crossed through Sequoia National Park on the way to Mineral King. Accordingly, in 1965, the Forest Service issued a formal prospectus for a ski development and invited interested parties to submit proposals. *Id.* at 17-19.

Most elected officials and newspapers supported the development. The state of California, for its part, agreed to designate the road as a state highway and to pay for improvements.

Six entities responded to the prospectus with proposals. Disney Productions submitted the winning proposal, which included as many as 1.5 million visitor trips per year into Mineral King, 7,200 visitor beds (plus employee accommodations), 14 ski lifts able to handle 10,000 skiers per hour, and parking for 2,500 cars. Disney also touted the economic benefits to Tulare County and the revenues to the Forest Service.

The Sierra Club was divided over the proposed development. Older members favored it as comporting with traditional recreation activities. These members also worried that the Sierra Club would lose credibility with the Forest Service if the club reversed its prior support for skiing. Younger members, however, saw the club as a growing national organization with a mission to preserve the environment. In 1965, a majority of the Sierra Club's board of directors voted to oppose Disney's project. The club's published opposition included the impact on Mineral King's fragile environment and the spillover effect on Sequoia National Park. *See id.*, at 21, 26-27, 78.

As Disney Productions began to refine its plans, opposition began to grow as environmentalism became a national trend. Influential entities, such as the New York Times and Natural History magazine, voiced opposition to Disney's project. The Department of Interior continued to ask for details about the road across Sequoia National Park.

By 1969, Disney Productions enlarged its plans to 22 lifts, while eliminating cars from the valley by constructing a 2.5-mile cog railway to a parking structure. *Id.*, at 92-94.

In June of that year, the Sierra Club filed suit in U.S. District Court in San Francisco against the Department of Agriculture for failing to hold public hearings on the project and for the project's proposed permit and against the Department of the Interior for allowing an expanded road and power lines through Sequoia National Park. *Sierra Club v. Hickel*, No. 51,464 (N.D. Cal.). A threshold issue was standing: the Sierra Club alleged no actual injury – economic or otherwise – to itself or its members and, instead, alleged that the club's "special interest" in wilderness conservation entitled it to bring suit.

In July 1969, the District Court preliminarily enjoined the project from proceeding. The court found that the Sierra Club had standing and was likely to prevail on its claims.

In 1970, the 9th Circuit reversed. It found that the Sierra Club lacked standing. It also rejected the club's substantive claims, holding: (a) re the Department of Agriculture, the 1953 chamber of commerce meeting was a sufficient public hearing, and the Forest Service had discretion to grant the permit for the project on national forest land; and (b) re the Department of the Interior, neither the road nor power lines violated federal statutes. *Sierra Club v. Hickel*, 433 F.2d 24, 30, 32, 35-37.

The Sierra Club appealed to the Supreme Court, which granted certiorari. In 1972, the court ruled 4-to-3 (two new justices had not been confirmed before oral argument) that the club lacked standing. The majority held that standing required "injury in fact," which could be environmental damage without economic injury, and that an organization (such as the Sierra Club) had standing based on its members' injury. However, the Sierra Club's complaint failed to allege that it or its members had suffered such injury. Significantly, the court noted that the Sierra Club could amend its complaint to add injury-in-fact allegations. The court expressed no views on the club's substantive claims. See *Sierra Club v. Morton*, 405 U.S. 727, 733-39, 741 & n.8.

While the Sierra Club lost, two aspects of the Supreme Court's ruling facilitated the subsequent half century of modern environmental litigation: (1) standing may be based on environmental and other non-economic injury, and (2) an organization has standing to represent its members' injuries. With these tools, environmental organizations, often led by the Sierra Club, have fundamentally influenced environmental issues throughout the U.S.

As for Mineral King itself, the Sierra Club amended its complaint, but other factors emerged. Most importantly, Congress – during the lawsuit's pendency – enacted the National Environmental Policy Act in 1969, which required a detailed environmental impact statement, including public comments or hearings, for projects such as Disney's at Mineral King. See 42 U.S.C. §§4332(2), 4336(b)(1). This requirement meant the Forest Service's planning process had to begin anew. See Daniel Selmi, *supra*, at 214, 227, 236-38.

In addition, newly elected public officials, including California's U.S. Senators and the local congressional representative, opposed the Disney project. In 1977, President Jimmy Carter's administration favored incorporating Mineral King into Sequoia National Park. In 1978, Congress enacted this incorporation, with skiing expressly barred. *See id.*, at 244, 250-55.

Today, Mineral King remains – and will remain – one of the jewels of California's wilderness, to be enjoyed by those willing to drive those 698 curves.

**John Caragozian** is a Los Angeles lawyer and on the Board of the California Supreme Court Historical Society. He thanks Janie Schulman for her contributions to this column. He welcomes ideas for future monthly columns on California's legal history at [caragozian@gmail.com](mailto:caragozian@gmail.com).

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