

The Remote Valley That Facilitated Modern Environmental Protection

BY JOHN S. CARAGOZIAN

MINERAL KING IS a high glacial valley in California's Sierra Nevada. Access is by one narrow, 25-mile-long road — supposedly with 698 curves — that ends at the 7,800-foot valley floor. From there, foot and stock 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 environmental movement in the United States by opening the door to litigation by citizen groups and individuals claiming non-economic injury (as well as economic injury) from proposed land use and development.

Native Americans knew of Mineral King for millennia. White settlers initially glimpsed the valley in 1862. A decade later, gold and silver were discovered, triggering the first of several mining booms. By 1879, the first road to the valley had been constructed, but it was so rough and steep that most equipment and other supplies were transported on horse- or mule-back, rather than in wagons.¹

By the turn of the 20th century, the mining booms had faded. Transportation into the valley remained slow and dangerous; mineral lodes were on sheer mountain-sides; the ore was difficult to smelt; and winter avalanches endangered people, buildings, and equipment.

In 1890, President Benjamin Harrison signed legislation creating Sequoia National Park to protect redwood groves. The Sierra Club's president, John Muir, helped to draw the Sequoia National Park's boundaries, but the



Mineral King Valley. Photo: John S. Caragozian.

park omitted Mineral King, largely because of its mining claims and cabins.² (National parks are administered by the National Park Service, under the Department of the Interior, and are dedicated to preservation, especially of wilderness lands.)

In 1908, the Sequoia National Forest was created, and it did include Mineral King.³ 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.

1. See Louise Jackson, *Beulah: A Biography of the Mineral King Valley of California*, Tucson, AZ: Westernlore Press, 1988, 3–4, 11–27.

2. See Greg Glasgow and Kathryn Mayer, *Disneyland on the Mountain: Walt, the Environmentalists, and the Ski Resort That Never Was*, Lanham, Md.: Rowman & Littlefield, 2023, 40.

3. See Daniel P. Selmi, *Dawn at Mineral King Valley: The Sierra Club, the Disney Company, and the Rise of Environmental Law*, Chicago, Ill.: Univ. of Chicago Press, 2021, 7.

In 1926, Sequoia National Park was expanded, but once again, Mineral King was excluded. Instead, it remained within the national forest, bordered on three sides by the park.

Mineral King then fell into a long slumber; few visited the valley even after Tulare County took over and improved the road, but the road was slow and partially unpaved and still provided no winter access into the valley.

After World War II, as downhill skiing became popular in America, 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.⁴

The Tulare County Board of Supervisors also endorsed the proposal, in 1953. 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 Sierra Club reiterated its support at that meeting, but the proposal stalled for lack of an all-season road into the valley.⁵

Enter Walt Disney, co-founder of what was then named Walt Disney Productions. During the 1950s, Disney was personally popular with environmental groups and agencies; indeed, the Sierra Club honored him with a lifetime membership in recognition of his nature films.⁶ Disney also enjoyed skiing, and the Forest Service encouraged him to consider developing Mineral King. Once again, however, the lack of an all-season road slowed momentum.⁷

Still, Disney Productions and other private entities continued to assess Mineral King's skiing potential. Some asserted that the road problem might be solved by making major improvements to the existing road, and in 1964, the National Park Service conditionally approved such improvements across the 11 miles of road that crossed through Sequoia National Park on the way to Mineral King. Accordingly, in February 1965, the Forest Service issued a formal prospectus for a ski development,

The federal government itself became allied with environmental organizations to expand wilderness boundaries and protections.

including an “all-weather public road,” and invited interested parties to submit proposals.⁸

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

Six entities responded to the prospectus with proposals for the development. Disney Productions submitted the winning proposal, which envisioned as many as 1.5 million visitor trips per year into Mineral King. Disney also promised to complete by 1976 a total of 7,200 visitor beds (plus employee housing), 14 ski lifts able to handle 10,000 skiers per hour, and parking for 2,500 cars. Its plan also touted the future resort's economic benefits to Tulare County and revenues to the Forest Service.⁹

The Sierra Club had grown divided over the proposed development. Older members favored it as consistent with traditional recreation activities and worried that the Sierra Club would lose credibility with the Forest

Service if the club reversed its earlier, repeated support for skiing at Mineral King. Younger members, however, saw the club as a growing national organization with a mission to preserve the environment. They also questioned whether the Sierra Club's prior support for Mineral King skiing (which envisioned simple rope tows and a single lodge) should bind the club to the much larger Disney development. In May 1965, a majority of the Sierra Club's board of directors voted to oppose Disney's project. The club's

published opposition emphasized the impact on Mineral King's fragile environment and the spillover effect on Sequoia National Park.¹⁰

Walt Disney's death in December 1966 proved a key event. Whereas Disney Productions continued to grow and thrive under Walt's brother Roy Disney and other executives, Walt's personal vision, face, and support had always fueled the Mineral King project within the company.¹¹

Still, Disney Productions remained committed to Mineral King. As Disney continued to refine its plans, however, opposition began to grow as environmentalism became a national movement.¹² Influential entities, such as the New York Times and Natural History magazine, voiced disapproval of Disney's project. Meanwhile, the Department of the Interior continued to ask for details

4. *Id.* at 10–11, 105–06.

5. *Id.* at 12.

6. See Glasgow and Mayer, *Disneyland on the Mountain*, at 12–13.

7. Selmi, *Dawn at Mineral King Valley*, at 13–15.

8. *Id.* at 17–19; Glasgow and Mayer, *Disneyland on the Mountain*, at 42.

9. Selmi, *Dawn at Mineral King Valley*, at 40–41.

10. See *id.* at 21, 26–27, 78; Glasgow and Mayer, *Disneyland on the Mountain*, at 45–46, 48.

11. See *id.* at 86.

12. *Id.* at 90.

about the proposed road across Sequoia National Park.¹³

By 1969, Disney Productions enlarged its plans to 22 lifts, while eliminating cars from much of the valley in favor of constructing a 2.5-mile cog railway to a parking structure.¹⁴

In June of that year, the Sierra Club followed up on its opposition to Disney's Mineral King project by filing suit in U.S. District Court in San Francisco. At the time, such litigation was rare for the Sierra Club or any environmental organization.¹⁵

The Sierra Club claimed the Department of Agriculture failed to hold public hearings on the project, that the USDA's proposed permit for the project violated federal law, and that the Department of the Interior improperly would allow an expanded road and power lines through Sequoia National Park.¹⁶ Standing was a threshold issue: The Sierra Club alleged no actual injury — economic or otherwise — to itself or its members and instead asserted that the club's "special interest" in wilderness conservation entitled it to bring suit.

In July 1969, the district court agreed, finding that the Sierra Club had standing and was likely to prevail on its claims. Accordingly, the court preliminarily enjoined the Mineral King project from proceeding.¹⁷

In 1970, the U.S. Court of Appeals for the Ninth Circuit reversed, ruling that the Sierra Club lacked standing. It also rejected the club's substantive claims. With respect to the Department of Agriculture, the appellate court held that the 1953 Tulare Chamber of Commerce meeting was a sufficient public hearing, and the Forest



Walt Disney, left, on his last visit to Mineral King on Sept. 14, 1966 with Gov. Pat Brown (center) and Willy Schaeffler (right), Disney ski consultant. At extreme right is Larry Whitfield, Sequoia National Forest supervisor and at right, background, is Ron Miller, Disney's son-in-law and professional football player. Photo: *Herald Examiner Collection, Los Angeles Public Library.*

Service had discretion to grant the permit for the project on national forest land. Regarding the claims against the Interior Department, the court ruled that neither the road nor power lines violated federal statutes.¹⁸

The Sierra Club appealed to the U.S. 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 court concluded, 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 view concerning the club's substantive claims.¹⁹

13. Selmi, *Dawn at Mineral King Valley*, at 63, 66, 87–88, 90.
14. *Id.* at 92–94.

15. See, e.g., Richard J. Lazarus, "The Greening of America and the Graying of United States Environmental Law: Reflections on Environmental Law's First Three Decades in the United States" (2001) 20 *Va. Envtl. L. J.* 75, 76; Samuel P. Hays, "Environmental Litigation in Historical Perspective" (1986) 19 *U. Mich. J. L. Reform* 969, 970–71.

16. *Sierra Club v. Hickel*, No. 51,464 (N.D. Cal.). The Sierra Club decided not to name Disney Productions as a defendant, fearing that, given Disney's popular and wholesome image, suing Disney would create adverse publicity. See, e.g., Glasgow and Mayer, *Disneyland on the Mountain*, at 117–18.

17. *Sierra Club v. Hickel*, No. 51, 464 (N.D. Cal.).

18. *Sierra Club v. Hickel* (9th Cir. 1970) 433 F.2d 24, 30, 32, 35–37.

19. *Sierra Club v. Morton* (1972) 405 U.S. 727, 733–39, 741 and fn. 8. One of the dissenting justices was William O. Douglas, who had considered recusing himself because he had been a Sierra Club member until 1970 and even served on the Sierra Club's board for one year in 1961–62. Glasgow and Mayer, *Disneyland on the Mountain*, at 128–29. Justice Douglas ultimately did not recuse himself. See Selmi, *Dawn at Mineral King Valley*, at 183–84.

Although the Sierra Club lost, two aspects of the Supreme Court's ruling facilitated the subsequent half century of modern environmental litigation in federal courts. First, federal standing may be based on environmental and other non-economic injury, and second, 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 country in recent decades.

Further, in some instances, the federal government itself became allied with environmental organizations to expand wilderness boundaries and protections. As but one recent example, the Bureau of Land Management — another agency within the Department of the Interior — is attempting to preserve wilderness lands in the Grand Staircase-Escalante National Monument in Utah with the support of environmental groups. The status of the land's formal designation, the size of the monument, and scope of its permitted uses have long been subject to back-and-forth disputes between conservationists and those who seek access for grazing and mining.²⁰

As for Mineral King itself, the Sierra Club amended its complaint in three ways after the Supreme Court's standing decision. First, the club alleged that it and its members suffered actual injury, including deprivation "of wilderness experiences they have enjoyed since [1900]."²¹ Second, the amended complaint added Mineral King cabin owners as co-plaintiffs, and those owners alleged additional injuries.²² Third, the Sierra Club added claims asserting violation of the National Environmental Policy Act in 1969²³ — legislation that had been subsequently enacted, and which required a detailed environmental impact statement, including public comments or hearings, for projects such as Disney's at Mineral King.²⁴ This requirement meant the Forest Service's planning process had to begin anew.²⁵

In what it termed a gamechanger attempt at compromise, Disney scaled back its project to 8,000 visitors per day and to ten lifts. Disney also proposed to avoid

20. See, e.g., "Will the tug of war over Utah's canyon country ever end? Utah's anti-Washington politicians keep trying to make our beloved parks, monuments and wilderness their own," *L.A. Times*, Dec. 24, 2023, A14; Stephen Trimble and Carolyn Z. Shelton, "Op-Ed: Biden saved what Trump dismantled in Utah. But what will 'save' mean?" *L.A. Times*, July 14, 2022, <https://www.latimes.com/opinion/story/2022-07-14/grand-staircase-escalante-management-plan-biden-administration-blm> [as of Jan. 7, 2024].

21. Glasgow and Mayer, *Disneyland on the Mountain*, at 136.

22. *Ibid.*

23. 42 U.S.C. §§ 4331–4347

24. See 42 U.S.C. §§ 4332(2), 4336(b)(1).

25. Selmi, *Dawn at Mineral King Valley*, at 214, 227, 236–38.

a highway through Sequoia National Park and powerlines over the park; instead, a cog railway would replace the road through the entire park section and powerlines would be buried under the road and railway.²⁶ The cog railway, however, raised new questions, such as whether a railway met the U.S. Forest Service's original 1965 prospectus for an all-weather public road and who would pay for the railway.²⁷

Disney's problems worsened with the project's adverse publicity, a sensitive issue for an image-conscious company. Disney cartoon characters were satirized, and protesters with signs marched at Disneyland's gates.²⁸

Finally, newly elected public officials — especially California's U.S. Senators Alan Cranston and John Tunney, local congressional Representative John Krebs, and California Governor Jerry Brown — opposed the Disney project. In 1977, President Jimmy Carter's administration favored incorporating Mineral King into Sequoia National Park.²⁹ In 1978, Congress enacted this incorporation, with skiing expressly barred.³⁰

Today, Mineral King remains, and will remain, one of the jewels of California's wilderness, to be enjoyed after driving those 698 curves. ★

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26. Glasgow and Mayer, *Disneyland on the Mountain*, at 143–45.

27. Selmi, *Dawn at Mineral King Valley*, at 216–17, 219. Disney stated that it would not finance the railway, as doing so would not be economically feasible, but no public agency (whether the state or Tulare County) was willing to assume this financial burden. See *id.* at 221–22, 236. Disney then became trapped because, upon learning of the railway proposal, the state had withdrawn its offer to finance a road into Mineral King. Glasgow and Mayer, *Disneyland on the Mountain*, at 144. Moreover, the U.S. Forest Service eventually rejected the railway proposal. See *id.* at 153. In sum, transportation into a proposed Mineral King ski resort was never solved.

28. See, e.g., Glasgow and Mayer, *Disneyland on the Mountain*, at 145.

29. See Selmi, *Dawn at Mineral King Valley*, at 244, 250–54.

30. 16 U.S.C. §§ 45f(b), 45f(h). These sections were part of the National Parks and Recreation Act of 1978, which included provisions for national parks, monuments, seashores, historic sites, battlefields, and the like across the U.S. See Pub. L. 95–625.