

Both bills, and as we understood it—this hearing was to deal with all bills before the committee—both bills; that is, S. 3132 and S. 3126, contemplate that backfilling of pits could be required even though a pit was in a remote arid region on a mountain under circumstances which would require the uphill hauling of millions of tons of earth, despite the fact that there was prosphate ore in the bottom of the pit which advancements in mining technology or future domestic need would make it economically feasible to extract. We would like to draw attention to the specific provisions of the bill which so provide and we would draw the committee's attention to section 101(a) of 3126 which provides for backfilling, and section 7(A)(1)(c) of 3132 which also provides for backfilling.

Senator METCALF. Now, Mr. Olsen, you know that this committee and this group is not going to require the filling of these pits. I come from a State where we are developing one of the largest copper mining open pit operations in the United States. Ultimately it will rival the Bingham pit. It may be at times that it would be necessary to backfill a small pit or even a small sand and gravel operation. I don't know. But nobody, no one in the whole United States from the Secretary of the Interior right on down, contemplates the requirement of backfilling an open mine pit.

I haven't had a chance to read some of your suggestions. If you are fearful that there is ambiguity I hope that you will submit specific language as counsel for this group to be assured that that will not be required. There has to be some latitude, but it is an affront to this committee to come in and say that as reasonable men you think that we are going to require that the pits on the Mesabi Range and the Bingham, Utah, and Butte, Mont., be filled.

Mr. OLSEN. Sir, we are most pleased to hear that as your views and as the views of this committee. We are also very pleased to hear this as the views of the Secretary of the Interior. We know that if and when we ever had a lawsuit over a situation like this we would certainly want to refer to your comments which are in the record, but our problem is that there is nothing in the bill which would prohibit a requirement for backfilling, not a thing.

Now, we know that this committee as it is now composed may not require this. We know that our present Secretary of the Interior may not require this. What we do not know is if there are many people in the United States who believe that these pits should be backfilled. So we feel that, in order for us to have some protection, for us to be assured as to whether or not we invest money in the phosphate operations in Idaho, there should be some kind of a standard set in this bill which would restrict unnecessary and unreasonable backfilling. That is all we are asking.

Senator CHURCH. Will you prepare some language that would seem to you to give you this sort of statutory protection? I agree with you that the term "appropriate" is so broad and wide as to be practically meaningless, but I think that it would be helpful to the committee to have some language submitted that would establish reasonable limitations here against what might possibly be arbitrary and capricious discretionary action on the part of some future Secretary.

I concur that a law ought to establish the necessary criteria within those reasonable guidelines within which the discretion must be exer-