

SENATE REPORT NO. 92-1162
Legislative History
Senate Report No. 92-1162

Following is the September 18, 1972, Congressional Report from the Interior and Insular Affairs Committee on S. 630. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

SURFACE MINING RECLAMATION ACT OF 1972
Interior and Insular Affairs; United States Senate
SENATE REPORT No. 92-1162; 92nd CONGRESS 2nd Session ; S. 630.
SEPTEMBER 18, 1972. - Ordered to be printed

Preamble

Mr. JACKSON (for Mr. Moss), from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 630]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 630) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

Voting on the bill was unanimous with the understanding that members of the committee reserve the option to offer amendments to the bill on the floor of the Senate.

I. INTRODUCTION

14 1. GENERAL

14 As the legislative history in Part III of this report shows, a growing concern on the part of the Public and the Congress has culminated in action by the Senate Interior and Insular Affairs Committee in reporting a bill to regulate surface mining operations.

14 The center of the controversy over surface mining has, in many respects, focused on coal production in Appalachia States, although many areas in the West have also been focal points of controversy.

14 The Appalachian Region has 22.5 percent of the coal that can be strip mined in the United States. Although strip mining has increased less in

Appalachia (where the topography is rugged) than it has in flat areas, such as Illinois and in many Western States, it has increased enough to cause extreme concern among Appalachian citizens. n1

14 n1 Appalachia, vol. 5, No. 4, February, March, 1972.

14 The problem clearly is not a regional problem: it is national in character and is not confined to any one area of the country, nor, in the view of the Senate Interior Committee, is it confined to one mineral.

14 According to a report made for the Public Land Law Review Commission, coal seams indicated thick enough for exploitation underlie 34 million acres of the 11 far-western States. These deposits constitute a source of low-sulfur fuel that electric utilities anticipate will meet environmental standards for air pollution control. The Nation's soaring demand for electrical energy indicates that these coal reserves will be necessary as a power source until breeder-type nuclear power reactors become a reality. Accordingly, it is expected that Western coal production will rise from 29 million tons in 1970 to about 338 million tons by 1990. More than 665,000 acres of Federal lands were leased for coal mining in nine Western States as of June 30, 1970.

15 The States of Idaho, Montana, Utah and Wyoming contain 42 percent of the known and 41 percent of the potential phosphate rock deposits in the United States. Annual production of this important mineral, mostly from surface mines, is 6 million tons with estimates at three times this level by the year 2000.

15 One of the few major undeveloped energy resources left in this country is oil shale. The richest deposits lie in eastern Utah, southern Wyoming, and northwestern Colorado. In that region there are potentially commercial deposits underlying 11 million acres.

15 It should not be assumed that all of the western coal, phosphate, oil shale and other minerals will be mined by surface methods. But pressures for vastly expanded development of western mineral resources are mounting rapidly and surface mining, because of its favorable cost-to-production ratio, is certain to play an important role.

15 Annually, over four billion tons of mineral raw materials - including crude oil, natural gas, coal, ores of the metals, and a wide variety of nonmetallics are now extracted by all extractive methods from the 3 1/2 million square miles of the United States. Minerals and energy in adequate quantities are indispensable to modern industrialized society. Without them there can be no economic and social progress. The United States uses, according to the Secretary of the Interior, n2 annually 20 tons per person to sustain our economy.

15 n2 First annual report of the Secretary of the Interior under the Mining and Minerals Policy Act of 1970 (P.L. 91-631).

15 Contemporaneous with the need for raw minerals to be processed into energy and materials for the industrial society, we are faced with mounting costs of environmental damage.

15 Harry Caudill put the case starkly when he said:

15 America is so abundantly endowed with ores and fuels, world demand for them is so great, and earth-moving technology is so efficient that strip mining - until recently associated primarily with coal and Appalachia - has become as reality or an imminent prospect for every state and nearly all counties. An ecological nightmare of unimaginable dimensions suddenly looms everywhere. n3

15 n3 Nation, April 19, 1971.

15 Mr. Peter Borrelli, Eastern Representative of the Sierra Club, in a speech presented to the Seminar on Conservation and Coal Mining at Ohio University held on August 14 through 18, 1972, stated:

15 It is not illogical, in the face of this absence of any rein on the coal companies, to ask that strip mining be stopped - now. Perhaps not stopped for all time and in all places, but stopped until we can create even the most rudimentary means of making strip miners accountable for a broader public standard of care and caution. Would anyone object if there were selected strip mining, in non-mountainous areas, consistent with a comprehensive land use plan, with provisions for the reconstruction of the wasted land? I think not. But we must face the fact that it is the companies and not the government nor the people that now make the decisions affecting the land and the lives of Americans.

16 Proposals for totally banning surface mining operations for already depressed areas even in the face of immediate economic plight reveal the heightened and compelling concern of environmentalists.

16 Spokesmen for the American mining industry state that surface mining - which includes both strip mining with giant earth mover machines and auger mining with huge power drills - is more efficient, less costly and much safer than underground, or deep mining. In addition, they say strip mining is vital to ensure that the nation has a sufficient supply of coal to generate electric power during the impending "energy crisis."

16 Although the prime arguments over legislation to regulate surface mining are economic and environmental, there are a number of additional points of

controversy. These include the need for continuing supplies of minerals, particularly coal because of the current concern over energy supplies; the effectiveness of reclamation procedures, the question of who shall administer regulation programs, and the nature of provisions to insure the safety of mine workers. Briefly, the contentions over these matters are as follows:

16 The Senate Interior Committee has been particularly cognizant of the mounting public concern over the continued availability of adequate energy supplies. The continued prosperity and progress of an industrial society is impossible without adequate supplies of mineral and surface resources. Problems related to surface mining and use of surface-mined land and how they can be solved must be brought into perspective in considering balanced resource utilization. Without a realistic perspective in balancing the equities, neither wise nor effective policies or actions are likely to result.

16 Estimates of major energy sources in the period beyond the year 2000 indicate that fossil sources will decline in importance. Until that time, however, fossil fuels must be considered our primary energy sources. Of those fossil fuels - coal, oil and gas - coal is the most abundant and the most accessible.

16 The 1970 edition of Mineral Facts and Problems published by the Bureau of Mines notes:

16 Increasingly, environmental and social considerations can be expected to constrain the supply and limit the use of direct fuels to those that are nonpollutant. Land use and ecological considerations may restrict strippable coal supply.

16 The capability adequately to restore surface mined lands using available technology is a matter which is still under debate. While industry has returned to productive use some thousands of acres of mined land, opponents claim that, in the main, these are simply "showcase" projects which are not representative of the vast majority of reclamation efforts.

16 Senator Allott arranged for a presentation to members of the full Committee concerning the experience of the Brown Coal Surface mines in West Germany, southwest of Cologne, to illustrate reclamation feasibility. These mines are among the largest and most efficient in the world, with the largest mine producing 100,00 tons of lignite per day. As much as 150 million tons of coal and overburden are moved each year through the use of bucket-wheel excavators having a capacity of as much as 130,000 cubic yards per day. The coal (lignite) is from 200 to 800 feet below the surface, which must be removed prior to mining.

17 The significance of the West German mines lies in the restoration techniques employed. The use of giant spreaders (equal in size to the bucket wheel excavators) permit a quality of "relandscaping" not possible without such equipment.

17 "Relandscaping" is not used in the sense of returning the land to precisely its former configuration; rather, it is used in the sense of restoring the land to not less than its former productivity, and returning it to equivalent or superior aesthetic quality.

17 By employing such mining and restoration techniques, surface mining is reduced to a temporary disruption of the use of the surface and to a temporary disfigurement of the landscape. The face of the land is restored just as a plastic surgeon may correct a natural imperfection while repairing the disfigurement of the damaged face of an accident victim.

17 The West German experience demonstrated that lands can be mined and restored to an attractive and aesthetically pleasing landscape, perhaps even improved. As Senator Allott remarked:

17 If the West Germans can do it, certainly we can do it. I've seen their success in mined land reclamation and it is outstanding but we must have control of our surface mining to achieve these results.

17 A major question concerning the regulation of surface mining has been whether the Federal or State government should establish and operate the program.

17 State regulation has been favored by the mining industry on the grounds that local unique conditions could be more easily recognized and built into the regulatory program. An overall Federal program, it was claimed, would be too inflexible and would work a disadvantage on some surface mining operations.

17 Proponents of a Federal program criticize the lack of strong regulations and enforcement under State management. They cite as an additional argument that, with uniform nationwide standards and requirements, surface mine operators would not be able to move from State to State, in effect, "shopping" for the lowest standards of environmental protection.

17 Several of the bills before the Committee combined Federal and State roles in regulating surface mining. The Federal responsibility lies in formulating general guidelines within which the States are to develop and enforce reclamation programs. In the event a State does not do so, the Federal government is empowered to develop and/or administer a program deemed satisfactory by the Secretary of the Interior.

2. THE ISSUES FROM THE HEARINGS

17 The hearings held by the Subcommittee on Minerals, Materials and Fuels on November 16, 17 and December 2, 1971 and February 24, 1972 developed a useful record on surface mine regulations. Witnesses provided new documentation of previously identified issues. In addressing the various legislative proposals before the Committee, witnesses raised additional questions and points of view.

18 In order to review and analyze the issues, representative statements from the hearings have been selected and grouped in this section.

18 Surface mining was defended on economic grounds by Cannelton Coal Company president Paul Morton:

18 I sincerely believe that the surface mining method of extracting our Nation's coal resources is more nearly in accord with rational conservation of natural resource policy than is the deep mining for coal. By surface mining we are presently able to make a total recovery of the resource while this is not possible through deep mining. For example, in my own operations, Cannelton Coal can and will recover all 14 million tons of coal reserves presently held in fee and covered by our present 2,000-acre permit. Through the best in underground methods, we are able to extract less than 4 million tons from that same reserve. Hence, more than two-thirds of our coal would be non-recoverable if not surface mined.

18 Representative Kenneth Hechler of West Virginia cited the environmental costs which stand in contrast to efficiency:

18 Watertables are destroyed, depriving the earth of its channels of nourishment. The delicate surface fabric of life-supporting earth is cast to the bottom. Deep strata of rock and shall are pulverized and exposed to the elements, where they will leach acids and toxic minerals into the surrounding streams for generations. Mountains, now unstable, crack, slip and slide. Rains wash mud, sand and toxic substances down into the streams and rivers, filling their channels and poisoning their waters.

18 These two basic positions - economics versus environment - were heard from many witnesses who detailed various aspects of the controversy.

18 Underground mining

18 A useful corollary to the environmental damages of surface mining was contained in the testimony of several witnesses on underground mining.

18 Russell Train, Chairman of the Council on Environmental Quality, noted the extent of subsidence:

18 * * * land undermined by underground mining alone probably exceed 7 million acres - with 2 million acres already suffering some subsidence and another two-thirds of a million acres expected to subside by the year 2000. The Bureau of Mines estimates that new underground mining will affect 4 million more acres of land in the meantime. Our actions now can prevent those 4 million acres from becoming a burden on future generations.

18 Train added, "environmental consequences of underground mining, such as subsidence and acid mine drainage, can be very serious without adequate controls".

19 He was speaking in support of the administration proposal, S. 993 and S. 1176, which along with a number of other pending measures would impose environmental controls on underground mines as well as surface mines.

19 John R. Quarles Jr. of the Environmental Protection Agency cited the extent of damages from mining operations, then added, "a major portion of the damages which I have just mentioned results from inadequately planned and unregulated underground mining and mineral processing".

19 Energy needs and coal

19 The conservationist point of view on the widely discussed energy crisis, and the need for coal to resolve it, is typified by this testimony of the Wilderness Society representative, A.T. Wright:

19 We doubt that there is an energy crisis of serious enough proportions which demands that coal be strip mined at its present rate or, indeed that it be strip mined at all. The experts tell us that we have adequate coal reserves for the indefinite future. We are not forced to resort to stripping. Why, then, must coal be stripped at all in view of the staggering social and environmental costs which attend it? * * * Deep mining on an almost exclusive basis seems to be the only sane answer to the catastrophic alternative of strip mining.

19 Cannelton Coal's Morton offered a starkly different view:

19 Deep mining simply does not provide the Nation with a viable alternative to surface mining.

19 National Coal Association President Carl Bagge said:

19 It is not realistic to expect that surface mined coal could be replaced by production from underground mines. While there are ample underground

reserves, to produce the 264 million tons of surface coal mined last year would require 132 additional underground coal mines of 2 million tons annual capacity, a capital investment of \$3.2 to \$3 .7 billion, three to five years before full production could be anticipated and an additional 78 thousand trained underground miners.

19 Later, pointing out the contribution of surface-mined coal to the national energy supply, Bagge added, "* * * it is reasonable to assume that about one-fourth of the total electric energy generated in 1970 was produced from surface mined coal".

19 Senator Howard H. Baker testified also on this point:

19 * * * the power grids of the nation, especially those of the Southeast, are dependent to a remarkable degree on the production of coal from surface mines and this dependence cannot be withdrawn suddenly without unacceptable economic and social consequences.

19 Wright in his statement questioned the existence of any real overall energy crisis, testifying:

19 Aside from the fact that the crisis, if indeed there is one, has been induced by high pressure sales tactics and overpromotion, a part of the picture has to be the 52 million tons of coal exported annually.

20 Extensive testimony on the matter of promotion of the use of electrical energy was presented in this committee's hearings on power generation and associated problems in the Southwest.

20 Reclamation feasibility

20 Opponents of surface mining contend that the technology is not available to provide for the adequate reclamation of lands following mining. Much of their effort to ban such mining has been based on that contention.

20 Hollis Dole, Assistant Secretary for Mineral Resources of the Department of Interior discussed at some length the means available to counter adverse environmental effects of both surface and underground mining. "Reclamation of mined areas," he said, "not only reduces pollution, but returns land to subsequent productive use."

20 Dole further stated:

20 The growing conviction that environmental damage caused by mining operations can be controlled and minimized through adequate safeguards and proper surveillance has led in recent years to the formulation of new environmental protection measures by several Federal Agencies having land management responsibilities. Mineral operations on these lands now must be

conducted in accordance with the best available practices, and the lands disturbed reclaimed to a condition compatible with current standards.

20 Interestingly, the witness who followed Dole was John Quarles of the Environmental Protection Agency who said:

20 We do not have adequate technology to deal with all of the environmental problems that are created by mining and mineral processing activities.

20 A.T. Wright of the Wilderness Society stated:

20 * * * reclamation is at best a myth and at worst a hoax if we delude ourselves into believing that we can re-establish anything but a shaky monoculture on strip mined areas.

20 It seems fair to state that the prompt restoration of surface mined land to its original natural state is impossible. The restoration of the same land to some useful state is more likely and in some situations could make the mined land more valuable. Representatives of both the coal and stone industries testified that the use of surface mined land after mining should be left to the decision of the operator-owner, or local government. Thus, they oppose Federal statutory language requiring restoration of mined land to the original contour, or the filling of all cuts.

20 Federal or State administration

20 The 1971 hearings revealed a significant change in the position of the mining industry from that expressed in the 1968 hearings.

21 On page 97 of the printed hearings on "Surface Mining Reclamation", 90th Congress, 2nd Session, Mr. Joseph Abdnor, representing the American Mining Congress testified:

21 Based on the mining industry's awareness of the economic factors involved, its experience in the diversity of the problem and the engineering techniques of land restoration, and its analysis of the problem on a national basis, the American Mining Congress is opposed to the legislation before you today.

21 He further noted on page 98 of the 1968 hearings:

21 We do not believe Federal legislation is called for; we oppose it as unnecessary, undesirable, and impractical.

21 It is unnecessary because no plausible case exists for global Federal regulation producing a conflict of jurisdiction over the myriad local conditions which apply to the reclamation of surface-mined lands.

21 In the 1971 hearings, Abdnor once again represented the American Mining Congress. His recent testimony illustrates the change in the mining industry's approach:

21 Let me say at the outset that the American Mining Congress endorses the concept embodied in a number of the legislative proposals pending before this Committee - namely, that it is appropriate for the federal government to have and exercise the authority to establish guidelines for the regulation of surface mining. While urging that the states have a responsible role, we recognize that when federal guidelines are thus set, it is incumbent on a state to satisfy those federal guidelines; and if it does not, then the federal government will come into a state and do the job itself.

21 In 1968, conservationists found acceptable the proposition of Federal guidelines for the States to use in the development and administration of their own programs - the approach now supported by a large segment of the mining industry.

21 The conservationist position has also undergone a shift. Based on their observations of State programs to regulate surface mining and reclamation, conservationists find State control unsatisfactory, in many instances. As a result, their request is now for a Federally administered program.

21 Assistant EPA Administrator John Quarles criticized the existing situation, noting:

21 Many of the State statutes are inadequate and ambiguous; some do not admit of equitable enforcement. States enforcement has been hampered by lack of funds and personnel. In addition, most of the State laws * * * are too limited in coverage to provide a comprehensive remedy for the problem.

21 United Mine Workers of America representative Joseph Brennan, speaking in support of S. 2777, said:

21 S. 2777 contains a provision for State control over stripping under certain circumscribed conditions. We have some misgivings on this section because of many State failures in the past to adequately control stripping or to effectively enforce proper statutes.

22 Other critics of the State programs were more outspoken. Peter Borrelli of the Sierra Club testified:

22 There are two basic reasons for the failure of regulation. One is lack

of enforcement. The feeble regulatory efforts of West Virginia and Kentucky are just no match for the immense political and economic power of the coal industry.

* * * Pennsylvania can at least balance the scale with some real enforcement, but blatant violations of the law abound.

22 The second reason for the failure of regulation is that regulations in all three States prescribe procedures to be followed, rather than results to be achieved.

22 Norman R. Williams, former official in the West Virginia surface mining regulatory program concluded, "the surface mining industry in Appalachia is not amendable to social control". He charged that in West Virginia:

22 * * * the entire regulatory apparatus of the State is geared to protect the surface mine operator's profits as against protecting the environment and downstream residents.

22 In contrast, two active State reclamation officials, William Guckert of Pennsylvania and Sanford Carby of Georgia testified in support of an overall Federal program but for a State role. Guckert, for instance, called for Federal legislation which "should set the standards, requirements and penalties, but the responsibility for enforcement should be with the individual States".

22 S. James Campbell of the National Crushed Stone Association cited the historic role of State and local government in determining land use patterns. He said:

22 Blanket federal rules respecting reclamation would conflict with and undermine efforts of state and local authority to provide rational growth and land development.

22 Administering Federal agency

22 There was a strong difference of opinion apparent in the hearings as to which agency should lead the Federal effort in establishing guidelines and administering the program.

22 Department of Interior Assistant Secretary Hollis Dole testified:

22 The Department of the Interior, whose function is the formulation and administration of programs relating to management, conservation, and development of our natural resources, is the logical agency to administer the proposed act.

22 His position was supported by industry spokesmen and others who acknowledged the expertise of the Department of the Interior.

22 Carl Bagge stated that Interior was best qualified to administer the Federal program, particularly in light of the fact that, "the Mining and Minerals Policy Act of 1970 charges the Secretary of Interior with the responsibility of carrying out the policy of that Act".

23 Joseph Brennan testified for the United Mine Workers that, "the Department of Interior is the logical place for enforcement * * * ". He added:

23 On the other hand, there is a great deal of knowledge about the impact of strip mining and the damage done to the environment by strip mining, outside the Department of Interior. To bring this knowledge to the fore, S. 2777 provides for the use * * * of experts from other governmental agencies. It also establishes a strip mining advisory commission, with membership appointed by three somewhat diverse governmental departments.

23 The Secretary of Interior would appoint three members. * * *

23 The Secretary of Agriculture would appoint three members. * * *

23 Finally, the responsibility for the Federal anti-pollution law rests with the Administrator of the Environmental Protection Agency * * * [who would also appoint three members of the advisory commission].

23 In general, conservation and environmental groups favored vesting primary Federal authority in the Environmental Protection Agency.

23 Malcomb Baldwin, testifying for the Conservation Foundation, said:

23 We believe that the Environmental Protection Agency, which is responsible for enforcing most of the nation's Federal environmental protection laws, is in the best position to enforce strip mine legislation. This separation of enforcement duties from the Department of the Interior's development and management function is consistent with the theory behind the Administration's environmental reorganization proposals. Conflicts of interest historically apparent within the Department of the Interior can be resolved by giving EPA enforcement authority over coal strip mining.

23 Among others sharing this position were the Black Mesa Defense Fund, and the Sierra Club. Senators Cooper and Baker advocated EPA as the lead agency for the Federal effort. Senator Cooper noted:

23 Senator Baker and I have concluded that the proper agency for control would be the Environmental Protection Agency, cooperating with the Department of

the Interior's Bureau of Mines, and with the Forest Service and Soil Conservation Service of the Department of Agriculture, and others.

23 The case for the Department of Agriculture as lead agency was made by David Unger, of the National Association of Conservation Districts:

23 The Federal responsibility for dealing with the impacts of mining on the land surface should be exercised by the Department of Agriculture. USDA is the recognized authority in dealing with erosion, land reclamation, and land conservation. Working in cooperation with our conservation districts, the Department has built up a network of technical, financial, and educational arrangements which are already being utilized in mined-land reclamation and which would be available for an accelerated and expanded program.

24 Virtually all of the research being conducted on reclamation of mined lands is being done by USDA and cooperating Agricultural Experiment Stations.

.
. .

24 The Soil Conservation Service of the Department of Agriculture has nearly 40 years of experience in the scientific planning of land reclamation and conservation work * * *

24 SCS has available a corps of nearly 8,000 trained technicians across the country who are experienced in the application of technology to land problems of this kind.

24 Additional issues

24 Several points, not previously discussed in this Committee Print, appeared in the hearings a number of times. These are the special characteristics of some mineral operations; the problem of previously mined lands including questions of ownership; a severance tax on surface mined minerals; a timetable for the implementation of surface mining regulation; and other suggested additions or deletions with regard to the then pending legislation. The contentions on these points are outlined in the following sections.

24 Special characteristics of some mineral operations

24 Rather broad support was made for the point that surface mining for different minerals creates different problems - and that any Federal reclamation law should recognize those differences.

24 Malcomb Baldwin of the Conservation Foundation said:

24 However, many of the bills now being considered would legislate for all forms of surface mining. We believe these bills to be inadequate, because they

do not recognize the problems peculiar to each form of strip mining.

24 Georgia reclamation official, Sanford Darby, noted:

24 I know from experience in writing the Georgia rules and from administering and enforcing the provisions of this law many of the problems involved. I can assure you that if you delegate complete responsibility to the Secretary of the Interior or to any one specific government official the responsibility of developing regulations which will apply to the entire United States, he is going to have an almost impossible task to accomplish.

24 S. James Campbell, of the National Crushed Stone Associated, said:

24 With regard to the requirements of several of the bills this Committee is now considering, I would call to your attention the unique character of our industry. Quarries have to be located in or near urban areas because of the high cost of transporting heavy stone materials. Consequently, our industry is already subject to heavy local regulation through zoning and area growth plans. Again, a quarrying operation disturbs very little land - the average quarry encompasses less than 30 acres. Because almost 85% of the materials excavated from a quarry is sold, there is virtually nothing left for land fill. Moreover, typical types of quarries have a life expectancy of about 81 years.

25 With the exception of being located near urban centers, these same arguments are also applicable to the mining of iron ore. Tom Binger said of his company's experience in Minnesota:

25 It is the numerous inactive mines and lean ore stockpiles that can be relied upon to provide the demands of the increased steel production in times of national emergency. If all the pits in Minnesota had been "reclaimed" and the lean ore piles dumped back in the open pits, I do not believe the production requirements of World War II or the Korean War could have been so easily fulfilled.

25 * * * My company's operations have always involved the adoption of new techniques to gain mineral values from mines that have though to have been exhausted of economic ore by a previous operator. Had the previous operator contaminated the mine by the reintroduction of surface materials or had he not carefully segregated the lean ore materials brought to the surface in his operations, it seems certain to me that most of the iron ore we have been able to produce would not have been possible.

25 Previously mined lands

25 There are about two million acres of land which have been disturbed by

surface mining but never reclaimed. Provisions for treatment of these "orphan lands" are included in some - but not all - of the pending bills.

25 Senator Clifford Hansen said of S. 1160, which he introduced:

25 The Subcommittee has devoted much time and effort to several bills pending in the Congress concerning strip mining and underground mining and the restoration and reclamation of mined lands. I am deeply concerned however, that these bills do not provide for restoration and rehabilitation of areas which have been mined in the past and have been long since abandoned.

25 The bill would provide nationwide application of a program presently limited to Appalachia whereby the Secretary of Interior makes grants to seal and fill voids in abandoned coal mines. Abandoned oil and gas wells would also be covered by S. 1160.

25 Assistant Interior Secretary Dole testified in opposition:

25 * * * preventing the annual additions of new problems is relatively more important than initiating broad new programs to ameliorate the affected lands of the past. We must bring under control today's and tomorrow's potential damages to the environment before we can make reasonable headway against those of yesterday.

25 * * * Our second reservation concerning S. 1160 is centered quite simply on the basis of cost. It is truly a very substantial expense which will be involved in repairing past mining damages. It is not one that can be imposed readily on its perpetrators, as too many of the former mine operators and landowners no longer control or own the mined property. And because our knowledge of what really needs to be done is incomplete, the potential for costly mistakes is large.

26 Senator Jennings Randolph testified that in West Virginia:

26 The principal remaining concern is acid mine drainage from abandoned and orphaned surface mined lands.

26 The Conservation Foundation, referring to coal, stated:

26 We recommend a joint State-Federal program, in which initially the states should catalogue and establish reclamation plans and priorities for these lands and the Federal government should provide the funds and special expertise. Then the states and/or the Federal government should proceed selectively to reclaim

or rehabilitate.

26 We recognize that there are problems of windfall profits to private owners benefitting from the enhanced value of their lands. However, liens could be applied by states, to assure that an owner of reclaimed land would repay the state for any increment in value resulting from reclamation, at least up to and including the resulting increment in fair market value of the land. We recommend that new legislation require a thorough study of the "revolving fund" mechanism whereby public acquisition and resale of subsequently reclaimed land can fund the purchase of more such land.

26 Severance tax on surface mined minerals

26 Senator Howard Baker testified:

26 We should consider the establishment of a severance tax on all coal and on other fuels at the Federal level to insure uniformity and make the proceeds thereof available to the states or locality if they elect so that the benefits of this resource can accrue in the area in which it is located.

26 In later questioning, he indicated that he would make such a tax applicable to all surface mined minerals, not only fuels.

26 Norman Williams also supported a tax on coal to facilitate reclamation:

26 * * * a Reclamation Trust Fund should be established, based on a per-ton tax of all coal mined, the money to be devoted exclusively to purchasing and restoring lands inadequately reclaimed from surface mining or deep mining of coal, and also for funding workshops and other organized efforts to train citizens in monitoring techniques.

26 Peter Borrelli, of the Sierra Club, offered as one method by which the "federal government might affect partial prohibition" of surface mining of coal:

26 A tax of \$2 .50 per ton, on strip-mined coal to remove the competitive advantage of strip mining over deep mining. The tax could be used for federally administered reclamation.

27 A timetable for surface mining regulation

27 The administration surface mining proposal allows two years for the States to develop requirements for mining operations and reclamation. Another proposal, S. 1498, would abolish surface mining for coal within six months of enactment. The timing of controls for surface mining thus remains an active

question.

27 Administration spokesmen defended the two year time allowance to the States on the grounds that some State legislatures met only every two years, and thus would need the time allowed by the administration proposal.

27 Senator John Sherman Cooper proposed a more compressed schedule:

27 This procedure, establishing a system of primary State regulations, backed up if necessary and enforced by the EPA, would require 16 or 18 months to develop - 6 months from enactment for the EPA to issue comprehensive guidelines and criteria to the States, 6 months for the State to develop its plan based upon the Federal criteria and guidelines, and then 4 to 6 months for the action of the EPA in approving or amending State plans.

27 Noting the problems that unregulated mining could cause during even the 18 month period, Senator Cooper added:

27 I therefore propose that during this interim period, surface mining be conducted only under Federal authority, with the approval of the EPA.

27 Our proposal would establish an interim Federal program, under Federal authority of the Environmental Protection Administration. Any person currently operating a surface mine, or proposing to initiate operations at a new site, would be required to file a plan with the EPA describing the method of operation and the restoration program. The Administrator of EPA would have to approve the plan if the operator is to continue operations, or initiate new operations. The Administrator would approve the plan only if he were assured that restoration is adequately provided for. Six months after enactment no person could operate a surface mine except in compliance with the interim Federal controls and EPA approval.

27 A similarly compressed timetable was proposed by Baldwin of the Conservation Foundation, who said:

27 * * * we recommend that Federal law should give the states a regulatory role, but that it should allow them not more than six months to develop Federally-approved laws, regulations, and implementation procedures. Failing such approval, Federal standards and enforcement should apply.

27 Given the general condition of state law and the urgency of radical changes, it may well be that the foregoing proposal might result in direct Federal control over coal strip mining in many states, through Federal permits, regulations, and inspection programs. Such a direct Federal role would find

some precedent in Federal enforcement of the Coal Mine Health and Safety Law.

28 As part of the Federal program, Baldwin also recommended that, "all contour stripping cease within six months of the date of enactment of the Act."

28 Other proposed additions and deletions

28 The hearings elicited numerous suggestions as to additions, deletions and changes in language of the several bills. Several witnesses, such as HELP and the League of Women Voters of Scranton, Pennsylvania, and the National Coal Association provided detailed reviews of the pending legislation.

28 Among the suggestions offered were these:

28 The American Mining Congress expressed concern that any legislation approved by the Committee, "include an appeals procedure, including the right to judicial review by the courts". The Mining Congress also declared, "that criminal sanctions in a federal surface mining statute would be most inappropriate".

28 The National Coal Association said that, with regard to any federal guidelines, or regulations, "public notice and the right to comment should be required".

28 The deletion of control of underground mining was proposed by E. R. Phelps, President of Peabody Coal Company, who said:

28 The coal industry believes the legislation should not include the environmental regulation of underground mining.

28 R. W. Hatch added in this regard:

28 * * * no practical technology has yet been developed to control subsidence in underground coal mining, so there is no way that that part of the statute could be enforced.

28 The Crushed Stone Association offered this suggestion:

28 We propose that such legislation define the term "reclamation" to specify that flexible land reuse is the will of Congress. The failure to make this clear will, we submit, invite "guidelines" ordering a return to as near original condition as possible irrespective of possible alternative uses that would result in a higher use of such land.

28 The Association also offered a suggestion that was repeated by other mineral industry witnesses:

28 That any Federal guidelines or state standards should be required to be consonant with the Mining and Minerals Policy Act of 1970.

28 These are, of course, but a few of the many suggestions offered during three full days of testimony. The selection is not meant to be encyclopedic, but only to provide an indication of the concerns expressed. While it is hoped that this review of the hearings is balanced, overall, the full hearing record must be examined as the final source on what transpired.

3. SUMMARY OF MAJOR PROVISIONS

29 (a) Committee Action. - During the more than a year and a half of this Congress the Subcommittee on Minerals, Materials and Fuels conducted numerous hearings, field investigations and studies of surface mining operations throughout the country.

29 On June 1972, the Subcommittee reported its bill to the full Committee with the unanimous and bi-partisan support of the Subcommittee.

29 On September 13, 1972, on motion of Senator Frank E. Moss, Chairman of the subcommittee, the full Committee on Interior and Insular Affairs voted to report out the Subcommittee's bill (S. 630) with the understanding that Members may wish to offer amendments to the measure on the floor.

29 In commenting on the reporting of S. 630, Senator Moss said:

29 The satisfactory reclamation and rehabilitation of surface mined areas is one of the nation's great conservation charges, and the intelligent use of the materials of this earth in the betterment of mankind a special charge. This bill is an attempt to meet that challenge.

29 In seconding the motion to report the Subcommittee bill, Senator Len B. Jordan of Idaho, ranking minority member of the Subcommittee, pointed to the hours of hearing time and the field trips undertaken by the Subcommittee in consideration of the legislation. The bill reported by the Subcommittee, he added, is a reasonable, effective measure, designed to protect the environment without adversely affecting essential mining activity and conforming to the now generally accepted policy that the costs of the mineral developed should reflect the cost of adequate reclamation.

29 Senator Henry M. Jackson, Chairman, said that if this bill is passed, S. 630 will provide the first Federal regulation of strip mining since the method was first used in the early 1900's. He went on to state that the bill is a "great step forward for conservation in America."

29 Senator Gordon Allott, the ranking minority member of the full committee, agreed, saying that "restoration of land affected by strip mining must be a part of the mining process and a cost of doing business. Controls must be

implemented as soon as possible to prevent further damage to our precious land resource without adequate restoration."

29 (b) Purpose . - The purpose of the legislation is to provide Federal guidelines, technical assistance and a grant-in-aid program to States with respect to the regulation of surface mining operations and surface operation incident to underground mining operations for all minerals.

29 (c) Authorization. - The grant-in-aid program authorizes annual grants to States in an amount not to exceed 80% of the total costs incurred during the first year and 50% of the total costs incurred during the succeeding years, and authorizes an appropriation of \$10 million for the fiscal year ending June 30, 1973 and \$2 0 million for each of the next two succeeding fiscal years. An additional \$1 00 million revolving fund is authorized to acquire title to and for the reclamation of abandoned and unreclaimed mined lands.

30 (d) Administration. - The Act would be administered by the Secretary of the Interior and he is authorized to promulgate Federal guidelines, approve State plans in consultation with the Secretary of Agriculture on reclamation matters, and obtain the views of other agencies principally concerned with such State plan.

30 (e) Requirements for Permit. - A permit is required for all new operations, or any significant increase of operations, for surface mining of coal. The effect is a 90 day moratorium during the period within which the Secretary must prepare guidelines for surface mining of coal. Operators of on-going operations for coal must obtain permits under either a State or Federal plan within one year of enactment. Permits for all other minerals must be obtained after two years.

30 No permit will be issued unless the technology exists to reclaim the land.

30 (f) Prohibition. - The regulating authority under either a Federal or a State plan may deny issuance of a permit and thus prohibit mining operations where the surface cannot be reclaimed or where an area of critical concern or significant historical or cultural value would be destroyed by any proposed mining operations.

30 (g) Federal-State Cooperation. - The Act places the initial responsibility for developing, authorizing and enforcing regulations with the States. The Secretary of the Interior is required to prepare a Federal plan for any State which does not adopt an acceptable State program meeting the requirements of the Act or if the State fails to enforce its plan.

30 (h) Role of the Federal Government. - The Secretary is required to publish guidelines for the Federal and State plan which would include: environmental protection standards; and require a reclamation plan, mining

permit and bonding sufficient to assure reclamation and provide adequate provisions for enforcement. Specific Federal guidelines for the surface mining of coal would include requirements for handling waste and spoil materials, revegetation, bench widths and highwalls, terracing and water impoundments.

30 (i) Role of the States. - States which now have effective laws governing reclamation of surface mining operations which meet the requirements of the Act would continue such operations as an approved interim plan. Those States without such provisions must enact a State plan which includes a permit system for coal operations within one year of enactment and develop a State plan which includes a permit system for all other minerals within two years of enactment.
(See (e) above.)

30 (j) Minerals and Lands Covered. - All minerals are covered except those minerals which naturally occur in a liquid or gaseous state and all lands are covered except lands which are subject to exclusive Federal jurisdiction and Indian lands. n4 All mines, the products of which directly or indirectly affect commerce are included in the bill.

30 (k) Sanctions. - The bill provides sanctions for violation of Federal or State laws including issuance of stop orders, withholding of permits, forfeiture of bonds and initiation of civil and criminal actions.

31 Civil and criminal provisions are provided with willful violations subject to fines up to \$10,000 and imprisonment for up to six months or both.

31 n4 The intent of the committee was to exclude only those lands over which a State could not exercise its police power, such as Indian lands and military enclave properties of the United States.

4. NEED

31 The area disturbed by surface mining annually climbed from 50,000 acres in 1965 to nearly 100,000 acres in 1970, according to the Bureau of Mines. The Council on Environmental Quality, in its report of August, 1972, put the 1971 estimate at 241,800 acres and said at least 4,650 acres are being stripped each week. Only about a third of the land disturbed by surface mining had been reclaimed.

31 Only through positive legislative action will the destructive aspects of surface mining be successfully overcome. When this is accomplished, lands that

are now in useless condition, devoid of vegetation and potentially dangerous as causes of floods, contamination, pollution and other catastrophes may be restored once again to natural or a much needed productive state, suitable for agriculture, livestock, recreation and scenic enjoyment.

31 In its 1972 annual report to the President, the Council on Environmental Quality stated that it will cost \$2 87.1 billion from 1971 to 1980 to improve and restore the environment. The report estimated the 1971-80 expenditure for land reclamation and water purification from surface mining for all minerals will total \$5 .7 billion. If the costs to the environment were included in the price of fuel, the cost of deep mined coal would rise 30 percent, strip-mined coal 32 percent, domestic oil 26 percent and imported oil 23 percent.

31 A balancing of the needs of the nation in its requirements for minerals and the economics and industrial growth weighed against the environmental needs is not an impossible equation. To achieve this balance, federal action is necessary to establish uniform guidelines for the States to follow and in approving and enforcing uniform State plans which will meet these basic requirements.

31 Federal action is also necessary to aid the States in enforcement of existing State laws which meet Federal requirements and where no such State laws exist, Federal action is necessary to provide assistance to the States in the preparation and enforcement of a State plan and in research and training of personnel for the implementation of State and Federal laws.

31 A series of reports issued by the Comptroller General during 1972 point up the need for legislation. These reports are as follows:

31 Improvements Needed in Administration of Federal Coal-Leasing Program, B-169124, March 29, 1972

31 Opportunities for Improvements in Reclaiming Strip-mined Lands Under Coal Purchase Contracts, B-114850, August 9, 1972

31 Administration of Regulations for Surface Exploration, Mining and Reclamation of Public and Indian Coal Lands, B-148623, August 10, 1972.

II. BACKGROUND - FROM THE LITERATURE

31 For a period of 30 years the Congress has had before it legislative proposals bearing on the recovery of various minerals by surface mining.

A history of these bills was contained in a Committee Print issued earlier this year by this Committee. n1

32 n1 Legislative Proposals Concerning Surface Mining of Coal. 92d

Congress, 1st Session, Committee on Interior and Insular Affairs, United States Senate, September 1, 1971.

32 Surface mining refers to the process of removing the soil, rock and other material which covers the mineral, e.g., strip mining, open cast mining, placer or hydraulic mining, quarrying, and dredging.

32 A related method, used in the recovery of coal, is auger mining, a process in which large drills are used to bore horizontally into coal seams on hillsides.

32 An Interior Department study, "Surface Mining and Our Environment", has identified these advantages of surface mining methods:

32 It makes possible the recovery of deposits which, for physical reasons, cannot be mined underground; provides safer working conditions; usually results in a more complete recovery of the deposit; and, most significantly it is generally cheaper in terms of cost-per-unit of production.

32 Surface mining in 1969 accounted for 94 percent of all industry, as illustrated by recent remarks of Interior Secretary Morton to the Interstate Mining Compact Commission in which he noted:

32 Surface mining in 1969 accounted for 94 percent of all domestic production of crude metallic and nonmetallic ores: 2.45 billion tons compared with 165 million tons from underground mines.

32 Approximately 38 percent of all coal in 1969 came from surface mines. Preliminary data for 1970 indicates that this figure has risen sharply to 44 percent.

32 On a comparison basis, surface mines in 1969 produced 218 million tons and 269 million tons in 1970. Underground mines produced 347 million tons in 1969 compared with 338 million tons in 1970. Only the sharp increase in surface-mined coal enabled the industry to meet demand last year.

32 A more detailed picture is presented by the tables in the Committee Print noted above which show the production of various commodities by surface mining. Tables are included under the heading of Natural Resource and Energy Requirements.

32 Another study has recently noted these characteristics of coal surface mining operations:

32 In strip mining, output per man-day is roughly 100 percent higher than in underground mining, average recovery is 60 percent higher, and operating costs

are 25-30 percent lower.

32 This report, "Stripping Coal Resources of the United States," by Paul Averitt of the U.S. Geological Survey shows the increased efficiency of recovery made possible by strip mining methods. A Pennsylvania anthracite field, for instance, saw only one-third recovery by underground mining years ago. In the 1920's and 1930's strip mining with small shovels increased the recovery. Now partly mined coal is being recovered by surface mining methods in pits as much as 400 feet deep.

33 Averitt indicates that by 1980 the pits may reach a depth of 1,000 feet.

33 Despite the magnitude and value of surface mining operations many concerned citizens feel the adverse environmental effects of surface mining are so severe in the case of coal that they seek a total ban on all coal strip mining. Others have sought to develop a nationwide system of State, Federal or a combination of State and Federal control of surface mining which would, among other things, require the restoration of lands to be disturbed by surface mining. Some of the proposed bills provide reclamation of lands already disturbed.

33 It has been estimated that some 3.2 million acres had been disturbed by surface mining as of January 1, 1965. Of this total, some "two-thirds of the acreage (about 2.0 million) still require some remedial attention", according to the 1967 Interior Department report.

33 One serious deficiency in working with the problem of land reclamation is the lack of adequate current statistics on the amount of land disturbed and restored since the 1965 information was published. The Bureau of Mines, which compiles national mineral industry statistics, has released the following figures only for 1969 and only for coal, although it is understood that later figures are being gathered and will be made available:

SALIENT STATISTICS ON SURFACE MINING OF COAL IN THE UNITED STATES IN 1969 n1

State	Production	Surface mined land	Percent		
	Number of mines	Quantity (thousand short tons)	Acreage disturbed	Acreage reclaimed	disturbed land reclaimed during
Alabama	65	8,169	n(2)	n(2)	n(2)
Alaska n2	3	667	15		
Arkansas	6	167	n(3)	n(3)	n(3)

Colorado	9	1,915	n(3)	n(3)	n(3)
Illinois	37	34,640	6,711	5,479	81.6
Indiana	32	17,976	3,335	3,118	93.5
Iowa	11	534	120	40	33.3
Kansas	4	1,313	1,176	250	21.3
Kentucky:					
Eastern	262	17,082	12,200	9,600	78.7
Western	51	2m,632			
Maryland	38	1,045	261	459	175.9
Missouri n3	8	3,299	n(5)	n(5)	n(5)
Montana	5	995	31	33	106.5
New Mexico n3	3	3,636	250	100	40.0
North Dakota	20	4,704	330	140	42.4
Ohio	276	32,616	10,629	7,902	74.3
Oklahoma	8	1,722	1,674	1,441	86.1
Pennsylvania:					
Bituminous	602	22,592	11,774	9,298	79.0
Anthracite	174	4,579	534	539	100.9
Tennessee	73	3,609	n(2)	n(2)	n(2)
Virginia	158	5,182	2,258	2,331	103.2
Washington	2	5	n(2)	n(2)	n(2)
West Virginia	340	19,388	15,711	17,117	108.9
Wyoming	8	4,481	154	51	33.1
Total n4	2,195	217,952	67,163	57,898	86.2

33 n1 Data on acreage and acreage reclaimed compiled from Bureau of Mines Form O.M.B. No. 42-s70014.

33 n2 Data not reported.

33 n3 No State regulation on surface mining.

33 n4 Data may not add to totals shown because of rounding.

33 On the unreclaimed surface mined site there is destruction of the vegetative cover; the overburden is strewn upon adjacent lands; and surface and subsurface drainage patterns are altered. The 1967 Interior Department report notes these additional offsite damages:

34 Stream and water-impoundment pollution from erosion and acid mine water; isolation of areas by steep highways; and, the impairment of natural beauty by the creation of unsightly spoil banks, rubbish dumps, and abandoned equipment.

34 An important loss from unreclaimed lands is the fish and wildlife which the affected area would have supported in its natural condition.

34 Only seven commodities have been identified as being responsible for 95 percent of the 5,000 square miles which have been disturbed by surface mining. They are:

Percent

Coal	41
Sand and gravel	26
Stone 8 percent, gold 6 percent phosphate 6 percent, iron 5 percent	28
All others	05

34 These figures explain, perhaps, the prominence given to coal in the public discussion of problems related to surface mining. A contributing factor must also be the fact that coal mining is conducted largely in the East where it is visible to a larger portion of the population than is the case with Western mines which are primarily for metallic ores.

34 Although the prime arguments over legislation to regulate surface mining are economic and environmental, there are a number of additional points of controversy. These include the need for continuing supplies of minerals, particularly coal because of the current concern over energy supplies; and the effectiveness of reclamation procedures. The question of who shall administer regulation programs, and the safety of mine workers are also of concern. Briefly, the contentions over these matters are as follows:

34 The energy crisis

34 The Senate Interior Committee has been particularly cognizant of the mounting public concern over the continued availability of adequate energy supplies. Recent evidences of action in this matter are the establishment of a National Fuels and Energy Policy Study pursuant to Senate Resolution 45 of the 92nd Congress, action by the Committee on legislation to develop an accelerated program of coal gasification, and a review of the Department of Interior's prototype leasing program for oil shale.

34 Environmentalists have advocated constraint in the use of energy generally, and strip mined coal in particular, on the theory that our current level of electrical power use is needlessly high. Power companies have also been criticized for extensive advertising to generate additional consumer demand for power. Major portions of the U.S. coal reserves are recoverable only by surface mining techniques. Satisfaction of electric power demands without access to these coal deposits would add a new and significant dimension to the energy crisis.

34 Our need for non-fuel minerals has been presented as largely a choice between surface mining for domestic reserves or dependence on foreign sources of supply. Interior Secretary Morton in his remarks to the Interstate Mining Commission declared:

34 It is the surface mining industry that, in the future, will provide a strong domestic mineral supply base and prevent our dependence on foreign sources of mineral raw materials from becoming dangerously large or prohibitively expensive.

35 Reclamation feasibility

35 The capability to restore surface mined lands using available technology is a matter which is still under debate. Although existing State laws require land rehabilitation, opponents of surface mining have claimed that the requirements are not rigid enough to provide environmental protection, or that there is little or no enforcement of the provisions.

35 Federal or State regulation

35 A major question concerning the regulation of surface mining is whether the State or Federal government should establish and operate the program.

35 Wayne Davis wrote in his article "The Stripmining of America":

35 As the acceleration of stripmining proceeds, attempts to regulate it are frustrated. Although Kentucky has a fairly good mining reclamation law and some honest, conscientious people in the Division of Reclamation, law enforcement has broken down. An employee of the Division told me that during the summer of 1970 permits were issued to over 100 new operators. Since anyone who can borrow enough to get a bulldozer into operation can go into business and get rich now, there is a flood of new people into stripmining. The enforcement officer said that some of these inexperienced operators could not operate within the law even if trying to do so and spills of spoil into public highways and into the streams are the result.

35 Davis added:

35 * * * we must have federal regulations of mining practices.

35 Any local efforts to regulate this or any other industry encounter the standard and somewhat justified reply that regulation would put them at a disadvantage with their competitors in other States.

35 Edmund Faltermayer has examined the strip mine reclamation requirements and operations in Pennsylvania, and in Life magazine expressed a strongly contrary opinion. After commenting on the several State and Federal proposals to ban strip mining of coal he writes:

35 * * * It costs \$1 .50 a ton less, on the average, to strip coal than to send men into the bowels of the earth for it. That cost advantage is so great that strip-mining companies can afford to do some pretty fancy regrooming if they are made to do it. I know this is so, because I've been to Pennsylvania, a state which rigorously enforces its reclamation law, the toughest in the land. A lot of Pennsylvania companies are now going beyond what the law requires - replacing topsoil, for example. "They've really got religion on reclamation now," says William E. Guckert, who runs the state's enforcement program. "But," he quickly adds, "they didn't get religion until we put the screws to them."

36 Cynics will greet with disbelief the news that there is a state government anywhere that puts the screws to the stripmining industry. How it happened is worth telling. With more scarred acreage than any other state, Pennsylvania also has the country's biggest constituency of outdoorsmen to notice all the ruined terrain - 1.1 million licensed hunters and 800,000 fishermen - and they know how to lobby.

36 Both of these articles appear in their entirety in the later pages of this committee print.

36 Worker safety

36 An important social issue which had been discussed with regard to the relative merits of underground and surface mining is the health and safety of the miners.

36 Mrs. Harry Perry, Senior Specialist for the Congressional Research Service, has stated:

36 * * * The fatality and injury rate in underground mines is much higher than for strip mines. In 1970 the fatality rate in underground mines was 1.17 per million man hours of exposure while it was only .64 for strip mines. If all coal stripping were banned and the fatality rates remained as they now are the conversion to all underground mining would indicate statistically 90 additional men killed in mining for 1970.

36 Strip mine opponents have contended that rigorous enforcement of the 1969 Mine Health and Safety Act would do much to reduce the hazards of underground mining.

IV. COST OF THE BILL

37 In accordance with subsection (a) of section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the new obligational authority which would be incurred in carrying out S. 630 for administration and

inspection, State grants and research would be as follows:

37 For the first year, 7.9 million; the second year, 14.4 million; the third year, 17.3 million; the fourth year, 18.8 million; and the fifth year, 19.8 million.

37 In addition Section 303 of Title III of the bill authorizes an appropriation of \$100 million for the Abandoned Mine Reclamation Fund.

V. SECTION BY SECTION ANALYSIS OF THE BILL SHORT TITLE

38 The short title of the Act is "Surface Mining Reclamation Act of 1972."

38 To provide for cooperation between the Secretary of the Interior and the States with respect to regulation of surface mining operation and acquisition of abandoned mines.

SECTION-BY-SECTION ANALYSIS OF THE BILL TITLE I

38 Sec. 101. Definitions. - This section contains the definitions of terms used in the Act. Some of the more unusual terms follow.

38 "Reclamation" is defined as the reconditioning or restoration of an area disturbed or affected by surface mining operations or surface operations incident to underground mining operations.

38 "Surface area" means an area of land from which minerals are extracted by surface mining operations of surface operations incident to underground mining operations, and includes private ways, roads, etc.

38 The term "mining operation" means activity conducted on the surface of lands in connection with surface mine or underground operations after the effective date of the Act.

38 The term "any mine subject to this Act" means mining operations the products of which enter commerce or directly or indirectly affect commerce.

38 The term "other minerals" means all minerals other than coal and minerals in a liquid or gaseous state extracted by means of a well or pipe.

38 The term "area of critical concern" means areas where mining activities could cause irreparable environmental damage.

38 Sec. 102. Congressional Findings. - Extraction of minerals is a significant and essential industrial activity in the balanced economy of the nation.

38 Some mining operations destroy the land and its bounties, impair citizen

rights and create dangerous hazards.

38 Federal regulation and State cooperation is necessary on a nationwide basis to protect the environment.

38 Initial responsibility rests with the States because of the diversity of terrain, climate, and other physical characteristics.

SECTION-BY-SECTION ANALYSIS OF THE BILL TITLE II

38 Sec. 201. Permit Requirements. - No new coal operations or significantly increased existing operations may go forward without a permit either State or Federal. Ongoing coal operations must obtain a permit within one year, and a permit for mining for all other minerals must be obtained within two years of enactment.

38 Sec. 202. Publication of Federal Guidelines. - Within ninety days after enactment the Secretary must promulgate Federal guidelines for coal. The Federal guidelines will be published in the Federal Register and interested persons may submit written comment. Provision is made for public hearing followed by a published report of findings.

39 Proceedings are subject to the requirements of the Administrative Procedures Act with regard to public participation and the right to appeal. Within one year of enactment, the Secretary must promulgate guidelines for all other minerals.

39 Sec. 203. General Federal Guidelines. - The guidelines provide requirements for reclamation, operating procedures and material handling techniques. Each State or Federal plan must require a permit, a reclamation plan, including specific standards for environmental quality, health and safety, sufficient bond to insure reclamation, authority to prohibit mining under certain circumstances, and provision for enforcement of the reclamation requirements. Consideration must be given to the use to be made of the surface after mining. No permit will be issued except where the reclamation plan shows technology exists to reclaim for the approved use.

39 Each applicant for a permit must submit a reclamation plan for the mining operation. The guidelines set out specific provisions to be included in the plan such as protection of ground and surface water; sealing tunnels; protection from flooding resulting from silting; provision to prevent debris slides and slope failures; dust, smoke and noise abatement, provisions for suppression of fires, protection of surface areas, control of mine refuse; and provision for regrading and revegetation.

39 Each permittee is required to provide a bond of not less than \$500 per acre.

39 The regulating authority has authority to prohibit mining by denying a permit where an area of critical concern would be destroyed. Any person aggrieved by such a prohibition may petition the U.S. District Court to determine whether the prohibition amounts to an unconstitutional taking.

39 The regulating authority is authorized to issue stop orders and bring civil and criminal actions for violations.

39 The guidelines detail the information to be filed by the applicant for the proper administration of his permit application.

39 Sec. 205. Federal and State Interim Plans. - This section required to be set forth in the guidelines, and provides authority to issue stop orders, initiate civil and criminal actions, and provide training programs for enforcement of reclamation.

39 Sec. 204. Specific Guidelines for Coal. - This section provides for covering coal seams, disposal of debris, revegetation, control of bench widths, highwalls and spoil peaks; allows acceptable alternative methods to achieve the planned use.

39 Sec. 205. Federal and State Interim Plans. - This section requires a State plan for coal within one year of enactment (either an existing State law which qualifies or a newly adopted plan) unless the State notifies the Federal authority otherwise; and provides for a Federal interim plan for any State which does not promulgate or properly qualify a State plan. Federal interim plans remain in effect until terminated or superceded by a permanent State or Federal plan.

39 Sec. 206. State Plans. - This section provides Federal assistance for State plans which qualify under the guidelines. Provision is made for notice and public hearings on the proposed plan. The Secretary's approval of State plans is undertaken in consultation with the Secretary of Agriculture, under detailed provisions for reclamation, a showing of financial adequacy for enforcement, training programs, reports, permit, reclamation plan, bond, authority to prohibit permit requirements, inspection, sanctions (both administrative and court actions) and provides for Federal takeover if the State fails to adopt or enforce a plan meeting the requirements of the Act. State plans may conform to Federal guidelines or exceed them.

40 Appeals may be filed when applications for permits are denied and hearings held. Provision is made for revocation and revision of permit applications under State plan and hearing upon request.

40 A State plan must provide for inspection, reports and sanctions for violation including stop orders, withholding of permits, forfeiture of bonds and initiation of civil and criminal actions.

40 Permittees are held responsible for any violation under the Act unless reclamation has been accomplished and bond released.

40 The Secretary continually reviews State plans, holds public hearings on State plans [14(d)] and may withdraw his approval of State plans and take over administration and enforcement of the plan.

40 Copies of permit application and permits are to be public information.

40 Sec. 207. Federal Plan. - The Secretary must publish a Federal plan for a State if the State after one year fails to enact a State plan for coal which meets the requirements of this Act or if the plan is not revised or enforced as required by the Secretary.

40 Public hearings will be held on any such Federal plan for a State. The Federal plan becomes inoperative when an acceptable State plan has been promulgated.

40 Sec. 208. Inspections and Investigations. - The Secretary shall inspect as necessary to evaluate a State's administration of its plan. Federal agencies are authorized to issue right of entry permits for State officials on lands within the jurisdiction of the agency.

40 As a tool in enforcement, the Secretary shall require records to be kept, reports to be prepared, and monitoring of operations.

40 States' representatives may be delegated this Federal responsibility for inspection.

40 Records and other information shall be kept confidential.

40 Sec. 209. Federal Enforcement. - The Secretary, upon notice of a violation of provisions of a State plan is authorized to notify the individual involved and the State and publish his findings. Failure to correct the violation subjects the permittee to an administrative order for compliance and possible civil action.

40 If violations within a State appear to be because of the State's failure to enforce, the Secretary shall give public notice of such finding and the Secretary is required to assume the responsibility for and enforcement of the State plan.

40 Orders issued under this section shall specify the time in which compliance with the order must be had (considering the seriousness of the violation and any irreparable harmful effect upon the environment).

40 The Attorney General may be requested to initiate a civil action for noncompliance or injunction proceeding.

40 Penalties of \$1 ,000 for each and every day of violation for a civil action may be imposed and \$1 0,000 in a criminal action, or imprisonment for six months or both.

41 Officers of corporations knowingly allowing violations of the provisions of this Act shall be subject to the same fines.

41 Sec. 210. Advisory Committee. - This section authorizes the Secretary to appoint a Committee of not more than seven nor less than five persons representing a balance among local, Federal and State officials and taking cognizance of the viewpoint of operators of mines and conservation and public interest groups, and fixes the rate of compensation.

41 Sec. 211.Grants to States. - This section authorizes the Secretary to make annual grants to States to assist States in developing, administering and enforcing a State plan. The grants shall not exceed 80% of total costs the first year and 50% during succeeding years.

41 The section calls upon the Secretary and all Federal agencies to provide assistance to the States in the form of:

41 (1) technical assistance and training of personnel,

41 (2) inventorying mining operations in the State, and

41 (3) evaluating State plans and future needs.

41 Sec. 212. Authorization of Appropriations. - This section authorizes appropriations to the Secretary for the fiscal year ending June 30, 1972, the sum of \$10,000,000 and \$2 0,000,000 for each of the next two succeeding fiscal years, and thereafter as Congress deems necessary.

SECTION-BY-SECTION ANALYSIS OF THE BILL TITLE III

41 This title addresses itself to the problem of repair of past damage from surface mining operations and is consistent with the special report to the nation by the U.S. Department of the Interior, n1 recommending acquisition of such lands.

41 n1 U.S. Government Printing Office 1967-0-258-263.

41 Sec. 301. Acquisition of Abandoned and Unreclaimed Mined Areas. - This section is a finding by the Congress that acquisition of such lands to construct, operate or manage reclamation facilities is a public purpose and

authorizes the Secretary to acquire by purchase or donation or condemnation land or any interest therein which has been abandoned and not reclaimed. It provides that title to such land shall be taken in the name of the United States, title to be approved by the Attorney General pursuant to existing law and requires that the price to be paid shall consider the unrestored condition.

41 Conditions under which condemnation actions are permitted are set forth in subsections (d) and (e). States are encouraged (by grants up to 90%) to acquire abandoned and unreclaimed lands within their boundaries and to donate such lands to the United States for the purpose of reclamation. States are given a preference right to purchase back reclaimed lands at fair market value.

41 The Secretary is authorized to administer lands reclaimed under this title and to use moneys in the Fund (see Sec. 303) for such purposes.

41 Reclaimed lands may be sold by the Secretary pursuant to the Surplus Property Act, of 1949, provided the lands are sold at fair market value. Moneys from such sales are to be deposited in the Fund.

41 Sec. 302. Filling Voids and Sealing Tunnels. - This section meets a problem of voids and open and abandoned tunnels, shafts and entryways which create a hazard to public health and safety and provides that at the request of a Governor, the Secretary, is authorized to fill the voids and seal the abandoned openings.

42 The Secretary is authorized to acquire by purchase, donation or otherwise, any such interest in land necessary to accomplish this purpose.

42 Sec. 303. Abandoned Mine Reclamation Fund. - This section establishes a revolving Fund and an initial appropriation of \$1 00,000,000 for purposes of this Title. Fees and bond forfeitures from failure of permittees to reclaim augment the fund, except that States with acceptable State plans are authorized to retain such fees and apply them first to reclamation of the instant land covered by the bond or deposit. Moneys from sale, lease or rental of land are deposited to the Fund.

SECTION-BY-SECTION ANALYSIS OF THE BILL TITLE IV

42 Sec. 401. Research. This title recognizes the need for continuing research and study in reclamation and mining technology and authorizes the Secretary to make grants and enter into contracts for such purposes.

42 Sec. 402. Other Federal Laws. - This section sets out the savings clauses and provides that this act shall not be construed to supercede, amend,

modify or repeal any existing State or Federal law relating to mine health and safety and air and water quality.

42 In order to achieve uniformity of regulation among lands of differing ownership, subsection (b) of this section affirms the authority of the Secretary or heads of other Federal agencies under other Federal laws to include conditions appropriate to regulation of surface mining and reclamation with the provision that any such condition shall be consistent with any Federal plan or an approved State plan in which the lands are located.

42 Sec. 403. Separability. - This section provides that the invalidity of any one section hereof shall not invalidate the remainder.

VI. COMMITTEE RECOMMENDATION

42 The Committee

42 The Commiton Interior and Insular Affairs by unanimous vote in executive session on September 13, 1972, recommends that S. 630, as amended, be enacted.

42 Pursuant to subsection (b) of section 133 of the Legislative Reorganization Act of 1947, as amended, the following is a tabulation of votes of the members of the Committee on Interior and Insular Affairs on a motion to report S. 630, as amended, favorably to the Senate:

42 Yeas, 16:
Jackson Gravel
Anderson Allott
Bible Hatfield
Church Bellmon
Moss Fannin
Burdick Hansen
McGovern Jordan
Metcalf Buckley

VII. EXECUTIVE COMMUNICATIONS

43No Executive communications were requested or received on Committee Print No. 3 reported as S. 630 since the bill was drafted by the Subcommittee in executive session and based upon the bills before the Committee. Executive communications for the bills on which the Committee held hearings follows:

43 U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C., November 12, 1971.

43 Hon. HENRY M. JACKSON,

43 Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

43 DEAR MR. CHAIRMAN: This responds to your request for the views of the Department on S. 77, S. 1498, and S. 2455 dealing with the adverse environmental aspects of mining operations.

43 We recommend against enactment of all of the above listed bills and recommend that S. 993, the Administration's proposal "To provide for the cooperation between the Federal government and the States with respect to environmental regulations for mining operations, and for other purposes" be enacted instead.

43 All of the listed bills contain aspects of similarity to the Administration's proposal, S. 993. That bill would encourage through Federal grants the States to regulate all types of mining activity including surface and underground, coal and most other minerals. (It excludes oil and gas.) If the States fail within two years to propose a regulatory program which is approved by the Secretary of the Interior, the Secretary will promulgate and administer mined area protection regulations for that State.

43 S. 77 and S. 2455 differ from the Administration's proposal in that they cover only surface and strip mining and divide responsibility between the Secretaries of Interior and Agriculture (S. 77), or the Administrator of the Environmental Protection Agency (S. 2455).

43 S. 1498 differs from the Administration's proposal in that it vests Federal administrative responsibility in the Environmental Protection Agency, applies to coal mining only and gives sole regulatory responsibility to the Federal Government with respect to existing surface mines. It would prohibit altogether the opening of any new, inactive or abandoned surface coal mine.

43 Section 8 of S. 1498 prohibits all future coal mining in areas established as wilderness pursuant to the Wilderness Act. If further provides that underground coal mining on lands within the National Forest System shall be conducted only under regulations "which will assure that there will be no adverse effects" either on-site or off-site.

43 Titles II, IV and V of S. 77 and section 9 of S. 1498 provide for Federal assistance to reclaim and conserve areas damaged by past coal mining operations. Both bills require that such areas be owned by State or local governments, and authorize Federal funding. The Administration's bill applies only to damage caused by existing and future mining operations.

43 S. 1498 and S. 2455 provide for citizen suits to mandamus government officials who neglect or refuse to enforce the Act and allow suits against any

person alleged to be in violation of the Act or the regulations.

44 Section 14 of S. 1498 directs Federal agencies through contracts or assistance programs to effectuate the purpose and policy of the Act and specifically prohibits contracting for coal from a mine where a condition giving rise to a conviction under the Act has not been corrected.

44 The following major differences between the bills are the basis for our recommendations stated above.

44 (1) Limited Coverage

44 Each region of the country has its own particular environmental problems from mining. In many areas coal mining is the most troublesome, particularly open pit or strip mining. Other types of mining, however, also pose a substantial threat to the environment. Underground coal mines can constitute a major source of water pollution and underground coal fires both contaminate the air and waste a valuable resource.

44 The Administration's bill is truly national in its scope, dealing with the entire range of mining related environmental problems. We feel that the regulatory machinery to be created under these bills should deal with all these problems, and not simply those related to a particular type of mining.

44 (2) Federal Administration

44 The basic premise of the Administration's proposal is that environmental protection and reclamation can be accomplished most economically by building it into the mining operation rather than by patching up afterwards. It attempts to substitute careful advance planning for costly control devices. Achieving this objective requires intimate knowledge of mining operations and the physical environment in which they are conducted. The Bureau of Mines, the Geological Survey, and the Bureau of Land Management of this Department possess paramount expertise in these areas and are best suited to guide State efforts in mined area protection and reclamation.

44 For this reason we oppose S. 1498 which places the program under the Environmental Protection Agency. That agency would, of course, under the Administration's proposal, retain its responsibility for enforcement of air and water standards against mining operators. It would also participate with the Departments of Agriculture and Commerce, the Tennessee Valley Authority and the Appalachian Regional Commission on an advisory committee

created under the Act.

44 (3) Primary Responsibility to States

44 The environmental problems stemming from mining operations are essentially land use problems. Such problems are, under the Federal Constitution, primarily the responsibility of the States. Because of this and in keeping with the President's broad effort to return decisionmaking responsibility to State governments, the Administration's bill encourages the States to accept the responsibility for regulating mining operations within their borders. It offers Federal grants to cover up to 80% of the cost to the States of developing a program and a percentage of the costs of administering it during the first four years.

44 We oppose, therefore, S. 1498 which recognizes no State responsibility for surface mine regulation.

45 (4) Restoration of Past Mining Damage

45 As stated in the letter transmitting the Administration's proposal, the solution to the problem of healing damage inflicted in the past is largely one of spending taxpayers' dollars, since the party responsible is typically not available for legal action and the value of the land reclaimed does not generally justify the cost. All available remedies must be exhausted before tax revenues are spent and care must be taken to avoid windfalls to private owners.

45 We feel that the first priority in mined area protection must be to arrest the damage presently being inflicted on the land and that Federal funding to restore lands damaged in the past cannot be justified at this time.

45 (5) Prohibition of Surface Coal Mining

45 This Department strongly opposes the blanket prohibition in S. 1498 of surface mining of coal. This country is facing a crisis in mineral supply, particularly in the fuels area. Known reserves of oil and gas are being rapidly depleted. The potential of nuclear energy, while a hopeful long-term solution, has not been developed sufficiently to carry us through the critical period of the next 5 or 10 years. Domestic coal must supply a heavy share of the Nation's fuel needs both now and in the future.

45 Fortunately, this Nation is endowed with vast coal deposits, many of them lying at relatively shallow depths where underground mining is economically ludicrous if not physically impossible.

45 We do not mean to minimize the potential adverse environmental consequences of surface mining nor to imply that environmental degradation is necessary to maintain our standard of living. The letter transmitting the Administration's proposal unequivocally condemns those surface mining practices which have wasted the land and scarred the landscape, poisoned and choked the streams and fouled the air. This country cannot tolerate such abuses of the environment any longer.

45 The answer, however, is not a flat prohibition of surface coal mining but to find ways to avoid or reduce to acceptable levels the environmental damage. The technology is presently available for environmentally safe surface mining in many areas, particularly in the more arid, western States. The Administration's proposal calls for further research to expand the technology for mined area protection and reclamation. Moreover, the Administration's proposal contains authority to prohibit surface mining where the areas affected cannot be adequately reclaimed. The regulations adopted by the State under the Administration's proposal must contain requirements designed to insure that the mining operation will not result in a violation of applicable water or air quality standards and will control or prevent specified types of environmental damage. We believe that the Administration's proposal provides a constructive method for meeting the needs of the environment without sacrificing unnecessarily our ability to acquire mineral resources on which this Nation's prosperity depends.

45 (6) National Forests

45 S. 1498 makes special reference to National Forests requiring that underground coal mining operations in them be conducted with "no adverse effects". The Administration's proposal requires that all mining on all Federal lands be conducted under regulations which assure at least the same degree of environmental protection and regulation as is required by the State in which the land is situated. It is essential that the Federal Government itself practice what it preaches to the States and we see no reason to limit this practice to National Forest lands.

46 (7) Citizen Suits

46 As a matter of general policy, we support citizen participation in enforcement of laws to protect the environment and the repudiation of defenses to environmental actions based on standing to sue and sovereign immunity. We have supported citizen suits in specific instances such as the Clean Air Amendments of 1970 (Public Law 91-604) and the Administration's proposed amendment to section 10 of the Federal Water Pollution Control Act (S. 1014 in this

Congress).

46 The citizen suits which we have supported are limited to enforcement of specific environmental requirements which are capable of objective definition or precise measurement.

46 The Administration's proposed Mined Area Protection Act will result in a variety of types of environmental standards. Those designed to assure that air and water quality control standards are met may, as stated above, be enforced through existing or proposed provisions allowing citizen suits. Those regulations pertaining to the approval of a reclamation plan will require the judgment of a State official familiar with the mining operation and the local mining conditions. We do not feel that the courts should become involved in this area except to review, in the normal manner, abuses of administrative discretion.

46 (8) Federal Procurement

46 Section 14 of S. 1498 parallels section 306 of the Clean Air Act, as amended, which prohibits Federal agencies from contracting with persons in violation of the Act until the condition is corrected. We agree with the principle embodied in this section, that the Federal government should not support through its procurement of goods a person's activities in violation of the Act. We feel, however, that if the operator in accordance with the applicable law is in the process of correcting a condition which has given rise to a conviction, under an approved schedule of compliance that he should not suffer the added penalty of being prohibited from selling to the Federal Government. Therefore, we would have no objection to including this section in the Administration's proposed "Mine Area Protection Act of 1971" provided the words "coal mine" in subsection 14(a) are changed to "mined area", the words "or any law or regulation promulgated pursuant thereto" are added after "Act" on line 16, and lines 20 and 21 are revised to read "administering agency certifies that the operator is operating in compliance with the applicable law and regulations".

46 Also, subsection 14(b) should be deleted as unnecessary and to assure maximum flexibility for the administrative promulgation of government wide procedures coordinated with those being developed to implement section 306 of the Clean Air Act.

46 The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of S. 993 would be in accord with the Administration's program.

46 Sincerely yours, HOLLIS M. DOLE, Assistant Secretary of the Interior.

47 EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, D.C., November 15, 1971.

47 HON. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

47 DEAR MR. CHAIRMAN: This is in response to your requests for the views of the office of Management and Budget on the following legislation:

47 S. 77, a bill "To provide for the regulation of present and future surface and strip mining, for the conservation, acquisition, and reclamation of surface and strip mined areas, and for other purposes."

47 S. 630, a bill "To provide for the cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes."

47 S. 1160, a bill "Relating to the rehabilitation of areas damaged by deleterious mining practices, and for other purposes."

47 S. 1498, a bill "To provide for the control of surface and underground coal mining operations which adversely affect the quality of our environment, and for other purposes."

47 S. 2455, a bill "To regulate the practice of strip mining, to protect the environment, and for other purposes."

47 The Department of the Interior has submitted a related bill, S. 993 - the "Mined Area Protection Act of 1971", for Congressional consideration, and as stated in the Department's reports on the legislation cited above, it recommends enactment of S. 993 in lieu of these bills. Enactment of S. 993 would be in accord with the program of the President.

47 Sincerely, WILFRED H. ROMMEL, Assistant Director for Legislative Reference.

47 DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY, Washington, D.C., November 17, 1971.

47 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate.

47 DEAR MR. CHAIRMAN: This is in response to your letter of October 6, 1971, requesting the views of this Department on S. 77, a bill "To provide for the regulation of present and future surface and strip mining, for the conservation, acquisition, and reclamation of surface and strip mined areas, and for other purposes."

47 This bill generally provides for the conservation and improvement of lands affected by surface mining operations.

47 The President's Environmental Message to the Congress, dated February 8, 1971, proposed a Mined Area Protection Act, S. 993, to establish Federal requirements and guidelines for State programs to regulate the environmental consequences of surface and underground mining. This proposal was submitted to Congress by the Secretary of the Interior and introduced on February 25, 1971, as S. 993. We recommend that the Administration's proposal be enacted.

48 The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

48 Sincerely,

48 J. PHIL CAMPBELL, Washington, D.C., January 4, 1972.

48 OFFICE OF THE DEPUTY ATTORNEY GENERAL, Washington, D.C., January 4, 1971.

48 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, and U.S. Senate, Washington, D.C.

48 DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 77, a bill "To provide for the regulation of present and future surface and strip mining, and for the conservation, acquisition, and reclamation of surface and strip mined areas, and for other purposes."

48 Although we defer to the Departments of the Interior and Agriculture and to other interested Federal agencies concerning the desirability of the policy embodied in this bill, we do point out several technical problems.

48 We note that the bill fails to accommodate the Attorney General's authority to conduct litigation on behalf of the United States. No provision is made for service of process or petitions for review upon the Attorney General or the local United States Attorney. See Rules 4(d)(4) and (5), Federal Rules of Civil Procedure.

48 Subsection 2(b)(7) of the bill states that one of the purposes of the proposed legislation is "the elimination of competitive disadvantages for firms operating in a given market area which interfere with the orderly and fair marketing of minerals in commerce." This purpose is apparently based on the subsection 2(a)(10) finding that present state regulation "creates, because of the diversity of State regulations, or the lack thereof, competitive

disadvantages for firms operating in a given market area and thereby interferes with the orderly and fair marketing of minerals in commerce."

48 These references to competitive conditions and the intent to correct them raise antitrust problems. Although no immunity provisions are contained in the bill, the possibility remains that states could use the regulatory authority over surface and strip mining afforded to them by section 103, to limit production of minerals or otherwise affect the competitive marketing of these products under the protection of the "state action" instrument provided by the doctrine of *Parker v. Brown*, 317 U.S. 341 (1943). See *Hecht v. Pro-Football, Inc.*, 444 F.2d 931 (D.C. Cir. 1971). Accordingly, the Department recommends that subsections 2(a)(10) and 2(b)(7) be deleted from the bill.

48 Sections 104 and 105 authorize the Secretaries of the Interior and Agriculture to inspect and investigate a surface or strip mine or previously surfaced or strip mined area to determine whether there has been compliance with the appropriate laws. Recent decisions have imposed limitations upon the course of action which the investigator may take in the event he is refused entry. See *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970); *Camara v. Municipal Court*, 387 U.S. 53 (1967); See *v. City of Seattle*, 387 U.S. 541 (1967).

49 Section 503 of the bill would permit the owners of property acquired under Title V of the bill to reserve for themselves and their successors a qualified right of use and occupancy. We believe that this provision could lead to much litigation over whether an area the Government sought to acquire under Title V and the landowner sought to reserve is "required for reclamation measures." Also, it could be quite cumbersome to value the fee subject to such reserved interests rather than the fee itself. Traditionally the estate in property sought by the Government has not been subject to judicial inquiry. *Berman v. Parker*, 348 U.S. 26 (1954); *United States v. Twin City Power Company*, 350 U.S. 222 (1956).

49 The Department of Justice notes that the Committee's favorable consideration of the Administration's proposal, S. 993 - the Mined Area Protection Act of 1971, would obviate the need for dealing with the problems noted above.

49 The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

49 Sincerely,

49 RICHARD G. KLEINDIENST, Deputy Attorney General.

49 U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C., September 17, 1972.

49 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

49 DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on S. 630, a bill "To provide for the cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes."

49 We recommend that the bill not be enacted but that S. 993, the Administration's proposal, "To provide for the cooperation between the Federal government and the States with respect to the environmental regulations for mining operations, and for other purposes", be enacted instead.

49 Both bills are designed to combat the adverse environmental effects of mining operations. These effects have been well documented and include unsightly spoil heaps, clogged and polluted streams, wasted land and scarred landscapes, mine fires and unintentional cave-ins causing surface subsidence.

49 There are many similarities between the two bills. Both would encourage States to establish a regulatory program which, if it met the statutory criteria and was approved by the Secretary of the Interior, would make the State eligible for Federal grants. Under both bills, if a State fails after two years to produce a regulatory program meeting the standards of the Act, the Secretary of the Interior is directed to issue Federal regulations governing mining operations in that State.

50 Both bills contain provisions for advisory committees, Federal inspections, penalties, and federally-sponsored research or training programs.

50 There are four major differences between the two bills which constitute the basis for our recommendation that S. 993 be enacted and not S. 630.

50 (1) Scope

50 The Administration's bill is broader in scope. It covers underground mines as well as surface mines, while S. 630 covers only the latter. The potential environmental hazards of underground mines are serious and, while the technology for dealing with them may not be as advanced as it is with respect to surface mines, it is important that the framework be established so that improvements in mining technology can be developed and applied to underground mining as rapidly as possible.

50 (2) Regulatory Criteria

50 The Administration's proposal contains certain criteria for approval of a State program not contained in S. 630. It contains provisions designed to control two major adverse effects of underground mining, fires and subsidence, and it requires that maps of underground mines be kept on file so that the danger of unintentional subsidence can be avoided. It requires that a permit be obtained by all mine operators. It requires provisions to avoid waste of mineral resources and to require that reclamation be made a part of the mining cycle. The Administration's bill specifically requires that the program be administered by a single State agency unless the Secretary approves an interstate agency. The State agency must coordinate with State agencies responsible for air, water and other environmental quality standards.

50 The Administration's bill further provides that State regulations be developed with full participation of all interested groups, that they be subject to regular review and updating and that they be compatible with regulations of adjacent States.

50 The Administration's proposal provides that the statutory criteria will be further elaborated by the Secretary through guidelines which will attempt to provide the operator of a mining operation sufficient flexibility to choose the most economically efficient means of meeting the requirements of the Act.

50 We feel that these provisions of the Administration's bill which spell out the criteria in greater detail and allow maximum latitude to the operator to select the best way for his particular operation to meet the environmental objectives is essential, particularly in those areas where the technology for environmentally safe mining is still being pioneered.

50 (3) Funding

50 Both bills authorize appropriations as necessary. Under S. 630, Federal grants may not exceed 50 percent of the cost of developing, administering and enforcing the regulations. Under the Administration's proposal, the Federal assistance may cover up to 80% of the cost of developing the program during the year prior to its approval and a share of the costs of administering and enforcing the program during the four years following its approval. That share may be up to 60% the first year, 45% the second year, 30% the third year and 15% the fourth year. By that time it is expected that the heavy initial costs will have been met and that the program would become self-sustaining through permit

fees if the State chooses to impose them. The Administration bill provides that if the Federal Government is obliged to administer a program for a State the cost will be recovered from permit fees.

51 (4) Federal Lands

51 Neither bill would place Federal lands under the control of the State program although both would require that mining regulations on Federal lands be at least as stiff as those on State lands. The Administration's proposal states explicitly that Federal agencies are authorized to impose environmental regulations on all lands under their jurisdiction.

51 In view of the differences between the two bills and for the reasons discussed above, we prefer the Administration's proposal to S. 630.

51 The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of S. 993 would be in accord with the program of the President.

51 Sincerely yours,

51 W. T. PECORA, Under Secretary of the Interior.

51 DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY, Washington, D.C., September 20, 1971.

51 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

51 DEAR MR. CHAIRMAN: This is in response to your request for a report on S. 630, a bill "To provide for the cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes."

51 The President's Environmental Message to the Congress, dated February 8, 1971, proposed a Mined Area Protection Act to establish Federal requirements and guidelines for State programs to regulate the environmental consequences of surface and underground mining. This proposal was submitted to Congress by the Secretary of the Interior on February 10, 1971.

51 The proposed Mined Area Protection Act is somewhat broader in scope than S. 630, encompassing underground as well as surface aspects. Accordingly, we recommend that the Administration's proposal be enacted.

51 The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's

program.

51 Sincerely,

51 J. PHIL CAMPBELL, Under Secretary.

52 OFFICE OF THE DEPUTY ATTORNEY GENERAL, Washington, D.C., January 4, 1972.

52 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

52 DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 630, a bill "To provide for cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes."

52 This bill is designed to induce the States to promulgate regulations protecting the environment insofar as it is threatened by surface mining operations. To this end, the States are allowed, by Section 7, a maximum of three years to submit proposed regulations to the Secretary of the Interior for his approval, relating to planning, regulation, inspection and reporting, control of erosion, flooding and pollution of water, isolation of toxic materials, the prevention of air pollution by dust, the reclamation of surface mined areas, maintenance of access through mined areas, the prevention of land or rockslides, and the protection of fish and wildlife and their habitat and the public health and safety. Section 8 provides that if a State fails to obtain approval of its plan within the allotted time, the Secretary must after appropriate notice and hearing issue Federal regulations for the operation of surface mines and for the reclamation of surface mined area in such State. Under certain circumstances set forth in Section 7(b), the Secretary, after having approved a State plan, may withdraw his approval, and issue Federal regulations. Enforcement of an approved State plan is delegated to the State.

52 In the event the Secretary issues regulations applicable to a State, he may request the Attorney General to institute a civil action for appropriate injunctive relief, or may impose a civil penalty of up to \$1 00 daily for violation of the regulations. Also, the knowing violation of any such regulation is a criminal offense punishable by a fine of not more than \$2,500, by imprisonment for up to one year, or both.

52 Although we defer to the Department of the Interior and other interested agencies concerning the desirability of the policy embodied in this bill, we do point out several technical problems.

52 In the event that Federal regulations are issued under section 8, the

Secretary is empowered, by section 12, to request the Attorney General to enforce these regulations by way of an injunction to prevent any person from engaging in mining operations in violation of these regulations. On the other hand, in the event that State regulations are issued and approved, section 12(b) empowers the Secretary to prevent a person from placing in commerce the minerals produced by a mining operation in violation of any approved State regulations. However, should the Secretary exercise his discretionary authority under section 7 and withdraw approval of a State's regulations, he has no enforcement authority under section 12 until Federal regulations become effective. Since the Secretary must comply with the hearing requirements of section 8, including a 60 day notice period, prior to the establishment of effective Federal regulations, a hiatus is created.

53 The procedures for the issuance of Federal environmental regulations for State mining operations set forth in section 8 differ in various respects from the Federal rulemaking procedures in 5 U.S.C. 553.

53 Section 10(a) authorizes the Secretary to enter any mining operation and mined area to inspect and investigate. Recent decisions have imposed limitations upon the course of action which the investigator may take in the event he is refused entry. See *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970); *Camara v. Municipal Court*, 387 U.S. 53 (1967); See *v. City of Seattle*, 387 U.S. 641 (1967). In addition, we call attention to section 12(c) which empowers the Secretary, through the Attorney General, to enforce the right of entry under section 10, as we are uncertain what form of enforcement is contemplated.

53 Section 12(a), page 14, lines 10-12, contain a provision whereby a civil action may be commenced "to prevent a person from engaging in surface mining operations without a permit from the Secretary required under section 8 of this Act. . . ." Section 8 refers only to regulations, and impliedly these regulations could require a permit similar to that which a State program would require as indicated in section 7(a)(1)(B).

53 The Department of Justice notes that the Committee's favorable consideration of the Administration's proposal, S. 993 - the Mined Area Protection Act of 1971, would obviate the need for dealing with the problems noted above.

53 The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the

Administration's program.

53 Sincerely,

53 RICHARD G. KLEINDIENST, Deputy Attorney General.

53 THE WHITE HOUSE, Washington, D.C., April 24, 1972.

53 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

53 DEAR MR. CHAIRMAN: There are three legislative proposals pending before your Committee I consider particularly important in this Nation's comprehensive effort to protect our environment. They are: the National Land Use Policy Act (S. 992), the Mined Area Protection Act (S. 993), and the National Resource Lands Management Act (S. 2401).

53 The first two proposals were among those which I set out in my environment message to the Congress of February 8, 1971; the National Resource Lands Management Act was submitted by the Interior Department later in 1971. In my environment message in February of this year, I proposed amendments to strengthen the National Land Use Policy Act. I am encouraged by the facts that hearings have been held by your Committee on all three bills and that all three have received strong public support. I am also pleased to note that the Committee has held several executive sessions on the Land Use Bill. However, none of these bills has yet been reported out of the Committee.

54 Over the past several years your Committee has consistently played an important role in this country's environmental awakening. I know, therefore, that you share my sense of the significance of this legislation.

54 As a Nation we have taken our land resources for granted too long. We have allowed ill-planned or unwise development practices to destroy the beauty and productivity of our American earth. Priceless and irreplaceable natural resources have been squandered. These three proposed laws are aimed at changing all this. Their common objective is to place decisions regarding land use in the broader perspective of environmental protection, and to assure maximum foresight and comprehensive planning in the utilization of our physical resources.

54 The proposed National Land Use Policy Act would restructure the institutions which govern land use in this country to better reflect regional considerations in those land use decisions - the great majority - whose impact spills over local jurisdictional boundaries. It would require States to control large scale development; to control development in areas of critical environmental concern and in areas impacted by such key growth-inducing

facilities as highways, airports, and major recreation facilities; to guide the siting of highways and airports; and to insure that development of regional benefit is not unfairly excluded by local regulation.

54 The proposed Mined Area Protection Act would make land reclamation and environmental protection an integral part of all mining operations. States would be required to establish a permit program based on approval of a mining and reclamation plan in advance of operations.

54 The proposed National Resource Lands Management Act would establish a comprehensive policy, based on multiple use and environmental protection, for the management of 450 million acres of public land by the Bureau of Land Management in the Department of the Interior. It would give the Secretary of the Interior broad authority to implement the policy.

54 The country needs these bills urgently. And as you well know the time for action by the 92nd Congress is growing short. I urge your Committee to move ahead rapidly on this important legislation. The staff of the Department of the Interior and the Council on Environmental Quality will continue to cooperate with your Committee in every way possible.

54 I am taking the liberty of forwarding a copy of this letter to Senator Allott.

54 Sincerely,

54 RICHARD NIXON.

54 U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C., November 12, 1971.

54 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

54 DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 1160, a bill "Relating to the rehabilitation of areas damaged by deleterious mining practices, and for other purposes."

55 We recommend that this bill not be enacted but favor instead the enactment of S. 993, the Administration's proposed "Mined Area Protection Act of 1971".

55 S. 1160 would authorize the Secretary of the Interior to make grants to the several States to rehabilitate areas damaged by deleterious mining practices. Grants would be made for the purpose of sealing and filling voids in abandoned coal mines and abandoned oil and gas wells, and to reclaim and rehabilitate lands affected by strip or surface mining. Grants would be restricted to 75 percent of the total cost of any project, and the bill would authorize necessary appropriations for three years.

55 There are two distinct problems involved in meeting the challenge which mining operations can present to the environment:

55 (1) requiring ongoing and future mining activities to be conducted in a way as to minimize the environmental impact, and (2) healing the wounds that have been inflicted by past mining operations.

55 The Administration's proposed bill deals only with the first problem, the solution to which is largely a matter of developing regulations which will require environmental considerations to be built into the mining operation. An integral part of this effort will be research programs promoted by the Secretary of the Interior with Federal funds.

55 The Administration's proposed bill recognizes that the initial responsibility for developing and enforcing regulations should rest with the States. It also recognizes, however, that the effort must be nationwide and based, to the fullest extent possible, on national standards, so that industry will be placed on an equal footing in every State.

55 The Administration's proposed bill therefore gives the States the opportunity to develop and submit regulations for approval by the Secretary of the Interior in accordance with certain specific criteria set forth in the bill.

55 If a State fails to develop an acceptable program within two years after enactment, the proposed bill authorizes the Secretary to promulgate regulations for mining operations within the State.

55 The problem of healing damage inflicted in the past is more complicated. Typically, the party responsible is not available for legal action to require him to repair the damage he has caused. Consequently the solution is largely a matter of spending taxpayers dollars. In order to justify a massive Federal grant program to clean up past mined-areas, a detailed cost-benefit analysis must be undertaken to assure that this problem deserves top priority among the great number of other environmental problems the solution to which requires Federal funds. The tools for such an analysis are in the formative stages. Until they have been further refined, it is felt that a restoration program is premature.

55 The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of S. 993 would be in accord with the President's program.

55 Sincerely yours,

55 HOLLIS M. DOLE, Assistant Secretary of the Interior.

56 DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY, Washington, D.C.,
November 17, 1971.

56 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular
Affairs, U.S. Senate.

56 DEAR MR. CHAIRMAN: This is in response to your request for a report on
S.
1160, a bill "Relating to the rehabilitation of areas damaged by deleterious
mining practices, and for other purposes."

56 This Department recommends that the bill not be enacted.

56 The President's Environmental Message to Congress, dated February 8,
1971, proposed a Mined Area Protection Act, S. 993, to establish Federal
requirements and guidelines for State programs to regulate the environmental
consequences of surface and underground mining. This proposal was submitted
to
Congress by the Secretary of the Interior on February 25, 1971. In
transmitting
that proposal, attention was called to the fact that there are two different
problems involved in meeting the challenge which mining operations can
present
to the environment: (1) requiring ongoing and future mining activities to be
conducted in a way as to minimize the environmental impact, and (2) healing
the
wounds that have been inflicted by past mining operations.

56 We recommend enactment of the Administration's proposal which deals
only
with the first problem, the solution to which is largely a matter of
developing
regulations that will require environmental considerations to be built into
the
mining operation.

56 The problem of healing damage inflicted in the past is more
difficult. Most of the lands now in need of reclamation were mined when there
were no statutory requirements that they be reclaimed or where such statutory
requirements were ineffective. Consequently, to relieve the adverse impacts
on
the environmental treatment of these lands may well require a considerable
input
of public funds. The investment of Federal funds will require a detailed
cost-benefit analysis to determine the priority of this problem in comparison
with other environmental problems requiring Federal funds.

56 This Department has a long history of conducting research and giving
technical and financial assistance to private landowners in protecting land
surface areas against erosion and runoff. Many of the lands on which we have
provided assistance were surface mined. At such time that proposals for
reclaiming lands affected by past surface mining may be submitted, this
Department will anticipate aiding in the development of proposals for

consideration by the Congress.

56 The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

56 Sincerely,

56 J. PHIL CAMPBELL, Acting Secretary.

57 EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, Washington, D.C., November 15, 1971.

57 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

57 DEAR MR. CHAIRMAN: This is in response to your request of May 28, 1971, for the views of the Office of Management and Budget on S. 1240, a bill "Relating to prospecting and exploring for minerals on public lands of the United States by means of bulldozers or other mechanical earthmoving equipment."

57 The Office of Management and Budget concurs in the views of the Department of the Interior in its report on S. 1240, and accordingly recommends that the following Administration proposed bills be enacted in lieu of S. 1240: (1) S. 993 - the "Mined Area Protection Act of 1971"; (2) S. 2401 - the "National Resource Land Management Act of 1971"; and, (3) S. 2727 - the "Mining Law of 1971". Enactment of these Administration proposed bills would be in accord with the program of the President.

57 Sincerely,

57 WILFRED H. ROMMEL, Assistant Director for Legislative Reference.

57 U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C., November 12, 1971.

57 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

57 DEAR MR. CHAIRMAN: Your Committee has requested a report on S. 1240, a bill "Relating to prospecting and exploring for minerals on public lands of the United States by means of bulldozers or other mechanical earthmoving equipment."

57 We recommend that S. 1240 not be enacted and that S. 2727, the Administration's proposed "Mining Law of 1971", S. 2401, the Administration's proposed "National Resource Land Management Act of 1971", and S. 993, the Administration's proposed "Mined Area Protection Act of 1971", be enacted instead.

57 Section 1 of S. 1240 would authorize the Secretary of the Interior to prohibit the exploration for minerals by bulldozer type equipment on certain public lands (including national forest lands) where he finds (1) that fragile soil conditions make it inadvisable to use such equipment, or (2) the use of mechanical equipment is likely to result in irreparable damage to the land surface. The Secretary would be directed to publish a detailed description of the boundaries of designated areas in the Federal Register and this description is to be made available for public inspection at the Office of the Bureau of Land Management nearest to the affected area.

58 Section 2 provides that no one shall enter upon the public lands for the purpose of mineral exploration with bulldozers or other earthmoving equipment unless he has filed with the Bureau of Land Management a statement of intent and a performance bond, in such amount as the Secretary shall determine, so as to assure reasonable protection of the environment. Section 3 of S. 1240 directs the Secretary to consult with the Secretary of Agriculture before taking action affecting national forest lands, and section 4 authorizes the Secretary to issue such regulations as he determines necessary to carry out the provisions of the Act.

58 The basic purpose of S. 1240 is to protect the public lands from the damage caused by mechanized prospecting permissible under the Mining Law of 1872. This Department recognizes that unregulated exploratory operations conducted with bulldozers and other earthmoving equipment can result in irreparable harm to the land resources, but believes that the scope of S. 1240 is too limited to accomplish the kind of comprehensive, coordinated regulation necessary to correct abuses under the present system.

58 On October 12, 1971, this Administration proposed to Congress a "Mining Law of 1971", introduced in the Senate as S. 2727. This bill emphasizes the Administration's concern that protection of the environment should be a major factor in any legislation to reform the mining laws. Section 10 of S. 2727 provides a program to regulate the environmental aspects of mining on public lands. It would require, among other things, that the operator file an operation plan with the Secretary for approval before he commences any activity which might cause a significant disturbance of the environment. The plan would be in accord with the regulations issued by the Secretary and designed to assure that the operation would not violate air and water quality standards and would control erosion, subsidence and other specified environmental damage. The regulations would require that reclamation be made an integral part of the

operation while allowing the operator maximum flexibility to determine the most economically feasible means of achieving the environmental objectives.

58 This Department has also proposed a bill, S. 2401, which we believe provides a comprehensive plan for the management of federally owned lands consonant with the needs for environmental protection and effective land use planning. Enactment of S. 2401 would provide the Secretary of the Interior with regulatory and enforcement authority sufficient to meet these needs. Specifically, section 7(a)(2) of S. 2401 would direct the Secretary to require "performance bonds guaranteeing such reclamation of any person permitted to engage in extractive or other activity likely to entail significant disturbance to or alteration of the land." This authority is broader in scope than that provided in S. 1240 and would include the mechanized exploration activities encompassed by S. 1240.

58 In addition, title II of S. 993, the "Mined Area Protection Act of 1971", proposed to the Congress by this Department on February 10, 1971 establishes standards for environmental regulation of mining operations by the states on nonfederally owned lands within the state.

59 Section 101(b) defines "mining operations" to include "activities conducted . . . for the exploration for . . . minerals from their natural occurrences . . ." The environmental regulation standards set forth in title II of S. 993 specifically require reclamation plans and performance bonds to guarantee such reclamation. Moreover, section 301 of S. 993 requires all Federal departments having jurisdiction over lands on which mining operations are conducted to issue regulations governing such mining operations which are at least as stringent as those promulgated and approved pursuant to section 201. These wise bills, then, would provide for protection of mineral resource lands whether public or private. Enactment of S. 2727, S. 2401 and S. 993 would establish a coordinated, comprehensive program for the exploration and exploitation of mineral resources, as well as the protection of the environment, to a degree not attainable within the limited scope of S. 1240.

59 The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

59 Sincerely yours,

59 HOLLIS M. DOLE, Assistant Secretary of the Interior.

59 DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY, Washington, D.C., November 17, 1972.

59 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

59 DEAR MR. CHAIRMAN: As you asked, here is the report of the Department of Agriculture on S. 1240, a bill "Relating to prospecting and exploring for minerals on public lands of the United States by means of bulldozers or other mechanical earthmoving equipment."

59 The Department of Agriculture recommends enactment of S. 2727, the Administration's proposal to reform the mining laws, in lieu of S. 1240.

59 S. 1240 would authorize the Secretary of the Interior to designate and establish certain areas comprising the public lands (including the national forests) which would be closed to entry for minerals prospecting or exploring with bulldozers or other mechanical earthmoving equipment. Such areas would be fragile or steep areas where heavy equipment would cause irreparable surface damage.

59 In areas not closed to entry with bulldozers or mechanical earthmoving equipment, no minerals prospecting or exploration on public lands could be conducted by individuals, companies, or other organizations unless such parties file a statement of intent regarding the nature of proposed operations, and a performance bond in an amount determined by the Secretary of the Interior.

59 The Secretary of the Interior could take no action under S. 1240 affecting the National Forest lands administered by this Department without the consent of the Secretary of Agriculture.

60 On October 12, 1971, the Secretary of the Interior sent to the Congress this Administration's proposal to reform the mining laws, which is now embodied in S. 2727. This proposal, which would cover the National Forest lands we administer, embraces the objectives of S. 1240. It would authorize and direct the withdrawal from any mineral development of those lands which we determine have a higher use or which should be removed from disposition to protect or enhance their environmental quality. For those lands not withdrawn it authorizes the administering agency to require conditions in prospecting licenses, and in exploration, development, and production permits to minimize or avoid environmental disturbance. The Administration proposal would cover all activities relating to disposition of mineral materials, and not just use of bulldozers and mechanical earthmoving equipment.

60 For these reasons we believe S. 2727 would fully accomplish the purposes of S. 1240 and provide the complete and comprehensive reform of the mining laws that is so strongly needed now.

60 The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

60 Sincerely,

60 J. PHIL CAMPBELL, Acting Secretary.

60 DEPARTMENT OF AGRICULTURE. OFFICE OF THE SECRETARY, Washington, D.C.,
November 17, 1971.

60 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular
Affairs, U.S. Senate.

60 DEAR MR. CHAIRMAN: This is in response to your letters of October 27,
1971, requesting the views of this Department of S. 1498, a bill "To provide
for
the control of surface and underground coal mining operations which adversely
affect the quality of our environment, and for other purposes," and S. 2455,
a
bill "To regulate the practice of strip mining, to protect the environment,
and
for other purposes."

60 These bills generally provide for the conservation and improvement of
lands affected by surface mining operations.

60 The President's Environmental Message to Congress, dated February 8,
1971, proposed a Mined Area Protection Act, S. 993, to establish Federal
requirements and guidelines for State programs to regulate the environmental
consequences of surface and underground mining. This proposal was submitted
to
Congress by the Secretary of the Interior and introduced on February 25,
1971,
as S. 993. We recommend that the Administration's proposal be enacted.

60 The Office of Management and Budget advises that there is no objection
to
the presentation of this report from the standpoint of the Administration's
program.

60 Sincerely, J. PHIL CAMPBELL,

60 Acting Secretary.

61 DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY, Washington, D.C.,
February 14, 1972.

61 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular
Affairs, U.S. Senate.

61 DEAR MR. CHAIRMAN: This is in response to your letter of January 21,
1972, requesting the views of this Department on S. 2777, a bill "To provide
for
cooperation between the Secretary of the Interior and the States with respect
to
the regulation of surface mining operations, and for other purposes."

61 This bill, the "Strip Mine Control Act of 1971," would provide for the
conservation and improvement of lands affected by surface mining operations.

61 The President's Environmental Message to the Congress, dated February 8, 1971, proposed a Mined Area Protection Act to establish Federal requirements and guidelines for State programs to regulate the environmental consequences of surface and underground mining. This proposal was submitted to Congress by the Secretary of the Interior and introduced on February 25, 1971, as S. 993.

61 While we concur with many of the objectives of S. 2777, S. 993 is broader in scope and applies to both surface and underground mining. Accordingly, we recommend enactment of S. 993.

61 The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

61 Sincerely,

61 J. PHIL CAMPBELL, Under Secretary.

61 U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C., February 23, 1972.

61 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

61 DEAR MR. CHAIRMAN: This responds to your request for the views of the Department on S. 2777, a bill "To provide for cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and for other purposes" and on S. 3000, a bill "To provide for a program for the regulation of surface mining of coal to protect the environment, and for other purposes."

61 We recommend against enactment of these bills and recommend instead the enactment of S. 993, the Administration's proposal, "To provide for the cooperation between the Federal Government and the States with respect to environmental regulations for mining operations and for other purposes."

61 The basic objective of S. 2777, S. 3000, and the Administration's bill is the same, namely to combat the adverse environmental effects of certain types of mining operations.

62 All three bills would establish a permit system to regulate mining operations in accordance with statutory criteria. Central to the system would be a reclamation plan which each mining operator would be required to file before commencing operation. The plan would show in detail how the operation would be conducted and the reclamation activity that would accompany it. All of the bills would require bonds to assure that the reclamation plan is complied with.

62 The following major differences between the bills form the basis for our recommendation favoring S. 993.

62 (1) Scope

62 The Administration's bill is broader in scope. It covers underground mines as well as surface mines, while S. 2777 is limited to surface mining and S. 3000 to surface mining of coal. Although the environmental damage caused by surface mining of coal has received, and probably deserves the most attention, other types of surface mining and underground mining also create potential environmental hazards which may be equally serious. While the technology for dealing with the problems of underground mining may not be as advanced as it is with respect to surface mines, it is important that the framework be established so that improvements in mining technology can be developed and applied to underground mining as rapidly as possible.

62 (2) Federal-State Relationship

62 The environmental problems stemming from mining operations are essentially land use problems. Such problems are under the Federal Constitution, primarily the responsibility of the States. Because of this and in keeping with the President's broad effort to return decisionmaking responsibility to State governments, the Administration's bill encourages the States to accept the responsibility for regulating mining operations within their borders. It offers Federal grants to cover up to 80% of the cost to the States of developing a program and a percentage of the costs of administering it during the first four years. Only if the State fails to act within two years will the Federal Government undertake to regulate mining within the State. S. 3000 is similar to the Administration's bill in this respect except that the time it allows for the States to act is shorter (one year maximum) and it does not provide any Federal grants. Without some Federal funding offered to the States we fear that many States will simply let the Federal Government do the job, even though the State may strongly resent the Federal interference, and may have been doing an excellent job on its own. The result will probably be an unnecessary erosion of State responsibility and a higher ultimate cost to the Federal Government.

62 S. 3000 provides an interim Federal permit program until the State programs become effective. Even if a Federal nationwide mining permit system could be established significantly ahead of the State programs, we question the justification of creating such a Federal program for an interim period.

62 S. 2777 gives primary responsibility for administering the regulatory system to the Federal Government including authority, which would be vested in

the Department of the Interior, to charge fees, set bonds and issue or refuse to issue mining permits.

63 Section 15 of S. 2777 authorizes the Secretary of the Interior to delegate enforcement of the Act to any State which he finds has laws to insure compliance. It may be argued that this will produce the same effect as the Administration's bill, since the latter authorizes the Secretary to enforce mining regulations in any State which does not develop its own regulatory program meeting the requirements of the Act. We feel, however, that it is important to give the States every opportunity and encouragement to develop their own programs before the Federal Government intervenes.

63 (3) Restoration of Past Mining Damage

63 S. 2777 establishes a strip mining reclamation fund with an appropriation of \$1 00 million to finance the acquisition and restoration by the Federal Government of lands damaged by mining operations. The problem of making reclamation a part of an ongoing mining operation and the problem of reclaiming land after mining has ceased are related but nonetheless separate. As stated in the letter transmitting the Administration's proposal, the solution to the problem of healing damage inflicted in the past is largely one of spending taxpayers' dollars, since the party responsible is typically not available for legal action and the value of the land reclaimed does not generally justify the cost. All available remedies must be exhausted before tax revenues are spent and care must be taken to avoid windfalls to private owners.

63 We feel that the first priority in mined areas protection must be to arrest the on-going damage presently being inflicted on the land and that Federal funding to restore lands damaged in the past is a lower priority.

63 (4) Regulatory Criteria

63 The Administration's proposal provides that the statutory criteria will be further elaborated by the Secretary through guidelines which will attempt to provide the operator of a mining operation sufficient flexibility to choose the most economically efficient means of meeting the requirements of the Act.

63 We feel that this provision of the Administration's bill which allows maximum latitude to the operator to select the best way for his particular operation to meet the environmental objective is essential, particularly in those areas where the technology for environmentally safe mining is still being pioneered.

63 (5) Federal Lands

63 It is not clear whether under S. 2777 and S. 3000 the State would be

given the delegation of enforcement authority over mining operations on Federal lands. Although we feel that Federal lands should be protected from environmental damage by regulations at least as stringent as those governing State and private lands, we feel that to subject mining operations on Federal lands to State control would be invasion of the Federal Government's proprietary interests. Therefore, the Administration's proposal excludes Federal lands from the State regulatory program but requires the land manager to impose environmental controls on mining operations under his jurisdiction as the State imposes on other lands within the State.

64 In view of these differences between the bills and for the reasons discussed above we recommend enactment of the Administration's proposal in lieu of either S. 2777 or S. 3000.

64 The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

64 Sincerely yours,

64 HARRISON LOESCH, Assistant Secretary of the Interior.

64 EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, Washington, D.C., February 23, 1972.

64 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

64 DEAR MR. CHAIRMAN: This is in response to your requests of January 21, 1972, for the views of the Office of Management and Budget on S. 2777, the "Strip Mine Control Act of 1971", and S. 3000, the "Coal Strip Mine Control Act of 1971".

64 The Department of the Interior has submitted a related bill, S. 993, the "Mined Area Protection Act of 1971" for Congressional consideration, and as stated in the Department's report on S. 2777 and S. 3000, it recommends enactment of S. 993 in lieu of these bills. Enactment of S. 993 would be in accord with the program of the President.

64 Sincerely,

64 WILFRED H. ROMMEL,

64 Assistant Director for Legislative Reference.

64 DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY, Washington, D.C., February 14, 1972.

64 Hon. HENRY M. JACKSON, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

64 DEAR MR. CHAIRMAN: This is in response to your letter of January 21, 1972, requesting the views of this Department on S. 3000, a bill "To provide for a program for the regulation of surface mining of coal to protect the environment, and for other purposes."

64 This bill, the "Coal Strip Mine Control Act of 1971," would provide for the conservation and improvement of lands affected by surface mining operations.

64 The President's Environmental Message to the Congress, dated February 8, 1971, proposed a Mined Area Protection Act to establish Federal requirements and guidelines for State programs to regulate the environmental consequences of surface and underground mining. This proposal was submitted to Congress by the Secretary of the Interior and introduced on February 25, 1971, as S. 993.

65 While we concur with many of the objectives of S. 3000, S. 993 is broader in scope and applies to both surface and underground mining. Accordingly, we recommend enactment of S. 993.

65 The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

65 Sincerely, J. PHIL CAMPBELL, Under Secretary.

VIII. CHANGES IN EXISTING LAW

TEXT: 65 In compliance with subsection (4) of rule XXXIX of the Standing Rules of the Senate, it is reported that there are no changes in existing law made by the bill, S. 630.