

**HEARING, January 10 and 12, 1977**  
**Legislative History**  
**January 10 and 12, 1977 Hearing**

Following is the January 10 and 12, 1977 hearing before the House of Representatives Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs. 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.

**HEARING**  
**SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES**  
**JANUARY 10, 1977, JANUARY 12, 1977; Serial No. 95-1**

MONDAY, JANUARY 10, 1977

1 HOUSE OF REPRESENTATIVES, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, Washington, D.C.

1 The committee met, pursuant to notice, 9:55 a.m., Hon. Morris K. Udall (chairman of the committee) presiding.

1 The CHAIRMAN. The committee will be in session.

1 I feel sometimes that I have been here before. We are visiting old friends, the Federal strip mining legislation. While the Congress hasn't officially organized yet, and committees have not been appointed by the House, we have scheduled 2 days this week for briefings to look into the issues on the current status of strip mining and reclamation practices.

1 This committee has attempted to enact the Federal strip mining bill for the past several years. Critics have argued that the need for a national bill has vanished. The bill's opponents argued that the reclamation regulations of the States have improved vastly and that the environmental abuses of strip mining are ancient history.

1 Today and Wednesday we will take a hard look at that proposition. This morning we will hear from people concerned about mining east of the Mississippi. Wednesday we will focus on the West.

1 Today's schedule includes both operators and citizens from Kentucky, Virginia, and Alabama. Montana, Wyoming, and Colorado citizens are scheduled Wednesday and at that time we will also hear from executives of major mining companies interested in Western coal development.

1 On the first day of the 95th Congress, last week, I introduced H.R. 2, which is basically the same bill the committee reported last year.

1 While the committee will hold formal hearings on this bill, the key provisions of H.R. 2 are obviously relevant to today's sessions, and I am sure they will be discussed.

1 I have, however, asked that the witnesses be instructed to address also the more general issue of the status of strip mining regulation in the States represented here today. More detailed testimony on the provisions of H.R. 2 will be received at our formal hearings.

1 The strip mining issue is not new to the Congress nor the Interior Committee. We have been actively engaged in the struggle to pass a strip mining bill through three successive Congresses.

2 We have reported five bills and received two vetoes. Circumstances have changed, however, and President-elect Carter, who will take office in just a few days, has expressed his strong support for Federal strip mining legislation.

2 Clearly, supporters of a Federal strip mining bill have never been in a better position to achieve enactment of a national bill.

2 While we are acting in a position of strength, it is as important as ever that we attempt to be fair. We will start, therefore, with a fresh look at this issue and we will hear from the people most directly affected, the people who mine the coal and the people who must live with coal mining.

2 We are going to try to conclude our series of witnesses by lunch time or shortly thereafter. We will ask the witnesses to be brief and to focus on the general issues this morning.

2 The first group of witnesses will be - before I proceed to that, does the gentleman from Kansas have any opening comments?

2 Mr. SKUBITZ. The gentleman from Kansas first wants to congratulate the chairman for the appointment to the chairmanship of this committee.

2 The CHAIRMAN. It is not official yet.

2 Mr. SKUBITZ. I have served on many committees with the chairman. He has always been fair in his attitude. This side of the aisle has no desire to try and stall this legislation. We are

familiar, many of us, with the background of the legislation. I feel the chairman should bear in mind it has been 4 years since we held public hearings on this bill.

2 Twenty-two members, over half of this committee, were not present at the time of public hearings. About the same number were not present when the administrative officers were here testifying. I feel obligated to the new members of this committee that we go into this legislation in detail so they will know the pros and cons. This committee in the past has had a reputation for always doing its work.

2 Years ago the chairman on this committee, because of thoroughness, seldom lost a bill on the floor. I am certain the new chairman will want to continue on that road this year and the years to come.

2 The CHAIRMAN. I thank my colleague for his generosity and kindness. We have a number of old faces here. The minority has completed its committee assignment procedures. We have Mr. Rudd and Mr. Edwards this morning. We will be getting our members assigned this week and next week.

2 I am glad to welcome the two new members.

2 I will now ask Mr. Kilgore to take the stand.

STATEMENT OF FRED KILGORE, CODIRECTOR, VIRGINIA CITIZENS FOR BETTER RECLAMATION

2 Mr. KILGORE. I would like to say that I appreciate the opportunity to be here. I am here to give what our organization feels is the present status of Virginia's strip mining reclamation program.

2 First of all, our organization, Virginia Citizens for Better Reclamation, organized in April 1976. Since that time, we have gained the membership of 250 members, three-quarters of which are from the coalfield area of southwest Virginia.

3 We have a substantial number of coal miners in our group. My father is a coal miner. I have lived there all my life - my family has been there for a couple of hundred years. I hope you don't consider this an outsider's view.

3 To give you some background of Virginia's surface mining reclamation in its current status, I would like to read an excerpt from an official State testimony given by Mr. Roller,

Commissioner of the Division of Mining and Reclamation on October 29, 1976.

3 It has been learned that mining has not been performed with adequate controls for minimizing or preventing adverse disruptions. Many drainage systems are haphazardly installed on strip sites in Virginia.

3 Spoils are not being retained on the benches. According to our records, the division's office and inspectors have received approximately 1,200 complaints during the last 12 months on these problems. There are at the present approximately 800 landslides occurring along about 1,700 miles of benches in southwestern Virginia.

3 The Division of Reclamation feels the present rules and regulations are broad enough to be discretionary; however, in most instances they are too discretionary and place a big burden on our inspectors.

3 They tend to be argumentative in respect to both the operator or because each may have good ideas; however, without specific criteria in accomplishing a given task, it is left pretty much to chance.

3 If we don't have specific criteria to install ponds and drainage systems, it is pretty much to chance and sometimes improperly done or not accomplished at all.

3 Another excerpt from the testimony was by a representative of the Corps of Engineers from Huntington, W.Va.

3 I am with the Corps of Engineers in Huntington, W.Va. Our concern with the surface mine industry in the State of Virginia is the Department of Mined Land Reclamation that deals with three watersheds that drain into our multipurpose reservoir projects these projects were built a few years ago with both Government and State money.

3 The purpose of these projects is to provide flood control and recreation for the people of Virginia. Our concern with the surface mine industry is the excessive sedimentation that has taken place over the last couple of years in those projects. This sedimentation not only endangers the project purposes which I just discussed but could possibly cause a premature extinction of those projects. Currently, Virginia does not have adequate drainage and control regulations.

3 I would like to turn now to the slide program I put together discussing these inadequacies in

Virginia State law in detail.

3 [Slide.]

3 Mr. KILGORE. This first shot is of the part of Jefferson National Forest showing deciduous hardwood forest excellent timberland and excellent water drainage systems. It is really good watershed.

3 [Slide.]

3 Mr. KILGORE. This next shot is taken west of Appalachia, Va., in Wise County. On the extreme left of our photo you see land. This is land that was mined and not reclaimed because Virginia didn't have a basic reclamation law until 1966.

3 It was amended in 1972 and strengthened. In the background the black spot is refuse from a deep mine pit or a deep mine. On the right, in the background, along this flat part of the bench area is reclamation done under the 1966 law.

3 The law has been updated. In 1972 it is stronger but still has a lot of loopholes. This will be original contour from the top of the highwall down to here. The bench area is where spoil has been pushed over to the side of the mountain. Virginia law still allows spoil to be shoved over the side of the mountain.

4 It reads, "Spoil will remain on the bench insofar as feasible."

4 Some inspectors have said they have a problem enforcing that. Also, it concerns the highwall which we are not really as concerned with as we are the spoil bank, the loose material that washes down in the watersheds.

4 The highwall will be reduced to the maximum extent practicable under Virginia law. This is another shortcoming. We feel that the two are interrelated. If you retain spoil you are going to reduce the highwall automatically.

4 [Slide.]

4 Mr. KILGORE. This shot is of the Flat Gap region of Wise County, Va. It was taken in 1972. The lower seam has been reclaimed.

4 The upper seam is current operation.

4 [Slide.]

4 Mr. KILGORE. This is the same area in 1976. As you can see, the lower seams have been reclaimed and the top seam is added. Virginia allows stripping through temporary streams and drainage systems. Only permanent streams are protected.

4 [Slide.]

4 Mr. KILGORE. As Mr. Roller said, there are 800 landslides occurring along 1,700 miles of benches. This shot was taken while we were on a tour with the Virginia delegates of various strip mines.

4 We were standing on a mine site looking across the drainage; and according to the inspector I was with, he said this land had been reclaimed last year. The slides have occurred there at a pretty rapid rate.

4 Virginia has no stipulation on the degree of slope that can be mined compared to other States which say no spoil can be pushed over the side at a certain degree of slope.

4 [Slide.]

4 Mr. KILGORE. This is a shot of a surface mine closest to my home. This is where I live. This is a coal company surface mine permit number 1631. I think they got their permit in 1973.

4 [Slide.]

4 Mr. KILGORE. I will take you down to the ground. These show you reclamation in Virginia, current reclamation. First of all, during the operation, you see they stripped through the head of a drainage system. This is not a well controlled valley field.

4 Virginia does not require those but they are having hearings concerning the drainage control handbook. This loose material in this valley is very prone to erosion when the stream relocates itself and runs through this area.

4 [Slide.]

4 Mr. KILGORE. The site on the far side that is graded down has been reseeded and planted with grass seed.

4 [Slide.]

4 Mr. KILGORE. This is what it looked like about 3 months later. This is before the bond was returned. This was taken in the fall of 1975. Give it another growing season, down to the

ground in 1976.

4 [Slide.]

5 Mr. KILGORE. In Virginia we have pretty good success with bench growth, revegetation of bench areas because they are flat; but, I want to get into what I call the flat land theory after a while.

5 A lot of operators claim this bench area can be used for building structures and improving commercial and industrial use.

5 I think there are flaws in that theory. First of all, you might notice the lush grass. This reminds me of a shot I saw in 1975. A coal company in Virginia sent each Member of Congress a picture of a well reclaimed bench area, small highwall, no spoil bank that had cattle grazing on it.

5 I noticed in the picture it was only 2 miles from where I lived at the time. I also recognized the place that was out on the Wise Mountain. It never had any cattle on it to my knowledge.

5 In fact, it doesn't have a fence around it. I might ask you to be aware of that type of stuff.

5 [Slide.]

5 Mr. KILGORE. This is the same area just to give you an idea of the highwall. This is the director of organization standing here. This is the reclamation where the bond has been returned. This just gives you some idea of how many tons of spoil have been pushed over the mountain.

5 Virginia does not require segregation of any type of soil that would be put back over for growing. They require at least 4 feet of suitable overburden for revegetation be put over the tops of materials.

5 [Slide.]

5 Mr. KILGORE. Erosion starts almost immediately. This is after reclamation. Another thing that I can show in this photo is the peak of the flat land theory. If you were to build any type of structure on this, this slope mine which is about 80 percent of Virginia's mine on slopes, you would have difficulty keeping the structure there.

5 [Slide.]

5 Mr. KILGORE. One problem, if you build it too close to the highwall, the highwall may cave in on you.

5 [Slide.]

5 Mr. KILGORE. If you wanted to graze cattle or grow a garden there, you might have a little problem. This is pretty typical around the higher mines, where they are near rock outcroppings.

5 [Slide.]

5 Mr. KILGORE. As you get closer to the edge of the spoil bank, the soil gets thinner and thinner. Virginia requires 1,000 trees per acre be planted on the outer slopes, that 800 trees at a minimum survive, including volunteer tree species.

5 [Slide.]

5 Mr. KILGORE. Close to the edge you notice that the spoil bank starts slipping away going down the mountain. This is due to the fact that Virginia law allows operation to push the spoil over onto vegetated areas.

5 [Slide.]

5 When the vegetation rots, slippage occurs. The spoil bank keeps trying to find the angle of repose which is usually in a drainage system.

5 [Slide.]

6 Mr. KILGORE. This is a spoil bank after reclamation. Permit number 1631.I spoke with the area supervisor for the Division of Mining and Reclamation and he said this is one of the best steep slope sites in the State of Virginia, reclamation sites.

6 [Slide.]

6 Mr. KILGORE. Farther down the slope there is no limit on the amount of spoilage to be pushed over the side of the mountain in Virginia.

6 [Slide.]

6 Mr. KILGORE. Down the slope from that is the creek, the temporary stream which is also not protected. Keep in mind this is the closest one - closest mine to my home. I could have found this anywhere throughout Virginia. You follow this tributary downstream to the mainstream. You come out at Honey Branch Stream.

6 I have lived there all my life. Before stripping never occurred above the drainage systems of this hollow. The creek there is about 6 feet deep and has a lot of aquatic life. Now it has 6 feet of sediment in it.

6 The only use I know for it now is the tourists use it for baptisms, sort of a test of faith.  
[Laughter.]

6 [Slide.]

6 Mr. KILGORE. On upstream, this is Honey Branch Creek on up above there. This land belongs to my uncle who is a coal miner. The surface mine a mile above his home released this amount of overburden into the creek causing the creek to be rerouted destroying his bottom land.

6 [Slide.]

6 Mr. KILGORE. The creek kept going back and forth trying to get around this stuff, cutting up the bottom land.

6 [Slide.]

6 Mr. KILGORE. The area this bank was built on was undercut and he had to move his barn.

6 [Slide.]

6 Mr. KILGORE. This is getting into another aspect of stripping in Virginia, the blasting problem. This area is Norton, Va., the only city in the coalfield section of southwest Virginia. This is a combination excavation site and mine site.

6 Along this area, the Thirteenth Street region of Norton, and along this area, over 25 homes have been damaged due to flying rock and vibrations from excessive blasting.

6 We would know more about these blasting incidents only the Division of Mines and Quarries won't allow us access to the records.

6 [Slide.]

6 Mr. KILGORE. Here is a hole in the roof of one of the board members, Mr. Davis. In January of last year a 10-pound rock came through this man's home.

6 [Slide.]

6 Mr. KILGORE. The brick itself is cracked, and later after this, the chimney actually fell in and the fire marshal condemned his chimney. He had to have it rebuilt.

6 [Slide.]

7 Mr. KILGORE. I am standing on the roof looking back at the site behind this man's home. Virginia allows stripping within 5 feet of the adjoining property line.

7 [Slide.]

7 Mr. KILGORE. There was an abnormal amount of dust kicked up by this operation, very inadequate controls on the subduing of this dust.

7 As a result, several people have been - met with the diagnosis of contracting silicosis from this job.

7 [Slide.]

7 Mr. KILGORE. The company replied to the complaint saying they weren't even mining coal. So, I took this picture. This mysterious black substance here caught my eye. Up until April of last year, TVA was buying this coal. I went down and informed them about what was going on on Thirteenth Street.

7 I think they quit buying the coal from this operation.

7 You notice in the middle there is a space between Mr. Davis's fence and a mine operation. That used to be Norton, Va.'s alley right-of-way. It was sort of stripped out. I think they forgot about the property line.

7 Norton had an emergency meeting and told them they would have to put the dirt back.

7 [Slide.]

7 Mr. KILGORE. This is a bad slide, but it shows another weakness of Virginia's law. This house is owned by the operator. He can strip as close as he wants to. Of course, he can strip almost as close as he wants to to the house that is not his, within 5 feet of the property line. It so happens the house is built on the property line.

7 On top of these people on the hill is Norton. They did not want to sell at first, but when they saw D-9 sitting outside their door they decided to sell.

7 If there had been a public notice given, the people might not have bought the place to start with.

7 No public notice or hearings are required in Virginia prior to the issuance of a permit.

7 [Slide.]

7 Mr. KILGORE. Mr. William McCoy, their next door neighbor, was lucky. He had 70 feet behind his home. He only owned land 3 feet on the other side of his home. I know for a fact they didn't want to sell. They have sold out since the Kellys sold out. It is sort of a domino theory.

7 [Slide.]

7 Mr. KILGORE. This is what was above their home for a few weeks.

7 [Slide.]

7 Mr. KILGORE. This is Mr. William McCoy, his two sons, aged 19 and 14; Mr. McCoy is a military retiree, never worked a day in his life in the mines. Neither has his son. Needless to say, his 14-year-old has never worked a day in the mines.

7 They have all been diagnosed by certified black lung specialists with having contracted silicosis. Over 24 people were employed and eight were found to have silicosis. None of those eight people ever worked in the coal mines.

8 This is Quintz Valley College gym, an extension of the University of Virginia. In 1975 a blast set off caused \$5 0,000 worth of damage to the swimming pool and gymnasium. JKG Coal Co. has except for that one incident done an outstanding job with reclamation. They haven't completely finished.

8 When they do, I intend to send pictures up to each Member of Congress to show what can be done in Virginia. They have a very good site there for houses and trailers but this is mountaintop stripping and you can do that much more easily on the plateau region than on steep slopes.

8 [Slide.]

8 Mr. KILGORE. Another aspect of Virginia's stripping is public safety on the roads. You see the roadbed caving in. This is Route 651 between Bull Hill and Sandy Ridge in Wise County.

8 [Slide.]

8 Mr. KILGORE. Closer up you see the actual roadbed caving in, the guard rail dangling down.

8 [Slide.]

8 Mr. KILGORE. The reason is stripping is allowed in Virginia right up to the road, right up to the right-of-way. In Kentucky it forbids stripping within 100 feet of a public road. I brought this point out to the Department of Conservation and they said it was the highway department's problem.

8 [Slide.]

8 Mr. KILGORE. This is looking up. That's what I saw, this highwall right up against the public road. There has been one fatality reported on this road due to an accident of this highwall.

8 The State put the guardrail up.

8 [Slide.]

8 Mr. KILGORE. The last two shots are Jefferson National Forest, Quintz Branch district in southwest Virginia. I put these in primarily because their group has come out in opposition to stripping on national forest land in Virginia.

8 We feel that this available watershed has not that much coal. It shouldn't be messed up when the coal can be gotten on private lands. The problem is 60 percent of the minerals in this forest district are owned by private individuals or companies; and attempts are being made now to obtain permits to strip in Wise County.

8 In fact, an attempt was made just a few weeks ago according to the Division of Mining and Reclamation. The only thing that kept the operator from obtaining the permit, he didn't have the \$12 permit fee in his bond money. Other than that, he would be allowed to go on to national forest land.

8 [Slide.]

8 Mr. KILGORE. The last shot. This is Clear Creek, Va., one of the finest trout streams in the area. A lot of people go up here for recreation. National forest stream, forest land on the right.

8 Coal company land on the left, which as I understand it is planned to be stripped. We don't have a whole lot of optimism about the future of that creek, but we have had a couple of hundred

thousand acres stripped without any heed to proper reclamation preplanning that Virginia has.

9 You get to expect this type of stuff.

9 That's the end of my slide presentation.

9 The CHAIRMAN. Thank you very much, Mr. Kilgore, for your impressive presentation.

9 Let me ask you just a couple of questions, if I might.

9 You may sit down if you prefer.

9 Am I correct in assuming that your organization, the Virginia Citizens for Better Reclamation, favors a Federal law and believes the State law is inadequate?

9 Mr. KILGORE. We have concentrated almost full effort on the State effort since April of 1976. We are not too optimistic about the successes we will have.

9 We prefer State controlled because we feel the community has more control, but if it is not forthcoming, we feel that relief has to come from somewhere.

9 Our board has never endorsed or come out against the Federal strip mining bill because unlike many people who deal with the Federal strip mining bill, we like to see it first and read it and understand what's in it and what effect it would have in southwest Virginia.

9 If you are asking my personal opinion, the last House bill that you had, 13950, it has some serious loopholes in it, but it also has some things I think should be made more flexible for the coal operators' benefit.

9 But the loophole I see is the grandfather clause which allows permits that were issued prior to enactment of the act. If those grandfather clauses stand, there is no use in Virginia for any type of favorable bill.

9 The permits have been accelerated, people going in and get permits so they can beat the deadline. Another thing that is not so much in Virginia, but Kentucky, and Tennessee, there's a lot of broad form deeds there. Land can be stripped without the landowner's consent.

9 In Virginia you cannot. That is one great advantage we have over some of the other States. It is due to a lower court ruling, however, and could be overturned.

9 The CHAIRMAN. Under the bill we had last time, and the one I just introduced, if Virginia were to pass a law which was equal and as stringent as the Federal law, and chose to do so, it could take over the administration of the program, of its own program so that you can have the kind of local control.

9 Mr. KILGORE. We made a point of that. We wrote every coal operator in Virginia in August of 1976 so we can sit down and work out a good bill that would make Federal intervention unnecessary.

9 We got one reply to 400 letters from coal operators in Virginia. That coal operator was outside the State and had two coal constructions in Virginia, very well constructed. He was doing them under West Virginia law.

9 He said he saw no way to do it one way in West Virginia and another in Virginia. Thus he has one of the best reclamation projects in Virginia.

9 The CHAIRMAN. We have a large number of witnesses this morning.

9 Are there questions, Mr. Skubitz?

10 Mr. SKUBITZ. Mr. Kilgore was your organization created in 1976?

10 Mr. KILGORE. Yes, sir.

10 Mr. SKUBITZ. How many members do you have?

10 Mr. KILGORE. 250.

10 Mr. SKUBITZ. Are they concentrated in one area?

10 Mr. KILGORE. 75 percent of them are in the coalfield region of southwest Virginia.

10 Mr. SKUBITZ. How is your organization financed?

10 Mr. KILGORE. Members give donations. We get foundation support. We have bake sales.

10 Mr. SKUBITZ. Have you been getting money from any foundation?

10 Mr. KILGORE. I get \$300 a month salary from a foundation.

10 Mr. SKUBITZ. Which one?

10 Mr. KILGORE. The Youth Project in Washington, D.C.

10 Mr. SKUBITZ. Do you speak for all members of your organization?

10 Mr. KILGORE. Well, I am codirector and elected spokesman. Any matter that deviates from our articles of incorporation has to go before the nine-member board.

10 Mr. SKUBITZ. Were you authorized to come here today and speak for the organization?

10 Mr. KILGORE. Yes, sir.

10 Mr. SKUBITZ. Are you a member of the Sierra Club?

10 Mr. KILGORE. No.

10 Mr. SKUBITZ. Friends of the Earth?

10 Mr. KILGORE. No.

10 Mr. SKUBITZ. I ask these questions for one reason. Several years ago we had about four people come in from four different organizations. They all had their offices in the same room on C Street.

10 Mr. KILGORE. My office is in my living room. [Laughter.]

10 Mr. SKUBITZ. What officers do you have?

10 Mr. KILGORE. We have a nine-member board of directors, of which our articles - our bylaws require that they be a majority of them born in - native to the coalfield region of southwest Virginia.

10 We don't want outside influence.

10 Mr. SKUBITZ. Do you all operate out of the same living room?

10 Mr. KILGORE. The board of directors live in their own homes and we meet occasionally.

10 Mr. SKUBITZ. You have criticized the Virginia law as being weak. If I understand your testimony, am I to assume you would rather see the citizens of the State take care of this matter rather than the Federal Government?

10 Is that correct?

10 Mr. KILGORE. Let me say what you wish and what might be necessary are two different things. I wish Virginia had a good law, had one since stripping first started. The operators themselves I feel in States like Virginia are what causes Federal intervention to start with.

10 If they won't do it, somebody is going to do it or a lot of people are going to suffer.

10 Mr. SKUBITZ. Did your organization commence operation last year?

10 Mr. KILGORE. Right.

11 Mr. SKUBITZ. Have you given your State legislators an opportunity to respond?

11 Mr. KILGORE. We are in the process of that. We contacted every delegate on the House Mining and Resource Committee; three of the four coalfield delegates won't even answer mail. In fact, material we send to them, they reroute it to a strip miners' group. They get it before other people in the eastern part of the State get it.

11 We have a delegate in Grundy who has introduced a bill to transfer the Department of Mining and Reclamation to the Department of Labor and Industry and take out 10 percent of the reclamation program by excluding the high roads.

11 He did this bill after coal company operators financed the writing up of the bill. He admitted that. He did not research on the bill.

11 The Division of Mines and Quarries which was to take the responsibility from the Division of Mining and Reclamation admitted they did no research on the bill; so, we have that to look at.

11 We can't be overly optimistic with that lack of support. We are going to work hard on the State level and have been working hard on the State level.

11 I was asked to come here today to testify as to Virginia's present program; and, you can draw your own conclusions.

11 Mr. SKUBITZ. Thank you.

11 The CHAIRMAN. Any questions over here?

11 Any further questions?

11 [No response.]

11 The CHAIRMAN. Thank you very much, Mr. Kilgore.

11 Our next group of witnesses are operators in southwestern Virginia. Mr. Willis, Mr. Manicure, Mr. Mullins, Mr. Nicewonder, Mr. Robertson, Mr. Witt? Would you come forward to the witness table?

A PANEL CONSISTING OF DENNIS WILLIS, THOMPSON & LITTON, INC.; JAMES MANICURE, VICE PRESIDENT, VIRGINIA COAL & COKE CO.; J. D.

NICEWONDER, PRESIDENT, CONTRACTING ENTERPRISES AND PRESIDENT,  
VIRGINIA ENERGY COAL CO.: F. D. ROBERTSON, PRESIDENT, KNOX CREEK COAL;  
AND LUKE WITT, PRESIDENT, VIRGINIA COAL ASSOCIATION

11 Mr. ROBERTSON. Mr. Chairman, members of the committee, I have the dubious distinction of becoming a spokesman for this group. We are up here in a group so if the committee would like to have some particular questions answered, there are people up here that are more familiar than others on certain aspects than on others.

11 The CHAIRMAN. Would you identify yourself?

11 Mr. ROBERTSON. I am Franklin Delano Robertson. I am a resident of Buchanan County, Va.; a mining engineer licensed to practice in Virginia, Kentucky, and West Virginia; a graduate of the University of Virginia Law School, a member of the Virginia State Bar; a property owner, and a coal operator. I appear before this committee -

11 The CHAIRMAN. Would you identify your colleagues for the record.

11 Mr. ROBERTSON. Yes. They are Dennis Willis, James Manicure, J. D. Nicewonder, and Luke Witt.

12 I appear before this committee because of my deep concern for the economic and sociologic impact that the proposed Surface Mine Act will have on the State of Virginia and the Nation.

12 First, the Virginia problem, only seven of Virginia's 97 counties produce coal. They are Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise. In order that you may know the potential economic impact on Virginia of this bill certain data concerning Buchanan County, Va., is being submitted to this committee. It is used as a typical example of the counties in Virginia that produce coal.

12 Buchanan County has a population of approximately 35,000 people. Its only industry is coal mining. In 1975, this county produced 14 million tons of coal, of which 33.5 percent or 4.7 million tons were mined by surface methods. Severance taxes collected by the county for the year 1975 were in excess of \$2 million.

12 This amount accounted for over 50 percent of the total local taxes collected. Surface mines accounted for \$6 70,000 of the total. These taxes are placed in the general fund and are used

primarily for public schools. Buchanan County cannot afford the loss of this tax income.

12 Surface mines in Buchanan County at the present time employ 1,375 persons and pay annual wages of \$1 0,180,000. This area has historically been an area of high unemployment. The surface mine industry is directly furnishing 1,375 jobs and indirectly furnishing many more.

12 In 1975, all of Virginia's coal producing counties produced 35.5 million tons of coal, of which 37 percent or 13.3 million tons were produced by 517 surface mines who paid \$40,300,000 in wages to 4,097 employees.

12 The present Virginia reclamation law allows Virginia operators to surface mine coal only if they reclaim the land. Our Commonwealth sets standards that meet her needs. In Virginia, the coal terrain is extremely mountainous. Level land sells at a premium.

12 Sergeant York, the most highly decorated G.I. in World War I, was from the mountain portion of our neighboring State, Tennessee. Upon his return to the United States, he found the entire Nation at his feet, offering untold riches. His only request of the Nation that he had so gallantly served was "40 acres of bottom land." This desire for level land is born in us hillbillies and stays with us throughout our lives.

12 The provisions of this act requiring that surface mined land be returned to its approximate original contour would deny us the opportunity to increase the amount of level land available in our area. In my years of working in coal fields of Virginia, I have on many occasions been required to negotiate with surface owners, trying to acquire their permission to conduct surface mining on their lands. One of the prime trading points is the fact that they will be left with some flat land. The surface owners want flat land, land they can use, and do not want their land returned to its original contour.

12 I want to emphasize that the coal-bearing mountains of Virginia, West Virginia, Kentucky, and parts of Tennessee are unique in the Nation. Ninety-nine percent of the surface mining production in Virginia comes from slopes that are 20 degrees or steeper.

13 We could not engage in competitive mining if these slopes had to be restored to original contour. Members of this committee, Virginia cannot afford to suffer a curtailment in surface mining activities.

13 The census statistics for 1970 establish that 80 percent of the families in the 9th Congressional District had a family income of less than \$1 0,000. Since 1970, the demand for surface coal has brought an economic renaissance to our area. This bill as now drawn would return our people to the depressed conditions that previously existed.

13 I also want to respectfully recommend that this distinguished committee communicate with President-elect Carter to make sure that the provisions of this bill as now drawn are compatible with the national energy policy that is now being formulated by President-elect Carter.

13 It is essential that the formulation and articulation of the Carter energy policy be completed prior to the enactment of any legislation designed to implement that policy.

13 I am advised that a recent critical study of U.S. energy policy has been prepared for President-elect Carter by a task force headed by Lawrence Klein of the Wharton School of Finance, Philadelphia, Pa.

13 It is pointed out in the study that six factors must be considered by President-elect Carter in dealing with the constraints facing the new administration in devising the most effective energy policy for the Nation.

13 These six factors are:

13 One: Energy impact on U.S. economic performance;

13 Two: Energy impact on the Nation's trade balance - overall and bilateral;

13 Three: Capital needs to provide long-term energy needs and their impact on credit markets;

13 Four: Environmental damage resulting from energy policies which do not adequately reflect environmental costs;

13 Five: Uncertainty in energy policy which creates uncertainty in the minds of energy producers who must plan large-scale investments; and

13 Six: Income distribution and the relative well being of poor families.

13 In connection with factor one, the passage of a Federal surface mining bill will create the following conditions:

13 One: A serious loss of jobs in the mining industry itself in areas that have been historically depressed;

13 Two: A serious loss of jobs in the supporting parts and equipment manufacturing industries;

13 Three: A loss of jobs in the retail sector in areas affected by surface mining;

13 Four: A serious loss of tax revenues to the counties, States, and Federal Government, including severance taxes, sales taxes, and personal income taxes to the State and Federal Governments;

13 Five: Untold millions of Federal and State welfare dollars will be required to provide only partial sustenance to all people so affected; and

14 Six: The loss of millions of tons of surface coal production will inflate the price of the remaining deep mine coal, resulting in Arab OPEC oil kind of inflation that caused the recent disastrous doubledigit inflation here at home. An already precarious world economy could easily be pushed over the brink.

14 In connection with factor number two, the energy impact on the U.S. economic performance will be burdened with the additional millions of barrels of high-cost Arab oil that will be needed to replace the millions of tons of coal that will never be mined.

14 The resulting negative balance of payment could be staggering.

14 In connection with factor number three, it is well known that the costs of additional development of conventional oil, gas and coal continues to accelerate. However, the costs that must be faced when alternative new sources of energy are developed will be horrendous.

14 To bring oil shale, tar sands, coal gasification, coal liquefaction, solar power, wind power, and all other new energy possibilities to the marketplace, it could well be estimated that all the available credit in the market may well be exhausted before the problem is halfway solved.

14 In connection with factor four, the tremendous amount of intangible costs to be faced by both industry and Government are beyond the scope of this writer.

14 In connection with factor number five, the formation of a new capital investment for the coal industry will be impossible if any businessman carefully reads the proposed legislation. Further, any businessman with an ounce of knowledge and one that has ever made a payroll out of his own pocket, whether it be in the coal industry or growing peanuts, could not ever be persuaded to invest even \$0.03 in the surface coal mining industry.

14 In connection with factor six, the relative well-being of poor families will be further depressed. The net income available to them for purchasing the other essentials of life will be reduced directly by the ever-increasing high cost of electrical power resulting from the increased costs of mining.

14 I would like at this time to submit a statement by Dennis Willis of Thompson and Litton, Inc., in describing the progress made in sediment control in Virginia in the past year. Included in this statement are data on emission control and erosion control and hollow fill procedures which were not known at the time of the drafting of the present legislation. In summary, this bill would stop technological advances. The bill is inflexible. Virginia and other States are continually seeking to lessen the impact on the environment of surface mining. To make these States conform to a uniform Federal law will stifle technical advances which may be made to suit the particular terrain and climate of the individual States.

14 Virginia has 226 million tons of surface mine reserves or stated differently, 17.1 years of life at the present rate of mining. Essentially, all of Virginia's reserves underlie steep slopes as they are defined in the bill now under consideration by you.

14 Under present economic conditions, it will be impossible to surface mine coal in Virginia if this bill is enacted. In order to allow Virginians to surface mine Virginia coal under this bill, the steep slope provision, the return to approximate original contour provision, the data-gathering provisions, the permitting provisions, the bonding provisions, and the citizens-suit provisions must all be modified.

15 It is important that this committee realize that the coal discussed here today is a very special type of coal. It is used primarily in the manufacture of coke. Only a small portion of our Nation's total coal reserves will make coke. Practically none of the Western coals are suitable for

manufacturing coke. Coking coals must be low in sulphur and ash content but in addition, must have certain unique chemical and petrographic properties before they can be turned into coke and used in the manufacture of steel. Our Nation's greatest reserves of coking coal lie in the steep Appalachian Mountains which are the most seriously affected by this bill. In Virginia alone, this bill will cost the Nation 226 million tons of coking coal that it can never replace. This coal cannot be mined by any method except the surface mining method.

15 We, in Virginia, respectfully request that this committee come to Virginia and see the uses being made of the flatland left after the contour stripping without returning the land to its original contour. Among these uses, you will see colleges, schools, farms, airports, housing developments, trailer parks, and many other desirable uses.

15 If you will visit with and weigh the economic and sociologic cost of this legislation, you can come to no other conclusion than, this is a matter best left to the States.

15 I thank you for your time.

15 The CHAIRMAN. Thank you, Mr. Robertson, for a very effective presentation of your point of view.

15 Just a couple of questions. Are all your associates at the table coal operators?

15 Mr. WITT. No, sir, Mr. Chairman, I am president of Virginia Coal Association which represents some of the members.

15 Mr. ROBERTSON. Mr. Dennis Willis is consulting engineer with Thompson and Litton. The other two gentlemen are coal operators.

15 The CHAIRMAN. Tell me this. For the operators here today from Virginia, what is the average size operator in terms of payroll, number of employees, number of coal - tons of coal produced? Could you give us an idea of whether you are a big operator, medium sized?

15 Mr. ROBERTSON. We are an area of very small operators. The average operation - I did not even realize myself that it was this small, but it only produces 25,000 tons of coal a year. There are 517 surface mines in the State of Virginia producing 14 million tons.

15 The CHAIRMAN. In your own case, how many mines, how many separate operations do you have going, how many employees? Can you give us some idea?

15 Mr. ROBERTSON. We have - in the operation in which I am directly involved with, we operate three surface mines. We operate 15 deep mines. We directly or indirectly furnish employment for about 400 people.

15 The CHAIRMAN. 400?

15 Are your operations smaller or larger than your other two colleagues?

15 Mr. ROBERTSON. I would say James' is larger than mine and J.D.'s is probably smaller.

16 The CHAIRMAN. Are you typical of the range of size of operators?

16 Mr. ROBERTSON. We feel that we are.

16 The CHAIRMAN. What is the price of coal you are getting now for your production?

16 Mr. ROBERTSON. In the \$3 0 range.

16 The CHAIRMAN. Thirty?

16 Mr. ROBERTSON. In the \$3 0 range for metallurgical coal after it is prepared and cleaned.

16 The CHAIRMAN. How does that compare with what you were getting 5 years ago?

16 Mr. ROBERTSON. About 100 percent increase.

16 The CHAIRMAN. We were told in testimony last year or the year before that at the very most, total reclamation, the kind the bill requires, is a factor of maybe 5 percent of production costs at the most. Would you contest that figure?

16 Mr. ROBERTSON. Yes, sir. A lot of the information - I don't know where your particular figure came from, Chairman Udall - a lot of that information came from the report written by mathematica and Francis Bacon. It was written in a project over in eastern Kentucky. We don't know and can't really quantify what the actual cost will be to us.

16 The CHAIRMAN. Let me be more basic. That study and the experience in Pennsylvania and other places suggests to me and to the other members of the committee that you can put the land back, even on steep slopes; and if you use new techniques, the modified block cut, other

such techniques, at a fair and modest cost. You can put the land back, not to the original contour but to the approximate original contour without any highwalls. Your testimony suggests today in southwestern Virginia in your area, the choice is either leave the coal there or get it out leaving highwalls and continuing the practices we saw in the slides. Are you telling me there is no way technologically you can get the coal out in your area and not leave highwalls?

16 Mr. ROBERTSON. Not under present economic conditions. If you want to spend enough money, you can do anything. If the price of coal goes to \$60, \$70, \$80, \$90, \$100 a ton, we can surface mine and put it back.

16 The CHAIRMAN. You are suggesting the costs of putting it back on steep slopes might be \$30, \$40, \$50 a ton?

16 Mr. ROBERTSON. Possibly.

16 The CHAIRMAN. You would contest the Pennsylvania operators?

16 Mr. ROBERTSON. I contest the 5 percent.

16 The CHAIRMAN. They tell us they are doing it on steep slopes in the cost of -

16 Mr. ROBERTSON. There is so much difference, Chairman Udall, in the terrain of Pennsylvania and what their steep slope problems are and our terrain, that the experiences which they have up there, although they are beneficial as a learning process are really not applicable to our area.

16 The CHAIRMAN. I have one final question. On the last page of your statement, you suggest that doing it the way you are now doing it, contour stripping, leaving highwalls, providing land for colleges, schools, airports, housing development, trailer parks, and other desirable uses. What percent of the land might grow something for a farmer? What percentage of the land that has been left on the bench is being used for schools, colleges, airports, housing developments, intensive uses of those kinds?

17 Mr. ROBERTSON. A very small percentage. If you exclude farms, a very small percentage.

17 The CHAIRMAN. Other questions on my left?

17 Mr. WEAVER. Yes, Mr. Chairman.

17 The CHAIRMAN. Mr. Weaver.

17 Mr. WEAVER. You mentioned the price of coal has gone up 100 percent in the last 5 years to \$30 a ton. How much have operating expenses gone up, excluding land? Just the task of getting the coal out?

17 Mr. ROBERTSON. They have gone up commensurate with the increase in prices and even greater in most cases.

17 Mr. WEAVER. Thank you, Mr. Chairman.

17 Mr. ROBERTSON. If you take it on a percentage basis, Mr. Congressman, the cost, the actual cost has gone up greater than the price.

17 Mr. WEAVER. Excluding the price of land, profit margins haven't increased?

17 Mr. ROBERTSON. Percentagewise, no, sir.

17 The CHAIRMAN. Mr. Eckhardt?

17 Mr. ECKHARDT. Suppose you have bottom land and changes in uplands after the water flow so as to erode it away as in one of the cases Mr. Kilgore described? I suppose that could happen, could it not?

17 Mr. ROBERTSON. It could happen. I am not sure I understand your question.

17 Mr. ECKHARDT. Suppose you have that situation. Do you think that a man's bottom land should be so damaged if there is a resultant net increase in tax recovery and employment? I mean, how are you going to weigh a man's interest in not having his property altered by another man's use as against the general tax benefit?

17 Mr. ROBERTSON. I wish I knew the answer to that.

17 Mr. ECKHARDT. You would go ahead and permit the destruction to the man's bottom land if the net result were a total increase in tax take and a total increase in employment?

17 Mr. ROBERTSON. I didn't intend to leave that impression. The impression I intended to leave with the committee was that surface mining can be done on steep slopes, surface mining can be done responsibly on steep slopes. The provisions which require return to the original

contour with new technological advances and sedimentation control, those provisions are no longer useful. It certainly is not my position or the position of any coal operator I know to abuse any individual or to harm anyone in any way for no other reason they have an economic reason not to, because, of course, we are liable for damages, for any damage they do.

17 Mr. ECKHARDT. You then say that you are in favor of some type of controls, some type of reasonable regulation to prevent the injury of operations in strip mining by one man on his land to the land of another man? You are saying that some reasonable regulation is necessary to prevent injury to the other man's land? That it is desirable and you would favor it?

18 Mr. ROBERTSON. As the State of Virginia has, and as the State of Virginia is continuing to work with.

18 Mr. ECKHARDT. What about this situation Mr. Kilgore describes? He says the State of Virginia permits this kind of operation and he showed slides of it within 5 feet, I believe of one man's land? Is there not a considerable declivity in that man's homes, barns, equipment? Does the State of Virginia permit that?

18 Mr. ROBERTSON. The State of Virginia permits you to stay on your own property and go within 5 feet of another man's but you must stay 50 feet away from his buildings. The State of Virginia has amended the laws once and strengthened them. It has committees and commissions appointed which are looking at them again. Mr. Kilgore's organization was formed in 1976. The Legislature of the State of Virginia has not been in session since his organization was formed. I am sure that he will be received by the legislature and will have his input into the legislative process on the State level.

18 Mr. ECKHARDT. I notice you state in your statement that only 7 of Virginia's 97 counties produce coal. So, he is one of those persons in the 7 counties who may have to vote in opposition; at least his representative may be voting in opposition to 90 other counties' positions. Now, I have noted in my State when I was in the legislature that sometimes the 7 counties that are badly hurt are badly outvoted by the 90 counties that may be concerned primarily with the maximum tax. Isn't that really a problem for Mr. Kilgore and for those like him?

18 Mr. ROBERTSON. I don't think the other 90 counties in Virginia will ignore the problems of seven.

18 Mr. ECKHARDT. I hope not.

18 Mr. ROBERTSON. It is 7 percent of the total population of the State.

18 The CHAIRMAN. Mr. Kazen?

18 Mr. KAZEN. Thank you, Mr. Chairman.

18 Talking about Buchanan County, you say that severance taxes collected by the county are in excess of \$2 million. Were those \$2 million on the 4.7 million tons of surface mining or was that on the 14 million tons all together?

18 Mr. ROBERTSON. That was on the 14 million tons all together. Of the \$2 million, \$670,000 came from surface mining.

18 Mr. KAZEN. What is the severance tax? What is the rate?

18 Mr. ROBERTSON. One percent. One percent of gross sales.

18 Mr. KAZEN. One percent of gross sales?

18 Mr. ROBERTSON. Yes.

18 Mr. KAZEN. When was that tax put in?

18 Mr. ROBERTSON. It was boosted to 1 percent - it was 1/2 of 1 percent. It was put in in about 1972 and boosted to 1 percent in 1976-1975-1976. So, the figure you have is for 1975. The figure not available for 1976, I would have brought it with me. It will be in the range of 4 million.

18 Mr. KAZEN. In other words, the State of Virginia took advantage of the fact more coal was being used and sold and therefore, wanted some more revenue and all they did was raise the severance tax by 100 percent?

18 Mr. ROBERTSON. Yes, sir. But this money stays in the locality in the county.

19 Mr. KAZEN. I understand. But the consumer has to pay it?

19 Mr. ROBERTSON. Yes, sir.

19 Mr. KAZEN. Thank you.

19 The CHAIRMAN. I am going over here for a moment. Any questions on my right? Mr.

Skubitz?

19 Mr. SKUBITZ. Mr. Kilgore's testimony indicates that you mine about 5,000 tons of coal per acre. This bill provides for reclamation fees of 35 cents per ton which would mean \$1,750 per acre for reclamation of the land. Mr. Kilgore said it took from \$266 to \$636 per acre to reclaim the land. Do you agree or disagree with Mr. Kilgore?

19 Mr. ROBERTSON. I will address a part of that and let one of my colleagues address the rest. The 5,000 tons per acre is an arbitrary figure and is based upon a certain seam height. That particular seam height should be about - and I am doing this in my head - about 3 feet or 36 inches. We have jobs working 18 inches. Available in place in bituminous coal, there is 1,800 tons per foot-acre; so, when people start saying, "Well, there are so many tons per acre," it depends upon how thick it is. So, you won't always have a fixed amount of - on your tonnage basis on the 35 cents on the proposed bill to work with on reclamation.

19 Mr. Nicewonder, do you think you can speak further to that?

19 Mr. NICEWONDER. Well, we disturb about 3 acres of surface for each acre of coal that we mine. That throws that figure way off. With our roads and outer slopes and all of our extra work that is not directly on the coal seam, we disturb approximately 3 acres per each acre of coal that is mined.

19 Mr. SKUBITZ. Do you have to reclaim all 3 acres?

19 Mr. NICEWONDER. We definitely do. We have to bond that at the rate of \$800 per acre in the State of Virginia.

19 Mr. SKUBITZ. That is all, Mr. Chairman.

19 The CHAIRMAN. Mr. Tsongas?

19 Mr. TSONGAS. Mr. Robertson, on page 3 of your testimony, you say since 1970 demand for surface coal has brought an economic renaissance to our area, the bottom line of that page. In response to Mr. Weaver's question, you said the cost of coal mining since 1970, the increase has exceeded the increase in price.

19 Mr. ROBERTSON. I think I said the percentage increases. Coal mining is profitable today and is profitable in southwest Virginia. It has brought an economic renaissance. It was also

profitable in 1970. The- if you take the return on your total gross sales in 1970, the rate of return, and apply that rate of return on your total gross sales in 1976, you will find that your rate of return in 1976 is smaller than your rate of return was in 1970.

19 Mr. TSONGAS. Could you supply those figures for the committee?

19 Mr. ROBERTSON. Yes, sir. [Information requested will be placed in the committee files when received.]

19 Mr. TSONGAS. The second question, your final statement is that this is a matter best left to the States. Could you or your colleagues tell me what efforts you have made since 1970 to bring about a strip mining bill in the State legislature?

20 Mr. ROBERTSON. The State legislature has strengthened the strip mining bill which was essentially passed in 1966. They strengthened it in 1972. I think Mr. Kilgore agreed with that in his verbal presentation here, and so do I.

20 Mr. TSONGAS. What was the stand of your colleagues on those two bills?

20 Mr. ROBERTSON. Sir?

20 Mr. TSONGAS. What position did you and your colleagues take in 1966 and 1972?

20 Mr. ROBERTSON. Personally, I took no position on either of those two bills. Completely hands off.

20 Mr. TSONGAS. What about your -

20 Mr. ROBERTSON. My colleagues are present. Mr. Nicewonder is, for example, a member of a commission, a committee appointed by the legislature to study the present State bill; and make suggestions to the legislature for further amendments.

20 J.D., you tell them.

20 Mr. NICEWONDER. You spoke about 1966. My company, Contracting Enterprises went on record as advocating a strip bill for the State of Virginia. I could see the need that was existing then. From then on, we have worked with the State and I am on the committee now. We are going to upgrade the law as we can live with and as is needed.

20 Mr. TSONGAS. Could you supply for the record collectively a statement indicating what improvement on the present strip mining bill in Virginia you would advocate to your own State

legislature.

20 Mr. MANICURE. I am currently a member of the committee Mr. Nicewonder is talking about. These recommendations will be finalized by March on the committee I am serving on. These are new rules that the Virginia surface mine operators will operate under. As it pertains to drainage, we are designing a drainage handbook and manual. After March, the Virginia operators will be mining under a different set of rules than we are mining under now. These will be made available to you at that time; they will not be complete until March.

20 Mr. TSONGAS. Fine. The final point is last year when we had the strip mining bill, the argument used by Mr. Zarb and others against the bill is that it would cost jobs, 36,000 jobs lost to the American economy. I think it is rather obvious that coal is the - one of the - one of the energy resources of the future. Do you believe that a strip mining bill would cost jobs in the States given the increased demand for coal?

20 Mr. ROBERTSON. Nationwide, I am not sure. In my own mind, the bill as presently constituted would stop mining economically on the steep slopes in Virginia. I think also affected would be small portions of east Kentucky, a small portion of east Tennessee, and a smaller area in southern West Virginia.

20 Can they mine 70-foot thick coal seams in Wyoming? The coal is so thick it boggles the imagination. I can see no way that they couldn't do it. We are mining 18 inches, 20 inches; and if we are real lucky, we get 36 inches. To us, it is a much more difficult problem.

21 Mr. TSONGAS. The figure of 36,000 jobs nationwide, you don't find to be a credible thing?

21 Mr. ROBERTSON. No.

21 The CHAIRMAN. Mr. Carr?

21 Mr. CARR. Thank you, Mr. Chairman. Mr. Robertson, can you tell us what Buchanan County's unemployment was 5 years ago? The unemployment rate?

21 Mr. ROBERTSON. Not and be positively accurate. I can give you a ballpark figure.

21 Mr. CARR. OK.

21 Mr. ROBERTSON. I would guess around 10, 11, 12 percent.

21 Mr. CARR. Do you know its unemployment rate today?

21 Mr. ROBERTSON. I would guess, again, 6 percent, maybe even lower than that.

21 Mr. CARR. Is it your testimony that coal mining directly or indirectly makes up that difference?

21 Mr. ROBERTSON. Yes, sir; it is our only industry. It is the only industry we have at all.

21 Mr. CARR. You have no recreation industry?

21 Mr. ROBERTSON. No tourism.

21 Mr. CARR. People don't come to fish, camp, backpack?

21 Mr. ROBERTSON. There is an inter-Stat epark which lies in Dickson County, I believe, which is pretty close to Buchanan and that attracts some tourism. The county itself seems to reap no benefits from that. There is no motel industry, no restaurant industry. The park itself has within the park itself one motel, its own restaurants.

21 Mr. CARR. Mr. Robertson, are your miners, your employees making 100 percent more today than they were 5 years ago?

21 Mr. ROBERTSON. In some cases, they are doing better than that, Mr. Carr.

21 Mr. CARR. What is the average hourly wage?

21 Mr. ROBERTSON. Probably around \$8.

21 Mr. CARR. Five years ago, it was \$4 or less?

21 Mr. ROBERTSON. Yes. \$3.50 or 4.

21 Mr. CARR. What is your local property tax rate there?

21 Mr. ROBERTSON. \$5 .50 per hundred dollars. That is per hundred dollars of assessed. That is not \$5.50 fair market value.

21 Mr. CARR. I understand. What is your assessment as a percentage of fair market value?

21 Mr. ROBERTSON. Ten percent.

21 Mr. CARR. Is that 100 percent more than 5 years ago?

21 Mr. ROBERTSON. No, sir, but there has been one increase. The structure is that they

normally do a new assessment every 6 years, I believe. The period has come within the last 5.

21 Mr. CARR. I was interested in your comments that your coal is used for coking. You said even without the bill, you've got 17 years of life at the present rate of mining; is that correct?

21 Mr. ROBERTSON. That is assuming that the 226 million tons of reserve is correct. That is a figure this committee came up with in its hearings in 1973. It came from one of the environmental council groups.

22 Mr. CARR. You mean to tell me in 17 years, we are going to be out of coking coal?

22 Mr. ROBERTSON.No, sir. I am telling you in 17 years, if the initial figure was correct, Virginia will be out of surface mining coal.

22 Mr. CARR. Then, you said that your coal is unique because of its composition and it was used mainly for coking; is that correct?

22 Mr. ROBERTSON. Yes, sir.

22 Mr. CARR. I am putting the two together. Are we not adding up to a 17-year life for coking coal?

22 Mr. ROBERTSON. That applies basically to the coal we are talking about, surface mining here on the steep slopes. Virginia has also deep mine coal, somewhere in the neighborhood of 1,500 million tons. It is going to be around for a long time. It is of the same quality. I am talking about -

22 Mr. CARR. That is used for coking coal?

22 Mr. ROBERTSON. That is used for coking coal also.

22 Mr. CARR. And Arab oil, I suppose, is not a substitute for coking coal?

22 Mr. ROBERTSON. No, sir.

22 Mr. CARR. I have no further questions.

22 The CHAIRMAN.The gentleman from Oklahoma.

22 Mr. EDWARDS. You commented first on Sergeant York and his reference to wanting bottom land. I am a city boy, but even I understand that bottom land and level land are not the

same thing. Are you trying to say that the people in the area you represent believe you are performing a beneficial service by your strip mining in that you are leaving the land more level?

22 Mr. ROBERTSON. Yes.

22 Mr. EDWARDS. The people in your area favor strip mining because it is leaving the land level?

22 Mr. ROBERTSON. Yes, in my opinion.

22 Mr. EDWARDS. You talk about a serious loss of jobs in the mining industry if this legislation is passed. If this legislation is passed, do you personally anticipate cutting back your operations, and how many people do you anticipate laying off?

22 Mr. ROBERTSON. I have three surface mine jobs, one of which is a mountaintop removal. That job will continue until I run out of the - it will continue for about 2 years until I run out of mountaintop stripping. The other two jobs are contour strip jobs on steep slopes. These will be closed down. That will put about 30 people out of work.

22 Mr. EDWARDS. Maybe I didn't understand. You said you would be closing that operation down regardless?

22 Mr. ROBERTSON. No, sir. Only if the law passes.

22 Mr. EDWARDS. Is that essentially the same thing that would happen with your colleagues who are operators?

22 Mr. MANICURE. The surface mining we do on our property is all on slopes. One out of twenty operations - we only have one operation that would qualify as a mountaintop removal. The two other operations would - they would just phase out as the bill is presently constituted and as I understand it.

23 Mr. EDWARDS. I have one additional question. I wonder if you would comment on one of Mr. Kilgore's statements which bothered me some. That is the reports of people in the area contracting silicosis as a result of the mining operations on adjoining property.

23 Mr. ROBERTSON. It is the first time I ever heard of it, in this room today. I would not like - I would like to know a lot more of the facts than what I heard said today.

23 Mr. EDWARDS. If it is true, and you can confirm it, or we can confirm it for you, would you support legislation or support actions by the coal mining industry to see that that is changed?

23 Mr. ROBERTSON. Of course.

23 Mr. EDWARDS. You would personally and your colleagues would support it?

23 Mr. ROBERTSON. Of course.

23 The CHAIRMAN. Mr. Seiberling?

23 Mr. SEIBERLING. Thank you, Mr. Chairman.

23 Mr. Robertson, can you tell us - in your testimony, you said that essentially all of Virginia's reserves underlie steep slopes. Can you tell us what the average slope is that is being mined in Virginia today? You said there are over 20 degrees.

23 Mr. ROBERTSON. In 1971, it was 9 million tons, I believe, roughly 9 million tons produced in the State of Virginia. 8.9 million of those tons was produced on slopes of 20 degrees or greater. They went up to as high as 35.

23 Mr. SEIBERLING. What is the average slope? That is my question?

23 Mr. ROBERTSON. This will be a guess. I would say probably around 27, 28.

23 Mr. SEIBERLING. How wide is the bench you use to get from the average slope? What is the average bench width that you would leave after mining?

23 Mr. NICEWONDER. This is a ballpark figure. We don't have the figures. We haven't measured them. I would say 200 feet average.

23 Mr. SEIBERLING. Only about - a small, very small percentage of those are actually being used today after the mining is completed; is that correct?

23 Mr. NICEWONDER. If you eliminate farming, cattle raising, and so on, yes. Very small percentage. But if you put in cattle raising, which we are doing on my operations, then the percentage will go up greatly.

23 Mr. SEIBERLING. What do you do with the spoil that you don't put back on the slope in this method that you are advocating?

23 Mr. WILLIS. We use the hollow fill technique to distribute our spoils to hollows. This

would be the manner you use. You have a certain swell factor involved when you remove your overburden of about a third.

23 Mr. NICEWONDER. The problem with this bill as written says nothing can be deposited below the coal level. Well, that eliminates us hauling any material around to the designated areas if they are below the coal level. That is where they are.

23 Mr. SEIBERLING. As I recall, there is a provision in the bill that does permit moving the overburden to another point where that is necessary if it is approved by the regulatory authority; but are you saying that none of the overburden is dumped over the downslope?

24 Mr. NICEWONDER. Definitely, it is being dumped over now.

24 Mr. SEIBERLING. What percentage of your overburden goes to hollow fill and what percentage goes over the side?

24 Mr. NICEWONDER. Well, this is another ballpark figure. I would say 50 percent of it now is being hauled. That is in the State regulations.

24 Mr. SEIBERLING. To a hollow fill or hauled to what point?

24 Mr. NICEWONDER. In the heads of the hollows.

24 Mr. SEIBERLING. Are you saying also that nobody is mining steep slopes and restoring the original contour in Virginia?

24 Mr. NICEWONDER. No one in the State of Virginia.

24 Mr. SEIBERLING. No one?

24 Well, I understood that last year Mr. Zarb went down and inspected mines in Virginia where contour is being restored on steep slopes.

24 Mr. MANICURE. Not in Virginia. There is nothing being done.

24 Mr. SEIBERLING. Perhaps I am mistaken. It may have been West Virginia. Aren't they mining - aren't they doing it on steep slopes in West Virginia?

24 Mr. NICEWONDER. They started doing it and a big percentage of them are out of business.

24 Mr. SEIBERLING. Are they doing it in Pennsylvania?

24 Mr. NICEWONDER. You have a different terrain, completely different.

24 Mr. SEIBERLING. But there are steep slopes that are being mined and recontoured in Pennsylvania, are there not?

24 Mr. MANICURE. Pennsylvania is mining more of the box-cutting method with the rolling terrain that they have. They are using drag lines to do this. We cannot use this type of equipment on our slopes.

24 Mr. SEIBERLING. You are saying the box-cut method is not applicable to slopes in Virginia?

24 Mr. MANICURE. Not in Virginia.

24 Mr. SEIBERLING. Why is that?

24 Mr. NICEWONDER. Due to the terrain.

24 Mr. SEIBERLING. Well, there are steep slopes being mined in other States. That is the thing I don't understand by the box-cut method.

24 Mr. NICEWONDER. The box-cut method can only be used in areas, I would say, 8, 10 degrees or less. You strip - that box cut, you strip the complete area. You take out a block, move over, and continue that. There is no way to do that on the steep mountains. You take out one cut, possibly two, and then you have a wall there that is 60 to 80 feet high. If you took another 50-foot cut, you would -

24 Mr. SEIBERLING. You are saying with a 200-foot bench, you cannot put the overburden back so as to restore the original contour? I find that hard to believe, particularly since I have seen it done in some States on steep slopes.

24 Mr. WILLIS. You still have this swell factor.

24 Mr. SEIBERLING. That is something else again. That is a matter of disposing of the excess overburden. Your testimony, Mr. Robertson's testimony was you cannot restore the original contour on steep slopes. I notice that that is not a fact in other States. I find it hard to understand why it can't be done in Virginia.

25 Mr. NICEWONDER. To begin with, it is 200 feet that I spoke of. At least approximately half of that is fill, where we have filled out. So, pulling it back to a hundred feet of natural ground here, that is what you would have to work with under your system.

25 Mr. SEIBERLING. Well, if you have a 200-foot bench, that will take a lot of overburden. It seems to me that that ought to be possible with a bench of that width to restore the original approximate contour and eliminate the highwall. I don't understand why some States that are competing with you can do it and you say that you cannot.

25 Mr. MANICURE. The 200-foot bench is not all original ground that you are dealing with. Your original ground, if you are going to try to stack material out on the last 50 to 75 feet of that bench you are talking about, you are going to have slides as Mr. Kilgore pointed out. That is part of the weakness in our law that we have in Virginia which is going to be strengthened under the new rules we are currently working on.

25 Virginia is not going to allow anything to a hundred feet below the seam of coal which would only take a hundred feet down. This is going to eliminate that sizable bench we are talking about and eliminate the slides Mr. Kilgore was referring to. You cannot take this material and stack it on spoil, which you are referring to on your 200-foot bench. You may leave a bench 200 feet, but that does not mean we recovered coal for 200 feet. We may have only have recovered a 100-foot pit of coal. The other 100 feet is out in spoil.

25 Mr. SEIBERLING. That has nothing to do with the question of whether you can fill back against a highwall and eliminate the highwall, does it?

25 Mr. NICEWONDER. That has all to do with it, because you reduce your bench from 200 feet down to 100 and you have 100 percent of your material in if you have retained it all on the bench.

25 Mr. SEIBERLING. I am not saying you do retain it all on the bench. Your point was you could - Mr. Robertson made the statement that they could not restore the approximate original contour and remain in business; and I understood that to mean that he was saying they could not be required to backfill and eliminate the highwall. Now, getting rid of the excess overburden or spoil is another problem; and obviously that has to be handled and our bill makes a provision for that.

25 So, I find it very difficult to equate Mr. Robertson's testimony with the practice that we know is successfully being done in other States that are competing with Virginia.

25 Mr. ROBERTSON. It is not being done in Virginia nor is it being done in States and in the smaller area of hard-core central Appalachia where the maximum amount of historical erosion has occurred, where the slopes are the steepest, where the valleys are the narrowest, where the hills are the highest. The difference between the top of the terrain and the bottom. If anybody thinks they can raise capital to invest in a surface mine under that bill and restore to the original contour, and you won't let, under the bill, store below the coal seam itself, there is no place to put it.

26 Mr. SEIBERLING. Just one final question. Somebody said that West Virginia, the companies were mining on steep slopes and tried to restore the original contour and found they couldn't do it economically and have gone out of business. Is it possible that if every State had to follow the same rules that they might not have gone out of business, because they are competing with you, and you don't have to restore the original contour? That is the whole reason for a national set of standards. So everybody is going by the same rules.

26 Mr. ROBERTSON. How can you set a national set of standards with something that would apply to the rolling country of Wyoming and something that would apply to the steep slopes of Appalachia?

26 Mr. SEIBERLING. I think if you look at this bill we have standards for steep slopes and different standards for level or rolling terrain so you have one set of standards for a particular type of terrain. Then, everybody who has that type is under the same rule. There are steep slopes in Ohio. We have a bill like Pennsylvania that requires eliminating the highwalls. We are competing with coal from Virginia and West Virginia.

26 Mr. ROBERTSON. Have you been down to southwest Virginia? Have you been down to Buchanan County?

26 Mr. SEIBERLING. I have been to West Virginia. I would like to go to Virginia.

26 Mr. ROBERTSON. I invite you to come. I have been in your fine State of Ohio. What you call steep slopes in Ohio are bottom land to us. [Laughter.]

26 Mr. SEIBERLING. Well, that is true by and large. We do have some steep slopes. Let me say if I sound a little skeptical, we heard this same type of testimony in 1971 before the State of

Ohio put its new strip mining law in place. The president of Hannah Coal Co. said if you pass this law, we will go out of business; and the law was hardly 6 weeks old before he was asking permission to take the devices across Interstate 70 so they could open up strip mining on the other side. I take some predictions of gloom with a grain of salt. I would be happy to go to Virginia and see what the situation is.

26 The CHAIRMAN. We have a long list of witnesses here. Any other questions?

26 Mr. MILLER. In response to Chairman Udall's question about the cost of reclamation, are you suggesting to the committee in your area it is \$30 a ton?

26 Mr. ROBERTSON. No, sir. No, sir.

26 Mr. MILLER. Then, what?

26 Mr. ROBERTSON. What I tried to suggest to the committee was that I do not have a quantifiable answer as to what the cost of reclamation under this bill would be. The information that was presented to this committee in its hearings in 1973, I disagree very vehemently with it. I am positive it will be substantially in excess of that.

27 Mr. MILLER. When you answered it could possibly be as high as \$30 a ton, that is not to suggest that it in fact is.

27 Mr. ROBERTSON. That it will be, I don't know. What I am saying is it could be.

27 Mr. MILLER. You are required, if I understood one of the other witnesses, you are required to bond the land to the extent of \$800 an acre?

27 Mr. ROBERTSON. Yes, sir; the statute in Virginia calls for from \$200 to \$1,000 an acre. The bonding fee is set pretty much by the regulatory agency. Everything being bonded now is at the rate of \$800 an acre.

27 Mr. MILLER. I assume there is a basis in fact for arriving at that figure for reclamation purposes given the way you mine the land today? That is not an arbitrary figure, is it?

27 Mr. MANICURE. As a guide, just to seed and to fertilize and mulch an acre, the price now is \$3 50 an acre. That is only for seed and mulch. It does not count the trees that must be put back on your grading.

27 Mr. ROBERTSON. Or regrading costs.

27 Mr. MILLER. So, there is some relationship between that \$8 00 figure and the cost?

27 Mr. ROBERTSON. Yes.

27 Mr. MILLER. Thank you.

27 The CHAIRMAN. Thank you, Mr. Robertson. You and your colleagues have given us a very effective presentation. We were happy to have you with us today.

27 [Prepared statement of Franklin D. Robertson follows:]

28 MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

28 My name is Franklin Delano Robertson. I am a resident of Buchanan County Virginia; a Mining Engineer licensed to practice in Virginia, Kentucky and West Virginia; a graduate of the University of Virginia Law School; a member of the Virginia State Bar; a property owner, and a coal operator.

28 I appear before this Committee because of my deep concern for the economic and social impact that the proposed Surface Mine Act will have on the State of Virginia and the Nation.

28 First the Virginia Problem, Only seven of Virginia's 97 Counties produce coal. They are Buchanan, Dickenson, Lee, Russell, Scott, Tazewell and Wise. In order that you may know the potential economic impact on Virginia of this Bill, certain data concerning Buchanan County, Virginia, is being submitted to this Committee. It is used as a typical example of the Counties in Virginia that produce coal.

28 Buchanan County has a population of approximately 35,000 people. Its only industry is coal mining. In 1975, it produced 14 million tons of coal, of which 33.5% or 4.7 million tons was mined by surface methods. n1 Severance taxes collected by the County for the year 1975 were in excess of \$2, ,000000.00. This amount accounted for over 50% of the total local taxes collected. Surface mines accounted for \$6 70,000.00 of the total. n2 These taxes are placed in the general fund and are used primarily for public schools. Buchanan County cannot afford the loss of this tax income.

28 n1 Virginia Department of Labor & Industry Annual Report, (1975)

28 n2 Supplied by Commissioner of Revenue's Office, Buchanan Co., Virginia.

29 Surface mines in Buchanan County at the present time employ 1,375 persons and pay annual wages of \$1 0,180,000.00. This area has historically been an area of high unemployment. The surface mine industry is directly furnishing 1,375 jobs and indirectly furnishing many more.  
n3

29 n3 Virginia Department of Labor & Industry Annual Report, Ibid

29 In 1975, all of Virginia's coal producing counties produced 35.5 million tons of coal, of which 37% or 13.3 million tons were produced by 517 surface mines who paid \$40,300,000.00 in wages to 4,097 employees. n4

29 n4 Virginia Department of Labor & Industry Annual Report, Ibid

29 The present Virginia Reclamation Law allows Virginia operators to surface mine coal only if they reclaim the land. Our Commonwealth sets standards that meet her needs. In Virginia, the terrain is extremely mountainous. Level land sells at a premium.

29 Sgt. York, the most highly decorated G.I. in World War I, was from the mountain portion of our neighboring State, Tennessee. Upon his return to the United States, he found the entire nation at his feet, offering untold riches. His only request of the nation that he had so gallantly served was "forty acres of bottom land." This desire for level land is born in us hillbillies and stays with us throughout our lives. The provisions of this Act requiring that surface mined land be returned to its approximate original contour would deny us the opportunity to increase the amount of level land available in our area. In my years of working in coal fields of Virginia, I have on many occasions, been required to negotiate with surface owners, trying to acquire their permission to conduct surface mining on their lands. One of the prime trading points is the fact that they will be left with some flat land. The surface owners want flat land, land they can use, and do not want their land returned to its original contour.

30 I want to emphasize that the coal bearing mountains of Virginia, West Virginia, Kentucky and parts of Tennessee are unique in the nation. Ninety-nine percent of the surface mining production in Virginia comes from slopes that are twenty degrees or steeper.

30 We could not engage in competitive mining if these slopes had to be restored to original

contour.

30 Members of this Committee, Virginia cannot afford to suffer a curtailment in surface mining activities.

30 The census statistics for 1970 establish that 80% of the families in the 9th Congressional District had a family income of less than \$1 0,000. Since 1970 the demand for surface coal has brought an economic renaissance to our area.

31 This Bill as now drawn would return our people to the depressed conditions that previously existed.

31 I also want to respectfully recommend that this distinguished committee communicate with President-elect Carter to make sure that the provisions of this Bill as now drawn are compatible with the National Energy Policy that is now being formulated by President-elect Carter.

31 It is essential that the formulation and articulation of the Carter Energy Policy be completed prior to the enactment of any legislation designed to implement that policy.

31 I am advised that a recent critical study of U.S. Energy Policy has been prepared for President-elect Carter by a task force headed by Lawrence Klein of the Wharton School of Finance, Philadelphia, Pennsylvania.

31 It is pointed out in the Study that six factors must be considered by President-elect Carter in dealing with the constraints facing the new administration in devising the most effective Energy Policy for the nation.

31 The six factors are:

31 1) Energy impact on U.S. economic performance,

31 2) Energy impact on the nation's trade balance (overall and bilateral),

31 3) Capital needs to provide long-term energy needs and their impact on credit markets,

32 4) Environmental damage resulting from energy policies which do not adequately reflect environmental costs,

32 5) Uncertainty in energy policy which creates uncertainty in the minds of energy producers who must plan large-scale investments, and

32 6) Income distribution and the relative well being of poor families.

32 In connection with Factor No. 1, the passage of a Federal Surface Mining Bill will create the following conditions:

32 A. A serious loss of jobs in the mining industry itself in areas that have been historically depressed.

32 B. A serious loss of jobs in the supporting parts and equipment manufacturing industries.

32 C. A loss of jobs in the retail sector in areas affected by surface mining.

32 D. A serious loss of tax revenues to the Counties, States, and Federal Government, including Severance Taxes, Sales Taxes, and Personal Income Taxes to the State and Federal Governments.

32 E. Untold millions of Federal and State Welfare dollars will be required to provide only partial sustenance to all people so affected.

32 F. The loss of millions of tons of surface coal production will inflate the price of the remaining deep mine coal, resulting in Arab OPEC oil kind of inflation that caused the recent disastrous double-digit inflation here at home. An already precarious world economy could easily be pushed over the brink.

32 In connection with Factor No. 2, the energy impact on the U.S. economic performance will be burdened with the additional millions of barrels of high cost Arab oil that will be needed to replace the millions of tons of coal that will never be mined. The resulting negative balance of payment could be staggering!

33 In connection with Factor No. 3, it is well known that the costs of additional development of conventional oil, gas and coal continues to accelerate. However, the costs that must be faced when alternative new sources of energy are developed will be horrendous. To bring oil shale, tar sands, coal gasification, coal liquefaction, solar power, wind power, and all other new energy possibilities to the marketplace, it is estimated that all the available credit in the market may well be exhausted before the problem is halfway solved.

33 In connection with Factor No. 4, the tremendous amount of intangible costs to be faced by both industry and government are beyond the scope of this writer.

33 In connection with Factor No. 5, the formation of new capital investment for the coal industry will be impossible if any businessman carefully reads the proposed Bill. Further, any businessman with an ounce of knowledge and one that has ever made a payroll out of his own pocket, whether it be in the coal industry or growing peanuts could not ever be persuaded to invest even \$0 .03 in the surface coal mining industry.

33 In connection with Factor No. 6, the relative wellbeing of poor families will be further depressed. The net income available to them for purchasing the other essentials of life will be reduced directly by the ever increasing high cost of electrical power resulting from the increased costs of mining.

34 In summary this Bill would stop technological advances. The Bill is inflexible. Virginia and other States are continually seeking to lessen the impact on the environment of surface mining. To make these States conform to a uniform Federal Law will stifle technical advances which may be made to suit the particular terrain and climate of the individual states.

34 Virginia has 226 million tons of surface mine reserves or stated differently, 17.1 years of life at the present rate of mining. Essentially all of Virginia's reserves underlie steep slopes as they are defined in the Bill now under consideration by you. n5 Under present economic conditions, it will be impossible to surface mine coal in Virginia if this Bill is enacted. In order to allow Virginians to surface mine Virginia coal under this Bill, the Steep slope provision, the return to approximate original contour provision, the data gathering provisions, the permitting provisions, the bonding provisions, and the citizens suit provisions must all be modified. It is important that this Committee realize that the coal discussed here today is a very special type of coal. It is used primarily in the manufacture of coke. Only a small portion of our nations total coal reserves will make coke. Practically none of the western coals are suitable for manufacturing coke. Coking coals must be low in sulphur and ash content but in addition must have certain unique chemical and petrographic properties before they can be turned into coke and used in the manufacture of steel. Our nations' greatest reserves of coking coal lie in the steep Appalachian Mountains which are the most seriously affected by this Act. In Virginia alone this

Bill will cost the nation 226 million tons of coking coal that it can never replace. This coal cannot be mined by any method except the surface mining method.

34 n5 Congressional Record Senate 4507 et seq., (March 13, 1973)

35 We, in Virginia, respectfully request that this Committee come to Virginia and see the uses being made of the flat land left after contour stripping without returning the land to its original contour. Among these uses you will see colleges, schools, farms, airports, housing developments, trailer parks and many other desirable uses.

35 If you will visit with and weigh the economic and social cost of this Legislation, you can come to no other conclusion than, "This is a matter best left to the States."

35 I thank you for your time.

35 F. D. Robertson

36 The CHAIRMAN. Congressman Wampler couldn't be here this morning. He has a statement that will be included in the record.

36 [Prepared statement of Hon. William C. Wample follows:]

36 PREPARED STATEMENT OF HON. WILLIAM C. WAMPLER, BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS BRIEFING ON SURFACE MINING ISSUES

36 Mr. Chairman, and Members of the Committee: Thank you for allowing me the opportunity to offer brief remarks today on the issue of surface mining.

36 As I understand the situation, the purpose of today's briefing is to determine public sentiment on the need for federal surface mining and reclamation legislation. Also, I understand that if the committee decides to go ahead with legislation on this issue, hearings will be held in the near future at which time extended statements may be offered. The bill which the committee would have before it, H.R. 2, is identical or very nearly identical to H.R. 13950, which was offered in the 94th Congress but was not granted a rule for consideration by the full House. My remarks are based on this presumption, as I have been advised copies of H.R. 2 are not yet available.

36 My reasons for opposing federal surface mining legislation have not changed in the several years the Congress has had such legislation presented before it. The ready availability of coal

through surface mining should not be hampered by the government at a time when we are again faced with increasing costs of imported oil. The many persons employed or dependent upon the surface mining industry for their livelihood should not be forced into the ranks of the unemployed at a time when we are trying desperately to decrease our unemployment percentage. With strict federal regulation, as proposed in H.R. 2, surface mining would virtually be banned in Virginia, thereby increasing the cost of coal available by other means to the utilities, and, as a result, increasing the cost of utilities to the consumer.

36 Approximately 85 percent of the surface mined coal in Virginia is mined on slopes of 25 degrees or greater. In addition to severely decreasing coal production by requiring return to original contour, much flat land resulting from the mining which could be used for grazing, home or industrial building, would be lost to the affected areas. This is one of my major objections to the bill as it has previously been presented. My other main objection is with regard to the section concerning citizens suits, whereby any citizen, whether damaged or not, could protest the issuance and renewal of permits or bond release. Under such a system, it could take up to a year before an operation could be started after application for a permit. Such delays, in themselves, could have disastrous effects upon not only the surface mining industry, but upon the consumer of coal.

36 Faced with our current and increasing energy needs, such obstructions in the way of mining a basic, abundant, and readily available fuel source are highly impractical, and, one could say, bordering on the ridiculous.

36 Virginia State law has taken a realistic, and responsible approach in their regulation of the surface mining industry in my state. Because of the differences in terrain, type of coal and other variables which exist in the several coal producing states, I feel very strongly that the State government is the proper forum for lawmaking with respect to surface mining.

36 The incoming Administration has proposed a streamlining of the bureaucracy and therefore less red tape and interference in state and local matters, to result in less waste of the taxpayers money. Enactment of a strict federal surface mining law will, in all probability, result in an increased bureaucracy, also resulting in greater cost to the taxpayer.

36 The Appalachian area, hard hit by unemployment and inflation, and long an area of special recognition for its needs by the federal government, can ill afford the resultant situation of such legislation becoming law.

36 I have briefly outlined here my objections to the need for federal surface mining legislation. If the Committee persists in going ahead with such a proposal I will discuss my views in depth at a later hearing. Although I object, it is my feeling that the Committee will take such action.

36 In closing, I would like to offer a few suggestions for a realistic approach to such hearings by the members of the Committee.

36 The last comprehensive hearings on legislation for this purpose were held in 1973. Since then, nearly identical bills have been offered to the Congress with little or no attention to changes in the text of the bill. Over 50 percent of the Committee on Interior and Insular Affairs, once it is fully organized, will not have participated in those comprehensive hearings.

37 Extensive hearings should be conducted, with careful attention being given to all the facts, as I know you will do. In addition, I feel that field hearings, with viewings of surface mining areas on the ground, instead of by air, should be taken to those areas which will be affected by such legislation.

37 The incoming Administration will have an energy policy for the nation which should also be carefully and realistically considered. I hope Mr. Udall and the other Committee members will be meeting with President-elect Carter to discuss this before going ahead with the proposed legislation.

37 Again, I appreciate this opportunity to briefly express my views, and would welcome a visit by the Committee members to Southwestern Virginia to view our surface mining operations.

37 The CHAIRMAN. We now turn to the Commonwealth of Kentucky. We will have Mr. David Smith, operator, Corbin, Ky., Kentucky Independent Coal Producers Association.

37 Mr. Smith?

37 Mr. Smith, we have your statement. You may proceed.

STATEMENT OF DAVID SMITH, OPERATOR, KENTUCKY INDEPENDENT COAL PRODUCERS ASSOCIATION, CORBIN, KY.

37 Mr. SMITH. Thank you, Mr. Chairman, and members of the committee.

37 I am David Smith. I reside in Corbin, Ky., and am actively involved in the coal mining industry in eastern Kentucky.

37 I represent the following Kentucky coal associations: The Kentucky Independent Coal Producers Association, of which I am a vice president; Kentucky-Tennessee Coal Operators Association, of which I am the executive vice president; Harlan County Coal Operators Association; Letcher-Knott-Perry Independent Coal Operators Association; and Coal Operators and Associates of Pikeville.

37 The membership of these associations comprises over 600 small and medium sized deep and surface coal mining companies in Kentucky.

37 I had hoped that during the 95th Congress, I would be invited to give testimony concerning the need for a coordinated national energy policy and not a law legislating coal mine reclamation. This is because the need for a Federal reclamation law does not exist. However, the need for a national energy policy has become so paramount to each of us that it is a cliché of the American way of life. It is this energy plan which we should be considering today, instead of yet another Federal coal mine reclamation bill. During this period of continuing national energy shortages and prior to formulation of a national energy plan, the passage of a Federal reclamation law is ill-timed and ill-conceived. Passage of unnecessary Federal reclamation standards before determination of which source or sources of energy reserves will be developed to meet our Nation's energy requirements through the next century will eliminate coal from consideration as a major element of our total energy plan.

37 This is due to the unnecessary and unreasonable constraints placed upon current and future production of not only surface mine coal, but deep mine coal by this reclamation bill.

37 A major fallacy exists in the assumption that lost surface mine coal production due to the passage of this bill will be replaced by increased deep mine coal production in the short and long term. Obviously, this assumption is incorrect because deep mine coal production will also be seriously curtailed due to the stringent permit process and reclamation standards for surface

effects of deep mining contained in this reclamation act. Therefore, we are going to lose in the short term and long term essential coal production from both surface and deep mines. A loss our energy hungry Nation cannot afford. Furthermore, by any interpretation, the bill will result in a period of 6 months to 3 years whereby no new surface or deep mines could conceivably be opened and the Nation would have to rely on the coal production solely from the currently existing mines if they can meet the Federal requirements of this act.

38 Ideally, the logical approach would be to first determine which sources of energy the Congress and the Nation want to develop to make America an energy independent Nation, and after this determination, decide the balance to be struck between increased environmental protection and our national objectives of energy independence, a strong economy, curtailing the outflow of dollars to other nations, unemployment, and higher consumer costs, particularly for electricity.

38 Now, let us consider the environmental protection to be obtained from this bill in real terms. First, the bill does not set reclamation standards for noncoal surface mines, but only mandates a departmental study of this area. Certainly, the copper, iron ore, phosphate, uranium, and other noncoal mining industries have been in existence a sufficient period of time to determine if reclamation standards are necessary. During the 92d Congress we saw the Federal surface mine bill undergo a major change from an "all minerals bill" to a "coal only" bill after significant lobbying efforts by environmental groups, farm organizations and noncoal mining associations. We can only speculate why Congress does not want to extend environmental sanctions to the noncoal mining industry.

38 A further deficiency in overall environmental protection in this bill is the lack of reclamation standards for Indian lands. In title 7, section 710, the proposed legislation establishes only a study and fails to establish long-term legislation to regulate surface mining on Indian lands.

38 Did we want to maintain environmental protection by violating the U.S. Constitution? The bill currently under consideration does just this. In title 5, section 522(3), the bill provides for no compensation to the owner of mineral rights where the Federal Government owns the surface.

This is a form of reverse condemnation and a direct violation of the constitutional guarantee that no citizen shall be deprived of property without just compensation and due process of law. And section 522 and 601 delve further into the violation of the Constitution through deprivation of land and mineral rights by establishing procedures to designate areas unsuitable for coal and noncoal mining activities without compensation to the owner thereof.

38 Another serious error of the proposed bill is the conflict of the bill itself with the findings of Congress stated in section 101(e) where the State is given primary responsibility for surface mine reclamation. After such findings, Congress and this committee proceed in the next 175-180 pages to completely circumvent the States' authority in these areas and leave control firmly with the Federal Government. By the enactment of this conflict, we are forcing the development of another duplicative Federal bureaucracy. This new bureaucracy would have to perform the reclamation duties presently being carried out by State governments and the following Federal departments and agencies:

39 The Department of Interior; The Department of Defense; The Department of Justice; The Department of Agriculture; Council on Environmental Quality; The Bureau of Mines; The National Environmental Protection Agency; The U.S. Geological Survey; The Corps of Engineers; Mining Enforcement and Safety Administration; Division of Forestry; and The Division of Soil Conservation.

39 Not to count numerous other State and Federal agencies.

39 One must realize that when the Environmental Protection Agency promulgates in the near future the new source performance standards for surface mining as required by Public Law 92-500 that this publication will effectively abolish any necessity for this bill.

39 In conclusion, the time and need for this type of Federal legislation has passed. This legislation might have been practical and perhaps even workable if it had been enacted by Congress between 1940 and the late 1960's. Yet Congress failed to take any major legislative action between 1940 and 1970 even though 45 Federal surface mine bills were introduced and several hearings were conducted. In 1971, another major effort was undertaken by Congress to enact a Federal reclamation law, when a forerunner of the current bill under consideration was

introduced. At that time, only eight States had surface mine reclamation laws. As of 1976, 38 States have surface mine reclamation laws which are individually suited to their citizens' economic environmental, social, geographical, and ecological needs and objectives. Twenty-one States accounting for over 90 percent of the coal production do have reclamation laws.

39 In reality, the efforts of Congress and this committee have been fulfilled by prompting the passage of State reclamation laws under the threat of impending Federal legislation and by the passage of other Federal environmental laws. The currently proposed bill is not needed.

39 I seriously wondered why the supporters of this bill continually reintroduce the bill in Congress. I appreciate the opportunity to appear before you and give you my views. I do hope the supporters of this bill do not look for a victory after many defeats on this bill.

39 Thank you.

39 The CHAIRMAN. Thank you, Mr. Smith.

39 In response to your last comment, inquiry as to why we continue to sponsor the bill, as one who has been doing that, I will tell you why. We have had this issue before us for four Congresses now. In every Congress we voted on this topic. More than two-thirds of the Members of the House, more than two-thirds of the Members of the Senate elected to represent the people in this country, said they wanted the bill.

39 Virtually every Governor of every coal State has said they wanted the bill. What we really had was a veto by one man, Gerald Ford, supported by one-third plus three in the House who said they didn't want it.

40 We didn't have majority rule. We had minority rule. We had a small minority in this country getting what they wanted over a substantial majority of the people who did want the bill. That would be my response to your inquiry.

40 I just have one question. At the bottom of page 2, you say by any interpretation this bill would result in a period of 6 months to 3 years whereby no new surface mining or deep mining could conceivably be opened and the Nation would have to rely on coal production in the currently existing mines. I would make two comments on this, and you can respond if you like.

40 One is that we don't even deal very largely with deep mines. I don't know how our bill could prevent new deep mines from opening.

40 Second, this bill was patterned originally on the law of Pennsylvania. It is a good pattern. We followed it quite closely. They have been mining coal in Pennsylvania under essentially this law for years now.

40 Production has increased with none of the dire consequences that you predict. Why can they meet the standards of this law in Pennsylvania and not in Kentucky?

40 Mr. SMITH. I am not talking about meeting the standards. I am talking about the delay in time that it may take for State legislatures that do not meet on an annual basis. It would take them time to pass the statutes necessary for the departments of reclamation in several States to adopt this criteria.

40 I don't think the departments will have the authority to encompass the Federal surface mine bill without going to their legislature. There is also the problem what if a State rejects the Federal bill and the Federal Government has to come in and set up the standards there? There will be a delay there.

40 The other major problem we see in Kentucky is the fact we have very limited resources of technical people that will be necessary to prepare this type of permit application. By my estimate, it would take approximately a year or more to collect the data that is necessary as in the core drilling requirements for the hydrologic assessments.

40 I recently completed a survey and there were only about seven firms in the State of Kentucky and they are currently involved with road contracting that would be able to perform these types of services. I can see a great surge upon this group of technical people and great delays in bringing about the permit process.

40 The CHAIRMAN. Let me tell you, I don't favor a 3-year or 3-month moratorium. I think the country is going to have to get more coal from deep mines and surface mines. During three different sessions we amended this bill to try to meet the objections that indicated a moratorium. The last time around, last year there were a half a dozen provisions designed to make sure we had a reasonable phasing period so that the legislation wouldn't have a drastic impact. If you can

show us later when we get into the specific drafting of amendments that this legislation would have these horrendous results, I would be glad to look at those specific points.

40 If you look at our bill carefully, you will see it will not have the impact that you argue.

41 Mr. SMITH. I will be submitting to the committee within the week, a technical analysis of the bill.

41 The CHAIRMAN. Any questions on my right?

41 Over here? Mr. Tsongas?

41 Mr. TSONGAS. One question: You say that this bill should have been enacted somewhere between 1940 and present? Your argument is that between 1940 and 1975, 1976, you did everything you could to defeat a strip mining bill and were successful. Now, you come back in 1977 and say, since you didn't do it before, there is no point in doing it now.

41 Mr. SMITH. That is not exactly what I intended to be the result of my argument. Between 1940 - I think in 1940 - the late Senator Everett Dirksen introduced a bill that would require them to put the dirt back in the holes they left in his home State. Through 1970, there were approximately 45 bills. There was a lot of activity or a lot of national impetus to have a bill like this passed that resulted in the environmental movement.

41 Since 1970 we have seen a great majority of States, approximately 30, pass reclamation laws. My argument is that you have served your purpose in bringing about reclamation by holding these hearings and by - under the threat of Federal legislation. The States now have reclamation laws and they are improving on those laws daily.

41 Mr. TSONGAS. Which would argue if you remove the Federal threat -

41 Mr. SMITH. I didn't hear you.

41 Mr. TSONGAS. You are arguing now if you remove the Federal threat, then the pressure will be off the States to improve their strip mining bill. I would assume that the coal operators association would be as active in the future as in the past to make improvements in State laws?

41 Mr. SMITH. I think there is a great impetus in the States as you saw from the citizens'

organizations that were here this morning and the citizens' group that will be here after my testimony. There is a great movement in the State to bring about good reclamation laws. We are continually improving on those laws.

41 As far as being opposed to reclamation -

41 Mr. TSONGAS. Have you supported those efforts or opposed them?

41 Mr. SMITH. I personally feel we need good reclamation laws in the coal industry. That is the only way we will be able to stay in business. We cannot do things that we used to now because they are not environmentally acceptable. I think a vast majority of the coal operators have accepted their environmental responsibilities in this area. I am continuously working with our State department to bring about good reclamation. I am opposed to more redtape and unnecessary things because the real thing we are trying to do is the end result of reclamation.

41 We don't get that by a lot of redtape and extra criteria in between.

41 Mr. TSONGAS. You say the operators have accepted their environmental responsibility?

41 Mr. SMITH. I think a vast majority have.

41 Mr. TSONGAS. What caused them to accept that responsibility?

41 Mr. SMITH. I think part of the threat of the Federal legislation, the fact that we just can't do the things that have been done in the past.

42 The CHAIRMAN. Mr. Eckhardt?

42 Mr. ECKHARDT. I notice on page 4 you state that this bill has unconstitutional provisions, and as I recall you added the little phrase that wasn't in your original statement. I don't mean to explain about it, but I didn't quite get it. It is after the Federal Government owns the surface.

42 Mr. SMITH. Right. What we were concerned about was whether the Federal Government owns the surface of the land and private ownership, citizens ownership of the minerals under that land. If they were denied access to surface mine on that property, who is going to pay for the value of the minerals underneath?

42 Mr. ECKHARDT. I looked up that section in the bill. I notice that you are totally capitalizing. I suppose you refer to section 522(e)?

42 Mr. SMITH. Yes, sir.

42 Mr. ECKHARDT. It starts out, "subject to valid existing rights, no surface coal mining operations except those which exist on the date of the enactment of this act shall be permitted."

42 I would assume that would make two exceptions. One, operations existing on the date of the bill; and two, where there are valid subsisting rights for future operations. I can't see anything unconstitutional about that. Can you?

42 Mr. SMITH. I really didn't follow your analysis.

42 Mr. ECKHARDT. It seems to me the exceptions are twofold. One, if there is presently mining on the premises, that is excepted, that is in effect grandfathered. But in addition to that, it starts with "subject to valid existing rights." For instance, if someone had an ownership right on the land by original deed, by lease, by transfer which gave him the right to produce minerals under the soil, I would think that that would be a valid existing right. So I can't see anything unconstitutional about that section.

42 Mr. SMITH. Well, there is no procedure in there if mining would be denied on these Federal lands. We are having this problem right now in Kentucky. In the south central part I live in, it is owned by the Federal Government and the Daniel Boone National Forest. Certain areas have been designated under the Wilderness Act.

42 Mr. ECKHARDT. Maybe you have trouble under existing law. I don't know about that. Under this act, this act protects valid existing rights. Now, I assume that means constitutional rights. I assume you would not object if in this bill we made it clear that there is simply no intent here to violate the Constitution.

42 Certainly, I think that is implied. I think it is also expressed. I just don't see where you say that this is unconstitutional.

42 Mr. SMITH. Your interpretation of the bill then, if we use the criteria in 601 where you can designate lands that are unsuitable for surface mining, and, therefore, that mineral could not be developed by surface mining.

42 Mr. ECKHARDT. Unless there is a valid existing right to do that.

42 The CHAIRMAN. That provision was directed to publicly owned lands to which the Federal Government has the title. The Federal Government can designate its own lands as unsuitable for mining.

43 Mr. ECKHARDT. Sure; if there were some existing right of some type, it seems to me the bill steers around it. I can't see anything unconstitutional in that section.

43 Do you really see the unconstitutionality?

43 Mr. SMITH. Yes, sir; I can see that, if these minerals are not able to be developed, and there is no provision in this act for compensation.

43 Mr. ECKHARDT. This is subject to valid existing rights. If there is a valid existing constitutional right - which I don't think would exist in many cases in these public lands, perhaps in no cases - but if there is one, the bill simply steers around it.

43 The CHAIRMAN. You raised a red flag and we will look at it.

43 Any other questions?

43 Mr. Seiberling?

43 Mr. SEIBERLING. You mentioned there are 38 States that have reclamation laws. Of course, they vary greatly. Would you be willing to accept in Kentucky a law comparable to that that is now enforced in Pennsylvania to the extent that conditions - the physical conditions are comparable?

43 Mr. SMITH. I am not that familiar with the Pennsylvania law. I understand it will be a 100 percent haulback and return to original contour in Kentucky.

43 Mr. SEIBERLING. I believe they allow the modified log cut method.

43 Mr. SMITH. In Kentucky we can put 30 to 40 percent of the overburden over the site with hollow fill. I can see no purpose of returning to original contour. I am not saying that we can't do it or won't do it, but I just do not see the purpose in it.

43 Mr. SEIBERLING. Well, that brings out the point I want to make. Just calling a law a reclamation law couldn't mean it will result in real reclamation. The Pennsylvania law requires real reclamation. The Kentucky law does not.

43 Mr. SMITH. That is your interpretation of what reclamation is?

43 Mr. SEIBERLING. Pennsylvania coal operators are competing against Kentucky coal which does not have to go to the length and expense that the Pennsylvania coal operators do and it seems to me that there is no way that we are going to have effective reclamation by the States unless we set certain standards as this bill does.

43 Mr. SMITH. I think you have to determine what type of reclamation you want; and I think the gist of your argument is that you would like to do away with the competitive market in coal.

43 Mr. SEIBERLING. No; just the opposite. We don't want the poorest, the lowest reclamation standards to set the standards for the whole country which is what is happening today. Ohio cannot effectively enforce its strip mining law because its miners are competing with those in other States that have much weaker laws which means that the States where the coal associations have the greatest domination over the legislature, and result in the weakest law, are setting the standards for the whole country. That is what the Congress on several occasions decided they don't want to do. That is really the issue in a nutshell.

43 The CHAIRMAN. Thank you, Mr. Smith. We appreciate your presence here today.

43 [Prepared statement of David O. Smith follows:]

44 KENTUCKY-TENNESSEE

44 Coal Operators Association, Inc.

44 1001 CIRCLE DRIVE/CORBIN, KENTUCKY 40701

44 Testimony of David O. Smith before the House of Representatives, Interior Subcommittee, Washington, D.C., 9:30 a.m., January 10, 1977, re: the "Surface Mining Control and Reclamation Act."

45 MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE-

45 MY NAME IS DAVID O. SMITH. I RESIDE IN CORBIN, KENTUCKY, AND I AM ACTIVELY INVOLVED IN THE COAL MINING INDUSTRY IN EASTERN KENTUCKY. I REPRESENT THE FOLLOWING KENTUCKY COAL ASSOCIATIONS:

45 A. KENTUCKY INDEPENDENT COAL PRODUCERS ASSOCIATION OF WHICH I AM A VICE PRESIDENT

45 B. KENTUCKY-TENNESSEE COAL OPERATORS ASSOCIATION OF WHICH I AM THE EXECUTIVE VICE PRESIDENT

45 C. HARLAN COUNTY COAL OPERATORS ASSOCIATION

45 D. LETCHER-KNOTT-PERRY INDEPENDENT COAL OPERATORS ASSOCIATION

45 E. COAL OPERATORS AND ASSOCIATES OF PIKEVILLE

45 THE MEMBERSHIP OF THESE ASSOCIATIONS COMPRISES OVER SIX HUNDRED SMALL AND MEDIUM SIZED DEEP AND SURFACE COAL MINING COMPANIES IN KENTUCKY.

45 I HAD HOPED THAT DURING THE 95TH CONGRESS, I WOULD BE INVITED TO GIVE TESTIMONY CONCERNING THE NEED FOR A COORDINATED NATIONAL ENERGY POLICY AND NOT A LAW LEGISLATING COAL MINE RECLAMATION. THIS IS BECAUSE THE NEED FOR A FEDERAL RECLAMATION LAW DOES NOT EXIST. HOWEVER, THE NEED FOR A NATIONAL ENERGY POLICY HAS BECOME SO PARAMOUNT TO EACH OF US THAT IT IS A CLICHE OF THE AMERICAN WAY OF LIFE. IT IS THIS ENERGY PLAN WHICH WE SHOULD BE CONSIDERING TODAY, INSTEAD OF YET ANOTHER FEDERAL COAL MINE RECLAMATION BILL. DURING THIS PERIOD OF CONTINUING NATIONAL ENERGY SHORTAGES AND PRIOR TO FORMULATION OF A NATIONAL ENERGY PLAN, THE PASSAGE OF A FEDERAL RECLAMATION LAW IS ILL TIMED AND ILL CONCEIVED. PASSAGE OF UNNECESSARY FEDERAL RECLAMATION STANDARDS BEFORE DETERMINATION OF WHICH SOURCE OR SOURCES OF ENERGY RESERVES WILL BE DEVELOPED TO MEET OUR NATION'S ENERGY REQUIREMENTS THROUGH THE NEXT CENTURY WILL ELIMINATE COAL FROM CONSIDERATION AS A MAJOR ELEMENT OF OUR TOTAL ENERGY PLAN.

46 THIS IS DUE TO THE UNNECESSARY AND UNREASONABLE CONSTRAINTS PLACED UPON CURRENT AND FUTURE PRODUCTION OF NOT ONLY SURFACE MINE COAL BUT DEEP MINE COAL BY THIS RECLAMATION BILL.

46 A MAJOR FALLACY EXISTS IN THE ASSUMPTION THAT LOST SURFACE MINE COAL PRODUCTION DUE TO THE PASSAGE OF THIS BILL WILL BE REPLACED BY INCREASED DEEP MINE COAL PRODUCTION IN THE SHORT AND LONG TERM. OBVIOUSLY, THIS ASSUMPTION IS INCORRECT BECAUSE DEEP MINE COAL PRODUCTION WILL ALSO BE SERIOUSLY CURTAILED DUE TO THE STRINGENT PERMIT PROCESS AND RECLAMATION STANDARDS FOR SURFACE EFFECTS OF DEEP MINING CONTAINED IN THIS RECLAMATION ACT. THEREFORE, WE ARE GOING TO LOSE IN THE SHORT TERM AND THE LONG TERM ESSENTIAL COAL PRODUCTION FROM BOTH SURFACE AND DEEP MINES. A LOSS OUR ENERGY HUNGRY NATION CANNOT AFFORD. FURTHERMORE, BY ANY INTERPRETATION, THE BILL WILL RESULT IN A PERIOD OF 6 MONTHS TO 3 YEARS WHEREBY NO NEW SURFACE OR DEEP MINES COULD CONCEIVABLY BE OPENED AND THE NATION WOULD HAVE TO RELY ON THE COAL PRODUCTION SOLELY FROM THE CURRENTLY EXISTING MINES IF THEY CAN MEET THE FEDERAL REQUIREMENTS OF THIS ACT. IS THIS WHAT CONGRESS WANTS?

46 IDEALLY, THE LOGICAL APPROACH WOULD BE TO FIRST DETERMINE WHICH SOURCES OF ENERGY THE CONGRESS AND THE NATION WANT TO DEVELOP TO MAKE AMERICA AN ENERGY INDEPENDENT NATION, AND AFTER THIS DETERMINATION, DECIDE THE BALANCE TO BE STRUCK BETWEEN INCREASED ENVIRONMENTAL PROTECTION AND OUR NATIONAL OBJECTIVES OF ENERGY INDEPENDENCE, A STRONG ECONOMY, CURTAILING THE OUTFLOW OF DOLLARS TO OTHER NATIONS, UNEMPLOYMENT, AND HIGHER CONSUMER COSTS, PARTICULARLY FOR ELECTRICITY.

47 NOW, LET US CONSIDER THE ENVIRONMENTAL PROTECTION TO BE OBTAINED FROM THIS BILL IN REAL TERMS. FIRST, THE BILL DOES NOT SET

RECLAMATION STANDARDS FOR NON-COAL SURFACE MINES, BUT, ONLY MANDATES A DEPARTMENTAL STUDY OF THIS AREA. CERTAINLY, THE COPPER, IRON ORE, PHOSPHATE, URANIUM, AND OTHER NON-COAL MINING INDUSTRIES HAVE BEEN IN EXISTENCE A SUFFICIENT PERIOD OF TIME TO DETERMINE IF RECLAMATION STANDARDS ARE NECESSARY. DURING THE 92ND CONGRESS WE SAW THE FEDERAL SURFACE MINE BILL UNDERGO A MAJOR CHANGE FROM AN "ALL MINERALS BILL" TO A "COAL ONLY". BILL AFTER SIGNIFICANT LOBBYING EFFORTS BY ENVIRONMENTAL GROUPS, FARM ORGANIZATIONS AND NON-COAL MINING ASSOCIATIONS. WE CAN ONLY SPECULATE WHY CONGRESS DOES NOT WANT TO EXTEND ENVIRONMENTAL SANCTIONS TO THE NON-COAL MINING INDUSTRY.

47 A FURTHER DEFICIENCY IN OVERALL ENVIRONMENTAL PROTECTION IN THIS BILL IS THE LACK OF RECLAMATION STANDARDS FOR INDIAN LANDS. IN TITLE 7, SECTION 710, THE PROPOSED LEGISLATION ESTABLISHES ONLY A STUDY AND FAILS TO ESTABLISH LONG TERM LEGISLATION TO REGULATE SURFACE MINING ON INDIAN LANDS.

48 DO WE WANT TO MAINTAIN ENVIRONMENTAL PROTECTION BY VIOLATING THE U.S. CONSTITUTION? THE BILL CURRENTLY UNDER CONSIDERATION DOES JUST THIS. IN TITLE 5, SECTION 522 (E), THE BILL PROVIDES FOR NO COMPENSATION TO THE OWNER OF MINERAL RIGHTS WHERE THE FEDERAL GOVERNMENT OWNS THE SURFACE. THIS IS A FORM OF REVERSE CONDEMNATION AND A DIRECT VIOLATION OF THE CONSTITUTIONAL GUARANTEE THAT NO CITIZEN SHALL BE DEPRIVED OF PROPERTY WITHOUT JUST COMPENSATION AND DUE PROCESS OF LAW CONTAINED IN ARTICLE 5 OF OUR BILL OF RIGHTS. AND SECTION 522 AND 601 DELVE FURTHER INTO THE VIOLATION OF THE CONSTITUTION THROUGH DEPRIVATION OF LAND AND MINERAL RIGHTS BY ESTABLISHING PROCEDURES TO DESIGNATE AREAS UNSUITABLE FOR COAL AND NON-COAL MINING ACTIVITIES WITHOUT COMPENSATION TO THE OWNER THEREOF.

48 ANOTHER SERIOUS ERROR OF THE PROPOSED BILL IS THE CONFLICT OF THE BILL ITSELF WITH THE FINDINGS OF CONGRESS STATED IN SECTION 101 (E) WHERE THE STATE IS GIVEN PRIMARY RESPONSIBILITY FOR SURFACE MINE RECLAMATION. AFTER SUCH FINDINGS, CONGRESS AND THIS COMMITTEE PROCEED IN THE NEXT 175-180 PAGES TO COMPLETELY CIRCUMVENT THE STATES AUTHORITY IN THESE AREAS AND LEAVE CONTROL FIRMLY WITH THE FEDERAL GOVERNMENT. BY THE ENACTMENT OF THIS CONFLICT WE ARE FORCING THE DEVELOPMENT OF ANOTHER DUPLICATIVE FEDERAL BUREAUCRACY. THIS NEW BUREAUCRACY WOULD HAVE TO PERFORM THE RECLAMATION DUTIES PRESENTLY BEING CARRIED OUT BY STATE GOVERNMENTS AND THE FLOWING FEDERAL DEPARTMENTS AND AGENCIES:

- 49 THE DEPARTMENT OF INTERIOR
- 49 THE DEPARTMENT OF DEFENSE
- 49 THE DEPARTMENT OF JUSTICE
- 49 THE DEPARTMENT OF AGRICULTURE
- 49 COUNCIL ON ENVIRONMENTAL QUALITY
- 49 THE BUREAU OF MINES
- 49 THE NATIONAL ENVIRONMENTAL PROTECTION AGENCY

49 THE U.S. GEOLOGICAL SURVEY

49 THE CORP OF ENGINEERS

49 MINING ENFORCEMENT AND SAFETY ADMINISTRATION

49 DIVISION OF FORESTRY

49 DIVISION OF SOIL CONSRVATION

49 ONE MUST REALIZE THAT WHEN THE ENVIRONMENTAL PROTECTION AGENCY PROMULGATES IN THE NEAR FUTURE THE NEW SOURCE PERFORMANCE STANDARDS FOR SURFACE MINING AS REQUIRED BY PL 92-500 THAT THIS PUBLICATION WILL EFFECTIVELY ABOLISH ANY NECESSITY FOR THIS BILL.

49 IN CONCLUSION, THE TIME AND NEED FOR THIS TYPE OF FEDERAL LEGISLATION HAS PASSED. THIS LEGISLATION MIGHT HAVE BEEN PRACTICAL AND PERHAPS EVEN WORKABLE IF IT HAD BEEN ENACTED BY CONGRESS BETWEEN 1940 AND THE LATE 1960'S. YET CONGRESS FAILED TO TAKE ANY MAJOR LEGISLATIVE ACTION BETWEEN 1940 AND 1970 EVEN THOUGH 45 FEDERAL SURFACE MINE BILLS WERE INTRODUCED AND SEVERAL HEARINGS WERE CONDUCTED. IN 1971, ANOTHER MAJOR EFFORT WAS UNDERTAKEN BY CONGRESS TO ENACT A FEDERAL RECLAMATION LAW, WHEN A FORERUNNER OF THE CURRENT BILL UNDER CONSIDERATION WAS INTRODUCED. AT THAT TIME, ONLY 8 STATES HAD SURFACE MINE RECLAMATION LAWS. AS OF 1976, 38 STATES HAVE SURFACE MINE RECLAMATION LAWS WHICH ARE INDIVIDUALLY SUITED TO THEIR CITIZENS' ECONOMIC, ENVIRONMENTAL, SOCIAL, GEOGRAPHICAL, AND ECOLOGICAL NEEDS AND OBJECTIVES.

50 IN REALITY, THE EFFORTS OF CONGRESS AND THIS COMMITTEE HAVE BEEN FULFILLED BY PROMPTING THE PASSAGE OF STATE RECLAMATION LAWS UNDER THE THREAT OF IMPENDING FEDERAL LEGISLATION AND BY THE PASSAGE OF OTHER FEDERAL ENVIRONMENTAL LAWS. THE CURRENTLY PROPOSED BILL IS NOT NEEDED.

50 AND A CORRECT MOTIVATIONAL DIAGNOSIS MAY BE THAT THE INTERIOR COMMITTEE, AFTER SUFFERING NUMEROUS EXHAUSTING AND HUMILIATING DEFEATS, HAS AGAIN PROPOSED THIS LEGISLATION AS A CAUSE VACANT OF ANY RATIONAL FOUNDATION. I RESPECTFULLY URGE THE MEMBERS OF THIS COMMITTEE TO SEEK NOT A LATE VICTORY THROUGH PASSAGE OF THIS LEGISLATION BUT TO SEEK WHAT IS RIGHT FOR OUR COUNTRY.

50 RESPECTFULLY SUBMITTED,

50 DAVID O. SMITH

50 1001 CIRCLE DRIVE

50 CORBIN, KENTUCKY

50 JANUARY 10, 1977

51 The CHAIRMAN. We will now get another view from Kentucky, Mr. Mike Mullins.

STATEMENT OF MIKE MULLINS, KNOTT COUNTY CITIZENS FOR SOCIAL

AND ECONOMIC JUSTICE; FLOYD COUNTY SAVE OUR LAND CLUB; AND  
CUMBERLAND CHAPTER, SIERRA CLUB

Mr. MULLINS. I am afraid I don't have a written, prepared statement.

The CHAIRMAN. You may proceed as you see fit. Do you have slides to show us?

Mr. MULLINS. Yes; I have a statement I kind of sketched out myself.

In a recent open letter to the Kentucky Coal Journal, the president of the Coal Operators Association of Pike County, Ky., stated that Chairman Udall should speak for Arizona and not for Kentucky. I personally would like to say that there are a number of Kentuckians who appreciate the fact that Chairman Udall and other members of the Interior Committee are speaking for Kentuckians. There have been several representatives in the State of Kentucky who have not done a very good job of speaking for us.

On the other hand, there have been some, including Carl Perkins, who represents the 7th Congressional District who have supported this bill from the beginning and who continue to support it; and I have been assured that he will continue to support it.

I am here today representing the Knott County Citizens for Social and Economic Justice, and the Floyed County Save Our Land Club. I put down the Cumberland Chapter of the Sierra Club because I am a member of it.

Like Mr. Kilgore, I am from Floyd County, Ky., from High Hat. It's a town of about 100 people. I have lived there all my life and my family came from that area. I have been active in organizations in that area on strip mining. Our group from Floyd County, our aims have been to strict enforcement of strip mining laws. We do not think that they have been strictly enforced.

Knott County, Ky., has a history of imposing strip mining. In 1966, the County of Knott abolished strip mining, but the State court would not uphold this abolishment.

The question that we are addressing today is whether there is a need for Federal strip mine bill. Since the State has been doing such a good job, they feel like we don't need one. I think there is a great difference between passing laws and enforcing them. The State of Kentucky is one of the greatest law-passing States that I know of. They are one of the worst that I know of in enforcing these laws.

Reports by the center for science and the public interest and the mathematica report have shown that these laws have not been enforced.

Last week the secretary of the department of natural resources and environmental protection for the State of Kentucky came out and said there was not a need for a Federal strip mine bill. I am here today to disagree with Mr. Robert Bell.

52 That article in the paper convinced me that I needed to come to Washington. Mr. Bell stated that there was no need for the return of the land to its natural contour, there was no - mountain removal was not a problem, and so forth. But there is a definite problem. For example, in October 1976, one of the most well respected reclamation supervisors for the State of Kentucky, William Hays, resigned. He worked for 10 years under three Governors, under five different reclamation directors, and three of four different secretaries of natural resources, environmental protection in the State of Kentucky. He finally up and resigned in October because of the lack of enforcement of strip mine laws in Kentucky.

52 He stated, and I quote:

52 A State strip mine regulation job is the only one I know of where if you do your job, you are likely to lose your job.

52 This is a man that has spent all of his time in eastern Kentucky working in the field trying to do a good job. Mr. Bell has been in Frankfort, Ky., for the past 20 years and he has been with the Department of Natural Resources for less than 1 year.

52 I would like to know which person's opinion you are going to accept.

52 Now, there are all kinds of problems in the State of Kentucky. One of the major problems, I think, is the effect of strip mining on the water. The State of Kentucky has more natural streams than any other State in the Continental Shelf of the United States outside of Alaska. It has one of the greatest watersheds there is. This watershed is being destroyed.

52 One of the major problems, and one that I think all the taxpayers of this country should look at, is the destruction of the lakes that are being built by the Federal Army Corps of Engineers. These lakes, for example, Dewey Lake. I am from Floyd County. It is filling up at an

alarming rate now as a result of sedimentation from the strip mines that are in its watershed. The fish reservoir in Pike County, Ky., life expectancy has been cut tremendously. There is nothing living in it. That costs, I think, between \$45 million and \$50 million to build.

52 What we are doing in eastern Kentucky is creating some of the most expensive sediment ponds in the world. Blasting problems. That is easy to document. My house shakes occasionally. There's a clinic, a health clinic 1 3/10 miles from this operation. It has some very sophisticated equipment where they run various tests for disease and so forth in that area. The head of this clinic told me 2 weeks ago that as a result of blasting from a strip mine that these instruments he cannot depend upon them. He's reported this to the State he should and they said that they are blasting within limits and that he should not even be able to hear those blasts.

52 Well, he not only hears them, he feels them in that clinic.

52 Flatland in Kentucky. Well, I disagree. I disagree. I kind of like the hills. That is why I intend to stay in those hills. Recently, before I came up here, I called a person at the Kentucky River Development District and asked, I said, "How many industrial parks and so forth are - industries are located on strip - flatlands that been created by strip mining"? Not one. I asked him if it was feasible to think in terms of those benches, and so forth, being used for industry and housing, and so forth. He said it wasn't because the fact is that if you do get an industry to come in, one of the major problems that they face in eastern Kentucky is finding adequate water and sewage systems. It would be prohibitive in these areas to get the sewer lines, and so forth, on these benches, and so forth, plus they are very unstable.

53 Another problem we have in Kentucky, our court system has continually upheld the validity of the board form D. Anyone of you gentlemen sitting here today if you own land in Kentucky and someone wanted to come in, if a coal company owned the mineral rights, they could come in and strip. We don't even have the right. We are like squatters down there on most of the land. We are there at the convenience of many of the coal companies.

53 One of the major things I think you have to provide for in this Federal bill, and I think the gentleman before me was right, you need to provide money for more inspectors. You can't

expect the States to take care of it. If you expect them to enforce the laws, with their present staff, then the job will not get done. They have to have some help.

53 I don't know. I have read the bill. I am not sure that that is in there, a provision for that.

53 I have some slides and I want to show those. Just another point I want to make. In Appalachia alone, it has been said there's over 25,000 - this was taken from a report by a person, Dr. Jerry Howe, Morehead State University, over 25,000 miles of highwalls in Appalachia alone.

53 There is a definite problem as far as siltation in our area as was shown by a 1975 ARC grant of \$3 05,000 to build a series of six settling basins along the branches of Troublesome Creek in Perry and Knott County.

53 This is another use of the taxpayers' money again. I don't think - one of the major things, talking about Mr. Hays, William Hays, I wish we could have gotten him to come up here today. I think he would have been a lot better witness than me. His claims that there has been lack of enforcement in Kentucky have never been - they have not been repudiated whatsoever. The newspapers have called, asked for this, and not received any answer whatsoever.

53 I would like to show some of these slides.

53 The CHAIRMAN. We will dim the lights a little bit. While you are getting set up, some of my colleagues have asked me my plans this morning. It is the Chair's purpose to do three States. We are on the second one and the last is Alabama. Since there is no business on the floor, I thought we would probably go through and finish by 12:30, 12:45.

53 Mr. MULLINS. This is a scene.

53 [Slide.]

54 Mr. MULLINS. That is me on top of that back there. This was taken about 3 1/2 years ago. The thing that is important about this, that has not changed. That is the same way. This was taken down at McDowell, Ky., about 3 miles from where I grew up.

54 The person who did the stripping said he would build an airport up there. The bench is plenty wide enough. I think you would have problems landing. When you come off, there is

another hill right in front of it. He could land his helicopter there, though.

54 [Slide.]

54 Mr. MULLINS. This is another view of that same strip mining. It goes all the way around the side of the hill. There is a great deal of overburden pushed over there. I have seen this every day for the past 3 1/2 years. I have never seen any reclamation whatsoever on this land.

54 [Slide.]

54 Mr. MULLING. Same area. That is where you come in. That is the major part of it there. They had a slide there last year. It came off the hill and blocked this railroad track. Rocks came off.

54 [Slide.]

54 Mr. MULLINS. That has been that way for 3 1/2 years at least.

54 [Slide.]

54 Mr. MULLINS. What you see here is an area, the discoloration of the water is at the head of this hollow, there has been refuse from the coal that has been packed back in there. This is the runoff. Those streams sometimes - this stream here is almost totally - there's hardly any aquatic life whatsoever left in Beaver where I grew up.

54 From - in the past 7 or 8 years, I have watched this stream die.

54 [Slide.]

54 Mr. MULLINS. This is a view of the highwall. You can imagine 25,000 miles of that.

54 [Slide.]

54 Mr. MULLINS. This is an important slide in that this is in the area of the Carport Reservoir which has just been finished in Knott County, Ky. Much of the area around the lake has been stripped. There is at least one stream which has a heavy acid content and they built some basins and so forth to keep this out of the lake, but they are still not 100-percent sure that it is not going to get into the lake.

54 [Slide.]

54 Mr. MULLINS. This is - this shows a strip mine with the house in the area there. These

were taken within the last 6 months. That is the same way today.

54 [Slide.]

54 Mr. MULLINS. This is an important slide in that what you have here is an active strip mine. This is the one where they are doing the blasting now that has hurt the clinic down there. What you have here, there's a housing - you have some very expensive homes that were - this was a farm. They auctioned off the land. People came in and bought up lots. They built very expensive homes. I would say there's between \$150,000 and \$2 00,000 worth of homes here. During one blast, there were rocks and things thrown through the top of a friend of mine's house. They had had - other friends of mine have been stopped within a half a mile of this strip mine on the State roads during times of blasting. They have seen rocks flying through the air.

55 [Slide.]

55 Mr. MULLINS. This is the same view. In this area right here, this home here is a big settlement pond right here. It is a huge one. I don't think these people are going to be very comfortable this spring when the rains come. I know I would not be. This area has had - two springs ago there was a great number of landslides from strip mines in this general area in Knott County. I have documentation of that.

55 [Slide.]

55 Mr. MULLINS. This is just an example of runoff from some of the strip mines.

55 [Slide.]

55 Mr. MULLINS. That is similar today.

55 I don't call that reclamation. To me, reclamation is in the eye of the beholder a great deal of the time. It is a very - what is reclamation to some people I don't think is reclamation to the others.

55 [Slide.]

55 Mr. MULLINS. This is an area that was stripped. This is on Lost Creek in Knott County. It was stripped in 1960-something. This area has been revegetated. You can see the slippage. All of that is coming off there and coming slowly, but surely, into one of the main roads.

55 [Slide.]

55 Mr. MULLINS. That is the same thing there. Even where you have some vegetation, you still have a great deal of slippage.

55 [Slide.]

55 Mr. MULLINS. This is where - a pushing over of overburden. Most of these are in Knott County.

55 [Slide.]

55 Mr. MULLINS. This is an example of the highwall area. Under the dirt there, that is auger holes. They have covered those up.

55 That is it.

55 The CHAIRMAN. Mr. Mullins, thank you very much for your presentation. Are there any questions?

55 [No response.]

55 The CHAIRMAN. If not, we thank you.

55 Mr. MARRIOTT. How many strip mining operations are there in your neighborhood?

55 Mr. MULLINS. I think in Knott County between 40 and 50.

55 Mr. MARRIOTT. What is the population in your city? Or your county?

55 Mr. MULLINS. 18,000 people. The Kentucky River and Development District did a study of the income level. They found the income of the area, average income incredible in the past 4 years. They also found this increase has taken place from the people who had more, got more, and those who had less stayed the same. There hasn't really been much of an increase as far as average income on that overall level. It has just been, it has been mostly - this is in the Mountain Eagle which is published in Pittsburg, Ky., which says most of this was made up by the co-op.

56 Mr. MARRIOTT. How far away in general is a population center from where the strip mining is going on?

56 Mr. MULLINS. They are getting closer. Strip mining is like cancer. By the time you see it in Kentucky, it is too late. To give you an example, recently, they wanted to strip within the city

limits of Hazard, Ky. The mayor of Hazard got on the ball and got this permit denied. You saw how close they are stripping in Norton, Va. They are on one city block in Virginia. They are getting closer and closer. This area where the new houses were, there are about 10 houses there, very expensive, nice homes that - when they were built were maybe worth \$45,000 to \$50,000. I don't know their value right now. I would say that they couldn't get that much out of them. I don't think I would give them that much for any of them. They would have to give me a real good deal.

56 Mr. MARRIOTT.Thank you.

56 The CHAIRMAN. Thank you, Mr. Mullins.

56 Our next witness is our distinguished colleague from Alabama, Mr. Tom Bevill.

STATEMENT OF HON. TOM BEVILL, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF ALABAMA

56 Mr. BEVILL. Thank you, Mr. Chairman and distinguished members of the committee. I appreciate your giving me this opportunity to appear before you. I will make this brief. I do have a formal statement here that I would like to submit for the record.

56 The CHAIRMAN. Without objection it will be printed in full.

56 Mr. BEVILL. I also have a statement from our Governor that I will just touch on. He points out that the Legislature of Alabama has passed a bill that sets up now a local law - the Surface Reclamation Act of 1975 - and it is a very strong piece of legislation. I have read it and it is now in effect.

56 The Governor feels this is the place to handle reclamation problems which we all support. It is our belief that the States can do a better job than Washington in handling reclamation.

56 This is the substance of his statement.

56 The CHAIRMAN. We will put it in the record.

56 Mr. BEVILL. I also have a statement from the Lieutenant Governor of Alabama, the Speaker of the House of Alabama and other State leaders, in addition to the Surface Mining Reclamation Commission. These letters point out what has been done and how these problems are being handled.

56 [The documents referred to follow:]

57

January 5, 1977  
The Honorable Tom Bevill  
U.S. Congressman  
1126 Longworth House Office Building  
Washington, D.C. 20515  
D Dear Tom:

57 It has been called to my attention that Congressman Udall will hold hearings commencing January 12, 1977, respecting the Federal strip mining legislation and other legislation regulating the mining industry.

57 It continues to be our position and policy that the individual states ought to take the lead in this regard and we have supported strong strip mining legislation in Alabama and will continue to do so.

57 We would respectfully request that you voice our sentiments as far as this regulatory practice is concerned for the mining industry.

57 With kindest regards and best wishes for a Happy and Prosperous New Year, I am

57 Sincerely yours, George C. Wallace

57 Governor

57 GCW: pt

58

STATE OF ALABAMA  
January 7, 1977  
Honorable Tom Bevill  
United States Congressman  
1207 Longworth House Office Building  
Washington, D.C. 20515  
Dear Congressman Bevill:

58 It is my understanding that you plan to present testimony before the Committee on Interior and Insular Affairs concerning potential legislation designed to provide federal regulations on the surface mining of coal.

58 I appreciate your interest in this type of legislation. I, too, am vitally interested in seeing that the state's environment is adequately protected. However, regulatory controls on surface mining of coal should not place unreasonable or unnecessary regulations on the mining industry.

58 I personally feel that the dual objective of protecting the environment and allowing the strip mining industry reasonable flexibility within its operation can most realistically be met by allowing each of the several states to provide for the regulation of strip mining within their own boundaries.

58 Historically, governmental regulations have proven to be most effective and efficient when administered at the state or local level. By contrast, regulatory controls which have in many cases been deemed to be cumbersome, costly, and not only ineffective, but in many cases counter-productive to their intended goals, are usually those controls administered at the Federal level.

59 I would encourage you in your remarks to support strong and effective controls of strip mining, but to encourage members of Congress to allow the several states to enact and enforce these measures. Certainly, a strong argument for state regulation can be supported by the fact that Alabama has enacted such legislation and is currently engaged in a rigorous enforcement of its strip mining laws.

59 With best regards, I am

59 Most sincerely,

59 JERE BEASLEY

59 JB/pm

60

STATE OF ALABAMA  
HOUSE OF REPRESENTATIVES  
January 5, 1977  
Honorable Tom Bevill  
United States Congressman  
House Office Building  
Washington, D.C. 20515  
Dear Congressman Bevill:

60 I am writing to encourage your efforts in Congress to preserve the states authority to orderly regulate its own mineral production. Coal mining in the mineral producing states has unique characteristics that do not make "blanket regulation" realistic.

60 Each federal bill introduced in Congress in the last three years set national standards to apply to all states. This does not allow for local people to make, administer and enforce their own mining regulations.

60 In Alabama we have a coal surface mining act that is about one and one-half years old. This act sets standards and procedures to meet Alabama's needs and adequate financing is provided by the legislation to carry out its intent.

60 I am currently serving on the Interstate Compact Mining Commission as the Governor's designee for Alabama. The Compact Commission has unanimously voted to oppose blanket federal legislation that takes away the regulatory authority from the states.

60 The Commission has a sound record for responsible and realistic reclamation programs. It recognizes the need for preserving our environmental integrity. The technical and professional people of the Compact Commission are concerned that blanket regulations would greatly endanger the ability to produce the coal tonnage for American industry and consumers.

61 I strongly urge that you work to protect Alabama jobs that would be lost if smaller coal companies could not comply with all the administrative red tape of the federal bureaucracy. I am very concerned with cutting coal production at a time when energy is so critical in our every day way of life.

61 Yours very truly,

61 Bobby Tom Crowe

61 BTC:lpl

61 bcc: Mr. William Kelce

62

STATE OF ALABAMA  
HOUSE OF REPRESENTATIVES MONTGOMERY 36104  
January 5, 1977  
H Honorable Tom Bevill  
United States House of Representatives  
House Office Building  
Washington, D.C. 20515  
Dear Tom:

62 Re: Federal Surface Mining Legislation expected to be introduced in the new Congress by Morris Udall

62 In the 1975 session of the Alabama Legislature we passed a regulatory act regarding coal surface mining in Alabama, and amended this act in the 1976 session. This act is very heavily weighted toward a program of definitive reclamation.

62 It is my belief that each state should have its own regulations and enforcement of mining laws. The added bureaucracy and governmental red tape would not be to the best interests of conservation or energy production. The proposed strip mining bills would have a very serious adverse economic effect on the areas of employment and related coal industry jobs in Alabama.

62 I certainly hope that as a member of the United States Congress you will work to defeat these federal mining bills.

62 Thanks for your help in this matter.

62 With warm personal regards, I am

62 Sincerely,

62 Joseph C. McCorquodale, Jr.

62 Speaker

62 JCMcC, Jr:bt

63

STATE OF ALABAMA  
SURFACE MINING RECLAMATION COMMISSION  
January 7, 1977  
Hon. Morris K. Udall, M.C.  
House of Representatives  
Congress of the United States  
Washington, D.C.  
Dear Congressman Udall:

63 As you may know, in 1975 the Alabama Legislature completely rewrote the Alabama Surface Mining Reclamation Act. Under the new law a commission was established to oversee reclamation of surface mined areas in the State of Alabama. Governor Wallace appointed me to that commission and, after Senate confirmation, I was elected by the other commissioners as Chairman.

63 The purpose in my writing to you is to call to your attention the new Alabama Act and to state that in my opinion this act, when fully operational, will be more than adequate to meet Alabama's needs in regard to reclamation. Obviously, the problems in Alabama differ greatly from those in other parts of the country and it is my firm conviction that in the area of mined land reclamation the peculiar characteristics of each area should be taken into account and that is best

achieved by local legislation such as our act. Our act and the regulations which our commission is in the process of formulating provide effective and realistic tools tailored to our state's problems. I am confident that if we determine that additional statutory means are necessary the Alabama Legislature will respond.

63 I am delighted that Congress is apparently examining the necessity for any further consideration of a federal bill rather than moving blindly forward on the assumption that such a bill is needed. While there may have been a need four or five years ago when Congress began its examination of surface mining, the situation has obviously changed. I am convinced that we have no need for an additional federal bureaucracy to assure adequate reclamation in Alabama and that our commission, composed both of technically expert members and citizen members, will be able to achieve the desired ends without unduly increasing the cost of fuel in this state. As you may know, Alabama is currently in the middle of a continuing controversy over the cost of generating electricity brought on in no small part by the increase in the cost of coal which provides approximately 80% of the generating fuel source in this state.

64 It is my belief that federal legislation is not required at this time.

64 Yours very truly

64 G. William Noble

64 Chairman

64 Alabama Surface Mining Reclamation

64 Commission

64 GWN/jfl

64 cc: Hon. Walter Flowers

64 Hon. Tom Bevil

65  
January 7, 1977  
Honorable Tom Bevil  
U.S. Congressman  
2305 Rayburn Office Building  
Washington, D.C. 20515  
Dear Congressman Bevil:

65 I'm writing you on behalf of myself, my organization and the people we represent in regards

to the proposed Strip Mining legislation.

65 We believe the legislation that we have here in Alabama is sufficient to do the job it was intended to do. We supported this legislation and we will continue to support any improvement made by the people of Alabama along this line.

65 However we think it should be left up to local people living in areas that is affected by the operation.

65 For this reason we earnestly solicit your support in allowing Local and State Government to enact and enforce legislation governing Strip Mining in Alabama.

65 Looking forward to seeing you at our Spring meeting in Washington and wishing for you a very successful New Year.

65 Sincerely yours,

65 W. T. (Bill) Thrash

65 Business Manager

65 I.U.O.E. Local 312

65 WTT/bc opeiu # 18

66 Mr. BEVILL. The land has been abused. There is no question about that. I guess it has been abused everywhere there is stripping. The fact that it is being stopped is the point. It has been in effect some 60 days, or the actual implementation of it has been in effect for several months, since 1975.

66 The act is now functioning. Within the past 2 weeks two violations have been cited and injunctions have been issued. This commission has been set up in my hometown, in the middle of the coalfields of Alabama. I am familiar with the coal industry and very concerned about the coal industry.

66 I think this committee is to be congratulated on what it has done. It has caused each of these States that have surface mining to take an inventory of their situation and see what they are doing, and now they are taking action. I think, frankly, this committee deserves a lot of credit for this.

66 I am asking this committee not to go too far. At least take the time and look and see what

these States have done. Please don't just dust this old bill off: that has been coming down to the House for 4 years and not even look into what the States have done.

66 I think this is unfair. I think this committee wants to be fair about this thing, but at least take a look and see if these States have provided adequate laws which are strong enough. I have been voting to prohibit strip mining in the national forests and Bankhead National Forest in my district.

66 There is a lot of coal there, but I don't think the energy situation is critical enough to merit that. I think we ought to leave our national forests alone. As a matter of fact, Congressman Bob Jones and I introduced a bill to set aside 12,000 acres and designate it as a wildlife area in the Bankhead National Forest.

66 Many amendments were added and we wound up with over 200,000 acres when this bill went through the Congress. With your help, Mr. Chairman, we were able to get this land set aside as a wilderness area, to protect and prohibit strip mining.

66 We have been very concerned about our streams because we have had abuses. We have stopped that. Alabama has more navigable waterways than any State in the Nation, and we are concerned about our water resources. We have a lake right there in my district that is 42 miles long and 200 feet deep in some places and the water is so clean you can drink it.

66 It sounds like bragging a little, but we are very concerned about it.

66 We are concerned about protecting the environment. We are concerned about reclamation. There are areas there, I might say, that look like the surface of the moon because this was all done before there was any thought given to it and before the committee started bringing this to the attention and making this a real issue that the people are interested in.

66 I think everybody is trying to do the same thing. I do hope this committee will take the time to look and see what the States have done. Alabama is not going to have any problem in reclamation. One State law even goes so far as to require them to haul in topsoil.

66 We have a lot of areas where there is strip mining that doesn't have topsoil worth anything. I know a whole hill that is going to be moved there and when they get through with it, they are

going to have to haul topsoil in and it is not going to be the original contour. It is not even going to be close to the original contour. The hill will be gone. It is going to be better than it was before they ever started.

67 So I think there are a lot of angles to this thing. I know this committee has wrestled with this thing many times. When you start trying to write a bill on the Federal level that will apply to the rolling hills of north Alabama, where we have an abundant supply of coal, and at the same time, try to make it apply to the Midwest where you take the big, deep vein of coal out and have problems covering up the areas that were left vacant, and then making it apply to the mountains of West Virginia, you are taking on a real task.

67 Frankly, I don't see any question but that the best way to solve this problem is just what you have already done - instill in the States the need to have strong reclamation laws and make the States handle them, because the States can do a better job of it.

67 This is one of our biggest problems in this Nation: we keep building bureaucracies. When this bill passes, the Bureau of Reclamation will ask for at least another 100 persons. They will have to have desks, another building to locate it. They will have to have millions of dollars more. We will have to add to our staffs in Congress.

67 The gentleman that testified before me said it took 3 years to get a permit and a license. It will; you know it. The industry will suffer. We don't want the industry suffering. You know this industry is depending too much already - we are not turning that around. We are still going in the wrong direction.

67 We relied on foreign oil for more than 40 percent of our energy last year. There are only two things that will save us. That is nuclear energy and coal. That is all we have right now.

67 Let me plead with this committee to preserve the coal industry. One operator in my hometown has 1,400 people on the payroll. That is 1,400 families, and I don't want to see those people wiped out. I don't want to see them closed down waiting to get a permit from Washington.

67 The CHAIRMAN. We appreciate your comments. I think the suggestions you make will be looked at. We do not assume conditions are identical and we will look to see what the States

have done since this legislation was first considered. We will do that carefully.

67 Mr. SKUBITZ. Will the gentleman yield?

67 The CHAIRMAN. Yes.

67 Mr. SKUBITZ. I want to commend you on your statement. I think we have got to take into consideration two things: One: We do need the fuel. We need the energy. Two: We can't afford to let coal companies simply destroy the land on the basis that we need the fuel.

67 There has got to be a happy medium somewhere. The thing that is bothering me is the idea of trying to set down a reclamation policy by statute here that may apply to one area and not apply to another. I would like to see us - I would like to see this committee go over to England and take a look at what England is doing in the area of reclamation.

68 One thing I was impressed with is the fact that they are calling their soil conservation service into the act and letting them determine what ought to be done in the way of reclamation. I have seen some pictures that before there was any mining the land had very little value.

68 We did take the mineral. It still has less value now, but I think that what we ought to do is to determine how much or what sort of reclamation ought to be done rather than saying it has to be restored to its former contour.

68 Mr. BEVILL. Yes, sir. This committee has the know-how, the ability. I don't know of any committee in the world that could do a better job than this group right here.

68 I know you are going to do that. I hope you will do that very thing: look into these other aspects. We don't want to see the industry wiped out. We all want this reclamation. This is exactly the way I feel about it.

68 The CHAIRMAN. Any further questions?

68 Mr. Seiberling?

68 Mr. SEIBERLING. I would just like to make a comment, Tom. Maybe you are not aware of it.

68 The former Secretary of the Interior, Rogers Morton, testifying on the last of the strip mining bills that was vetoed by President Ford - before it was vetoed - stated to this committee

that the bill would actually produce an increase in jobs, and he also stated that while he felt there might be a temporary dip in production, that it would not cause any diminution of our Nation's coal supply.

68 So I think that these two fears we can put aside. I agree with you that we ought to take a look at what some of the States have done since we have passed the bill that the President vetoed and see if we can make some appropriate adjustments in this bill. This bill is a very flexible bill and does take into account different conditions that pertain in different sections of the country.

68 Of course, if we can do it, we should.

68 Mr. BEVILL. Yes, sir. The present Secretary of the Interior, another one of our old colleagues, was in Birmingham just a few weeks ago and expressed concern about this bill. He actually advised the President to veto it.

68 I do want to throw that out, too. Here is a good example. You have the immediate preceding Secretary of the Interior taking one position, you have the present Secretary of the Interior taking another position. It is a very complex thing. I think this illustrates the complexity of the problem more than anything we could say or do.

68 You gentlemen have the work cut out for you. It is very difficult in trying to come up with an equitable bill.

68 Mr. SEIBERLING. I might say after the President vetoed it, Mr. Morton defended his veto; but the facts are as he stated, that the bill would produce a net increase.

68 The CHAIRMAN. Thank you, Tom.

68 Our next witness is the Honorable John Buchanan.

68 Mr. BUCHANAN. Thank you very much. I am here to listen.

68 r. BUCHANAN. Thank you very much. I am here to listen.

68 The CHAIRMAN. Thank you. I hope you learn something today.

68 [Prepared statement of Hon. Tom Bevill follows:]

68 STATEMENT OF TOM BEVILL

68 January 10, 1977

69 Mr. Chairman and distinguished members of this Committee: I appreciate your giving me

this opportunity to appear here today. My district encompasses much of the Alabama coal fields and I am very familiar with the Alabama situation. I grew up in and around coal mines in Townley Alabama and today that area is enjoying a renewed economic health such as it has not known in my lifetime due primarily to surface mining. Landowners and mine employees are now able to enjoy an acceptable standard of living and provide adequate education for their children and health care for their families. Most of that is due to surface mining and I am happy to say - and I am speaking from first-hand observation - that that surface mining is being conducted in a responsible manner with the land being returned to a productive use. In fact, in many cases, the land that is now being mined in my district was of such a rough contour and topography that it has never been productive, useful land. Under the new Alabama Reclamation Act, that property is being reclaimed so that it will now, and for all time, be useable. I am just glad that we don't have to return to "the original contour" because if we did, that would be putting property back in its unuseable form. There are of course a few people in the industry in Alabama like there are everywhere who will try to cut corners. The new Commission established under the 1975 Alabama Surface Mining Reclamation Act has only been operational for a couple of months but it has already demonstrated that it is going to be a tough agency dedicated to insuring responsible mining practices and adequate land reclamation tailored to Alabama's needs and requirements.

70 As you know, I supported President Ford's veto of the bill passed by Congress in 1975 because I was convinced then, and I am convinced now, that that bill or any bill like it would result in massive unemployment and sharply decreased coal production particularly in Alabama. I think that is too high a price to pay when the ultimate end - responsible land reclamation - can be achieved without that result. We sometimes tend to forget sitting up here in Washington that there may be answers to problems that don't necessarily require our taking over an industry. I can assure you that the landowners in my district are for the most part, quite concerned not only with getting the coal out of their properties but with having those properties economically productive in the future and most of the leases that are negotiated in my area require reclamation that will do just that for the landowner. I am afraid that too often we just assume that it takes a law to accomplish a purpose but my experience in my district is that the landowners want to have as

much to say about what's done with their land as we sitting up here in Washington, or any bureaucrats that we might create could ever say.

70 I think we can all recall that after the last bill passed the proposed regulations that would have implemented that bill were published. Now, that gave us a very rare opportunity to see how a bill would really be administered by the bureaucrats. I took the time to carefully read those regulations and I will tell you today that had the bill been passed over the President's veto and had those regulations or anything resembling them been adopted the Alabama coal industry would, by now, be pretty much confined to underground mining and I have the feeling, from reading the old bill, that at least some of that underground mining would no longer exist. The new Alabama act, in my opinion, achieves the purpose that I am sure my colleagues had in mind in a federal bill - that is, if the purpose was really to insure reclamation - and it does it without any of the bad side effects and that's because the Alabama act is tailored to Alabama and to its operations, its lands and its growing seasons. For instance, a blanket requirement such as we saw in the last federal act for the segregation and protection of top soil may have some validity when the rich farm lands of the Mid-West are being mined but it has absolutely nothing to do with the facts of life in the Alabama coal fields. Recognizing that, the Alabama Legislature has required not that the thin leached out soils be segregated and preserved but that the lands be treated in such a manner as to insure revegetation including, where necessary, the importation of top soil. The point is, that the Alabama act is designed to meet Alabama conditions and to achieve what we all want - useable and productive land for use after mining by our children and our grandchildren and those that follow. In Alabama that after use may be range land, agricultural, forestry, home sites, recreational, industrial or commercial use.

71 The opening line of the Alabama act declares, in great big capital letters, that "All areas surface mined under this act shall be reclaimed." I know Alabama and its coal fields. The Alabama act will do just what it purports to do - guarantee the reclamation of mined lands. There is absolutely no reason at this point in time for us to create a vast new bureaucracy, the effect of which would be in my opinion and in the opinion of the United Mine Workers and many others knowledgeable in that field to completely stifle an industry so vital to Alabama and the nation.

STATEMENT OF EARL BAILEY, UNIVERSITY OF ALABAMA,  
TUSCALOOSA, ACCOMPANIED BY EARL CHEATWOOD, CHAIRMAN, CONCERNED  
CITIZENS FOR BETTER STRIP MINING LEGISLATION; ALABAMA CONSERVANCY  
ORGANIZATION

73 Mr. BAILEY. I am Earl Bailey, from Tuscaloosa, Ala. I teach at the University of Alabama in the College of Engineering. I am the regional vice president of the Sierra Club in the Southeast, a member of the Alabama Board of Conservancy, consultant to the Wildlife Federation in Alabama. I have worked extensively in the last 6 or 7 years in voluntary efforts for better regulation of surface mining. I would like to make it completely clear that I represent myself here today. I came here at the request of the committee; and that none of my remarks should be taken as the opinion of the University of Alabama.

73 I turned in a written statement and I would like to summarize that written statement today with a slide presentation.

73 The CHAIRMAN. We have seen your - I have seen your statement. I find it excellent. We will, of course, print that in our hearing record in full along with that of Mr. Cheatwood.

73 Mr. BAILEY. I appreciate Congressman Bevill and Congressman Buchanan being here today, and I appreciate the input from Governor Wallace. Most of all, I appreciate the opportunity from this committee of letting me come up here to present an opposing viewpoint. I think I represent a significantly different position. The title of my presentation is "Alabama Needs Federal Coal Surface Mining Legislation."

73 [Slide.]

73 Mr. BAILEY. I would like to start out by comparing an Alabama coal scene that is being mined now with a coal scene in Wyoming. This one is actually in Montana.

73 [Slide.]

73 Mr. BAILEY. There is a vast difference in the amount of land area disturbed at the present time compared to other States.

73 [Slide.]

73 Mr. BAILEY. Alabama has had a law since 1969. There are between 50,000 and 60,000 acres of surface mine disturbed in the State. Previous to that time under the law about 40,000 has

been disturbed. If surface mining continues at the present rate until the year 2000, approximately 108,000 more acres will be disturbed.

73 The 1969 law - these are typical orphan mines in the State.

73 [Slide.]

73 Mr. BAILEY. The 1969 law had very, very poor enforcement. This is land reclaimed under the 1969 law. The budget for the Department of Industrial Relations that has enforced that law the last 2 years was \$22,000 and \$23,000 per year. They have two men employed whose responsibility is enforcement of the act that has been in effect since 1969 through 1975.

73 [Slide.]

74 Mr. BAILEY. Typical reclamation under the 1969 act was grading. This much grading was not required under the act. Mine operators generally performed this much grading. That mine 3 years later looks like this.

74 [Slide.]

74 Mr. BAILEY. That is not a real good picture of it. It does have a few pine trees, a few grass, sage, pokeweed. There is nothing there to prevent erosion. Reclamation under the 1969 act has been totally ineffective. The water pollution control provisions are so bad the State passed in, I believe - went into effect in 1975, separate water pollution control guidelines that are enforced by the Alabama Water Improvement Commission. These guidelines have generally been ineffective for stopping siltation and acid drainage.

74 This is a typical area that's been grassed under the 1969 act. Grassing is not required. Four hundred pine trees per acre are required. Pine trees are very ineffective in preventing siltation or erosion.

74 This mine photographed from above looks like this.

74 [Slide.]

74 Mr. BAILEY. You can see the grassed areas in a couple of places. This is typical reclamation under the 1969 act.

74 [Slide.]

74 Mr. BAILEY. Again typical of what has been reclaimed in the past 6 years under an act

that has less than \$25,000 in the State for enforcement.

74 [Slide.]

74 Mr. BAILEY. This is in a State that mines about - this year about \$500 million worth of coal at the market value.

74 [Slide.]

74 Mr. BAILEY. The typical mine outcrops, the erosion control is very poor. The Alabama water improvement commission guidelines provide for erosion control at the edge of the mine.

74 [Slide.]

74 Mr. BAILEY. There is no real responsibility of these people to require grass or other erosion control measures.

74 The typical method used is silt traps at the edge of the mine. Most of those - there has been a lot of trouble with them washing out.

74 [Slide.]

74 Mr. BAILEY. An engineered plan is required, but engineering supervision of construction is not required and in general the silt dams have been totally inadequate.

74 [Slide.]

74 Mr. BAILEY. This is a typical pine tree stand on a land that quite a bit of money was spent on land preparation.

74 [Slide.]

74 Mr. BAILEY. I want to make a big point of research in Alabama. There's been less than \$1 00,000, as I can document, of research work going on in the State on pollution control and mine reclamation. The Alabama surface mining reclamation council has a \$3 0,000 a year program with Auburn University. This is an Auburn University plot 3 years ago. The program got started roughly 3 years ago. The bureau of mines office in the State has no research work going.

75 The biological department at the University of Alabama has two small research projects. The Alabama development office, department of conservation, has no research going. If you take as in other industries the research work that's going on at present as a predictor of technology that

is available for future - for the future, then we are in a very, very poor position researchwise in the State.

75 To my knowledge, there's not one mine research reclamation project with topsoil replacement in the State. The new law does not require topsoil replacement. It only requires 400 pine trees per acre on the interior of the mine. This is totally inadequate.

75 [Slide.]

75 Mr. BAILEY. Nobody claims this research.

75 There are real questions in my mind about forest reproductivity on the land. This is the first mine in Brookwood, Ala., Tuscaloosa County. It's about 28 years old, 28 to 30 years old. One of the early mines. The tree stand on this, this mine - and this was relatively a shallow overburden and should have been a good site for reclamation, this tree stand is 28 years old. Pine trees with about 4 to 5 inches of DBH. Off this mine site you can find stumps that are 21 to 22 inches in diameter of the same age.

75 Even though pine tree growth the first few years looks good, there's still no research data, and there will not be any for quite some time in Alabama to validate any of the present mine reclamation methods.

75 [Slide.]

75 Mr. BAILEY. Silt dams are built without engineering supervision.

75 [Slide.]

75 Mr. BAILEY. They wash out two to three times a year in some areas.

75 [Slide.]

75 Mr. BAILEY. This is a silt dam that was about 30 feet high, 100 feet across the base. It broke. It wiped out trees in the whole valley going down to a creek called Daniel Creek.

75 If people had been in there at the time, there would have been a hazard to live.

75 [Slide.]

75 Mr. BAILEY. Acid drainage is a problem in parts of the State. I know of only - well, you can count them on your hands the number of places that acid drainage is being treated.

75 [Slide.]

75 Mr. BAILEY. Daniel Creek, a Corps of Engineers navigable waterway, this creek, just as an example, is indicative of the problem in Alabama. There are about 20 square miles in this drainage. Some of you may be familiar with the fact that the general Accounting Office a few years ago recommended that there be no strip mining in Corps of Engineers reservoir drainage basins because of the impact of siltation on the reservoir.

75 [Slide.]

76 Mr. BAILEY. Daniel Creek, if you look at the drainage area, which is - this is on a negative film, the dark areas are strip-mined areas in north Tuscaloosa County. The Daniel Creek drainage basin is this area right in here that's been about 50 percent to possibly 60 percent surface mined.

76 [Slide.]

76 Mr. BAILEY. Daniel Creek is down in this hollow.

76 [Slide.]

76 Mr. BAILEY. These are some of the mines that drain into Daniel Creek.

76 [Slide.]

76 Mr. BAILEY. The Corps of Engineers has reported this situation in two reports.

76 [Slide.]

76 Mr. BAILEY. The creek - the reservoir looks like this now. For almost 2 miles, this part of the reservoir has silt 30 to 40 feet deep. It assays about 5 percent coke according to the Corps of Engineers reports. They drilled this. They think most of this came from strip mines.

76 [Slide.]

76 Mr. BAILEY. I think you can see coke mines on top here and, and yellow along the edges. It's a sad situation to a \$1 00 million reservoir. It's an extremely critical situation for the Corps of Engineers. These are major damages to taxpayer projects. The situation is not unique in Alabama. I would call it typical. Bankhead Reservoir appears to have the same type of situation.

76 [Slide.]

76 Mr. BAILEY. This is a view of the creek from the air. This silt is 30 to 40 feet deep. Just a wild guess, I would say probably that much silt has already gone out into the reservoir.

76 [Slide.]

76 Mr. BAILEY. This is the old swimming hole at Daniel Creek and there is silt 20 to 30 feet deep at the diving board. I used to fish up here about 7 years ago. You could go up here in a large boat or boat at high speed.

76 [Slide.]

76 Mr. BAILEY. Here are coal washer filings that are being washed down around and spread out on old mines. Some of this drainage you can see.

76 [Slide.]

76 Mr. BAILEY. Before I go to the wildlife scenic rivers that have been impacted by strip mining, I would like to make one comment on blasting. There appears to me to be good scientific evidence now that mining - that the surface mining industry is using a criterion for blasting in - throughout the country. I have talked recently to people from four or five States that they use this criteria in. Two inches per second parallel velocity of the soil near a home is stated by the bureau of mines in a publication to be safe damage level. They also state that this formula should be interpreted on a probability basis. Dr. Eugene Cardin, from the University of Alabama Department of Aerospace and Mechanical Engineering has recently testified in a court case, after analyzing the problem that this criterion gives a 3 percent chance of major damage to a home that received a 2-inch-per-second parallel velocity.

77 Mr. Cheatwood later will give you some information about FHA and VA loans that have been denied. Basically there appears to be good evidence that all over the country the mining industry is using a criterion that on one shot there is a 3 percent probability of major damage and there is no accounting for cumulative damage which does occur, and 15 to 20 blasts by - from a strip mine, the effect on a nearby community would be a very, very high chance for major damage to occur. These are the kinds of problems that it takes a lot of manpower, research money; the bureau of mines did not even have an instrumented house when they took their

one-shot blasting data that was meant, I think, to be used for construction projects.

77 The research base to validate surface mining is totally inadequate: reclamation, water pollution, blasting; you pick an area; name it, and look at the research dollars going into it, and it's a bad situation.

77 The CHAIRMAN. We are going to run out of time fairly soon.

77 Mr. BAILEY. I will wrap up in 2 minutes.

77 Alabama has four potential wild and scenic rivers that have been impacted in a major way by surface mining. I would like to mention two. The Cahaba River is a national wild and scenic study river. Congressman Walter Flowers filed the bill. The study is underway.

77 About 20 miles of the Cahaba River, at the prettiest shoals, appear to be excluded from inclusion under the act because of mining damage.

77 [Slide.]

77 Mr. BAILEY. To show that this situation is occurring now, there's loose spoil coming down that cliff on the other bank from a mining operation that took place last spring. There was a dragline that mined down to the river, crossed on the shoals and went up on the other side.

77 [Slide.]

77 Mr. BAILEY. This is a typical strip mine. This was done in the late 1960's or early 1970's on the Cahaba River.

77 This is all in the area that is precluded now from inclusion under the National Wild and Scenic River Act.

77 [Slide.]

77 Mr. BAILEY. The Locust Fork of the Warror River, the best whitewater canoe river in Alabama. There are probably as many out-of-State tourists that come to canoe this river as to any one of the major State parks. It's a tremendously popular river. It has two scenic covered bridges that have been preserved. There are 30 miles of river that look like that.

77 [Slide.]

77 Mr. BAILEY. This is in Blount County, Jefferson County.

77 [Slide.]

78 Mr. BAILEY. People have mined in the river. The situation is continuing. I am told by Mr. Cheatwood that there's spoil right now from mining operations going in the river. There's about a 20- to 30-mile stretch that is halfway decent for canoeing left at the present time.

78 [Slide.]

78 Mr. BAILEY. The economic impact of these abuses will be felt in Alabama for years to come. A baptizing on the Swan covered bridge This is what the river looked like less than 10 miles upstream, about 5 miles upstream, from one little thunder shower.

78 The CHAIRMAN. Enough to make a Christian out of them. [Laughter.]

78 Mr. BAILEY. Draglines in Tuscaloosa County fly an American flag over them. I think there is a valid question about what is American and what is un-American.

78 [Slide.]

78 Mr. BAILEY. The last thing, and I will conclude. I hope you read the rest in my statement. Now that bird dogs are coming in to Washington, and skiing is maybe on the way down, I think there are a lot of us in Alabama that hope that the minds that are reclaiming in the future have a lot less of these on.

78 I appreciate your time.

78 The CHAIRMAN. Thank you, Mr. Bailey.

78 Mr. Cheatwood, did you want to be heard.

78 Mr. BAILEY. I am sorry. I meant to introduce Mr. Cheatwood.

78 Mr. CHEATWOOD. Thank you, Mr. Chairman, members of the committee.

78 My name is Earl Cheatwood, chairman of the Concerned Citizens Organization for Better Stripmining Legislation, also a member of the Alabama Conservancy Organization. I would like to relate to you a little bit about the blasting problems in Alabama. From the blasting within subdivisions like some of the suburb towns like Warrior, Kimberly, Mars, Glenwood, Gardendale, Fultondale, we have the loss of VA and FHA loans. To my knowledge, within the area there are at least 150 homes that rank in the damage class.

78 I would like to dwell on some of the instances from two of the damages to some of the

homes. My home was half a mile away from the strip bed. The real estate people last year estimated damage in the \$10,000 class.

78 Warrior Surgical Supply plant, approximately 1 1/4 miles away from the strip area, estimated damages in the \$27,000 class.

78 To my knowledge in the North Jefferson County, we have approximately 45 civil suits entered in Jefferson County. I have been told by the VA and the FHA loan people, their evaluation people, the reason why they withdrew these loan moneys was because of the environmental effects from the blasting, instances that they can go away from the pit area and find damages.

78 One particular date of last year, February 5, K. & T. Coal Co. put off a blast that shattered plate glass 2 1/2 miles away from the pit. That's not going around the country road. That is in a straight line from the pit to Warrior Chevrolet place.

79 At this time, since time is running short, I will remain and answer any questions you have.

79 The CHAIRMAN. You have been very helpful. I am sorry we are trying to cover as much as we can. I wanted to save a little time for the other side of the story from Alabama and some of the industry people. Congressman Buchanan said he wanted to comment on something here.

79 Mr. BUCHANAN. Mr. Chairman, I appreciate your courtesy in hearing me. I want to join in asking the committee to look at this blasting problem. As I understand it, it is not covered by State law. Local government cannot handle it because of the State law; and I am not sure at what level it should be handled, but it does appear there has been rather wanton disregard for the rights of some citizens of my congressional district and of their property in blasting that has apparently damaged their homes.

79 I would hope this committee would take a hard look at that problem for the United States.

79 The CHAIRMAN. Thank you.

79 Mr. Cheatwood has documented a number of cases here where the property values have been rather dramatically impacted.

79 Mr. CHEATWOOD. These documents include developers of subdivisions and also an individual person.

79 The CHAIRMAN. Are there questions or comments from the committee?

79 Mr. SEIBERLING. Mr. Chairman, could I just point out that whenever we hear from the industry spokesmen and they say it's going to add to the cost, if we impose reclamation requirements on them, nobody ever brings up the costs of not having these kinds of controls. I think Mr. Cheatwood has done us all a service by showing in very concrete terms how property of a good number of people apparently has been materially reduced in value because of strip mining operations.

79 The CHAIRMAN. Thank you, gentlemen.

79 [Prepared statement of Earl Bailey follows:]

80 Alabama Needs Federal Coal Surface Mining Legislation by Earl Bailey \* A  
Presentation to the Committee on Interior and Insular Affairs House of Representatives  
Subcommittee on Energy and the Environment, Hon. Morris K. Udall, Chairman  
Briefings on the  
Regulation of Surface Mining

80 January 10, 1977

80 \* Earl Bailey is an Associate Professor of Aerospace Engineering at The University of Alabama, working in the area of systems analysis. He is presently serving as National Sierra Club Regional Vice President for the Gulf Coast Region and as a member of the Alabama Conservancy Board of Directors. He is a member of the National Sierra Club Energy Committee, Coal Subcommittee, and the National Sierra Club Forest Practices Committee. The opinions expressed in this paper are those of the author and do not represent an official position of The University of Alabama.

81 Preface

81 Aldo Leopold, commenting on the land ethic which we do not seem to have in this country, outlines the value judgment which must be made to protect our most valuable asset, the land on which we live, as follows:

81 "The 'key-log' which must be moved to release the evolutionary process for an ethic is

simply this: quit thinking about decent land-use as solely an economic problem. Examine each question in terms of what is ethically and esthetically right, as well as what is economically expedient. A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise." (Sand County Almanac)

81 What is 'right' for strip-mined land rehabilitation as proposed in the federal strip mining legislation which is the subject of our discussions today? What is 'right', if we look ahead 100, 200, or more years to the legacy we leave our children and their descendents? The answer in my opinion is the best in land restoration (see appendix A, Sierra Club Coal Policy). Land restoration by my definition would restore land affected by mining to a self-sustaining ecosystem as indicated by: equal or greater biologic productivity; vegetation which can withstand natural climatic variations without long-term human maintenance and which supports native wildlife; and maintains or improves water quality during and after mining. Unfortunately the proposed federal surface mining legislation is not designed to meet the previous criterion for land restoration (as opposed to land reclamation). Much of the research and technology needed to validate strip mining is not even available today. The law as we know it today is a weak compromise which can be "tolerated" by the coal companies and not what we feel is 'right'. To justify what is 'right', our congressmen must look to good stewardship of the land aimed at future generations, the labor intensiveness of mine reclamation, protection of scientific values of unique ecosystems, and reduction of social costs of strip mining.

82 Alabama Needs Federal Coal Surface Mining Regulation by Earl Bailey

82 This paper will include discussions of the past record of coal surface mining reclamation and enforcement in Alabama, the social and environmental impact of surface mining, and the inadequate planning for future surface mining regulations in Alabama. The Alabama record is one of which we should be ashamed - a record of stream and waterway siltation and pollution, despoiling potential national wild and scenic rivers, disregard for future productivity of mined land, damages to property of Alabama citizens living in the coal fields, export of coal subsidized by damages to Alabama taxpayers, . . . , etc.

82 I. Introduction.

82 Surface mining for coal began in Alabama many years ago but in the past 20 years the industry has expanded to supply approximately 65 percent of the state's coal production, which was 22,644,000 n1 tons in 1975. Over 100,000 acres of land have been affected by surface mining in Alabama at the present time and most of this land has been mined since 1960. Average selling prices for Alabama coal were \$22 per ton in 1974 and \$2 6.50 per ton in 1975 n1 with some export contract sales in the \$50 0 to \$6 0 per ton range. Estimates of average mining costs are typically in the \$10 to \$1 2 per ton range. Alabama coal seams being surfacemined are thin compared to coal seams being mined in other states, with the average seam thickness being mined today i nAlabama toaling about 20 inches. Overburdens to coal seam thickness ratios of about 35 are considered economically minable at the present time. n2

82 n1. Telephone conversation with Mr. Jim Boyle, U.S. Bureau of Mines, Tuscaloosa, Alabama. 3 January 1977.

82 n2. Communication with Mr. Bo Daniel, Alabama Geological Survey. 3 January 1977.

82 Alabama coal exported from the Alabama state docks facility over the past 23 mounths has been 5,241,637 tons or approximately 2,554,846 tons per year. Additionally, about 1,000,000 tons was exported from other facilities each year. Most of this coal has been surface-mined and exports amount to about 23% of surface-mined coal production.

83 Alabama state taxes on coal production are a 13.5 cents-per-ton severance tax that is earmarked for the state docks coal-handling and export facility and a 5\* corporate income tax with a depletion allowance. Walker County also has a 20 cents-per-ton severance tax that is earmarked for repair of damaged county roads.

83 Surface mining legislation and enforcement in Alabama is summarized as follows:

83 1. The Surface Mining Reclamation Act of 1969 was implemented by the Department of Industrial Relations, which is responsible for the enforcement of this act. This law has been in effect over the period 1969 - 1976 and the most complimentary description of the law heard by me is that the law was a joke. The last two yearly budgets for the agency for the agency for enforcement were \$23,000 and \$2 2,000 respectively, with only two field men conducting all inspections and permit reviews. n3

83 n3. Communication with Mr. H. T. Williams, Alabama Department of Industrial Relations.  
3 January 1977.

83 2. The Alabama Water Improvement Commission issued a set of guidelines in 1974 to operators for "Minimizing the Effects of Surface Mining on Water Quality." These guidelines are enforced by the AWIC, surface mining enforcement division, and primarily provide for edge-of-mine water pollution control. The AWIC yearly budget for coal surface mining enforcement is approximately \$5 0,000. This budget provides for a staff of 4 persons who are responsible for field work, permit review and administration. The staff in 1975-76 issued 385 permits, approved 703 facilities, performed 5232 inspections, and took 14 enforcement actions (3 fines). n4 The AWIC guidelines are very weak, lack strict enforcement, and in general are not significantly reducing mine pollution at the present time. These guidelines continue to be the only basis for water pollution control of surface mine discharges under the new Alabama law.

83 n4. Communication with Mr. Buddy Cox, Alabama Water Improvement Commission. 3  
January 1977.

83 3. The Alabama Surface Mining Reclamation Act of 1975 has superseded the 1969 Act and set up the Alabama Surface Mining Commission which, as of December 1976, has authority for mine reclamation. The commission is based in Jasper, Alabama and, according to Tom Walker, Assistant Director, the commission plans to hire 17 employees in 1977 which includes 7 to 9 field inspectors. The new Alabama law is one of the weakest laws in the nation, and in an analysis by John Doyle, n5 37 major deficiencies of the law were documented. Provisions of this law will be discussed in the following text, along with descriptions of past, present and future reclamation in Alabama under existing laws, environmental impacts of surface mining in Alabama, and problems with present enforcement.

90 n5.Doyle, John C.: "An Analysis of Six Selected State Statutes and Promulgated Regulation," Environmental Policy Center, 324 C Street, S.E., Washington, D.C. March 1976.

90 II. Surface Mine Reclamation in Alabama.

90 The purpose of this section is to describe past, present, and projected future surface mine

land reclamation in Alabama under past and existing laws. Surface-mine affected acreage in Alabama totals about 100,000 acres at the present time. Approximately 60,000 acres of this affected land was disturbed before the 1969 act went into effect and 35,000 to 40,000 acres, with reclamation under the 1969 act since that time. Assuming the present production rates for coal surface mining remain constant over the next 24 years, an additional 180,000 acres is estimated to have been disturbed by surface mining by the year 2000 (assuming 15,000,000 tons production/year, a disturbed acres to mined acres ratio of 1.5, and 3000 tons/acre production).

90 The acreage disturbed by coal surface mining in Alabama before the 1969 law went into effect has primarily been left as orphan mines. The spoil piles have not been regraded; at most, aerial seeding of pine tree seed was the limit of revegetation efforts; and there were no water pollution or siltation control measures taken by the industry. Mines were opened on river and stream banks with spoil deposited into the river. These mines today still contribute significantly to stream pollution and natural revegetation growth is poor in the majority of cases and still non-existent ten years after mining on some mines. The economic cost of these orphan mines will continue to accrue for many decades to come.

90 Reclamation under the 1969 law consisted of grading a 10-foot bench on top of the spoil piles and trying to establish 400 pine trees per acre on mine interiors. Mine spoils which were too toxic did not have to be revegetated. A bond of \$1 25 per acre was returned if a pine stand was established (even temporarily). About 60% of bonds have been returned under the 1969 law. n3 There was no provision for water pollution control structures enforced under the law. During the past 4 or 5 years the mining industry preformed some voluntary spoil grading over and beyond what the law required. Reclamation results achieved under the law were only slightly better than obtained previously with no reclamation and no law. The pine trees did not establish on the steep spoil of the mine out slopes and interiors and even when pine trees did establish, there was little erosion protection during the first 5-to 10-year period. Severe gullyng, erosion, and toxic mine drainage is present today on most of these mines. Due to the normal sequence of the mining process during this period, rock, shale, and acid overburden composed much of the upper layers of the spoil banks - thus further degrading the probability of successful revegetation.

90 n3. Communication with Mr. H. T. Williams, Alabama Department of Industrial Relations.  
3 January 1977.

85 The Alabama Water Improvement Commission regulations went into effect in February 1975. Since that time, an engineered water pollution control plan has been required for each mining permit. The guidelines require diversion of all drainage from spoil banks and mine interiors to a settling basin and treatment of toxic drainage. Mining is allowed to within 100 feet of stream banks. This law to date has not significantly reduced mine pollution because of lax enforcement dictated by budget limitations, program cutbacks, cumbersome administrative procedures, lack of staff understanding of engineering aspects of the control facilities (this is not meant as a criticism of AWIC inspection personnel who are mainly biologists and who, under the adverse work load, have done a creditable job), and the impossibility of controlling mine pollution at the edge of the mine. The history of pollution control structures visited by me during the past year has been one of total inadequacy. Heavy rains have washed out silt dams or caused overflows which allowed large silt releases. The present enforcement requires that only the pollution control plans be designed by a professional engineer and implementation and construction is left up to the mine personnel. This virtually guarantees that certified construction methods are not used in many cases. The AWIC inspectors do not have time to be present when construction is taking place. Some silt traps have washed out two times in one year in Tuscaloosa County. Very few cases of toxic drainage treatment seem to be occurring.

85 The 1975 Alabama law is presently in the initial stages of implementation and it is too early to predict what the enforcement will be. The commission is chosen by the governor and many of the appointments involve men with little knowledge of strip mining in the state and who have no firm commitment to a major upgrading of the poor practices of the past. A lone conservationist was appointed to the commission and he received much criticism at the time of appointment from environmental organizations because of his lobbying for passage of the weak 1975 law. As mentioned previously, an analysis of the 1975 law revealed 37 major deficiencies. n5 The reclamation performance standards allow leaving the highwall, require no topsoil or subsoil

replacement, permit spoil graded to rolling topography with no specification on final slope, require no water pollution control measures, demand no drilling and coring to determine spoil characteristics before mining, and mandate only 400 pine trees per acre on the mine interior for vegetative cover. Basically the environmental performance standards show little improvement over the 1969 Alabama law. Amendments to the law did, however, require 1000-foot mining setbacks around Smith Lake in North Alabama and Little River Canyon (a state-protected scenic river and state park).

85 n5. Doyle, John C.: "An Analysis of Six Selected State Statutes and Promulgated Regulation," Environmental Policy Center, 324 C Street, S.E., Washington, D.C. March 1976.

86 III. Environmental, Economic, and Social Impact of Coal Surface Mining in Alabama.

86 Major public and private property damages from surface mining operations in Alabama are:

86 1. Damages to water resources due to toxic mine drainage and siltation involve major damage in approximately 400 miles of major streams and reservoirs. This mileage includes four potential state or federal wild and scenic rivers and major sedimentation of two U.S. Corps of Engineers reservoirs which are navigable waterways. n7, 8

86 n7. "Report on the Sedimentation of Daniel Creek," U.S. Army Corps of Engineers, Mobile District, Mobile, Alabama. December 1975.

86 n8. "Report on the Pollution of Daniel Creek," U.S. Army Corps of Engineers, Mobile District, Mobile, Alabama. June 1974.

86 2. Further damages include diminished commercial and private-property values near surface-mined areas and affected water resources, damage to homes by blasting, n9 loss of insurance, and inability of property owners to get loans on homes for resale purposes.

86 n9. Cheatwood, Earl: Report to the House of Representatives Committee on Interior and Insular Affairs. 10 January 1977.

86 3. Reduced land productivity after mining for forestry operations and loss of wildlife habitat are evident on the majority of strip-mined land in Alabama. Measurements taken in

Tuscaloosa County indicated substantial reduction in pine tree growth on graded spoil banks, being particularly evident after 5-8 years of growth. n10

86 n10. Bailey, J.E.: Testimony Before the Alabama Senat Health Committee on Strip Mining. 21 June 1973.

86 4. Impact of land and stream degradation on the outdoor recreation and tourist industry is significant.

86 5. Economic losses are incurred by miners and their families after mining accidents.

86 6. State and federal roads suffer major damage.

86 7. Highway accidents and vehicle damage are greater due to road damage caused by coal hauling.

86 8. Surface mining causes underground water supply contamination and aquifier modification. Wells are going dry near strip-mined areas, and this has been a major cause of citizen law suits in Alabama.

87 9. The habitat for rare and endangered species of plants, animals, and fish has been reduced. Pollution and siltation of river systems have been a major contributing factor. The destruction of the Locust Fork of the Warrior River by strip mining was called the "greatest ecological disaster of the century" in a legislative review from the state Attorney General's office. Mining on the banks of the Cahaba River has apparently precluded a major reach of the river from qualifying as a National Wild and Scenic River.

87 10. Coal hauling and blasting has created a public nuisance. Noise and dirt are the major environmental degradations near mines. Blasting by strip mine operations has been a major cause of landowner complaints in the state. Many homes have been damaged by careless blasting and there is evidence that the criterion used by the mining industry for a determination of a safe level of blasting (U.S. Bureau of Mines Report 656, soil particle velocity of two inches per second) actually gives a probability for major home damage of 3% for one blast. The effect of cumulative damage for repeated blasting is not considered and would be much higher. There appears to be a scientific justification for the many blasting-damage complaints from homeowners.

87 11. Psychological impact on nearby residents has contributed to mental health problems in the state, along with increased medical costs which result. n11, 12

87 12. The ad valorem tax base has been decreased due to property devaluation and resource depletion.

87 n11. Bailey, J.E.: "Regional Impact of Coal Surface Mining," Orientation Session on Surface Mining for the Legislature of Alabama, Mineral Resources Institute - State Mine Experiment Station, The University of Alabama. 5 May 1975.

87 n12. Morgan, Mark L.: "Enforcement of Strip Mining Laws," Center for Science in the Public Interest, 1979 Church St., Northwest, Washington, D.C. 1975

87 There has been no analysis by an Alabama state agency of social and environmental costs of surface mining. A rough estimate of public damages was made by Bailey in 1975 n13 and the range of social costs appeared to be \$1.21 [\*] \$2 .45 per ton of coal surface mined, although at the present time this number seems overly conservative. Using the above estimate, the cumulative public damages in Alabama due to surface mining will grow to over a half-billion dollars by the year 2000. The proposed federal law could mitigate some of the major impacts of surface mining by the reduction of environmental damages. Some of the social costs will also be offset by the increased employment offered by mine reclamation in what is a labor unintensive industry. Many citizens of Alabama will, however, continue to be adversely affected by strip mining even with the proposed federal law.

87 n13. Communication with Dr. Eugene Carden, Department of Aerospace and Mechanical Engineering, Consultant, Mechanics of Materials and Fatigue, The University of Alabama. 4 January 1977.

87 IV. Research on Surface Mined Land Reclamation and Water Pollution Control in Alabama.

87 Land reclamation and pollution control technology is only as good as the research upon which it is based, and the research programs within a state are a good indicator of the future commitment a state plans to make. An analysis of the status of on-going reclamation research within the state gives us even more cause for concern. Research programs of interest are as follows:

88 1. Auburn University (Dr. Sam Lyle) has conducted a small research program for the industry (Alabama Surface Mining Reclamation Council) at a level of \$3 0,000 per year for 5 years. This program deals only with plant-growth techniques on graded spoil. There are no control plots with topsoil or subsoil replacement. This research is developmental research aimed at short-term industry needs.

88 (Dr. Sam Lyle has been appointed by Governor Wallace to the new surface mining commission.)

88 2. The Tennessee Valley Authority has a research project in North Alabama aimed at revegetative growth on graded spoil piles. The dollar value of the research is unknown.

88 3. Dr. Earle Cross in the Biology Department at The University of Alabama has a small project focused on erosion control on spoil banks. This project is funded by several surface mining companies and is less than \$5000 per year

88 4. Dr. Travis Hughes of the Geology Department, The University of Alabama, has an NASA-funded project for assessment of mine erosion using satellite photography. There is little revegetation research being conducted in this project.

88 5. The Bureau of Mines state office has no research in progress to my knowledge.

88 6. The Alabama Geological Survey has no research in progress to my knowledge.

88 7. The Alabama Development Office and the State Conservation Department have no impact studies or reclamation studies in progress to my knowledge.

88 Thus, in summary, the total research being conducted in the state on a problem that promises as much as 1 billion dollars damages to state citizens, their investments, and their environment is less than approximately \$1 00,000 per year. The problems of spoil water retention, aquifer damage and pollution, and water pollution control are areas which have no major research programs in effect. Research in land restoration and accompanying soils problems are not even being considered at a state level. This situation occurs in a state where coal with a market value of close to half a billion dollars was mined last year. At this time there is not one "model" reclamation project by industry in Alabama.

89 V. Summary.

89 If we ask the question, "Does Alabama need federal surface mine regulation?" and summarize Alabama's handling of the strip mining problem, we get the following conclusions:

89 1. Alabama's new strip mining law is among the weakest of state laws and is totally inadequate for protection of its citizens.

89 2. Enforcement of mine reclamation and water pollution laws in the past have been underfunded, understaffed, and ineffective.

89 3. Damages to public and private property are large and will approach one-half to one billion dollars by the end of the century.

89 4. Important natural areas of scientific and recreational value are being irreversibly affected without any consideration of opportunity costs.

89 5. The mining industry has such good control over the state legislature that, in the last legislative battle when Alabama's new law was passed, conservationists did not get any significant amendments to a weak bill written by industry lawyers except the 1000-foot mining setback on Smith Lake and Little River Canyon. (1000 feet is not sufficient for protection of water quality.) This is after 10 years of hard work by thousands of Alabama citizens.

89 6. Research and planning in the state for reclamation and pollution control is virtually non-existent.

89 Does Alabama need federal surface mine regulations? My answer is "Yes, Alabama needs a strong federal strip mining law." If the past and present experience with surface mining for coal is considered along with an estimate of what the future holds, the only real question is whether the federal law will be too little and too late.

91 EXHIBIT A

91 SIERRA CLUB COAL MINING POLICY

91 MSC (Smith-Gill) COAL MINING ("Mining") - the extraction of coal by surface mining or deep mining methods - has often proved to be an unacceptable activity under past and present practices. Mining has caused and continues to cause serious and extensive environmental

damage, including pollution of water, depletion of water supply, destruction of land, harm to health and safety, and the serious disruption of community life. Not only has mining destroyed thousands of miles of stream and thousands of acres of land, but the damage caused by mining is often irreparable. In addition, present mining policies result in the elimination of a non-renewable resource without proper consideration of alternative renewable and non-polluting energy sources and energy conservation.

91 The Sierra Club supports only that mining which is designed and conducted to meet goals consistent with the maintenance or improvement of environmental quality. These goals must be implemented through an effective and comprehensive program of planning, research, legislation, regulation, taxation, energy conservation, and utilization of environmentally acceptable alternative renewable and non-polluting energy resources. In these processes, public notice and participation must be fully authorized and encouraged. The health and safety of mine workers and other affected citizens must be rigorously protected.

91 The Sierra Club opposes mining under any conditions in areas with significant environmental values or areas with unusual sensitivity to the effects of mining. The Sierra Club supports only that mining which ultimately meets the following goals:

91 A. Fills a necessary energy need based on the assumption of maximum energy conservation.

91 B. Restores land affected by mining to a long-term self-sustaining ecosystem, as indicated by:

91 1. Equal or greater biological productivity, and

91 2. Vegetation which can withstand natural climatic variations without long-term human maintenance and which can support native wildlife.

91 C. Maintains or improves water quality and supply.

91 D. Maintains or improves air quality.

91 E. Restores land affected by mining to a use or uses compatible with the protection of environmental quality.

91 F. Avoids creation or perpetuation of community dependence on mining, and avoids other disruption of community life.

91 G. Protects the health and safety of miners and citizens of the community

91 H. Creates no 'latent environmental hazards [\*] may affect future generations.

91 Further, the Board of Directors of the Sierra Club adopts the implementation guidelines for planning, research, legislation, regulation and mining taxes embodied in the second draft report of the joint coal subcommittee of its National Energy Policy Committee.

92 The CHAIRMAN. Our last witness this morning is Mr. William Kelce, of the Alabama Surface Mining Reclamation Association.

STATEMENT OF WILLIAM KELCE, ALABAMA SURFACE MINING RECLAMATION ASSOCIATION, ACCOMPANIED BY C. A. POWELL, GENERAL COUNSEL

92 Mr. KELCE. Mr. Chairman, Mr. C. A. Powell, attorney from Birmingham, and our legal counsel for the reclamation council, is also with me today.

92 The CHAIRMAN. We are happy to have you here, Mr. Powell.

92 Mr. POWELL. Thank you, Mr. Chairman.

92 Mr. KELCE. I am William M. Kelce. I reside in Birmingham, Ala. I am the chairman of the Alabama Surface Mining Reclamation Council which represents 18 surface mining companies in the State of Alabama. Our member companies produced 61 percent of the total surface mined coal tonnage in Alabama during our State's fiscal year ending September 30, 1976.

92 I might also mention that I am now association director, but by past history, my family founded the Peabody Coal Co. I was with them until 1968, at the time we sold to Kennecott. Four of us left Peabody and formed Arch Minerals Co. in 1969, which is now the seventh largest producer in the country.

92 I do have some background in surface mining.

92 Mr. Chairman, my statement before this committee may be a little rambling for two reasons:

92 First: I've only had a few days since notification of the hearings to prepare a statement.

92 Second: I'm not sure what the purpose is for this hearing. I've prepared my statement on the assumption that this hearing is to determine whether there is a need to hold hearings on surface mine legislation.

92 The reason I assumed this is because the new Interior Committee for this Congress has not been formed, and knowing our American process of free government, I'm sure you will want to hold hearings on the need for surface mine legislation when you have your new members available to listen to testimony from both sides so they may determine for themselves, based on the facts, whether there is still a need for a Federal bill to regulate surface mining.

92 Mr. Chairman, rather than taking up a lot of this committee's time with my thoughts on the need for a Federal surface mine bill - which, by the way, would be prejudiced in favor of the coal industry - I will relate to you the feelings of some of our State's officials on the matter and also some facts made by a study by the University of Alabama on surface mine legislation.

92 First, let's look at the study and recommendations made by the Minerals Resources Institute, University of Alabama. The following are quotes by Dr. Robert M. Cox presented at an orientation session on surface mining for the Legislature of Alabama held on May 5, 1975.

92 He, by the way, is a mining engineer and not an aerospace engineer.

93 If reasonable surface mining and reclamation laws are adopted, surface mined coal production is expected to increase to 20 million tons per year by 1980. This rate of production would employ 4,300 miners and contribute \$472 million to the State economy.

93 If restrictive surface mining legislation is enacted, surface mined coal production will decrease to approximately 10 million tons per year by 1980. This will result in the employment of only 2,000 miners and a contribution of only \$164 million to the State economy.

93 The physical characteristics of Alabama coal occurrences and the associated high mining cost preclude the one to one replacement of surface production by underground production that is often mentioned by opponents of surface coal mining. The current importation of 9 million tons of coal per year for consumption within Alabama attest to this economic fact of life. The

adoption of unrealistic and restrictive surface mining legislation will cost Alabama, by 1980, approximately \$2 06 million annually in lost revenues and more than 1,800 jobs in the coal industry.

93 Surface mining is the safest and most economical way to produce raw materials from the earth's crust. It also affords a more healthy working environment for the individual miner. Surface mining now accounts for more than 96 percent of our annual mineral requirements and approximately 60 percent of our coal requirements.

93 The problems associated with surface mining are the disruptions of the land's natural topography that create unsightly landscapes, and environmental damages of serious concern to the majority of our population. These problems have been recognized during the past decade and to a great extent have been corrected by modern mining and reclamation procedures.

93 The purpose of this paper is to present factual technical and economic information and data, and predicted trends of future coal production and market demands to give members of the State legislature an insight into the probable consequences of a new state law regulating the surface mining industry.

93 The abundant supply of relatively inexpensive steam coal produced by surface mines for the purpose of electric power generation has provided the foundation for the industrial expansion that has occurred throughout Alabama. Alabamians in general have enjoyed the benefits of plentiful low-cost electric power.

93 Unfortunately, recent political decisions - brought about by various pressure groups - threaten to destroy or severely curtail the surface mining of coal and eliminate the economic advantages once enjoyed by all. These political decisions are rapidly changing the basic rules of operation and fundamental economics of surface coal mining. Recent changes, resulting from the enactment of environmental health and safety laws, and various bureaucratic rules and regulations have had a threefold effect: greatly increased operating cost, increased leadtimes for mine development, and limited potential reserve base for future mining.

93 Current legislative proposals are also casting a shadow of uncertainty over the future of all coal mining operations creating serious delays and increased cost for the expansion of the coal

industry which is necessary to meet our projected independence goals.

93 For decades the United States has been regarded as a politically stable country by the mining industry, and mine developments could be planned with little regard to major political changes significantly altering the economics of a mine operation. In recent years, however, the enactment and continuing consideration of numerous environmental and safety laws and regulations at all levels of government, is severely eroding the economic-political stability of the U.S. mining industry.

93 The result has been a growing shortage of raw materials and greatly increased mining cost. Future uncertainty, within reasonable limits, can be handled by the U.S. mining industry, but recent political decisions - or, in fact, indecisions - have brought about uncertainty into all areas of the nontechnical aspects of surface coal mining.

93 Environmental laws and regulations have had both a direct and indirect effect on the mining productivity and cost. The direct costs were anticipated, but the indirect cost resulting from lowering productivity, development time delays, and increased capital costs have been much greater than expected. Also, the continuing uncertainty about the ultimate environmental regulations and goals has caused untimely delay in the development of new mines. The United States has burned more coal than has been produced for each of the last 3 years; thus lowering our national stockpiles to a critical level.

94 The 23-percent drop in productivity in the underground utility mines beginning in 1969 is attributed primarily to the enactment and subsequent enforcement of the 1969 Federal health and safety law. The 46-percent drop in productivity in the surface mines that began in 1970 is attributed primarily to the passage and enforcement of environmental rules and regulations. Of particular interest is the 27-percent drop from 1973 to 1974 which coincides with the adoption of Alabama Water Improvement Commission rules and regulations and new zoning ordinances in Jefferson County.

94 The economic analysis of the surface coal mining industry is shown in table VIII as a value per acre disturbed basis. This format provides economically positive data in comparison to alleged environmental damage speculated by various environmental groups to be in the range of

\$500 to \$3 ,000 per acre. The economic analysis indicates an economic contribution to the State's economy that has increased from \$24,000 per acre to a current value of \$54,000 per acre. The projected economic contribution is \$6 25,000 per acre.

94 Surface mining of coal requires only a temporary use of land that is returned to useful forest production or agricultural uses within 3 to 5 years. Coupled with the fact that less than one-quarter percent - 50,000 acres - of Alabama's land area has been surface mined for coal to date and that less than 2 percent contains potential surface mineable reserves, there is no real basis in fact for much of the alarm and political action that has been brought about in recent years by various environmental groups.

94 In addition, the economic analysis shows a very favorable benefit to cost ratio in favor of continued surface mining, not to mention the added health and safety benefits of surface mining in comparison to underground mining.

94 As previously mentioned, Alabama coal is expensive to mine relative to coal produced in the Midwest and Eastern United States. During 1974, Alabama imported 7 million tons of utility coal. Approximately 11 million of the total 15 million tons of utility coal produced in Alabama in 1974 came from surface mines.

94 If reasonable surface mining regulations are adopted, the production of surface mined utility coal should increase to 16 million tons per year by 1980. This represents a production increase of 5 million tons and about 1,100 new jobs. The adoption of restrictive legislation will result in an estimated 4 million tons per year drop in production and the loss of about 900 jobs.

94 The major point of interest is that utility coal consumption in Alabama will increase to approximately 29 million tons per year by 1980. With reasonable surface mining laws, 16 million tons per year of this coal will be mined in Alabama by surface methods. If restrictive laws are adopted, our in-State production will decrease by 4 million tons and we will import an additional 8 million tons from the Midwest as shown in tables XI and XII.

94 If we can adopt a reasonable surface mining law, we stand to gain the benefits of an additional \$2 06 million of coal production per year by 1980 and the creation of more than 1,800 new jobs. If we adopt restrictive laws, we will lose not only the 1,800 jobs and the \$2 06 million

of production, but we will have to pay an additional \$2 06 million per year out of the State economy to "buy" imported coal for use in Alabama. Thus, our net loss would be \$412 million annually and 1,800 jobs.

94 I will not attempt to draft a new mining law, but I would recommend that:

94 The legislature limit its role to setting environmental goals and legal standards and not attempt to legislate engineering practices, techniques or mining methods for the coal industry. Generalized procedures that would solve problems in some mines may very well create problems in other mines. No two coal mines are exactly alike and each requires specific techniques and methods for successful and economic operation under any given set of rules and regulations.

94 A new state surface mining law should be drafted with provisions for adequate reclamation of the affected lands and to minimize off-site environmental damages. Reasonable bonding and reclamation standards should be adopted that recognize the private ownership nature of coal property in Alabama, and the value of adjacent lands. The law should also recognize the relatively minor land-use requirements of the surface mining industry in the State as a whole, and the economic significance of locally produced coal on the continued industrial development of the State.

95 The Alabama Legislature proceeded during the 1975 session to upgrade Alabama 1969 surface mining laws. The following are excerpts from that law.

95 The CHAIRMAN. I wonder if we could read these and you could jump over to the bottom of the next page and you could comment on the law?

95 Mr. KELCE. I have read these particular excerpts at length to show this committee that:

95 One: The Alabama law requires that all lands mined must be reclaimed.

95 Two: That citizens of the State have a say-so in regulating the coal industry, and

95 Three: That there are people on the regulatory body that have expertise in reclamation technology.

95 The law requires a license to mine, and in order to get a license the operator must show financial responsibility to execute the requirements of the act.

95 You can probably read this, Mr. Congressman.

95 The CHAIRMAN. Your entire statement will be printed in the record.

95 Mr. KELCE. I will jump over to page 11.

95 I have only highlighted the Alabama law here due to the time limit. However, I think it illustrates that Alabama and other States have adequate laws that protect the environment and regulate the mining industry.

95 It also illustrates that the States are doing this job within a lot of bureaucratic redtape causing loss of jobs - increasing the price of coal substantially which, in the end, must be borne by the public in increased electric bills and, last, but not least, the States have proven that there is not a need for another Federal law that takes away States rights to run their own business.

95 One of the most important changes that have occurred in the past couple of years is the change of opinion that some organizations and people have toward Federal surface mining legislation. One of them being the United Mine Workers of America.

95 If you will remember, the UMWA supported Federal legislation 2 years ago. Today they don't, and I quote from the UMWA report to the delegates of the 47th Consecutive Constitutional Convention, Legislative and Political Action (COMPAC) Committee:

#### 95 RESOLUTION ON MINING AND ENVIRONMENTAL PROTECTION

95 Each of us here knows the special problems concerning surface mining and reclamation that affect only the areas in which we live. What works in the hills of West Virginia may not work in the plains of Illinois. The way that some companies in West Virginia push the top off a mountain to remove coal differs from the methods used in the West where they remove up to 80 and 90 feet of overburden from flat terrain and put it in spoils to get to the coal. Some reclamation standards that would benefit one area could possibly harm another.

95 We recognize that strip mining and reclamation are both very important to the economy and ecology of our country.

96 It is vital that we protect the fragile water systems, soil erosion, and foodproducing lands, not only for ourselves, but more for the use of our children and our children's children.

96 In closing, I'd like to briefly read some excerpts from letters written to Congressman Udall of Arizona, Congressmen Flowers and Bevill of Alabama.

96 From George Wallace, Governor of the State of Alabama:

96 It has been called to my attention that Congressman Udall will hold hearings commencing January 12, 1977 respecting the Federal strip mining legislation and other legislation regulating the mining industry.

96 It continues to be our position and policy that the individual States ought to take the lead in this regard and we have supported strong strip mining legislation in Alabama and will continue to do so.

96 From Lt.Gov. Jere Beasley, State of Alabama:

96 It is my understanding that you plan to present testimony before the Committee on Interior and Insular Affairs concerning potential legislation designed to provide Federal regulations on the surface mining of coal.

96 I appreciate your interest in this type of legislation. I, too, am vitally interested in seeing that the State's environment is adequately protected. However, regulatory controls on surface mining of coal should not place unreasonable or unnecessary regulations on the mining industry.

96 I personally feel that the dual objective of protecting the environment and allowing the strip mining industry reasonable flexibility within its operation can most realistically be met by allowing each of the several states to provide for the regulation of strip mining within their own boundaries.

96 Historically, governmental regulations have proven to be most effective and efficient when administered at the State or local level. By contrast, regulatory controls which have in many cases been deemed to be cumbersome, costly, and not only ineffective, but in many cases counterproductive to their intended goals, are usually those controls administered at the Federal level.

96 From Bobby Tom Crowe, Speaker Pro Tem, House of Representatives, State of Alabama.

96 I am writing to encourage your efforts in Congress to preserve the State's authority to

orderly regulate its own mineral production. Coal mining in the mineral-producing States has unique characteristics that do not make "blanket regulation" realistic.

96 Each Federal bill introduced in Congress in the last 3 years set national standards to apply to all States. This does not allow for local people to make, administer, and enforce their own mining regulations.

96 In Alabama we have a coal surface mining act that is about 1 1/2 years old. This act sets standards and procedures to meet Alabama's needs and adequate financing is provided by the legislation to carry out its intent.

96 I am currently serving on the Interstate Compact Mining Commission as The Governor's designee for Alabama. The Compact Commission has unanimously voted to oppose blanket Federal legislation that takes away the regulatory authority from the states.

96 From Joe McCorquodale, Jr., Speaker, Alabama House of Representatives:

96 In the 1975 session of the Alabama Legislature, we passed a regulatory act regarding coal surface mining in Alabama, and amended this act in the 1976 session. This act is very heavily weighted toward a program of definitive reclamation.

96 It is my belief that each State should have its own regulations and enforcement of mining laws. The added bureaucracy and governmental redtape would not be to the best interests of conservation or energy production. The proposed strip mining bills would have a very serious adverse economic effect on the areas of employment and related coal industry jobs in Alabama.

97 The CHAIRMAN. These are the same letters Mr. Bailey provided for the committee?

97 Mr. KELCE. Some are. Some were, but these aren't.

97 The CHAIRMAN. OK.

97 Mr. KELCE. This is from G. William Noble, chairman, Alabama Surface Mining Reclamation Commission:

97 The purpose of my writing to you is to call to your attention the new Alabama act and to state that in my opinion this act, when fully operational, will be more than adequate to meet Alabama's needs in regard to reclamation. Obviously, the problems in Alabama differ greatly

from those in other parts of the country and it is my firm conviction that in the area of mined land reclamation the peculiar characteristics of each area should be taken into account and that is best achieved by local legislation such as our act. Our act and the regulations which our commission is in the process of formulating provide effective and realistic tools tailored to our State's problems. I am confident that if we determine that additional statutory means are necessary, the Alabama Legislature will respond.

97 I am delighted that Congress is apparently examining the necessity for any further consideration of a Federal bill rather than moving blindly forward on the assumption that such a bill is needed. While there may have been a need 4 or 5 years ago when Congress began its examination of surface mining, the situation obviously changed. I am convinced that we have no need for an additional Federal bureaucracy to assure adequate reclamation in Alabama.

97 From W. T. Thrash, business manager, International Brotherhood of Operating Engineers, Local 312:

97 I'm writing you on behalf of myself, my organization, and the people we represent in regards to the proposed strip mining legislation.

97 We believe the legislation that we have here in Alabama is sufficient to do the job it was intended to do. We supported this legislation and we will continue to support any improvement made by the people of Alabama along this line.

97 However, we think it should be left up to local people living in areas that are affected by the operation.

97 For this reason we earnestly solicit your support in allowing local and State government to enact and enforce legislation governing strip mining in Alabama.

97 I realize that there are a few coal miners in Alabama that don't even want State regulations. Also, I realize that there are a few radical environmentalists, or should I say preservationists, that don't want coal surface mined at all. However, members of the committee, these letters pretty well sum up Alabama's position on the need for Federal legislation to regulate surface mining.

97 There is no need now, for the reasonable and intelligent people of Alabama have found they

can pass and enforce laws at the State level without creating another Federal bureaucracy that will, in the end, add to their tax burden.

97 I appreciate the opportunity of appearing before this committee today and I will be more than happy to answer any questions you might have.

97 The CHAIRMAN. Thank you, R. Kelce.

97 Were you sitting where you could see Mr. Bailey's slides?

97 Mr. KELCE. Yes, sir. I have seen them for the last 7 years.

97 The CHAIRMAN. Is this an unfair presentation?

97 Mr. KELCE. Very much so. I would offer the same opportunity that this committee come to Alabama and see what is being done today.

98 The 1969 Surface Mining Act which he referred to during his presentation wasn't worth the paper it was written on, quite frankly.

98 The 1975 act is very, very tough.

98 The CHAIRMAN. Do you believe, as some have said, that the States are beefing up their laws because of the threat of Federal legislation?

98 Mr. KELCE. Yes, sir, I do. It was kind of a unique situation during the 1975 session of the legislature to see myself and Archie Phillips, one of the most adamant environmentalists in the State to see he and I working in the legislature together, trying to get the law passed.

98 The CHAIRMAN. Any questions?

98 Mr. Seiberling?

98 Mr. SEIBERLING. Did you see the picture of the - I don't know the name of the river. It sounded like Cahoga, but it wasn't. That's in Ohio. Where the strip mining has silted, and obviously made it ineligible for consideration as a wild and scenic river? Did you see that this morning?

98 Mr. KELCE. I couldn't see it from where I was sitting. Mr. Powell might.

98 Mr. POWELL. Mr. Seiberling, there were pictures of two rivers. One was a creek, Daniel Creek. The other was the Cahaba River. I am not sure which one you are referring to.

98 Mr. SEIBERLING. Both of them.

98 Mr. POWELL. I was so amazed at the statement. The statement was the reservoir looks like this.

98 Mr. SEIBERLING. I think he indicated that was the tributary to the reservoir. He later said that some of the silt he felt had had gotten into the reservoir, but they haven't checked that yet.

98 Mr. POWELL. I think it ought to be pointed out Mr. Bailey is the lead plaintiff involved in a case on the matter. The scientific facts dealing with Daniel Creek are that the Corps of Engineers raised the dam some 20-odd feet without doing an environmental impact statement in an area where coal mining had been going on since the late 1930's, turning the creek into a silt trap. There is no doubt

98 Mr. SEIBERLING. Let's look at the other river, the Cahaba River. You saw the aerial photographs and the strip mine right next to the river?

98 Mr. POWELL. Yes, sir.

98 Mr. SEIBERLING. Where there didn't appear to be any reclamation visible from the air, at least. In what ways would the present new law in Alabama prevent that sort of thing?

98 Mr. POWELL. Alabama has a two-pronged approach. It has one commission handling water problems, of which that is one. There is one commission handling coal mining per se, and mine site reclamation.

98 The fact of the matter is the Cahaba River has also been the scene of enforcement actions, the first one being about a year ago. The Supreme Court has just handled that in the State. It very effectively controlled it.

98 What is showing now is an area that has been coal mined, I know, since the 1940's. This is not some area that recently has been opened up. It is an old coal mining area. How would it handle it? An operator would now have to show where he is mining, what he is going to do to prevent that kind of thing.

99 He will have to have a permit from the water agency before he can open his mine. You don't get that permit unless you show you will not do that kind of thing.

99 You will have a bad miner on occasion. No matter what kind of law you pass, be it State or Federal, you will have somebody break the law.

99 It appeared to me that is what he was showing. If so, I think the tools are there at the State level to bring rather swift and severe punishment, including jail.

99 Mr. SEIBERLING. Then how does it differ from the bill that we are considering in this committee in terms of the actual effect?

99 Mr. POWELL. In terms of effect, the bill you are considering in the committee seeks to apply across the board standards that aren't compatible with our mines and our topography.

99 Mr. SEIBERLING. I read the summary of the bill that was in Mr. Kelce's testimony, and it seemed to me that to the extent that it indicated a form, the form was one that was very much compatible with the bill that is before us.

99 In other words, we don't supplant it. This bill doesn't supplant any State regulatory authority. It merely says that if they do have reclamation standards, that they shall be up to certain levels. I am just wondering to what extent the State law in Alabama would be deviating from what is required by this bill?

99 Mr. POWELL. I am havin to rely on the old bill, the last on that was passed by Congress and vetoed. I have not seen the new bill. I apologize for that.

99 I assume they are substantially similar?

99 Mr. SEIBERLING. I think it would be very helpful if we could have an analysis for this committee of your view as to the differences between the regime in Alabama that would be required by this bill and the present law in Alabama.

99 Mr. POWELL. I do, too. I hope if we have committee hearigs, we will have an opportunity to do that.

99 Mr. SEIBERLING. If you would care to submit that, I am sure Mr. Udall would see that the committee got that.

99 Mr. POWELL. I would like to clear up one thing for Congressman Buchanan who commented that there is no blasting control, and that while blasting is not thought of as a matter of reclamation, since it is operational.

99 Congressman, that is just not so. I am sorry. The act specifically has a section dealing with blasting. The commission has under consideration now - the commission, the State commission, extensive blasting regulations.

99 In fact, within the last 2 or 3 weeks, they have levied substantial fines and penalties and imposed on an ad hoc basis on some irresponsible miners some rather substantial penalties.

100 I think that matter is getting under control. We sought to have a blasting bill passed in the State legislature the last go-around that would apply to all industries. The techniques in coal mining, road building, quarrying are essentially the same. That bill was defeated.

100 Why, we don't know, except there are some plaintiffs' attorneys running around getting rich on blasting cases. They didn't really care for it. That is being controlled, Congressman Buchanan. I think it will be very tightly under control within the next week or two.

100 The CHAIRMAN. Gentlemen, we thank you.

100 Mr. SEIBERLING. While he is on the blasting, Mr. Charman, could I ask one more question?

100 Are you saying that all of these cases where the Veterans' Administration has denied loans and so forth because of blasting damage and the threat of damage would be prohibited by - the situation that led to those would be prohibited by the new Alabama law?

100 Mr. POWELL. Congressman, again there is no way we can stop bad folks from doing bad things.

100 Mr. SEIBERLING. I am saying would they be prohibited by the law?

100 Mr. POWELL. They will be controlled. Proper blasting is not going to produce the things you heard about. I don't know what types of analyses Mr. Cheatwood used. Mr. Cheatwood didn't mention that he is the plaintiff in a lawsuit and at one point in that lawsuit said he hadn't been damaged or at least that's what we have been told. There has been damage.

100 I think it will be lessened. There will inevitably be the ba guy doing the bad thing. I think blasting, properly conducted, is not going to lead to damage. I think the commission in Alabama has the expertise to see to it they adopt the proper standards.

100 I think the industry as a whole is in favor of that. I just happened to pick up a newspaper from New Year's Eve and the headline on it kind of amazed me. It is from a reporter who has been after us for 6 years. He says one of the surprising things that has developed since the

Alabama Surface Mining Reclamation Commission began enforcing State strip mining laws is that coal miners are among the commission's best allies against offenders.

100 You mentioned earlier competition in Ohio. We wish we could do something about competing with Western coal where they have no overburdening of 40-foot seams. We are concerned about the bad guys running around from under the law that we are having to compete with. I think between that self-interest and the commission's heavily citizen-oriented makeup, I think the problems that Alabama has seen will be eliminated.

100 And I think the need for Federal legislation at that point as it applies to Alabama disappears. The need may have been there 5 or 6 years ago. It no longer simply exists.

100 Mr. SEIBERLING. My comment is if the Alabama law provides in effect standards that are comparable that the bill before us provides, then far from being an argument that we don't need a Federal law, it is an argument that we do.

101 Mr. POWELL. I would not leave the impression with you that we require the elimination of all highwalls or that we prohibit mining on steep slopes. We think we have the expertise in Alabama to mine steep slopes.

101 We also know much of the land we are mining starts off as a high wall. We are winding up leaving it maybe a highwall or maybe not. We don't prohibit those, nor do we seek to prohibit mining. We seek to control the way it is done.

101 Mr. SEIBERLING. I think if you take a better look at this bill, it doesn't prohibit mining on steep slopes.

101 Mr. POWELL. Economically it does.

101 Mr. KELCE. Does it do away with the mining of highwalls?

101 Mr. SEIBERLING. It requires the restoration to the approximate original contour except in certain circumstances.

101 Mr. KELCE. I think it would behoove this committee - we are doing it right now in the State of Alabama - a highwall is a cut with a vertical wall. I think we are going to find in the State of Alabama that we have more highwalls on our Federal highway systems, our interstates and U.S. highways, than we have in strip mining. Are we going to eliminate high walls on our Federal highways?

101 Mr. SEIBERLING. I do not think that two wrongs make a right.

101 The CHAIRMAN. On that happy note, let's conclude this morning's hearings.

101 Thank you, gentlemen.

101 The committee will recess until 9:45 Wednesday.

101 [Prepared statement of William Kelce follows:]

102 CHAIRMAN UDALL, MEMBERS OF THE COMMITTEE:

102 MY NAME IS WILLIAM M. KELCE, I RESIDE IN BIRMINGHAM, ALABAMA, I AM THE EXECUTIVE DIRECTOR OF THE ALABAMA SURFACE MINING RECLAMATION COUNCIL WHICH REPRESENTS EIGHTEEN (18) SURFACE MINING COMPANIES IN THE STATE OF ALABAMA. OUR MEMBER COMPANIES PRODUCED SIXTY ONE (61) PER CENT OF THE TOTAL SURFACED MINED COAL TONNAGE IN ALABAMA DURING OUR STATES FISCAL YEAR ENDING SEPTEMBER 30, 1976.

102 MR. CHAIRMAN MY STATEMENT BEFORE THIS COMMITTEE MAY BE A LITTLE RAMBLING FOR TWO REASONS. FIRST OF ALL I'VE ONLY HAD A FEW DAYS SINCE NOTIFICATION OF THE HEARINGS TO PREPARE A STATEMENT, SECONDLY, I'M NOT SURE WHAT THE PURPOSE IS FOR THIS HEARING, I'VE PREPARED MY STATEMENT ON THE ASSUMPTION THAT THIS HEARING IS TO DETERMINE WHETHER THERE IS A NEED TO HOLD NEED HEARINGS ON SURFACE MINE LEGISLATION. THE REASON I ASSUMED THIS IS BECAUSE THE NEW INTERIOR COMMITTEE FOR THIS CONGRESS HAS NOT BEEN FORMED AND KNOWING OUR AMERICAN PROCESS OF FREE GOVERNMENT, I'M SURE YOU WILL WANT TO HOLD HEARINGS ON THE NEED FOR SURFACE MINE LEGISLATION WHEN YOU HAVE YOUR NEW MEMBERS AVAILABLE TO LISTEN TO TESTIMONY FROM BOTH SIDES SO THEY MAY DETERMINE FOR THEMSELVES, BASED ON THE FACTS WHETHER THERE IS STILL A NEED FOR A FEDERAL BILL TO REGULATE SURFACE MINING.

102 MR. CHAIRMAN, RATHER THAN TAKING UP A LOT OF THIS COMMITTEE'S TIME WITH MY THOUGHTS ON THE NEED FOR A FEDERAL SURFACE MINE BILL (WHICH BY THE WAY WOULD BE PREJUDICED IN FAVOR OF THE COAL INDUSTRY)

103 I WILL RELATE TO YOU THE FEELINGS OF SOME OF OUR STATE'S OFFICIALS ON THE MATTER AND ALSO SOME FACTS MADE BY A STUDY BY THE UNIVERSITY OF ALABAMA ON SURFACE MINE LEGISLATION.

103 FIRST, LETS LOOK AT THE STUDY AND RECOMMENDATIONS MADE BY THE MINERALS RESOURCES INSTITUTE, UNIVERSITY OF ALABAMA. THE FOLLOWING ARE QUOTES BY DR. ROBERT M. COX PRESENTED AT AN ORIENTATION SESSION

ON SURFACE MINING FOR THE LEGISLATURE OF ALABAMA HELD ON MAY 5, 1975.

103 "IF REASONABLE SURFACE MINING AND RECLAMATION LAWS ARE ADOPTED, SURFACE MINED COAL PRODUCTION IS EXPECTED TO INCREASE TO 20 MILLION TONS PER YEAR BY 1980. THIS RATE OF PRODUCTION WOULD EMPLOY 4300 MINERS AND CONTRIBUTE \$472 MILLION TO THE STATE ECONOMY.

103 IF RESTRICTIVE SURFACE MINING LEGISLATION IS ENACTED, SURFACE MINED COAL PRODUCTION WILL DECREASE TO APPROXIMATELY 10 MILLION TONS PER YEAR BY 1980. THIS WILL RESULT IN THE EMPLOYMENT OF ONLY 2000 MINERS AND A CONTRIBUTION OF ONLY \$164 MILLION TO THE STATE ECONOMY.

103 THE PHYSICAL CHARACTERISTICS OF ALABAMA COAL OCCURRENCES AND THE ASSOCIATED HIGH MINING COST PRECLUDE THE ONE-ONE REPLACEMENT OF SURFACE PRODUCTION BY UNDERGROUND PRODUCTION THAT IS OFTEN MENTIONED BY OPPONENTS OF SURFACE COAL MINING. THE CURRENT IMPORTATION OF NINE MILLION TONS OF COAL PER YEAR FOR CONSUMPTION WITHIN ALABAMA ATTEST TO THIS ECONOMIC FACT OF LIFE. THE ADOPTION OF UNREALISTIC AND RESTRICTIVE SURFACE MINING LEGISLATION WILL COST ALABAMA, BY 1980, APPROXIMATELY \$2 06 MILLION DOLLARS ANNUALLY IN LOST REVENUES AND MORE THAN 1800 JOBS IN THE COAL INDUSTRY.

104 SURFACE MINING IS THE SAFEST AND MOST ECONOMICAL WAY TO PRODUCE RAW MATERIALS FROM THE EARTH'S CRUST. IT ALSO AFFORDS A MORE HEALTHIER WORKING ENVIRONMENT FOR THE INDIVIDUAL MINER. SURFACE MINING NOW ACCOUNTS FOR MORE THAN 96 PERCENT OF OUR ANNUAL MINERAL REQUIREMENTS AND APPROXIMATELY 60 PERCENT OF OUR COAL REQUIREMENTS.

104 THE PROBLEMS ASSOCIATED WITH SURFACE MINING ARE THE DISRUPTIONS OF THE LANDS NATURAL TOPOGRAPHY THAT CREATE UNSIGHTLY LANDSCAPES, AND ENVIRONMENTAL DAMAGES OF SERIOUS CONCERN TO THE MAJORITY OF OUR POPULATION. THESE PROBLEMS HAVE BEEN RECOGNIZED DURING THE PAST DECADE AND TO A GREAT EXTENT HAVE BEEN CORRECTED BY MODERN MINING AND RECLAMATION PROCEDURES.

104 THE PURPOSE OF THIS PAPER IS TO PRESENT FACTUAL TECHNICAL AND ECONOMIC INFORMATION AND DATA, AND PREDICTED TRENDS OF FUTURE COAL PRODUCTION AND MARKET DEMANDS TO GIVE MEMBERS OF THE STATE LEGISLATURE AN INSIGHT INTO THE PROBABLE CONSEQUENCE OF A NEW STATE LAW REGULATING THE SURFACE MINING INDUSTRY.

104 THE ABUNDANT SUPPLY OF RELATIVELY INEXPENSIVE STEAM COAL PRODUCED BY SURFACE MINES FOR THE PURPOSE OF ELECTRIC POWER GENERATION HAS PROVIDED THE FOUNDATION FOR THE INDUSTRIAL EXPANSION THAT HAS OCCURRED THROUGHOUT ALABAMA. ALABAMAISANS IN GENERAL HAVE ENJOYED THE BENEFITS OF PLENTIFUL LOW COST ELECTRIC POWER.

104 UNFORTUNATELY, RECENT POLITICAL DECISIONS (BROUGHT ABOUT BY VARIOUS PRESSURE GROUPS) THREATEN TO DESTROY OR SEVERELY CURTAIL THE SURFACE MINING OF COAL AND ELIMINATE THE ECONOMIC ADVANTAGES ONCE ENJOYED BY ALL. THESE POLITICAL DECISIONS ARE RAPIDLY CHANGING THE BASIC RULES OF OPERATION AND FUNDAMENTAL ECONOMICS OF SURFACE COAL MINING. RECENT CHANGES, RESULTING FROM THE ENACTMENT OF ENVIRONMENTAL HEALTH AND SAFETY LAWS, AND VARIOUS BUREAUCRATIC

RULES AND REGULATIONS, HAVE HAD A THREE-FOLD AFFECT: GREATLY INCREASED OPERATING COST, INCREASED LEAD TIMES FOR MINE DEVELOPMENT, AND LIMITED POTENTIAL RESERVE BASE FOR FUTURE MINING.

105 CURRENT LEGISLATIVE PROPOSALS ARE ALSO CASTING A SHADOW OF UNCERTAINTY OVER THE FUTURE OF ALL COAL MINING OPERATIONS CREATING SERIOUS DELAYS AND INCREASED COST FOR THE EXPANSION OF THE COAL INDUSTRY WHICH IS NECESSARY TO MEET OUR PROJECTED INDEPENDENCE COALS.

105 FOR DECADES THE U.S. HAS BEEN REGARDED AS A POLITICALLY STABLE COUNTRY BY THE MINING INDUSTRY, AND MINE DEVELOPMENTS COULD BE PLANNED WITH LITTLE REGARD TO MAJOR POLITICAL CHANGES SIGNIFICANTLY ALTERING THE ECONOMICS OF A MINE OPERATION. IN RECENT YEARS, HOWEVER, THE ENACTMENT AND CONTINUING CONSIDERATION OF NUMEROUS ENVIRONMENTAL AND SAFETY LAWS AND REGULATIONS AT ALL LEVELS OF GOVERNMENT, IS SEVERELY ERODING THE ECONOMIC-POLITICAL STABILITY OF THE UNITED STATES MINING INDUSTRY. THE RESULT HAS BEEN A GROWING SHORTAGE OF RAW MATERIALS AND GREATLY INCREASED MINING COST. FUTURE UNCERTAINTY WITHIN REASONABLE LIMITS, CAN BE HANDLED BY THE U.S. MINING INDUSTRY, BUT RECENT POLITICAL DECISIONS (OR, IN FACT, INDECISIONS) HAVE BROUGHT UNCERTAINTY INTO ALL AREAS OF THE NONTECHNICAL ASPECTS OF SURFACE COAL MINING.

105 ENVIRONMENTAL LAWS AND REGULATIONS HAVE HAD BOTH A DIRECT AND INDIRECT EFFECT ON MINING PRODUCTIVITY AND COST. THE DIRECT COSTS WERE ANTICIPATED, BUT THE INDIRECT COST RESULTING FROM LOWERING PRODUCTIVITY, DEVELOPMENT TIME DELAYS, AND INCREASED CAPITAL COSTS HAVE BEEN MUCH GREATER THAN EXPECTED. ALSO, THE CONTINUING UNCERTAINTY ABOUT ULTIMATE ENVIRONMENTAL REGULATIONS AND GOALS HAS CAUSED UNTIMELY DELAY IN THE DEVELOPMENT OF NEW MINES. THE UNITED STATES HAS BURNED MORE COAL THAN HAS BEEN PRODUCED FOR EACH OF THE LAST THREE YEARS; THUS LOWERING OUR NATIONAL STOCKPILES TO A CRITICAL LEVEL.

106 THE 23 PERCENT DROP IN PRODUCTIVITY IN THE UNDERGROUND UTILITY MINES BEGINNING IN 1969 IS ATTRIBUTED PRIMARILY TO THE ENACTMENT AND SUBSEQUENT ENFORCEMENT OF THE 1969 FEDERAL HEALTH AND SAFETY LAW. THE 46 PERCENT DROP IN PRODUCTIVITY IN THE SURFACE MINES THAT BEGAN IN 1970 IS ATTRIBUTED PRIMARILY TO THE PASSAGE AND ENFORCEMENT OF ENVIRONMENTAL RULES AND REGULATIONS. OF PARTICULAR INTEREST IS THE 27 PERCENT DROP FROM 1973-1974 WHICH COINCIDES WITH THE ADOPTION OF ALABAMA WATER IMPROVEMENT COMMISSION RULES AND REGULATIONS AND NEW ZONING ORDINANCES IN JEFFERSON COUNTY.

106 THE ECONOMIC ANALYSIS OF THE SURFACE COAL MINING INDUSTRY IS SHOWN IN TABLE VIII AS A VALUE PER ACRE DISTURBED BASIS. THIS FORMAT PROVIDES ECONOMICALLY POSITIVE DATA IN COMPARISON TO ALLEGED ENVIRONMENTAL DAMAGE SPECULATED BY VARIOUS ENVIRONMENTAL GROUPS TO BE IN THE RANGE OF \$500 TO \$3,000 PER ACRE. THE ECONOMIC ANALYSIS INDICATES AN ECONOMIC CONTRIBUTION TO THE STATE ECONOMY THAT HAS INCREASED FROM \$24,000 PER ACRE TO A CURRENT VALUE OF \$54,000 PER ACRE. THE PROJECTED ECONOMIC CONTRIBUTION IS \$62,500 PER ACRE.

106 SURFACE MINING OF COAL REQUIRES ONLY A TEMPORARY USE OF LAND THAT IS RETURNED TO USEFUL FOREST PRODUCTION OR AGRICULTURAL USES

WITHIN THREE TO FIVE YEARS. COUPLED WITH THE FACT THAT LESS THAN 25 PERCENT (50,000 ACRES) OF ALABAMA'S LAND AREA HAS BEEN SURFACED MINED FOR COAL TO DATE AND THAT LESS THAN TWO PERCENT CONTAINS POTENTIAL SURFACE MINEABLE RESERVES, THERE IS NO REAL BASIS, IN FACT, FOR MUCH OF THE ALARM AND POLITICAL ACTION THAT HAS BEEN BROUGHT ABOUT IN RECENT YEARS BY VARIOUS ENVIRONMENTAL GROUPS.

107 IN ADDITION, THE ECONOMIC ANALYSIS SHOWS A VERY FAVORABLE BENEFIT TO COST RATIO IN FAVOR OF CONTINUED SURFACE MINING, NOT TO MENTION THE ADDED HEALTH AND SAFETY BENEFITS OF SURFACE MINING IN COMPARISON TO UNDERGROUND MINING.

107 AS PREVIOUSLY MENTIONED, ALABAMA COAL IS EXPENSIVE TO MINE RELATIVE TO COAL PRODUCED IN THE MID-WEST AND EASTERN UNITED STATES. DURING 1974 ALABAMA IMPORTED SEVEN MILLION TONS OF UTILITY COAL. APPROXIMATELY 11 MILLION OF THE TOTAL 15 MILLION TONS OF UTILITY COAL PRODUCED IN ALABAMA IN 1974 CAME FROM SURFACE MINES.

107 IF REASONABLE SURFACE MINING REGULATIONS ARE ADOPTED, THE PRODUCTION OF SURFACE MINED UTILITY COAL SHOULD INCREASE TO 16 MILLION TONS PER YEAR BY 1980. THIS REPRESENTS A PRODUCTION INCREASE OF FIVE MILLION TONS AND ABOUT 1,100 NEW JOBS. THE ADOPTION OF RESTRICTIVE LEGISLATION WILL RESULT IN AN ESTIMATED FOUR MILLION TONS PER YEAR DROP IN PRODUCTION AND THE LOSS OF ABOUT 900 JOBS.

107 THE MAJOR POINT OF INTEREST IS THAT UTILITY COAL CONSUMPTION IN ALABAMA WILL INCREASE TO APPROXIMATELY 29 MILLION TONS PER YEAR BY 1980. WITH REASONABLE SURFACE MINING LAWS, 16 MILLION TONS PER YEAR OF THIS COAL WILL BE MINED IN ALABAMA BY SURFACE METHODS. IF RESTRICTIVE LAWS ARE ADOPTED, OUR IN-STATE PRODUCTION WILL DECREASE BY FOUR MILLION TONS AND WE WILL IMPORT AN ADDITIONAL EIGHT MILLION TONS FROM THE MID-WEST AS SHOWN IN TABLES XI AND XII.

107 IF WE CAN ADOPT A REASONABLE SURFACE MINING LAW WE STAND TO GAIN THE BENEFITS OF AN ADDITIONAL \$206 MILLION OF COAL PRODUCTION PER YEAR BY 1980 AND THE CREATION OF MORE THAN 1,800 NEW JOBS. IF WE ADOPT RESTRICTIVE LAWS, WE WILL LOSE NOT ONLY THE 1,800 JOBS AND THE \$206 MILLION OF PRODUCTION, BUT WE WILL HAVE TO PAY AN ADDITIONAL \$206 MILLION PER YEAR OUT OF THE STATE ECONOMY TO "BUY" IMPORTED COAL FOR USE IN ALABAMA. THUS, OUR NET LOSS WOULD BE \$412 MILLION ANNUALLY AND 1,800 JOBS.

108 I WILL NOT ATTEMPT TO DRAFT A NEW MINING LAW, BUT I WOULD RECOMMEND THAT

108 THE LEGISLATURE LIMIT ITS ROLE TO SETTING ENVIRONMENTAL GOALS AND LEGAL STANDARDS AND NOT ATTEMPT TO LEGISLATE ENGINEERING PRACTICES, TECHNIQUES OR MINING METHODS FOR THE COAL INDUSTRY. GENERALIZED PROCEDURES THAT WOULD SOLVE PROBLEMS IN SOME MINES MAY VERY WELL CREATE PROBLEMS IN OTHER MINES. NO TWO COAL MINES ARE EXACTLY ALIKE AND EACH REQUIRES SPECIFIC TECHNIQUES AND METHODS FOR SUCCESSFUL AND ECONOMIC OPERATION UNDER ANY GIVEN SET OF RULES AND REGULATIONS

108 A NEW STATE SURFACE MINING LAW SHOULD BE DRAFTED WITH PROVISIONS FOR ADEQUATE RECLAMATION OF THE AFFECTED LANDS AND TO MINIMIZE OFF-SITE ENVIRONMENTAL DAMAGES. REASONABLE BONDING AND

RECLAMATION STANDARDS SHOULD BE ADOPTED THAT RECOGNIZE THE PRIVATE OWNERSHIP NATURE OF COAL PROPERTY IN ALABAMA, AND THE VALUE OF ADJACENT LANDS. THE LAW SHOULD ALSO RECOGNIZE THE RELATIVELY MINOR LAND USE REQUIREMENTS OF THE SURFACE MINING INDUSTRY IN THE STATE AS A WHOLE, AND THE ECONOMIC SIGNIFICANCE OF LOCALLY PRODUCED COAL ON THE CONTINUED INDUSTRIAL DEVELOPMENT OF THE STATE".

109 THE ALABAMA LEGISLATURE PROCEEDED DURING THE 1975 SESSION TO UPGRADE ALABAMA 1969 SURFACE MINING LAWS. THE FOLLOWING ARE EXCERPTS FROM THAT LAW.

109 SECTION II. DECLARATION OF PUBLIC POLICY AND LEGISLATIVE INTENT. ALL AREAS SURFACE MINED UNDER THIS ACT SHALL BE RECLAIMED.

109 (1) THE OBJECTIVE OF THIS ACT IS TO PROVIDE FOR THE SAFE, RESPONSIBLE AND REASONABLE RECLAMATION OF LANDS UPON WHICH SURFACE DISTURBANCES WILL BE CREATED BY SURFACE MINING OF COAL SO AS TO PROTECT THE TAXABLE VALUE OF PROPERTY AND PRESERVE NATURAL RESOURCES WITHIN THE STATE AND TO PROTECT AND PROMOTE THE HEALTH AND SAFETY OF THE PEOPLE OF THIS STATE, CONSISTENT WITH THE PROTECTION OF PROPERTY AND WITH MAXIMUM EMPLOYMENT AND THE ECONOMIC AND INDUSTRIAL WELL-BEING OF THE STATE. THE LEGISLATURE FINDS AND DECLARES THAT THE EXTRACTION OF COAL BY SURFACE MINING PROVIDES A MAJOR PRESENT AND FUTURE SOURCE OF ENERGY AND IS AN ESSENTIAL AND NECESSARY ACTIVITY WHICH CONTRIBUTES TO THE ECONOMIC AND MATERIAL WELL BEING OF THE STATE.

109 SECTION IV. THE ALABAMA SURFACE MINING RECLAMATION COMMISSION.

109 (1) THERE IS HEREBY CREATED AND ESTABLISHED THE ALABAMA SURFACE MINING RECLAMATION COMMISSION FOR THE PURPOSE OF IMPLEMENTING AND ENFORCING THIS ACT AND CARRYING OUT THE INTENT AND POLICY STATED IN SECTION II HEREOF

109 (2) THE COMMISSION SHALL BE COMPOSED OF SEVEN MEMBERS APPOINTED BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE AS FOLLOWS:

109 A. A GOVERNOR SHALL SELECT AND APPOINT MEMBERS WHO ARE FAIR AND REASONABLE CITIZENS OF THE STATE OF ALABAMA.

109 (A) ONE COMMISSION MEMBER SHALL BE APPOINTED FROM EACH OF THE THREE COUNTIES IN ALABAMA WHICH IN THE FISCAL YEAR 1973-74 PRODUCED THE GREATEST NUMBER OF TONS OF SURFACE MINED COAL, AS INDICATED BY THE RECORDS OF THE DEPARTMENT OF INDUSTRIAL RELATIONS. NO PERSON SHALL BE ELIGIBLE FOR ONE OF THESE APPOINTMENTS IF HE IS AN AGENT, STOCKHOLDER, OFFICER OR EMPLOYEE OF A COAL COMPANY OR IF HE, HIS SPOUSE OR DEPENDENT CHILDREN, HAS ANY MONETARY INTEREST IN THE OPERATION OF A SURFACE MINING COMPANY OR COAL COMPANY.

110 (B) ONE OF THE APPOINTEES TO THE COMMISSION SHALL BE A PERSON WHO, BY REASON OF HIS EDUCATION, PREVIOUS TRAINING AND EXPERIENCE, CAN BE CLASSED AS ONE CAPABLE AND EXPERIENCED IN THE TECHNOLOGY OF EARTH GRADING, REMOVAL AND MOVEMENT. THE PERSON CAPABLE AND EXPERIENCED IN THE TECHNOLOGY OF EARTH GRADING, REMOVAL AND

MOVEMENT, DURING THE PERIOD OF HIS SERVICE ON THE COMMISSION, MAY NOT BE AN AGENT, OFFICER, STOCKHOLDER, EMPLOYEE OR AN INDEPENDENT CONTRACTOR OF A COAL COMPANY OR SURFACE MINING COMPANY, NOR MAY HE, HIS SPOUSE OR DEPENDENT CHILDREN HAVE ANY MONETARY INTEREST IN THE OPERATION OF A SURFACE MINING COMPANY OR A COAL COMPANY. ONE OF THE APPOINTEES TO THE COMMISSION SHALL BE A PROFESSIONAL FORESTER DULY REGISTERED PURSUANT TO THE LAWS OF THE STATE OF ALABAMA WITH NOT LESS THAN TEN YEARS EXPERIENCE IN PROFESSIONAL FORESTRY. ONE OF THE APPOINTEES TO THE COMMISSION SHALL BE A PROFESSIONAL MINING ENGINEER DULY REGISTERED PURSUANT TO THE LAWS OF THE STATE OF ALABAMA WITH NOT LESS THAN TEN YEARS EXPERIENCE IN PROFESSIONAL ENGINEERING. ONE APPOINTEE TO THE COMMISSION SHALL BE AN ATTORNEY, DULY LICENSED TO PRACTICE LAW IN THE STATE OF ALABAMA HAVING NOT LESS THAN TEN YEARS EXPERIENCE IN THE ACTIVE PRACTICE OF LAW, THE MAJORITY OF WHOSE YEARS IN PRACTICE SHALL HAVE BEEN IN ONE OF THE THREE COUNTIES IN ALABAMA WHICH IN THE FISCAL YEAR 1973-74 PRODUCED THE GREATEST NUMBER OF TONS OF SURFACE MINED COAL AS INDICATED BY THE RECORDS OF THE DEPARTMENT OF INDUSTRIAL RELATIONS.

110 I HAVE READ THESE PARTICULAR EXCERPTS AT LENGTH TO SHOW THIS

111 COMMITTEE THAT:

111 1. THE ALABAMA LAW REQUIRES THAT ALL LANDS MINED MUST BE RECLAIMED, AND

111 2. THAT CITIZENS OF THE STATE HAVE A SAY SO IN REGULATING THE COAL INDUSTRY, AND

111 3. THAT THERE ARE PEOPLE ON THE REGULATORY BODY THAT HAVE EXPERTISE IN RECLAMATION TECHNOLOGY.

111 THE LAW REQUIRES A LICENSE TO MINE AND IN ORDER TO GET A LICENSE THE OPERATOR MUST SHOW FINANCIAL RESPONSIBILITY TO EXECUTE THE REQUIREMENTS OF THE ACT.

111 THE LAW REQUIRES A PERMIT TO MINE WHICH REQUIRES THE APPLICANT TO SHOW THE COMMISSION ALL PERTINENT INFORMATION IN THE MINING AREA SO THE COMMISSION CAN MAKE A DETERMINATION AS TO WHETHER OR NOT THE LANDS CAN BE MINED.

111 THE LAW REQUIRES A RECLAMATION PLAN AND MAP TO BE SUBMITTED WITH HIS APPLICATION FOR A PERMIT.

111 THE LAW PROVIDES THAT UPON COMPLETION OF MINING ALL FACILITIES BE REMOVED FROM THE PROPERTY AND THAT THIS AREA ALSO BE RECLAIMED.

111 THE LAW PROVIDES FOR BLASTING REGULATIONS.

111 THE LAW PROVIDES FOR INSURANCE WHICH I WILL READ TO YOU IN ITS ENTIRETY.

111 THE APPLICATION FOR PERMIT SHALL BE ACCOMPANIED BY A CERTIFICATE OF INSURANCE CERTIFYING THAT THE APPLICANT HAS IN FORCE A PUBLIC LIABILITY INSURANCE POLICY ISSUED BY AN INSURANCE COMPANY AUTHORIZED OR LICENSED TO DO BUSINESS IN THIS STATE COVERING ALL COAL SURFACE MINING OPERATIONS OF THE APPLICANT IN THIS STATE AND

AFFORDING PERSONAL INJURY AND PROPERTY DAMAGE PROTECTION, DURING THE TERM OF THE PERMIT. THE INSURANCE SHALL COVER THE APPLICANT AND ALL OF ITS AGENTS AND EMPLOYEES AND SHALL NOT BE LESS THAN SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) FOR PERSONAL INJURY AND FIVE HUNDRED THOUSAND DOLLARS (\$500,000) FOR PROPERTY DAMAGE.

112 THE LAW REQUIRES A BOND BE POSTED IN THE AMOUNT OF \$1,200,00 PER ACRE AFFECTED. THIS BOND WILL NOT BE RELEASED BY THE STATE UNTIL REVEGETATION AND RECLAMATION ARE COMPLETE. IT MIGHT BE OF SOME INTEREST TO YOU THAT ALMOST ALL OF THE LAND BEING MINED FOR COAL IN ALABAMA WOULD SELL FOR APPROXIMATELY \$350,00 PER ACRE PLUS THE VALUE OF THE TIMBER ON IT."

112 THE LAW PROVIDES FOR PENALTIES FOR VIOLATION OF THE LAW. IT PROVIDES A PENALTY OF \$10,000,00 PER DAY AND/OR ONE YEAR IN JAIL FOR ANY ONE WHO MINES WITHOUT A PERMIT. THIS MEANS A MINER WHO MINES FOR A MONTH WITHOUT A PERMIT WOULD BE SUBJECT TO A FINE OF \$300,000,00 AND 30 YEARS IN JAIL."

112 I'VE ONLY HIGHLIGHTED THE ALABAMA LAW HERE DUE TO THE TIME LIMIT, HOWEVER, I THINK IT ILLUSTRATES THAT ALABAMA AND OTHER STATES HAVE ADEQUATE LAWS THAT PROTECT THE ENVIRONMENT AND REGULATES THE MINING INDUSTRY. IT ALSO ILLUSTRATES THAT THE STATES ARE DOING THIS JOB WITHOUT A LOT OF BUREAUCRATIC RED TAPE-CAUSING LOSS OF JOBS - INCREASING THE PRICE OF COAL SUBSTANTIALLY WHICH, IN THE END, MUST BE BORNE BY THE PUBLIC IN INCREASED ELECTRIC BILLS AND, LAST BUT NOT LEAST, THE STATES HAVE PROVEN THAT THERE IS NOT A NEED FOR ANOTHER FEDERAL LAW THAT TAKES AWAY STATES RIGHTS TO RUN THEIR OWN BUSINESS.

112 ONE OF THE MOST IMPORTANT CHANGES THAT HAVE OCCURED IN THE PAST COUPLE OF YEARS IS THE CHANGE OF OPINION THAT SOME ORGANIZATIONS AND PEOPLE HAVE TOWARD FEDERAL SURFACE MINING LEGISLATION. ONE OF THEM BEING THE UNITED MINE WORKERS OF AMERICA. IF YOU WILL REMEMBER THE U M W A SUPPORTED FEDERAL LEGISLATION TWO YEARS AGO. TODAY THEY DON'T AND I QUOTE FROM THE U M W A REPORT TO THE DELEGATES OF THE 47 CONSECUTIVE CONSTITUTIONAL CONVENTION - LEGISLATIVE AND POLITICAL ACTION (C.O.M.P.A.C.) COMMITTEE:

113 RESOLUTION ON MINING AND ENVIRONMENTAL PROTECTION

113 EACH OF US HERE KNOWS THE SPECIAL PROBLEMS CONCERNING SURFACE MINING AND RECLAMATION THAT AFFECT ONLY THE AREAS IN WHICH WE LIVE. WHAT WORKS IN THE HILLS OF WEST VIRGINIA MAY NOT WORK IN THE PLAINS OF ILLINOIS. THE WAY THAT SOME COMPANIES IN WEST VIRGINIA PUSH THE TOP OFF A MOUNTAIN TO REMOVE COAL DIFFERS FROM THE METHODS USED IN THE WEST WHERE THEY REMOVE UP TO 80 AND 90 FEET OF OVERBURDEN FROM FLAT TERRAIN AND PUT IT IN SPOILS TO GET TO THE COAL. SOME RECLAMATION STANDARDS THAT WOULD BENEFIT ONE AREA COULD POSSIBLY HARM ANOTHER.

113 WE DO RECOGNIZE THAT STRIP MINING AND RECLAMATION ARE BOTH VERY IMPORTANT TO THE ECONOMY AND ECOLOGY OF OUR COUNTRY.

113 IT IS VITAL THAT WE PROTECT THE FRAGILE WATER SYSTEMS, SOIL EROSION, AND FOOD-PRODUCING LANDS, NOT ONLY FOR OURSELVES BUT MORE FOR THE USE OF OUR CHILDREN AND OUR CHILDRENS' CHILDREN.

113 WE RECOMMEND:

113 1. THAT UMWA/COMPAC WORK FOR STRONG STRIP MINE AND RECLAMATION LAWS ON A STATE BY STATE BASIS.

113 IN CLOSING I'D LIKE TO BRIEFLY READ SOME EXCERPTS FROM LETTERS WRITTEN TO CONGRESSMAN UDALL OF ARIZONA - CONGRESSMAN FLOWERS AND BEVILL OF ALABAMA.

114 IT HAS BEEN CALLED TO MY ATTENTION THAT CONGRESSMAN UDALL WILL HOLD HEARINGS COMMENCING JANUARY 12, 1977, RESPECTING THE FEDERAL STRIP MINING LEGISLATION AND OTHER LEGISLATION REGULATING THE MINING INDUSTRY.

114 IT CONTINUES TO BE OUR POSITION AND POLICY THAT THE INDIVIDUAL STATES OUGHT TO TAKE THE LEAD IN THIS REGARD AND WE HAVE SUPPORTED STRONG STRIP MINING LEGISLATION IN ALABAMA AND WILL CONTINUE TO DO SO.

114 SIGNED GEORGE C. WALLACE, GOVERNOR STATE OF ALABAMA

114 IT IS MY UNDERSTANDING THAT YOU PLAN TO PRESENT TESTIMONY BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS CONCERNING POTENTIAL LEGISLATION DESIGNED TO PROVIDE FEDERAL REGULATIONS ON THE SURFACE MINING OF COAL.

114 I APPRECIATE YOUR INTEREST IN THIS TYPE OF LEGISLATION. I, TOO, AM VITALLY INTERESTED IN SEEING THAT THE STATE'S ENVIRONMENT IS ADEQUATELY PROTECTED. HOWEVER, REGULATORY CONTROLS ON SURFACE MINING OF COAL SHOULD NOT PLACE UNREASONABLE OR UNNECESSARY REGULATIONS ON THE MINING INDUSTRY.

114 I PERSONALLY FEEL THAT THE DUAL OBJECTIVE OF PROTECTING THE ENVIRONMENT AND ALLOWING THE STRIP MINING INDUSTRY REASONABLE FLEXIBILITY WITHIN ITS OPERATION CAN MOST REALISTICALLY BE MET BY ALLOWING EACH OF THE SEVERAL STATES TO PROVIDE FOR THE REGULATION OF STRIP MINING WITHIN THEIR OWN BOUNDARIES.

114 HISTORICALLY, GOVERNMENTAL REGULATIONS HAVE PROVEN TO BE MOST EFFECTIVE AND EFFICIENT WHEN ADMINISTERED AT THE STATE OR LOCAL LEVEL. BY CONTRAST, REGULATORY CONTROLS WHICH HAVE IN MANY CASES BEEN DEEMED TO BE CUMBERSOME, COSTLY, AND NOT ONLY INEFFECTIVE, BUT IN MANY CASES COUNTER-PRODUCTIVE TO THEIR INTENDED GOALS, ARE USUALLY THOSE CONTROLS ADMINISTERED AT THE FEDERAL LEVEL.

114 SIGNED LT.GOV. JERE BEASLEY, STATE OF ALABAMA

115 I AM WRITING TO ENCOURAGE YOUR EFFORTS IN CONGRESS TO PRESERVE THE STATES AUTHORITY TO ORDERLY REGULATE ITS OWN MINERAL PRODUCTION.COAL MINING IN THE MINERAL PRODUCING STATES HAS UNIQUE CHARACTERISTICS THAT DO NOT MAKE "BLANKET REGULATION" REALISTIC.

115 EACH FEDERAL BILL INTRODUCED IN CONGRESS IN THE LAST-THREE YEARS SET NATIONAL STANDARDS TO APPLY TO ALL STATES. THIS DOES NOT ALLOW FOR LOCAL PEOPLE TO MAKE, ADMINISTER AND ENFORCE THEIR OWN

MINING REGULATIONS.

115 IN ALABAMA WE HAVE A COAL SURFACE MINING ACT THAT IS ABOUT ONE AND ONE HALF YEARS OLD. THIS ACT SETS STANDARDS AND PROCEDURES TO MEET ALABAMA'S NEEDS AND ADEQUATE FINANCING IS PROVIDED BY THE LEGISLATION TO CARRY OUT ITS INTENT.

115 I AM CURRENTLY SERVING ON THE INTERSTATE COMPACT MINING COMMISSION AS THE GOVERNOR'S DESIGNEE FOR ALABAMA. THE COMPACT COMMISSION HAS UNANIMOUSLY VOTED TO OPPOSE BLANKET FEDERAL LEGISLATION THAT TAKES AWAY THE REGULATORY AUTHORITY FROM THE STATES."

115 SIGNED: BOBBY TOM CROWE, SPEAKER PRO TEM HOUSE OF REPRESENTATIVES, STATE OF ALABAMA

115 IN THE 1975 SESSION OF THE ALABAMA LEGISLATURE WE PASSED A REGULATORY ACT REGARDING COAL SURFACE MINING IN ALABAMA, AND AMENDED THIS ACT IN THE 1976 SESSION. THIS ACT IS VERY HEAVILY WEIGHTED TOWARD A PROGRAM OF DEFINITIVE RECLAMATION.

116 IT IS MY BELIEF THAT EACH STATE SHOULD HAVE ITS OWN REGULATIONS AND ENFORCEMENT OF MINING LAWS." THE ADDED BUREAUCRACY AND GOVERNMENTAL RED TAPE WOULD NOT BE TO THE BEST INTERESTS OF CONSERVATION OR ENERGY PRODUCTION." THE PROPOSED STRIP MINING BILLS WOULD HAVE A VERY SERIOUS ADVERSE ECONOMIC EFFECT ON THE AREAS OF EMPLOYMENT AND RELATED COAL INDUSTRY JOBS IN ALABAMA.

116 SIGNED JOE MCCORQUODALE, JR., SPEAKER ALABAMA HOUSE OF REPRESENTATIVES

116 THE PURPOSE OF MY WRITING TO YOU IS TO CALL TO YOUR ATTENTION THE NEW ALABAMA ACT AND TO STATE THAT IN MY OPINION THIS ACT, WHEN FULLY OPERATIONAL, WILL BE MORE THAN ADEQUATE TO MEET ALABAMA'S NEEDS IN REGARD TO RECLAMATION. OBVIOUSLY, THE PROBLEMS IN ALABAMA DIFFER GREATLY FROM THOSE IN OTHER PARTS OF THE COUNTRY AND IT IS MY FIRM CONVICTION THAT IN THE AREA OF MINED LAND RECLAMATION THE PECULIAR CHARACTERISTICS OF EACH AREA SHOULD BE TAKEN INTO ACCOUNT AND THAT IS BEST ACHIEVED BY LOCAL LEGISLATION SUCH AS OUR ACT. OUR ACT AND THE REGULATIONS WHICH OUR COMMISSION IS IN THE PROCESS OF FORMULATING PROVIDE EFFECTIVE AND REALISTIC TOOLS TAILORED TO OUR STATE'S PROBLEMS. I AM CONFIDENT THAT IF WE DETERMINE THAT ADDITIONAL STATUTORY MEANS ARE NECESSARY THE ALABAMA LEGISLATURE WILL RESPOND.

116 I AM DELIGHTED THAT CONGRESS IS APPARENTLY EXAMINING THE NECESSITY FOR ANY FURTHER CONSIDERATION OF A FEDERAL BILL RATHER THAN MOVING BLINDLY FORWARD ON THE ASSUMPTION THAT SUCH A BILL IS NEEDED. WHILE THERE MAY HAVE BEEN A NEED FOUR OR FIVE YEARS AGO WHEN CONGRESS BEGAN ITS EXAMINATION OF SURFACE MINING, THE SITUATION OBVIOUSLY CHANGED, I AM CONVINCED THAT WE HAVE NO NEED FOR AN ADDITIONAL FEDERAL BUREAUCRACY TO ASSURE ADEQUATE RECLAMATION IN ALABAMA.

116 SIGNED G. WILLIAM NOBLE, CHAIRMAN ALABAMA SURFACE MINING RECLAMATION COMMISSION

117 I'M WRITING YOU ON BEHALF OF MYSELF, MY ORGANIZATION AND THE PEOPLE WE REPRESENT IN REGARDS TO THE PROPOSED STRIP MINING LEGISLATION.

117 WE BELIEVE THE LEGISLATION THAT WE HAVE HERE IN ALABAMA IS SUFFICIENT TO DO THE JOB IT WAS INTENDED TO DO. WE SUPPORTED THIS LEGISLATION AND WE WILL CONTINUE TO SUPPORT ANY IMPROVEMENT MADE BY THE PEOPLE OF ALABAMA ALONG THIS LINE.

117 HOWEVER WE THINK IT SHOULD BE LEFT UP TO LOCAL PEOPLE LIVING IN AREAS THAT IS AFFECTED BY THE OPERATION.

117 FOR THIS REASON WE EARNESTLY SOLICIT YOUR SUPPORT IN ALLOWING LOCAL AND STATE GOVERNMENT TO ENACT AND ENFORCE LEGISLATION GOVERNING STRIP MINING IN ALABAMA

117 SIGNED: W. T. THRASH, BUSINESS MANAGER INTERNATIONAL BROTHERHOOD OF OPERATING ENGINEERS LOCAL 312

117 I REALIZE THAT THERE ARE A FEW COAL MINERS IN ALABAMA THAT DON'T EVEN WANT STATE REGULATIONS. ALSO, I REALIZE THAT THERE ARE A FEW RADICAL ENVIRONMENTALIST, OR SHOULD I SAY PRESERVATIONIST THAT DON'T WANT COAL SURFACED MINED AT ALL. HOWEVER, MEMBERS OF THE COMMITTEE THESE LETTERS PRETTY WELL SUM UP ALABAMA'S POSITION ON THE NEED FOR FEDERAL LEGISLATION REGULATING SURFACE MINING.

117 THERE IS NO NEED NOW, FOR THE REASONABLE AND INTELLIGENT PEOPLE OF ALABAMA HAVE FOUND THEY CAN PASS AND ENFORCE LAWS AT THE STATE LEVEL WITHOUT CREATING ANOTHER FEDERAL BUREAUCRACY THAT WILL, IN THE END, ADD TO THEIR TAX BURDEN.

117 I APPRECIATE THE OPPORTUNITY OF APPEARING BEFORE THIS COMMITTEE TODAY AND I WILL BE MORE THAN HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE. -

118 [Whereupon, at 1:19 p.m., the hearing was adjourned, to reconvene at 9:45 a.m., Wednesday, January 12, 1977.]

118 [Additional material submitted for the hearing record by Hon. John Buchanan follows:]

Additional Material Submitted for the Hearing Record

119  
Congress of the United States  
House of Representatives Washington, D.C. 20515  
February 18, 1977  
The Honorable Morris Udall  
Chairman  
House Committee on the Interior and Insular Affairs [\*] 1324 Longworth HOB  
Washington, D.C. 20515  
Dear Mo:

119 Thank you very much for permitting me to participate in the informal strip mining meeting on January 10, 1977.

119 I would very much appreciate your inserting the enclosed material in the record of those briefings.

119 Thank you very much for your consideration, and with kindest regards,

119 Sincerely,

119 JOHN H. BUCHANAN, JR.

119 Member of Congress  
HOUSE OF REPRESENTATIVES  
MONTGOMERY, ALABAMA 36104  
February 14, 1977  
The Honorable John Buchanan  
U.S. House of Representatives  
Washington, D.C. 20515  
Dear Representative Buchanan:

119 I am belatedly writing this letter at the request of your assistant, Kathy Sullivan, in order to provide information concerning surface mining in Alabama. The information that I am providing is not exhaustive but is in response to specific questions from Ms. Sullivan.

119 1. Passage of the 1975 Surface Mine Law in Alabama. The 1975 Law was written by and for strip miners in Alabama. The House version of the bill was sponsored by Representative Jack Biddle, a strong friend of the strip miners, who told me during the 1975 legislative session that the bill was written in part by the Drummond brothers, strip miners in Alabama. The Senate version was sponsored by Senator Bob Wilson, who has consistently opposed controls over strip mining.

119 In 1975 there were two different comprehensive surface mine regulation bills introduced in the Alabama legislature. The stronger bill, modeled on the Udall bill, never came close to passage. The weak bill, backed by the strip miners, was passed even though it was opposed generally by conservationists and supported by no conservation organization, as far as I know. The floor leaders of the Governor supported the weak bill and were able to defeat all but two of the amendments offered to strengthen the bill (see Journal of the House, Vol. II, pp. 2539-2547).

119 2. Weaknesses of the 1975 Alabama Surface Mine Law. Time is not adequate for me to cover this topic. Several weeks ago I requested that the Alabama Attorney General's Office write

to the U.S. House Committee on Interior and Insular Affairs to state Alabama's need for a national surface mine law. In the subsequent letter sent by Attorney General Baxley a brief list of inadequacies in the Alabama law was stated. I have enclosed a copy of that letter to give you further information. I also recommend that you examine the list of dozens of weaknesses of the Alabama Law cited and analyzed in An Analysis of Six Selected State Statutes and Promulgated Regulations, by John C. Doyle, Jr., of the Environmental Policy Center, Washington, D.C.

121 I am sorry that I do not have time to enumerate weaknesses of the Alabama Law in this letter, but the fact of the matter is that the Alabama Law is nothing but a series of loopholes. The final joke of the law is that the Alabama Surface Mine Reclamation Commission has shown almost no effort to enforce the act at all. Even the token conservationist of the Commission, Archie Phillips, has declared that the Commission is "worthless" (see enclosed newspaper clipping) and has recently asked the state Ethics Commission to investigate the conflicts of interest of Commission members.

121 3. Attempted Amendments in 1976. In 1976 there were 15 bills proposed to amend the 1975 Alabama Law. The bills attempted to eliminate highwalls, to require immediate establishment of a grassy cover on mined land, to require top soil replacement in reclamation, to give the Commission power to regulate blasting, to protect waterways, etc. None of the amendments passed. Some bills did get out of committee but died on the calendars. Even the very weak amending bills failed to pass, e.g., my bill to require a shelf at the top of a final highwall. Bill Kelce, representing the Alabama surface miners' association, testified against my bill in committee and killed it. The only two bills to control strip mining which passed in 1976 were local bills designed to protect the Little River Canyon area. It is my opinion that the surface miners have such total control over the flow of legislation in Alabama that the only state-wide surface mining laws that the present Alabama legislature will pass are those written by the surface miners.

121 4. Power of the Alabama Commission to Regulate Blasting. It is clear from reading the Alabama Law of 1975, Act No. 551, that the Commission has no effective control over blasting by miners. Although Section 2, Declaration of Public Policy and Legislative Intent, has broad

statements concerning protection and promotion of health and safety of the people of the State, Section 11, Blasting Regulations, states the specific law on control of blasting. In effect the Commission is empowered to "adopt rules for detonating explosives within three hundred (300) feet of occupied or usable buildings or dwellings . . . ." Another section states that no blasting shall be done within three hundred feet without prior written consent of the owner of the building. The glaring inadequacy of such law requires no comment.

122 At the request of Acting Director Tom Walker, an Attorney General's opinion concerning the power of the Surface Mining Reclamation Commission to regulate blasting was sent to the Commission. On page three, section two, the letter states, "The Commission has no explicitor implicit authority to regulate blasting and the use of explosives where such explosives are utilized in the process of removing overburden exposing seams of coal for mining or in such related tasks of mining except as provided in Section 11(c) of Act 551." A copy of the opinion is enclosed.

122 5. Legislation Proposed in 1977. Several bills have been introduced in this legislative session to strengthen the 1975 Alabama Law. There is not much hope that the many weaknesses of the existing law can be corrected by state-wide amendments. Even if the general law is amended, many citizens doubt that there will be effective enforcement by the existing Commission. The best chance for achieving effective State regulation lies in the passage of local bills. In the Jefferson County legislative delegation, we are again attempting to pass a local bill to allow the County governing body and municipalities to regulate surface mining. Last year such a bill was defeated by a minority of our delegation (copy of the bill enclosed). It was, of course, the 1975 law which cleverly took away the then existing powers of counties and municipalities to regulate surface mining [Section 2(7), page 3 of Act No. 551]. In short, we will again try this year to pass effective surface mining regulation laws in Alabama, but, predicting from our past failures, the projects are not bright. Our only realistic hope for help in Alabama lies in the passage of national legislation.

122 This letter is but an outline of answers to the five questions which your assistant asked me to discuss. I will be happy to provide other information that you need.

122 In closing, I ask you to help in all ways possible to pass the surface mine control bill now before Congress. I am well aware that this issue is a difficult one for you and that a "Yes" vote will require a change of position.

122 Please give us your support. Only by the passage of national legislation can Alabamians receive the help that they now need so badly.

122 Sincerely,

122 Tom Leonard

122 mba

122 Enclosures

123 The Birmingham News 2-tues., Feb. 1, 1977

123 WANTS IT ABOLISHED

123 Mine watchdog group worthless: Member

123 BY OLIVIA BARTON

123 News staff writer

123 A member of the Alabama Surface Mining Reclamation Commission said today he will ask the State Legislature to abolish the commission, which he said is "dominated by mining interests."

123 Archie Phillips of Fairfield, a taxidermist and conservationist, said the commission "does not have the authority or the will to act on behalf of the public interest."

123 The commission is "toothless, neutral and absolutely worthless," said Phillips. "The people on the commission cannot vote freely, because they are more interested in the mining companies than they are in the public."

123 PHILLIPS' REMARKS came on the heels of a meeting of the commission Monday night in Jasper, where five regulations proposed by Phillips to strengthen the commission's power, were turned down.

123 Phillips proposed that the commission adopt regulations to:

123 -allow the commission to control blasting.

123 -require strip miners to save topsoil and replace it.

123 -require high walls to be reduced to a rolling contour.

123 -require that the commission control water quality in the permitted strimine area.

123 -require back filling to close off the mining area at the earliest time after mining has been completed.

124 Phillips said the commissioners would not even consider voting on the five regulations that he said would bring Alabama up to the minimum required by a proposed federal law.

124 "I am thoroughly disgusted with them," said Phillips. "I plan to ask the Legislature to sunset the commission and introduce local legislation to give counties the authority to control strip mining."

124 Phillips today asked the Jefferson County Commission to impose a moratorium on all strip mine zoning until "you get local control through the State Legislature."

124 Phillips said controlling strip mine activities is not complicated. "You don't need expertise, you just need guts."

124 The county commissioners did not commit themselves, but did indicate considerable interest.

124 Commissioner Ben Erdreich commented that he felt the general bill, the state law, would have to be amended. "I don't think a local act would give us back local control."

124 Commission President Tom Gloor told Phillips he believed he would agree the coal has got to come out, but, he told the state strip mining commission member, "I think you put your finger on one political fact of life - if we hold back on zoning, it probably will get some attention and maybe some cooperation from strip mining companies."

124 Phillips again urged, "I don't think you'll be fair to the people of Jefferson County if you zone one more acre for strip mining before the State Legislature gives you local authority over the mining process."

124 Phillips said he will ask the Jefferson County Planning and Zoning Commission this week to place a moratorium on all new strip mine zoning and permits until local legislation or the federal law can be put into effect.

124 The federal law governing strip mining is expected to be passed by the U.S. Congress this year, and may come up some time this month, according to U.S.Rep. John Buchanan.

124 Phillips said 99 per cent of the problems faced by the commission had been with blasting, which he believes can be better controlled at a local level.

124 "There'll be no relief on blasting from the commission," said Phillips. "We've been flim-flammed. The commission has no intention of giving these people any relief."

124 Opposition to Phillips' proposal came from all members of the commission, except Chairman Bill Noble, mayor of Gardendale, said Phillips.

124 Commissioner Dr. Robert Cox of the University of Alabama took exception to nearly every rule Phillips proposed, saying Alabama land is best suited for growing pines, which he said foresters grow 15 to 20 per cent better on stripped land.

124 Foresters, said Cox, want high walls left as fire breaks.

124 Phillips was critical of Cox's proposal to pay the Alabama Geological Survey \$1 8,000 to help analyze aerial photographs to make an inventory of strip mines in Alabama.

124 The commission approved Cox's proposal, which Phillips called "a stupid waste of the taxpayer's money. They're just throwing that money down to the university, when we could have it done for a fraction of the cost," said Phillips.

124 The rift between Phillips and the commission cropped up also when Phillips proposed a \$1 0,000 fine on Vulcan Coal Sales for operating a strip mine in Carbon Hill without a permit.

124 The commission approved a reduced fine of \$5,000, with only Phillips voting against the lesser fine.

12 with only Phillips voting against the lesser fine.

125  
THE ATTORNEY GENERAL  
STATE OF ALABAMA. MONTGOMERY. ALABAMA 36136  
January 27, 1977  
The Honorable Morris K. Udall  
United States Representative  
Chairman, Subcommittee on Energy and the Environment  
Committee on Interior and Insular Affairs  
U.S. House of Representatives Washington, D.C. 20530

Re: Alabama's Need for National Surface Mining Legislation  
Dear Representative Udall:

125 I would like to take this opportunity to call upon the House Interior Committee to move as quickly as possible in formulating and adopting strong and comprehensive Federal Surface Mining Legislation. During my service as Alabama Attorney General for the past six years, I have become acutely aware of the environmental harm which results from uncontrolled or inadequately regulated coal surface mining. Since Alabama's reclamation laws during this period have been the weakest in the nation, our environment has suffered the ravages of surface mining perhaps more than that of any other state.

125 Perhaps the best way to illustrate our pressing need for national surface mining legislation is to take a brief look at some of the deficiencies of Alabama's current Surface Mining Reclamation Act. This Act, the Alabama Surface Mining Reclamation Act of 1975, Act No. 551, Regular Session, 1975, was our legislature's first serious attempt at placing substantive controls upon coal surface mining.

126 A copy of this Act is enclosed for the benefit of your committee. Very regrettably, the Alabama legislation contains a number of serious deficiencies which I will discuss briefly below.

126 A very obvious shortcoming of our Alabama legislation is its failure to mandate a number of important reclamation standards. It fails to mandate the conservation and replacement of topsoil, the elimination of final highwalls, or the establishment of grassy cover growth on all reclaimed areas. The Alabama Act contains no protection at all for groundwater resources and also completely fails to address the problems of surface water pollution. Finally, the Alabama Act contains no restrictions whatever which would protect the environment from mining upon steep slopes.

126 The Alabama statute, with the exception of two specific scenic areas, provides no protection from areas of critical environmental importance. Thus, regardless of the ecological, historical, or scenic significance of an area, mining permits may be granted on the basis of the minimal criteria set out in the Act.

126 In addition, the Alabama statute fails to provide any incentive or program for reclamation

of Alabama's abandoned mined areas. Currently we have approximately 100,000 acres of "orphan mine" areas in Alabama and are in desperate need of some kind of program to begin the task of restoring these areas.

126 Our State Act also provides no meaningful protection for Alabama citizens from the effects of the heavy blasting carried out in conjunction with surface mining in Alabama. This blasting has been a source of hundreds of complaints to my office over the past six years. The provisions of the Alabama Act with respect to blasting are so minimal that they totally fail to address the problem of injury and disturbance to rural communities by blasting in conjunction with surface mining.

126 Perhaps one of the most glaring deficiencies in the Alabama statute is its failure to effectively prohibit conflicts of interest among the members of the commission set up by the Act. Three of the seven members are allowed by the Act to be employees or paid consultants of coal mining companies. This problem has the potential of undermining even the few important standards which the Act contains.

127 Finally, the enforcement and penalty provisions of the Alabama Act are grossly inadequate. The complex system of administrative procedures set up by the Act allows a violator to almost indefinitely avoid compliance with the Act while he pursues an administrative or judicial appeal. The absence of efficient, expedient enforcement will not protect our citizens from the many problems of coal surface mining.

127 As you can see from this brief itemization of problems with the Alabama Surface Mining Act, we are in great need of the standards and controls which could be provided through Federal legislation. I respectfully call upon you, your committee and your colleagues in Congress to move as quickly as possible in approving strong comprehensive national surface mining legislation.

127 Sincerely,

127 Bill Baxley

127 BILL BAXLEY

127 ATTORNEY GENERAL

127 BB: hc

127 Enclosure

128 H. 691

128 By Messrs. Jolly, Hall, Boles, Howard, Hopping, Tucker, Trammell,  
Porter and Leonard  
(With Notice and Proof)

128 R1 6/8/76

128 RFD Local Legislation No. 2

128 SYNOPSIS: This bill proposes to allow the Jefferson County governing  
body and the  
municipal governing bodies within Jefferson County to regulate surface mining  
within their  
respective police jurisdictions.

128 A BILL

128 TO BE ENTITLED

128 AN ACT

128 Relating to Jefferson County; to authorize the Jefferson County  
governing body and  
municipal governing bodies within Jefferson County to regulate surface mining  
activities within  
their respective police jurisdictions.

128 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

128 Section 1. It is the finding of the Alabama Legislature that surface  
mining activities create  
special problems in areas of the state with high population densities.  
Jefferson County is one  
such densely populated area. Local governing bodies within Jefferson County  
can best deal with  
the problems arising from surface mining in their respective police  
jurisdictions.

129 Section 2. The Jefferson County governing body and the municipal  
governing bodies  
within Jefferson County may, and are hereby authorized to, regulate surface  
mining activities  
within their respective police jurisdictions. In the event a provision of  
municipal or county  
regulations of surface mining activities are found to be in conflict with a  
provision of state  
regulations of surface mining activities, the more restrictive provision  
shall apply.

129 Section 3. County-wide surface mining regulations shall not preempt  
municipal  
regulations that apply to surface mining in the municipal police  
jurisdiction. The surface mining

operation must meet the requirements of the county and the municipal surface mining regulations in this area of joint jurisdiction. In the event a provision of municipal regulations of surface mining activities is found to be in conflict with a provision of county regulations, the more restrictive provision shall apply.

129 Section 4. All laws or parts of laws in conflict with this Act are hereby repealed.

129 Section 5. The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

129 Section 6. This Act shall become effective immediately upon passage and approval by the Governor or upon its otherwise becoming a law.

130

BARNETT, TINGLE AND NOBLE  
ATTORNEYS AT LAW  
SUITE 912-923 CITY FEDERAL BUILDING 2026 SECOND AVENUE NORTH  
BIRMINGHAM, ALABAMA 35203  
January 28, 1977  
Hon. John Buchanan  
Member of Congress  
Rayburn Building  
Washington, D.C.  
Dear John:

130 Pursuant to a request by Mrs. Cathy Sullivan of your office, I am enclosing a copy of Proposed Rules and Regulations which have been circulated among the members of the Alabama Surface Mining Reclamation Commission. As you know, the Alabama Surface Mining Reclamation Act of 1975 did not specifically authorize the Commission to enforce blasting regulations, except in a limited capacity as set out in Section 11 of the Act. Generally, it restricted the Commission's authority to 300 feet from a dwelling or building. After a request by the Commission, however, the Attorney General has rendered an opinion, which is somewhat ambiguous in language, but probably allows the Commission to adopt blasting regulations under the provisions of Section 5 of the Act, relating to Reclamation. In any event, this will probably be the Commission's interpretation of our authority until such time as a Court of competent jurisdiction may rule one way or the other.

131 I expect the Commission to consider the matter of adopting some form of blasting

regulations on an interim basis at our meeting of January 31, 1977, pending the possibility of additional action by the Legislature which will go into session the next day.

131 I will not attempt to explain the enclosed rules, as frankly, I do not understand a lot of them and we have had to rely very heavily on Dr. Bob Cox, who is a mining Engineer and is a member of our commission for expertise in the field.

131 I hope this information will be helpful to you and if I can provide any further information to you, please feel free to call on me.

131 Thanking you, I am,

131 Yours very truly,

131 G. William Noble

131 GWN/jf1

131 Enclosures

132 BLASTING RULES AND REGULATIONS OF THE ALABAMA SURFACE MINING RECLAMATION COMMISSION

132 Pursuant to the authority vested in it by the Alabama Surface Mining Reclamation Act of 1975, and in accordance with the procedures set forth in Section XXII of such Act the Alabama Surface Mining Reclamation Commission has adopted the following regulations:

132 Section 1. Declaration of Public Policy and Commission Intent:

132 (1) It is the intent of the Alabama Surface Mining Reclamation Commission to adopt for the coal industry such standard procedures and practices of statewide application as will improve the safety of such operations for the benefit of the general public and of those engaged in such blasting operations.

132 Section 2. Definitions. When used in these regulations, unless the context plainly indicates otherwise, the following words and phrases shall have the meanings respectively ascribed to them by this section;

132 (a) "Agency" means the Alabama Surface Mining Reclamation Commission.

133 (b) "Blasting Agent" - A blasting agent is any material or mixture, consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive and in which none of the ingredients is classified as an explosive, provided that the finished product, as mixed and

packaged for use or shipment, cannot be detonated by means of a No. 8 test blasting cap.

133 (c) "Blasting Operation" means the use of blasting agents and/or explosives in the blasting of stone, rock, or any other natural formation by or on behalf of any person.

133 (d) "Distance" means the distance in feet along ground contour to the nearest normally occupied house, public building school, church, commercial or institutional building neither owned, leased nor controlled by the person conducting the blasting operation.

133 (e) "Explosive" means any chemical compound, other substance or mechanical system intended for the purpose of producing an explosion, or that contains oxidizing and combustible units or other ingredients in such proportions or quantities that ignition by detonation may produce an explosion.

133 (f) "Fixed Site" means a surface coal mine in which the principal blasting activities remain in one geographical location from year to year.

134 (g) "Good Cause" means the willful violation of, or repeated failure after warning to comply with, the requirements of these regulations.

134 (h) "Highway" means any publicly maintained road regularly used for motorized traffic.

134 (i) "Licensed Blaster" means an individual licensed by the Alabama Surface Mining Reclamation Commission to detonate blasting agents and/or explosives pursuant to these regulations.

134 (j) "Normally Occupied" means a dwelling house, regularly occupied in whole or in part as a habitation for human beings, school, public building, church or institutional building which is regularly used for its intended purpose and unless such property has been abandoned or condemned.

134 (k) "Person" means an individual, firm, partnership, corporation, association or other legal entity including the State of Alabama, its agencies, departments and all other political subdivisions including towns, cities, municipalities and counties.

134 (l) "Public building" or "public highway" means a building or highway constructed or maintained by an agency or department of a governmental body or by a governmental body itself

such as a city, town, county, municipality, or school district and which is regularly used by the general population.

134 (m) "Stemming" shall mean that inert material placed in a borehole after the blasting agent and/or explosive for the purpose of confining the explosion gases in the borehole, or that inert material used to separate the blasting agents and/or explosives (decks) in decked holes.

135 Section 3. Detonation of Blasting Agents and/or Explosives in Blasting Operations;  
Licensing of Blasters:

135 (a) No person shall detonate a blasting agent and/or explosives in any blasting operation subject to these regulations except in accordance with the provisions of these regulations.

135 (b) A licensed blaster must be present at the detonation of any blasting agent and/or explosive in any blasting operation and shall either personally detonate such blasting agent and/or explosive or directly supervise such detonation. A licensed blaster shall be responsible for decisions relating to spacing, stemming, quantity of explosives and timing of delays.

135 (c) Application for examination for licensing as a blaster shall be in writing on a form to be provided by the Commission and shall be accompanied by a fee of twenty dollars (\$20.00). Such applicant shall be examined by the Commission to test the applicant's skills and knowledge of the principles and practices of blasting operations and the handling and use of blasting agents and/or explosives. Such examination shall also test such applicant's familiarity with the understanding of these regulations and their requirements.

136 (d) Upon successful completion of such examination and the payment of an additional fee of fifty dollars (\$50.00), the Agency shall issue to such applicant a license as a "Licensed Blaster" which license shall remain in full force and effect until suspended or revoked by the Agency in accordance with the provisions of this section.

136 (e) Suspension and revocation of license: The Agency, may, for good cause, temporarily suspend any license issued by it pending hearing to determine if such license should for good cause be revoked, which hearing shall be held within 30 days of such suspension. In any revocation hearing before the Agency, the licensee shall have the right to be represented by

counsel, to present and cross-examine witnesses and there shall be a stenographic transcript of such proceeding, a copy of which shall be furnished to such licensee. In the event the Agency fails to schedule such hearing and issue its decision within 30 days of any temporary suspension, unless such delay is at the request of the licensee, then such temporary suspension shall be lifted pending final order by the Agency. In the event the Agency revokes a license, such licensee may appeal such decision, which decision must be in writing setting forth the findings of fact upon which such decision is based, to the circuit court of the county in which such licensee resides, or in which the Agency has its principal office. Such appeal shall be treated by such circuit court as a preferred case on its docket and shall take precedence over all cases except prior appeals pursuant to this section. Any such appeal shall be a trial de novo. On appeal, the decision of the circuit court shall be final and binding except that the licensee may appeal such decision as in the manner of all other circuit court decisions.

137 (f) In any case where a license is revoked pursuant to these regulations the person whose license is so revoked shall not be eligible to apply for the issuance of a new license for a period of six months following the effective date of such revocation and may be relicensed following such period only upon re-examination pursuant to the provisions of these regulations.

137 (g) Anything hereinabove to the contrary notwithstanding, the Agency shall upon payment of a fee of fifty dollars (\$50.00) issue a license without examination to any applicant who, by affidavit, shall show to the Agency that on the effective date of these regulations such applicant was actively engaged in supervising or conducting blasting operations and has been so engaged for the year preceding such effective date, or is a certified mine foreman pursuant to the laws of the State of Alabama.

138 (h) All fees collected hereunder shall be retained by the Agency to be used as part of its operating fund.

138 Section 4. Measurement and Instrumentation:

138 (A) BLASTING SAFETY:

138 (1) When blasting operations, other than those conducted at a fixed site as a part of any industry or business operated at such site, are to be conducted within two hundred feet of a

known pipe line, or other public utility facility, including but not limited to electrical and commercial cables or wires, the licensed blaster or person in charge of the blasting operations shall take due precautionary measures for the protection of such line or facility, and shall notify the owner of the line or his agent that such blasting operations are intended.

138 (2) All trunk lines of exploding type detonating cord shall be covered if located within eight hundred feet of any public highway, or any normally occupied dwelling house, public building, school, church, commercial or institutional building.

138 (3) When operating within 800 feet of a highway, if it is probable that flying rock will land on such highway reasonable precautionary measures shall be taken to safeguard the public. Blasted material shall not be thrown on a public highway in sufficient quantity to impede traffic without prior Agency approval and any such material thrown on a highway must be removed promptly.

139 (4) Except where required for safety of an operation, or with prior agency approval, there shall be no blasting before sunrise or after sunset.

139 (B) BLASTING STANDARDS:

139 (1) In all blasting operations (except as hereinafter otherwise provided) the peak particle velocity of ground motion shall not exceed two (2) inches per second at the location of any normally occupied dwelling house, public building, school, church, commercial or institutional building.

139 (2) The ground velocity limits set forth herein shall not apply to property owned, leased, or contracted by the licensed blaster or licensed blaster's employer or to property for which the owner gives a written waiver.

139 (3) Where seismic instrumentation is not employed, for non-tabulated distance of over three hundred (300) feet, the maximum charge per delay period (W) shall be determined by the formula:

$$139 W = (D/50)^2$$

139 Where W is the weight of explosive in pounds and D is the distance in feet to the nearest normally occupied dwelling house, public building, school, church, commercial or institutional

building. The following table shall be used for determining weight of explosives in a single delay where seismic instrumentation is not employed:

140

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\*4\*STANDARD TABLE  
OF DISTANCE

Distance	Weight in pounds	Distance in Feet	Weight in Pounds
0-10	1/8	350	49
11-15	1/4	400	64
16-20	1/2	500	100
21-25	3/4	600	144
26-30	1.00	700	196
31-40	2 .25	800	256
41-50	3.50	900	324
51-60	4.75	1000	400
61-70	6.00	1100	484
71-80	7.25	1200	576
81-90	8.50	1300	676
91-100	9. 75	1400	784
101-110	11.00	1500	900
111-130	13.50	1600	1024
131-150	16.00	1700	1156
151-170	18.50	1800	1296
171-190	21.00	1900	1444
191-210	23.50	2000	1600
211-230	26.00	2500	2500
231-250	28.50	3000	3600
251-270	31.00	3500	4900
271-290	33.50	4000	6400
291-300	34.75	4500	8100

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140 (4) In lieu of compliance with Section 4(B) (3), the person conducting blasting operations may chose to seismographically record every blast except as otherwise provided, on a three component seismograph where the components (transverse, vertical and longitudinal) are arranged mutually perpendicular. The seismic data shall be available for inspection at any reasonable time by the Agency and shall be retained by the person conducting blasting operations for a minimum of three (3) years. So long as the seismographic records indicate peak particle velocities of 2.0 inches per second of ground motion or less at the location of the nearest normally occupied dwelling house, public building, school, church, commercial or institutional building to which these regulations apply, the person conducting blasting operations shall be

considered to be in compliance with this section.

141 (5) Seismographic instruments shall be used in each individual blasting operation that is not conducted in compliance with the Standard Table of Distance or formula hereinabove set forth. Notwithstanding the foregoing, a modified table for blasting operations may be established upon petition to and approval by the Agency, for use at a particular site provided that the peak particle velocity limit of two (2) inches per second of ground motion is not exceeded. Blasting operations without instrumentation will be considered as being within the limits set forth in this subsection if, at a specific location on the occasions of at least five blasts, instrumentation has shown that the maximum peak particle velocity of ground motion at the specified location is one (1) inch per second or less provided that in all future blasts the scaled distance is equal to or greater than the scaled distance for the instrumented blasts.

141 (6) In estimating the peak particle velocity of ground motion at a given position, the following formula shall be used:

141  $V = V_o(D_o/D)^{1.5}$  Where  $V_o$  is the maximum peak particle velocity of ground motion at the seismograph,  $D_o$  is the distance of seismograph from the blasting, and  $D$  is the distance from the blasting to the position in question assuming the same general conditions between the given position and the blast and the location of the seismograph and the blast. The distance  $D_o$  may not be greater than  $D$ , and  $D$  cannot be more than five (5) times  $D_o$ . This determined peak particle velocity of ground motion at the site of any normally occupied dwelling house, public building, school, church, commercial or institutional building shall not exceed the limit of two (2) inches per second of ground motion.

142 (7) All portable displacement seismographs currently in use will be acceptable until further notice by the Agency. All velocity seismographs, to be accepted for compliance with these regulations, shall have internal calibration capacity by January 1, 1978.

142 (8) To be approved by the Agency, a direct reading velocity seismograph shall have a frequency range of 5 cycles per second to 150 cycles per second or greater, a velocity range from zero to 2.0 in/sec. or greater and shall comply with the design criteria for portable seismographs as outlined in United States Bureau of Mines RI-5708 and RI-6487.

143 (9) Seismographs of both the direct reading velocity type and the displacement type will be approved by the Agency for use as follows:

143 (a) Particle velocity reading may be calculated from results obtained by a displacement seismograph or obtained from an approved direct reading velocity seismograph in any blasting operation where all of the following conditions exist:

- 143 1. Recording distance is over 200 feet from the blast;
- 143 2. Scaled distance is numerically greater than 25;
- 143 3. Frequency range is 40 cycles per second or less.

143 (b) A direct reading velocity seismograph shall be required in any blasting operation where all of the following conditions exist:

- 143 1. Recording distance is less than 200 feet from the blast;
- 143 2. Scaled distance is numerically less than 50.

143 (c) A direct reading velocity seismograph shall be required in any blasting operation where all the following conditions exist:

- 143 1. Recording distance is more than 200 feet from the blast;
- 143 2. Scaled distance is numerically less than 25.

144 (d) A direct reading velocity seismograph shall be required in any blasting operation where all of the following conditions exist:

- 144 1. Recording distance is more than 200 feet from the blast;
- 144 2. Frequency range is in excess of 40 cycles per second.

144 e) Scaled distance is defined as:

$$144 D_s = [W]$$

144 Where D is the actual distance in feet and W is the weight of explosives in pounds per delay period of eight (8) milliseconds or greater.

144 (10) Any seismic reports submitted to the Agency for compliance or petition must be accomplished by the most recent calibration report on such seismograph instrument.

144 (11) RECORDS:

144 (a) A record of each blast shall be kept. All records including seismograph reports shall

be retained at least three (3) years, shall be available for inspection by the Agency and shall contain the following minimum data:

144 (1) Name of person conducting blasting operations and name of blasting contractor or blasting operator if applicable;

144 (2) Location, date and time of blast;

144 (3) Name, signature and license number of licensed blaster in charge;

144 (4) Type of material blasted;

144 (5) Number of holes, burden and spacing;

144 (6) Diameter and depth of holes;

144 (7) Types of blasting agents and/or explosives used;

145 (8) Maximum amount of blasting agents and/or explosives per delay period of eight (8) milliseconds or greater;

145 (9) Method of firing and type of circuit;

145 (10) Direction and distance in feet to nearest normally occupied dwelling house, public building, school, church, commercial or institutional building neither owned, leased nor contracted by the licensed blaster or licensed blaster's company nor on property on which the owner gives a written waiver;

145 (11) Weather conditions;

145 (12) Type and height or length of stemming;

145 (13) Whether extraordinary protective devices were used and if so, the type or method used;

145 (14) Type of delays used and delay periods used.

145 (b) Where required, seismographic records showing the following information shall be retained as all other records set forth in (a) above:

145 (1) Name of person or firm analyzing the seismograph record;

145 (2) Seismograph reading of peak particle velocity of ground motion;

145 (3) The person taking the seismograph reading shall accurately indicate the location of seismograph if used, and shall also show the distance of seismograph from blast.

145 (12) Such records as are required hereunder may contain a drawing, photograph, photographic reproduction of a map, or a map of the area so that the locations set out in Sections 11(a)(10) and 11(b)(3) above may be indicated thereon.

145 (13) These regulations are in no way intended to relieve the contractor or operator or other persons of responsibility and liability under any other laws but shall, however, supercede and preempt all municipal local and county regulations of coal mine blasting.

146 Section 5. Insurance:

146 Any person conducting blasting operations subject to these regulations, shall prior to commencing such blasting operations, obtain public liability insurance and furnish to the Agency a certificate of such insurance issued by an insurance company authorized or licensed to do business in the state covering blasting operations affording personal injury and property damage protection covering such person, its agents and employees in amounts of not less than seven hundred and fifty thousand dollars (\$750,000.00) for personal injury and five hundred thousand dollars (\$500,000.00) for property damage which insurance shall be maintained in full force and effect so long as such person is conducting any such blasting operation.

146 Section 6. Penalties:

146 (a) Any person who violates any provision of these provisions shall, upon conviction in a court of competent jurisdiction, be fined not less than \$100.00 nor more than \$1,000.00.

146 (b) Any licensed blaster who shall willfully, or repeatedly after warning, violate the terms of these regulations may suffer revocation of such blaster's license as hereinabove provided.

147 Section 7. Severability:

147 The provisions of these regulations are severable. If any part of these regulations is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

147 Section 8. Effective Date:

147 These regulations shall become effective on the first day of the third month following their adoption provided however that any person having the qualifications to be licensed pursuant to

Section 3(g) of these regulations shall complete and submit an application to the Agency within 45 days after such effective date and shall be considered to be in compliance with the licensing provisions of these regulations until such Agency denies such applicant a license.

147 Section 9. Administration:

147 For the purposes of enforcing these regulations the Commission shall have the authority, through its authorized agents and employees, to inspect the relevant records and premises of persons conducting blasting operations subject to these regulations, to issue notices of hearings and suspensions of license, to administer and grade examinations pursuant to the terms of these regulations, to employ such persons including consultants and attorneys as may be necessary to effectively implement these regulations; may, after public notice, adopt such forms as may be necessary for reporting pursuant to these regulations; may obtain liability insurance to protect the public, including those subject to these regulations from the negligent acts of their employees and agents in the course of conducting business.

149 THE LIBRARY OF CONGRESS

149 Congressional Research Service

149 January 24, 1977

149 To: Honorable John Buchanan Attention: Cathy Sullivan

149 From: American Law Division

149 Subject: Blasting Regulations Under the Alabama Surface Mining Reclamation Act of 1975

149 This responds to your request for an analysis of the extent to which the Alabama Surface Mining Reclamation Act of 1975, Act 551, 1975, grants to the Alabama Surface Mining Reclamation Commission, created by the Act to implement and enforce its provisions, the authority to issue rules and regulations governing blasting in surface mining operations. Our analysis is limited to interpretation of the statute itself, and is thus incomplete without reference to legislative history, administrative interpretations, and other aids.

149 Section 11 of the Act governs blasting regulations, and is reproduced below.

150 Section 11. Blasting Regulations.

150 (a) An operator shall use explosives only in accordance with the rules, regulations, and standards as set forth by the Mine Enforcement Safety Administration, the Coal Mining Laws of the State of Alabama and the Open Pit and Quarry Safety Rules of the State of Alabama.

150 (b) No blasting shall be performed after sunset or before sunrise except as may be required to comply with the rules, regulations and standards prescribed in Paragraph (a) above, or such other rules and regulations as may be adopted hereunder.

150 (c) The Commission shall adopt rules for detonating explosives within three hundred (300) feet of occupied or usable buildings or dwellings in order to prevent injury to persons and property. In adopting the rules, the Commission shall consider the type and amount of explosive required relative to the geology of the area, and all related factors including acceptable practices in the industry.

150 (d) If an explosive is to be detonated within one thousand (1,000) feet of occupied buildings or dwellings, all persons in such buildings and dwellings shall be notified within twentyfour hours prior to the blast; in those cases where the operator so elects, he may furnish such persons with a blasting schedule extending for a reasonable period of time.

150 (e) No blasting shall be done within the prescribed minimum distance three hundred (300) feet unless prior written consent of the owner of the building has been obtained.

150 General authority to adopt regulations for reclamation control is granted to the Commission by section 5(1), and authority to enforce blasting regulations made applicable by section 11 is granted the Commission by section 5(4):

150 Section 5.Powers.

150 In addition to any other powers conferred on it by law, the Commission shall have the power to:

150 (1) Adopt, amend, suspend, repeal and enforce reasonably necessary rules and regulations to control coal surface mining reclamation consistent with this Act, including the declaration of public policy and legislative intent contained in Section 2. Such rules and regulations may be for

the State as a whole or may vary from area to area, as may be appropriate to accomplish the policy and intent of this Act, and in order to take into account varying local conditions;

150 (4) Enforce the rules, regulations and standards governing the use of explosives for the purpose of blasting in surface coal mining as set forth in Section 11 of this Act;

151 Clearly the Commission does have authority to adopt rules for blasting within 300 feet of buildings or dwellings; this authority is expressly granted by subsection 11(c), supra. Whether the Commission has authority to issue rules and regulations controlling blasting beyond the 300-foot area is questionable, however. Although subsection (b) distinguishes between subsection (a) standards set by the Mine Enforcement Safety Administration and "such other rules and regulations as may be adopted hereunder," this latter reference is apparently to subsection (c)'s express requirement that rules be adopted, and does not by itself grant the Commission any authority to adopt rules. A second major consideration is section 5's conferral of power on the Commission. The general authority in 5(1) to adopt rules and regulations is limited by the language "reasonably necessary . . . to control coal surface mining reclamation," and thus is not a broader authority to adopt rules and regulations to effectuate the purposes of the Act. Furthermore, @ 5(1) also grants the power to "enforce" these rules and regulations for the control of reclamation; were the term "reclamation" intended to comprehend blasting operations there would arguably be no need to add @ 5(4), the grant of authority to enforce blasting regulations. The definition of reclamation in section 3 as "the process of reconvertng mined land to its former or other allowable use . . ." also does not appear to comprehend blasting.

152 Finally, we note that @ 5(4) itself grants no authority to adopt rules, but merely authorizes enforcement of "rules regulations and standards . . . as set forth in Section 11."

152 Reference to the rules, regulations and standards governing blasting set by the Mine Enforcement Safety Administration and to any other such rules set pursuant to the State's coal mining laws, as well as reference to the legislative history of the Surface Mining Reclamation Act, may shed further light on legislative intent.

152 Your copy of the Act is returned herewith.

152 George Costello

152 George A. Costello

152 Legislative Attorney

153

LAW OFFICES

LANGE, SIMPSON, ROBINSON & SOMERVILLE

1700 FIRST ALABAMA BANK BUILDING

BIRMINGHAM, ALABAMA 35203

January 21, 1977

Ms. Cathy Sullivan

Office of Congressman

John H. Buchanan, Jr., M.C.

2159 Rayburn Building

Washington, D.C. 20515

Dear Cathy:

153 I am enclosing a copy of an opinion letter issued by the Attorney General of Alabama apparently on November 29 relating to the powers of the Alabama Surface Mining Reclamation Commission in regard to the adoption of blasting regulations. I am also enclosing a copy of what I have been told are proposed blasting regulations to be considered by the Commission. I know that these proposed regulations were in the hands of the chairman of the Commission and I understand, from him, in the hands of the other members of the Commission sometime in November. As you can see, they closely parallel the statewide all industry bill that was introduced in the legislature last year.

153 Yours very truly,

153 Charles A. Powell, III

153 CAP/jbh

153 Enclosures

153 (Copies of this material have also been sent by Mayor Noble and Representative Tom Leonard with exception to the newspaper articles)

154

THE ATTORNEY GENERAL

STATE OF ALABAMA MONTGOMERY ALABAMA 36136

November 29, 1976

Mr. Thomas G. Walker, Jr.

Acting Director, Alabama

Surface Mining Reclamation Commission

912 City Federal Building

2026 - Second Avenue North

Birmingham, Alabama 35203

Alabama Surface Mining Reclamation Commission - Blasting - Licensing of blasters

Alabama Surface Mining Reclamation Commission authority over blasting and use of explosives in coal surface mining operations.

Dear Mr. Walker:

154 In your letter of November 15, 1976, you asked for an Attorney General's opinion on the following questions:

154 1. Can the Alabama Surface Mining Reclamation Commission promulgate rules and regulations on blasting and the use of explosives where such is used as a tool for reclamation?

154 2. Can the Commission promulgate rules and regulations on blasting and the use of explosives where such explosives are utilized in the process of removing overburden exposing seams of coal for mining or in such related tasks of mining?

155 3. Does Section 11(c) of the "Alabama Surface Mining Reclamation Act of 1975" require the Commission to promulgate rules related to the detonation of explosives within 300 feet of occupied or useful buildings or dwellings?

155 4. Does Section 11(d) of the above-mentioned Act (providing for notification of persons within 1000 feet of a proposed detonation) prohibit or preclude the Commission from requiring similar notification within a greater distance?

155 5. May the Commission require operators to obtain the written consent of property owners beyond the 300 feet distance as required in Section 11(e) or does the Section preclude and prohibit the Commission from extending such distances a reasonable amount?

155 6. May the Commission under applicable provisions of state law and upon the proper findings of fact promulgate rules that require the following:

155 a. That surface mining licensees and permittees utilize only qualified individuals to direct blasting and explosive detonations and further require that being "qualified" shall mean having a thorough knowledge of the rules, regulations and standards as accepted throughout the industry and as set forth in the Mining Enforcement Safety Act, the Coal Mining Laws of Alabama, the Open Pit and Quarry Rules.

155 b. Require persons who will be using explosives in coal surface mining operations to take an examination and be certified as qualified within the meaning of 6a above and authorized to direct and supervise the blasting operations.

156 1. Section 5 of Act No. 551, General Acts of Alabama 1975, p. 1226, approved September 30, 1975, states:

156 "In addition to any other powers conferred over it by law the Commission shall have the power (1): to adopt, amend, suspend, repeal and enforce reasonably necessary rules and regulations to control coal surface mining reclamation consistent with this act including the declaration of public policy and legislative intent contained in Section 2."

156 Subsection 1 of Section 5 of Act 551 gives the Commission regulatory authority to control all aspects of coal surface mining reclamation. This subsection therefore does authorize the commission to promulgate rules and regulations for blasting that would be used as a tool for reclamation. However any regulations promulgated pursuant to this subsection must be consistent with other standards set out in the act.

156 2. The Commission has no explicit or implicit authority to regulate blasting and the use of explosives where such explosives are utilized in the process of removing overburden exposing seams of coal for mining or in such related tasks of mining except as provided in Section 11(c) of Act 551.

156 3. Section 11(c) of Act 551 specifically requires the Commission to promulgate rules relating to the detonation of explosions within 300 feet of occupied or useable buildings or dwellings.

156 4. The Commission has no explicit or implicit authority to require notification beyond the 1,000 feet notification requirement found in Section 11(d) of Act 551.

156 5. The Commission has no explicit or implicit authority to require written consent of property owners beyond the 300 feet distance mentioned in Section 11(e) of Act 551.

156 6a. The Commission can require licensees under Act 551 to use only qualified individuals to direct blasting and explosive detonations and further require that these persons be certified as having knowledge of rules, regulations and standards set forth in the Mine Enforcement Safety

Act, the Coal Mining Laws of Alabama, the Open Pit and Quarry Rules, rules promulgated by the Commission relating to blasting, and accepted industry standards.

157 6b. Section 7B of Act 551 specifically states:

157 The applicant shall, as a condition to obtaining a license, satisfy the Commission pursuant to reasonable standards and regulations to be promulgated by it, of the applicant's ability to comply with the provisions of this Act, which standards shall require the applicant to demonstrate: (1) That it has available to it sufficient technical skill to assure compliance with the provisions of this act and the regulations adapted pursuant thereto; . . .

157 Pursuant to Section 7B the Commission can adapt standards and regulations that could include a requirement that anyone involved in blasting or supervising such operations must take an examination to demonstrate to the Commission that he is knowledgeable on the subject of blasting standards. If a operator fails to use a blasting specialist certified by the Commission, it could revoke the operator's license.

157 Sincerely,

157 WILLIAM J. BAXLEY

157 Attorney General

157 By-

157 JACKSON P. BURWELL

157 Assistant Attorney General

158 [From the North Jefferson News, Gardendale, Ala., Sept. 2, 1976]

158 BLASTING DAMAGE EVIDENCE GIVEN TO NEW COMMISSION

158 A North Jefferson County man presented evidence of damage caused by blasting in strip mines near his home and lodged a formal complaint against the K and T Coal Company at the first meeting of the State Surface Mining Reclamation Commission in Tuscaloosa Tuesday.

158 Earl Cheatwood of Warrior, representing the Concerned Citizens for Better Strip Mining, presented the newly inaugurated commission, which is chaired by Gardendale Mayor William Nobles, a series of documents which showed that the Veterans Administration has denied home construction loans to residents of the area due to damage from the blasting and the proximity to

the mines, that home insurance has been cancelled in at least one instance due to the same factors, and that one building sustained an estimated \$27,241 in damages.

158 Two pieces of correspondence with the regional office of the Veterans Administration in Montgomery stated that strip mining was a major factor in the denial of VA loans. One of the letters, dated April 6th of this year, stated that the Administration was not accepting any applications for new construction in the area due to "the adverse influences of blasting and strip mining."

158 A third letter submitted to the commission showed that almost 20 percent of the total value of one home was lost due to the influence of strip mining and blasting in the area, according to VA figures.

158 A fourth letter stated that an accounting agency had been unsuccessful during a two year period in obtaining loans in the Warrior area of Cherokee Estates due to the strip mines. The letter further stated that if "government agencies continue to decline loans in the Warrior, Alabama area, there will be no means to finance homes if the homeowner is required to relocate."

158 The letters were received by various residents of the Warrior area in connection with loan applications for construction and real estate.

158 Another document showed that a home insurance policy had been cancelled due to a "foundation problem with the kitchen floor," Cheatwood told the commission that numerous cancellations had occurred, and that insurance companies were attempting to put a strip mining clause into new policies which operated much like a high-risk automobile insurance policy.

158 A final document submitted was an estimate of repairs to the Warrior Surgical Supply building in Warrior. The estimate, which included a new roof, a new set of doors, and replacing loose concrete blocks, amounted to \$27,214. Cheatwood claimed that a majority of the damages had been done as a result of continued blasting in the area.

158 The seven-man commission was authorized by the Legislature last year to govern certain aspects of strip mining in the state. The commission has some limited power in regulating blasting according to Act Number 551, under which it, was established, however, the group is

still in the organizational phase at this point of locating suitable headquarters in Jasper and hiring a director for its programs.

158 Cheatwood also lodged a formal complaint with the commission against the K and T Coal Company in connection with "damages incurred on a continuing basis, and especially a blast put off on February 5th of this year." The coal company was operating just east of Kimberly during a period of more than a year when the blast in question took place.

158 Cheatwood emphasized to the commission that the company was no longer operating in the area, but that he was filing the complaint for future consideration should the company or principals of the company apply to resume operations elsewhere in the state.

158 The commission, according to Cheatwood, stated that it was unable to take action at the present time, that they appreciated his appearance at the meeting, and that would take his presentation into consideration.

158 The commission consists of Noble, Dr. Sam Lyle, Auburn, Dr Robert Cox, the University of Alabama, Howard Roberts, Florence, Archie Phillips, Fairfield, Lewis Manderson, Tuscaloosa, and Dr. David Rowland, Jasper.

158 Earlier in the day the commission heard a plea from Professor Jim Brown of the Geology Department at the University of Alabama to give the maximum incentives to industry to invest their capital in expanding the coal industry in the state of Alabama.

159 Apparently the commission will refrain from taking action prior to the establishment of its headquarters, and the setting of guidelines concerning policy in enforcing its decision. No time table as to when the commission will become effective has been set forth at the present.

159 [From the Birmingham News, Dec. 30, 1976]

159 SURFACE COAL MINING FIRM PUT UNDER STRICT REGULATIONS

159 (By Waylon Smithey)

159 Jasper - Taking the first such action since it was established to enforce the state's strip mining laws, the Alabama Surface Mining Reclamation Council has put a company operating in Jefferson County under very strict regulations for 45 days before deciding whether further action is necessary.

159 In setting a precedent, the commission ordered Pawnee Mining and Coal Sales Co. to have a licensed engineer to draw up a blasting plan to submit to the commission for approval.

159 Commission Acting Director Tom Walker said he believes the move is indicative of a trend for all strip mining companies which use blasting to get to the coal.

159 Pawnee has received the brunt of complaints from residents of the Glenwood area, near Morris in northern Jefferson County, who have charged that the company's blasting has damaged and devalued their property, that the firm has made no attempt at land reclamation, that it mined illegally in an unzoned area and that trucks hauling material for the firm speed through the area.

159 The order to the company was announced at a 10 a.m. press conference today in Jasper where the commission maintains its offices.

159 The order also calls for Pawnee to:

159 - Monitor 100 per cent of its blasting for coal and keep extensive records on each blast, such as depth and strength of charge, blast patterns, seismological readings, etc.

159 - Suspend strip mining operations on land not zoned for that purpose.

159 - Expect "pop" inspections of its operations at any time by the commission.

159 The commission announced that it was asking other state agencies to check on the strip mining by Pawnee. Among these are the Alabama Water Improvement Commission, to check on possible pollution of a creek by runoff from the strip pits, and the Alabama Public Service Commission, to follow up on complaints about speeding and excessively noisy coal trucks.

159 At a hearing on the complaints Dec. 7, attorney Nelson Arnold, who represents Pawnee, denied most of the charges.

159 Part of the order also was that the strip mining company meet with the people who have complained about such things as blasting at the mining operation damaging their homes.

159 In other action today, the state Surface Mining Reclamation Commission cited Vulcan Coal Sales to show cause why the company should not be fined the maximum \$10,000 for strip

mining without a permit in the Carbon Hill area. A hearing on that citation is set for 6 p.m., Tuesday, Jan. 18, at the Walker County Courthouse in Jasper.

159 Announcement was made Wednesday that the commission has named its first permanent director. He is Virgil Willett of Camden, who has been in the lumbering and woods products business for several years and now is a truck salesman in Camden.

159 Willett, 48, holds a bachelor's degree in forestry from Auburn University. His annual salary will be \$30,000

159 Willett will assume his duties Friday. Walker, who now is acting director, will become assistant director.

160 [From the Daily Mountain Eagle, Jasper, Ala., Dec. 31, 1976]

160 LAND AND PROJECT TO BE IN TUSCALOOSA

160 The Department of Interior, in a recent decision, decided to locate a project office of the Bureau of Land Management in Tuscaloosa.

160 Making the announcement, Lowell J. Udy, Eastern States director said, "The Tuscaloosa area needed to accommodate the planning and environmental impact statement efforts for the Federal Coal Leasing Program in North-Central

160 The Bureau of Land Management has been assigned lead responsibility for the preparation of the environmental impact statement covering significant coal related activities in North-Central Alabama.

160 "Planning activities are already underway in the area," Udy said. "We are consulting with affected state and federal agencies, beginning resource activities and gathering other land use date."

160 DeRocco also said public hearings will be held giving the public a chance to "disnominate nominations submitted to the government by coal companies, state and federal agencies of land they wish to have strip mined."

160 According to Udy, the decision to locate the project office in Tuscaloosa was based on several considerations:

160 - Both the U.S. Geological Survey and the Bureau of Mines have existing offices in

Tuscaloosa. These two agencies will serve as main coordinating entities for the planning activities and EIS preparation.

160 - The proximity of the University of Alabama could be an important source of resources and technical information, expertise and assistance.

160 - Tuscaloosa is within the tentative boundaries drawn for the planning and EIS efforts in North Central Alabama.

160 - Commercial air transportation facilities are available at Tuscaloosa.

160 "The Tuscaloosa project office will give us the capability to be more effective and efficient in carrying out our coal resources program," Udy said. "It will permit us to react in a more timely manner to the many sensitive resource considerations by being closer to the resources and the public we serve."

160 Udy said the Tuscaloosa office should be operational by March 1, 1977. "The General Services Administration is securing appropriate office space to accommodate the staff required for the planning effort."

160 According to Udy, the initial planning staff will include; a staff leader, geologist, outdoor recreation planner, lands and realty specialist, wildlife biologist, forester agronomist, watershed specialist, administrative officer, and clerical staff.

160 The federal government has an estimated 764,000 acres of mineral ownership in Alabama.

160 [From the Daily Mountain Eagle. Jasper, Ala., Dec. 30, 1976]

160 VULCAN COAL CAUGHT WITHOUT MINING PERMIT

160 Vulcan Coal Sales Co. of Hoover was cited by the Alabama Surface Mining Reclamation Commission in Jasper this morning in a news conference for mining without a permit.

160 The company has been ordered to appear before the commission for a formal hearing on Jan. 18 at the commission's monthly meeting, to be held in the Jasper area Chamber of Commerce auditorium at 6 p.m.

160 Tom Walker, assistant director of the commission, said the company will have to show cause why they weren't in violation of the law.

160 The commission can fine the company up to \$1 0,000 for the violation.

160 The company has been mining land east of Carbon Hill but inside the city limits. Sources said the company stopped mining three days ago and looks like it's attempting to do a little reclamation.

160 Commission chairman William Noble of Gardendale said he was "bombarded" with complaints last Wednesday and Thursday. Noble said he was contacted by an attorney, Butch Powell of Birmingham, who represents the Alabama Surface Mining Council, who said the company was giving the coal companies who were trying to live within the law a bad name.

161 Noble also said the company was issued a cease and desist order by Tom Walker, assistant commission director, but the company failed to heed it. "The company just ignored the order and went on working."

161 Complaints to the commission also came from the town council of Carbon Hill and other citizens who complained of the blasting in the area.

161 Noble said Powell called him twice on Wednesday, once from the offices of Cobb Coal Co. and the other time from the offices of Drummond Coal Co.

161 [From the Birmingham News, Dec. 31, 1976]

161 COAL MINERS AID COMMISSION

161 Jasper - One of the surprising things that has developed since the Alabama Surface Mining Reclamation Commission began enforcing state strip mining laws is that coal miners are among the commission's best allies against offenders.

161 And the commission put the public on notice that if it expects the commission to stop strip miner abuses it had better get its case together before the commission hearings.

161 The commission, still operating with borrowed and surplus furniture and equipment and filing in cardboard boxes, bit down this week on two offenders.

161 One was Vulcan Coal Sales, Inc., which the commission said had operated a strip mine near Carbon Hill without a permit. A commission spokesman said the operation began on a Saturday and that inspectors were on the site Monday, after three other strip miners called the

commission office about the illegal operation.

161 When the operation continued Thursday, despite warning from two inspectors, from Tom Walker, commission acting director, and the commission itself, the company was ordered to show cause why it should not be fined \$1 0,000 as set out by state law. The hearing was set for 6 p.m. Jan. 18 in the Walker County Courthouse.

161 Walker said, "The majority of the miners want the law implemented fairly. If it's applied fairly then strip mining is not going to be the dirty word it has always been."

161 In its first hearing Dec. 7 in Gardendale against Pawnee Co., the commission found what becomes painfully apparent at many public hearings - the public is often ill-prepared to defend its case.

161 "The testimony and information produced at this hearing indicates that violation of the law may have occurred," Walker said, "but the information is insufficient for this commission to make permanent judgments and the documentation of the testimony to time and place of events was poorly recorded both by the complainants and the respondents."

161 The commission said it will place Pawnee under very strict supervision for 45 days and then have the company return for another hearing in February. Lurking behind the order was the commission's concern over the fact that most of Pawnee's violation occurred before the group took power.

161 The commission ordered the company to stop strip mining on land that was not zoned for that purpose, but probably the most far-reaching order of the commission was that demanding detailed records of blasting activities.

161 The commission had asked for an attorney general's ruling on its power to enforce blasting regulations and had expected to have received it before now. The commission order that Pawnee keep blasting records is an indication of the strong feeling that the commission should have power to regulate blasting.

161 "There is a strong feeling that blasters should be licensed and it looks good for that," said Walker. "That should alleviate some of the problem. It would show that they are aware of the law and modern industrial standards."

161 Walker said on some small operations, if the blaster is off work, a bulldozer operator may be called on to do the blasting.

161 "The commission is dedicated to enforcing the law - to protect the people of this state and to make sure that blasting is done on an acceptable level. The techniques are available," Walker said.

162 But as the commission struggles into existence, it is not without problems. It asked for a new job classification for its inspectors, hoping for higher salaries than those that had been paid to inspectors in the Department of Industrial Regulations, where strip mining laws had been enforced.

162 Instead, the salaries were lowered. Inspector 1 will pay \$8,203 beginning and \$10,361 after several years on the job. The top classification, Inspector 3, (master's degree preferred) pays \$11,791 beginning and \$14,352 tops.

162 The commission has located its offices on the third floor of the Centraal Bank building in Jasper.

162 In addition to Walker, were hired for the panel, three secretaries. The commissioner director, Virgil Willett, who was named Tuesday, will join the force Monday.

162 There are two inspectors on loan from the Department of Industrial Relations and an accountant hired temporarily because of a federal court order regarding minority hiring.

162 The commission still has no furniture. Five chairs are on loan from Walker College, three from the Jasper Area Chamber of Commerce. It has one typewriter from the Department of Industrial Relations, and after a six-week wait got approval to rent two more. Three folding tables from Walker College are in use, with two more on order (after waiting more than a month for purchase orders).

162 About two months ago, the commission voted to order some chairs and automobiles through the state's central purchasing but it still hasn't gotten any of them.

162 On Oct. 27 the commission ordered some typewriters through the state. The state has a contract for typewriters and so it doesn't even have to put out a bid for that. They just have to

order them. But the commission still has no permanent typewriters of its own.

162 [From the Daily Mountain Eagle, Jasper, Ala., Dec. 30, 1976]

162 MINER THOUGHT HE COULD STRIP WITHOUT PERMIT

162 David Cotton, president of Vulcan Coal Sales, Inc., said he was technically in defiance of the law when he strip-mined some land in Carbon Hill without a surface mining permit from the Alabama Surface Mining Reclamation Commission. He said he assumed he could begin mining while he waited for his permit to be approved by the commission.

162 His company, located in Hoover, was cited in a commission news conference Thursday for failure to obtain a permit before mining and was ordered to appear before the commission on Jan. 18 to show cause why his company shouldn't be found in violation of the law and fined up to \$10,000.

162 In a telephone interview with the Mountain Eagle, Cotton said he had applied for a permit but wasn't aware he couldn't start mining before his permit was approved.

162 He said when the permits were handled by the Department of Industrial Relations a person could begin mining as soon as a permit was applied for. "The interpretation of the law has changed," he said. "I only wanted to do what was right."

162 Tom Walker, assistant director of the commission, said if land was mined before a permit was issued under the Department of Industrial Relations then it was done unlawfully.

162 The citation given to Vulcan Coal said the company was illegally mining coal on Dec. 13. Cotton told the Eagle he started moving dirt on Dec. 11 and came to the commission's Jasper office on Dec. 14 when he started mining and applied for a permit.

162 "I assumed it was all right that we could start mining after I visited the commission's office and applied for the permit," Cotton said. "The second time I visited the office they told me to stop and I did and started reclaiming."

162 Walker said he sent Cotton a letter on Dec. 13 telling him he was in violation of the law and would have to stop mining. Also two inspectors for the commission visited the site and verbally ordered the mining ceased.

163 "Our biggest mistake was going into a congested area to mine," Cotton said. Walker said Cotton called him after the news conference and told him he was ceasing operations in Carbon Hill and from now on would only strip mine "deep in the piney woods where only the owls are there to see." He also told Walker he was willing to pay for his mistake. A conviction by the commission carries up to a \$10,000 fine.

163 Several complaints were filed by area residents over the blasting by the Company. Cotton said one blast got away from a contract miner, who was doing some reclamation work for him on property he hadn't even mined but there was no damage done.

163 "We've done \$1 0,000 to \$1 5,000 worth of reclamation for the city of Carbon Hill on our own as a favor to the city," he said.

163 When the blast occurred, the miner was attempting to blow a 25 ft. high wall, left by someone else before the 1975 act was passed, so the land could be reclaimed, Cotton said. "It was just a bunch of irate citizens who complained."

163 Willian Noble, of Gardendale and chairman of the commission, said he received several complaints from Butch Powell, attorney for the Alabama Surface Mining Reclamation Council. The council is composed of coal companies.

165 WEDNESDAY, JANUARY 12, 1977 HOUSE OF REPRESENTATIVES, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, Washington, D.C.

165 The committee met, pursuant to recess, at 9:54 a.m., Hon. Morris K. Udall (chairman of the committee) presiding.

165 The CHAIRMAN. The committee will be in session.

165 This is the second of 2 days we set aside this week for briefings and information hearings on proposed legislation to regulate surface mining. On Monday, we heard largely from witnesses in the East and Appalachian region. Today's hearings were designed to focus primarily on the West, but we do have representatives from the coal association and mining industry generally. Of course, these represent mining interests of both East and West.

165 I would like to advise all of the witnesses that we are going to go straight through until we finish the four different panels or groups that we have asked to testify this morning. We have asked the witnesses to sum up their position and use 15 or 20 minutes each so we can have time

for questions by the members. We will try to move along and finish the entire proceeding by 1 o'clock. The cooperation of everyone would be appreciated.

165 I would like to welcome some of the newly assigned members. It isn't official yet, but those that have been designated on our side by the Steering and Policy Committee and those designated by the minority to serve on this committee, many of them are here this morning. We welcome you. We are anxious to have your participation in these hearings and all the activities of the committee.

165 Mr. WON PAT. Mr. Chairman?

165 The CHAIRMAN. Mr. Won Pat.

165 Mr. WON PAT. Has the Steering Committee finished yet?

165 The CHAIRMAN. I am told the Steering Committee has not finished its work. There is still voting on one or two vacancies. Most of the members who showed up this morning have been approved, voted by the Steering and Policy Committee.

165 Mr. WON PAT. I am a member of the committee?

165 The CHAIRMAN. Without a doubt. We couldn't run this committee without the gentleman from Guam.

165 Our first witnesses are Mr. Sweeney and Mr. Yarger from the Northern Plains Resource Council. Which of you is going to be spokesman?

165 Mr. YARGER. I am.

166 The CHAIRMAN. Good. We are glad to have you here. You may proceed.

166 We have your prepared statement, which will be made a part of our hearing record.

STATEMENT OF CHARLES YARGER, CHAIRMAN, NORTHERN PLAINS RESOURCE COUNCIL, ACCOMPANIED BY PAT SWEENEY, STAFF DIRECTOR

166 Mr. YARGER. My name is Charles Yarger. I am a farmer-rancher from McCone County in eastern Montana.

166 I am chairman of the Northern Plains Resource Council. The council is an agriculturally oriented citizens organization comprised primarily of farmers and ranchers in eastern Montana. The council was formed in the spring of 1972 because the members felt the need to present a

united front against the threat by energy and coal development to our businesses and way-of-life. This threat still exists and the council continues to grow as more agricultural people become affected and see the adverse impact on agriculture from development.

166 In Montana the companies have been mining on a large scale for 9 years. To date there is no such thing as successful reclamation. There are some highly publicized showcase plots. These plots have been fenced with 10-foot-high wildlife-proof fence, highly fertilized and left virtually untouched by livestock or wildlife for 3 years. They are planted to primarily tame species of grasses - crested wheat and smooth brome - which do not even comply with our reclamation law. The first time these reclamation plots even saw a cow was on the same day the company moved in with the television cameras to film the success of reclamation.

166 We in the Northern Plains feel that there is a definite need for a Federal strip mining and reclamation act for the following reasons:

166 There is a need in the West where there exists substantial amounts of Federal lands to eliminate potential jurisdictional conflicts between the States and the Federal Government. Properly done, the Federal strip mining and reclamation act can be a model for State/Federal cooperation.

166 It is worth noting that in Montana the Bureau of Land Management controls the surface on 8 million acres. In addition, the BLM has jurisdiction and control over nearly 40 million acres of Federal mineral. The surface lands over these Federal minerals are privately owned and under the jurisdiction of the State government. This clearly emphasizes the problem. Whether or not we are strong States rights advocates, the Federal Government has a great deal of responsibility to insure reclamation standards on these Federal lands.

166 We feel there should be uniform regulations throughout all of the States governing the coal industry. There is a tremendous amount of diversity between individual State laws governing such things as specific reclamation standards.

167 If neighboring States have differing reclamation standards, this then places more pressure for development on those States with the weaker laws. If one State's reclamation standards are weaker, this means the company can spend less money on reclamation, thereby selling their coal

at a lesser price or for a higher profit, promoting unfair competition. It also places undue pressure on the States with good State laws from the coal industry to weaken their standards.

This is now happening in Montana with the coal industry placing great pressure at the 1977

Montana legislative session to change our reclamation and tax laws on coal.

167 The Department of Interior has already acknowledged the need to have reclamation standards on Federal lands by the recent promulgation of their 211 regulations. We feel these regulations are wholly inadequate, were promulgated with little public input, are subject to the whims of the bureaucrats, and are designed to protect the mining industry more than the land and people.

167 There needs to be a Federal strip mining law in order to legislatively implement a program for the designation of areas unsuitable for surface mining. State reclamation laws cannot implement such a program on Federal lands.

167 There is a need for Federal strip mining legislation because only Congress can protect the rights of private surface owners over Federal coal. It is important now more than ever that the owners of surface over Federal coal be able to retain their right to say what happens to their land by written consent.

167 In Montana, the BLM has not even notified landowners as to who has nominated the coal for strip mining under their private surface. For example, in McCone County the industry nominated nearly 88,000 acres in the Department of the Interior's recent call for industry nominations for coal lands to be leased under EMARS. Most of this land is owned by ranchers and farmers, and they can't find out who has done the nominating and why. Even the town of Circle, Mont., where I do my shopping, was nominated for coal leasing.

167 We need a Federal strip mining bill because only the Federal Congress can guarantee the rights of the landowner.

167 The Northern Plains Resource Council believes that the current draft of the Federal Strip Mine and Reclamation Act needs strengthening and changing in several areas. These include:

167 State-Federal relationship: Here the bill should be changed to allow State enforcement on Federal lands if the State receives an approved State program. It should be emphasized,

however, that the Northern Plains Resource Council supports strong backup measures by the Federal Government to insure State compliance.

167 Strengthening areas designated unsuitable: This is an extremely important section of the legislation in our opinion. However, the phrase "substantial legal and financial commitments" in this current draft may render it useless and lead to unnecessary litigation.

167 It is our position that this phrase should be dropped from the bill entirely. A recent court case in Montana gives ample rationale.

167 In Cady v. Westmoreland Resources the Ninth Circuit Court of Appeals ruled that a new EIS must be completed for the Westmoreland lease in Montana because of the inadequacy of the present EIS and its lack of long-term analysis. In so ruling, the court stated, "In reconsidering his approval and in considering any future mining plans, the Secretary must ignore investments or commitments made by Westmoreland under the 5-year plan on the 770-acre tract." The court stated that strip mining decisions should not be made on the basis of monetary commitments in this case.

168 Our thought is that "substantial legal and financial commitments" should be stricken as a criteria for designating areas unsuitable for strip mining.

#### 168 VALLEY FLOORS

168 This section of the bill needs strengthening and clarification. We don't think that strip mining should be allowed in valley floors.

#### 168 BURIAL OF TOXIC SUBSTANCES

168 The bill needs the reclamation standard requiring burial of substances which are toxic to revegetation.

#### 168 INDIAN LANDS PROGRAM

168 It would be our recommendation that the committee review the section on Indian lands to determine the necessity for another study at this time and the current thinking of the tribes and people affected by the present language.

168 It is our intention to work out specific amendments and rationales on these areas and several others. We wish to thank the committee for its time and consideration of our comments and would answer questions, if any.

168 The CHAIRMAN. Thank you, Mr. Yarger, for a good presentation.

168 I think one of your major points is on page 2, that unless we have uniform regulations for coal all over the country, you are going to have some of the States with good strong programs in a situation of unfair competition with States that have loose laws or loose administration. I was just talking with Mr. Murphy from Pennsylvania, who is going to be one of our new members. He authored one of the early Pennsylvania laws and that issue was faced years ago there and Pennsylvania seems to have benefited from the decision to enact and enforce stiff laws.

168 I think there is general consent that this is the best law in the country. H.R. 2, the bill we introduced, is patterned on the Pennsylvania experience. It would really be unfair to put Pennsylvania and its operators in a position of restoring the land, doing a good job, and having to compete with coal from another State that didn't have strong standards.

168 This is one of the reasons that I think your point is well taken.

168 I have only one other question. On page 3, you talk about the protection of surface owners in those cases where the private owner owns the land out West, but the Federal Government owns the coal underneath the land. Is your organization satisfied with the provisions that start on page 170, in section 714 of H.R. 2, that came out of the legislation in the last Congress? Are you satisfied with these provisions?

169 Mr. SWEENEY. Mr. Udall, the council doesn't have any strong objections to those provisions. I think we have felt that we thought they were a little bit cumbersome and awkward, and that it might be tough to enforce given the complexity of that section, because we felt it could be a lot neater and done a little easier. But basically, we think it gets the point across, which is our point, that a surface owner has the right to say no if he so chooses. We think that section does that.

169 The CHAIRMAN. All right. I hope you won't ask us to make very many changes in it. It was a product, as you recall of a conference committee over which I presided. For several months we worked to reach agreement on that one single provision. I would hate to unscramble this again and put it back together. It isn't what I desired, but it is workable, we have gone around the track on the issues and is definitely acceptable.

169 Are there any questions on my left? Mr. Kazen.

169 Mr. KAZEN. Mr. Chairman, on page 2, in talking about the competition between States and the unfair competition as a result of these laws, we are told that there is great pressure on the Montana legislative session this year to change the reclamation and tax laws on coal. What type of pressure is being placed and what type of changes are they advocating?

169 Mr. YARGER. First, I can deal with the reclamation standards of the bill. We have a provision in our State reclamation law that states that the land must be reshaped to approximate original contours and that the grasses must be planted to diversified, primarily native, species of grasses.

169 This is one of the provisions that we feel is the strongest provision in our bill to insure that this land will be returned to be reclaimed, to long-term producing grasslands. This provision, there is a great deal of pressure to take this provision out of our strip mining reclamation act; and on the severance tax, the coal industry has - we have a 30-percent severance tax on coal, and the industry -

169 Mr. KAZEN. How much?

169 Mr. YARGER. Thirty percent. The coal industry has stated that this tax is excessive and that it is causing undue hardship on the industry itself, and that it is restrictive to the point of restricting interstate commerce; therefore, unduly burdensome on the consumers. When the fact of the matter is that Montana energy advisory council recently completed a study that stated that under the 30-percent severance tax our coal, the majority of our coal, which was going to Detroit Edison, was costing the average consumer 1 cent a day, which is approximately a package of cigarettes a month; and that under this 30-percent severance tax, if the mine can meet State reclamation standards, we will be expanding the Decker mine, which will be one of the largest exporting mines in the world.

169 This is under attack because it is excessive.

169 Mr. KAZEN. Let me ask you this other question: How much acreage is there on surface mining in Montana now? Do you know?

170 Mr. YARGER. About 1,200 acres a year.

170 Mr. KAZEN. About 1,200 acres a year?

170 Mr. YARGER. Yes.

170 Mr. KAZEN. I don't think you understood my question. How much is being surface mined now? How much acreage?

170 Mr. SWEENEY. If I might answer that, directly surface-mined, the acres that are being disturbed right now?

170 Mr. KAZEN. Yes, sir.

170 Mr. SWEENEY. Approximately 400 acres a year. That doesn't include associated facilities, powerplants, railroad spurs, 136 miles of railroad spurs and things like that. When you consider the impact of those proposed facilities, it is way over that figure, but actual acres that are being strip mined at the present time is about 400 acres a year.

170 Mr. KAZEN. If this bill passes, what effect will that have on the total acreage strip mined?

170 Mr. SWEENEY. In our opinion, none. There wouldn't be a single acre presently being strip mined that would be prohibited from being strip mined in Montana.

170 Mr. KAZEN. Thank you, Mr. Chairman.

170 The CHAIRMAN. The gentleman from Pennsylvania, Mr. Murphy.

170 Mr. MURPHY. Thank you, Mr. Chairman.

170 Mr. Yarger, you indicated that one of the reasons that you want this is because there are Federal lands now that need not comply with State law. You do have a State strip mining law in Montana. Are there any instances where Federal lands are being strip mined and not being done in accordance with State law? Do you know of any?

170 Mr. SWEENEY. At the present time, the State has been able to work out cooperative arrangements with the Federal Government so that the lands - the Federal lands which are at this point being strip mined - are basically complying with the Montana Strip Mining Reclamation Act, which is far superior in its environmental protection standards to the "211" regulations that have been promulgated by the Department of the Interior.

170 Mr. MURPHY. At the present you were not having the problem, but you think you may have a problem?

170 Mr. SWEENEY. The reason we are not at the present time having a joint enforcement problem is there is only one mine - the Decker mine, which is expanding onto Federal lease, is really one of the first major leases in Montana on Federal lands.

170 Peabody Coal operates that mine at Colstrip on Federal coal in Montana. They are permitted under the Montana law.

170 Mr. MURPHY. Do you know what it is selling for per ton?

170 Mr. SWEENEY. At the mine in the neighborhood of \$5 to \$6, I believe.

170 Mr. MURPHY. Thank you, Mr. Chairman.

170 [Discussion off the record.]

170 The CHAIRMAN. Mr. Seiberling?

170 Mr. SEIBERLING. Thank you, Mr. Chairman.

171 I would like particularly to address a point made on page 2 of your statement about the effect of having differing standards in different States. At the last hearing I made the point, and I would like your comment on it as to whether you agree, that the effect of the present situation is that the States with the weakest laws, in effect, set the standard for all the rest of the States and try to deprive the other States effectively of their sovereign ability to impose stronger laws.

171 In my State of Ohio, we have a very strong law on paper which we are not enforcing; and one of the primary reasons we are not enforcing it completely is because of the pressure of the coal companies, who say they have to compete with coal from West Virginia and Kentucky and other States that have weak or poorly enforced laws and, therefore, there will be a competitive disadvantage.

171 Is that the situation you find in Montana?

171 Mr. SWEENEY. I think that pretty accurately describes it, with one exception. That is that we have been more successful at attempting to enforce our tougher reclamation law in Montana than the other States, but the pressure has come on the issue of weakening the standards to those standards of the surrounding States, which in our opinion are not equal to Montana's.

171 At this point at least the enforcement has been fairly good, but the pressure has come to

lower the standards, as is happening now in the Montana session, to standards of surrounding States. That is where the pressure is coming from.

171 This last week the Governor of the State of Montana, just as an example of the pressure, had to state in the State of the State message that he would veto any bill that would attempt to lower the Montana severance tax or attempt to weaken our State reclamation law and plant siting law. He made that statement last week in the State of the State address just to emphasize to the industry his position, but also to emphasize the fact that there are those kinds of pressures.

171 Mr. SEIBERLING. What we have is a kind of Gresham's law operating where the bad money drives the good money out of circulation. Bad or weak laws create pressures to water down the good laws. That is one of the arguments being made. Isn't that the case?

171 Mr. SWEENEY. Absolutely. We feel the Federal strip mining bill will basically take the pressure off the State of Montana from the industry for weakening our standards when it sets a uniform regulation.

171 Mr. SEIBERLING. Thank you.

171 The CHAIRMAN. Any questions on my right?

171 Mr. Ruppe.

171 Mr. RUPPE. I want to thank the witness for his statement. I regret coming in late and having to read it instead of hearing it first hand. I understand you farm a ranch in Montana?

171 Mr. YARGER. Yes.

172 Mr. RUPPE. How many acres do you farm or ranch?

172 Mr. YARGER. Oh, we farm a couple of thousand acres of wheat, and we raise some cattle and sheep.

172 Mr. RUPPE. Have you farmed and ranched a long time?

172 Mr. YARGER. All my life, as my dad has and my granddad on the same place.

172 Mr. RUPPE. Do those ranchlands in Montana change hands very often? Has there been sort of an outside influence coming in and acquiring some of those properties?

172 Mr. YARGER. In our immediate area one in particular, a ranch that we border was recently sold to Burlington Northern Railroad, where they have announced a great deal of plans for development. But other than that -

172 Mr. RUPPE. The ranches haven't been bought up necessarily by outside speculators?

172 Mr. YARGER. No.

172 Mr. RUPPE. You mentioned the severance tax at 30 percent would only cost the average consumer a penny a day?

172 Mr. YARGER. Yes.

172 Mr. RUPPE. That is 30 cents a month. That would be a severance tax of a dollar's worth of coal. I don't know of anybody on the equivalent of a dollar's worth of coal a month, do you?

172 Mr. YARGER. This was the figure that -

172 Mr. RUPPE. I am just asking. There is no way you can heat your water or heat your home or do anything on a dollar's worth of coal a month. I would say it would be \$300 or \$400 a year. That might be right. I don't think \$10 a year is correct. I think whoever supplied the figure would have to come back with a different economic justification.

172 It brings to my mind, Mr. Chairman, that if you have a 30-percent tax on coal, what is to prevent Texas, Louisiana and Oklahoma from putting a severance tax on oil, and it would be \$4 a barrel?

172 Mr. SWEENEY. Mr. Ruppe, if I might respond, that is on the price of the coal at the mine.

172 Mr. RUPPE. All right. Let's price the coal at the mine.

172 Mr. SWEENEY. The cent a day was figured at the cost of the Btu's to the utilities.

172 Mr. RUPPE. Is coal \$4 at the mine, \$4.50?

172 Mr. SWEENEY. Somewhere in that area.

172 Mr. RUPPE. I think your statement is a good one. I like the comments concerning environmental standards.

172 Thank you, Mr. Chairman.

172 The CHAIRMAN. Gentleman, we thank you for being with us this morning.

172 Mr. YARGER. Thank you.

172 Mr. SWEENEY. Thank you.

172 [Prepared statement of Charles Yarger follows:]

173 NORTHERN PLAINS RESOURCE COUNCIL

173 STATEMENT OF CHARLES YARGER, CHAIRMAN NORTHERN PLAINS RESOURCE COUNCIL BILLINGS, MONTANA "WHY WE IN MONTANA NEED A FEDERAL STRIP MINING AND RECLAMATION ACT." BEFORE THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

173 JANUARY 12, 1977

174 Chairman Udall, members of the Interior Committee. My name is Charles Yarger. I am a farmer/rancher from McCone County in eastern Montana.

174 I am Chairman of the Northern Plains Resource Council. The Council is an agriculturally oriented citizens organization comprised primarily of farmers and ranchers in eastern Montana. The Council was formed in the spring of 1972 because the members felt the need to present a united front against the threat by energy and coal development to our businesses and way-of-life. This threat still exists and the Council continues to grow as more agricultural people become affected or see the adverse impact on agriculture from development.

174 In Montana the companies have been mining on a large scale for nine years. To date there is no such thing as successful reclamation. There are some highly publicized show case plots. These test plots have been fenced with 10 foot high wildlife proof fence, highly fertilized and left virtually untouched by livestock or wildlife for 3 years. They are planted to primarily tame species of grasses (crested wheat and smooth brome) which do not even comply with our reclamation law. The first time these reclamation plots even saw a cow was on the same day the company moved in the television cameras to film the success of reclamation.

174 We in the Northern Plains feel that there is a definite need for a federal strip mining and reclamation act for the following reasons:

174 There is a need in the west where there exists substantial amounts of federal lands to eliminate potential jurisdictional conflicts between the states and the federal government.

Properly done the federal strip mining and reclamation act can be a model for state/federal cooperation.

175 It is worth noting that in Montana the Bureau of Land Management controls the surface on 8,000,000 acres. In addition the BLM has jurisdiction and control over nearly 40 million acres of federal mineral. The surface lands over these federal minerals is privately owned and under the jurisdiction of the state government. This clearly emphasizes the problem. Whether or not we are strong states rights advocates, the federal government has a great deal of responsibility to ensure reclamation standards on these federal lands.

175 We feel there should be uniform regulations through out all the states governing the coal industry. There is a tremendous amount of diversity between individual state laws governing such things as specific reclamation standards.

175 If neighboring states have differing reclamation standards this then places more pressure for development on those states with the weaker laws. If one states reclamation standards are weaker this means the company can spend less money on reclamation thereby selling their coal at a lesser price or for a higher profit, promoting unfair competition. It also places undo pressure on the states with good state laws from the coal industry to weaken their standards. This is now happening in Montana with the coal industry placing great pressure at the 1977 Montana Legislative Session to change our reclamation and tax laws on coal.

175 The Department of Interior has already acknowledged the need to have reclamation standards on federal lands by the recent promulgation of their 211 Regulations. We feel these regulations are wholly inadequate, were promulgated with little public input, are subject to the whims of the bureaucrats, and are designed to protect the mining industry more than the land and people.

176 There needs to be a federal strip mining law in order to legislatively implement a program for the designation of areas unsuitable for surface mining. State reclamation laws cannot implement such a program on federal lands.

176 There is a need for federal strip mining legislation because only Congress can protect the rights of private surface owners over federal coal. It is important now more than ever that the

owners of surface over federal coal be able to retain their right to say what happens to their land by written consent. In Montana the BLM has not even notified landowners as to who has nominated the coal for strip mining under their private surface. For example in McCone County the industry nominated nearly 88 \$0 00 acres in the Department of Interior's recent call for industry nominations for coal lands to be leased under EMARS. Most of this land is owned by ranchers and farmers and they can't find out who has done the nominating and why. Even the town of Circle, Montana where I do my shopping was nominated for coal leasing. We need a federal strip mining bill because only the federal Congress can guarantee the rights of the landowner.

176 The Northern Plains Resource Council believes that the current draft of the federal strip mine and reclamation act needs strengthening and changing in several areas. These include:

176 State-federal relationship: Here the bill should be changed to allow state enforcement on federal lands if the state receives an approved State Program. It should be emphasized, however, that NPRC supports strong back-up measures by the federal government to ensure state compliance.

176 Strengthening areas designated unsuitable: This is an extremely important section of the legislation in our opinion. However, the phrase "substantial legal and financial commitments" in the current draft may render it useless and lead to unnecessary litigation. It is our position that this phrase should be dropped from the bill entirely. A recent court case in Montana gives ample rationale. Cady -v- Westmoreland Resources the 9th Circuit Court of Appeals ruled that a new EIS must be completed for the Westmoreland lease in Montana because of the inadequacy of the present EIS and its lack of long-term analysis. In so ruling the Court stated "In reconsidering his approval and in considering any future mining plans, the Secretary must ignore investments or commitments made by Westmoreland under the five-year plan on the 770 acre tract." The Court stated that strip mining decisions should not be made on the basis of monetary commitments in this case. Our thought is that "substantial legal and financial commitments" should be stricken as a criteria for designating areas unsuitable for strip mining.

177 Valley floors: This section of the bill needs strengthening and clarification. We don't

think that strip mining should be allowed in valley floors.

177 Burial of toxic substances: The bill needs the reclamation standard requiring burial of substances which are toxic to revegetation.

177 Indian Lands Program: It would be our recommendation that the Committee review the Section on Indian lands to determine the necessity for another study at this time and the current thinking of the Tribes and people affected by the present language.

177 It is our intention to work out specific amendments and rationales on these areas and several others. We wish to thank the Committee for its time and consideration of our comments and would answer questions if any.

178 The CHAIRMAN. Our next panel of witnesses includes Mr. Ian MacGregor and Mr. Phelps of Peabody Coal.

178 I understand we are having a joint panel by the American Mining Congress represented by Ian MacGregor and Mr. Ed Phelps, president of Peabody Coal; representing the National Coal Association are Mr. J. L. Jackson, president, Falcon Coal Co., and Mr. Paul Morton, president, Cannelton Industries, Charleston, W.V. The gentlemen are appearing together to give us an overview. Mr. MacGregor.

A PANEL CONSISTING OF: IAN MacGREGOR, CHAIRMAN, AMAX, INC., AND E. R. PHELPS, PRESIDENT, PEABODY COAL CO., ON BEHALF OF THE AMERICAN MINING CONGRESS; AND J. L. JACKSON, PRESIDENT, FALCON COAL CO., INC., LEXINGTON, KY., AND PAUL MORTON, PRESIDENT, CANNELTON INDUSTRIES, INC., CHARLESTON, W.VA., ON BEHALF OF THE NATIONAL COAL ASSOCIATION

178 Mr. MACGREGOR. Mr. Chairman, first of all, we would like to thank you and your colleagues for the opportunity to discuss this issue with you. As you know, we have been precluded from doing this since 1973 before the oil crisis hit us.

178 I think it is quite timely that we take a review of what has happened since. I have prepared a statement.

178 First of all, as the chairman has pointed out, I am associated with the AMAX Co., who are mining coal in different parts of the world, and also the American Mining Congress, of which, like Mr. Ford, I am the retiring chairman.

178 The CHAIRMAN. We are going to have a farewell address from Mr. Ford tonight. Is this

your farewell address?

178 Mr. MACGREGOR. This is my state of the union message, if you will.  
[Laughter.]

178 Seriously, I think, in looking at the necessity for legislation here - I have a prepared statement.

178 The CHAIRMAN. Let me go to that. We have a prepared statement of yours which is this one. Mr. Phelps, you have a prepared statement; Mr. Morton, you have one which we have. Is there a fourth?

178 Mr. JACKSON. I don't have a prepared statement.

178 The CHAIRMAN. All right.

178 Mr. MACGREGOR. He will give good visual evidence.

178 The CHAIRMAN. Let us direct without objection that all of these be printed in full in our hearing record.

178 We hope you will summarize them and highlight them for us and leave time for a little exchange.

178 Mr. MACGREGOR. As a quarterback, however, I think I am entitled to perhaps just not reading the statement. You have all of this. Maybe I can make a few philosophical remarks.

178 The CHAIRMAN. We don't want to restrict you. If you are more comfortable going through your statement, fine. We might urge some of the others to highlight it for us if you can.

179 Mr. MACGREGOR. They will probably deal with the specifics which are covered in the statement. I would like to go back over the history of this situation.

179 There were some remarks made this morning which I think it would be appropriate for me to respond to. First, I think that the question of whether we need Federal surface mining legislation is the issue in front of the House. There are two aspects of this.

179 One is the question of the environmental protection necessary; and the other aspect is the broader question of the economic issues that our country is involved in at the present moment. As I said earlier, things have changed quite importantly since we first discussed this issue in the

Congress, at which time the industry was able to participate in the deliberations.

179 Since then, there has been a great deal done, but not too much joint deliberation, unfortunately. However, at the State level, as Mr. Murphy has pointed out, enormous progress has been made in States in dealing with this issue. Unquestionably the first point that I would like to make is that the mining industry understands fully the concern of the environmentalists for some control over the circumstances under which land is used for this purpose.

179 As Mr. Yarger pointed out, and Mr. Sweeney also, quite a minuscule amount of land is used each year. In the State of Montana it was 1,200 acres. My own company is producing a million tons a year, and we are disturbing, I think, less than 400 acres a year in doing so, and restoring it as we go.

179 This whole problem represents a very difficult question for Congress to deal with. The reason is, of course, that we have on the one side the economic pressures of unrestricted mineral development and, on the other side, those who wish to have no disturbance of the environment around us.

179 Now, both of these are unrealistic situations because we have to live somehow or other and find out a method of accommodating our economic needs to these very real environmental considerations. No one in the mining industry argues with the necessity for proper procedures in handling this very difficult thing. On the other hand, as was pointed out so clearly by the speakers before me, this great country has one enormous attribute which we are all proud of. That is its diversity of people and geography and terrain, and that is, of course, where you run into the difficulty in producing legislation which covers all of the eventualities.

179 In fact, the more that you concern yourself with the problems, the more restrictive your legislation has to be; and you ultimately end up with something that is very difficult to permit any kind of mining at all. As a matter of fact, I might say that in some areas there are people who press for just that kind of legislation, and they have their reasons, which are that they would like to prevent any kind of surface mining taking place at all.

179 Unfortunately, in the events which have occurred since we last discussed this in 1975, the

United States has to think much more carefully about its procedures on energy, and I fear that when we move over from the environmental aspects of this to the economic aspects, there are some more serious problems that have to be faced today than when we last looked at it together.

180 As far as the environmental thing is concerned, each of the State is progressively in the inevitable American fashion tailoring legislation to the circumstances that they find and that their various publics press them to produce, to protect and regulate with the priorities that the public seeks.

180 This diversity of procedure, as I say, is one of the great strengths of the United States: the geography of West Virginia; the georgraphy of Indiana, under which coal lies, is completely different. West Virginia has been severely folded into the Appalachian Mountains. The coal in Indiana, for example, lies under relatively flat-lying areas which haven't been disturbed by this geological folding.

180 How, therefore, can we put together conditions in any kind of legislation which will deal with this diversity?

180 Another point: In some of the more simplistic looks at things, one would say that if coal is extracted from under the surface, you should put back the geological column in exactly the sequence which it was before you took the coal out.

180 Well, believe it or not, in the State of Indiana, with which I am fairly familiar, the receding Ice Age left us with a surface which includes large amounts of clay and other deleterious materials, and in the areas in which surface mining is practiced, the soils are not very good. As a matter of fact, the clays prevent the proper escape of the moisture from the surface and these soils become soggy and difficult to work.

180 We have found in our mining processes that there are materials other than the previous surface materials, the topsoil, which turn out to provide us with infinitely better agricultural conditions. My own company is upgrading agricultural land which is acquired and mined and then restored, and after mining, I believe I can prove to you that it is better land. As a matter of fact, one of your colleagues from the other House, unfortunately no longer with us here visited our properties for the benefit of his constituents, he pointed out that this kind of mining method

was one which he felt was highly satisfactory.

180 The name of the gentleman was Senator Birch Bayh. Unfortunately, he is not with us to confirm this, but it is recorded on the television interview which he gave at that time.

180 Moving now from the fact that we believe that the States are progressively organizing legislation to meet the requirements in their own particular areas to the economic considerations, the last time we attempted to get a surface mining bill together, the Bureau of Mines - I think it was - came up with a statement that about some 60 billion tons of coal, which would be normally economically mined by surface mining methods, was being locked away permanently and would not be capable of development as a result.

180 It is just a rather interesting coincidence that when you take the coal which they refer to, which is largely in the West, it works out to using a multiplier of 2 1/2 barrels of oil equivalent in energy per ton of coal, which is about what Western coal is. It works out to about 150 billion barrels of oil equivalent in energy.

180 Now, the United States is today heavily dependent on imports for its energy. We are importing last year some - close to 43 percent of our total energy increasingly from the Middle East at a cost of some \$3 5 billion. This year, I think the figure will be somewhat higher.

181 We have become increasingly dependent upon oil from that area. Let me just point out that the petroleum geologists tell us that Saudi Arabia alone has oil reserves of between 100 and 200 billion barrels - if you split it in the middle, 150 billion.

181 The politics of the Middle East is such that we are increasingly at hazard as we import our energy from this area. I think that unless some settlement is obtained there, we may be again precluded from drawing our energy from that source, and I don't think that the Congress would want to make the United States a potential second-time loser. We don't want to lose twice.

181 If we preclude ourselves from mining coal in a legislative form of surface mining bill, which makes it impossible to mine coal intelligently, then we may find ourselves to be a two-time loser.

181 First of all, we will lose perhaps through the politics of the world around us, our access to

energy in the Middle East, in the amount of 150 billion barrels of oil; and if we have too restrictive regulations on surface mining, we may preclude ourselves from mining coal in exactly the same amount of energy.

181 May I finish, Mr. Chairman, by saying that once again the industry stands ready to work with the States to attempt to handle this problem on a basis which is tailored to the requirements of each area. Nobody knows better than the people in the area what there is required and what are their priorities. Remember that much of the agony that we have over surface mining goes back to actions of this Congress in setting up the Tennessee Valley Authority. It was set up to provide energy for an area that was seen to need development. That energy came in the first instance from low-cost waterpower, but as the Tennessee Valley Authority had success and attracted industry, its needs for energy increased. As a result, it reached out into steam-generating plants and bought coal all through the area of the Appalachian Mountains.

181 This method of buying coal was attuned to the priority of the times: low-cost electricity. Therefore, as the initial costs were based on low-cost hydraulic power from the rivers, the new energy sources from coal had to be equally low cost. So, TVA went out and encouraged small entrepreneurs to get into the mining of coal and get into them at the lowest possible costs.

181 I remember being told repeatedly that they would not buy coal that cost them over 2 mills in energy cost, and this did not provide, nor did the TVA, nor did the TVA buyers encourage any reclamation. Much of the problem we face today with the orphan lands stems back to the fact that only a few decades ago our priorities did not include anything other than cheap energy. It paid no attention to reclamation. These priorities came from this Congress.

181 Today, I think Congress must look carefully again at these priorities. We must change them, of course, to reflect the necessity for reclamation.

181 Today surface mining is being done with reclamation of more land by the major companies engaged in this business. Eighty percent of the coal is produced by about 25 percent of the companies. These people all reclaim more land than they actually disturb each year, and despite the fact that the previous witness said that these were cosmetic, I would like to invite all or any of you to come to see what is being done by us.

182 The industry as a whole is becoming a major factor in agricultural production in the areas in which it is active. Every one of you has an invitation to come and see for yourselves what is being done on reclamation.

182 Sure, it varies. In Wyoming, we are near the surface. The land was very poor, low rainfall. It had actual oxidized coal, which is not a good way to provide soil for growing grass or other agricultural material. Despite that, by careful selection of materials, in that area the mining companies are progressively learning how to improve the pasture in the recovered lands.

182 I would love to show all or any of you what has been done.

182 Thank you very much for your attention.

182 The CHAIRMAN. I might say in that connection, Mr. MacGregor, that it is my intention to have a field trip arranged, particularly for the new members who have never seen coal mines and coal mine areas. We will ask you to pick out some places you are proud of for those members to visit.

182 We will ask the environmentalists to pick out places they are not very proud of for members to visit.

182 Mr. MACGREGOR. We will show you areas we are not proud of because of the enormous difficulties of the terrain.

182 The CHAIRMAN. Mr. Phelps, are you next?

182 Mr. PHELPS. Yes, sir.

182 Chairman Udall, I am Edwin R. Phelps. I appear here today in more or less, I guess, a triple capacity. I am president of Peabody Coal Co.; I am a past chairman of National Coal, and chairman of their Surface Mining Committee; and a director and chairman of the Surface Mining Committee for the American Mining Congress.

182 I am glad to have an opportunity to meet with you and to discuss the appropriateness or the need for a surface - a Federal surface mining law. As you know, I was here too - in 1973. There has been a lot of things that have changed since we last had an opportunity to address the question, and I think the opportunity to meet with you and talk about this and second Mr.

MacGregor's invitation along with your comment that you would, particularly the new members, and I think even the older members who have been here before, like to see the tremendous changes even in the last 3 or 4 years that have come about.

182 We have mines in 12 different States. We have an open invitation to you, any one of you or your entire group, any time. We would like to have the right pictures shown.

182 I think that the fact that you have a new committee, it is very appropriate that you saw fit to give us an opportunity to put on record again the facts and some of the information concerning this. I would like to just for the record repeat a little bit of what Ian said in reference to the national energy situation.

182 We are presently consuming in excess of 70 quadrillion Btu's of energy per year, and these figures go up to 90 quadrillion by 1985. These are numbers that are just impossible to visualize. We are talking about 24 zeroes following the 90. It is a number that nobody has any feel of, but now we are supplying it by 30 percent of natural gas and 46 percent of oil, 18 percent of coal, and 2 percent of uranium, and the remaining 4 percent by others. The "others" include hydro, geothermal, solar, wind power, and all of the others.

183 We are currently exceeding our own capacity to produce uranium for nuclear power. Even with the slowdown in construction of the nuclear plants, we are still importing some of our needs. Our natural gas reserves have been dropping.

183 Our domestic production of oil is dropping also. Our oil imports have risen from 21 percent in 1965 to 42 percent of our total requirements. Considering the risk, as Ian said, on the foreign sources of supply, this would be just bad news by itself. But when it is compounded by a price increase of over 500 percent, and no end in sight, it becomes many times more serious.

183 A \$4 0 billion oil import bill certainly threatens our national security, our economic growth, our domestic employment picture, and sadly dislocates the balance of world trade and our own balance of payments.

183 Well, I think everybody agrees that coal is a midterm answer. Even the new administration has said that this is the answer, we need coal in the midterm. This resource that

we have right now is essentially inexhaustible, even at any future rate of consumption; but it still accounts for 84 percent of our known raw energy supply.

183 But just as I said before, we are only using 18 percent of it in our use now. The coal industry now has a base of around \$5 billion, and to meet a growing energy requirement of something like double in the next 10 years, we would have to invest at least \$15 billion to make this production possible.

183 I think our industry projections are remarkably consistent with the desires of President-elect Carter, at least according to his public statements. They indicate that the largest percentage of this necessary increase must come from the expansion of existing mines and

183 At the present time over 50 percent of the coal production is produced by the surface mining methods. But even if we do this, and meet these projections, the USGS figures show that we will disturb by surface mining less than 0.1 of 1 percent of the land area of the States, and all of this acreage will be reclaimed and returned to agricultural or other beneficial uses that are locally acceptable.

183 Now the reason for the promise of any legislation is a public need. It is self-evident that a public need for environmental regeneration of surface-mined land is here, along with the need for more attention to our water and our air.

183 Practices which in the historical past met the mentality of the society and the requirements of cheap power at that time were correct, but they are not correct now and they do not meet the economic, social and environmental problems of today.

183 Our industry has practiced for a long time. The responsible operators have taken the fact that if we can't reclaim the land to a satisfactory use, we will not mine it. I think this is apparent over the last 10 years at the very minimum, a little personal interest in it.

184 Peabody Coal produces coal from 12 different States. We intend to increase that to other States in the future. Each one of these States that we produce coal in has either passed a new and rigorous surface mining law code and adapted to its particular circumstances or it has updated the preexisting reclamation and environmental laws that were designed to do the same thing.

184 Where the State jurisdiction does not extend, for example, the Indian lands, the reclamation provisions which we are required to follow are as severe as those directly administered by the State itself. The problems in each State are different and do not lend themselves to one overall solution.

184 High-sulphur coal, which by a chemical reaction produces acid water, poses a problem that is nonexistent in the low-sulphur areas. Land reclamation in an arid district is a very different proposition from reclamation in an area of high precipitation.

184 In some places it is appropriate to prohibit any impoundment of mine discharges. In others impoundments may be the salvation for livestock operators.

184 Mr. Chairman, all of the producing States and most of the States that have even unrealized production capabilities have examined their independent problems and are involving them or have solved them by appropriate legislation.

184 We operate in the high-sulphur areas of the Midwest, from west Kentucky into Ohio, and Illinois, and Missouri. In these States our major reclamation problem, which all of the State laws address, are related to acidity and the proper replacement of the soil in order to return the land to agricultural uses.

184 In this connection, along with our backup material which I would like to put in the record - I have an article from the Progressive Farmer. It details Peabody's Kentucky experience and success, of which we are very proud.

184 In Illinois, which is one of the showcases of the surface coal mining industry, Peabody's Peoria farms operate over 10,000 acres of highly productive agricultural hay, pasture, and livestock-feeding land.

184 In the low-sulphur area of Montana, our Big Sky operation is providing, under the demanding requirements of the Montana law, reclamation and revegetation which by any standard far exceeds the productivity of undisturbed ranchland.

184 Contrary to the previous witnesses, the Western Energy Co. has scientifically investigated the results of their planting, which proves that over 400 percent increase in livestock forage on the reclaimed land over the original prairie land.

184 Even in your State, Mr. Udall, under the most difficult kind of climate in which to reclaim and revegetate, we have so far been successful as to receive in 1976 the Annual Conservation Award from the Governor's Commission on the Environment.

184 With the cooperation of the Navajo Tribe in restraining its members from overgrazing the newly seeded area, we have attained ground coverage and forage which far exceeds the standard of the surrounding land.

185 We have been engaged in these reclamation efforts for many years and we have met the standards of today. Some have been difficult. We are meeting the regulations and requirements of the various States. The cost factor is something that is almost impossible to quantify.

185 You can certainly see that if you reclaim an acre of land in Missouri, where you get 1,500 tons of coal, and compare it to reclaiming an acre of land in Montana, where you get 30,000 tons, or in Wyoming, where you might get 120,000 tons per acre, the cost per ton is a variable that far exceeds any competitive aspect of the matter.

185 As to the Federal lands, I have no doubt, Mr. Chairman, that the new administration and its new Secretary of the Interior will continue to cooperate with, to coordinate with, and to respect the States in which those public lands lie, and will see to it that the requirements are no less strict on those public lands.

185 We have also, Mr. Chairman, recognized the facts as they exist today. We hope that your committee will recognize these facts and abandon your purpose to place another superfluous statute on the books and on the backs of a needed and responsible industry. We feel that our business and society is burdened with too many regulatory bureaucrats, and to pile another layer on top of the perfectly capable local personnel in the States involved, with the attendant arguments, disputes, and uncertainties of a dual system, can do nothing but slow the process that the States are now doing in a very adequate way.

185 I will also answer some questions, but I think if we would proceed with the four of us, and then put all the questions at the end, it probably would be a little better.

185 Thank you.

185 The CHAIRMAN. Thank you, Mr. Phelps.

185 Mr. Morton?

185 Mr. MORTON. Chairman Udall, members of the committee, my name is Paul Morton. I am a West Virginian. I am also president of Cannelton Industries, Inc., and immediate past chairman of the National Coal Association. My company operates both surface and underground mines in the Kanawha Valley of southern West Virginia where I have lived all my life.

185 In the spring of 1973, I was among coal industry representatives appearing before this committee to testify on the surface mining legislation then being considered. Since that time, there have been no public hearings at which industry spokesmen have been invited to testify.

185 Today, nearly 4 years later, I appear before this committee to state that Federal surface mining legislation is not necessary. All major coal producing States have their own functioning programs that regulate surface mining and require sound reclamation.

185 The national debate that has reged over this issue has outlived the need for Federal legislation. In the past 4 years, there has been a rapid spread of State legislation in mined land reclamation. Twenty-nine have enacted or significantly upgraded their own surface mining laws during this period, bringing to 38 the number of States that are regulating coal surface mining.

186 In addition, industry has stepped up its efforts to provide protection to local environments, realizing significant accomplishments not dreamed of even a decade ago. On of the most singular achievements, particularly in my own State of West Virginia, has been the creation of level land through reclamation that can be used for any number of new productive purposes after completion of mining. This is an area I will discuss in more detail later.

186 The State of West Virginia has accepted responsibility for surface mining regulation and protection of State lands and is doing an effective job of enforcing its own surface mining and reclamation program.

186 Under our Department of Natural Resources, West Virginia has detailed standards on revegetation, grading and back-filling, land use, minerals, soils, topography, and water resources. West Virginia has been able to devise effective reclamation standards acknowledging its

topography, climatology and environment. These natural resources will be drastically different in the West and would therefore make Federal nationwide regulation difficult, if not impossible, to devise in detail.

186 Additionally, West Virginia's law has behind it a history of court and administrative decisions interpreting the terminology to a point that its meaning is well understood by everyone concerned in our State. Federal legislation with all new terms, definitions, and procedures would cause havoc with our program just at a time when our production is coming back and we are adjusting to West Virginia's new law and regulations.

186 The coal industry for years has been a depressed industry. Only recently has the market for coal improved so that we are slowly getting back on our feet. We are now doing a better job of reclamation under the State laws and improvement continues each and every year. Admittedly, there are some tough adjustments to be made under these laws, but a discontinuance and reunion of all State programs at this time would cause a disruption nationally of coal production and could seriously set back industry production goals thereby increasing our dependence on foreign energy supplies. In addition to the disruption of production, reclamation which is now being achieved under existing State laws would be disrupted and deterred.

186 Since the purpose of the committee's briefing today is to take a look at the practices and problems of current coal surface mining procedures, I would like to discuss some of the positive changes that have occurred over the past few years under State regulation and examine how this proposed law would still place undue restrictions on mine operators. Specifically, I would like to report on the progress we have made in West Virginia in creating level land for more productive uses after mining is completed.

186 Provisions in the current bill would frustrate innovative and successful mining and reclamation techniques that have been developed in our mountainous Appalachian region. As anyone who has lived or traveled in this area knows, flat land is at a premium in Appalachia's steep mountains. It is so limited, in fact, that an acute shortage of land for housing, schools, and institutions has existed for many years. The existing areas along the narrow Kanawha Valley, for example, are completely occupied with residential and industrial developments.

187 In this respect, the Kanawha Valley is not unlike many other areas in mountainous terrain which have experienced population growth which is confined to a narrow strip-like corridor development along the rivers. The practice of creating level land to establish a base for further residential, commercial, and institutional development in the upper Kanawha Valley is not a new one. Now coal-mining operations are actively assisting in achieving this goal. While utilizing our valuable resource, effective reclamation can increase our productive usable flat land that is so urgently needed and wanted by the landowners. However, we do not, and in most cases cannot, know the precise use this land will be put to 15 or 20 years before the mining is completed.

187 Much of the land will, in all probability, be returned to the landowner for a family farm on land that was useless to him before mining. Commercial, agricultural, and other postmining development of land depends on how the landowner intends to use his land after the mining and reclamation is completed. The exemption in last year's bill is conditioned so that it is, as a practical matter, unavailable in most cases. It seems as though people who do not live in our rugged terrain sometimes forget or fail to understand what is obvious to us - level land in our area is valuable and permits an infinite variety of productive uses that nonlevel land simply does not afford. If you want, I can provide for the record a list of all postmining uses level land has been put to in West Virginia.

187 When I say productive use, I mean farming and grazing land as well as other uses. In West Virginia, reclaimed surface mine areas are being used for high schools, housing developments, airports, industrial parks, shopping complexes, and a broad spectrum of other uses. One can see the evidence throughout the State. The community hospital at Wheeling. The airport at Weirton. The shopping center at Bridgeport. A church at Beckley. The power company office at Weirton.

187 In Welch, construction of a new high school is nearing completion on land that my company mined and reclaimed. And just last week, the Federal Aviation Administration awarded a \$750,000 grant for work on a county airport near Logan on reclaimed surface mined land.

187 One of the most dramatic examples of this concept - and the one I am most proud of - is a

plan that is actively being explored for a proposed community of 23,000 on one of my mountaintop operations near Montgomery in Kanawha County. When surface mining operations have been completed there in about 7 years, 2,000 acres or more of usable land will be available on what was once a steep and rugged series of alternating ridgelines and valleys. My company, Cannelton Industries, has been working with the West Virginia Institute of Technology on possible future uses of this land. They have indicated that this particular area could support a community of 23,000, complete with schools, shopping, recreation, and other community facilities. However, I emphasize that these uses are now only in the planning stage and were certainly not committed for or even conceived of when mining began 10 years ago.

188 If our plan comes to fruition, we will have accomplished a service to the community. If it does not, we will be disappointed, of course, but the land will still lend itself well to expanding our livestock herd and increases our acreage allotted to crops or reforestation. These are only a few of the examples illustrating how reclaimed land can actually be more productive than the land in the premined state.

188 It must also be understood that it is the surface mining industry that is providing the economic base for countless facilities similar to those I have mentioned - heretofore, the economic base was lacking. Large capital sums have not been available in many areas to level land in this area by the construction of the Kanawha County Airport at Charleston. The public had to pay, in this instance, for leveling the land in a manner similar to what we are doing in our mining and reclamation.

188 The approach which my own company is currently using is a combination of the so-called valley-fill method and area mining of mountaintops. Let me first describe the valley-fill procedure.

188 Most mountaintops are indented with narrow valleys. Where the coal seams lie near the top of the mountain, we build an earthen dam at the mouth of the valley, then remove the overburden from the coal and store it in the horseshoe-shaped hollow. The result is a wide expanse of that precious level ground.

188 In area mining of mountaintops, the first cut is spread down the outslope in the same

fashion used for the slope-reduction method.

188 The remainder of the mountaintop is area-mined in the same way the flatlands of the Midwest are mined. Once the coal has been removed, the land is graded to a gently rolling topography.

188 Much of our Appalachian strippable reserves found on steep slopes of 15 degrees or more is low-sulphur high-Btu and high volatile coal. In an era of energy crisis we cannot afford to prevent the production of some of the best coal in the world.

188 I suggest the only way for this committee to decide intelligently whether Federal surface mining legislation is necessary is for the members of the committee to go out and see reclamation and surface mining operations in West Virginia and elsewhere, and then talk to the State Governors and reclamation officials to get an understanding of the tremendous strides that have been taken in the past few years.

188 I would like to extend a personal invitation to members of this committee to visit my surface mine operations in the Kanawha Valley to see what we are doing with land that has been leveled through mountaintop mining. The committee has never inspected my operations, although plans were made at one time for a visit. We waited, but the plane never arrived.

188 I have attempted to keep my remarks general today and only hit a few of the standards. I understand we will have an opportunity to testify at later public hearings on more detailed aspects. But I did not want to give the wrong impression about our concerns. The bill written last year is vague and ambiguous, and could lead to court suits and years of delay and uncertainty; its enforcement provisions, the initial program, the procedures and many of the other standards remain of critical concern.

189 I thank you.

189 The CHAIRMAN.Thank you, Mr. Morton.

189 We never got to that operation of yours on that previous trip because of something called fog. You really have to do something about that.

189 Mr. MORTON. We will do that on your next appearance.

189 The CHAIRMAN.The Commonwealth of Kentucky is the next hitter here. Mr. Jackson.

189 Mr. JACKSON. Mr. Chairman, I appreciate this opportunity. I am J. L. Jackson, president of Falcon Coal Co. We are headquartered in Lexington, Ky.

189 I am going to confine my remarks today to the State of Kentucky and more particularly to the area of Appalachia in eastern Kentucky where we operate.

189 I believe you, along with some of the others, did visit our property very briefly back in, I believe, 1973, and I was very upset by that visit because I didn't feel we got to show you what we really wanted you to see.

189 After looking at the active mining site, I believe you and the other committee members had to leave. It was an early departure. Along with the others, I would like to invite you back to our property and let you look at the whole spectrum. In that light, I have brought just a few slides that I want to show the whole spectrum of mining from the active mining to the regrading, to the revegetated completed reclamation, and a demonstration of some of the land uses and what the land looks like, especially for those who haven't been to visit our property.

189 The CHAIRMAN. This would be helpful. If someone will douse the lights.

189 Mr. JACKSON. Could you hold just a minute and let me make a few remarks?

189 First of all, I would like to try to make a point that we feel that Kentucky is adequate. In the most recent legislative session in Kentucky, we did not have any serious attempts or any proposals for legislation to change the reclamations that we are currently operating under. Back in 1974, when we did have the most recent significant changes to our State regulation, one of the representatives who authored that - those changes was John Swentford. He came and visited our property, looked at the work we are doing, let us explain what we were trying to achieve. His remark to me was that if everyone in the State were doing that, there would be no need for further legislation. My answer or comment to that was, "We are not doing any more than the lawyers." So writing a more restrictive regulatory law would certainly not help the enforcement of the law that we had. So where I think Kentucky has been lacking in the past - and I emphasize the past because some changes have been made - has been in the enforcement and the knowledgeable technical administration of the law. Until recently, we did not have technical people in the

regulatory agencies. Many of the problems in Appalachia in putting the land back in an environmentally protected way has been sedimentation and land slides. It has not been revegetation. We have a heavy rainfall there and revegetation is relatively easy to accomplish. We have had agronomists and forestry people principally along with others of similar qualifications who have been trying to direct a department that has a much more technical nature such as soil stability, sedimentation, landslides where I think the problem is really existing.

190 We now - and I have to be careful about criticizing that department. I see my boss from Kentucky is here, Secretary Bell, who is now head of the regulatory agency there. He has done a tremendous job in my opinion in hiring the technical people that the department has been lacking over the years; and I think we are now getting a knowledgeable division that can enforce the laws and knows how to recognize the problems and deal with them.

190 I think they can do an effective job with the laws that we have.

190 If we could look at the slides now.

190 [Slide.]

190 Mr. JACKSON. This is the only one that I think is not in color. It demonstrates a blast pattern where the holes have been drilled to shoot the overburden material above the coal seam. I want to show you these first pictures because they are not pretty to see.

190 Anyone who sees those without seeing the others would certainly come away with an impression that we are destroying the countryside. I think you have to look at the whole spectrum.

190 [Slide.]

190 Mr. JACKSON. This is machinery and equipment working in the overburden material that has been shot. This material has been blasted and is now being moved by a large end loader and a rearend dump truck that hauls the overburden material away from on top of the coal seam; and then the coal is extracted. Then the material is placed back and regraded and finally revegetated.

190 [Slide.]

190 Mr. JACKSON. This is a - one of the pictures. This is pretty much what you saw when

the helicopters landed on the ridge across from the active mining operation like this. You see the unsightly highwall. You see all of the disturbed soil dumped over the downslope or the outslope of the coal seam, which this law, or the regulation that has been submitted by the Congress will prevent.

190 There will be no spoil, as I remember, below the coal seam.

190 [Slide.]

190 Mr. JACKSON. This is the same area after it has been backfilled and regraded. It is left in a much more subsequently sloping type terrain; and then this area will finally be revegetated and reclamation completed.

190 [Slide.]

190 Mr. JACKSON. This is a - the same situation where the coal has been extracted, the land has been regraded; and this is a hydroseeder that is planting the seeds for whatever kind of vegetative growth was prescribed for this particular area.

190 [Slide.]

191 Mr. JACKSON. This is a hollow fill which is a storage area that is used to take care of the excess spoil material that cannot be kept up on the mountaintop to give enough working space so that the coal can be extracted. This is one of the techniques that I think certainly should be allowed for in any legislation. It is allowed for in the Kentucky legislation.

191 This is - has been revegetated; and as you can see, the degree of slope is considerably less than the land was originally, which is very important in controlling sedimentation.

191 [Slide.]

191 Mr. JACKSON. This is just the rolling topography as you can see that is left from the mountaintop removal. It has been regraded, revegetated; and after several growing seasons, the reclamation will be considered complete and the bond released on it. You can look on the far background and see the undisturbed ridges where no mining has been done.

191 About halfway between the foreground and the background is a ridge that was mined about, I guess, 1965 or earlier when the same standards that we are using now were not

applicable. We have a better, more useable terrain that is left under today's law.

191 [Slide.]

191 Mr. JACKSON. This is just another demonstration of the rolling topography on the mountaintop after extraction of the coal seam has reclaimed it.

191 [Slide.]

191 Mr. JACKSON. I don't think you can see it, but this is another field that has been left. In our particular area, most of the - the most popular land use, postmining land use has been grazing because the private landowners can get a quicker return or quicker use or quicker productive use out of it that way than they can by reforestation or some other planning. They all prefer this. Most of them do it. We try to - and we have the flexibility under Kentucky law to furnish them the type reclaimed area that they prefer.

191 [Slide.]

191 Mr. JACKSON. This is another experimental situation that we have. We have been experimenting with raising vineyards on the mountaintops. The climate is appropriate for it; and we have had some experts advise us in it. These particular vines are - and this little test plot is a French hybrid variety. You have to let the vines grow for 3 years before you ever harvest the first crop. This is the third year growth. We harvested a crop of grapes that year and had wine prepared from it. Our Governor in Kentucky is proud of this new industry, as he calls it, in Kentucky. We don't feel we have proven it yet, but indications are that we can establish a new industry on the mountaintops where the coal has been extracted.

191 We just have harvested the second crop; and the wine is now being prepared. The second crop has yielded almost twice what the first crop did. They were good indications. We have had wine experts test it and encourage us that the wine will be a good quality wine, and that the productivity will be satisfactory.

191 I believe that is all of the slides I have.

191 The CHAIRMAN. Thank you, gentlemen, for a thorough presentation.

192 Mr. JACKSON. Mr. Chairman, I have more, if I may.

192 The CHAIRMAN. You may.

192 Mr. JACKSON. I would like to emphasize under the Kentucky law and in the mining practices in Appalachia now that there are three major benefits from surface mining.

192 First, we are providing access to land that was previously completely inaccessible. The steep terrain precludes any kind of allweather roads up into the mountains into these remote areas back away from the larger streams.

192 The only makeshift roads that are there come from trails that are built back up the creek banks and actually in the creek beds in some instances.

192 What we are able to do with mining, because - paid for by the extraction of the coal is build all-weather roads up the mountains; and road construction in the mountains is extremely expensive. We couldn't justify it otherwise, to gain access to these areas that have otherwise been remote. Once you get there, we are providing a flat useable land. The flatland, as some of the other witnesses have testified to, is certainly a premium in Appalachia. Then we are also providing a water supply source. We are leaving basins on top of these areas on top of the mountains so that the land is graded back toward the center of the reclaimed area so that the water would accumulate in these mountain top basins and the runoff will be slowed down, the sediments can fall out, and the clear water can be drained through the purpose of a drain pipe, or by use of a drain pipe over the hillside which controls our sedimentation as well as provides access to water on top of the mountains so you don't have to go all the way down to the creek level to get it.

192 This is good for grazing, for any kind of agricultural purpose that you might put the land to for irrigation.

192 In general, I think the problem, the big problem, that I see with the past proposed Federal law has been that in my opinion it has been directed more towards elimination of the highwall for a cosmetic effect than for a meaningful environmental protection or improvement of land use and value.

192 I know those of you who have flown over Appalachia and seen the highwalls are turned off by that sight; but I would like for you to consider the - that cost, if you will, in comparison with the benefits to the land where you do have a highwall or where you have provided access,

flatland, and a water source.

192 In addition to the unsightly highwalls that you have seen, you have also seen the benches left in disarray; and in many instances where the spoil material that has been removed slide down the mountainside. Restoring the highwall or putting the land back to the original configuration is not the only way to prevent sedimentation and landslides.

192 As a matter of fact, in many instances, it is not the most effective way. The original contour concept presents many problems. In the first place, I think it ignores the desires of the private landowners. In our instance, for example, we have approximately 140,000 acres under lease in eastern Kentucky and Appalachia. Of that 140,000 acres, less than 10 percent is owned by our company, 10 percent of its surface, or by land companies from whom we lease.

193 Most of the surface, practically all of it is owned by individuals, private owners in the area where we are doing the mining. They have their own ideas about what they would like to do with that land out there. It doesn't necessarily conform to what the legislation proposed in the Congress would dictate. We were at a hearing recently in Louisville where one of the landowners got up and said, "Why do we have to put this back that way, why can't we leave a percentage so I can use it for this purpose or that." He enumerated the purposes as Mr. Morton has done.

193 It limits the postmining land uses. When you return the land to as steep a terrain as it has been in the past, you preclude all of these uses of a relatively flat land. It is not the most effective protection against environmental damage.

193 The steeper the terrain, the harder it is to return it to the original contour. Why put it back steep when you could do otherwise? You are contributing to sedimentation and soil stability problems more than other techniques that could be used. It promotes wasteful energy practices and inefficient mining practices.

193 I think in these days when we are so concerned about our energy supplies, and the domestic energy source for this Nation, we need to look at the laws that we are considering today and how they may penalize generations in the future here in this country.

193 The return to original contour concept, because of economics, will dictate under today's

mining practices where we have certain technology and certain economic conditions, a certain amount of overburden can be handled per unit volume of coal that is extracted. So if we go in and under those guidelines we mine that coal, and cut out a contour strip around a mountain in Appalachia, and then place this overburden - we pay a certain amount in energy, money, manpower to remove that coal. We are producing a net amount of energy. We are expending energy to produce energy.

193 OK. Once we have paid the bill for removing that overburden, and extracted our coal, then we put that overburden material back where we have already had to go through the process of moving it; and later generations that will come back and require additional coal reserves when technology and economics will dictate that additional coal can be removed, we will have to come back and pay the bill again and remove that material that has already been removed once; and it is not very forward thinking, if you are convinced that once that has been mined, it will never be touched again.

193 We are going back in areas now where economics and past regulations have dictated a limited amount of coal can be removed. We are going back and getting second and third cuts. This is going to happen, no matter what we do, because of the energy situation in this country. This is going to happen in the future.

193 So we need to recognize that and not penalize future generations by mining laws and practices that we are trying to establish now.

193 I feel that the proposed law, the one that has been proposed by the Congress before, is narrow and explicable. It dictates the mining practices and techniques. If we could have a law, if we must, a Federal law, I think it is still more appropriate to have a State law, because I think the States recognize the individual problems; and as someone has said before, there is such an infinite variation of mining conditions throughout this country that there is no way to write a specific law to dictate mining practices that will be applicable in those many, many varying mining situations. So if we could orient our law more toward results, what results are we trying to achieve, it doesn't make sense to say you can't mine on a slope greater than 20 degrees, if your purpose is to avoid - if your purpose is to avoid landslides. If that overburden material is hauled

to some remote area and stored so it possibly couldn't cause a landslide, why should we restrict mining on a slope greater than 20 degrees, or 25 degrees, or whatever.

194 I think we need to leave flexibility in the law so industry can be innovative; and as technology advances, we won't be stuck with inadequate mining practices that are inefficient both from the standpoint of energy recovery and from the standpoint of cost to produce this energy supply.

194 The law requires permission for variance from the original contour concept at the discretion of the regulatory agency. We already recognize there are many other practices that are acceptable such as mountaintop mining, I think. This is alluded to in the bill; but a variation would be required, or a variance, from the regulatory law there to permit that. I think it needs to be recognized that there are many other acceptable mining practices and not create such an impossible task to be allowed to engage in mining practices that we already know are acceptable.

194 The bill restricts mountaintop removal which I think is a tremendous shame, especially in Appalachia, since it does provide such a much more valuable topography after the mining is done. It dictates the placement of spoil. Maybe that is the best place to put the spoil today. Maybe a few years from now, it won't be. I think we need to leave more flexibility. These hollow fills, for example, that we demonstrated with the slides, have proven to be a very effective way of eliminating spoil problems, eliminating or controlling landslides, controlling sedimentation, and leaving the spoil material placed in a configuration that is much less steep and precipitous than it was when it was removed. It eliminates these hollow fills.

194 Gentlemen, that is really my comments on the things. I would like to reiterate, I hope that the members of the committee will come back to Appalachia and especially to eastern Kentucky and look again at the active mining site as you did in the past, but also go through the whole spectrum.

194 I certainly would like to encourage you to not necessarily come as our guests, but come with the agency representatives from the State, talk to the Governor, talk to Secretary Bell; and also I would like to see you talk to individuals who are private surface owners in the area where

we are mining. I know that you can go find other people as was the case on the last trip when the helicopters, I believe, sat down at the Hazard Airport and a delegation of school teachers and other people who, to my best information had never set foot on our mining property in their lives, came along with you and interrupted as we were trying to explain what we were doing and said this won't work, and they didn't know a thing about our mines.

195 The CHAIRMAN. They said you wouldn't let them on the mine.

195 Mr. JACKSON. That is not true, We invited them.

195 As a matter of fact, we have taken tours from Lexington, ladies' groups, and from Louisville to take them up and show them the reclaimed areas. I think the open door policy is the only one we can pursue. I would like you to talk to those private landowners and ask them whether they like what is being done to their surface.

195 Most of them are anxious to get it back after the mining is done so we can put it to use.

195 The CHAIRMAN. We will try to do our best and cover as much ground as possible. I do suspect there are members that might want to visit that winery that you have. [Laughter.]

195 The four of you have done a very effective and impressive case presenting this industry's point of view today. I want to thank you very much for it. We will try to take a little time now to get some interchange and dialog going on here.

195 You know there are points you made, Mr. Jackson, about letting the States run the operation. I have always found there are two things you have to have: One is a good law. The Soviet Constitution reads about as well as our Constitution on personal liberties, but they don't have the enforcement machinery. I think you need a good law. You also need people who believe in reclamation to enforce that law. That has been my quarrel with some of the States, not just the words on the books. They all read pretty good about destroying the land.

195 The actual enforcement is what I want to talk about.

195 I wondered if you wanted to comment upon the resignation that got a great deal of publicity of one of the most respected veterans of surface mining who quit and said, in effect, that you people are not enforcing the law?

195 Mr. JACKSON. This is Bill Hays, I suppose, that you are referring to.

195 I don't have firsthand knowledge about what Mr. Hays' problem was about resigning. I know that he had been kept on the Division of Reclamation through several different State administrations there. To my knowledge, he has always indicated an interest in seeing the orphan banks or the land that was, you might say, devastated back when we didn't have any law restored to some useful purpose; and it was my understanding that the Department had transferred him into a section and put him in charge of restoration of these orphan bank areas, which is not possibly as controversial as the areas that he had been in in the past.

195 I think that that might have had something to do. Apparently he had changed his mind or didn't like that particular aspect of his job and left. That is the extent of my information.

195 The CHAIRMAN. Let me ask you in the same connection, there has been an underlying theme here of let the States do the job. The bill we had last time, the bill I introduced this month says, in effect, if you are proud of your State law and it is a good law and it will reclaim the land, you come in and take over. The Federal Government will delegate to the States, give to the State the power under the State plan to enforce the law.

196 Let me ask any of you: Why, if you are so proud of what the States have done, can't we have a Federal law that gives equal standards everywhere in the country and let the States move in and enforce their laws?

196 Mr. MACGREGOR. I think Mr. Jackson pointed out to you, sir, the problem which arises. Previous attempt at writing regulations have in essence dictated the mining methods change. What is accepted today, and economic today, may not be in the context of 5, 10, 15 years from now; and I think that if you are persuaded that you must regulate this business, I certainly think that the attempts of the past to tell the mining industry how to mine is not exactly the way to do it.

196 From where I sit, one of the principal public preoccupations has been the question of orphan lands. Here may be a very real area in which the Federal Government should take an interest. Because of the fact, as I pointed out, that the priorities of the past were different than

those of today, and that our own Federal Government was one of the main instigators of Appalachia orphan lands in its desire for low-cost energy for TVA, for example, I really think that if you are going to concentrate on alleviating this public concern over these problems, that you should go and look at what can be done; and I am sure you will get industry support. I am sure the public would be willing to pay some kind of a premium on their fuels that they are getting today just as the road fund paid for our highway system, our future coal production could, with a modest increase, pay for the land recovery which would alleviate a great deal of concern.

196 We are being measured by a very large number of people on that past, not on the current procedures.

196 I recognize that point, but I guess some of you have Pennsylvania operations. In my judgment, the Pennsylvania law is a good one. The Pennsylvania enforcement machinery is good. They could take over tomorrow morning, continue what they are doing, and meet the standard of this bill without any change. Why can't Kentucky and West Virginia come up with those standards? We talked earlier about the diversity of situations. There is a diversity of economic situations. Pennsylvania enjoys high-grade coal and is right in the center of one of the greatest energy consuming markets in the world. For the total economic package in Pennsylvania, it is perfectly acceptable with that legislation. The further away you go, and the more you apply these regulations in areas which have other economic considerations, the more you will do to the economy of these areas.

196 For example, 96 percent of the energy in Indiana comes from surface-mined coal. I believe that if the Pennsylvania regulations were applied to Indiana, the people of Indiana would have some deficits in their energy sources or they would have sharp increases in costs.

196 The CHAIRMAN. You aren't arguing that the kind of reclamation you ought to depend upon the economics of the individual States? If the State is in trouble, or at a bad competitive disadvantage, you let them leave the high walls and tear down the mountains without restoring the land?

197 Mr. MACGREGOR. That is not what I said at all. I said the economics of a type of

reclamation for one type of terrain is not necessarily applicable in another. Pennsylvania is characterized by rolling countryside, the Appalachian folding that I talked about. The coal mining is invariably done in areas of that kind. In Indiana, we have the flat plains of the original, flat, carboniferous deposits which haven't been folded. The reclamation needs there are totally different.

197 The CHAIRMAN. Our bill recognizes these differences. I am aware of them. All I want to say in legislation is put the land back. If it is rolling, put it back rolling. If it is Appalachia, don't leave the highwalls. Let's refill it and get back to an approximate contour using the exceptions that are in the bill. I recognize diversity and I think the bill allows for diversity.

197 Mr. MACGREGOR. I noted during the last campaign, one of the public concerns was the increased amount of centralized regulation. I really believe that some attention should be paid to the necessity for letting the people in each political area make up their own minds what they do. If environmental considerations are of such importance and strength, they will absolutely come through in the public forums in each separate area as they do today; in every part of the country we are discussing with different groups different techniques on all of our resource extraction, not only coal.

197 The CHAIRMAN. I don't want to monopolize the time. I had two questions. Let me ask my old friend, Ed Phelps, to comment on one of these.

197 I get kind of the impression, talking to the coal people and, here this morning, that the industry feels unneeded and unloved.

197 I want you to know I think the country needs you. There is a need to double the production of coal in the next 10 years. I want to turn you loose to help produce the coal that will get the Arabs off our back and maybe slow down the rush to nuclear power and do a lot of other things for us. Why wouldn't we be better off, Ed, if we had one set of environmental protection standards for the whole country, we would have certainty in the industry? You wouldn't have this legislation hanging over your head year by year. You wouldn't have this unfair, competitive situation Mr. Seiberling talked about, where the States, with bad laws or bad enforcement, have an advantage over the States that try to do the job and put the land back.

197 Wouldn't you be better off if you had a Federal law and we all knew what the rules were going to be for the next generation? Then turn you loose for the next 20 years to dig coal and not spend time here testifying?

197 Mr. PHELPS. I will agree with that. I think the way I feel about it, Mr. Chairman, is, again, the fact that the people in the area are more responsible and realize what their problems and what results they want than, with all due respect, are groups sitting up here in this building.

198 Most of the Members, or many of the Members, are from States that do not have coal mining. Each State has their own interest; and the States are doing a job. As far as being competitive, I tried to explain that. There is no way to make it competitive. When you try to write a law that says every kind of mining in the United States is going to be covered under one set of 20 pages or 100 pages, it just is not going to work. The States are making these growing pains. I think that the States are doing the job that you are trying to do here; and I also feel very strongly that the law, with all the environmental input that got into it, got to the place where it was not a reclamation law. It did not highlight the fact that you end up with just good results. It went clear back and told you how to start mining, how to start drilling, and the whole works.

198 We don't need a prohibitory, or a law to prohibit us from mining. We need a law that ends up with good reclamation practices. And we are trying to do that. I think the States are trying to do that. I think they have a much closer feel for it than trying to write an overall program. That is our problem with it.

198 The CHAIRMAN. My colleagues want to make some points. I see some of them frothing at the mouth.

198 Mr. RONCALIO. No, that is my beard. [Laughter.]

198 The CHAIRMAN. We have different provisions for areas of low rainfall against those of high rainfall. We have provisions for area mines. We have provisions for steep-slope mines. We have a range of provisions.

198 We cover the wide diversity of conditions that we get in this country. I will quit if one of you will give me a satisfactory answer to the argument that it is unfair to ask responsible coal

companies in States that have tough laws to compete in the coal market with coal from companies in States that don't have them.

198 Mr. PHELPS. No problem on competing. Coal competes itself due to the type of coal. Freight on it is even higher than all those other costs. It has to compete with energy. It isn't a case of competition. Whatever the price of the reclamation is, we don't have any little gold bag we can pay for. The public pays for it.

198 That is what ends up in the final price of the cost of coal; the final price of the cost of energy to everybody in the United States because it all gets mixed up on an electrical grid system. Why put confusing laws in that confuse areas that do not exactly fit it when the States are doing it, and then add another expense to the Government to oversee the fact that they are going to turn it back over to the States?

198 It just seems to me an unnecessary layer in that that is expensive and serves no useful purpose.

198 The CHAIRMAN. Well, I will finish with this. The bill provides that a State which has a law that has the enforcement machinery, that meets the tests you are talking about, restoring the land and having reclamation practices, can move in and do all the enforcement. There won't be any Federal official around except occasionally to make inspections to make sure you are meeting the standards.

199 I hope most of the States, if we pass this thing, will take it over and administer it. I don't want a great army of Federal bureaucrats administering the thing. I would rather the States do what Pennsylvania has done and what Ohio has done.

199 Mr. MACGREGOR. Mr. Chairman, rather than reducing discrimination between producers, the uniform law would amplify discrimination between producers.

199 The CHAIRMAN. How?

199 Mr. MACGREGOR. I will tell you why. The last recording of the surface mining - coal surface mining industry recorded there were 1,739 companies involved in this industry. Some 70 percent of the coal is produced by about 5 percent of the companies who operate on a fairly large scale. In other words, 250 million tons plus are produced.

199 The remaining 100 million tons are produced by something like 1,250 operators, all of them operating with minimum capital on a small scale. These are the people who would be most affected by the Federal law that has been proposed to date. Most of them would be probably precluded from operating, because to meet the requirements of the concepts that were advanced by the Congress, one has to have enormous resources of machinery, planning, and equipment which the small firms don't have.

199 The CHAIRMAN. Like an old saying - and I really want to move on to my colleagues - we wrote some provisions in the bill the last time at the insistence of the administration and the coal industry that would give small operators special help in this regard, and if they are not adequate, they can tell us why and we will go back and look at them.

199 Yes, sir, Mr. Roncalio.

199 Mr. RONCALIO. I want to take 1 minute, possibly 2, to try to reconcile what this is all about in the best interests of all of us. Gentlemen, I think we have to have a Federal statute on the books to reconcile some inevitable differences between the Federal and the State interests and values.

199 I find it from Wyoming, after 7 years of devotion to this subject matter, inevitable to come to any other conclusion with the massive amounts of Federal coal under non-Federal service, with men like Mansfield and Metcalf we will write a law to put that in the bank for the next 50 years and not mine it.

199 You should abolish all surface mining, it is an abomination on the face of the earth, and a few people saying, "No not at all."

199 Don't you in your guts realize we have to write a bill? We want to write a bill to meld your interests with those of everybody else - nuclear, agricultural, surface owner, small operator who can't do much more than take 360 acres and run an operation on it? Thousands of people are looking to us to put an inevitable end to the fight that has to go to the Federal courts.

199 We recognize that. I beg of you, don't tell us we are limiting you to having to put everything back to its original contour. Don't tell us you can't mine a 20 degree slope. You can now.

200 Mr. MacGregor, bless your competent and devoted heart. I spent months with your top lawyers taking out the prohibition to mine the aquifers. We have to do that.

200 I will try to write a fair bill. My father died like this with a beard on his face after working 40 years in the coal mines. I want to be fair. Mr. Udall wants to be fair. We want it to blend with nuclear, oil, and help this country move forward.

200 I don't know how we can do it if we don't write a bill reconciling the interest of the Federal and State in areas like Wyoming and Montana where you have too much coal in all sorts of circumstances to do otherwise. I hope the bill continues to have a strong State lead. If the State regulations are more stringent than Federal, vis-a-vis Hershey-Kleppe last month, you won't have bureaucratic types going into it.

200 You know you will have problems in developing and leasing coal. If this bill can be less objectionable to you, you will do yourselves, the States, your people and all of us a great public service. That is all I have to say.

200 The CHAIRMAN. A very wise, eloquent member we have here.

200 Mr. MACGREGOR. Mr. Chairman, I can only say that we are very, very much impressed by the efforts that Mr. Roncalio has made in the past to reconcile these apparently unreconcilable opposing forces. The one force that gets caught in the middle, of course, is the public whose energy needs we have to think about, too.

200 I do hope if you get down to writing a bill, you do it on a different concept than you did the last time. Perhaps if we sit down together and get away from the idea of writing a mining bill, but one that outlines what are the principles on which we are working, and then if you want to let the States do some work on it, fine.

200 I think that my friend from Kentucky has pointed out there are grave dangers in these State regulations. I was appalled to see that Kentucky is about to change from bourbon to wines, courtesy of their bill on reclamation. [Laughter.]

200 The CHAIRMAN. I will alter nature for a minute.

200 Mr. Clausen of California.

200 Mr. CLAUSEN. Well, at the outset I want to state that I am pleased to hear, Mr.

Chairman, that we have agreed to take the committee on trips for the purpose of evaluating on the spot what I think is the kinds of practices, good and bad, throughout the country. Had you not taken the initiative here this morning, that was one of the requests I was going to make of you and the membership here.

200 I think it is absolutely essential that we move out into the field, have a chance to see it on the spot, and listen to the dialogs from opposing factions. That is what we are here for.

200 We are here to make a judgment. It is clear from this testimony, and I want to compliment all of you what I think is a very concise and very expansive testimony here. I think you have placed on the record some commentary that will be available to all of us as we evaluate the hearing record further down the line.

200 You all agree that there is a need for a law. The principal issue seems to be whether or not it should be a Federal law that recognizes the variables. You all seem to agree there is a need for a law that assures good reclamation practices. I don't think there is a member of this committee that doesn't agree with this.

201 Would it be possible for you to make an evaluation of what was said here in this law and come forth with a recommendation, if we agree that a Federal law would hopefully reconcile the differences that my friend from Wyoming is trying to accomplish?

201 Could you fellows take this law and present us with a sample of a law that you think we might be able to live with?

201 Mr. MACGREGOR. Mr. Chairman, Mr. Clausen, indubitably the mining industry can cooperate as they have done with the States in developing legislation applicable to the particular types of terrain in each part of the country. We have no inhibitions about cooperation on a system of principles. The problem is here that in the past there has been a tendency to try to prohibit techniques, and as my colleague, Mr. Jackson, pointed out, the trouble is that you are taking a snapshot of the industry as of now and you are going to write that into these rules and regulations forever.

201 This industry is a dynamic industry. Only a few years ago we were using equipment which cost maybe a few thousand dollars for the extraction of coal. The last piece of equipment that Ed

Phelps and I were forced to purchase cost \$2 7 million for one piece of equipment, and this enormous change in technology. Remember, this is where America's genius is, that we evolve technology as we go along. We would hate to see anything other than principles of the objectives you want to achieve at the end.

201 If you can sit down and do that with us, you have no argument with anyone in our industry.

201 Mr. CLAUSEN. Mr. Jackson, I believe you made reference in your testimony that almost all of the States have examined their independent problems and solved them by appropriate legislation. I don't want to take up time today, but it would be helpful, I think, for the hearing record and for future deliberation if we had examples of what you think is appropriate legislation.

201 Could you provide that for the record?

201 Mr. PHELPS. Also, Mr. Clausen, there is a booklet out that had the laws and regulations on reclamation of coal in every one of the States. It was put together in June 1976 by the Department of the Interior. It has the regulations, each one of them in each State.

201 Now we can make that available, and as was suggested, if there is an interest, a request, we would like to sit down and work out the kind of regulations that we think would be - would end up with good reclamation results. That is what we are all trying to do, I think.

201 Mr. CLAUSEN. I am going to pursue this. I think therein lies a key to the ultimate solution. That is, to see that we have examples of what you think would be proper legislation, taking into consideration the variables.

201 I say this on the basis of my own personal experience over in another committee dealing with the water pollution program.

201 Let me ask you, Mr. Chairman, are we going to provide for a State certification procedure in this legislation?

202 The CHAIRMAN. Well, that is up to the committee to determine. I introduced H.R. 2, which is essentially the last bill produced by the last Congress. I favor the principles in there

including the emphasis on State leadership. I hope the States will take advantage and administer their own law.

202 Mr. CLAUSEN. I think it is significant we recognize this now. In H.R. 9560, which was passed last year, we did move in the direction of setting up a State certification provision. I think it might be helpful if we moved in that direction, because the only way in which we are going to revise these objectives is if we have the expense, the qualifications, and the commitment on the part of the people in these States and political subdivisions that are out there where the problems exist.

202 The CHAIRMAN. If I can respond further, when you really get down to the gut problem of the last 4 years, the understandable complaint was, why don't you just write a law which tells us results, write a law that requires us to produce revegetation, resodding, new topsoil, and a good result? Yet we turn up and write a bill that has page after page of the details, about what you must look at.

202 I used to kid here. Once we had an amendment about the map that you had to file on the application. There was wording that said there must be an arrow on the map pointing north. Any damned fool that prepares a map will have an arrow on it. Here we were legislating detail.

202 The problem is one of trust. You can write for me a general law that would not be 120 pages, but might be 10 pages. Unless you had people that believed in reclamation administering that law, it wouldn't be worth anything.

202 The plain fact, when you get down to it, the problem we have had in the last 4 years is that the environmentalists with good reason don't trust what the States have done. They have written good laws in Kentucky and sometimes you had people who cared about the land administering them. Sometimes the coal companies got their hands on the legislation, the enforcement provision in the States. The laws don't mean a damned thing.

202 Maybe there is a point of balance here. I don't know. The plain reason we have written such a long bill is the lack of trust in the industry and the regulatory agencies at the State level.

202 Mr. CLAUSEN. Well, I think the real value of these hearings and where we are going to

go from here lies in what the States are doing already. First of all, I look down the list here. I look down this row of people on this committee.

202 My land, I have never seen so many new faces in all the time I have been in the Congress. Certainly, these are very knowledgeable people, and they will make a great contribution.

202 I would also state that the whole question of economics has altered substantially and, as has been pointed out in the testimony, a few decades ago, it just wasn't economically feasible for them to accomplish any of these objectives.

203 The CHAIRMAN. Any questions over here?

203 Mr. Seiberling?

203 Mr. SEIBERLING. Mr. Chairman, I have so many questions I couldn't possibly cover them in 5 minutes. I am going to make some observations and ask the gentlemen to comment on them if they see fit.

203 Ever since I can - I have been conscious of public affairs, which is more years than I would like to remember, I can recall there has been an effort in the State of Ohio to curb the depredations of strip mining. Ohio, I think, was one of the first States to do the strip mining of coal on a broad scale.

203 I am going way back to the 1930's and 1940's. It wasn't until 1971 that we actually got a law written that was really meaningful, and, of course, during this entire time the coal industry fought tooth-and-nail not to have any effective regulations of strip mining.

203 Now if I were the coal industry, maybe I would have taken that same approach. So we start off with the knowledge that you gentlemen in the past have had a conditioned reflex against any regulation. I suppose that is a normal gut reaction of a businessman.

203 I spent many years in business myself. I know.

203 Now the second thing is that I have great difficulty, Mr. Phelps, with your argument that if we just let the States alone and let them decide what would be reclaimed and we let the people of the States decide what is the best regime for them, and how to enforce it, that we have before us a long and, I might say, disgraceful history of intimidation by the coal industry of the people and the administrators in local areas.

203 So, the record isn't very good, and as Mr. Udall said, we have a problem of trust here. What we are trying to set up is a Federal system that will let the States do it, but make damned sure they are doing it. That is our problem.

203 So that is the first thing I think that we have to somehow work out.

203 Now in connection with your company, for example, isn't it a fact that Peabody, as recently as May of 1976, was operating two strip mines in Colorado without a permit, in violation of the criminal laws of the State of Colorado? Is that true?

203 Mr. PHELPS. We were cited for that, yes, sir. We were cited for it.

203 Mr. SEIBERLING. All right. Did you or didn't you?

203 Mr. PHELPS. If you would look into the background on this, there was a very logical explanation. We had people out there working on it. They changed the State laws. There was a political upheaval between two different groups in Colorado. I would like to send you the details on that. It is the kind of publicity that makes the industry look bad. It was all mixed up with the changing of Colorado regulations and personnel inside of the political government.

203 Mr. SEIBERLING. Well, that is right. We went from a tough Governor to a soft Governor as far as the environment was concerned.

203 The CHAIRMAN. Vice versa.

203 Mr. PHELPS. There was a 2-week period when there was a question of whether the permit had been legally requested or not.

204 Mr. SEIBERLING. Well, all I can say is that there hasn't been a very good record by the coal mining industry as a whole, and that is part of our problem in trying to deal with this overall problem.

204 Now the second thing I think we ought to ask you is that we hear a lot of talk about how we need level land in mountainous countries. I might say a lot of the strip mining in Pennsylvania is on mountainous areas that are every bit as steep as there are in West Virginia, Virginia, and Kentucky. But we have written a provision in this bill, section 515(c), which goes into some length as to permitting mountaintop removal and changing the contours of the land under certain conditions.

204 I might say it was - some of the provisions were taken from the Ohio law where we don't have any mountains, but where we try to come up with a similar procedural device from what Ohio has.

204 I think rather than make generalized criticisms, we ought to have from you a specific statement as to in what way this bill, in that particular instance, for example, would not be available in practice to help you do mountaintop removal. If you want to comment on that right now, fine. Maybe you would like to submit an analysis of it.

204 Mr. PHELPS. Go ahead. We will answer it as you go. If you have others - I think our biggest question on it was that it was that it was telling us how to do it, not what kind of results we were to get.

204 Mr. SEIBERLING. I don't so read it. It says you have to have certain overall requirements such as it has to be certified by an engineer that it is going to be stable, and that is something that you ought to have anyway. But tell us what you think is wrong with it in detail. I think that is something we need.

204 Mr. MacGregor, you talked about the restoration of land. You said that under the State reclamation laws all of the land was going to be restored to agricultural production or grazing or some production potential. What percentage of the land mined by your company has been restored?

204 Mr. MACGREGOR. 110 percent.

204 Mr. SEIBERLING. 110 percent. In other words, you have created more land than -

204 Mr. MACGREGOR. This is one of the reasons why we insist - and Mr. Clausen has supported us - that you come and see what is actually happening. The chairman talked about distrust. I am not going to talk about distrust. I am going to talk about concern.

204 We were concerned that the - that a company known as the Congress Coal Mining Engineering Co., drawing up specifications for how we should mine properties, didn't have the qualifications for doing that. That is the whole problem in a nutshell.

204 Any time you want the industry to collaborate with you on drawing up legislation which

will not deal a serious blow to the economics of the industry, we are happy to do so. We are working with States all the way from Pennsylvania, if you claim that has got the most restrictive, to whatever other one at the end of the spectrum.

205 We are working with each of them on systems of regulation, on the whole field of surface mining; but in each case, they are tailored to the essentials of the job.

205 Let me go back to a point you made, Mr. Seiberling, about the coal industry and it is bad management. This Congress has an enormous responsibility for that. During the period of the thirties and particularly the forties and the fifties, the industry was going out of existence. Why? Because Congress made a decision that the top price for energy was \$5 a ton for coal.

205 You did that by determining the price of natural gas. This put our industry on the rocks. Economics costs, as I told you. TVA fought every one of us down to the tiniest penny for a ton of coal in order to get that priority which your Government had established, which was cost.

205 Now maybe that gives us a bad image when we fight against it. We were fighting for survival.

205 Mr. SEIBERLING. Well, I wasn't referring to the image of fighting regulation. I was referring to some of the - primarily the treatment of people in the coal mining areas by some - I am not saying by all - I am saying by some; and I am including the deep mining operators, too.

205 Mr. MACGREGOR. If you go far enough back, you will find that large bodies of people in this country were disadvantaged by somebody.

205 Mr. SEIBERLING. I don't think we can debate this issue. I think that we need to understand that that is part of the problem.

205 Mr. JACKSON. May I comment a minute?

205 Mr. RONCALIO. Would you yield, Mr. Seiberling?

205 Mr. SEIBERLING. Yes.

205 Mr. RONCALIO. I am trying to restrain myself. That was an excellent, albeit self-serving, observation of the last 40 years.

205 One: Natural gas was infinitely cleaner.

205 Millions of housewives preferred it to coal.

205 Two: The coal companies in order to sell coal had to have it licensed at a cheap interest rate, which developed the resources of the country. That is not quite the role you pointed out, although Congress did set the levels at the request of the oil and gas industry. That was the vis-a-vis battle of coal versus oil, plus the fact that you said.

205 I have heard Congress blamed for it, except that. That makes the blame unanimous.

205 Mr. MACGREGOR. Mr. Roncalio, I agree with what you say. Let us see what it has produced. I would say that this very day there are parts of the country where the people are suffering because they became dependent. They are like drug addicts. They became dependent on natural gas.

205 Here we are debating, in a leisurely fashion, the question of how do we find alternatives to this? I do hope that you will pay some attention to the fundamental economics of the coal industry and the extraction of coal. As I said earlier, none of us have ever objected to proper regulation by the States. That will continue with respect to whether it is by States or Federal.

206 The CHAIRMAN. The gentleman's time has just about expired.

206 Mr. SEIBERLING. If I can make a quick observation, Mr. Chairman?

206 The CHAIRMAN. Yes.

206 Mr. SEIBERLING. Of course, the argument has been made before that this bill would curb coal production and so forth and so on. Now not even Mr. Morton and Mr. Zarb, when they were before this committee last year, defending President Ford's veto of the previous bill, which was a different bill than the one we have before us, ever contended that it would have any long-term effect on production whatsoever.

206 They conceded that if anything, the effect would be short term - 1, 2, or 3 years maximum - because they felt it would cause some small marginal operators to shut down some of their mines. We took that into account and made some - we stretched out the period for compliance. We provided for an aid to the States to do some of the work that the operators would have had to do, et cetera.

206 So I really think if you are going to make that argument, you must comment with a specific demonstration as to exactly how and in what - to what extent you feel that this bill will curb coal production and exactly what exchanges might have to be made to prevent it from doing so.

206 Mr. MACGREGOR. Mr. Seiberling, let me remind you that the President's veto message pointed out that out of the 350 million tons of surface mined coal, the bill as it stood would probably preclude the production of somewhere between 40 million and 150 million tons. A figure was put on the table.

206 Mr. SEIBERLING. When we got Mr. Zarb and Mr. Morton in here, they practically had to concede - although they didn't formally - that they could not come up with a justification for that figure. Mr. Ford was misled.

206 Mr. MACGREGOR. The Bureau of Mines did. They specified the amounts. We would be happy to give you the details if you want them.

206 Mr. SEIBERLING. Well, we have the hearing record available. We suggest you take a look at it.

206 The CHAIRMAN. Are there any other friendly questions?

206 Mr. KAZEN. Mr. Chairman?

206 The CHAIRMAN. Mr. Kazen, then Mr. Tsongas.

206 Mr. KAZEN. I am not here to argue with anybody. I am after evidence. Just one question: Will this bill cost you money and thus cost the consumer higher fuel bills?

206 Mr. MACGREGOR. It won't cost us any money. It will cost the consumer a lot of money.

206 Mr. KAZEN. You pass it on, don't you?

206 Mr. MACGREGOR. Yes.

206 Mr. KAZEN. Than how will it cost you money?

207 Mr. MACGREGOR. By increasing the amount of planning necessary to avoid the particular types of reclamation work. We would have to change the mining plans of all of our properties. We could not run continuously through certain areas. We would have to interrupt them, for example, take out the equipment, start over again.

207 This sort of thing would result in quite substantial changes in posts.

207 Mr. KAZEN. Would you care to give us a ballpark estimate as to how much this would increase?

207 Mr. MACGREGOR. I can't, but I would be happy to supply you with it.

207 Mr. KAZEN. Would you?

207 Mr. MACGREGOR. Yes.

207 The CHAIRMAN. Mr. Tsongas.

207 Mr. TSONGAS. Mr. Phelps and Mr. Morton, you said that you testified in 1973? What was the thrust of your testimony then?

207 Mr. MORTON. Same as it is today.

207 Mr. PHELPS. Same. The only thing that has changed is that the States in that 4-year period have come up with many more States with laws and with much better laws.

207 Mr. TSONGAS. Just in terms of where you are coming from, 4 years ago with all these States not having done anything, if your position 4 years ago was don't do anything?

207 Mr. PHELPS. Our position was to get a law, that one law - our original position was the same, that one law is to cover the whole thing was an impossibility, that it had to be for each State to determine their interests.

207 Mr. TSONGAS. So I would assume that 4 years prior to that your testimony would have been the same? Four years from today it would probably be the same?

207 Mr. PHELPS. There was no Federal law contemplated before that.

207 Mr. TSONGAS. The second point is slogans which I find very curious: "Leave it to the States."

207 In Massachusetts, in Boston, we had a candidate for mayor, Louise Day Hicks. You may recall the name. Her slogan was, "You know where she stands," which on the face of it was appealing. But you knew damned well what she was talking about.

207 When you say, "Leave it to the States," that whole States rights philosophy is very

appealing. It seems to me what you are saying is we have more control over the State legislatures than we have over this Congress. It seems to me that you have in conflict a parochialeconomic interest, which is the job of the State legislators, versus national interests, which is our job.

207 The third point, if I may. You talked about the cost to the public in terms of fuel costs of this bill. In this Congress, whether rightly or wrongly - and I think rightly - it is determined that the consumer shall pay more for automobiles to have clean air. They will pay more for waste treatment facilities to have clean water.

207 I think the same consumer would be willing to pay the costs to have reclaimed land.

208 Now, the argument that we need cheaper energy costs, so therefore don't reclaim the land, it would be a domino, to say, let's have cheaper automobiles, we don't care about the air; let's not spend money on sewage treatment facilities because we don't care about the water.

208 Why is your argument distinguishable from the other two?

208 Mr. PHELPS. I don't think, you know, that the philosophy is different. We have not said that we are going to go back to automobiles without exhaust cleaners on them. We say that we are reclaiming the land, that the States are requiring us to.

208 I take a little exception to Mr. Seiberling intimating that we have some way to cross the palm of the local people, which is more or less what he said. I do not think that we have any way to intimidate State legislatures any more than we have you people. If it is possible to intimidate, you are all in the same position.

208 I do not think that we can intimidate anybody. I think that people have to do things that they think fit them; and the States are more conversant with it, so they know what their positions are and how it affects them and whether it is a kind of rule and regulation that the people there want to live with. They are representing their people.

208 Mr. SEIBERLING. Would the gentleman yield?

208 I didn't say anything about crossing palms. I only talked about intimidation. I am not saying your company is that kind of company, Mr. Phelps. I think probably it is not. You as well as I do know the long, sad history of the coal fields in this country. I don't think we need to go

into detail here. But that is part of the history that is confronting us in trying to regulate the industry.

208 Mr. TSONGAS. A final point, if I may, Mr. Chairman. I make no pretense to be as good natured and moderate as the chairman. I hold town meetings in my district. The people talk about questions that come up amongst themselves. The one example I use in my town meetings of lobbyists was when the vetoed strip mining bill failed by three votes in the last Congress, I walked out of the chamber and there was Mr. Steiger, who is no longer with us, surrounded by representatives of your industry, backslapping each other and chortling and having a gay old time; and my only impression was they were delighted. Yet what was going to happen to this country?

208 That is the example I used in my district. Maybe I should remove myself from any judgment, because that left such a lasting impression on me, more than anything that happened in the last 2 years. I think that kind of thing has to be addressed, taken care of, so that the irresponsible mine operator, whom you do not represent, is in the same position as the responsible one.

208 The CHAIRMAN. Mr. Ruppe.

208 Would the gentleman yield?

208 The witness asked to have in the record some graphs and exhibits illustrating some of the points you made. Without objection these will appear in the record.

208 [The graphs and charts referred to follow:]

209 [See Graph in Original]

210 [See Graph in Original]

211 [See Graph in Original]

212 [See Graph in Original]

213 [See Graph in Original]

214 Mr. RUPPE. Thank you, Mr. Chairman.

214 In reference to your overall concern, do you foresee the passage of this legislation as posing a problem in terms of limiting the mining of the coal resource or do you look at it as

increasing the cost of mining in terms of higher reclamation standards or procedural and legal requirements or perhaps in the West imposing the cost of surface owner consent? Do you have any one particular area where you foresee the bill to be more onerous or more costly?

214 Mr. PHELPS. I think my general observation on it would be that the bill does have some specific prohibition areas in it that are questionable. As Mr. Roncalio said, he worked months trying to determine what an alluvial valley floor is. I would challenge any geologist in the United States to come up with what an alluvial valley floor definitely is. Those kinds of prohibitions would cut down the amount.

214 There were many additional hearings and so on that would delay, and maybe during those hearings stop some of the mining. The additional costs would be part of the additional policing that would be required, even if the States were all turned back over to the States.

214 You have to have an organization that is going to police the thing and say the States are doing right, they are going to have to be inspecting it all the time themselves. You have dual inspections. All of this kind of thing that we have been through, safety, some of the other items. I think it has possibilities of affecting all of us, all aspects.

214 Mr. MACGREGOR. Mr. Ruppe, there is another point. The bill injected a large number of uncertainties into the ability to mine any specific area on an organized plan. At the time that it was being discussed, there was some general ambition expressed around the country that one of the ways to alleviate the petroleum pressures was to, say, double coal mining.

214 At that time, as I recollect, the number that was bandied around was that we should go from 600 million tons to 1.2 billion, at a cost then estimated at being about \$3 0 billion. Now as most of the coal mining is done by private companies, the necessity for raising that capital, which is quite a large amount even by American standards, though not by congressional standards, that amount of money is difficult enough to raise in normal circumstances. But with the uncertainties that this bill injected into the whole sequence of mining operations, it would be very difficult to go to lending institutions and say, look. I have everything worked out to mine this property from here to here. This is the amount of coal we are going to get out. This is the cost of doing it.

214 As a result, it would probably preclude the financing of many ventures that would otherwise take place.

214 Mr. RUPPE. One more question.

214 One of you gentlemen indicated a few moments ago that the responsible people did want to reclaim the land and that to a large degree the responsible people were behind the comments you made today.

214 What about the comments of people who are not so responsible or perhaps the numbers of small operators who may not have the financial resources to comply with this piece of legislation? Is there any reason to really exempt them from the mining reclamation standards? In effect, without a national bill, don't we stand the possibility that these people may have the political capability or ability to apply pressure on the local or State level to really stop the establishment of strong standards or the enforcement of those standards once promulgated?

215 Mr. MACGREGOR. Mr. Ruppe, I think you touched on a point of discrimination. Assuming uniformity was applied, I think if you will read the article that was written in Sports and Field - I think it was - about the Pennsylvania mining regulations pertaining to surface mining, you will find out how this is administered by Pennsylvania, and I think very fairly. Most of the States obviously look to the larger companies to be totally responsible; and I think that, as far as the smaller companies, they recognize the economic hazards involved in their enforcement procedures.

215 So there is a spectrum, I believe, of enforcement. There is no question about it. As I said, about 75 percent of all the coal is mined by about 5 percent of the companies; and don't think that they don't have their feet put to the fire.

215 Mr. RUPPE. I am sure they do. I think there is a concern that the smaller or more independent companies should also adhere to all of the environmental standards that are passed by the various State legislatures. I don't think the Congress is of a mind to suggest that a recalcitrant or small operator should have less of a degree of enforcement of State law that applies to them than the major companies that are maybe more financially capable of meeting those standards.

215 I suspect many people in Congress, while they are concerned about the future of small business, are really concerned that maybe a certain number of people would simply secure an uneven, or a lesser, or more relaxed enforcement of State legislation. I think that is a strong concern of this body.

215 The CHAIRMAN. We have to save time for the next panel.

215 Mr. Lagomarsino?

215 Mr. LAGOMARSINO. Thank you, Mr. Chairman. I will try to be brief.

215 Mr. MacGregor, on page 5 of your statement you say the Federal surface mining legislation could only increase the costs of coal and there have been estimates of increased electrical rates of 10 to 15 percent. As I understand from what has been said earlier this morning, Pennsylvania has the toughest State regulations in the Nation. Would you agree with that assessment?

215 Mr. MACGREGOR. Yes. With regard to the point made earlier on this, Pennsylvania has regulations that probably cost certain of their miners more money than certain other States. There are many factors that go into the economics of coal, the thickness of the seam, whether the coal is high Btu or not, what its market value is.

215 So that to say that by adding to the cost of reclamation that you necessarily discriminate is not true. What you may do is to preclude the mining of certain types of coal.

215 In Pennsylvania, obviously they have the advantage of high Btu coal in fairly thick seams in acres which are very close to consuming markets and, therefore, their cost of transportation is minimal. And under these circumstances, it is entirely possible that certain coals mined in Pennsylvania may be able to carry a very much higher economic cost, be it for reclamation or whatever, and still be highly competitive.

216 Mr. LAGOMARSINO. It wouldn't be your testimony then that this legislation, if enacted, would increase the cost in Pennsylvania 10 or 15 percent?

216 Mr. MACGREGOR. Not necessarily, although I think there are some areas where that might happen. Certainly taking the averages across the industry from the East to the West, you come up with numbers of this order.

216 Mr. SEIBERLING. Would the gentleman yield?

216 Mr. LAGOMARSINO. Yes, I will yield.

216 Mr. SEIBERLING. Back in 1973, I introduced an amendment which would have imposed a \$2 .50 a ton reclamation fee on all coal, both deep and strip. It was adopted in the subcommittee, and then it would have allowed the deductions for the cost of reclamation as required by the bill, the cost of complying with the water pollution laws, with the cost of following the Coal Mining Safety Act, et cetera.

216 And the idea was the \$2 .50 a ton was high enough so that it would reflect after deductions no one would be disadvantaged by the governmentally imposed costs of mining, and, of course, the industry raised its hands in horror and said - and made a propaganda program to indicate that we were imposing a \$2.50 a ton fee by this amendment.

216 Of course, it wasn't that. It netted out much less. It eliminated all of these competitive impacts of legislation; so I would like to ask whether they would look with favor on that kind of approach again.

216 Mr. MACGREGOR. We would have to talk to our customers, the public utilities, who make electricity to sell to your constituents, to find out if they are keen on this.

216 Mr. SEIBERLING. Well, they pass the costs right along under the fuel investment clauses.

216 Mr. MACGREGOR. Not what they say to us.

216 Mr. MILLER. If the gentleman would yield, we heard all morning about the question of passing the costs on to consumers. Everybody in this room is either a consumer or represents them, and I am sure shares the concern. The question is what is the social cost of getting the coal to the marketplace to turn into electricity or for whatever purposes it is used? I don't think you can ignore those social costs.

216 If it is \$2 .50 a ton, it is \$2 .50 a ton. Why do people have to live in an area of the country and suffer the detriments of supplying coal to the steel mills in Pennsylvania or electricity to California, however you want to use it? It seems to me you have to recognize those social costs,

whether it is in putting the land back or providing a pension for somebody who died in the mines or whatever it is.

216 Those are social costs. They have been subsidized in the past through weak laws. You have been able to go around this country and rip it up and not have to put it back. The costs have to be paid.

216 Mr. MACGREGOR. Mr. Miller, I would not call any of our neighbors who work in the coal industry "bastards."

216 The CHAIRMAN. Mr. Rahall might object to that.

216 Mr. MILLER. It is at their expense that the profits have been made.

217 Mr. MACGREGOR. Our best protagonists are employees. I would like you to meet some of them when you come out on the excursion.

217 Mr. MILLER. Let me tell you. Business has always had a great way of getting into bed with labor when you talk about jobs.

217 Mr. MACGREGOR. You mean labor is conspiring against the public?

217 Mr. MILLER. No; that is not what I am saying at all. I am talking about when you say you can go to a State legislature and write reasonable laws, I say when it comes down to the local constituent and you are talking about jobs, the laws don't always end up in the best interests of the general public.

217 Mr. MACGREGOR. Mr. Miller, I think you will discover over the history of this country social costs have changed and the identification of these has changed. When they have been recognized, they have been accommodated in our economic system. We are in the process of such a transition now. What we are talking about here is how we produce legislation that achieves a transition from the past to the future with the minimum of disruption.

217 Mr. MILLER. I agree. I agree. I don't think you should be judged by what went on 20 years ago or 40 years ago in your industry. The question is how has it changed and how can we bring that change about where it hasn't taken place.

217 Mr. MACGREGOR. The reason that we have elected all you bright people to Congress is to help us come up with these changes.

217 Mr. TSONGAS. Would the gentleman yield?

217 The CHAIRMAN. The gentleman from California, Mr. Lagomarsino, had his time stolen from him.

217 The Chair now gives it back - by some poor Baptist.

217 Mr. LAGOMARSINO. I would like to ask one question.

217 I think it was you, Mr. MacGregor, that mentioned if this legislation went into effect, that you would have a difficult time raising the necessary capital to do the job. I think most of us think we must produce a heck of a lot more coal than we are producing now.

217 What about the reverse of that? The chairman mentioned this earlier. What about the instability and the uncertainty of knowing what is going to happen legislatively? You know you are sitting here, as you said, and you have been here before.

217 If this legislation isn't enacted now, you will be back in a couple of months or next year when similar legislation is proposed. Who is going to invest the kind of money necessary with this hanging over their head?

217 Mr. MACGREGOR. I think I can rationalize what has happened. Whether this is what is going to happen in the future, in the interim, from the time that we first discussed this bill some 4 long years ago until now we have gone about the business of trying to take care of the country's energy needs. Fortunately in most of the States reasonable legislation has been evolved which gives us understandable predictable conditions. The very fact that this project is being discussed here introduces an element of instability into the future.

217 I would hate to go back to some of the people who were so keen to help us in the last few years and tell them now there is another cloud hanging over our head. They are the people - the people who have saved money in this country, the pensioners and others who have lent us the money which we have invested in new coal mines. They are the people now at risk, the public through their pension funds and other institutions.

218 Mr. LAGOMARSINO. My point is - and I think the chairman made the same point - that as long as you have the uncertainty of this bill or some other legislation hanging here, I think you will have almost the same effect as if the legislation were enacted.

218 The CHAIRMAN. We are going to try to resolve that uncertainty one way or the other.

218 Mr. MACGREGOR. One of our arguments about the proposed legislation was that - and I don't want to be critical of the drafters. One of the arguments was that it contained so many ambiguities, so many areas difficult to interpret and susceptible to different possible constructions that we might find ourselves in the long course -

218 Mr. LAGOMARSINO. That is a good point.

218 Mr. MACGREGOR [continuing]. Spending a lot of time arguing about points which were unclear. One of the drawbacks of congressional bill-drafting is that in your desire to be very fair to everyone, you frequently leave ambiguities, the idea being let's not be too crystal clear because then it can be interpreted intelligently by the people who are working on this.

218 This has resulted in many cases in an enormous expansion of litigation over the interpretation of Federal regulations, and increasingly people like myself spend hours in law courts and other places trying to find out what are the constraints upon us? I do wish that if some legislation is to be drafted here, that it be - that it deal essentially with principles and not, as I said earlier, get into the form of telling us what Congress thinks should be done in mining coal.

218 We believe that despite our shortcomings, most of our people are reasonably competent. They are good, solid American citizens and they take their duties seriously. We have good staff people, engineering people who understand all of the things we are talking about here. Interesting enough, many of our employees are members of things like the Sierra Club and various other protection agencies.

218 The CHAIRMAN. We really have to move on here.

218 Mr. Sharp?

218 Mr. SHARP. I would like to follow up on a question that was raised a couple of times, particularly by Mr. Kazen. That is your estimates of the costs. I assume you have been alluding to H.R. 2. I wondered in the process of providing that overall figure if you could provide a rather detailed analysis of how that figure is arrived at, including written assumptions, because I think that would be helpful so we can have other knowledgeable people examine it and give us their

estimates and judgment.

218 I am aware that many different assumptions can be made. I would like to have that myself. Maybe that already exists.

218 Mr. MACGREGOR. Within the framework of the paragraph at the bottom of page 5, I would be glad to try to supply some information to you.

218 Mr. SHARP. I was not a member of the committee in the last Congress. On the floor I had to deal with this complicated question. I discovered one of the arguments tossed around was the estimated costs. Everybody denied each other's figures.

219 I realize that is almost inevitable. I think we could do it more intelligently if we could have it from you, a fairly detailed analysis.

219 Mr. MACGREGOR. We will try to get you some figures. As Mr. Roncalio points out, everyone who comes to testify here is totally self-serving.

219 Mr. SHARP. I tend to agree, but I believe that while we will never know the total truth, we can get close. Strangely, it is one of the ways I will have of testing whether the arguments you make before me are reasonably in the ball park, or whether or not your opponents are right, that we cannot trust what you say.

219 Mr. SEIBERLING. Would the gentleman yield?

219 Mr. SHARP. I would be happy to.

219 Mr. SEIBERLING. It would also be helpful to get the industry view as to what have been the increases in the price of coal since 1973 and earnings by the coal industry, because both according to the information I have seen have increased astronomically. The price has almost tripled, as I recall; and also earnings have gone up by an even greater percentage.

219 Admittedly they were low prior to the OPEC oil -

219 Mr. MACGREGOR. I will be happy to supply some information. Of course, each company has its own information.

219 The rather interesting thing - you left one thing out. We would like to show you also what has happened to the costs.

219 Mr. SEIBERLING. My information is, and I would like to be corrected, that earnings

have risen far more rapidly than costs.

219 Mr. TSONGAS. Would the gentleman yield?

219 Mr. SEIBERLING. Yes.

219 Mr. MACGREGOR. If you start from a low enough base. Remember, the industry was running largely in the red at the time the turn took place.

219 Mr. SEIBERLING. That is true, but they certainly have been very profitable in the last couple of years.

219 Mr. MACGREGOR. Some companies have.

219 Mr. SEIBERLING. Most companies?

219 Mr. MACGREGOR. No. Ed, what do you say?

219 [Mr. Phelps shakes his head negatively.]

219 The CHAIRMAN. I say we will have to move along.

219 Mr. SEIBERLING. Let me say Peabody Coal Co. has a very peculiar situation, with which I sympathize.

219 Mr. TSONGAS. I would indicate to Mr. Seiberling at the session on Monday I asked Mr. Robertson to supply the information. His statement was that the increases in costs have exceeded the increases in prices.

219 Mr. MACGREGOR. That is usual in American industry. The resulting margin is sometimes known as profits. It is used for the purpose of paying for money, paying for the money and the capital you have earned. It is used for investing in the future development and replacing the resources -

219 Mr. SEIBERLING. I am not against profits. I am all for profits.

219 Mr. MACGREGOR. I wanted to tell you where they come from.

219 The CHAIRMAN. Gentlemen, thank you very much.

219 [Prepared statements of Ian MacGregor, Edwin Phelps, and Paul Morton follow:]

## 220 AMERICAN MINING CONGRESS

220 Statement of Ian MacGregor Chairman, Board of Directors, and Chief Executive Officer  
AMAX Inc. on behalf of the AMERICAN MINING CONGRESS in regard to "Is There A Need

For Federal Coal Surface Mining Legislation?" before the Committee on Interior and Insular Affairs United States House of Representatives

220 January 12, 1977

221 Statement of Ian MacGregor Briefing on "Is There A Need For Federal Coal Surface Mining Legislation?"

221 January 12, 1977

221 Mr. Chairman and distinguished members of the House Committee on Interior and Insular Affairs, my name is Ian MacGregor. I am chairman of the Board of Directors and chief executive officer of AMAX Inc., a company engaged in several states in the mining of many minerals including coal. I am also chairman of the Board of Directors of the American Mining Congress, a trade association whose membership is composed of the U.S. companies producing most of the nation's metals, coal, and industrial and agricultural minerals.

221 It is understood that the focal point of this briefing is the question, "Is there a need for federal coal surface mining legislation?" It is to this question that my statement and the remarks of my colleagues will be directed.

221 Committee examination of the need for federal coal surface mining legislation seems eminently appropriate at this time for several reasons.

221 1) It has been nearly four years since public hearings have been held by this committee, or any other committee in Congress, wherein the mining industry has been afforded an opportunity to express its views on this important question.

221 2) Due to the exigencies of the elective process, retirements, and committee reassignments, membership on this committee has changed significantly in the past four years. While I am informed that committee assignments will not be formally approved by the House of Representatives until January 19, rough calculations indicate that more than sixty percent of the membership will have joined the committee since the 1973 hearings.

222 3) Finally, we believe that so much has happened in the past four years that, if there ever was a need for federal coal surface mining legislation, that "need" no longer exists. The developments of the past four years include the following:

222 The October 1973 oil embargo and subsequent price increases have taken their toll on the nation's economy and balance of payments, contributed to continued inflation, and stymied economic recovery. President-elect Carter has pointed out that:

222 In effect, the oil producing and exporting countries (OPEC) cartel has levied a sixty billion dollar annual excise tax on the rest of the world, an amount more than equal to the stock value of all international oil companies in the world. By 1980, the liquid capital of oil exporting nations will comprise more than half the world's monetary reserves, creating the potential for devastating world economic damage or threats of damage.

222 Meanwhile, U.S. dependence on foreign oil has increased from 29 percent of consumption in 1972 to 43 percent in 1976 despite efforts at conservation and attempts to inaugurate a national policy of energy independence. The Federal Energy Administration estimates that 1977 dependence will rise to 46 percent of consumption.

222 U.S. coal production has only increased by about ten percent since 1972 (from 602 million tons in 1972 to an estimated 665 million tons in 1976), and progress towards increased energy independence remains disappointingly slow. President-elect Carter said: "A major immediate need is to derive maximum energy from coal, while preserving environmental quality. We have at least a 200-year supply of clean and accessible coal."

223 The nation continues to suffer negative trade balances, largely due to high energy imports. The value of net imports of natural gas, crude oil, and petroleum products rose from \$7.4 billion in 1973 to \$26 billion in 1975 and undoubtedly exceeded \$30 billion in 1976.

223 These high energy imports have contributed significantly to inflation and our sluggish economic recovery. Meanwhile, unemployment remains a problem and is estimated for the month of November at 8.1 percent.

223 Federal budget deficits have risen to the \$6 0 billion range. The estimated deficit for FY-1976 was \$6 5.6 billion. The preliminary estimated deficit for FY-1977 of \$5 0.6 billion is likely to rise significantly depending upon the amount and form of economic stimulus Congress may enact, i.e., tax cuts, job programs, accelerated public works, etc.

223 President-elect Carter has repeatedly emphasized his laudable objectives of balancing the

federal budget within four years and of reducing unemployment to the 4-1/2 percent level.

223 Mr. Chairman, in light of the nation's growing unemployment, persistent inflation, depressed business conditions, adverse balance of trade and soaring federal budget deficits, new federal programs should be evaluated on these two criteria:

223 First, are they essential - is the proposed new federal program really needed - and second, what is the program's impact upon unemployment, inflation, international balance of trade, domestic business conditions, and the federal budget?

224 In our view, federal coal surface mining legislation fails to measure up to those criteria. Such legislation is not essential nor even needed since surface coal mining is already regulated, either by the states or by federal regulation, or by a combination of both. Reclamation is now required for virtually all surfacemined coal produced in the United States.

224 The state legislatures have been particularly active in this field in the past few years. Thirty-eight states have mined land reclamation laws. It should be emphasized that twenty-nine of those states have either enacted new mined land reclamation laws, or amended existing mined land reclamation laws since 1973, the year in which this committee last held public hearings. If Vermont's land use and development law is viewed as a mined land reclamation law, the number would be increased to thirty states. Table 1 attached to my statement is a listing of the states which have either enacted or amended their mined land reclamation laws since 1973.

224 On May 17, 1976, federal regulations were promulgated and are now being implemented providing for surface mining reclamation for federal lands. These regulations permit the states with public lands to assume full reclamation authority over federal lands if their state laws qualify. The laws of New Mexico, Utah and Wyoming have been determined to qualify, and cooperative agreements have been entered into with the Department of the Interior whereby each state will enforce reclamation on federal lands.

224 Thus, federal surface mining legislation fails to meet the first criteria, the criteria of essentiality. Reclamation of surface mined lands is being performed under state law or federal regulation.

225 Table 2 attached to this statement is, I believe, revealing as it lists all coal producing states in 1975, according to the volume of total coal production from that state (both surface and underground) and indicates whether there is a mined land reclamation law in force. As that table indicates, only Arizona and Alaska do not have a state law covering mined land reclamation. However, I hasten to add, that all coal production in Arizona is on Indian lands, where reclamation requirements are a condition of the lease. Mr. Phelps can provide the committee with additional detail on those reclamation requirements.

225 While I am not as familiar with the situation in Alaska, I am advised that the State Department of Natural Resources has wide latitude on including reclamation requirements in the lease terms, uses a variety of other regulatory techniques, and, of course, those deposits which are on federal lands are already subject to the federal regulations.

225 With respect to the second criteria, it is clear that federal legislation would only aggravate the problems of unemployment, inflation, international balance of trade, domestic business conditions, and the federal budget.

225 According to previous estimates relative to legislative proposals of the 94th Congress, such legislation would increase unemployment by prohibiting a significant amount of mining. Estimates of the number to suffer unemployment have been a subject of disagreement, as estimators gave different weight to the impact of the various provisions.

225 If coal production is reduced or expansion of coal production is significantly retarded by prohibitive legislation, shortages will cause price increases, thereby adding to inflationary pressures. As far as I know, federal surface mining legislation could only increase costs of coal and there have been estimates of increased costs of electric utility rates of from 10 to 15 percent.

226 Added inflationary pressures will further weaken domestic business in its competition with foreign producers of similar products. This weakened competitive position caused by increased prices for U.S. manufactured goods will not only hurt the ability of business to market its goods abroad, but it will also increase foreign competitive pressures on domestic markets for U.S. goods.

226 A reduction in domestic coal production or retarded expansion of coal production will

heighten the nation's vulnerability to any interruption in imported energy, such as another oil embargo. As a developed nation, the U.S. depends upon an adequate energy supply, and any drastic reduction in fuel availability would wreak havoc on the economy and cause severe personal hardship.

226 Concomitantly, continued or increased dependency on imported energy will result in a less favorable international balance of payments posture for the U.S. As I mentioned earlier, in 1976 the U.S. dependence on foreign oil was 43 percent of consumption, and dependence in 1977 is estimated at 46 percent. The nation's dollar outflow for the importation of mineral fuels for 1976 was in the neighborhood of \$34 billion.

226 Finally, the cost of the new bureaucracy required to administer such legislation can only increase the pressures on the federal budget and add to the soaring budget deficits now being experienced - over \$6.6 billion in FY-1976. President-elect Carter has emphasized the need to simplify government. The duplication of adding a federal bureaucracy to carry out a job which the states are already performing and can do better would be a step in the wrong direction.

227 Mr. Chairman, surface mining technology is dynamic. Mining and reclamation methods have changed, are changing and will continue to change in the years ahead. These changes are for the better, we believe, and significant progress has been made in improving mining and reclamation techniques. To remain dynamic, surface mining and reclamation technology must not be frozen by inflexible national legislation which does not take into account the considerable variations state by state of topography and other conditions. The inclusion of impractical requirements in a national law would throttle innovation in new and improved methods of both mining and reclamation. Opportunities for innovation and new techniques should not be stifled. State and local governments, the level of government most closely attuned to local needs, can deal effectively with the problems of mined land reclamation. The federal government should not ignore the ability of the states and their rights to deal with local conditions. Understandably, the individual state responses have varied, as they should, to account for the widely differing climate, geology, terrain, biology, chemical, and even social conditions. Climate variations alone range from the Arctic to the arid regions of the Southwest, and from the high rangelands of the

Northern Great Plains to the humid mountains of Appalachia. The legislative responses of the states have been tailored to meet the special needs of their people and its region.

227 In southern Illinois, farm land has a desirable post-mining use. It is a region of adequate rainfall and good soils. Consequently, the Illinois reclamation program is designed to create new crop land subsequent to mining.

227 Wyoming is a high plains area where rainfall is not adequate for intensive farming, and in many places the soils are not suitable. Much of the state is range land and is used for grazing. Its reclamation requirements are attuned to its climate and local needs.

228 Iowa has taken a slightly different approach. First, the state of Iowa authorized a three million dollar study to be performed by the Iowa State University, and from the results of that study drafted its mined land reclamation law. It should be noted that in Iowa the administration of its reclamation program is lodged in the Division of Mines and Minerals of the State Department of Soil Conservation. In Iowa, overburden may be cast below the toe of the mine cut, as it is used for the construction of soil conservation terraces.

228 In southern Indiana there were too few lakes, at least there were in the eyes of many of the state's sportsmen and ecologists. That oversight of nature is being improved through its mined land reclamation program. By not filling the final cut, many lakes have been formed, and the regulations stipulate that the banks must be suitably graded.

228 Past federal legislative proposals have almost uniformly required "a return to the approximate original contour". Variances were permissible only in the case of "mountaintop removal" mining, and where insufficient overburden existed. It is apparent from the above examples that beneficial changes from original contour are possible through use of proper reclamation planning and techniques. This is only possible where local conditions are thoroughly understood and local guidelines established. Another case in point can be found in the brown coal region of West Germany where the "approximate original contour" is often found to be undesirable, and reclamation planning includes the creation of a whole new landscape.

229 A comment from U.S. Geological Survey Circular 731 entitled "A Guide to State

Programs for the Reclamation of Surface Mined Areas" is pertinent to the question of local versus national regulation: "The number of state programs designed specifically for mined area reclamation has increased from one in 1939, with the initial action of West Virginia, to 38 states in 1975. Thirty-two of the state programs became effective during 1970-75. In several of the remaining twelve states, draft legislation abounds and all fifty states are likely to have programs by 1980."

229 In summary, Mr. Chairman, things have changed in the coal surface mining industry and a lot has happened since the industry last appeared before this committee in May of 1973. The actions of the states have obviated the need for national coal surface mining legislation, and as I have outlined here today, such legislation will be counterproductive to the urgent national objectives of increasing domestic energy sufficiency, which in turn, is critical to economic recovery, reduction of unemployment, putting a lid on inflation, and improving our international balance of trade.

229 Mr. Chairman, I would be remiss if I did not point out that there have also been changes in the coal mining industry since the 1973 hearings on surface mining. Environmental protection is now firmly established policy in all responsible mining companies. If there are any exceptions to responsible mining and reclamation practice now, surely they are isolated and can be adequately dealt with on a state level, where state needs and rights should be paramount, without the need for sweeping federal legislation and redundant regulations.

229 Don't judge the industry by the past, judge us by the present. Come out and see what we are doing. On behalf of my company, I wish to extend a warm and cordial invitation to you, Mr. Chairman, and all members of the committee to visit any and all AMAX coal mines. We urge you and the members of the committee to see what's being done.

230 I think a quote from the previously mentioned U.S. Geological Survey Circular 731 appearing on page 2 is an appropriate closing:

230 In the early years of surface mining, major emphasis was placed on "recovery of the mineral," with little or no regard to "recovery of the land." Initial lack of concern for the environment caused increasingly stringent strip mine legislation. Reclamation has now become

an integral part of most surface mining operations and has caused some major revisions in mining techniques, particularly in the East. Current practice is to incorporate reclamation with the mining sequence, and not to regard it as a separate operation.

230 Thank you, Mr. Chairman.

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\*3\*TABLE 1

\*3\*STATES WITH SURFACE MINING LAWS  
SHOWING THE YEAR OF ENACTMENT AND  
THE YEAR THE LAW MOST RECENTLY  
AMENDED

State	Enacted	Most Recently Amended
Alabama	1969	1975
Arkansas	1971	
California	1975	
Colorado	1973	1976
Florida	1971	1975
Georgia	1968	1976
Haw aii	1975	
Idaho	1971	
Illinois	1961	1976
Indiana	1967	1974
Iowa	1968	1976
Kansas	1968	1974
Kentucky	1967	1976
Louis iana	1976	
Maine	1973	1975
Maryland	1967	1976
Michigan	1970	1972
Minnesota	1971	
Missouri	1971	1975
Montana	1973	1975
New Mexico	1972	
New York	1974	1976
North Carolina	1971	
North Dakota	1969	1976
Ohio	1972	1974
Oklahoma	1971	1972
Oregon	1972	1975
Pennsylvania	1945	1976
South Carolina	1973	
South Dakota	1971	1976
Tennessee	1972	1975
Texas	1975	
Utah	1976	
Virginia	1950	1976
Washington	1970	
West Virginia	1939	1971
Wisconsin	1973	
Wyoming	1973	1976

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231 (Material obtained from state offices)

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\*4\*TABLE 2  
\*4\*1975 Coal  
Production by State  
in order of Volume  
\*4\*(In Millions of  
Tons)

State	Surface Production	TOTAL Production	Mined Land Reclamation Law?
Kentucky	78.0	143.6	yes
West Virginia	20.9	109.3	yes
Pennsylvania	39.5	84.1	yes
Illinois	27.7	59.5	yes
Ohio	31.3	46.8	yes
Virginia	12.3	35.5	yes
Indiana	24.9	25.1	yes
Wyoming	23.4	23.8	yes
Alabama	15.0	22.6	yes
Montana	22.1	22.1	yes
Texas	11.0	11.0	yes
New Mexico	8.8	8.8	yes
North Dakota	8.5	8.5	yes
Colorado	4.8	8.2	yes
Tennessee	4.4	8.2	yes
* Arizona	7.0	7.0	no
Utah	0.0	7.0	yes
Missouri	5.6	5.6	yes
Washington	3.7	3.7	yes
Oklahoma	2.9	2.9	yes
Maryland	2.5	2.6	yes
* Alaska	0.8	0.8	no
Iowa	0.3	0.6	yes
Arkansas	0.5	0.5	yes
Kansas	0.5	0.5	yes
Georgia	0.07	0.07	yes

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232 \* Coal production in Arizona is solely on Indian lands, where reclamation requirements are a condition of the lease. On State owned lands standard reclamation requirements are applied. Most mineral deposits in Alaska are on Federal or State lands - USDI regulations apply on Federal lands; on State lands, reclamation requirements are established by the State of Alaska,

on a case-by-case basis, as part of the terms of leases to mine operators.

233 STATEMENT OF EDWIN R. PHELPS BEFORE THE HOUSE COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS AS TO THE NEED FOR A FEDERAL SURFACE  
MINING LAW

233 JANUARY 12, 1977

234 Mr. Chairman and Members of the Committee:

234 My name is Edwin R. Phelps and I appear before you today in triple capacity. I am President and Chief Executive Officer of Peabody Coal Company, the largest domestic coal producer. I am also past Chairman and a member of the Executive Committee of National Coal Association as well as the Co-Chairman of the Surface Mining Committee of American Mining Congress, and Chairman of the Surface Mining Committee of National Coal Association. I appreciate this further opportunity to discuss with you the question of the appropriateness or need for a Federal Surface Mining Law. As you know, this is not my first opportunity to express my views and views of the industry on this subject, and I should tell you in advance that they have not changed. In fact, the course of events since the Congress last addressed the issue has resulted, if anything, in a solidification of those views.

234 Since this is a new Congress and will be a new Committee, it is fitting that the record of its consideration of this matter be full and complete. Therefore, I hope you will bear with me for the sake of that record if some of these statistics and views which I intend to lay before you seem elementary or repetitive.

234 Reviewing briefly the national energy situation which has received so much attention but so little action in the last several years, the United States is presently consuming in excess of 70 quadrillion BTUs of energy per year. And even if the more conservative demand projections are realized that consumption will increase to over 90 quadrillion BTUs by 1985. These unimaginable numbers, representing 10 to the 24th power, or 24 zeroes following the numerals, are now supplied 30% by natural gas, 46% by oil, 18% by coal, 2% by uranium, and 4% by other. It should be noted that the "other" includes hydro power, geothermal power, solar power, wind power, and all other of the minor and esoteric forms.

235 We are currently exceeding our own capacity to produce uranium for nuclear power, and,

even with the slowdown in the construction and projected construction of nuclear plants, are importing some of our current needs. Our natural gas reserves have been dropping, and production has been doing so since 1973. Our domestic production of oil is dropping likewise and has decreased steadily since 1970. On the other hand, since 1965 our oil imports have risen from 21% of our total oil usage to 42% of our total requirements. Considering the risk attendant upon reliance on foreign sources of supply, this would be bad news by itself, but when compounded by a price increase of 500% with no end in sight, it becomes many times more serious. A 40 billion dollar oil import bill threatens our national security, our economic growth, our domestic employment picture, and sadly dislocates the balance of world trade and our own balance of payments.

235 Everyone agrees, across all shades of the political and economic spectra, and especially including the new administration, that coal is the only near and midterm answer to our energy problems. This resource, essentially inexhaustible at our present or any contemplated future rate of consumption, accounts for 84% of our domestic energy raw material, but as I said before provides only 18% of our requirements. To meet the need for its product the five billion dollar coal industry must invest at least 15 billion dollars and double its production in the next several years.

236 The industry's own projections, which appear to be remarkably consistent with the desires of President-elect Carter so far as can be judged by public statements, indicate that the largest percentage of this necessary increase must come from the expansion of existing mines and from new mines, both surface and underground, in the East and the Midwest. To meet the goal, however, production of surface mined coal from the Rocky Mountain West must also expand substantially. In other words, we must use all our available resources, and expand with all convenient speed in all producing areas.

236 If we do so, up to the capabilities of the projections of the government and the industry, the USGS figures show that we will be disturbed by surface mining less than 1/10th of 1% of the land area of the states. And all of this acreage will be reclaimed and returned to agricultural or other beneficial and locally acceptable uses.

236 The reason for the proposal of any legislation is, of course, a felt public need and it is self-evident that a public need for the environmental regeneration of surface mined land arose, along with the need for more attention to our water and our air.

236 Practices which in the historical perspective of our frontier mentality had been acceptable to society became unacceptable, and rightly so. I call to your attention the fact that as to surface mining the industry as a whole, and the individual companies thereof, long ago subscribed to the dictum "if you can't reclaim don't mine." But what has occurred in these last ten years?

237 Peabody Coal Company produces coal from 12 states and intends to produce coal from three others. In each and every one of these states the state has either passed a new and rigorous surface mining law keyed and adapted to its particular circumstances, or has updated pre-existing reclamation and environmental laws designed to do the same. Where the state jurisdiction does not extend, for example, to Indian lands, the reclamation provisions which we are required to follow are to the full as severe as those directly administered by the state itself, but the problems in each state are different and do not lend themselves to an overall solution. High sulfur coal, which by chemical reaction, produces acid water, poses a problem nonexistent in low sulfur areas. Land reclamation in an arid district is a very different proposition from reclamation in an area of high precipitation. In some places it is appropriate to prohibit any impoundment of mine discharges. In others impoundments may be the salvation of livestock operators. Mr. Chairman, all producing states and almost all of those which have unrealized production capabilities have examined their independent problems and solved them by appropriate legislation.

237 As you know, Mr. Chairman, Peabody operates in the high sulfur areas of the Midwest, from Western Kentucky and Ohio through Missouri. In these states our major reclamation problems, which all of the state laws address are related to acidity and the proper replacement of top soil in order to return the land to agricultural uses. In this connection, along with other backup material which I would like to place in the record, is this article from the Progressive Farmer detailing Peabody's Kentucky experience and success, of which we are very proud. In Illinois, one of the showcases of the surface coal mining industry, Peabody's Peoria Farms,

operates over 10,000 acres of highly productive agricultural hay, pasture, and livestock feeding land.

238 In the low-sulfur area of Montana, Peabody's Big Sky operation is providing, under the demanding requirements of the Montana law, reclamation and re-vegetation which, by any standard, far exceed the productivity of undisturbed ranch land. We are reclaiming on at least an equal basis with Western Energy, whose scientifically investigated results prove over 400% increase in livestock forage on the reclaimed prairie.

238 In your state, Mr. Chairman, under the most difficult kind of climate in which to reclaim and re-vegetate, we have been so far successful as to receive, in 1976, the Annual Conservation Award from the Governor's Commission on the Environment. With the cooperation of the Navajo Tribe in restraining its members from over-grazing the newly seeded ground, we have attained ground cover and forage which far exceed the standard of the surrounding land.

238 Peabody, and its predecessor companies, have been engaged in reclamation efforts since the 1920's, but I do not claim, Mr. Chairman, that we would have reached our current standards without the direction of the statutes, regulations, and requirements of the respective states. They, however, alert to the needs and desires of their citizenry, have fully protected their interests in their land, water and general environment so far as our industry is concerned.

239 As to the Federal public lands I have no doubt, Mr. Chairman, that the new Administration, and its new Secretary of the Interior, will continue to cooperate with, to coordinate with, and to respect the states in which those public lands lie, and will see to it that the requirements are no less strict on those public lands. In these circumstances, so radically changed since the 92nd Congress, first considered the question and largely influenced the states to take their own actions, a federal statute would be an error. Business and our society are already burdened with a plethora of regulatory bureaucrats. To pile another layer of bureaucracy atop the perfectly capable local personnel of the states involved, with the attendant arguments, disputes and uncertainties of a dual system, can do nothing but harm.

239 I urge you, Mr. Chairman, and members of this Committee, to recognize the facts as they

exist today and to abandon your purpose to place another superfluous statute on the books, and on the backs of a needed and responsible industry.

239 I will try to answer such questions as you may have.

239 Thank you, Mr. Chairman.

240 NATIONAL COAL ASSOCIATION

240 STATEMENT BY PAUL MORTON PRESIDENT CANNELTON INDUSTRIES, INC. CHARLESTON, WEST VIRGINIA before the COMMITTEE ON INTERIOR AND INSULAR AFFAIRS with respect to SURFACE MINING U.S. HOUSE OF REPRESENTATIVES Washington, D.C.

240 January 11, 1977

241 CHAIRMAN UDALL, MEMBERS OF THE COMMITTEE:

241 MY NAME IS PAUL MORTON, I AM A WEST VIRGINIAN. I AM ALSO PRESIDENT OF CANNELTON INDUSTRIES, INC., AND IMMEDIATE PAST CHAIRMAN OF THE NATIONAL COAL ASSOCIATION. MY COMPANY OPERATES BOTH SURFACE AND UNDERGROUND MINES IN THE KANAWHA VALLEY OF SOUTHERN WEST VIRGINIA WHERE I HAVE LIVED ALL MY LIFE.

241 IN THE SPRING OF 1973, I WAS AMONG COAL INDUSTRY REPRESENTATIVES APPEARING BEFORE THIS COMMITTEE TO TESTIFY ON THE SURFACE MINING LEGISLATION THEN BEING CONSIDERED. SINCE THAT TIME, THERE HAVE BEEN NO PUBLIC HEARINGS AT WHICH INDUSTRY SPOKESMEN HAVE BEEN INVITED TO TESTIFY.

241 TODAY, NEARLY FOUR YEARS LATER, I APPEAR BEFORE THIS COMMITTEE TO STATE THAT FEDERAL SURFACE MINING LEGISLATION IS NOT NECESSARY. ALL MAJOR COAL PRODUCING STATES HAVE THEIR OWN FUNCTIONING PROGRAMS THAT REGULATE SURFACE MINING AND REQUIRE SOUND RECLAMATION.

242 THE NATIONAL DEBATE THAT HAS RAGED OVER THIS ISSUE HAS OUTLIVED THE NEED FOR FEDERAL LEGISLATION. IN THE PAST FOUR YEARS, THERE HAS BEEN A RAPID SPREAD OF STATE LEGISLATION IN MINED LAND RECLAMATION. TWENTY-NINE HAVE ENACTED OR SIGNIFICANTLY UPGRADED THEIR OWN SURFACE MINING LAWS DURING THIS PERIOD, BRINGING TO 38 THE NUMBER OF STATES THAT ARE REGULATING COAL SURFACE MINING. MISSISSIPPI SHOULD SHORTLY BE ADDED TO THIS LIST, BRINGING THE TOTAL TO 39. IN ADDITION, INDUSTRY HAS STEPPED UP ITS EFFORTS TO PROVIDE ADEQUATE PROTECTION TO LOCAL ENVIRONMENTS, REALIZING SIGNIFICANT ACCOMPLISHMENTS NOT EVEN DREAMED OF A DECADE AGO. ONE OF THE MOST SINGULAR ACHIEVEMENTS - PARTICULARLY IN MY OWN STATE OF WEST VIRGINIA - HAS BEEN THE CREATION OF LEVEL LAND THROUGH RECLAMATION THAT CAN BE USED FOR ANY NUMBER OF NEW PRODUCTIVE PURPOSES AFTER COMPLETION OF MINING. THIS IS AN AREA I WILL DISCUSS IN MORE DETAIL LATER.

243 FOR SOME REASON, THE ERRONEOUS MISCONCEPTION HAS PERSISTED THAT SURFACE MINING AND RECLAMATION ARE NOT REGULATED AT STATE AND LOCAL LEVELS. ON THE CONTRARY, THERE IS NO UNREGULATED SURFACE MINING TODAY IN ANY MAJOR COAL-PRODUCING STATE. WEST VIRGINIA

ENACTED THE FIRST STATUTE GOVERNING SURFACE MINING IN 1939, AND, AS I MENTIONED EARLIER, LAWS ARE NOW ON THE BOOKS IN 38 STATES. WEST VIRGINIA AND OTHER STATES HAVE CONTINUALLY IMPROVED THEIR REGULATORY PROGRAMS WITH ADDITIONAL LEGISLATION - AND REGULATIONS - BUILT WITHIN THE FRAMEWORK OF THEIR OWN PARTICULAR OR PECULIAR NEEDS AND CONDITIONS.

244 I WOULD HOPE THAT EMOTIONALISM WILL NOT CLOUD THE ISSUE BEFORE US. IN CONSIDERING THE NEED FOR LEGISLATION, THE DETERMINING FACTOR SHOULD BE WHAT IS BEING DONE TODAY BY THE STATES AND THE COAL INDUSTRY. IN VIEW OF NEW DEVELOPMENTS, THE IMPROVEMENTS IN STATE LAWS AND REGULATIONS SINCE THE LAST HEARINGS, AND THE NEW MEMBERS OF THE INTERIOR COMMITTEE, IT WOULD BE EXTREMELY BENEFICIAL TO HAVE THE COMMITTEE VISIT THE STATES AND TALK TO THE GOVERNORS AND ENFORCEMENT OFFICIALS ABOUT THEIR ONGOING PROGRAMS BEFORE DECIDING WHETHER THERE IS A NEED FOR FEDERAL LEGISLATION.

244 THE STATE OF WEST VIRGINIA HAS ACCEPTED RESPONSIBILITY FOR SURFACE MINING REGULATION AND PROTECTION OF STATE LANDS AND IS DOING AN EFFECTIVE JOB OF ENFORCING ITS OWN SURFACE MINING AND RECLAMATION PROGRAM. IN FACT, WEST VIRGINIA WAS THE FIRST STATE TO ENACT SUCH LEGISLATION AND IT HAS SINCE IMPROVED IT MANY TIMES BY AMENDMENTS. TO SUGGEST THAT THIS LAW IS UNSATISFACTORY OR LACKS ADEQUATE ENFORCEMENT IS TO IGNORE THE FACT THAT IT HAS HAD A MAJOR IMPACT ON THE SURFACE MINING INDUSTRY IN OUR STATE. IN 1972, THE YEAR AFTER PROVISIONS WERE STIFFENED, SURFACE MINING PRODUCTION SUFFERED A 16 PERCENT DECLINE AND THEN CONTINUED TO FALL MORE SLOWLY BEFORE LEVELING OFF IN THE LAST YEAR OR SO.

245 UNDER OUR DEPARTMENT OF NATURAL RESOURCES, WEST VIRGINIA HAS DETAILED STANDARDS ON REVEGETATION, GRADING AND BACKFILLING, LAND USE, MINERALS, SOILS, TOPOGRAPHY AND WATER RESOURCES. WEST VIRGINIA HAS BEEN ABLE TO DEVISE EFFECTIVE RECLAMATION STANDARDS ACKNOWLEDGING ITS TOPOGRAPHY, CLIMATOLOGY AND ENVIRONMENT. THESE NATURAL RESOURCES WILL BE DRASTICALLY DIFFERENT IN THE WEST AND WOULD THEREFORE MAKE FEDERAL NATIONWIDE REGULATION DIFFICULT, IF NOT IMPOSSIBLE, TO DEVISE IN DETAIL.

246 CRITICS OF OUR STATE LAW HAVE ARGUED ON BOTH SIDES OF THE FENCE. SOME SAY IT IS TOO STRICT. OTHERS HAVE SAID IT IS NOT STRICT ENOUGH. HOWEVER, THE VAST IMPROVEMENT IN THE LAW AND OUR PRESENT RECLAMATION PRACTICES ARE RECOGNIZED AND SUPPORTED BY MOST OF THE PEOPLE IN WEST VIRGINIA. MINING AND THE PROTECTION OF THE LAND IS A STATE RESPONSIBILITY AND AS CHANGES ARE NEEDED, THE LEGISLATION AND REGULATIONS ARE AMENDED. HOWEVER, WE THINK OUR LAW IS A WELL-CONSTRUCTED AND A GOOD LAW, AND IS PRESENTLY PROMOTING EFFECTIVE RECLAMATION.

246 ADDITIONALLY, IT HAS BEHIND IT A HISTORY OF COURT AND ADMINISTRATIVE DECISIONS INTERPRETING THE TERMINOLOGY TO A POINT THAT ITS MEANING IS WELL UNDERSTOOD BY EVERYONE CONCERNED IN OUR STATE. FEDERAL LEGISLATION WITH ALL NEW TERMS, DEFINITIONS AND PROCEDURES WOULD CAUSE HAVOC WITH OUR PROGRAM JUST AT A TIME WHEN OUR PRODUCTION IS COMING BACK AND WE ARE ADJUSTING TO WEST VIRGINIA'S NEW LAW AND REGULATIONS.

247 WEST VIRGINIA IS CERTAINLY NOT THE ONLY STATE MOVING FORWARD

IN THIS AREA. AS I INDICATED, 29 STATES HAVE ADOPTED NEW OR UPDATED LAWS SINCE MARCH OF 1973. THE STATES ARE BEST QUALIFIED TO DEAL WITH LOCAL CONDITIONS, SUCH AS THE ESTABLISHMENT OF GENERAL LAND USE OBJECTIVES. BECAUSE OF THE WIDE RANGE OF TOPOGRAPHIC AND CLIMATIC CONDITIONS THAT ARE ENCOUNTERED, NO SINGLE SET OF REGULATIONS CAN POSSIBLY PROVIDE THE FLEXIBILITY TO DEAL WITH SUCH DIVERSITY. THIS WILL BE BETTER LEFT TO THE STATES, WHO ARE DEMONSTRATING THEIR WILLINGNESS - AND ABILITY - TO DO THE JOB. THE FEDERAL GOVERNMENT SHOULD NOT IMPOSE A NEW FEDERAL PROGRAM AND ITS COMPLICATED ADMINISTRATIVE STRUCTURE ON THE STATES. THIS IMPOSITION WOULD COMPLETELY DISRUPT AND CONFUSE THE STATES' ESTABLISHED EXPERTISE AND REGULATORY MACHINERY AT A TIME WHEN THE COAL INDUSTRY IS BEING CALLED UPON TO INCREASE PRODUCTION. WE HAVE FOR YEARS BEEN A DEPRESSED INDUSTRY. ONLY RECENTLY HAS THE MARKET FOR COAL IMPROVED SO THAT WE ARE SLOWLY GETTING BACK ON OUR FEET. WE ARE NOW DOING A BETTER JOB OF RECLAMATION UNDER THE STATE LAWS AND IMPROVEMENT CONTINUES EACH AND EVERY YEAR. ADMITTEDLY, THERE ARE SOME TOUGH ADJUSTMENTS TO BE MADE UNDER THESE LAWS, BUT A FEDERAL BILL WILL REQUIRE COMPLETE REVISION OF ALL ASPECTS OF THE EXISTING STATE PROGRAMS. DISCONTINUANCE AND REVISION OF ALL STATE PROGRAMS AT THIS TIME WOULD CAUSE A DISRUPTION NATIONALLY OF COAL PRODUCTION AND COULD SERIOUSLY SET BACK INDUSTRY PRODUCTION GOALS THEREBY INCREASING OUR DEPENDENCE ON FOREIGN ENERGY SUPPLIES. IN ADDITION TO THE DISRUPTION OF PRODUCTION, RECLAMATION WHICH IS NOW BEING ACHIEVED UNDER EXISTING STATE LAWS WOULD BE DISRUPTED AND DETERRED.

249 SINCE THE PURPOSE OF THE COMMITTEE'S BRIEFING TODAY IS TO TAKE A LOOK AT THE PRACTICES AND PROBLEMS OF CURRENT COAL SURFACE MINING PROCEDURES, I WOULD LIKE TO DISCUSS SOME OF THE POSITIVE CHANGES THAT HAVE OCCURRED OVER THE PAST FEW YEARS UNDER STATE REGULATION AND EXAMINE HOW THIS PROPOSED LAW WOULD STILL PLACE UNDUE RESTRICTIONS ON MINE OPERATORS. SPECIFICALLY, I WOULD LIKE TO REPORT ON THE PROGRESS WE HAVE MADE IN WEST VIRGINIA IN CREATING LEVEL LAND FOR MORE PRODUCTIVE USES AFTER MINING IS COMPLETED.

250 PROVISIONS IN THE CURRENT BILL WOULD FRUSTRATE INNOVATIVE AND SUCCESSFUL MINING AND RECLAMATION TECHNIQUES THAT HAVE BEEN DEVELOPED IN OUR MOUNTAINOUS APPALACHIAN REGION. AS ANYONE WHO HAS LIVED OR TRAVELED IN THIS AREA KNOWS, FLAT LAND IS AT A PREMIUM IN APPALACHIA'S STEEP MOUNTAINS. IT IS SO LIMITED, IN FACT, THAT AN ACUTE SHORTAGE OF LAND FOR HOUSING, SCHOOLS AND INSTITUTIONS HAS EXISTED FOR MANY YEARS. THE EXISTING AREAS ALONG THE NARROW KANAWHA VALLEY, FOR EXAMPLE, ARE COMPLETELY OCCUPIED WITH RESIDENTIAL AND INDUSTRIAL DEVELOPMENTS. THIS SHORTAGE HAS CREATED A CRISIS IN PROVIDING RESIDENTIAL HOUSING, A SITE FOR A NEW HIGH SCHOOL COMPLEX AND LAND NECESSARY FOR OTHER NEEDS OF AN EXPANDING COMMUNITY. IN THIS RESPECT, THE KANAWHA VALLEY IS NOT UNLIKE MANY OTHER AREAS IN MOUNTAINOUS TERRAIN WHICH HAVE EXPERIENCED POPULATION GROWTH WHICH IS CONFINED TO A NARROW STRIPLIKE CORRIDOR DEVELOPMENT ALONG THE RIVERS. THE PRACTICE OF CREATING LEVEL LAND TO ESTABLISH A BASE FOR FURTHER RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENT IN THE UPPER KANAWHA VALLEY IS NOT A NEW ONE. NOW COAL MINING OPERATIONS ARE ACTIVELY ASSISTING IN ACHIEVING THIS GOAL. WHILE UTILIZING OUR VALUABLE RESOURCE, EFFECTIVE RECLAMATION CAN INCREASE THE PRODUCTIVE USABLE FLAT LAND THAT IS SO URGENTLY NEEDED. THIS LEVEL LAND IS BENEFICIAL AND MORE VALUABLE IN HILLY

TERRAIN AND CONSEQUENTLY, THE LAND OWNERS WANT IT. HOWEVER, WE DO NOT, AND IN MOST CASES CANNOT, KNOW THE PRECISE USE THIS LAND WILL BE PUT TO 15 OR 20 YEARS BEFORE THE MINING IS COMPLETED. IT IS RARE IF EVER THAT A PROPOSED DEVELOPMENT PROJECT WITH SPECIFIC PLANS AND ASSURED INVESTMENT IN PUBLIC FACILITIES CAN BE PROJECTED FIVE YEARS IN ADVANCE, NOT TO MENTION 15 OR 20 YEARS. MUCH OF THE LAND WILL, IN ALL PROBABILITY, BE RETURNED TO THE LANDOWNER FOR A FAMILY FARM ON LAND THAT WAS USELESS TO HIM BEFORE MINING. COMMERCIAL, AGRICULTURAL AND OTHER POST MINING DEVELOPMENT OF LAND DEPENDS ON HOW THE LANDOWNER INTENDS TO USE HIS LAND AFTER THE MINING AND RECLAMATION IS COMPLETED. THE EXEMPTION IN LAST YEAR'S BILL IS CONDITIONED SO THAT IT IS, AS A PRACTICAL MATTER, UNAVAILABLE IN MOST CASES. IT SEEMS AS THOUGH PEOPLE WHO DO NOT LIVE IN OUR RUGGED TERRAIN SOMETIMES FORGET OR FAIL TO UNDERSTAND WHAT IS OBVIOUS TO US - LEVEL LAND IN OUR AREA IS VALUABLE AND PERMITS AN INFINITE VARIETY OF PRODUCTIVE USES THAT NONLEVEL LAND SIMPLY DOES NOT AFFORD. IF YOU WANT, I CAN PROVIDE FOR THE RECORD A LIST OF ALL POST MINING USES LEVELED LAND HAS BEEN PUT TO IN WEST VIRGINIA.

253 WHEN I SAY PRODUCTIVE USE, I MEAN FARMING AND GRAZING LAND AS WELL AS OTHER USES. IN WEST VIRGINIA, RECLAIMED SURFACE MINE AREAS ARE BEING USED FOR HIGH SCHOOLS, HOUSING DEVELOPMENTS, AIRPORTS, INDUSTRIAL PARKS, SHOPPING COMPLEXES, AND A BROAD SPECTRUM OF OTHER USES. ONE CAN SEE THE EVIDENCE THROUGHOUT THE STATE. THE COMMUNITY HOSPITAL AT WHEELING. THE AIRPORT AT WEIRTON. THE SHOPPING CENTER AT BRIDGEPORT. A CHURCH AT BECKLEY. THE POWER COMPANY OFFICE AT WEIRTON.

253 IN WELCH, CONSTRUCTION OF A NEW HIGH SCHOOL IS NEARING COMPLETION ON LAND THAT MY COMPANY MINED AND RECLAIMED. AND JUST LAST WEEK, THE FEDERAL AVIATION ADMINISTRATION AWARDED A \$7 50,000 GRANT FOR WORK ON A COUNTY AIRPORT NEAR LOGAN ON RECLAIMED SURFACE-MINED LAND.

254 ONE OF THE MOST DRAMATIC EXAMPLES OF THIS CONCEPT - AND THE ONE I AM MOST PROUD OF - IS A PLAN THAT IS ACTIVELY BEING EXPLORED FOR A PROPOSED COMMUNITY OF 23,000 ON ONE OF MY MOUNTAINTOP OPERATIONS NEAR MONTGOMERY IN KANAWHA COUNTY. WHEN SURFACE MINING OPERATIONS HAVE BEEN COMPLETED THERE IN ABOUT SEVEN YEARS, 2,000 ACRES OR MORE OF USABLE LEVEL LAND WILL BE AVAILABLE ON WHAT WAS ONCE A STEEP AND RUGGED SERIES OF ALTERNATING RIDGELINES AND VALLEYS. MY COMPANY, CANNELTON INDUSTRIES, HAS BEEN WORKING WITH THE WEST VIRGINIA INSTITUTE OF TECHNOLOGY ON POSSIBLE FUTURE USES FOR THIS LAND. THEY HAVE INDICATED THAT THIS PARTICULAR AREA COULD SUPPORT A COMMUNITY OF 23,000, COMPLETE WITH SCHOOLS, SHOPPING, RECREATION AND OTHER COMMUNITY FACILITIES. HOWEVER, I EMPHASIZE THAT THESE USES ARE NOW ONLY IN THE PLANNING STAGE AND WERE CERTAINLY NOT COMMITTED FOR OR EVEN CONCEIVED OF WHEN MINING BEGAN THERE ELEVEN OR TWELVE YEARS AGO.

255 IF OUR PLAN COMES TO FRUITION, WE WILL HAVE ACCOMPLISHED A SERVICE TO THE COMMUNITY. IF IT DOES NOT, WE WILL BE DISAPPOINTED, OF COURSE, BUT THE LAND WILL STILL LEND ITSELF WELL TO EXPANDING OUR LIVESTOCK HERD AND INCREASING OUR ACREAGE ALLOTTED TO CROPS OR REFORESTATION. THESE ARE ONLY A FEW OF THE EXAMPLES ILLUSTRATING HOW RECLAIMED LAND CAN ACTUALLY BE MORE PRODUCTIVE THAN THE LAND IN ITS PRE-MINED STATE.

255 IT MUST ALSO BE UNDERSTOOD THAT IT IS THE SURFACE MINING INDUSTRY THAT IS PROVIDING THE ECONOMIC BASE FOR COUNTLESS FACILITIES SIMILAR TO THOSE I HAVE MENTIONED - HERETOFORE, THE ECONOMIC BASE WAS LACKING. LARGE CAPITAL SUMS SIMPLY HAVE NOT BEEN AVAILABLE IN MANY AREAS TO LEVEL LAND IN THIS AREA BY THE CONSTRUCTION OF THE KANAWHA COUNTY AIRPORT AT CHARLESTON. THE PUBLIC HAD TO PAY, IN THIS INSTANCE, FOR LEVELING THE LAND IN A MANNER SIMILAR TO WHAT WE ARE DOING IN OUR MINING AND RECLAMATION.

256 THE APPROACH WHICH MY OWN COMPANY IS CURRENTLY USING IS A COMBINATION OF THE SO-CALLED VALLEY-FILL METHOD AND AREA MINING OF MOUNTAIN TOPS. LET ME FIRST DESCRIBE THE VALLEY-FILL PROCEDURE.

256 MOST MOUNTAIN TOPS ARE INDENTED WITH NARROW VALLEYS. WHERE THE COAL SEAMS LIE NEAR THE TOP OF THE MOUNTAIN, WE BUILD AN EARTHEN DAM AT THE MOUTH OF THE VALLEY, THEN REMOVE THE OVERBURDEN FROM THE COAL AND STORE IT IN THE HORSESHOE-SHAPED HOLLOW. THE RESULT IS A WIDE EXPANSE OF THAT PRECIOUS LEVEL GROUND.

256 IN AREA MINING OF MOUNTAIN TOPS, THE FIRST CUT IS SPREAD DOWN THE OUTSLOPE IN THE SAME FASHION USED FOR THE SLOPE REDUCTION METHOD.

257 THE REMAINDER OF THE MOUNTAIN TOP IS AREA-MINED IN THE SAME WAY THE FLAT LANDS OF THE MIDWEST ARE MINED. ONCE THE COAL HAS BEEN REMOVED, THE LAND IS GRADED TO A GENTLY ROLLING TOPOGRAPHY.

257 THE PROBLEMS OF SURFACE MINING IN THE MOUNTAINS ARE ALL TOO FAMILIAR. THEY HAVE BEEN THE SUBJECT OF NUMEROUS NEWSPAPER AND MAGAZINE ARTICLES AND TELEVISION SPECIALS. I AM NOT HERE TO MAKE EXCUSES FOR THE PAST NOR TO TRY TO CONVINCE YOU THAT GOOD RECLAMATION IS NOW BEING DONE IN EVERY INSTANCE. BUT THIS DOES NOT MEAN THAT SUCCESSFUL RECLAMATION CANNOT BE ACHIEVED IN MOUNTAINOUS TERRAIN. MOST OF THE SURFACE MINERS TODAY ARE RESPONSIBLE OPERATORS. THEY ARE USING SOUND ENGINEERING PRINCIPLES AND EMPLOYING RECENTLY DEVELOPED TECHNIQUES WITH AN UNDERSTANDING OF AGRONOMY AND SOIL MECHANICS. THEY ARE DOING A SOUND JOB OF RECLAMATION ON STEEP SLOPES IN APPALACHIA BY TRANSFORMING OTHERWISE USELESS LAND TO PRODUCTIVE USE.

258 NATIONALLY, APPROXIMATELY 47 PERCENT OF OUR SURFACE MINED COAL COMES FROM APPALACHIA, THE REGION ORDINARILY ASSOCIATED WITH MOUNTAIN MINING. MUCH OF OUR APPALACHIAN STRIPPABLE RESERVES FOUND ON STEEP SLOPES OF 15 DEGREES OR MORE IS LOW-SULFUR HIGH-BTU AND HIGH VOLATILE COAL. IN AN ERA OF ENERGY CRISIS WE CANNOT AFFORD TO PREVENT THE PRODUCTION OF SOME OF THE BEST COAL IN THE WORLD. IT IS UNREALISTIC TO PREVENT 100 PERCENT RECOVERY OF THIS VALUABLE RESOURCE BY SURFACE MINING WHEN THE TECHNOLOGY EXISTS TO EFFECTIVELY RECLAIM AND POSSIBLY TO IMPROVE THE LAND AFTER MINING.

259 THE COAL MINING COMPANIES OF THIS NATION CAN PRODUCE THE FUEL THE NATION NEEDS. THE LAND THAT IS TEMPORARILY BEING DISTURBED TO EXTRACT THIS ABUNDANT RESOURCE CAN - AND IS - BEING RETURNED TO PRODUCTIVE USE UNDER IMPROVED STATE LAWS. A VISIT TO THE COAL FIELDS WILL ESTABLISH THIS, DESPITE THE REPETITIOUS AND OBSOLETE PICTURES CURRENTLY POPULAR IN PUBLICATIONS.

259 I SUGGEST THE ONLY WAY FOR THIS COMMITTEE TO DECIDE INTELLIGENTLY WHETHER FEDERAL SURFACE MINING LEGISLATION IS NECESSARY IS FOR THE MEMBERS OF THE COMMITTEE TO GO OUT AND SEE RECLAMATION AND SURFACE MINING OPERATIONS IN WEST VIRGINIA AND ELSEWHERE, AND THEN TALK TO STATE GOVERNORS AND RECLAMATION OFFICIALS TO GET AN UNDERSTANDING OF THE TREMENDOUS STRIDES THAT HAVE BEEN TAKEN IN THE PAST FEW YEARS.

259 I WOULD LIKE TO EXTEND A PERSONAL INVITATION TO MEMBERS OF THIS COMMITTEE TO VISIT MY SURFACE OPERATIONS IN THE KANAWHA VALLEY TO SEE WHAT WE ARE DOING WITH LAND THAT HAS BEEN LEVELED THROUGH MOUNTAIN TOP MINING. THE COMMITTEE HAS NEVER INSPECTED MY OPERATIONS, ALTHOUGH PLANS WERE MADE AT ONE TIME FOR A VISIT. WE WAITED, BUT THE PLANE NEVER ARRIVED.

260 TO SUMMARIZE, DURING THE FOUR YEARS SINCE I LAST APPEARED BEFORE THIS COMMITTEE, OUR GOVERNOR, LEGISLATURE AND ADMINISTRATIVE AGENCIES HAVE BEEN COMMITTED TO A STRICT AND EFFECTIVE SURFACE MINING AND RECLAMATION LAW. THE DEPARTMENT OF NATURAL RESOURCES HAS DONE A GOOD JOB OF ENFORCEMENT AND TODAY FEDERAL LEGISLATION IS NOT NEEDED AND WOULD BE DETRIMENTAL TO COAL PRODUCTION.

260 I HAVE ATTEMPTED TO KEEP MY REMARKS GENERAL TODAY AND ONLY HIT A FEW OF THE STANDARDS. I UNDERSTAND WE WILL HAVE AN OPPORTUNITY TO TESTIFY AT LATER PUBLIC HEARINGS ON MORE DETAILED ASPECTS. BUT I DID NOT WANT TO GIVE THE WRONG IMPRESSION ABOUT OUR CONCERNS. THE BILL WRITTEN LAST YEAR IS VAGUE AND AMBIGUOUS, AND COULD LEAD TO COURT SUITS AND YEARS OF DELAY AND UNCERTAINTY; ITS ENFORCEMENT PROVISIONS, THE INITIAL PROGRAM, THE PROCEDURES AND MANY OF THE OTHER STANDARDS REMAIN OF CRITICAL CONCERN.

262 The CHAIRMAN. Our last panel is from the Powder River Basin from the great State of Wyoming.

262 Mr. RONCALIO. Would the chairman waive the courtesy of introducing the members and allow me to say I am glad they are here?

262 The CHAIRMAN. I thank my colleague for his cooperation. Your statement will be in the record. You may proceed as you wish.

JOINT STATEMENT OF GERALD W. MORAVEK, MEMBER, TONGUE RIVER, KIRBY STAR ROUTE, SHERIDAN, WYO., AND THOMAS FRANCE, STAFF DIRECTOR, POWDER RIVER BASIN RESOURCE COUNCIL, SHERIDAN, WYO.

262 Mr. MORAVEK. Mr. Chairman, gentlemen, I am Gerald Moravek. I have a small ranch 10 miles north of Sheridan, Wyo., and 4 miles south of the Montana line. I bought this ranch 5 years ago after retiring from the Army with the grade of Lieutenant Colonel. I appreciate this opportunity to appear before you and to testify as a private concerned citizen and as a

representative of the Powder River Basin Resource Council which is an organization of approximately 650 members concerned with safeguarding our Western way of life and the preservation of our environment while properly utilizing our resources to meet the needs of today and tomorrow. Like myself, most of our members are ranchers and farmers.

262 On Monday of this week, an industry representative appearing before this committee inferred that testimony offered by the opposing citizens group lacked validity since their organization was 2 years old. Only in the past few years have citizens acknowledged the fact that they must organize in order to try to protect themselves from the actions of the coal industry. I myself learned this hard lesson in June of last year and joined the organization for which I now speak.

262 I don't own the mineral rights on my place. They belong to a charitable trust which also has other mineral rights in the locality. My deed gives the minerals owner "the right to enter on, explore for, develop and remove the minerals, specifying that the surface owner will receive reasonable compensation for the necessary surface disruption."

262 In 1973, the trust contracted with a local mining company to develop its resources. This mining firm decided its initial development would be on property which was 1 1/2 miles away from my property. In April of last year, the mining company requested a State mining permit. My review of the permit application showed the area to be on the valley floor immediately adjacent to the river. Additionally, I felt the company had not reviewed in sufficient detail the short- or long-range effects of the mine upon the normal high-water periods of the Tongue River, capability to return the area to its previous, highly productive condition, nor the effects upon the underground aquifers of the valley floor. Further, the company proposed moving the coal by 40-ton truck loads for 5.5 miles over a narrow secondary State highway constructed only for light vehicle traffic and used primarily as a farm-to-market road at a rate of one truck every 1 1/2 minutes.

263 This presented a safety hazard for my family and neighbors while at the same time requiring the public to maintain and reconstruct the road for their operation.

263 On the basis of these beliefs, I, in conjunction with the Powder River council, filed a

protest to the mining operation. Immediately, we were termed in the local press obstructionists to progress and the public welfare. Under Wyoming law, a protested permit application requires a public hearing by our environmental quality council.

263 Well before the hearing date, the attorney for the trust advised myself and my family that they considered our protest to be a threat to their mineral rights and should we persist they would sue to recover the value of the denied coal. On the day of the prehearing conference, my wife and I were served with notice of a personal civil law suit which demanded title to our place and \$1 4 million in damages to compensate them for loss of the coal reserves.

263 This was before the environmental quality council had even heard the merits of our protest, and I remind you that the proposed mine was 1 1/2 miles away from the boundaries of our surface ownership. No other individuals were named in the suit, however it stated that other John Does and John Doe, Inc. were involved, would be searched out and eventually would be named in the complaint.

263 After the suit was filed, my wife and I went to a lawyer and determined the following courses of action were open;

263 One: We could fight the suit and lose, thus guaranteeing the loss of our life's efforts to our opponents;

263 Two: We could fight and win and have the legal costs of the effort guarantee the same thing, or;

263 Three: We could drop our public protest and remain silent on all mining matters and have the suit dismissed. We chose the latter option and have remained silent since last August.

263 The Powder River resources council, because it is an incorporated, nonprofit organization, continued on with the protest and forced the mining application to be withdrawn, essentially proving the merits of our complaints.

263 Gentlemen, I think my personal experiences illustrate a number of things, primary among them the essential need for a strong Federal strip mine law. The strip mining industry is moving West whether we like it or not, and although some of the companies are different, the same tactics that have so long prevailed in Appalachia are coming to the northern Great Plains.

263 Gentlemen, without the strongest kinds of Federal guarantees for both personal rights and the environment, we will meet our energy needs at the expense of those principles that are the foundation of our Republic.

263 The members of the Powder River Basin resource council have worked for passage of a Federal strip mine law for 4 years - now is the time for enactment into law. Coal is no longer a personal nor regional asset but instead a national resource. With a strong bill here, the States will have the backup necessary to insure that reclamation is accomplished against the backdrop of industry pressure.

264 Both the industry and the Department of Interior are now claiming that Federal legislation is moot because of the passage of strong State laws. Again, I think our own experiences in Wyoming demonstrate falseness of this argument.

264 Wyoming was the first State in the country to sign a memorandum of understanding with Interior that gave primacy to State reclamation efforts, an agreement that recognizes the strength of Wyoming laws. While we recognize that Wyoming does have adequate standards, the State has not supported, to the degree necessary, the department charged with administering the law.

264 The land quality division of Wyoming's department of environmental quality currently has 13 employees attempting to administer some 300 mining permits and applications, an impossible task. The Whitney application would have been approved by the department had not the protest been filed simply because it did not have sufficient manpower to review the application in the detail demanded by the law.

264 The Department of Interior, while carefully scrutinizing Wyoming law made little effort to examine the capacity of the State to adequately carry out the law. Knowing what I do about the Department of Interior. I think this may have been deliberate.

264 Efforts, led by the Powder River council, are now underway to insure that the department receives additional funding during Wyoming's current legislative session, but I'm sure we are facing a problem that will be with the State as long as coal is there in Wyoming to be mined.

264 A Federal strip mine law is necessary not only for those States with an inadequate law, but

also for these States with inadequate programs to meet the demands of reclamation. Furthermore, and I think this is an important point for the East, very few States have a program for the rehabilitation of abandoned mine lands.

264 The Powder River council feels that the Federal strip mine bill should provide a foundation upon which State programs can be placed, not only for State and private lands, but also for Federal lands. This would allow States as diverse as Wyoming and Alabama to develop programs that recognize the great difference in topography, climate and coal deposits, while at the same time providing some additional insulation and protection from the tremendous pressures that are often applied at the local level. Once the coal is gone, the land returns to the people. This final use demands that individual States have the authority, within the framework of the Federal bill, to supervise both the operation and the reclamation of strip mine lands.

264 In addition to the need for a strong State program, we also see a need for special protection of certain areas. This past weekend at a conference here in Washington, I had the opportunity to discuss with Appalachian people their problems with surface coal mining. After this experience, I can offer strong support to their needs for eliminating mountaintop and steep-slope mining.

264 In the West, we have another situation, and that is with the irrigated valley floors that provide the bulk of our hay and crop production. The tremendous agricultural productivity of these areas, coupled with their hydrologic fragility, mandates special attention by the Congress. In my area, one can produce 4 tons of hay per irrigated acre, enough feed to winter two or three range cattle.

265 These same cattle require 40 to 80 acres of upland pasture for summer grazing. For each acre of bottom land that is stripped, the productivity of upland pasture is seriously reduced. I understand that there have been some problems with a definition of valley floors and I have heard industry representatives claim that alluvial valley floors cover the entire West. This is not true. In the Powder River Basin alluvial valleys comprise less than 3 percent of the surface if they are simply defined as those areas along a stream bed where gravity flow irrigation may be practiced or which are naturally subirrigated, including undeveloped range lands.

265 In stating the need for protection of alluvial valleys, I would also go into another part of the bill now before this committee. We have not had the opportunity to review in detail H.R. 2, but we understand that it is identical to H.R. 13950 of the 94th Congress. Section 510(b)(4) of the act will allow the commencement of valley floor mining if the applicant shows "substantial legal and financial commitments" have been made prior to enactment of the law.

265 The coal lands of the West have historically been areas of speculative investment. If acquisition of either lands or leases is termed to be a substantial commitment almost all valley floor operations will be grandfathered and any restrictions placed upon mining these areas effectively gutted. We feel these sections on prior commitment should be eliminated or changed to specify that the acquisition of mineral rights by purchase or lease will not be termed a substantial commitment. This is particularly important because of the enormous amount of time that has been taken in enacting this bill into law. In saying this, I am not inferring, in any way, that the committee has not made the greatest possible effort to enact this law.

265 Valley floors, because of their delicate hydrology and tremendous productivity need protection. The potential for offsite impacts is great. The loss of farmland will affect much of the West. The hydrology is the single most important component of the ecosystem. Because of these items, and because reclamation has never been demonstrated on valley floors, I feel we should avoid these areas unless the coal is absolutely essential to national energy needs.

265 With 7 billion tons of coal under lease in the Powder River Basin alone, we are many, many years away from such a situation. At the absolute minimum, only experimental tracts should be allowed so that we can obtain adequate data to insure reclamation and protection of off-site lands and waters.

265 The Powder River Basin resource council believes strongly that surface owners must have the right to approve or disallow, not only the extraction of Federal minerals under their lands, a common situation in Wyoming, but also the exploration for these minerals. In too many instances, explorers, if we can term them that, have cut fences, left gates open and abused

roadless areas. All of these things add to both the economic and social impacts of energy development in Wyoming. We feel that the bill should require bonds to be posted with the proper regulatory agencies to compensate for any damage to surface while lease holders to Federal coal are exploring their holding.

266 In summary, the time has come for a good Federal bill to become law. When I say a good bill, I do not mean one that has been watered over 3 years of struggle with the outgoing administration, but a bill that does justice to the resources and people of this country. This concludes my written testimony; I do have some slides to show the committee.

266 The CHAIRMAN. Thank you, Mr. Moravek. You can proceed with your slides.

266 Mr. MORAVEK. Thank you.

266 [Slide.]

266 Mr. MORAVEK. Gentlemen, our first slide shows the valley soils on aluminum and till soils. This is from a Wyoming soils map developed by the University of Wyoming Agricultural Experiment Station in 1957, well before the current controversy erupted.

266 Mr. TSONGAS. Mr. Chairman, could we have an indication of the size, what it represents?

266 Mr. MORAVEK. This comprises, gentlemen, the Powder River Basin area; and we are essentially seeing the northeast corner of the State. We have here Campbell, Sheridan, and Johnson Counties. The areas on which we find the alluvial deposited soils are those shown in the orange. You will see these little fine arterial lines. This is what they are. They are the arteries of our vast dry range land country.

266 In my area, up in this area here, just 4 miles from the line, we receive 10 to 14 inches of annual rainfall, total moisture. Without the passage of water down through these arteries, our irrigation system, our entire hydrology system probably will go to pot.

266 Now, certainly we can say if we move up on the flat lands, we can mine and strip mine; but we request very urgently that we stay out of these areas. This comprises only 3 percent of the total land surface of these three counties and less than 2 percent of the stripable reserves of coal.

266 We don't feel, as I mentioned with 8 billion tons of Federal coal currently under lease in this area, with the other private mines ongoing, that the restriction of this 3 percent will seriously harm our national economy or the industry.

266 [Slide.]

266 Mr. MORAVEK. Gentlemen, this is the home place. Now, you can see the flatland; and immediately above the area, which can be irrigated by gravity irrigation, are the high lands. Down here we get 4 tons of hay to the acre. Up here, it takes 40 to 80 acres for the cattle we raise down here on one acre.

266 [Slide.]

266 Mr. MORAVEK. Another view. Dramatic. The river, the flatland, and the benches. In my particular case, about 300 yards from the river back to the benches.

266 [Slide.]

267 Mr. MORAVEK. The house built in 1897, 2 1/2 miles away from an existing mine, subjected periodically to blast damage from their operations.

267 [Slide.]

267 Mr. MORAVEK. Here is another view of an alluvial valley floor in Wyoming. Notice how narrow it is. Notice also the difference in vegetative cover here on the hills and down in the bottom. This is the lifeblood of our system.

267 [Slide.]

267 Mr. MORAVEK. Another area, in other areas these valleys widen out, but seldom more than a half of three-quarters of a mile wide. In this particular instance, you have a sprinkler system on the valley floor. We specifically state that the area to be protected is that area which can be gravity-irrigated. We do not mean an area which is irrigated, possibly a sprinkler system or a well or some other system which might be up on the bench.

267 [Slide.]

267 Mr. MORAVEK. Another shot. Again, notice the difference in vegetation.

267 [Slide.]

267 Mr. MORAVEK. More sprinkler operations. This is a hand-movable operation, and the

difference in colors because of the water down below.

267 [Slide.]

267 Mr. MORAVEK. Here the valley has widened out. This happens to be approximately 1 1/2 miles away from my place. It was sold the other day to a coal company, roughly 2,000 acres, for \$3 .8 million by rumor for the coal deposits there. Essentially, from what I know of ongoing leasing, purchasing operations within the next few years we will find an area 15 miles long, from Sheridan past the Montana border stripped out along the river bottom.

267 [Slide.]

267 Mr. MORAVEK. The area of our disagreement, 1 1/2 miles away from me. In this case, planted in potatoes, 400 bushels to the acre this year.

267 [Slide.]

267 Mr. MORAVEK. This is a strip mine 2 1/2 miles away from my home. You notice that our coal reserves are much different than those of the East. A 60-foot vein taken out by dragline moved over to a tipple and shipped out by rail. The overburden moved from above the coal down to a storage area and after the stripping is completed, taken from the spoils area and moved back into the hole. This mine has been in operation for many years. Another shot coming up

267 [Slide.]

267 Mr. SEIBERLING. Is that mine on an alluvial valley floor?

267 Mr. MORAVEK. Yes. This will show you a picture of the mine. This is a different shot. Here is the highway. The previous shot was taken back up in here, looking down. This particular picture is probably in the neighborhood of 3 years old, possibly 4.

267 Now, it was originally an alfalfa field. They are mining it now. This area over in here was previously mined. It has been leveled, and they have planted crops on it. My comment, I have driven by this area many times, in comparison with the area below which belongs to a neighbor, the productivity difference is roughly 3 to 1. This is after about 10 or 12 years of restoration.

268 Mr. SEIBERLING. What mine is that?

268 Mr. MORAVEK. Big Horn coal mine, sir, operated - owned by Big Horn Coal and operated by Peter Keywood Co.

268 Mr. CLAUSEN. Is that the natural channel of the river?

268 Mr. MORAVEK. This is Big Goose Creek here coming down, winding around. Here comes tumbler.

268 The channel has been moved. Originally it came through here. On two or three occasions, movement has been made. They moved the channel about two summers ago, greatly increasing the amount of silt that came down the river. As I mentioned, I pumped my water out of the river, up to a ditch and the irrigated. The cast iron impeller I was using in the pump wore out in 1 1/2 years instead of a life expectancy of about 7 years. But the channel has been moved. You notice over here they extracted coal and part of the spoil was left.

268 [Slide.]

268 Mr. MORAVEK. A final shot, gentlemen, here is another shot. Decker Coal Co., the largest strip mine in the world. Now, again, this was an early shot taken just after they had begun operation. Notice the depth of the vein. Since that time, there has been much more land stripped. A unit train, 100 to 120 cars long here getting ready to pull into the siloes, load, and move on east; but about 3 months ago, the firm held a - there was a public hearing on whether an extension to the mine should be granted. We favored the extension of the mine in this area. It is not in the bottom land; it is up on marginally productive rangeland. We feel that it can be taken care of. Again, the final thing we ask that our valleys be protected.

268 Gentlemen, I would ask if you have any questions.

268 Mr. RONCALIO [presiding]. Thank you for an excellent statement and throwing light and helpful leadership to us. I am going to let the members ask questions first. Mr. Tsongas?

268 Mr. TSONGAS. Just one question. You stated the difference in productivity was a factor of 3 to 1. Does that imply that productivity cannot be put back to its original state or it was inadequately done?

268 Mr. MORAVEK. Our feeling is that it may eventually recover but it is going to take years.

When you stake the soil out, nature laid it in, laid it down, a little silt, a little gravel, more silt, this type of thing, along the river bottom. This soil basically is permeable to the movement of water. What moves on top of the ground is a lot less than generally moves underneath. You come in with a dragline, take it out, wove it by a carryall or whatever to a storage site. When we put it back, we have to put it back the same way, with a big scraper or truck.

268 Each time the wheels pass over that material, they compact it. We build essentially underground an earthen dam, which stops the flow.

268 Now nature will resolve this problem over a long period of time. It always does; but we do not feel that we should subject ourselves to this process at this time. Now, as time goes along, we generally find that most industries under the gun come up with technologies to meet the requirements of the situation.

268 Mr. TSONGAS. If I may interrupt, the last slide you showed where you had been in favor of increasing the land available for mining, it - was it your position that that land because of its characteristics is more easily put back to its original state?

269 Mr. FRANCE. I think the question is one of the fact that it is what you would call marginal rangeland. While I want to deemphasize the difficulty of reclamation in the semiarid West, I think we are into what is an unknown science at this point. The risks we are getting into on the valley floors are so much greater in terms of the productivity and the cattle industry in Wyoming and Montana that if we are going to risk this to extract our natural resources, that it should be up in the dryland areas until such time as we absolutely need the coal down in the valley floors.

269 I think one of the big points, in listening to the gentlemen who preceded us, they kept talking about coal that may or may not be taken out of production. I think that that needs to be put into the context of how much coal the country does have available to it. We currently have about 7.8 billion tons of coal under Federal lease in the Powder River basin. The Department of Interior is currently making plans to lease an additional 8 million tons of coal. That may change with the incoming administration, but that has been the proposal that has been advanced by the people in Wyoming. That amount of coal is sufficient to meet our energy needs far into the

future, at least our coal requirements.

269 I think taking small amounts of coal out of immediate realization by the mining industry does nothing to diminish the overall supply of our overall coal reserves.

269 Mr. TSONGAS. I find it curious that we should really focus in on coal because it is inexhaustible. Now, you have certain sections that have to be mined or otherwise they will be taken out of production. That is a great inconsistency.

269 Mr. SEIBERLING. Mr. Chairman?

269 Mr. RONCALIO. Yes, Mr. Seiberling?

269 Mr. SEIBERLING. Did you hear the colloquy between me and the previous witness about the pattern of intimidation in the coalfields?

269 Mr. MORAVEK. Yes, sir.

269 Mr. SEIBERLING. Would you say your experience showed that pattern is continuing.

269 Mr. MORAVEK. Sir, this lawsuit was filed against myself, my wife, and the Powder River Council for one purpose only: to insure that no other local citizen dared raise his voice in protest. Now, there was no opportunity for damages. The case had not even gone to hearing before the public agency. Neither side had presented testimony, but the suit was filed at that time for one purpose only: to keep people from trying to obstruct the operations of the coal industry in that area.

269 Mr. SEIBERLING. Of course, you have a constitutionally guaranteed right to petition the elected and appointed governmental bodies, so that that was an effort, in effect, to diminish you in the exercise of your constitutional rights.

269 Mr. MORAVEK. This is my understanding, sir.

269 Mr. SEIBERLING. So, despite all the protestations of how you should forget the past, it seems that the patterns of the past are still continuing; and in fact, are being extended to the new mining areas?

269 Mr. MORAVEK. Yes, sir.

270 Mr. RONCALIO. Could I only observe that perhaps the tactics, thank God, are not what they were 75 or 80 years ago. I am reading legislation - this is the truth - in the Senate of the

United States, 70 years ago, a law passed rescinding an act of the Wyoming legislature which gave a right of action to any laborer or worker injured on the railroad in Wyoming. One workman representing a mineral company during a great strike said, "How dare you say we are not treating those workers fair; why some of them can't even speak English;" so I think there is a little improvement I hope toward some balance. We will reexamine the language. I notice you don't like page 75. You think it isn't strong enough on river valley floors.

270 Mr. Tsongas?

270 Mr. TSONGAS. No more questions.

270 Mr. RONCALIO. Mr. Clausen, my colleague and friend from the good side?

270 Mr. CLAUSEN. I appreciated the testimony and the pictures in particular, because it really gives us a perspective to support your testimony. I thought you were extremely articulate as a witness, sir. It is obvious that you have a background in making presentations before committees.

270 Having said that, while you are coming before this committee and the Congress making a request, have you made a similar request or a similar presentation before the legislature in Wyoming?

270 Mr. MORAVEK. No, sir. I have not.

270 Mr. CLAUSEN. Why not?

270 Mr. MORAVEK. We have a legislative representative in the capitol. The session starts, I believe, this week. They are presenting the affairs which we are interested in. We have a full-time staff member there to present these matters before our own legislature.

270 Mr. CLAUSEN. The reason I make this point is you heard from the previous witnesses, and it is recognized there are geological differences and variables around the country.

270 Mr. MORAVEK. Sure.

270 Mr. CLAUSEN. I think it behooves all of us to take into consideration first of all that we should try to get our own house in order in your State, if it is at all possible, and get some relief. If you are not then getting relief, then it would be clear to everyone involved in the process that

you have in effect exhausted all of our efforts. I would hope that maybe you would seek some sort of legislative or regulatory relief in Wyoming simultaneous to your request for relief from here.

270 Mr. MORAVEK. We are doing that now, sir.

270 Mr. FRANCE. Could I respond to that just briefly?

270 Mr. RONCALIO. Mr. France?

270 Mr. FRANCE. I think one of the points we tried to bring out in the testimony is we do feel we have good laws going to cover reclamation. It was a painful process, I think both for industry, citizens, and the legislature to come up with an adequate piece of legislation. Certainly there was a lot of compromise in the statehouse in Cheyenne. The problems that are confronting us are taking that law and making sure it is fully administered. The Department of Environmental Quality has just not received sufficient funding to even review a permit like a written application to the degree they can reject it and say, "We need more work on it." It took a private citizens' group with a great deal of experience, time and energy, to point out the deficiencies in the application. That is not because of a shortcoming on the dedication of Wyoming's administrative officials. We found a very dedicated staff there willing to work long hours. It is simply the fact that the legislature while passing the law has not seen itself in a position to also fund that agency to the ability that it needs - to the degree that it needs to be funded. I think in discussions that we have had over the week, that pattern seems to be repeated throughout the country. I think it is one of the strongest arguments for enactment of a Federal law to make sure that not only the laws in the States are brought up to standards, but also the programs. The law on the books really provides only the beginning of a handle on strip mining problems.

271 Mr. CLAUSEN. Let me respond very briefly to that. Implicit in your remarks is the fact that if it passes as a Federal law, it will assure you success with the Federal Government which you can't have with the State level of government. Based on the experiences I have observed. I don't know that that necessarily would hold up.

271 There are reasons for this. Again, I am going to put on my other hat. I happen to be the ranking minority member on the Water Resources Subcommittee of the Public Works and

Transportation Committee and served with your distinguished colleague, Mr. Roncalio, in the water pollution field, on the Public Works and Transportation Committee. We moved in the direction of authorizing legislation with the stated objective of cleaning up the waters of America and hopefully to have by 1983 a zero discharge. Shortly after we got involved in the process, where the Congress finally committed themselves in a very positive way to doing something about it, it became clear to all of us if we were going to succeed in our clean water program objectives that we had to have the qualifications and the expense of personnel out there with the people where the problems exist.

271 We found as an example that there weren't enough sanitation engineers to successfully implement a program on water pollution no matter what the funding level was. It is for that reason that I constantly come down hard on this requirement of gearing up the States and local subdivisions, wherever applicable, with the kind of personnel and kind of resources to carry out the administrative function there. Our role here can more effectively be carried out in a more reasonable and I think more responsive manner with emphasis on the oversight and review functions, which I think we have not done enough of here in this committee. We do not have an oversight committee. We have in Public Works.

271 Mr. FRANCE. I think Congressman Roncalio brought out an excellent point earlier. That is the fact that while I appreciate very much what you are saying, I do think the situation in Wyoming and Montana is somewhat unique because of the tremendous reserves of Federal coal. I think the Federal Government - I think the State of Wyoming, and we have certainly supported it in this effort, wants to administer reclamation over those lands. I also think the Federal Government has a responsibility to help the State fund those programs and develop those programs to insure that the public trust of the Nation which is invested in those lands is also protected.

272 Mr. RONCALIO. This is interesting, our correlation on both these fronts. Just yesterday, I had to make the decision, do I stay with a subcommittee chairmanship here on this beloved Interior Committee, Public Lands, perhaps National Parks, or do I go over and chair a subcommittee in Public Works of some 27 staffers on investigation and review of all the EDA and Public Works programs in America?

272 Well, I decided to stay here; and even though EDA means so much to Wyoming, last week there were some \$10 million in grants to some Wyoming communities. Not as much as we wanted. This is what I tried to get across to Mr. MacGregor earlier this morning. We have to reconcile State and Federal differences on coal as well as discharge pollutions, water purity, and everything else. You can't fight another Civil War over coal. I hope the industry people recognize that.

272 I commend you for being a mover, a shaker that you are. You are in the toughest fight in America. You have the toughest opponent, Homer Scott. You know him. So do we. We also have other movers and shakers in this movement.

272 We have a new Senator from Wyoming who lives with this.

272 Maybe if men of good reason and good will come up with a reasonable Federal bill, that will help. We hope you will help us. I don't want to go through another traumatic experience of after hundreds of hours here, a President shall veto on flimsy ground, and an override that failed by two miserable votes. That is a heartrending experience. That was the second time for us. We had a bill 2 years before that we had gotten ready for passage. The Senate killed that one.

272 Mr. MORAVEK. We hoped we are presenting to you, sir, a definition of alluvial valleys which you can now live with, we can live with, and everybody will go away happier.

272 Mr. RONCALIO. You really wish for us, do you not, to get at the economic language about the test for buying up leases on alluvial valley floors. If enough of them are owned, you don't think that economic commitment is sufficient to justify the mining of alluvial valley floors unless it is a one-shot experimental basis?

272 Mr. MORAVEK. Yes, sir; we feel this way very definitely.

272 Mr. RONCALIO. We hope we can make everybody involved just a little bit unhappy.

272 Mr. Tsongas?

272 Mr. TSONGAS. Just one point, before I do, let me commend you for your decision to stay as chairman of one of the committees on Interior.

272 Mr. RONCALIO. I appreciate that.

272 Mr. TSONGAS. You make my wait a little longer, but [Laughter.]

272 Mr. CLAUSEN. Do you mind explaining that?

272 Mr. RONCALIO. I appreciate it.

273 Mr. TSONGAS. The truth is they don't allow chairmen with beards on Public Works.  
[Laughter.]

273 Obviously, that was not my question. I am concerned about the statements you made on the reclamation. Two things. One: Do you have a background in geology? Does your army-

273 Mr. MORAVEK.No, sir. I was an infantryman. I am a graduate of the College of Agriculture, University of Wyoming with a major in animal science and agronomy. I was born and raised on a place out in - born in Wyoming, raised in western Nebraska in the dry lands in the 1930's; have done extensive traveling throughout the world and seen reclamation areas, hydroelectric projects, this type of thing: Africa, Southeast Asia, Iceland, Central Europe, where I picked up some practical knowledge. I am not a technician in that area.

273 Mr. TSONGAS. I was very impressed by you.You seem to have given a lot of thought.  
My final point: Do you have any data that you could refer us to on the differences in reclamation, some of the concerns you were expressing? Is there any recognized text in the field?

273 Mr. FRANCE. I am not sure exactly which phase of reclamation you are referring to.  
There is an enormous amount of data out on reclamation. There is little data out on valley floor mining simply because there has been very little. The one example we know of is the Big Horn mine. It was not under any kind of law requirement, legal requirements until 1971; and then a more extensive act was passed in 1975. The data have really - they have never attempted to reclaim much of the land. It has not come back in the form we feel to be adequate. Again, just referring to the valley floor situation, the surface reclamation is only part of the problem you are dealing with. You have hydrologic flows which prevent inherent problems to people downstream. I think one of the things we have looked at and some of the issues we have gone into is that at this point, it appears the Big Horn mine is having some minor effect on groundwater and surface water flows, not enough to cause severe water problems. Everybody at

this point is very curious about where you might hit this level, where you might see severe degradation. I can certainly provide you with almost any information that you would like.

273 Mr. TSONGAS. I think most of us from the East who don't have mining operations in our States really are babes in the woods when it comes to the issues. If you could get together some data that was digestible and not voluminous, we would appreciate that.

273 Mr. FRANCE. We will make an effort.

273 Mr. RONCALIO. I want to thank the two of you again. I think this has been a beneficial hearing. I hope we can have your cooperation in allowing the expansion of the Big Horn mine. I just hope the operators themselves can recognize where they can work in the alluvial valley floors. I would like to recognize the presence of Carolyn Alderson.

273 Thank you both very much.

273 We are adjourned.

273 [Prepared statement of Gerald Moravek follows:]

274 Powder River Basin Resource Council

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274 150 W. Brundage (307) 672-5809

274 TESTIMONY ON HR 2 SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES MORRIS K. UDALL, CHAIRMAN Gerald W. Moravek Powder River Basin Resource Council

274 January 13, 1977

275 I am Gerald W. Moravek. I have a small ranch ten miles north of Sheridan, Wyoming and four miles south of the Montana line. I bought this ranch five years ago after retiring from the Army with the grade of Lt. Colonel. I appreciate this opportunity to appear before you and to testify as a private concerned citizen and as a representative of the Powder River Basin Resource Council which is an organization of approximately 650 members concerned with safeguarding our Western way of life and the preservation of our environment while properly utilizing our resources to meet the needs of today and tomorrow. Like myself, most of these members are ranchers and farmers.

275 On monday of this week and industry representative appearing before this committee inferred that testimony offered by the opposing citizens group lacked validity since their organization was only two years old. Only in the past few years have citizens acknowledged the fact that they must organize in order to try to protect themselves from the actions of the coal industry. I myself learned this hard lesson in June of last year and joined the organization for which I now speak.

275 I do not own the mineral rights of my place. They belong to a "charitable trust" which also has other mineral rights in the locality. My deed gives the minerals owner "the right to enter on, explore for, develop and remove the minerals, specifying that the surface owner will receive reasonable compensation for the necessary surface disruption." In 1973 the trust contracted with a local mining company to develop its resources. This mining firm decided its initial development would be on property which was a mile and a half away from my property. In April of last year the mining company requested a state mining permit. My review of the permit showed the area to be on the valley floor immediately adjacent to the river. Additionally I felt the company had not reviewed in sufficient detail the short or long range effects of the mine upon the normal high water periods of the Tongue River, capability to return the area to its previous, highly productive, condition, nor the effects upon the underground aquifers of the valley floor. Further, the company proposed moving the coal by 40 ton truck loads for 5 1/2 miles over a narrow secondary state highway constructed only for light vehicle traffic and used primarily as a farm to market road at a rate of one truck every one and a half minutes. This presented a safety hazzard for my family and neighbors while at the same time requiring the public to maintain and reconstruct the road. On the basis of these beliefs, I, in conjunction with the Powder River Council, filed a protest to the mining operation. Immediately we were termed in the local press, obstructionsts to progress and the public welfare. Under Wyoming law, a protested permit application requires a public hearing by our Environmental Quality Council. Well before the hearing date the attorney for the trust advised myself and my family that they considered our protest to be a threat to their mineral rights and should we persist they would sue to recover the value of the denied coal. On the day of the pre-hearing conference my wife and I were served

with notice of a personal civil law suit which demanded title to our place and \$1 4 million in damages to compensate them for loss of the coal reserves. This was before the EQC had even heard the merits of our protest, and I remind you that the proposed mine was one and a half miles away from the boundaries of our surface ownership. No other individuals were named in the suit, however it stated that other John Does and John Doe Inc. were involved, would be searched out and would eventually be named in the complaint.

277 After the suit was filed my wife and I went to a lawyer and determined the following courses of action were open: 1) We could fight the suit and lose, thus guaranteeing the loss of our life's efforts to our opponents, 2) We could fight the suit and win and have the legal costs of the effort guarantee the same thing, or, 3) We could drop our public protest and remain silent on all mining matters and have the suit dismissed. We chose the latter option and have remained silent since last August. The Powder River Council, because it is an incorporated, non-profit organization, continued on with the protest and forced the mining application to be withdrawn, essentially proving the merits of our complaints.

277 Now I think my personal experiences illustrate a number of things, primary among them the essential need for a strong federal strip mine law. The strip mining industry is moving West whether we like it or not, and although some of the companies are different, the same tactics that have so long prevailed in Appalachia are coming to the Northern Great Plains. Gentlemen, without the strongest kinds of federal guarantees for both personal rights and the environment we will meet our energy needs at the expense of those principles that are the foundation of our Republic.

277 The members of the Powder River Basin Resource Council have worked for passage of a federal strip mine law for four years - now is the time for enactment into law. Coal is no longer a personal nor regional asset but instead a national resource. With a strong bill here, the states will have the backup necessary to ensure that reclamation is accomplished against the backdrop of industry pressure.

277 Both the industry and the Department of Interior are now claiming that federal legislation is mute because of the passage of strong state laws. Again, I think our own experiences in

Wyoming demonstrate falseness of this argument. Wyoming was the first state in the country to sign a Memorandum of Understanding with Interior that gave primacy to state reclamation efforts, an agreement that recognizes the strength of Wyoming laws. While we recognize that Wyoming does have adequate standards, the state has never supported, to the degree necessary, the Department charged with administering the law. The Land Quality Division of Wyoming's Department of Environmental Quality currently has 13 employees attempting to administer some 300 mining permits and applications, an impossible task. The Whitney Application would have been approved by the Department had not the protest been filed simply because it did not have sufficient manpower to review the application in the detail demanded by the law. Interior, while carefully scrutinizing Wyoming law made little effort to examine the capacity of the State to adequately carry out the law. Knowing what I do about the Department of Interior, I think this was deliberate. Efforts, led by the Powder River Council, are now underway to ensure that the Department receives additional funding during Wyoming's current legislative session, but I'm sure we are facing a problem that will be with the state as long as coal is there to be mined. A federal strip mine law is necessary not only for those states with an inadequate law, but also for those states with inadequate programs to meet the demands of reclamation. Furthermore, and I think this is an important point for the East, very few states have a program for the rehabilitation of abandoned mine lands.

278 The Powder River Council feels that the federal strip mine bill should provide a foundation upon which state programs can be placed, not only for state and private lands, but also for federal lands. This would allow states as diverse as Wyoming and Alabama to develop programmes that recognize the great differences in topography, climate and coal deposits, while at the same time providing some additional insulation and protection from the tremendous pressures that are often applied at the local level. Once the coal is gone, the land returns to the people. This final use demands that individual states have the authority, within the framework of the federal bill, to supervise both the operation and reclamation of strip mine lands.

279 In addition to the need for strong state programs, we also see a need or special protection of certain areas. This past week-end at a conference here in Washington I had the opportunity to

discuss with Appalachian people their problems with surface coal mining. After this experience I can strong support their needs for eliminating mountain top and steep slope mining. In the West, we have another situation, and that is with the irrigated valley floors that provide the bulk of our hay production. The tremendous agricultural productivity of these areas, coupled with their hydrologic fragility, mandates special attention by the Congress. In my area, one can produce four tons of hay per irrigated acre, enough feed to winter two or three range cattle. These same cattle require 40 to 80 acres of upland pasture for summer grazing. For each acre of bottomland that is stripped, the productivity of upland pasture is seriously reduced. I understand that there have been some problems with a deffinition of valley floors and I have heard industry representatives claim that alluvial valley floors cover the entire West. This is not true. In the Powder River Basin alluvial valleys comprise less than 3% of the surface if they are simply defined as those areas along a stream bed where gravity flow irrigation may be practiced or which are naturally subirrigated, including undeveloped range lands.

279 In stating the need for protection of alluvial valleys I would also go into another part of the bill now before this Committee. We have not had the opportunity to review HR 2, but we understand it is identical to HR 13950 of the 94th Congress. Section 510(b)(4) of the Act will allow the commencement of valley floor mining if the applicant shows "substantial legal and financial commitments" have been made prior to enactment of the law. The coal lands of the West have historically been areas of speculative investment. If acquisition of either lands or leases is termed to be a substantial commitment almost all valley floor operations will be grandfathered and any restrictions placed upon mining these areas effectively gutted. We feel these sections on prior commitment should be eliminated or changed to specify that the acquisition of mineral rights by purchase or lease will not be termed a substantial commitment. This is particularly important because of the enormous amount of time that has been taken in enacting this bill into law. In saying this, I am not inferring, in any way, that this Committee has not made the greatest possible effort to enact this law.

280 Valley floors, because of their delicate hydrology and tremendous productivity need protection. The potential for offsite impacts is great. The loss of farmland will effect much of

the West. The hydrology is the single most important component of the ecosystem. Because of these items, and because reclamation has never been demonstrated on valley floors I feel we should avoid these areas unless the coal is absolutely essential to national energy needs. With 7 billion tons of coal under lease in the Powder River Basin alone we are many, many years away from such a situation. At the absolute minimum, only experimental tracts should be allowed so that we can obtain adequate data to ensure reclamation and protection of off-site lands and waters.

280 The Powder River Basin Resource Council believes strongly that surface owners must have the right to approve or disallow, not only the extraction of federal minerals under this lands, a common situation in Wyoming, but also the exploration for these minerals. In too many instances explorers, if we can term them that, have cut fences left gates open and abused roadless areas. All of these things add to both the economic and social impacts of energy development in Wyoming. We feel that the bill should require bonds to be posted with the proper regulatory agencies to compensate for any damage to surface while lease holders to federal coal are exploring their holding.

281 In summary, the time has come for a good federal bill to become law. When I say a good bill, I do not mean one that has been watered over three years of struggle with the outgoing administration, but a bill that does justice to the resources and people of this country. This concludes my written testimony, I do have some slides to show the Committee.

282 [Whereupon, at 1:25 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]