HEARING, FEBRUARY 7, 1977 AND MARCH 1, 2, and 3, 1977
Legislative History
February 7, 1977 and March 1, 2, and 3, 1977 Hearing

Following is the February 7, 1977 and March1, 2, and 3, 1977 hearing before the Senate Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources. 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.

SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE
FEBRUARY 7, 1977, MARCH 1, 2, and 3, 1977, SERIAL No. 95-32

MONDAY, FEBRUARY 7, 1977

1 U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES, OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Washington, D.C.

1 The subcommittee met, pursuant to notice at 11:30 a.m., in room 1202, Dirksen Office Building, Hon. Lee Metcalf presiding.

1 Present: Senators Metcalf, Jackson, Church, Johnston, Bumpers, Hansen, Melcher, and Hatch.

1 Also present: D. Michael Harvey, special counsel; Norman Williams, professional staff member; and Ted Orf, deputy minority counsel.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

1 Senator METCALF. The subcommittee will be in order. This is a hearing of the Subcommittee on Public Lands and Resources to get the views of the Carter administration on S. 7, the Federal Surface Mining Control and Reclamation Act of 1977. S. 7 is a modified version of H.R. 25, 94th Congress, the bill which President Ford vetoed in May 1975.

1 President Carter has consistently voiced support for a strong Federal strip mine bill. He repeated this pledge most recently during his nationwide fireside talk last Wednesday evening.

1 For those of us who have been struggling over the years - for over 6 years - to enact legislation which will meet the need for preserving our land and water resources, for stabilizing our coal industry, and for taking the first step toward a rational energy policy for this Nation, the President's words of encouragement have come like proverbial music to the ears.

1 I have a telegram from the West Virginia Surface Mining and Reclamation Association, reminding me this is the sixth straight year Congress has attempted to pass a bill to regulate surface mining for coal in the United States.

1 Secretary of the Interior Andrus made some general observations on surface mining at his confirmation hearings. I must sav we were agreeably

impressed by his comments at that time, particularly with reference to protection of agricultural lands from the ravages of strip mining.

2 In view of the urgent need to move S. 7 to the White House as soon as possible and in a form which is acceptable to the President, we have asked Secretary Andrus and FEA Administrator O'Leary to give us detailed assessments of the legislation today. We have also invited statements for the record from the Environmental Protection Agency and the President's Council on Environmental Quality.

2 Before I will call on you, Mr. Secretary, and you, Mr. Administrator, I will ask the chairman of the full committee, the distinguished Senator Jackson, for his statement, and I will insert the departmental report in the record at this time.

2 [The report referred to appears on the following page.]

3
United states Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240
FEB. 4, 1977
Dear Mr. Chairman:

3 This responds to your request for the views of this Department concerning S. 7, the "Surface Mining Control and Reclamation Act of 1977."

3 We strongly support enactment of such legislation. A new law to control surface mining of coal and provide for reclamation of mined lands is badly needed and the legislation your Committee has before it is well conceived to meet that need. Its expeditious passage is a high priority of President Carter.

3 S. 7 would provide for a cooperative surface coal mining regulatory program with responsibility for implementation being shared between the States and the Secretary of the Interior. Strong reclamation performance standards and permit requirements would assure that both State and Federal mined land would be fully reclaimed and that the environment would be protected. On the other hand, under mechanisms provided by the bill, the production of needed coal could continue under national standards in a reasonable manner. Public participation in decisions about surface coal mining would be provided for. Full development of needed information would be required or encouraged to serve as a basis for effective and reasonable regulation of surface mining operations. Through S. 7's bonding and enforcement provisions, actual compliance with the standards and requirements would be assured.

3 In addition to the reclamation regulatory program, the bill provides for reclamation of lands already damaged by past mining. Financed in S. 7 through a fee levied against Federal coal, the bill provides both for reclamation of rural lands through the Department of Agriculture and for acquisition and reclamation of abandoned and unreclaimed mined lands and for alleviation of problems related to mining.

3 The effects of inadequately controlled surface coal mining are well known. Among them are destruction or diminution of the utility of land, erosion and land slide, flooding, water pollution, destruction of fish and

wildlife habitat, loss of natural beauty, property damage, health and safety hazards, and adverse social impacts.

4 Increasingly in the future, the Nation's energy needs will depend on coal mining. Current trends indicate that more and more of this mining will be by surface methods. Federal and other western lands will be called on to supply surface-mined coal, in many instances for the first time. Against this background, the need for legislation such as S. 7 is urgent.

4 In developing and carrying out an effective and efficient surface coal mining control and reclamation law, the Department will work closely with the Congress. President Carter has indicated that he would have signed the surface mining legislation passed by the last Congress, but vetoed. The President is prepared to approve similar legislation and has directed us to work with Congress in resolving remaining major issues and developing whatever changes in introduced bills may appear advisable to improve them.

4 Protection of surface owners of land where the Federal Government owns and proposes to rease coal was a particularly difficult issue for the last Congress. Section 423(e) of S. 7 changes the surface owner consent provision finally developed and included in the vetoed bill. That provision afforded a right to consent to specified individuals and limited the amount that could be obtained by such an individual if he does consent. The amount specified had three components to be determined by appointed appraisers: (1) the fair market value of "the surface estate," (2) certain specified losses and damages, and (3) an additional reasonable amount limited to the lesser of the item (2) losses or $1 00 per acre. If this provision were adopted, the language of item (1) should be clarified so that it would apply to the fair market value of the "surface estate based on its use for agricultural purposes and exclusive of the value of minerals or the right to consent under this section." Clarified in this way, that type of provision is preferable to Section 423(e) of S. 7 which prohibits surface mining of Federal coal where the surface is owned by a non-Federal party.

4 The bill will place on small mine operators a heavy administrative and operating burden. Several changes may be desirable to limit this burden, including:

4 - directing the regulatory authority to undertake the development of some of the information required to obtain a mining permit

4 - financing this work in part from the reclamation fee collected pursuant to section 301(b)(3)

4 - permitting reduced application fees

4 - omission of certain permit application date as determined by the regulatory authority and in some instances requiring less data - modifying the bond release administrative provisions by limiting the scope of the notice to be given and providing an informal procedure for release

5 Departmental staff can work with your Committee in providing specific amendments to accomplish these changes.

5 A related matter concerns the schedule provided by the bill for implementation of the program. We recommend application of performance standards to new mines beginning six

months after enactment and to existing mines beginning after one year. In addition, it appears desirable to have applications for permanent permits made only after a State or Federal program is approved. The regulatory authority's determination whether to issue a permit could not be delayed longer than six months after application is made (or a specified time after enactment of the bill). Tying the permanent permit application procedure to approval of a State or Federal program in this fashion is administratively preferable to provisions of S. 7 which require permit applications twenty months after enactment, whether or not a program has been approved.

5 A related matter concerns the requirement of Federal inspections of non-Federal mines beginning 135 days after enactment. While we recognize the desirability of Federal "back-up" enforcement of reclamation requirements principally intended to be a State responsibility, we are concerned that State incentives to carry out that responsibility not be weakened. A full program of regular Federal inspections might weaken those incentives and encourage States to withdraw from the regulatory program. To reduce this possibility, we suggest that Federal "back-up" inspections be provided only where there is an indication of specific need - that is, when the Secretary receives information giving reason to believe that there are violations of the Act's requirements.

5 With respect to the abandoned land reclamation program set forth in Title III, we recommend that the fees assessed against currently mined coal be made applicable to all coal - not merely coal derived from Federal land and should be in addition to royalties now received from Federal land.In addition, the Administration would like to work further with the Congress to determine whether the provisions of section 305 relating to secondary impacts of mining are best suited to meeting problems posed by abandoned mine lands. It is important that resources of the abandoned land reclamation program be directed to matters of highest priority and that past environmental damage be remedied effectively and expeditiously. To this end, consideration of the requirement that fifty percent of the fees collected for the fund be initially allocated to the State from which they are derived may warrant modification to allow more flexibility in directing resources to areas of greatest need.

5 An important purpose of this legislation is to protect fish, wildlife and other ecological

values. In developing and implementing this program we intend to assure that these values are appropriately recognized.

6 Section 410(b)(5) recognizes the need for special protection of alluvial valley floors.These areas are essential to the agricultural base of the Nation and the economic life of many parts of the West. We support this protection. Some modification appears desirable, however, to clarify the provision and to provide for the continued operation of mines currently producing coal. To accomplish this we recommend amending section 410(b)(5) to read:

6 (5) the proposed surface coal mining operations, if located west of the one hundredth meridian west longitude would -

6 (A) not interrupt, discontinue, or prevent farming on alluvial valley floors that are irrigated or naturally subirrigated but, excluding undeveloped rangelands which are not significant to farming on said alluvial valley floors and those lands that the regulatory authority finds that if the farming that will be interrupted, discontinued, or prevented is of such small acreage as to be of negligible impact on the farm's agricultural production, or,

6 (B) not adversely affect the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b)(5):

6 Provided, this paragraph (5) shall not affect those surface coal mining operations which in the year preceeding the enactment of this Act (1) produced coal in commercial quantities, and (2) were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors.

6 We believe that administration of provisions of S. 7 relating to judicial matters may also be improved. With respect to citizen suits seeking to compel the Secretary or a regulatory authority to perform any act or duty under the Act which is not discretionary, it may be appropriate to specify that the citizen suit provision shall constitute the exclusive remedy to assure that the Secretary or regulatory authority will receive sixty days notice except for situations involving an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.This will allow the Secretary opportunity to remedy any failure that may in fact

exist without the necessity for suit.In addition, a provision of the Clean Air Act similar to section 426(a)(1) of S. 7 has been the subject of much needless litigation concerning the specification of "the appropriate" United States Court of Appeals. We recommend that this be clarified by providing that review of actions relating to State programs for a State shall be by the Court of Appeals for the Circuit in which the State is located. Review of orders or decisions of national scope under section 426(a)(2) should be in the U.S. Court of Appeals for the District of Columbia.

7 Finally, we endorse the provision of section 423(d) which contemplates the application of State programs to Federal lands. This should, however, be carried out by agreement between the States and the Secretary of the Interior rather than at the sole election of a state. To this end, several changes appear desirable. It should be clarified that States with cooperative agreements will be permitted to retain their regulatory function, with appropriate modification, prior to the approval of a State program, that the Department retain its statutory duty to receive and approve mining plans, and that the designation of lands unsuitable for mining will continue to be an Interior responsibility. It should also be specified that the election of the State will be subject to the Department's review and approval as are other aspects of the State program.

7 This Administration is firmly committed to the prompt enactment of good surface mining control and reclamation legislation. To accomplish this we are prepared to work closely with the Congress, both with respect to the modifications outlined above and to other improvements that may appear advisable as the Congress acts on the measure. More importantly we will continue that close relationship in implementing an effective program. The harm left in the wake of past surface mining must be ended promptly. Enactment of legislation such as S. 7 in the near future is a high priority both of President Carter's energy policy and his environmental policy.

7 The Office of Management and Budget has advised that enactment of legislation conforming to the views set forth above would be in accord with the program of the President and it has no objection to the presentation of this report.

7 Sincerely,

7 CECIL D. ANDRUS

7 SECRETARY

7 Honorable Henry M. Jackson

7 Chairman, Committee on Interior and Insular Affairs

7 United States Senate

7 Washington, D.C. 20510

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

8 The CHAIRMAN. Today we begin what will hopefully be the last chapter in the long effort by the Congress to develop Federal legislation governing the surface mining of coal in our country. I will not recite the long history of hearings, committee markups, floor debate, and Senate-House conference committee meetings which have gone into this legislation. Suffice it to say that both the 93d and 94th Congresses passed surface mining bills by overwhelming margins. Unfortunately, President Ford saw fit to veto both bills and in 1975 the House of Representatives failed by a mere three votes in its attempt to override the veto.

8 I firmly believe that this legislation will be enacted this year. We have a President who has repeatedly stated his support for it. Responsible representatives of the coal industry have indicated that they can live with it. Recent studies by outside experts have demonstrated that the exaggerated claims of adverse impacts made by the Ford administration and some industry representatives are nonsense.

8 The United States is truly the Saudi Arabia of coal. Development of coal is the key to meeting our energy needs for the rest of this century.

8 One of the major inhibiting factors to coal development in all of the coal regions of the country - East and West - is the failure to establish Federal surface mining standards. Our coal industry must know what the guidelines are in order to be able to plan their investments and proceed with mining.

8 I think it is important to keep in mind that our domestic reserves of coal are so large that we can afford to establish standards which provide protection for water quality, prime agricultural lands, and esthetic values even if in some instances this means that certain coal deposits will not be mined.

8 Once we have established the rules for digging the coal, then we must insure that we can burn it without impairing the quality of our air. While the question of air quality standards will be considered by another committee of the Senate, our committee will be encouraging the necessary research and development to find ways of solving the air quality problem. For example, better methods of removing the sulfur from the coal before burning should be given a high priority on our R. & D. agenda.

8 In closing, I want to pay tribute to Senator Lee Metcalf who has led the fight for Federal surface mining legislation for the last 4 years. He has done the work of chairing hearings, leading the committee markups, and managing the legislation on the floor. The Senate has repeatedly endorsed his efforts by overwhelming votes. Indeed, the last Senate rollcall on surface mining was 84 to 13. That kind of vote reflected the convictions of Senators from all parts of the country that Senator Metcalf had brought before them legislation which struck an appropriate balance between the need to develop our coal reserves and to protect our lands and waters. It further reflected their feeling that the legislation was flexible enough to be applicable to the mountainsides of Appalachia, the fertile agricultural areas of the Midwest and the arid, fragile lands of the West, and that it recognized the interest of the individual States by giving them the principal responsibility for regulation of mining within their borders.

9 I am sure that Senator Metcalf has been even more frustrated than I over the failure to enact a Federal law. I am equally sure that such a law will be enacted within the next few months. When it is, Senator Metcalf will have the satisfaction of knowing that his efforts have, at long last, borne fruit.

9 Finally, Mr. Chairman, I think the spirit and the attitude on the part of the administration here to really do something about it is exemplified by the presence of our new Secretary, Mr. Andrus, and the new head of the Federal Energy Administration, Mr. O'Leary. Here we have the two keys to the problem we face. I am delighted both of them are present here this morning to participate in these hearings.

9 Senator METCALF. Mr. Chairman - and I say Mr. Chairman because you are chairman of our full committee - it has been your cooperation and participation that has permitted us to get

this bill this far along. I appreciate your kind words and your cooperation which has always been exemplary. I share your optimism: We are going to pass some legislation in this session.

9 The leading minority member has also been very cooperative in participation in the discussions - I am not going to endorse everything the distinguished Senator from Wyoming has made.

STATEMENT OF HON. CLIFFORD P. HANSEN, A U.S. SENATOR FROM THE STATE OF WYOMING

9 Senator HANSEN. I appreciate these richly deserved accolades, both from you, Mr. Chairman, and the chairman of our subcommittee. I have never been more persuasive among my Republican colleagues than when I teamed up with you, the chairman of this subcommittee.

9 As you know, I have supported surface mine legislation as it has come down through the legislative process in times past. It is my intention to support it again, if the final version adequately protects the rights of States, landowners, and the public in general. The protection of our environment, our land resources, and agricultural way of life, and our water, is of the highest importance.

9 I certainly want to do everything I can to see whatever is passed here takes full recognition of these values.

9 I am also concerned because my State of Wyoming has taken a very active role in passing laws that address the problems that are incident to the development of energy through coal. A Federal strip mining bill enters the area of Federal/State jurisdiction and touches upon the police power that normally has been under the jurisdiction of the State, or of the States I should say, and my concern reflects that of the Governor of Wvoming in taking note of the fact the Secretary of the Interior and the Governor of Wyoming entered into an agreement prompted by a lawsuit brought by the State of Wyoming, which marks out areas of State authority, recognizing among other things the adequacy of the laws passed by the State of Wyoming insofar as reclamation and mining processes generally are concerned.

9 I hope this legislation will recognize this very worthwhile cooperative effort between the Federal Government, on the one hand, and the States on the other, recognizing the continuing

validity of the kind of agreement your predecessor, Mr. Secretary, and my Governor entered into.

10 My second concern is for an adequate energy supply for this country. We all know we have become more dependent upon foreign sources of petroleum supply that are uncertain at best. We import more than 40 percent of the petroleum we use in this country. And I think that impinges not only on the viability and good health of our industry as a Nation, but even more importantly, under certain conditions, upon our national defense posture.

10 It has been pointed out on many occasions that during the oil boycott back in 1973, we had to transport fuel to the Sixth Fleet in the Mediterranean by tanker, taking those supplies from the eastern coast of the United States all the way into the Mediterranean.

10 As my good friends from Montana and Washington know, we are having a very unusual winter in the West. The reports on water indicate we may have perhaps a little more than a third of the amount of runoff that we might have anticipated.

10 I have not had a chance to talk to the chairman of the full committee, but we are going to get only about a third.

10 The CHAIRMAN. That is correct.

10 Senator HANSEN. The Columbia River and the Snake River as well are important sources of energy.

10 The CHAIRMAN. If it goes on for a little bit longer, and I think the Secretary will agree - we will have the greatest shortage in a hundred years. I mean we are having a drought. There has been no snow or rain. If you look at the Olympics and the Cascades, there is no snow at all. It was 54 degrees in Seattle yesterday.

10 Senator METCALF. There is a shortage in most of the area, and in eastern Montana they have very little snowfall. That is the upward drainage to take care of all of the Missouri drainage, from Fort Peck right down to New Orleans.

10 Senator HANSEN. I appreciate the points you have underscored here for me, Senators Jackson and Metcalf. As our good friends at the witness table know so well, coming from Wyoming we are at the head of the creek; we are at the headwaters of the Columbia, at the

headwaters of the Colorado, the headwaters of the drainage that goes into the Great Salt Lake.
We supply water through the Platte into Nebraska.

10 So water runs out of Wyoming in every direction. We are well aware of the points you
both make. I am glad you made the observations you did because it underscores one important
fact; that is, while we have been fortunate this winter, both in terms of a mild winter and in terms
of generally adequate energy supplies, when you consider the impact that this shortfall in water is
going to have upon the hydropower for the Pacific Northwest, it bodes nothing but real trouble.

10 As Senator Jackson pointed out the indications are this will be the shortest we have been
in - 100 years, did you say, Senator?

10 The CHAIRMAN. Yes. In the Columbia Riversystem.

10 Senator HANSEN. That is extremely serious. My good friend, one of the Congressmen
from the State of Washington, Mr. McCormack, has a background in nuclear power. I think he
speaks with real authority, and he said if we have a real shortfall in power or even if we were to
try to take off on a national program of zero, increased usage, it would have a disastrous effect
upon the United States.

11 I think I am quoting him fairly accurately although I am paraphrasing what he said. He
pointed out people who need work the most, those with few work skills, minorities, are the first
to suffer when there is inadequate power.He knows, as we all do, for each man-hour of work on
the farms and ranches - and our distinguished Secretary understands very well, having served as
Governor of Idaho for three terms - that for each man-hour we burn 1.2 gallons of fuel.

11 These are some of the considerations that we will be faced with as we consider this very
important piece of legislation and I join in welcoming you two distinguished representatives to
the witness table.

11 Senator METCALF. Thank you very much, Senator. The Senator from Louisiana.

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM
THE STATE OF LOUISIANA

11 Senator JOHNSTON. Thank you, Mr. Chairman. Mr. Chairman, I was just reading

here on page 2 of the Secretary's statement about the so-called compromise over surface ownership that we worked out in the last hours of the conference committee last year. I well remember those weeks, and it may have been months, while we considered the Surface Mining Act in conference, and at the last minute it appeared the bill was going down to defeat because of inability to agree on that surface ownership.

11 I had a hand in putting together that compromise. The point I am making is I felt then, and I feel now, it is important that we come up with a bill for surface mining that is reasonable, that will protect the surface. I believe that can be done.

11 At the same time, Mr. Chairman, the energy shortage is finally ripening into the energy crisis. So it is more important than ever that we be very careful in what we do, that we don't "lock up the coal," that we don't make a bill that is so onerous in its operation either as to cost the country too much money or to get the country too little coal.

11 I believe we did the right thing last year. I believe we can again this year.

11 One thing we have not addressed ourselves to in this Congress - well, the Senate has addressed itself to it, but the Congress has not - is the question of coal slurry pipelines. I believe these two issues are inextricably related and interwoven. We have got to have a way to get this coal down to the South, indeed, to Louisiana, which is the biggest gas-producing State, I guess, in the country, at least when you include OCS gas. Yet we are burning coal there and we need coal, yet we can't get it down in sufficient quantities. If that is true in Louisiana, it is even more true in States throughout the country, that we need a source of coal.

11 As Jimmy Carter said the other day, coal is the key to the solving or the dealing with the energy crisis. I agree. I don't think a strip mining bill is inconsistent with having coal the key to that crisis, but I do think while we are about the question of surface mining we also need to address the question of coal slurry pipelines.

12 I am introducing a bill in the next day or two which I hope, Mr. Chairman, we will consider in conjunction with this strip mining bill. I am for the strip mining bill in any event. But I think we ought to have a coal slurry pipeline bill so we can transport that coal which we mine with such high environmental standards.

12 Senator METCALF. Ithank my friend from Louisiana. He knows I am going to resist anything - and that means coal slurry pipelines or environmental protection for other areas or scientific institutes in our universities, anything that gets in the way of the basic strip mining bill.

12 These other matters, as far as this Senator is concerned, will be taken up later, when we consider such problems as the water involved in the coal slurry pipelines. But I assure the Senator from Louisiana that early in this session or after we pass the strip mining bill, there will be adequate consideration of the problem of coal slurry, of problems of research and development centers, and those other things that were in the strip mining bill before.

12 One of the problems we have, Mr. Secretary, is we have 18 new Senators who were not involved in strip mining legislation before.Of course, one of these new Senators is the Senator from Utah, Mr. Hatch. I am delighted to have him here this morning.I will call on you for an opening statement before we hear from the Secretary.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

12 Senator HATCH. The only opening statement I care to make is that I am very pleased to see both of you here and I do have some questions about the strip mining proposal. I am a great believer in States' rights, I strongly believe that the States can manage their own lands. Many of my questions will be in that area.

12 Frankly, I have real questions about whether a strip mining bill is what this country needs. I think it means more Federal controls and more domination by the Federal Government, less production and sometimes, I think, more costly production to both the producers and the consumers. So I have some real questions about it. I will keep an open mind, and hopefully you can answer my questions to everybody's satisfaction.

12 Senator METCALF. I thank the Senator from Utah very much.The Senator from Arkansas.

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

12 Senator BUMPERS. Mr. Chairman, first of all I want to say I appreciate the

chairman's remakrs regarding the coal slurry lines. The Senator from Louisiana and I have talked about it for a little bit. It just so happens the major proposal is one from Gillette, Wyo., to Pinewell, Ark., and as of this moment I don't know what anybody proposes to do - certainly I don't know what my State proposes to do - with the waste water that is necessary to haul that coal in slurry pipelines.

13 It is my understanding the line, or whatever the dimension might be, would be half water and half coal. I have seen some of the studies on it but nobody has said what we in Arkansas are supposed to do with that water. You can imagine what the chemical content of it would be once it gets there.

13 If they want to build two lines so they can send the water back to Wyoming, then I have no objection. But I have told the Senator from Louisiana I recognize there are economic benefits. He advises me the cost of shipping coal from Wyoming to Arkansas can be done by slurry line at about one-third of the cost of shipping it by unit train and that makes it attractive.

13 Of course, if the environmental considerations could be satisfactorily worked out.

13 The second thing is, I watched Governor Andrus on one of the talk shows yesterday, "Face the Nation." I call him Governor because I notice in the latest poll they rank fourth in competence levels of the opinions of the people and the Congress is eighth, so I try to get them to call me Governor around here, too.

13 I was pleased to hear him say something I have always argued about the necessity of the strip mining bill, and that is, if I were a coal operator and if I anticipated getting into the business because of the obvious demand for coal that is going to be generated in the next few years, I would want guidelines. I would not want to make a sizable investment at this time with this hanging over my head knowing it is going to happen at some time but not knowing in what precise form or what the economic cost to me would be as a coal operator.

13 Governor Andrus made this point yesterday. I think it is one of the most cogent points that needs to be made. I thought the President last year in vetoing this bill on the grounds production would be lost was erroneous, totally specious, and in the hearings held subject to the

veto was shown to my satisfaction rather conclusively that those figures were erroneous.

13 I hope we will move expeditiously to pass a bill. I thought the one last year was a very good one. Most of us here on this committee and Senator Melcher, who was on the Interior Committee of the House at the time, was familiar with it; I thought it was a perfectly good one, and I will be happy with one just like it. Also perfectly happy to go through the hearings again and if there are any improvements that can be made, certainly I will be amenable to them.

13 Senator METCALF. I thank the Senator from Arkansas, or I could say, I thank you, Governor. We can also refer to the ex-Governor of Wyoming.

13 I appreciate your mentioning my colleague from Montana. Among the 18 new Senators, of course, is Senator Melcher. He is as well acquainted with strip mining legislation as anybody in America, and has been active in getting it through the House of Representatives. I think we should be reminded he came within three votes of overriding the veto. I believe we could have overridden the veto in the Senate if we had received the bill.

14 I welcome the Senator from Montana to the committee. We have just finished organization of the various committees of the Senate in accordance with the Stevenson resolution last week. So we have not had any appointments to any of the committees. Senator Melcher has shown an interest, a deep concern in this legislation, and I would like to call on him at this time.

STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

14 Senator MELCHER. Thank you very much, Mr. Chairman. I want to first of all compliment you, Lee, for introducing S. 7, and I note first of all, S. 7, like the vetoed bills, carries with it the prerogative for a State to run the reclamation program within their boundaries, not just on private and State lands but also on Federal lands. That is a key part of S. 7 as it was a key part of the vetoed bills.

14 On surface owners' rights, if there is going to be some modification of existing law, and I think there should be, it has to be done by Congress and it is one of the key issues that must be faced up to in S. 7 as it was faced up to in the vetoed bill.

14 I would offer the suggestion at this time that the surface owners' rights agreement, the stipulations carried in S. 7, be modified to be the same as was ironed out and hammered out in the conference committee, referred to by Senator Johnston. To accomplish that purpose and to allow this committee to consider that I shall offer such an amendment.

14 Therefore, it will be in order to consider it here at the appropriate time.

14 I think a cornerstone of developing western coal depends on an enactment of this bill, for the reason of solving surface owners' rights, for the reason of directing the States, the opportunity and the prerogative of running the reclamation program, not just on private and State owned land but on Federal lands, that we must have enactment of this bill.

14 When that is enacted, then I think we can see the development, prudently and wisely and selectively, of western coal. It is true, as Senator Jackson has said, that this country is rich in coal. Much of it is in the West. Probably most of the strippable coal is in the West and about half of it is federally owned.

14 Until we have the firm delegation of authority from the Congress to the States to run the reclamation program, firm guidelines and directions from the Secretary of the Interior on how to lay out the procedures for the development of this coal, I think we are seriously lacking. It is also worthy of note that enactment of S. 7 will set the minimum Federal guidelines for each of the States to follow in their own statutes in order to run the reclamation programs themselves within the boundaries of their States.

14 I believe this is also essential, or else we are going to remain in a position of States for economic gain being tempted to have weak reclamation laws, and therefore, attract coal company operations to their States away from other States that have tougher laws.

14 One of the basic reasons we have recognized in the Congress for the past 6 years the national strip mine legislation was needed and it is needed just as much today as during those 6 years and even more so now.

15 Finally, I would like to commend Senator Metcalf and the other sponsors of this legislation for providing money for abandoned, orphaned, strip mined lands that were abandoned years ago and never reclaimed, for providing funds for that; and second, for providing funds for

the social impacts that occur in areas where coal development is undertaken.

15 I think both points are essential and needed of recognition of the Congress to strip mined land that has never been reclaimed and looking ahead to recognize there are also social impacts where Federal coal development does occur and it is a Federal responsibility to assist in those areas.

15 I find S. 7 a very fine bill. I would only modify it to the one issue of surface miners' rights and recognizing the difficulty we had in obtaining final agreement on that, returning to the position we hammered out in conference a couple of years ago.

15 Senator METCALF. Thank you, Senator Melcher. Secretary Andrus - despite the admonition given to me by Governor Bumpers, I am going to address you as Mr. Secretary from now on - I am pleased you are here this morning and I know the problems you had at the Cabinet meeting with Governor Carter - I should say President Carter. Your admonition carries through Governor Bumpers; how did the Presidents rank in that poll?

15 Senator BUMPERS. I just looked at Congress and Governors; that is as far as I got.

15 Senator JOHNSTON. You can be assured it is above us. [Laughter.]

15 Senator METCALF. Anyway, I am delighted, with all of the problems that the Secretary of the Interior has, that you have recognized as we have the high priority and great urgency for passage of strip mining legislation in order to stabilize the basic and pivotal part of the coal industry as part of our overall energy program. We are delighted to have you here this morning. I am pleased we are going to be able to work with you, Mr. Secretary, in the years ahead and I look forward to a very fruitful relationship.

15 At this time I am going to ask you, and then Mr. O'Leary, to testify, and then you will be at the mercy of this subcommittee.

STATEMENT OF HON. CECIL D. ANDRUS, SECRETARY OF THE INTERIOR

15 Secretary ANDRUS. Mr. Chairman, members of the committee, my opening statement will be brief. I will read it, Mr. Chairman, because I think it will answer some of the questions that have been raised by members of your committee here this morning. The legislative report I will refer to, but I will not cover that at this time.

15 Senator METCALF. The departmental report has been incorporated into the record, prior to our opening statements and other necessary unanimous consent requirements will be made.

15 Secretary ANDRUS. Thank you, Mr. Chairman.

15 The Department of the Interior strongly endorses the enactment of comprehensive surface mining control legislation.Your committee has worked on, and the Congress has passed, such legislation during the past two Congresses. A Presidential signature on it is long overdue and I am glad to see it placed at the top of your agenda. Drawing on your past efforts and expertise, this administration looks forward to a new law under which an effective surface mining control program can be carried out.

16 Increasing this Nation's ability to produce and use coal in order to decrease our reliance on imported oil and scarce natural gas is essential.With sound environmental safeguards, surface mining will be an acceptable way to produce much of this coal.

16 Fortunately, coal is abundant in this country. We can afford to be particular about where and how we mine it, consistent with conservation of the resource. We can afford to declare certain areas off limits to strip mining because of other important resource values, and we can insist on ending the abuses which historically have been associated with coal strip mining.

16 Prompt establishment of new ground rules for surface coal mining is essential both for a sound environmental policy and a sound energy and economic policy.Despite recent improvements in State and Federal programs, a uniform approach, approved by the Congress, needs to be adopted:

16 - To assure a high level of environmental protection;

16 - To provide for sound management of our land resources;

16 - To eliminate competitive economic pressures on States to lower their reclamation standards; and

16 - To provide the coal industry with firm guidelines for its future development.

16 In reaffirming my support of this legislation, I would like particularly to mention some of its fundamental components, which have been developed in the last few years of debate and

compromise on this legislation:

16 First: That reclamation is required to fully restore strip mined land to at least its original productivity.

16 Second: That the burden is on the operator, not the Government or the citizen, to demonstrate affirmatively that reclamation according to the law will be achieved.

16 Third: That certain areas will be off limits to strip mining because of other important resource values, preserving the option for society later to determine whether the coal is worth the sacrifices associated with mining by surface methods.

16 Fourth: That citizens will have meaningful opportunities to participate in the implementation of the law - through availability of information, hearings, and opportunities for citizen suits.

16 Last: That abandoned, unreclaimed mines will be reclaimed using money from production fees.

16 Mr. Chairman, in approaching this legislation, I want to see a bill which will make for an effective and efficient program without an undue burden on the economy. More specifically, the following principles should govern:

16 No arbitrarily imposed losses of coal production should result from the program.

16 It should not result in significant unemployment.

16 No substantial consumer impacts should result. It should not adversely affect competition.

17 No unreasonable administrative burdens and governmental costs should be imposed.

17 In general, I believe the legislation before you meets these tests.

17 I hope you will agree with me, however, that if we can improve the bill, we should not be deterred from this by past history, and, in any event, several issues remain to be resolved, many of them touched upon by your committee this morning. I would like to touch upon several of them now.

17 How to protect the owners of surface interests in lands where the Federal Government

owns and might lease coal for surface mining is an issue of central concern. Some recognition is
certainly appropriate to protect the interests of individuals who have in many instances, created
by their own labor a working ranch or farm and who may be faced with serious losses if Federal
leases are issued.I am not prepared to support a blanket prohibition of surface mining in the split
ownership situation, however.

17 Many hours of your time were spent in the last Congress trying to resolve this difficult
issue. It has been discussed here this morning in the opening remarks of your members.

17 The bill which finally passed conferred a right to consent on a specified class of surface
owners. To avoid large windfalls, it also specified compensation which could be paid for
consent. The concept of this provision in the vetoed bill would appear preferable to an outright
prohibition.At this point, I can only suggest that we remain open to reaching the most reasonable
possible solution of the problem and our Department stands ready to work with you to this end.

17 A second question is the protection of alluvial valley floors. I fully support such
protection.My staff advises me, however, that it would be desirable to clarify the alluvial valley
floor prohibition somewhat and to make specific allowance for the continued operation of
approved mines already producing coal.

17 As I mentioned, a basic feature of S. 7 which I support is its provisions for remedying the
historical environmental neglect of lands already mined and now abandoned. Some estimates are
that 1 1/2 million acres of land have been disturbed by all coal mining.I am frank to admit, I do
not believe we have an accurate inventory on that.

17 As you consider the bill's provisions for abandoned land reclamation, however, let me
urge you to focus on highest priority needs. A tremendous amount of reclamation work must be
done to repair the scars and correct the continuing environmental harm from mines where
responsibility for reclamation has ended and we must assure that our limited resources will be
used to produce the greatest possible results from a reclamation program.

17 Another issue of concern is the assignment of responsibility for the surface mining
reclamation program on Federal lands between the States and the Federal Government. S. 7 is

directed toward the accommodation of arrangements worked out in the last year. I would urge that you make those arrangements, like other portions of State programs, subject to review and approval by the Secretary, rather than election by the States. Other issues will also need resolution.The Department's legislative report, which you have, addresses most of these specifically and I will be happy to answer any questions about them you may have.

18 Our Department will also work with you in making whatever changes will improve the bill. As we plan and undertake preparation for implementation of the program, we will keep you fully advised and remain open to your advice as to the best possible way to accomplish this.

18 Coal constitutes over 85 percent of our hydrocarbon energy reserves and there can be no question that coal will provide a significant proportion of our energy needs for years to come. But as coal production increases, the environmental and land use problems it entails will also increase. We just cannot afford to permit historical mining practices to continue, particularly since environmentally sound mining can meet the Nation's energy and economic needs.

18 The pollution of some 11,000 miles of streams by acid mine drainage, extension siltation, the loss of forest and agricultural lands from productive capacity, the destruction of wildlife habitat, burning mine waste dumps, and health and safety hazards, must and can be controlled. Major impacts on land use and water resources are associated with many surface mines and these must be dealt with very, very carefully.

18 The framework you have provided by S. 7 to deal with surface coal mining reclamation is sound. I want to work with you to make needed improvements you were discussing this morning expeditiously and produce a bill for President Carter to sign. I assure you that the administration is committed to helping you pass such legislation and to careful administration of the program the legislation provides.

18 Senator METCALF. Thank you, Mr. Secretary. Before I call on Mr. O'Leary, I want to remind the people at the press table that the report of the Department of the Interior expands on some of the matters that the Secretary talked about, such as the protection of the surface owners' rights. We will have detailed testimony from the Kentucky operators at the next hearing,

regarding their concerns about implementation of the program, as to time involved, and so forth.
The Secretary has made a suggestion for modifying provisions for alluvial valley floors.

18 These are, in my opinion, relatively minor. They are matters that can be taken care of as a
result of discussion and markup.

18 I simply want to point out some of these questions touched on by the Secretary are dealt
with in greater detail by the departmental report.

18 You will probably be interrogated, Mr. Secretary, on some of these matters. You
understand the Senate is in the same position you are. We regard the proposed bill containing
145 pages as a skeleton program that we can put some flesh on as we proceed to implmentation.

18 Secretary ANDRUS. Excuse me, Mr. Secretary, I don't want to preempt my colleague's
testimony, but I think that is a point we do have to speak to. The implementation is broad and
again I assure you and this committee the Department of Interior wants to work with you to bring
about the implementation of the many facets that are enumerated in your legislation.

19 Senator METCALF.Thank you. We are delighted to have our new Administrator of the
Federal Energy Administration, the Hon. John F. O'Leary, who will make a statement. Then I
will call on my colleagues for their comments and interrogation.

STATEMENT OF HON. JOHN F. O'LEARY, ADMINISTRATOR, FEDERAL
ENERGY ADMINISTRATION

19 Mr. O'LEARY. Before getting into my prepared remarks, I would like to again
thank you for having this hearing and for the tenacity you have shown over the last few years in
getting us to this point. I share the view of the chairman of the full committee that this is the year
in which finally, after a good deal of enormous effort on the part of many people, we are going to
enact legislation in this area.

19 My personal involvement with this, Mr. Chairman, began more than 10 years ago with the
first study of surface mine damage done by the Department of Interior. In that instance, insofar
as my knowledge and recollection goes, we did the first landmark study of, and I think the only
phrase for it is, the national disgrace that had been associated with unregulated surface mining

over 75 to 100 years in this country; now to see 10 short years - or long years, as the case may be - we are going to come to a resolution of this must be extremely satisfying to you. It certainly is to me.

19 Mr. Chairman, I appreciate the opportunity to appear today to discuss the pending Federal surface mining legislation. The need for tough surface mining regulations is long overdue. The lengthy debate on this issue has obscured the important environmental goals which can and must be achieved. The President has repeatedly stated his position that Federal surface mining legislation is essential and that the time for its adoption is now. I am personally in complete agreement with this view.

19 Coal is one of our oldest and most plentiful sources of energy. Unfortunately, in many parts of our country its production and use has occurred without proper regard to its impact on our environment. Scenic areas have been lost. Our air and water have been fouled by failure to act in an environmentally responsible manner. We must put these days behind. The cost of reclamation is not high, Mr. Chairman, and we should not be misled to believe that concern for our environment and the production of energy are incompatible.

19 The winter of 1976-77 has dramatically pointed out the Nation's need for sound, well reasoned, energy programs. Senate bill S. 7, along with the similar legislation which has been introduced in the House of Representatives - H.R. 2 - is in my judgment, an important step in the right direction of balancing environmental and energy objectives.

19 The urgency of our energy situation dictates that the American people establish priorities and move rapidly toward adopting new goals and standards. The Surface Mining Control and Reclamation Act of 1977 reflects this national commitment. The task now is to enact legislation which will guarantee that our growing energy needs are not pursued at the expense of our natural environment.

19 The need for minimum national performance standards is further illustrated by recent State actions. Some coal producing States have adopted new surface mining legislation. Others have recently improved their laws. Those States which have enforced stringent reclamation standards have been able to maintain a viable coal mining industry. But competitive pressures

among States have sometimes resulted in the failure to enact more stringent laws and have often
led to less vigorous enforcement.

20 Time has come to establish national performance standards and to establish an
enforcement program to make sure these standards are met.

20 Traditional reliance on oil and gas for most of our energy requirements must change to
reflect the realities of our current energy situation. We need to establish a firm basis for coal to
play an expanded role in meeting our Nation's energy needs. Coal producers must be able to
proceed with a clear understanding of their responsibilities.

20 Coal represents the most important domestic source of energy for the United States in the
near term. U.S. coal production in 1976 was 665 million tons and is expected to increase to over
1 billion tons by 1985. Our coal reserves, used wisely and in conjunction with environmentally
sound standards, will provide us with reliable domestic energy source for many years to come.

20 The Federal Energy Administration is committed to the timely passage of this needed
legislation. We have carefully reviewed the proposed legislation, and there are just a few areas
of concern, which merit attention.

20 First, S. 7 would prohibit surface mining of Federal coal where private surface ownership
exists.

20 The purpose of this feature is to protect legitimate surface owner interests. I believe that
the protection of such interests is essential, but I would urge you to consider an approach which
would adequately safeguard owners' rights without enacting an overall ban.

20 A second provision of the Senate version which warrants further review is the alluvial
valley floor section. We recognize the importance of alluvial valley floors to the economic
viability of farming and ranching operations in the West and, therefore, to traditional western
lifestyles.Those areas which are conducive to agricultural activities should be protected and,
therefore, sources of water to such areas need to be maintained.

20 It is our view that mining operations located adjacent to or in proximity of alluvial valley
floors which will not have a significant adverse impact on water sources supplying alluvial valley
floors, and meet other requirements of the legislation, should be permitted. We believe that the

provision dealing with this matter could be subject to unintended misinterpretation. We would, therefore, prefer an alluvial valley floor provision which is unambiguous and would not lead to needless and lengthy litigation.

20 We strongly favor enactment of tough surface mining and administrative changes that may be necessary in order to improve the workability of the regulatory structure to be implemented under such legislation. These matters, of course, should be discussed between the agencies charged with administering such legislation and the appropriate committees of Congress.

20 Your reference to S. 7, representing a framework upon which the legislation can be built, is a case in point.

21 I would be pleased to answer any questions.

21 Senator METCALF. Thank you very much, Mr. Administrator. I was a lawyer, and the people of Montana and God willing I will probably be a lawyer in Montana again one of these days. I have regarded this legislation as an initial pleading, the vehicle to get prompt and early consideration from a new administration and from some of the new members of the committee who are involved. I feel it is the beginning and the pivotal part of an energy program for America, a full energy program, which we must get underway. Then we can take up such things as coal slurry pipelines, exotic sources of energy and things of that sort that are so necessary but are not the things we are going to have to face in the immediate future.

21 As chairman of this subcommittee, I welcome every suggestion and every proposal you have to make, or that my colleagues as Members of the Senate, or that Members of the House have to make - in order to work out a piece of legislation that will get us moving forward.

21 So I am just delighted that you are here. Your proposals for the bill are well taken and I feel sure we can continue to work together until we get President Carter's signature on this legislation.

21 I will call on my very distinguished colleague from Idaho, who came in just after you started to talk, Mr. Secretary, Senator Church.

STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM THE STATE OF IDAHO

21 Senator CHURCH. Thank you very much, Mr. Chairman, and Mr. Secretary. First of all I would like to say everyone in the Senate who knows the work the Senator from Montana, Senator Metcalf, has put in on this legislation not only credits him with the enactment of the legislation in the last session, which was met finally by veto, but honors his work in this field.

21 Mr. Secretary, you are off to running start. You have hardly had a chance to get your seat warm down at the Interior Department and you are up with major legislation very early which is a very good sign.

21 The question that I have relates to one part of your prepared testimony, and you refer to certain areas which will be off limits to strip mining because of other important resource values, preserving the option for society later to determine whether the coal is worth the sacrifice associated with mining by surface methods.

21 I don't know if this question has been looked at carefully by your Solicitor, but I am wondering whether the Federal Government possesses the authority to prohibit coal mining of Federal lands. I think without question it has the right to regulate under the commerce clause, but whether it would have the right on private property is a question I have never researched, and I don't know if it has come up during the course of deliberations of this committee.

21 Offhand, Mr. Secretary, do you have a response to that?

21 Secretary ANDRUS. Mr. Chairman, and Senator, depending on State law, in some States they can prohibit now on private land. My remarks in that prepared text were, obviously - I was trying to make a point - but just because there is coal there or some other mineral we should not rush out and grab it until we consider the other resource values that are there.

22 I cannot with certainty respond to your question as to whether the Federal Government does have the right on private land to prohibit it, but some States have it in their laws.

22 Senator CHURCH. I think the States would have that right under the exercise of police powers. But whether the Federal Government can go that far is what I would like answered. If you can have that researched, I would appreciate that.

22 Secretary ANDRUS. In response to Senator Church's question I will research that and write to him. But if the Federal Government sets the right example, others will follow. Within 24 hours, I will have a legal response to that.

22 Senator METCALF. That will be incorporated into the record.

22 Senator CHURCH. I think that would be helpful to have it incorporated into the record.

22 [Subsequently Secretary Andrus supplied the information appearing on the following pages.]

23
THE SECRETARY OF THE INTERIOR WASHINGTON
January 26, 1977
Honorable Lee Metcalf
Senate Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510
Dear Senator Metcalf:

23 During the course of my confirmation hearing you submitted a number of questions to be answered in writing. My responses to those questions are enclosed.

23 Copies of the questions and answers have been forwarded to Senator Henry M. Jackson for inclusion in the official record of the hearing.

23 If I can be of further assistance, please let me know.

23 Sincerely,

23 Cecil D. Andrus

23 Secretary of the Interior

23 Enclosure

24 Questions Submitted by Senator Metcalf

24 Q. 1.

24 The Department recently granted a one-year suspension of operations in the case of all four outstanding oil shale leases. Suspension was granted on the basis of conservation of the resource. However, at a hearing held last November by the Subcommittee on Materials, Minerals and Fuels, it became apparent that there were economic factors which figured prominently in the lessees' applications for suspension.

24 This has raised serious doubts about the true reasons for granting the suspensions.

24 My question is this: Do you plan to review the record on these suspensions? In addition, can you give us an indication of the Department's policy in future, if the lessees should request extension of the suspensions when they expire?

24 A. 1.

24 I do intend to review the issuance of the suspensions of oil shale leases. I also understand that the suspensions have been challenged in court.It appears that no actual operations were suspended, but rather that only the bonus bid payments were suspended. If that proves to be the case, I would not support extending the suspensions when they expire.

25 Q. 2.

25 With reference to the strip mining bill, one of the changes which I incorporated into S. 7, the bill I introduced last Monday, would allow State regulation of surface mining of coal on Federal lands, under an approved State program. I understand the Department has been actively soliciting similar types of agreements with western States, three of which have reportedly signed so far.

25 While I would endorse this effort in principle, I have been given to understand that the motive behind it may be to undercut support of the western States for the Federal strip mining bill. If this is so, I must tell you that I would have very serious reservations about continuing to back this provision for State regulation of Federal coal lands in S. 7.

25 We must have a strong Federal strip mining bill. We need such a bill because State environmental protection performance standards in most cases are quite inadequate and because, frankly, Federal standards are not nearly stringent enough, either. We need such a bill because orphaned lands are lying neglected, and for other reasons.

25 Now I recognize that States like Wyoming and Montana have strong environmental protection standards for strip mining. But, unfortunately, these States are the exception rather than the rule.

25 Let me ask you this: Can I count on you to make it crystal clear to the States which have signed or are about to sign this agreement with the Department, that it is in no way to be

construed as a substitute for Federal strip mining control legislation now under consideration by
Congress? I would very much appreciate having such an assurance.

25 A. 2.

25 I can assure you that I am as anxious as you for passage of a strong federal strip mine bill.
I will therefore make it clear to the states that any agreement they may have made with the
Department about regulating strip mining on federal lands is in no way a substitute for the strip
mining bill.

26 Principal Issues for Resolution

26 1. Surface owner protection - where Federal coal/private surface

26 (a) Mining prohibited - Mansfield amendment (S. 7 - @ 423(e))

26 (b) Surface owner consent - (H.R. 2 - @ 714) - limited class of individual; limited
compensation

26 2. Compliance deadlines

26 (a) S. 7 @@ 401-404

26 (i) Federal regulations - 6 months

26 (ii) State programs submitted - 18 months (possible 6 months extension for legislative
action)

26 approve/disapprove - 6 months later resubmit 60 days/reconsider 60 days Federal program
for State not having approved program - 30 months

26 (iii) Permanent Federal lands program - 6 months @ 423

26 (iv) Application to mines

26 Interim:

26 *new mines - require permit with specified performance standards

26 *existing mines - performance standards apply after 135 days

26 Permanent:

26 *all mines - apply for permits 20 months after enactment, must be acted on within 6
months of State program approval or no later than 30 months after enactment

26 (v) Federal back-up enforcement on all lands after 135 days (quarterly inspections)

26 Question: Will this reduce State incentive to assume enforcement responsibility in
interim?

27 (b) H.R. 2- @@ 501-505

27 (i) Federal regs - 6 months

27 (ii) State programs submitted - 18 months

27 Secretary approve/disapprove - 6 months later State resubmit 60 days/Secretary acts 60
days Federal program for States not having approved program - 30 months

27 (iii) Permanent Federal lands program @ 523 - 6 months

27 (iv) Application to mines

27 Interim:

27 *new mines - require permit with specified performance standards apply after 6 months @
502(b)

27 *existing mines - performance standards apply after one year

27 Permanent:

27 *all mines - apply for permits within 2 months after approval of State or Federal program,
must be acted on within 8 months after approval of State or Federal program (but not more than
38 months after enactment)

27 (v) Federal back-up enforcement on all lands after 6 months (inspection when indication
of violations)

27 3. Abandoned land reclamation program

27 (a) Funding: S. 7 (Title III) - Fee 35c ton surface/15c ton underground applies only to
Federal coal and is credited against royalties.

27 H.R. 2 (Title IV) - Fee 35c ton surface/15c ton underground (up to 10% value of coal or
5% of legnite) applies to all coal

27 (b) Allocation: 50% in State or Indian reservation from which collected subject to
reallocation if not used in 3 years

28 (c) Distribution: to Interior for orphan land program except up to one-fifth of Fund to
Secretary of Agriculture for rural land reclamation

28 H.R. 2 also provides 20% of Fund to regulatory authority for small mine information gathering

28 (d) Reclamation programs

28 *rural lands - @ 404 - Agriculture enters agreements up to 10 years for reclamation and provides grants up to 80% of reclamation costs. (120 acre limit)

28 *land acquisition program - @ 405(a) - Interior authorize to acquire land at price based on unrestored condition or to enter land based on certain findings and reclaim to eliminate fires, pollution, etc. Secretary may charge costs to owner and file lien on property. Secretary can make 90% grants to States for same purpose. Land may be resold competitively at fair market value to private parties or at lower value to State or local governments.

28 *funding of developments for impacted areas, including construction of public facilities - @ 405(b) - Also applies to area experiencing rapid development of coal resources filling voids and sealing tunnels @ 406

28 ISSUES: (1) Should authority to use funds for impacted areas be withdrawn? Note subsequent passage of legislation directing payment in lieu of taxes, increased State share of Federal mineral revenues and advance financing.

28 (2) Should reclamation purposes be clearly limited to demonstrable economic harms rather than unquantifiable injury such as aesthetic damage? Note OMB staff believes abandoned land program is bad precedent for Federal financing of non-point source pollution. EPA is developing mine source regulations. TVA views purchase program as wasteful. CEQ indicated some support of this view.

28 4. Mining and Mineral Institutes

28 H.R. 2, Title III

28 S. 7 - omitted

29 5. Alluvial valley floors

29 S. 7 - @ 410(b)5 (p. 59) - No grandfather clause and apparently looser language regarding definition of alluvial valley floors

29 H.R. 2 - @ 510(b)(5) (p. 75) - Grandfather clause and greater specificity of alluvial valley floor prohibition.

29 ISSUE: Should grandfather clause require actual production of commercial quantities in year preceding enactment or should it extend to mines which have permits or approved reclamation plans?CEQ argues only mines in actual production should be grandfathered. CEQ also urges additional protection for prime or unique farmlands.

29 6. National forests - Surface mining is prohibited under both H.R. 2 (@ 422(e)(2)) and S. 7 (@ 522(e)(2)) (p. 131). This provision affects substantial reserves in the Custer National Forest.

29 7. Small mines - Several provisions of H.R. 2 represent changes in vetoed bill designed to accommodate concerns for small mines.

29 401(d) - part of reclamation fee supports regulatory authority development in application information

29 507(c) - directs regulatory authority to perform water and core analyses for operator under 250,000

29 507(a) - application fee can be reduced below administration and enforcement costs

29 507(b)(14), (15) - permits omission of certain data if regulatory authority OKs

29 507(b)(2), (3) - less information required concerning adjacent landowners and previous permits of operator

29 519 - easier administrative requirements for bond release

29 8. Judicial and administrative.

29 Justice Department urges:

29 (a) specific exemptions from NEPA Environmental Impact Statement requirement for specific actions:

30 *regulations for State programs

30 *approval of State programs

30 *promulgation of Federal lands program

30 (b) Harmonization with other statutes:

30 (i) Air and water quality - EPA permits should be issued as part of mining permit based on

determination by EPA

30 (ii) Corps of Engineers permits should be issued under Federal Water Pollution Control
Act @ 404 should be issued by Interior with concurrence of Corps.

30 (c) Citizen suit provision - S. 7 @ 420; H.R. 2 @ 520

30 Use of provision against Secretary of the Interior should be made the exclusive remedy.
Effect: to assure that Secretary gets 60 days notice for suits against him for performance of
mandatory duties.

30 (d) Judicial review - S. 7 @ 426; H.R. 2 @ 526

30 Provision of (a)(1) for review of Secretarial action by "the appropriate" U.S. Court of
Appeals is causing needless litigation under the Clean Air Act over what is appropriate.
Provision should refer to Court in which the State is.

30 Also (a)(2) review of orders or decisions of national scope should be in the U.S. Court of
Appeals for D.C.

30 CEQ proposed and Justice opposed:

30 (e) mandatory payment of lawyer's fees for citizens suits

30 9. State-Federal enforcement arrangements for Federal lands

30 S. 7 @ 423(d) appears to allow cooperative arrangements. To adopt Interior practice it
should be modified to authorize agreements rather than provide for State elections.

30 H.R. 2 - no provision

30 10. Indian lands - unresolved issues of

30 - jurisdiction

30 - treatment under abandoned lands program

30 - definition of Indian lands

31
UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON. D.C. 20240
FEB 23 1977
Honorable Lee F. Metcalf
Chairman, Subcommittee on Minerals, Materials and Fuels
Senate Committee on Interior and Insular Affairs
Washington, D.C. 20510

Dear Senator Metcalf:

31 On February 7, 1977, Secretary Andrus testified before your committee on S. 7 "A bill to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines and for other purposes." Secretary Andrus was asked to obtain from the Solicitor of the Department of the Interior and submit for the record, an opinion on two questions:

31 (1) Whether the Congress may delegate to a state the authority to requlate reclamation of coal mining activities on federal lands; and

31 (2) Whether Congress has the authority, under a federal program, to designate certain state and private lands as off limits to coal mining?

31 This letter briefly responds to these questions.

31 Congressional Delegation of Authority to State to Regulate Federal Lands. Section 423(d) of S. 7 allows a State to "elect" to regulate reclamation on federal lands. The Department of the Interior in its legislative report on S. 7 supported this principle and suggested that several amendments were needed to have the election work properly. At the February 7, 1977, hearing, Senator Metcalf inguired about the constitutionality of state regulation of federal lands. (According to section 501(8) of S. 7, federal lands includes both lands where the United States owns the surface and mineral estates, and lands where the United States owns only the mineral estate.)

31 The Property Clause of the United States Constitution says that, "Congress shall have the power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States." U.S.Const., Art. IV, Section 3, Cl.2.The property Clause gives the Congress the power, without limitation, to determine how the property of the United States will be used and administered Kleppe v. New Mexico, U.S. , 96 S.Ct. 2285 (1976); United States v. San Francisco, 310 U.S. 16, 29 (1940); Utah Power & Light v. United States, 243 U.S. 389, 405 (1917). However, this clause does not automatically place the exclusive power to regulate federal property in the United States Government. Unless the exercise of a state police power conflicts with a federal statute or identifiable federal policy, the

police power of the states extends over federal lands unless and until Congress has determined to deal exclusively with the topic. State of Colorado v. Toll, 268 U.S. 228 (1925); McKelvey v. United States, 260 U.S. 353 (1922); see Texas Oil & Gas Corp. v. Phillips Petroleum Co., 406 F.2d 1303 (10th Cir. 1969), cert. denied, 396 U.S. 829 (1970) As the Supreme Court recently stated, "* * *[A] state undoubtedly retains jurisdiction over federal lands within its territory, but Congress surely retains the power to enact legislation respecting those lands pursuant to the property clause.[Citations omitted] And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause." Kleppe v. New Mexico, supra at , 96 S.Ct. at 2293.

32 In summary, state police powers consistent with federal law and policy apply to federal lands unless Congress acts or authorizes a federal agency to act to displace those laws. In addition, Congress may pass legislation which exercises exclusive jurisdiction over federal lands, or it may pass legislation which permits a state to retain jurisdiction over federal lands under certain conditions.

32 I conclude that the Congress may delegate to a state the authority to regulate reclamation of coal mining activities on federal lands.

32 Congressional Authority to Designate State and Private Lands as Unsuitable for Surface Coal Mining

32 Section 403 of S. 7 allows a state to regulate reclamation on State and private lands if it adopts a regulatory program that meets the requirements of the bill. The bill requires each state that wishes to regulate reclamation of lands mined for coal to adopt a program that meets specified reclamation performance standards and inspection, penalty and enforcement, and funding requirements. That section requires a state to establish a process for the designation of lands unsuitable for mining, S. 7, @ 403(a)(6) and to refuse to allow mining on certain types of land. S. 7, @ 410(b)(5). If a state fails to submit a qualifying program in the time period allowed by the bill, state laws and regulations that govern coal mining are preempted and the Secretary of the Interior is required to implement a Federal reclamation program for that state. S. 7, @ 404(a). As part of the Federal program under section 404, the Secretary has to assume the

responsibility to ban mining under @ 410(b)(5) and (after one year), to designate whether state
and private lands are unsuitable for surface mining. S. 7, @ 404(a), @ 422(a). During the
hearing on February 7, 1977, Senator Church inquired whether the exercise, by the federal
government, of the power to ban mining on certain areas of state and private lands was
constitutional, or whether this power could only be exercised by a state, under its police powers.

33 The Commerce Clause, Art. I, @ 8, cl. 3, United States Const. gives Congress the power
to regulate commerce among the several States. The power of Congress to regulate interstate
commerce under the Commerce Clause is plenary and encompasses not only regulation of
interstate commerce, but also necessary and proper measures to regulate intrastate commerce.
Houston & Texas Ry. v. United States, (Shreveport Rate Case), 234 U.S. 342, 351, 353 (1941).
The necessary and proper test is met if the regulated conduct might have a "substantial economic
effect" on interstate commerce. Wickard v. Filburn, 317 U.S. 111, 125 (1942). Commerce that
concerns more than one state and that has a real and substantial relationship to the national
interest meets this test. E.g. Heart of Atlanta Motel v. United States, 379 U.S. 241, 255 (1964).
The Courts give a high degree of deference to a Congressional determination that an activity
affects interstate commerce, and will defer to that judgment if there is a rational basis for finding
that a chosen regulatory scheme is necessary to protect interstate commerce. Katzenbach v.
McClung, 379 U.S. 294, 303-04 (1964). In South Terminal Corporation v. Environmental
Protection Agency, 504 F.2d 646, 677 (1st Cir. 1974), the Court upheld a determination by
Congress that regualtion of air pollution was permitted by the Commerce Clause. See also
United States v. Bishop Processing Co., 287 F.Supp. 624 (D.Md. 1968). In section 101(d) of S.
7, Congress has made the required determination that, "Surface and underground coal mining
operations affect interstate commerce, [and] contribute to the economic well-being, security and
general welfare of the Nation * * *."

33 If a subject matter has been found to be within Congress's power under the Commerce
Clause, Congress may adopt means to regulate that area, even though the means "may have the
same incidents which attend the exercise of the police power of a state." Federal Power
Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 582 (1942); Hoke v. United States, 227

U.S. 308, 323 (1913). For example, the Courts have specifically upheld the right of Congress to limit parking spaces to regulate air pollution through land use planning and other means even where the regulations reduced the number of parking places in a city below that level authorized by local zoning ordinances. South Terminal Corporation v. Environmental Protection Agency, supra, at 677. n1

34 I conclude that Congress has the power under the Commerce Clause to allow the Federal government to designate some types of state and private lands as unsuitable or off-limits to surface coal mining. n2

34 n1 Congress may not have the power under the Commerce Clause to require state officials to pass and enforce laws or appropriate money to carry out certain governmental functions required under regulations issued under the Clean Air Act. E.g., Brown v. Environmental Protection Agency, 521 F.2d 827 (9th Cir. 1975), cert. granted, 44 L.W. 3685.

34 n2 The allowable extent of the prohibition must also be consistent with the due process requirements of the Fifth Amendment. E.g., Goldblatt v. Hempstead, 369 U.S. 590 (1962).

34 Sincerely yours,

34 Frederick N. Ferguson

34 Acting Solicitor

35 Senator CHURCH. In strip mining we started with coal. Obviously it was the greatest need and it formed a part of the energy package that occupies the new administration and has occupied the Congress for some time, and we have had problems enough getting a strip mining bill for coal enacted into law. But beyond that, there are other forms of strip mining.

35 In our own State, Mr. Secretary, you know about the phosphate mines. We once had a problem when a molybdenum open pit mine was threatened at the base of a very beautiful mountain in Idaho. What view do you take with regard to strip mining legislation of this kind as it may be applied to other minerals in the future?

35 Secretary ANDRUS. Mr. Chairman, I hope that it will be applicable to other minerals in the future, Senator. But I believe as far as we can say with certainty here this morning, and

hopefully the legal research you requested will clarify another portion of it, that there are some areas that have other values including Castle Peak, as you pointed out. Some of your colleagues are aware of that area, some are not, but here is a situation where I believe simply because coal or a mineral happens to be geographically located there does not mean that we should extract it. You have to have a balanced resource program that will protect some of this.

35 If you choose you can utilize the terminology to let somebody else make that decision 50 years from now or 100 years from now. It is not a lockup. It is saving for somebody else to make that determination.

35 Right now, Senator, we have vast amounts of coal, both in the East and the West. They are in such quantity I don't think we have to destroy the beauty that you have so well described here this morning and in the past.

35 Senator CHURCH. If we manage to enact this strip mining bill for coal and our experience with it proves it to be workable and highly desirable legislation, then will you work with this committee to extend the regulation of open pit and strip mining to other minerals?

35 Secretary ANDRUS. Yes, sir; I will.

35 Senator CHURCH. I think that is all, Mr. Chairman.

35 Senator METCALF. May I say to the Senator from Idaho, the chairman of this committee is certainly aware of the problems that he raised. I remind the Senator from Wyoming, we held a hearing in Wyoming on uranium, and the problems of surface owners' rights and so forth were considerable.

35 We have problems under the mining law of 1972 and each of these areas may present different solutions.In fact, it is my intention before this Congress adjourns to also hold hearings on what happens in quarries, in borrow pits, et cetera. Some of the greatest scars left on the American landscape are there because we failed to take care of those seemingly nonessential programs.

35 But surface mining is most urgent. I don't think we consider we are setting any precedent for hard rock mining, for molybdenum and copper, for example. I don't know what we are going to do about the Berkeley pit, something like that gnawing away at the city of Butte. But we will

take those up after we have solved this problem. I am delighted you have brought this up. I know Secretary Andrus will cooperate with us.

36 Senator Hansen.

36 Senator HANSEN. Thank you, Mr. Chairman. Mr. Secretary, let me express my pleasure with your appearance here this morning and particularly note the background you bring to this very important national post you hold, that is, having served as Governor of the sovereign State of Idaho for three terms.

36 My first question deals with the State versus Federal responsibility in this area. As you know, four States, including Wyoming, North Dakota, Utah, and New Mexico, have entered into agreements with the Department whereby the State laws will apply, and I think it would be fair to note the State of Wyoming has probably gone farther in this regard than the other States although I have not had the opportunity personally to examine those agreements. But would it be your thought that this approach recognizes the diversity of conditions and situations and is the kind of cooperative agreement you might want to promote and continue?

36 Secretary ANDRUS. In response to the Senator's question, the concepts are certain, as mentioned by Senator Hatch, I would like to see the States have the ability and then the right to participate in the regulatory measures in this regard.

36 I have not personally looked at those documents that were signed the last week or the week prior to my coming into office, but the concept I concur with. As I mentioned in my testimony rather than just a blanket situation where they can request to have the program, I think it would be well if the Department of Interior had the opportunity to enter into a contract with them, because of the very point you bring out, the diversity of the various States.

36 If I may enlarge upon this and also answer the question posed by your colleague from Utah, one of the reasons we have to have a national strip mining bill is so that one State will not be in a position to take economic advantage over another State.But I would prefer to provide States with the capacity to handle the regulatory portion.

36 It was pointed out by Senator Bumpers, Senator Johnston, and Senator Melcher, if we do not have national guidelines, we do not protect the operators, where one would have an economic

advantage over another.

36 Senator HANSEN. Your concern -

36 Senator METCALF. I want to interrupt here, Senator.Mr. O'Leary, if you want to comment or have any additions to the statements, please do so. The questions are addressed to both of you at the same time.

36 Senator HANSEN. Thank you very much, Mr. Chairman. The chairman is quite right. I would welcome it, in case you think additional observation by either of you may be indicated at any time to make that observation.

36 I think the concern you expressed in your prepared statement was that competitively there may be later on an effort made by one State to lower its standards, to reduce its requirements, and the performance that might be expected so as to gain an economic advantage over another State. My question to be precise is this: If a State equals or exceeds the requirements in the Federal law, then would you be willing to leave with that State the administration and enforcement of the law?

37 Secretary ANDRUS. Mr. Chairman, yes, sir. And I concur it should be on Federal lands as well as other lands, all lands with coal in the State with the single proviso the Department of Interior enters into that contract and makes certain those standards are upheld. We don't intend to have two, one following the other.

37 Senator METCALF. Do you envisage any constitutional problems involved with delegation of authority over Federal lands to the administration of State agencies?

37 Secretary ANDRUS. No, sir; I do not.But I would yield to my colleague.

37 Mr. O'LEARY. Senator Metcalf, I was instrumental in the New Mexico agreement in my capacity as Director of Energy Resources there. We carefully reviewed that situation. There was no problem. Indeed, it was contemplated the regulations issued by the Secretary of the Interior, following the August 4 amendments to the Mineral Leasing Act. In our view, there simply is no conflict.

37 Senator METCALF. If the Senator from Wyoming would continue to yield for just a moment.

37 Senator HANSEN. I would be happy to.

37 Senator METCALF. Under the constitution, the control and administration of any Federal land is vested in the Congress.Congress has traditionally delegated that administration and that control to the Secretary of the Interior and other people. We had never delegated it until we passed the Coal Leasing Act last year, over the President's veto when we did delegate considerable control to the States, and that is why I wanted the record to show it is a constitutional precedent to delegate that control to the administration of the various State agencies, provided they meet the standards established by the congressional act.

37 Mr. O'LEARY. Mr. Chairman, there is a prior precedent. Under the Atomic Energy Act there was constructed the so-called State agreements plan. Under those State agreements there could be delegation of the responsibilities of the Atomic Energy Commission - now, of course, the Nuclear Regulatory Commission - on the basis of comparability. It was precisely that precedent that we cited in the discussions that led to the congressional approvals for the delegations to the States.

37 I think the principle we have to note there, both with regard to activity on the Federal lands under the Mineral Leasing Act and under this statute, when it is passed, is one of comparability. I don't think we can stand a situation in which the responsibility is passed off to the States without very careful audit of State activities.

37 Senator METCALF. I am not sure your second analogy is completely in point. I think the analogy in the coal leasing act is in point. I wonder if you, Mr. Secretary, and you, Mr. Administrator, would include a brief summary of your opinion when you supply the material for Senator Church? I think this is a very important matter to both Senator Hansen and to me, this business of setting a precedent to give the States control of the administration and supervision of Federal as well as non-Federal and private lands.

37 Secretary ANDRUS. Mr. Chairman, it shall be done.

37 Senator METCALF. Thank you, Senator, for yielding.

37 Senator HANSEN. You are welcome, Mr. Chairman. My next question has to do with

abandoned mine reclamation. Two proposals have been discussed. One is to establish a fund
from Federal royalties and the other proposal would establish the fund by levying fees on all
mined coal. As you know, last year one of the bills that was passed was the BLM Organic Act
and it contained a provision that was directed to bring relief to those hard-hit communities where
an explosion of activity occurred in the development of energy which we know quite a lot about -
all too well in my State of Wyoming - to provide front-end money so the towns that are called
upon to provide extra services, extra facilities, and to do planning, can afford it. Under the bill as
it first passed the Senate, 60 percent of those royalties would have been given back to the States
for the social and economic impact problems. Finally, out of the compromise of the House and
Senate, it was scaled down to 50 percent. Those funds come from Federal royalties.

38 What way do you think the reclamation of abandoned mines should be paid for? Do you
think from royalties or from a tax on the coal or a fee on the coal?

38 Secretary ANDRUS. Mr. Chairman, in response, there is room for discussion in that area.
If you are asking which one I would prefer, it is a fee on the coal. Then you are in a position
where the people who are actually profiting from the extraction of that coal are building a fund
for the reclamation and I think that is the fairest way to guarantee the funds will be available for
that purpose.

38 Senator HANSEN. Would you care to comment?

38 Mr. O'LEARY. Yes, Mr. Chairman. I would like to support that. We have taken a look,
of course. There is a commitment of 50 percent. We think it would be unfortunate if that were
to be diluted. All in all, this is a matter of internalizing some costs that have not so far been
borne by the coal operations. We think the tax approach is appropriate.

38 Senator HANSEN. I appreciate your comments. With respect to reclamation, one of the
most severe programs we had, at least in Wyoming, as we contemplate the damage that has
resulted and continues to result from abandoned coal operations, both surface mining operations
and underground mining operations, is the subsidence that occurs in several Wyoming towns.
Rock Springs, for example. We have had some very critical problems develop out there. As a
consequence, the Bureau of Mines undertook a pilot project to see what could be done in

back-filling these mine voids under the city with slurries.

38 The problem has many dimensions. It may result in gaslines being disrupted with the very great unlikelihood of an explosion occurring, with people being killed by fumes, it may result in sewerlines being broken and the pollution that would result, waterlines being broken, and powerlines also being broken, to say nothing of the more obvious effects which subsidence brings, with one side of a house going down, the foundations cracking, and this sort of thing.

38 Would it be your thought or how do you assess - let me ask it this way - what do you assess to be the most important first priority we should consider in land reclamation? On the one hand, if I could take an additional moment, it is the obvious desolation that results from the surface mine operation where the land has been torn up and left in a very unpleasing state that often times results in unproductivity and in the East has resulted in some other problems as well, and the problem of subsidence in cities.

39 We have a little taste of it in the West. It is a very common problem. The eastern towns, Pennsylvania, West Virginia, as examples.

39 Mr. O'LEARY. Mr. Chairman, I, of course, have been exposed to this problem for a long time. The pilot program Senator Hansen referred to was one he and I worked out when I was Director of the Bureau of Mines. It seems to me past coal mining operations have done a variety of community damage. We have had coal mine fires by the hundreds in Appalachia. Now a growing number in the West that ought to be controlled. We have a very expensive fill we built outside the city of Scranton, something approaching the size of the Panama Canal, 600 feet across, 300 feet deep, which we filled with fire retardant material to literally save the city of Scranton. I think that must be addressed. Burning calm banks, both in the East and in the West are a problem that has to be addressed. We really can't take the narrow focus of strip mining to cure coal mining ills.

39 It seems logical we ought to take a look at the full sweep of environmental damage attributable to past coal mining operations and attack it on the basis of priorities. Where, for example, public health and safety is in danger, as it is in the case of an underground fire in the substrata underlying a town. It seems to me those things call out for priority.

39 Senator HANSEN. You share those views?

39 Secretary ANDRUS. Mr. Chairman, in response I would agree and add to the point. You have a situation where some of the reclamation money is to be distributed within the States and the States will be involved in that decisionmaking process as to where they choose to spend it. It does not revert to the other fund for 3 years.

39 There are two bills that are generally discussed and I don't want to discuss the wrong one in this chamber, but the State would have a say-so in that fund.

39 Senator HANSEN. I have one question that relates to the first one. That is, as I understand the provision in S. 7, is there shall be levied a fee of 35 cents a ton on coal surface mined and 15 cents a ton on coal extracted by underground mining operations. I would observe in addition to the possibility of fire, which always is an always present danger - any time there are mine voids left in underground mines, sooner or later the likelihood is it will cause a fire - in addition to destroying a finite resource, there is the immediate and personal danger that asphyxiation can occur and lots of things can happen. With that additional thought in mind, and also with the concern we have for victims of certain occupational diseases such as black lung, and there have been bills introduced which would place the responsibility on the government to conclude, first, anyone who has worked in an underground mine for a certain period of time would have black lung and would be eligible for benefits under that bill, does it seem fair and appropriate that there should be a differential in the contribution that coal mined underground would make, as compared with surface-mined coal?

39 Mr. O'LEARY. I will give you my view, Mr. Chairman. I think the results of underground mining, over time, are more pernicious than are the results of strip mining. The ills of strip mining in most situations can have a 100-percent cure, given time. Underground mining poses a different problem, however. In your own town of Rock Springs, the cause of damage that is occurring now was created by actions taken 4 years ago. In time, when you disturb the subsurface it will go back to resonance after a long period of crumbling and falling. It seems to me that to make the distinction that is in the legislation is something we ought to look at very carefully before we cast it in concrete.

40 Senator HANSEN. Mr. Chairman, I have some other questions. I realize I am taking a lot of time. I will yield to some of the other Senators present so they can go ahead with their questions and then we will come back.

40 Senator METCALF. Thank you. The Senator from Louisiana.

40 Senator JOHNSTON. Thank you, Mr. Chairman. First, Mr. Secretary, let me say on one detail of the bill, you say we ought to amend section 410(b)(5) with respect to alluvial valley floors. Let me suggest the provision which we had in the bill, on page 59 of the bill, was hammered out after a great deal of thought and I would suggest is a great deal tighter than the proposed language.I simply mention that is suggested.

40 If what we are going to do is protect the existing mines, I think we could do that without that language. I simply mention that so we can get the lawyers to go back and see that it is the most tight.

40 I wonder, Mr. Secretary, if the administration has a position yet on coal slurry pipelines?

40 Secretary ANDRUS. Mr. Chairman, Senator, the answer is no for some of the reasons brought up here by some of your colleagues. Frankly, Mr. Chairman, my feet have not touched the ground that frequently to have that opportunity to get into that because of preparation for this.

40 I will tell you in response to the question you have the water problem, as Senator Bumpers was talking about, but the input at the other end as to where you would extract it, and those items have to be looked at. The answer to your question is no, sir, we have not yet taken a position on that as yet.

40 Senator JOHNSTON. When I suggested it, I thought this issue and that were related. I certainly don't want to kill this bill. I think last Congress it was my amendment that saved the bill. I don't want to take that much credit for it. It could have been killed. I am no more anxious to be a stumbling block now than I was then. But it seems to me these issues are related. I think we have plenty of votes. We passed the coal slurry pipeline in the Senate handily last time. We passed this bill handily. We had the votes to override the veto in the Senate.

40 I would hope the administration would take a look at that issue.I think it is much more vital now than ever. We have got to get that coal down to where it is going to be burned. Notwithstanding the fact that some people say we have got plenty of gas, I would suggest the evidence is clear: We are running out. We don't have enough right now and we are running out of that which we had and we better find an alterative fuel. To have that alternative fuel, I think our only choice is coal.

41 I don't believe trains can handle the whole job. I think we need all we can build. But even that is not going to be enough. We are going to have pipelines and trains, and I think we can do it in an environmentally sound manner.

41 I would hope the chairman would look at this bill as appropriate for that and recognize we could pass both, I think, with substantial margins.

41 Senator METCALF.I hate to disabuse the distinguished Senator from Louisiana, but this Senator is opposed to putting prohibitions against mining phosphates in National Parks, prohibitions or proposals for research and development centers in institutions throughout the United States, or surface mining controls in other minerals, as a part of this legislation. I would hope the Senator from Louisiana would take the assurances of the Senator from Montana that those matters would be carefully and thoroughly considered in separate legislation. He will have his opportunity, as he did in the last Congress, to have his views expressed in legislation.

41 I am concerned about putting additional material into the bill. I am prepared to make a point of order on the floor if we can hold it in committee, against any legislation that is amendatory to this bill, insofar as it relates to anything other than coal.I understand his concern, and I give assurances to the Senator from Louisiana that we will get on with some of these other issues just as soon as we can get rid of this legislation.

41 I am delighted to have Senator Hatch with us today and have him participate in a first hearing of this subcommittee. I know the State of Utah is very much concerned. I will be pleased to have you question our new Secretary of the Interior.

41 Senator HATCH. I do have some questions, Mr. Secretary and Mr. O'Leary. When President Ford vetoed the Mining Act of 1975, he gave, among other things, a number of

statements. Let me just read a few of them.Then I would like to ask questions.

41 He said:

41 I am returning today without my approval the Surface Mining Bill and Reclamation Act of 1975. I am unable to sign this bill because, one, as many as 36,000 people would lose jobs while unemployment is already too high; two, consumers would pay higher costs, particularly for electric bills when consumer costs are already too high; three, the nation would be more dependent on foreign oil when we are already overly dependent and dangerously vulnerable; four, coal production would be unnecessarily reduced, and our domestic resources needed more than ever.

41 Then he said this:

41 The Department of the Interior and the Federal Energy Administration now advises me if this bill were to become law, a production loss of 40 to 162 million tons would result in 1977. This would mean that six to 24 percent cent of expanded 1977 coal production would be lost. Actually production losses resulting from this bill could run considerably higher because of ambiguities in the bill and uncertainties of many of its provisions.

41 Such strong language, considering the dramatic impact suggested, irrespective or agencies, have you made any analyses which disprove President Ford's assertions which he stated came from your agency?

41 Secretary ANDRUS. Mr. Chairman, I would like to respond to that by referring to its context and then addressing the substance of the question of the Senator from Utah. In all fairness, I think we have to recognize that those statements were made as arguments about a bill which was being vetoed. In past history, when I was Governor, I vetoed a few of them and I used the strongest possible language I could get my hands on. I think that has to be taken into consideration.

42 But it is not this administration's feeling that it will decrease coal production or that it will increase unemployment. My colleague here, I know, has figures he will give you in a moment. I would also point out that testimony notwithstanding - I can't bring you back the date, but I can procure it for you - the testimony of the Secretary of the Interior in the previous administration

testified before this committee, or the House committee, pointing out the passage of this bill
would not cause substantial or any increase in unemployment or decreases in production. I yield
to my colleague for some figures on unemployment.

42 Mr. O'LEARY. Mr. Chairman, I have a copy of a report that was prepared by ICF, Inc.,
for the Council on Environmental Quality, which will be available to the committee if the
committee does not have it already in draft form. It is my understanding this was rushed in
preparation for this hearing.

42 Senator METCALF. Do you want this report in the record?

42 Mr. O'LEARY. It is useful.

42 Senator METCALF. It will be incorporated into the record.

42 Senator HATCH. We have not only the one of February 1, 1977, but also the draft of
January 24, 1977.

42 Senator METCALF. That will also be incorporated.

42 [The material referred to above appears on the following pages.]

43 DRAFT FINAL REPORT

43 ENERGY AND ECONOMIC IMPACTS OF H.R. 13950

43 ("SURFACE MINING CONTROL AND RECLAMATION ACT OF 1976," 94th CONGRESS)

43 Submitted to the Council on Environmental Quality and Environmental Protection Agency

43 Contract No. EQ6AC016

43 January 24, 1977

44 INTRODUCTION

44 The Environmental Protection Agency (EPA) and the Council on Environmental Quality
(CEQ) have expressed concern about the environmental damage that occurs when land is surface
mined without adequate reclamation. Thus, EPA and CEQ have continually supported the need
for uniform national surface mine legislation. EPA and CEQ are also aware of the potential
impact that strip mine legislation could have on the coal industry and on the Nation's program to
become less dependent on foreign sources of energy. For these reasons, EPA and CEQ

contracted with ICF to develop a methodology to quantify the economic and energy impacts of strip mine legislation. Although most of the analysis in this report focuses upon the specific provisions of the Surface Mining Control and Reclamation Act of 1976 (H.R. 13950), the analytical framework has been structured in a manner that would allow the analysis of the impacts of alternative surface mining reclamation provisions.

44 In several parts of this analysis, complete and accurate data did not exist. Further, the methodologies developed were often only approximate in the accuracy of the results rendered. Accordingly, the findings of this analysis should be interpreted; no undue weight should be given to any particular n number.

44 When judgments were necessary in conducting the analysis, we believe they were objectively made. However, when a range of judgments was possible, values were selected that would tend to exacerbate the adverse impacts. Hence, if a bias exists, we believe it is toward overstating impacts.

44 This bill contains many sections which do not directly affect the coal mining industry, such as those sections relating to State Mining and Mineral Resources and Research Institutes, various administrative provisions, and Designation of Lands Unsuitable for Non-Coal Mining. Since this analysis is concerned primarily with impacts to the coal industry, the focus is directed toward provisions which could result in increased coal mining costs, coal price increases, coal production impacts and coal reserve base impacts.

44 SUMMARY OF MAJOR CONCLUSIONS

44 The findings of this analysis indicate that the costrelated impacts due to H.R. 13950 are generally not great. These cost impacts are not likely to significantly affect national coal production, coal consumption, coal prices, employment, or electricity prices. However, there are numerous provisions in H.R. 13950 not directly related to costs which could create major difficulties. Such impacts include (1) substantial production impacts that could result from possible interpretations of the alluvial valley provisions, (2) delays in permitting due to inability to comply within established timetables and/or insufficient administrative funding, (3) extensive litigation resulting from ambiguous and undefined terms, (4) unintended effects due to

mismatches between the apparent intent and the actual wording, and (5) losses to the coal reserve base.

45 H.R. 13950 would establish surface mining and reclamation requirements applicable throughout the Nation. However, many of these requirements already exist in state laws and regulations in the coal mine operating regulations for federal coal leases.Accordingly, the incremental law presented by H.R. 13950 varies among states, and in some states, is quite small.

45 Since many of the performance standards of H.R. 13950 are often found in existing state laws and regulations, the cost impacts in many states are not great. In most non-Appalachian states, the incremental costs are less than $0 .75 per ton (1978 dollars). In Appalachia, cost increases are generally between $0.50 and $2 .00 per ton except in Alabama and Virginia, where costs for some mine-types could increase by over $4 .00 per ton. For purposes of this analysis, it was assumed the bill was enacted in January 1977. Hence, it was assumed these cost increases would first be incurred in 1978.

45 The production and energy impacts associated with these cost increases are not great. If there were no increase in market prices in 1978, net production curtailments in 1978 are estimated to be 22.0 million tons, all in Appalachia. If the market prices increased by $1 per ton in Appalachia in 1978, the net production curtailments would be reduced to about seven million tons. However, these production curtailments would not affect overall coal consumption in 1978, since consumers could meet the shortfall by drawing down existing coal stocks. There would be no net production curtailments in 1979 or thereafter, because market prices would increase by 1979 to stimulate the required additional production.

45 Another production imapct of H.R. 13950 would be to change the regional distribution of production. Production in areas with relatively large additional reclamation costs would either fall or not increase as rapidly as production in areas with small projected increases.

45 The projected price impacts resulting from the performance standards of H.R. 13950 are projected to be about $1/ton by early 1979 in Appalachia and the Central West, and $.5 50/ton in the rest of the Nation. These increases would increase the average residential consumer's electricity bill by a maximum of one percent per year.

46 The net direct employment impacts (i.e., lost jobs due to production curtailments minus new jobs due to increased reclamation) in 1978 could be a loss of about 1,400 jobs in surface mining in Appalachia, if the net production curtailments were 22 million tons. If the curtailments were lower, the net direct employment impacts would be lower. However, additional jobs would be created in both government and industry to implement the legislation and conduct the studies required for permit applications. In 1979, when there would be no net production curtailments, direct surface mine employment would be increased due to the increased reclamation activities.

46 Although the cost-related provisions of H.R. 13950 do not appear substantial, the imprecise wording of other provisions do present potentially significant impacts.These impacts are generally not related to cost, but could serve to restrict production and reserves under certain conditions.For example, while a moderate interpretation of the alluvial valley floor provisions could affect four mines with an additional production in 1978 of 12 million tons, a worst case interpretation could impact up to 51 million tons of western production by 1978 and 211 million tons by 1985.

46 In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could have effects quite different from the apparent Congressional intent. In most cases, the intent of the provision would have little cost or production impact. However, the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation. Examples of these provisions include the amount of time allowed for compliance with permit requirements and performance standards, the grandfather clause for mining on alluvial valley floors, specification of the technology to control sedimentation, and the provision for declaring lands unsuitable for mining.

46 The reserve impacts of H.R. 13950 could range between 8.5 and 28.3 billion tons, or between 2.0 and 6.5 percent of total reserves. These impacts are equivalent to between 6.2 and 20.7 percent of strippable reserves. It should be noted that these impacts would not affect the cost or regional distribution of coal production until the mid-1980's at the earliest.

46 These findings will now be presented in greater detail.

47 DRAFT FINAL REPORT

47 ENERGY AND ECONOMIC IMPACTS OF H.R. 13950

47 ("SURFACE MINING CONTROL AND RECLAMATION ACT OF 1976," 94th CONGRESS)

47 Submitted to the Council on Environmental Quality and Environmental Protection Agency

47 Contract No. EQ6AC016

47 February 1, 1977

48 INTRODUCTION

48 The Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) have expressed concern about the environmental damage that occurs when land is surface mined without adequate reclamation.Thus, EPA and CEQ have continually supported the need for uniform national surface mine legislation. EPA and CEQ are also aware of the potential impact that strip mine legislation could have on the coal industry and on the Nation's program to become less dependent on foreign sources of energy. For these reasons, EPA and CEQ contracted with ICF to develop a methodology to quantify the economic and energy impacts of strip mine legislation. Although most of the analysis in this report focuses upon the specific provisions of the Surface Mining Control and Reclamation Act of 1976 (H.R. 13950) n1, the analytical framework has been structured in a manner that would allow the analysis of the impacts of alternative surface mining reclamation provision.

48 n1 The complete text of H.R. 13950 (as reported August 31, 1976), is reproduced in Appendix G.

48 In several parts of this analysis, complete and accurate data did not exist.Further, the methodologies developed were often only approximate in the accuracy of the results rendered. Accordingly, the findings of this analysis should be interpreted; no undue weight should be given to any particular number.

48 When judgments were necessary in conducting the analysis, we believe they were objectively made. However, when a range of judgments was possible, values were selected that

would tend to exacerbate the impacts. Hence, if a bias exists, we believe it is toward overstating
impacts.

48 This bill contains many sections which do not directly affect the coal mining industry,
such as those sections relating to State Mining and Mineral Resources and Reserch Institutes,
various administrative provisions, and Designation of Lands Unsuitable for Non-Coal Mining.
Since this analysis is concerned primarily with impacts to the coal industry, the focus is directed
toward provisions which could result in increased coal mining costs, coal price increases, coal
production impacts and coal reserve base impacts.

48 SUMMARY OF MAJOR CONCLUSIONS

48 The findings of this analysis indicate that the costrelated impacts due to H.R. 13950 are
generally not great. These cost impacts are not likely to significantly affect national coal
production, coal consumption, coal prices, employment, or electricity prices.

49 However, several provisions in H.R. 13950 are subject to varying interpretations. In the
event that these terms are given very stringent interpretations, the impacts could be substantially
higher.

49 H.R. 13950 would establish surface mining and reclamation requirements applicable
throughout the Nation. However, many of these requirements already exist in state laws and
regulations in the coal mine operating regulations for federal coal leases. Accordingly, the
incremental law presented by H.R. 13950 varies among states, and in some states, is quite small.

49 Since many of the performance standards of H.R. 13950 are often found in existing state
laws and regulations, the cost impacts in many states are not great. In most non-Appalachian
states, the incremental costs are less than $0 .75 per ton (1978 dollars). In Appalachia, cost
increases are generally between $0.50 and $2 .00 per ton except in Alabama and Virginia, where
costs for some mine-types could increase by over $4 .00 per ton. For purposes of this analysis, it
was assumed the bill was enacted in January 1977. Hence, it was assumed these cost increases
would first be incurred in 1978.

49 The production and energy impacts associated with these cost increases are not great. If
there were no increase in market prices in 1978, net production curtailments in 1978 are

estimated to be 22.0 million tons, all in Appalachia. If the market prices increased by $1 per ton in Appalachia in 1978, the net production curtailments would be reduced to about seven million tons. However, these production curtailments would not affect overall coal consumption in 1978, since consumers could meet the shortfall by drawing down existing coal stocks. There would be no net production curtailments in 1979 or thereafter, because market prices would increase by 1979 to stimulate the required additional production.

49 Another production impact of H.R. 13950 would be to change the regional distribution of production. Production in areas with relatively large additional reclamation costs would either fall or not increase as rapidly as production in areas with small projected increases.

49 The projected price impacts resulting from the performance standards of H.R. 13950 are projected to be about $1 per ton by early 1979 in Appalachia and the Central West, and $.50 per ton in the rest of the Nation. These increases would increase the average residential consumer's electricity prices by less than one percent per year.

50 The net direct employment impacts (i.e., lost jobs due to production curtailments minus new jobs due to increased reclamation) in 1978 could be a loss of about 1,400 jobs in surface mining in Appalachia, if the net production curtailments were 22 million tons. If the curtailments were lower, the net direct employment impacts would be lower. However, additional jobs would be created in both government and industry to implement the legislation and conduct the studies required for permit applications. Although the net employment impacts are small, there could be significant impacts within some narrow geographical areas. In 1979, when there would be no net production curtailments, direct surface mine employment would be increased due to the increased reclamation activities.

50 Although the cost-related provisions of H.R. 13950 do not appear substantial, some key provisions may be interpreted differently. In the event that these provisions receive a very stringent interpretation, production impacts may be greater. These impacts are generally not related to cost, but could serve to restrict production and reserves under certain conditions. For example, while a moderate scenario of the alluvial valley floor provisions could affect four mines with an additional production in 1978 of 12 million tons, a high impact interpretation could

impact up to 25 million tons of western production by 1978 and 104 million tons by 1985.

50 In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays. In most cases, the intent of the provision would have little cost or production impact. Examples of these provisions include the amount of time allowed for compliance with permit requirements and performance standards, the grandfather clause for mining on alluvial valley floors, specification of the technology to control sedimentation, and the provision for declaring lands unsuitable for mining.

50 The reserve impacts of H.R. 13950 could range between 8.1 and 24.0 billion tons, or between 1.9 and 5.5 percent of total reserves. These impacts are equivalent to between 5.9 and 17.6 percent of strippable reserves. It should be noted that these impacts would not affect the cost or regional distribution of coal production until the mid-1980's at the earliest.

50 These findings will now be presented in greater detail.

51 Mr. O'LEARY. I have the draft report of February 1. We will see you get all of the material here.The conclusion is there will be some but very small unemployment impacts, but very small loss of production.

51 I think a lot of these estimates have to do with impact on price. There are some who feel, to the extent you increase the price, that some of the utilities now using coal will drop off the vine, so to say. In all likelihood, when you recognize that in Appalachia coal competes with coal, there will probably be some mix from point to point where the coal comes from. But I really doubt we are going to find a measurable drop in employment as a result of passage of this measure.

51 Senator HATCH. Gentlemen, I have not read the draft of the final report, but an independent company, which was called in to make an analysis of the energy and economic reports of House report of H.R. 13950, which is virtually the same as S. 7, that is dated January 24, 1977, page 1, a summary of conclusions - I realize you don't have this, maybe I could just make these points - various conclusions were reached.

51 I also have, in comparison with the January 24 summary, your February 1, 1977, revision of the draft final report.I am disturbed by what appears to be a Federal agency's altering of statistics and conclusions. When IFC presented the summary to the Council on Environmental Quality and the Environmental Protection Agency, the independent analysis stated, for example, on page 3 - this is the original draft report, dated January 24, 1977, page 3 -

51 For example, while a moderate interpretation of the alluvial valley floor provisions could affect four mines with an additional production in 1978 of 12 million tons, a worst case interpretation could impact up to 51 million tons of western production by 1978 and 211 million tons by 1985.

51 Now contrast this with the February 1, 1977, revision which reads: "For example, while a moderate scenario of the alluvial valley floor provisions could affect four mines with an additional production in 1978 of 12 million tons, a high impact interpretation could impact up to" - and I underscore this - "25 million tons of western production by 1978 and 104 million tons by 1985."

51 Gentlemen, someone has revised the ICF's best judgment. Instead of being 51 million tons, somebody has reduced it to 25 million tons, reducing the impact by more than one-half. They changed the figure of 211 million tons to 104 million.

51 Now, I am concerned about that. Do you believe a Federal agency, called upon by us for independent expertise, should revise those figures?

51 Secretary ANDRUS. Mr. Chairman, may I respond first to that? I do not have the report the Senator is reading from. I think I would be in error to respond to it when I have not looked at it. Let me make one point, if I might.

51 All of our studies that I think were put together in the prior administration pointed out, and confirmed, that only 3 percent or thereabouts of the total western coal that would be available for strip mining is found in these areas we would designate as alluvial valley floors. So the other 97 percent certainly would be available for extraction without getting into the sensitive areas and besides, when we look at that, then we have to recognize this is where the best farm productivity lies and the Western States have to very jealously guard that.

52 The report I cannot speak to. But the coal, the concept of where coal is and how it is to be extracted I would yield to my colleague.Maybe he has the newer report.

52 Mr. O'LEARY. I have the newer report, Mr. Chairman. Certainly I would inquire as to whether there was any doctoring.

52 Senator HATCH. It involves me. January 24, a week later it has completely contradictory conclusions, and this is from an independent company.

52 Mr. O'LEARY.If there is any doctoring, I will pledge to this committee I will report back to you.

52 Senator METCALF. Will the Senator from Utah yield? In order to clarify the record, will you tell us what the ICF is?

52 Senator HATCH. All I know is, it is ICF, Inc. It is a report submitted to the Council on Environmental Quality and the Environmental Protection Agency. It is Contract No. EQ6ACO16.

52 Senator METCALF. It is a private agency that CEQ contracted with to provide them with information, statistics, and so forth.The final basis of any report would be the Environmental Protection Agency or CEQ or some of those others on the oasis of information supplied by ICF and on the basis of other information that might be available to that governmental agency, is that correct?

52 Senator HATCH. The thing that concerns me, Senator, is that here is an independent corporation, hired as an expert in this particular field, on which the agency is to rely, and they changed the figures and dropped them down to half.

52 That is not the only point I intend to make here.

52 Senator METCALF. I understand. But I want it clearly understood, this is a private agency, which made a contract, and a report, which will be the basis of a governmental decision, and will be only part of the evidentiary material the Government will rely on for its report. It is possible that the next day, as a result of the ICF report or other information that comes in, the Government would have to modify its report.

52 Senator HATCH. That may be the case, I don't know.

52 Senator METCALF. I would like to have the record show what ICF is, what kind of contract it is, so it will be clear.

52 Senator HATCH. I think it is a private corporation hired to do work in the field.

52 Senator METCALF. It is analogous to Rand and other corporations we hire to do this kind of consulting work.

52 Senator HATCH. What bothers us out in the West is that these things come in like this and all of a sudden the facts and figures appear to be altered by Federal agencies to fit their needs.

52 Mr. O'LEARY. Mr. Chairman, may I address that point? Having been on both sides of the table, as technical director of the Miter Corp., from time to time numbers change in drafts. You come down, however, with a final figure and the corporation puts its name behind that. I don't think there was ever any example when I was with Miter or with four Government agencies to attempt to influence us in the development of numerical data. I will tell you we changed the numbers quite often as we went forward with drafts.

53 In a comparable situation like this, it does not surprise me in the slightest or raise any feeling that there is any impropriety, that numbers change from draft to draft. I don't think that is in any sense of the word a prima facie case that there has been tampering.

53 As I have indicated to the chairman, I will look into it. But I think we will find that there is nothing there.

53 Senator METCALF. Will the Senator yield? I have indicated in my opening statement we have also invited statements for the record from the Environmental Protection Agency, the President's Council on Environmental Quality. Those are the two agencies that received this ICF report and I would like to instruct the staff to get further clarification of what happened to that report, from EPA and CEQ, rather than from these witnesses.

53 Senator HATCH. I very much appreciate that, Mr. Chairman. Incidentally, both the reports were issued on ICF paper. What I am concerned with is how that report could change so drastically. Let me give you another illustration.

53 In the original report, entitled "Draft Final Report," January 24, 1977, on the page listed

Introduction, which would be the first page, I take it, of this report, because the next page is No. 2, the original report says:

53 However, there are numerous provisions in H.R. 13950 not directly related to costs which could create major difficulties. Such impacts include (1) substantial production impacts that could result from possible interpretations of the alluvial valley provisions, (2) delays in permitting due to inability to comply within established timetables and/or insufficient administrative funding, (3) extensive litigation resulting from ambiguous and undefined terms, (4) unintended effects due to mismatches between the apparent intent and the actual wording, and (5) losses to the coal reserve base.

53 Now, that was pretty definitive. Compare that to the other text or the changed text on the same stationery from ICF, Inc., found in the February 1, 1977, edition where - and this is what the change said:

53 However, several provisions in H.R. 13590 are subject to varying interpretations.

53 Let me see if I am quoting in the right spot.

53 Let me requote:

53 However, several provisions in H.R. 13950 are subject to varying interpretations.

53 In the event these terms are given very stringent interpretations, the impacts could be substantially higher.

53 Where one indicates there are all kinds of major difficulties, and lists the impacts in five different statements, the revised report reduces this to a general statement that impact might be high if stringently applied. I am concerned about that and I would like to have some explanation. I would like to have that.

53 The third point I would like to bring out at this particular point is found on page 3. Here on page 3 there is a part left out of the final revised draft. I would just like to read this to you.

54 It says:

54 In most cases, the intent of the provision would have little cost . . . these are the noncost provisions, maybe I had better read backward a little bit.

54 In addition there are several other noncost provisions in H.R. 13950 in which the wording
of the provisions . . .

54 can have effects quite different from the congressional intent.

54 In most cases the intent of the provision would have little cost or production impact.

54 Then the next sentence is left out of the subsequent report:

54 However, the actual wording could result in unnecessary restrictions, administrative
inflexibility and/or additional litigation.

54 Now, that is left out. What bothers me is that when you look at these things, it appears
that somebody has revamped this report to make it look like something from which the States
would benefit. The prior report was much more difficult and had much more serious criticisms
of the bill itself. I am concerned about having the bill if we are going to have one at all, that
takes into consideration all of these particular aspects that the first report brought out. I think
they are important.

54 I would like to also say I am very pleased with both of your explanations about allowing
the States to administer the particular bill, so long as they made the Federal Government
compliance standards. I think if that can work in fact as well as in principle, it would be a
wonderful thing.It would be one of the first major cases where that would be exemplary.

54 Let me ask you this question. Has the Department of the Interior or any Federal agency
made an analysis of the production impacts and/or the employment impacts - and if so, tell us
about it.

54 Secretary ANDRUS. Mr. Chairman, we are in the process of doing that now, starting on
the basis the bill is going to pass. But again, it would depend on down that road how many
States determined they would in fact be the controlling authority in the situation or whether they
would in fact leave it to the Federal Government. So I don't think we can honestly give you those
figures unless we plug into it the assumptions that some States would and some States would not.

54 It would be my hope, Senator, that the States would come up to speed as quickly as

possible, and they would, in fact, do the regulatory portion. But it could be 250, it could very
easily, in fact, be a thousand, if we had to go to the route of the Federal agency doing the law.

54 We are looking, but I don't think we can honestly give you a figure unless you can give us
the guidelines as to how you want the figures computed from a State standpoint.

54 Senator HATCH. Do you intend to make an analysis of the economic impacts and could
we have that?

54 Secretary ANDRUS. I have a preliminary figure. I would prefer with the concurrence of
the chairman to let us watch the amendments, or proposed amendments, toward the
implementation of this bill and give you a factual figure, the best we can, instead of giving you
one and then somebody's amendment would be attached that would change it and I would be in
the middle of being accused of the same numbers game we are talking about.

55 Senator HATCH. Would the Department employ independent scientific services to help
them arrive at these particular analyses?

55 Secretary ANDRUS. Mr. Chairman, I think in response to that we would have to, in order
to have figures that everyone can live with.

55 Senator HATCH.One thing that bothers me, Mr. Secretary, I have read an analysis of the
various State programs for surface-mined areas. It seems to me most States that are affected by
coal production, for instance, they have pretty adequate surface mining and reclamation
regulations with statutes on their books. Do you know of many States that don't have laws to
regulate strip mining already on the books.

55 Secretary ANDRUS. Mr. Chairman, that would always be a matter of opinion.

55 Senator HATCH. Well, in your opinion.

55 Secretary ANDRUS. In my opinion, no.They are not all of the same level. I think you
would recognize within the areas of trade journals even where they would point out
Pennsylvania's law is one way, Alabama's is another, West Virginia's is another. But I think
more importantly than that, we spent all day Saturday in the State of Kentucky, the eastern part of
the State, looking at past and present practices.

55 I think it clearly shows what you are implying. The States are moving to improve their programs but there are devastating amounts of land areas out there where minerals were extracted, in whole or in part, when there was no regulation whatsoever. I don't fault the States for trying that. No, they are not all at the same level of expertise.

55 Senator HATCH. If this legislation is passed, could you give us which States do not have adequate strip mining legislation or are not enforcing legislation already on the books, or anything else? Anything else that might help us determine whether that legislation is needed.

55 I was born and raised in Pennsylvania. I remember when strip mining legislation came down in Pennsylvania, it was greatly needed. The thing I am concerned about is are we penalizing the States for overseeing their own strip mining and reclamation considerations because of what happened 30, 40, 50 years ago, which was bad. And if that is so, then I have a real question of whether we need this strip mining legislation.

55 I would like to have these answers before we actually pass the bill - we have a lot of differences on it, there are a lot of disagreements on it. Even though it does appear the majority favor this bill.

55 Secretary ANDRUS. In response to your question, we will attempt to give you our best personal opinion as to the differences throughout America of adequate or less then adequate controls presently on the books.

55 Senator HATCH. I think I have taken quite a bit of time. Perhaps you could come back to me later.

55 Senator METCALF. Have you seen this ICF report?

56 Mr. O'LEARY. I have it, Mr. Chairman.

56 Senator METCALF.How long have you had it?

56 Mr. O'LEARY. I have had it probably for about 2 days.

56 Secretary ANDRUS. I have not seen it.

56 Senator METCALF. We will direct the record to show that this report is part of the record; that we ask CEQ or EPA to comment on it, when they comment on the legislation; and we emphasize it is a private report.

56 I understand the Senator from Utah is particularly concerned about having the Government or the agency that asked for the report change the recommendations or the final conclusion that ICF entered into, and I hope it will be corrected that way. We are not going to be bound by any report for which we contracted and we still cannot condone the agency's changing the conclusions or statistics entered in those contracted reports.

56 Mr. O'LEARY.May I make a comment with regard to that? I think the conclusions I expressed here will be supported. I think there will be very little damage to employment or production as a result of passage of this bill. It is not beyond the power of the Congress to pass a bill that would severely have disrupted both. Both my colleague and myself have pointed to three areas, the administrative area, the alluvial valley area, and the surface ownership area, which I think are reflected to a degree in the ICF report. If we were to take a very broad view, let's say of the alluvial valley question, we could have the possibility of preempting future possible production. That means simply the production will not take place in the broadened, expanded definition of an alluvial valley. It does not mean, Mr. Chairman, production will not take place. You have to understand something like 13 percent of the land area of the United States is underlain with coal. It is a ubiquitous material. It may have the effect, in the event Congress ultimately says we want a very, very broad definition of alluvial valleys, it may have the effect of denying production of something more than 3 percent of the surface area of the Western States that we currently view or perceive as being caught within this definition.

56 If so, the production will take place elsewhere. This is a 1985 number. The dramatically changing number we have reference to. I think you must view it in that perspective. It does not mean production denied, period; it means production denied in that area and picked up in some other area.

56 Senator HATCH. One of the concerns we have out in Utah, and I think in Idaho, Colorado, and other areas where we have extensive coal deposits, is that every time the Federal Government comes in to administer any aspect of Federal coal deposits, that we find there is a deterrent in development because there are all kinds of lawsuits, all kinds of reports, environmental impact studies, and so forth. These are sometimes overused, and we have great

coal reserves that could benefit this country and certainly could have benefited this country at this particular time in its history, prevented from development.

56 For 14 years, our State has tried to get approval for development of that coal on that plateau and finally lost the battle and the companies pulled out. I think 14 years is too long a time when you have high-moisture, low-sulfur coal. We are concerned about having Federal legislation that may allow more interference with the development, an orderly development, and I think Utah is one of those States that already has an agreement with the Department of the Interior to regulate its surface mining.

57 The coal is not strippable coal but the analogy I think I am drawing is a fair analogy. I can see the desire to have uniform regulation throughout the country so there are no economic advantages or disadvantages. On the other hand, we are taking things away from the States that might be able to handle these things better.

57 Mr. O'LEARY. Mr. Chairman, both the Secretary and I are aware of the States' position in this, having spent a great deal of our time in that area.

57 Senator HATCH. You have been on both sides.

57 Mr. O'LEARY. Yes; I can tell you with all the assurance I can muster that unless we can get this problem behind us, unless we can find generally acceptable rules here in the strip mining area and I believe, the air quality area, we are not - and I say this now as the FEA Administrator - we are not going to clear the way for coal to make the sort of contribution it should be making to solve the energy problem before this country.

57 It is clear that coal right now is in demand, that has come about because of uncertainty with regard to the capability of conducting mining operations that are acceptable because of a national debate of 4 years' standing now over strip mining rules and over air quality rules.

57 What this administration must do and what the Congress must do here in this session, I think, is to begin to get these questions taken care of so we can permit coal to go forward and make its contribution. The burden of my testimony before you, Mr. Chairman, is we have had the discussion, it is quite evident that this is a stopper in the bottle, this coal production, and let us get it behind us.

57 Senator HATCH. I was very pleased by the chairman's comments about investigating these discrepancies and let's have some answers to them. I would also like to reemphasize, I think, before enacting this legislation, we ought to have the other materials that you also kindly offered to us, and I hope we can get these and look into this from all aspects at the time the legislation is presented.

57 Senator METCALF. I will say to the Senator from Utah and others, we will get just as much information as is available, and we will take just as much advice from the Government, private sector, and everyone else, to help pass a bill.

57 I think you for yielding temporarily.

57 With the permission of the committee, I would like to recognize my colleague from Montana, who did so much on strip mining legislation last year, Senator Melcher.

57 Senator MELCHER. Thank you, Mr. Chairman. Sometimes, when I hear about alluvial valley floors and surface owners' rights, I come into a movie I have seen two or three times before.

57 I hope the outcome this time is different than what we have had to put up with before, in the vetoed bill, and I want to comment on a couple of points you have raised in the departmental report, Mr. Secretary.

58 I notice after H.R. 25 was vetoed and after we had reviewed the reasons for the President's veto and after we failed to override that veto, we talked to the critics, both within the Department, in the private sector with coal companies, and, specifically, one of the points we talked to them about was since you find ambiguity and an opportunity for lawsuits and the language that was in H.R. 25, the vetoed bill on the alluvial valley floors strip mining, can't we clarify that?

58 I notice that looking at that section on page 59 of S. 7, as compared to the recommendations of the departmental report, you have taken a different tact and I think have perhaps answered some of the questions of clarification and ambiguity, and I think, in fact, I recognize the language; I think it was something I was instrumental in drafting to include in H.R. 13950 and H.R. 13777, which were considered by the House in the last session.

58 We haven't lost much time of the House to act on those modified bills. I think it is significant that now your solicitors have found that this type of language for alluvial valley floors is less ambiguous and less prone to litigation. I just want to be sure that you feel strongly that this is adequate and sufficient language to avoid those two criticisms.

58 Secretary ANDRUS. Mr. Chairman, in response I am not at all surprised the Senator from Montana recognized some of that language. When I signed that report, it was not one that had pride of original authorship, it was one designed to meet the problems as we saw them, and the answer to your question is yes. We feel the language will meet those objections.

58 Senator MELCHER. You mentioned surface owners' rights in 423(e) of S. 7 and being the change it is from the vetoed bill, and then you give a recommendation of should the Congress go back to previous language of H.R. 25, which was the result of a conference committee deliberation.Can I interpret that paragraph to mean that you prefer the language of H.R. 25, rather than the language that is now in S. 7?

58 Secretary ANDRUS. Mr. Chairman, the answer to the question is yes, that is our preference.

58 Senator MELCHER. I also note you recommend some administrative procedure that will help the small mine operators.In other words, the amendments to S. 7 would alleviate some of the procedural hangups, so-called redtape that mine operators must comply with under the terms of S. 7. Would it be fair to say the language you would recommend there would be similar to what was in those two House bills I mentioned, H.R. 13950 and, more specifically, H.R. 13777, and which I understand is in H.R. 2 of this current Congress?

58 Secretary ANDRUS. Mr. Chairman, that is correct. The only point that bothers us at this point in time, Senator, is the figure of 250,000 tons per annual production, I don't know if that should be 275,000, whether it should be 200,000; some place, after you have received all of the testimony on this bill, together we can determine what that figure should be. But with that one proviso, your assumption is correct.

59 Senator MELCHER. The significance of the figure would be to identify what is a small mining operator?

59 Secretary ANDRUS. Yes.

59 Senator MELCHER. S. 7

59 Senator METCALF. May I interrupt? At the request of the Senators from Kentucky and Congressman Perkins from Kentucky, we are going to have a hearing on March 1 on some of the impacts of the bill on mine operators on eastern steep slopes and, of course, the same invitation is open to my colleague from Montana to attend these and other hearings. We will go into the question of impact on some typical eastern small mines. We intend to get other testimony in from western areas at a later time.

59 Senator MELCHER. I thank the chairman. Mr. Secretary, the report does not refer, as far as I can determine, at any place, to the question of coal strip mining on Indian lands within their own reservations. Now, since you have a dual responsibility to advise the Congress on the general situation of coal strip mining reclamation law but also the added responsibility of special status in dealing with the Indian tribes as Secretary of the Interior, might I ask if that is an oversight or perhaps it is a little bit quick to ask you this, perhaps some of your staff can advise you, have you ever reviewed the so-called Indian lands title that at one time, as the House passed it, was in H.R. 25, which gave to an Indian tribe within the boundaries of their own reservation about the same status a State would have, that is a prerogative to run a reclamation program if they met the minimum standards and could, like a State, exceed the minimum standards if they so chose?

59 Secretary ANDRUS. Mr. Chairman, Senator, that language, the reason it was not in the overview, starting on page 39 of S. 7, where it points out: "The Secretary shall consult with Indian tribes" - it continues on to page 41 - I do not disagree with giving the Indian nations the same rights as we give to the States. My concern is the difference and the time element in this bill, in 1979, to about 1 1/2-year to 2-year lag as compared to the others. I would prefer to see the Department of the Interior help them bring up their area of expertise so they will not lag behind the rest of the States and the Nation.

59 I would hope we would move together in this so they would have the capability of acting as the authority themselves.

59 Senator MELCHER. On page 72 of S. 7, specifically, a citation would be 415(b)(10)(a), there is a serious of requirements on protection of water where mining is done both in the mined area and the adjacent areas. I have two points to raise in that regard. First of all, while 10 at the top of page 2 says minimize the disturbances, and then goes on with (a), (b), (c), (d), and (e), the minimized phrase - minimize the hydrological disturbance, is a qualifying phrase which allows discretion, as to determining how much you must minimize and how you must minimize to protect. So that is discretionary language.

59 But is it your feeling, Mr. Secretary, when you get into (a), (b), (c), (d), (e), and (f) - for instance, (d) says you must restore the recharge capacity of the mined area and (e) says replacing the water supply and then preserving through the mining reclamation process the essential hydrological functions of the alluvial valley floors.

60 Those points are not modified by the minimum disturbance, do you feel - aren't these outright requirements and they are not to be deviated from? In other words, if you lost some water, you are not to get part of the water back, you are to get as much back. In other words, if the recharge is interfered with, you are to get and be protected, if you are an owner, to the same extent as the recharge water before the mining operation started; is that not correct?

60 Secretary ANDRUS. Mr. Chairman, that is correct, and may I expand a little bit on that point? There are those people who are suggesting the bill is too specific in a lot of areas, that discretion should be left to the Secretary of the Department of the Interior, and in some areas maybe that is so. But I think it should be specific in the areas you are talking about for the protection of those people. The answer to your question is yes.

60 Senator MELCHER. Then I would like to make this final observation. Since that is definite and since it is specific, it really makes it necessary to have the previous section dealing with gaining the permit on alluvial valley floor mining subject not to interference to the farming going on at that time, because without the first in the permit situation, the permit application, the requirement to examine and prohibit strip mining on alluvial valley floors where farming is actually going on, (f) could never be fulfilled on page 3 of the bill. Am I not correct on that, Mr. Secretary?

60 Secretary ANDRUS. Mr. Chairman, yes; it would appear to be correct -

60 Senator MELCHER.I think, from a practical standpoint, you cannot explain how you could strip mine a 40-foot seam of coal in the Yellowstone Valley and still preserve, throughout the mining reclamation process, the essential hydrologic functions of the alluvial valley floor in that area. So I think it should be noted - I am trying to do that in establishing this colloquy at this hearing - it should be noted that the alluvial valley floor section dealing with the permit application, denying that application if it involves a significant portion of farmland, either on subirrigated or irrigated lands on the alluvial valley floor is, for all practical purposes, an essential point. There is no sense going through all of the permit application to find out it will violate (f) on page 73 where it is impossible to maintain under existing technologies if we have the hydrologic functions of an alluvial valley floor.

60 Secretary ANDRUS.Mr. Chairman, Senator, you are absolutely correct in that regard. Let me remind you and the members of the committee that really our concern is that the alluvial valley floors be protected, the administration's concern, we have concern beyond that that good agricultural cropland is entitled to some protection. That is where we should have a discretionary capability for putting some of these areas off limit for this generation. Maybe the next generation wants to look at it again. But it is difficult to approach it in that language which your contribution today I think is good, and also your language is good.

60 Senator MELCHER. I thank you, and I agree emphatically on your statement of the importance of good agricultural land in the West.

60 Thank you, Mr. Chairman.

61 Senator METCALF. I thank my colleague from Montana, and both of you. Senator Hansen has yielded temporarily and I want to get back to him.

61 Senator HANSEN.I do have one further question, Mr. Chairman. Contained in S. 7 is language which precludes operations in significant portions of the State of Wyoming. I refer to language which would prohibit the mining of federally owned coal where the surface is owned by some other property owner other than the Federal Government.

61 I would invite your observations on this particular section.

61 Secretary ANDRUS. Mr. Chairman, Senator, this is one of the areas where we are concerned.We recognize the need for protection for those people that have the surface rights and the Federal Government has the mineral rights. We are very sympathetic to an outright consent, but we also recognize that there are given situations where perhaps consent of that surface owner who by the sweat of his brow created that ranch or that farm, then maybe consent could be a way out and there should be protection for them to do it. I refer to the language that was in the conference report of a year ago, or last year, that we prefer over the outright prohibition. I speak to that, Senator, that that would be our preference.

61 Mr. O'LEARY. I would like to reinforce that conclusion. In my prepared remarks, I referred to the preferred solution, one in which you do not have an outright embargo. There should be flexibility.

61 Secretary ANDRUS. Mr. Chairman, I might add I answer that question very cautiously. I know the chairman of the committee has language going in there. But you asked me what my preference was, Senator, and it is the other language.

61 Senator METCALF. The chairman of the committee is committed to the so-called Mansfield amendment to which the Senator from Wyoming referred.However, the chairman of the committee also concurred in the language adopted by the Senate twice and concurred in the conference language. I am not wed to any conference language; I want to get a bill out of this committee.

61 The Senator from Wyoming has equal determination and we start with what I referred to, but my experience in 25 years here is that I seldom get my druthers.

61 Senator HANSEN. If I may say, Mr. Chairman, I have been here a far shorter period of time, only 10 years, but the two times I have prevailed is when I joined up with you.I might say to our distinguished witnesses, that to your left are displayed four townships of land of which Gillette, Wyo., is roughly the center. This is an area where there are very thick beds of coal and perhaps we could have something included in the record later on in order that it could reveal what I am talking about - the area that is displayed on the right, the pink, is to indicate what is federally owned coal. On the left is that same area but the green indicates the lands the surface of

which is in private ownership, and the small blue checkers on there for the most part are sections
16 and 36 in each one of those townships indicating State ownership. I don't have a display nor
am I provided at this moment with information to know what the situation throughout all of
Wyoming would be, but I offer this as an illustration of my concern with this particular
provision.

62 It would seem if it were to remain in the bill, a very significant - and I underscore those
words - a very significant amount of coal in Wyoming could not be mined at all.

62 [Subsequent to the hearing Senator Hansen submitted the following:]

62 LAND AND COAL OWNERSHIP IN THE GILLETTE AREA

62 Since the signing of the Articles of Confederation in 1781, the Federal government has
held jurisdiction over vast acreages of land. During the 19th and early 20th centuries one of the
chief responsibilities of Congress and of several Federal bureaus was to provide for, and regulate,
the transfer of public lands to State and private ownership. As a result, a large body of laws and
regulations have been enacted to control the disposition of the public domain. (See "History of
Public Land Law Development," U.S. Government Printing Office, 1968, for detailed
discussions).

62 For lands in northeastern Wyoming, the Homestead Act of 1862, The Desert Land Act of
1877 (and revision of 1891), the enlarged Homestead Act of 1909, and the Stock Raising
Homestead Act of 1916 are of special importance.Through these measures, millions of acres of
public land were opened to entry and settlement for agricultural purposes, and a large part of the
land surface in the area shown has been converted to private ownership. Additional large
acreages were also transferred to State ownership (specifically sections 16 and 36 in every
township in the region), the income from which was to be used for public education. The Taylor
Grazing Act of 1934, which established grazing districts on the remaining public lands and made
them available for leasing to stockmen, virtually ended the acquisition of land through
homesteading in northeastern Wyoming.

62 The disposition of mineral-bearing lands has been controlled for the most part by a
separate set of laws and regulations.With respect to coal, a law in 1864 empowered the President

to sell lands containing known coal beds at public auction, but at a minimum price of $2 0 per acre. Any lands left unsold were then made available for private entry under the general public land statutes for a minimum fee. In 1873, Congress further provided that a citizen might claim up to 160 acres, and that a group of individuals might enter as much as 320 acres, of unreserved coal lands. The minimum price was $1 0 per acre for tracts located more than 15 miles from a completed railroad and $2 0 per acre for tracts located within 15 miles of a railroad. The 1873 act regulated the disposition of coal lands on the public domain until the passage of the Mineral Leasing Act of 1920. This statute, still in effect, authorized the Secretary of the Interior to issue two-year permits to prospect for coal on land not known to contain workable deposits, and then to issue preference leases to the same parties if coal is found to be present in commercial quantities. Under certain conditions, leases may also be offered by the Department of the Interior on the basis of competitive bidding.

62 In 1906 many millions of acres of coal-bearing lands which still remained within the public domain were withdrawn from private entry, and a series of acts followed in 1907-1910 that eventually separated surface and mineral rights. Thus, individuals could obtain title to the land surface but the Federal government retained the right to prospect and mine the underlying coal. Because ownership of much of the land surface in northwestern Wyoming was acquired after these "separation" laws went into effect, the coal deposits are still largely owned by the Federal government. The extent of separate ownership is dramatically illustrated by this pair of maps.

62 Two tracts of land are designated Bankhead-Jones Land Utilization Lands. These tracts were acquired by the Federal government through purchase from private owners chiefly in the 1930's, and placed in the category of grazing lands. In some cases, the title to the mineral rights is still in doubt.

62 This is a 1,512 square mile area in the heart of the Powder River Basin with Gillette Wyoming in the center of the map. The map on your left shows surface ownership. The map on the right shows subsurface coal ownership. Federal ownership is shown by the pink color. State ownership is shown in blue, primarily sections 16 and 36 in each township. Private lands are shown in light green.

62 Under the "Mansfield Amendment" in S. 7, where private surface (in green) rests on Federal subsurface (pink), mining would be prohibited. This constitutes a prohibition of almost 80 percent of this area where known coal seams are 60 to 100 feet thick.

62 (See Illustration in Original)

63 Secretary ANDRUS. I am very familiar with that checkerboard pattern of ownership and sections 16 and 36 and how they are dispersed and who owns them now. I have the same concern. That is why our Department has made the recommendation we have.

63 But also I have a definite concern and empathy for those people who own that surface, that may say, "Look, I don't want the ranch my grandfather and my father and myself have lived on for all of these years torn up by one of those rigs." It kind of gets you going both ways. We came down with what we thought, Senator, was a proper position.

63 Senator HANSEN. I appreciate that response. I might say we will be offering some other alternatives that we think have merit when we get into a markup.

63 I have no further questions, Mr. Chairman. Thank you very much.

63 Senator METCALF. Thank you very much, and I thank you gentlemen for your participation. We are going to adjourn this hearing. The next hearing will be March 1. In the interim we may ask some questions and we hope you will provide material for the record that has been requested. But I also want to comment on a couple of matters which have come up. We have put in study provisions in section 508 for Indian lands and section 509 for reclamation standards and so forth. Those provisions I hope will remain in the bill. But we are not bound to wait for completion of those studies in order to pass the necessary legislation.

63 These are largely carryovers from previous bills. So we hope we have an opportunity after passage of strip mining legislation to consider Indian lands. We held hearings, for example, on the oil shale prototype leasing program last fall.

63 Whether you complete a study in time or not, I hope you will go forward with it just as quickly as possible. We are not going to be bound to wait for additional oil shale legislation in view of the current energy crisis. Nonetheless, I want to comment that these studies are matters of concern.

63 Immediately after this committee reports out a strip mining bill to the Senate, this subcommittee is going to go to work on Indian lands, on oil shale. We are going to go to work on these other problems that have been raised regarding how we should regulate other strip mine activities. If your study is underway, fine. If not, we will just have to go on without it.

63 Secretary ANDRUS. We understand.

63 Senator METCALF. Thank you very much for your appearance.

63 We will be in recess until March 1.

63 [Whereupon, at 1:55 p.m., the subcommittee recessed, to reconvene, Tuesday, March 1, 1977, at 10 a.m.]

TUESDAY, MARCH 1, 1977

65 U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES, OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Washington, D.C.

65 The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. Lee Metcalf, presiding.

65 Present: Senators Metcalf, Jackson, Johnston, Haskell, Ford, and Domenici.

65 Also present: D. Michael Harvey, chief counsel; Norm Williams, professional staff member; and Ted Orf, deputy minority counsel.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

65 Senator METCALF. The subcommittee will be in order.

65 This is a hearing of the Subcommittee on Public Lands and Resources for the purpose of examining possible effects of the steep slope and other provisions of S. 7, the Surface Mining Control and Reclamation Act of 1977. S. 7 is a modified version of H.R. 25, the bill which President Ford vetoed in May 1975.

65 During the debate over the Ford veto, a number of allegations were made by the Ford administration. In particular, it was alleged that millions of tons of coal production would be lost, due to the disruptive impact of the bill's environmental protection performance standards and other provisions, upon surface mining operations being conducted on steep slopes.

65 These charges were shown to be based on little more than hearsay.

65 Nevertheless, they were blown all out of proportion. We had Mr. Zarb and Mr. Morton and a cast of thousands testifying on the Hill to the effect that our electric bills would triple, our oil imports would zoom, and 36,000 people would lose their jobs, if the bill were to be enacted. I can assure you, it was a most memorable performance.

65 Since then, calmer heads have prevailed. President Carter, Interior Secretary Andrus, FEA Administrator O'Leary, have all gone on record favoring the swift enactment of Federal surface mining legislation.

65 Indeed, Mr. Schlesinger, the President's Assistant on Energy, in a letter to Chairman Jackson, has said:

66 Let me emphasize that the energy agencies and the Department of the Interior and the Environmental Protection Agency see eye-to-eye on this legislation. Last year's arguments about this bill need not be reargued.

66 Recently there have been two studies, one done for CEQ and EPA, the other for TVA, which tend to cast serious doubt on the Ford administration's argument that requiring the mined site to be returned to the approximate original contour - the essence of the steep slope provisions of the bill - would have any significant impact on the Nation's coal supply. So much then for the Ford veto.

66 Having said all this, however, the fact still remains that many problems will be experienced by individual operators and by certain States in attempting to comply with the steep slope provisions and other requirements of S. 7. This we fully recognize.

66 I have stated before and I want to repeat again today my sincere hope that not a single operator will be put out of business by the enactment of this bill. However, I know that in some States the ruggedness of the terrain and the inadequacy of State reclamation standards are going to cause difficulties. It is not going to be easy for some operators to do what they should have been doing years ago.

66 For this reason, we have invited coal operators - or their representatives - from the six Appalachian States where the great preponderance of our coal has been produced in the past and

upon which we will continue to rely in future, and we have invited the National Coal Association and the American Mining Congress, to appear today in order to give us the benefit of their long experience with all aspects of coal production. I know they have gone over this bill with a fine-tooth comb and we welcome their suggestions for its improvement.

66 We have a long witness list for 3 days. It seems to me the whole organized world wants to testify on strip mining in one way or another. We have been over this course twice and the bills have been vetoed.

66 Substantially the bills that have been vetoed are probably the kind of legislation that will ultimately result from this committee. We want to give as much time as possible to the various people who have problems and concern with the bill.

66 Now, I have introduced S. 7. I am not wedded to a single section of it. I am open to conviction just as I would be open to conviction introducing any legislation. I want this hearing to be open and I want to have every concern, every point of view expressed.

66 We have some new members of the committee and I want them to be familiarized with the legislation. I hope over the days we are going to be confronted with testimony that we will explore everything that is necessary but that the hearings will not be too redundant or repetitous in testimony.

66 I very much regret my good friend and ranking minority member of the committee, Senator Hansen, is in the hospital and cannot participate in these hearings. I have relied on Senator Hansen, as Senator Jackson has, to help us and support us in the consideration of this legislation.

66 Nevertheless, when we go to the markup, and hopefully on Thursday, the last day of the hearing, when we are talking about western coal, Senator Hansen will be here. From time to time I will have other suggestions. I have a letter from Senator Hatch who suggested that he was not satisfied with some of the responses that he received in a letter regarding a surface mining study from ICF, from EPA, and others. I hope Senator Hatch will explore this and I will hold a separate hearing on those responses.

67 I want to call on my very good and respected chairman, Senator Jackson.

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

67 The CHAIRMAN. Thank you, Senator Metcalf. I regret I will not be able to stay through the hearings this morning. I would just like to express to you, and I know on behalf of the committee, our deep appreciation for the wonderful way in which you have been conducting hearings on this subject.

67 I believe it is now the third Congress, or the last 6 years, this is the third bill, and I must say as certainly everyone in this room is familiar with the problem, and realizes what this committee does here today, that the Congress - the House and the Senate - ultimately will send to the President, the strip mining bill. We are not playing any more veto games.

67 When we had this matter up - I introduced the first one, along with Senator Metcalf, along about 8 years ago or longer. The amusing thing was, industry thought it was too tough. Then, when we tightened up some more, it was suggested I introduce the old bill. Now, I am not an unreasonable person, but I want to say the chairman here, Senator Metcalf, has been more than reasonable.

67 What we are trying to do, ladies and gentlemen, it seems to me, is to undertake what I think a great majority of Americans want, and that is a balance between development on the one hand and environment on the other. I believe strip mining legislation dramatizes that challenge, that we are not here to put the coal people out of business.

67 I have taken a small lead in repeating over and over again, that the immediate alternative to oil is coal. I think a nation that is indeed the "Saudia Arabia of coal" - and that is what we are, and I don't mean in other ways - we have over half of the coal reserves of the non-communist world. The same as Saudi Arabia has 300 billion barrels of 600 billion known oil reserves. This is a precious resource.

67 Certainly a country, Mr. Chairman, as technologically advanced as the United States can find a way in which to obtain the coal and still protect the environment and, yes, may I say protect agriculture. In your State it is a very important double-edge sword as it is in Wyoming and other Western States, to save that topsoil to meet our agricultural requirements and at the

same time get the product under the soil that is so necessary as we bide time, as we get these other more esoteric and exotic alternatives of fusion, solar energy -

67 Senator METCALF. If the chairman will yield, I agree but it is hard for me to consider that the sun and wind and air are "esoteric" or "exotic". These are the fundamental things.

68 The CHAIRMAN. But I do think the issues can be narrowed to a very limited area, as I see it. I don't think we are very far apart, except for some special problems. I have been impressed with the Senator from Kentucky's questions in that area of the unusual contour of the problem we face in Kentucky and one or two other States.

68 I believe, Mr. Chairman, under your leadership here we will move rapidly and get a bill. I think the industry should know what the rules of the road are and the basis on which they are going to operate so we can get on with the business of getting our coal and even under the most favorable circumstances, most people think you ask for a coal bill, you get it. It is very complicated. It involves many, many factors.

68 I would just hope all who are participating in this endeavor realize we are trying to do our best to achieve necessary development on the one hand and sensible environmental safeguards that also protects not only the aesthetic values of the Nation but also alternative uses of the land for whatever justifiable and proper economic purpose it might involve.

68 I want to compliment the subcommittee chairman for his patience over 6 or 7 years, and I believe this is the last go-round.

68 Senator METCALF. I thank my chairman very much. He has been very patient with me in my effort to get a strip mining bill and he has always participated in this legislation over the years.

68 Senator Jackson, I know you and I are both very delighted that Senator Ford is a new member of our committee. I am especially pleased that Senator Ford, as a new member of our committee, is participating in one of the most important hearings that we have and one in which he is most knowledgeable and most experienced. I can't express my delight that he has an opportunity to serve on this committee and try to work out legislation that I am sure we will pass this year.

68 Senator Ford, I will call on you at this time.

STATEMENT OF HON. WENDELL H. FORD, A U.S. SENATOR FROM THE STATE OF KENTUCKY

68 Senator FORD. I would thank the chairman for these kind words, Senator Jackson, and others. One thing that is important to me is the statement made by Chairman Udall after he visited Kentucky and said, after not having been there for 4 1/2 years, we had come a long way in reclamation and I think that is an important question we have to consider in developing this legislation.

68 As Chairman Jackson has said, whatever comes from this committee and the House committee, we will have a bill this time. I think we need to look at the new technology and be sure in the interim, after three bills and 6 years, that we do not allow the older bills, or the bill we are looking at today, to prevent new technology from being used. Because coal is important.Coal is the answer to our synthetic fuels and I am very hopeful we can develop a piece of legislation that will be acceptable to meet the medium, as Chairman Jackson has said, between the environment and the production of coal. I look forward to the next 3 days of hearings and then working very hard to provide the right kind of legislation that will protect our environment and still give our people the opportunity to dig their coal.

69 Thank you, Mr. Chairman.

69 Senator METCALF. Again, we are delighted to have with us not a new Member of Congress, but a new member of our committee, a Senator with whom I have been able to work on other committees very closely, Senator Domenici of New Mexico.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

69 Senator DOMENICI. Senator Metcalf, I appreciate your permitting me a few opening remarks. I won't take a long time. You will forgive me if perhaps during the hearings, Mr. Chairman, is that while you have been through this a number of times, obviously I have not, although I am somewhat familiar of the legislation. I am very confident that this is an important issue for our country and I am sure the chairman knows it is important for the Western States.

69 In that regard, I would just want to make this early observation, Mr. Chairman.

69 The 10 Western Governors, including the Governor of my State, Gov. Jerry Apodaca, has communicated with me, as I assume they have with you.I am delighted the Governors, including these 10 Western Governors, are now meeting with our President. I hope that relationship expands and that they do have more input into executive decisions. They have always had the ear of the Congress, but collectively they may be able to do more to make the Governors' positions felt.

69 I would merely say, Mr. Chairman, our Governor has been an advocate of national strip mining law. He has supported it in the past. Recently, however, he has communicated to me that he and the other 10 Governors support the general legislation but they have a number of serious suggestions they want us to consider, not the least of which is what is going to happen to the existing agreements of cooperation formally signed by the Department of the Interior with the States of New Mexico, Wyoming, Utah, and North Dakota.

69 Our Governor has particularly requested this committee, in going through the bill, to make every effort to render those agreements as workable and operative as possible. I would ask at this time, Mr. Chairman, that the communication signed by our Governor, which include the overall statement of the Western Governors and their particular points, be made a part of the record at this point.

69 Senator METCALF. As a part of your remarks, it is so ordered.

69 [Governor Apodaca's letter follows:]

69 STATE OF NEW MEXICO, OFFICE OF THE GOVERNOR, Santa Fe, February 24, 1977.

69 Hon. PETE V. DOMENICI, U.S. Senator, U.S. Senate, Washington, D.C.

69 DEAR PETE: Enclosed you will find a brief statement I released on Monday concerning federal strip mine legislation.

70 I continue to support enactment of federal legislation in this area, while strongly recommending that cooperative agreements presently in effect between Western states and the Department of the Interior be accommodated and allowed to remain in force in whatever final legislation is passed by the Congress.

70 Your serious consideration of my views on strip mine legislation is deeply appreciated.

70 Sincerely,

70 JERRY APODACA, Governor.

70 Enclosures.

70 STATE OF NEW MEXICO, OFFICE OF THE GOVERNOR, Santa Fe, February 21, 1977.

70 Federal strip mine legislation was endorsed today by Gov. Jerry Apodaca, though qualified by several recommendations.

70 Congress is currently considering two strip mine bills, S.7 introduced by Senator Lee Metcalf of Montana and H.R. 2 introduced by Congressman Morris Udall of Arizona.

70 "I welcome the intiatives in S.7 and H.R. 2 and hope that Congress will pass and the President will sign federal strip mine legislation this year," Apodaca said. "My endorsement, however, is not without some qualifications."

70 Apodaca noted that New Mexico already has strict standards for reclamation of surface mined coal lands and has also recently signed a cooperative agreement with the Department of the Interior which allows the State to administer and enforce surface reclamation requirements on federal land.

70 "I would strongly recommend that current federal strip mine legislation accommodate cooperative agreements presently in effect between Western states and the Department of the Interior by incorporating appropriate language allowing these agreements to remain in force," Apodaca said. "I would further recommend that those provisions of a Draft Position Statement of the Western Governors' Regional Energy Policy Office (WGREPO) on Federal Strip Mine Legislation (attached), which was recently submitted to the ten Western governors for final approval, also be incorporated into current legislation."

70 The U.S. House of Representatives is conducting hearings this week on H.R. 2, and the Senate has scheduled hearings next week on S. 7.

70 STATEMENT OF JERRY APODACA, GOVERNOR OF THE STATE OF NEW MEXICO

70 Since early 1975, Western governors have supported the establishment of federal guidelines to regulate strip mining. I have been a strong advocate of such guidelines. This session of Congress is currently considering legislation to regulate surface coal mining operations throughout our nation, and I welcome the initiatives in S. 7 and H.R. 2 and hope that Congress will pass and the President will sign federal strip mine legislation this year. My endorsement, however, is not without some qualifications.

70 In 1972, the State of New Mexico enacted legislation governing the reclamation of surface mined coal lands under state ownership. Subsequently, regulations implementing this act were promulgated by the State Coal Surface Mining Commission. Under these regulations, permits issued by the Commission to operators of coal surface mines in New Mexico have included detailed requirements which ensure that the land mined will be restored to condition equal to or better than that existing prior to commencement of mining operations. The State feels that to achieve reclamation of surface mined lands, under the wide variety of geological and climatic conditions existing in New Mexico, the flexibility offered by our existing statutes and regulations must be maintained. With this point in mind, the State of New Mexico signed a cooperative agreement with the Department of the Interior in January of this year. This agreement provides for a cooperative program between the Department of the Interior and the State of New Mexico with respect to the administration and enforcement of surface reclamation operations conducted under coal leases issued by the Department of the Interior under the Mineral Leasing Act of 1920. The basic purpose of this agreement is to prevent duality of administration and enforcement of surface reclamation requirements by designating the State of New Mexico, wherever possible, as the principal entity to enforce reclamation laws and regulations in New Mexico. I would strongly recommend that current federal strip mine legislation accommodate cooperative agreements presently in effect between Western states and the Department of the Interior by incorporating appropriate language allowing these agreements to remain in force.

71 In addition to the above recommendation, I would further recommend that those provisions of a Draft Position Statement of the Western Governors' Regional Energy Policy Office on Federal Strip Mine Legislation (attached), which was recently submitted to the ten

Western governors for final approval, be incorporated into current legislation. This statement has my overwhelming support and I would hope that Congress will give the concerns of the Western governors their very serious consideration as they deliberate further on federal strip mine legislation.

71 Any state with an approved state program or cooperative agreement may elect to regulate surface coal mining and reclamation operations on federal lands within the state. Such regulation shall be subject to all the provisions of the Act.

71 FINANCING STATE ADMINISTRATION AND ENFORCEMENT

71 If a state assumes exclusive jurisdiction of mine reclamation, the federal government, which would have to administer a reclamation program if the state did not undertake that responsibility, should, when requested by the Governor of a state, share the administrative cost with the state on all nonfederal land and pay the state for the full cost of administering reclamation standards on federal land.

71 Specifically, we recommend that final legislation contain the language in S. 7, Section 505.

71 TIMETABLE FOR IMPLEMENTATION OF STATE AND FEDERAL PROGRAMS

71 Several varied provisions of both the Senate and House bills designate specific periods for developing State and Federal programs as well as setting time schedules with which operators must comply. We recommend that the States be given the maximum time possible for implementing individual State programs and that the Department of Interior be prevented from expanding federal staffing to implement and administer the provisions of such an Act where States are diligently attempting to develop their own programs. Specifically, the final legislation must recognize that some state legislatures meet every two years instead of annually including Montana and North Dakota. Thus, in those instances where a state legislature may not be able to act on their State program development for as long as two years, and such State does not have a cooperative agreement as suggested above, the interim regulatory provisions must be permitted to continue beyond the 24 month deadline for submission of a State program. This is needed so as to avoid the implementation of a Federal program and the concomitant Federal staffing buildup before a state legislature can act on developing their program.

71 ABANDONED MINE RECLAMATION

71 We strongly recommend that any abandoned mine reclamation provisions not be included in federal strip mine legislation and be considered as separate legislation.The prerequisites of any such legislation on abandoned mine reclamation should include the following:

71 Revenue for an abandoned mine reclamation fund be derived from a fee on all coal and that such fee be in addition to royalties on federal coal.

71 All revenue in an abandoned mine reclamation fund be returned to the state in which it was collected.

71 Priority expenditure for such money would be (1) for reclamation of abandoned coal mines, (2) to amelioriate coal-related socio-economic impacts and (3) for reclamation of abandoned non-coal mines. Other allowable uses of such money should be as specified in H.R. 2.

71 At the request of the Governor of a state with an approved reclamation program or with a cooperative agreement with the Department of Interior, the state shall operate any abandoned mine reclamation program contained in the legislation.

72 MINING OF FEDERAL COAL UNDER NON-FEDERAL SURFACE

72 We believe there needs to be protection of surface owners whose land contains federal coal. However, we believe that the so-called "Mansfield Amendment," which prohibits surface mining of all federal coal deposits which are under surface not owned by the federal government, would be untenable to western states and in many instances be tantamount to halting coal development.

72 ALLUVIAL VALLEY FLOORS

72 We recommend that final legislation contain the alluvial valley floor provisions found in H.R. 2 rather than the provisions found in S. 7.

72 DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

72 In keeping with the primary intention of Congress that this legislation be directed toward the problems associated with coal mining operations, we recommend that any final bill not contain the language of Title VI, of H.R. 2. This Title would permit the Secretary of Interior to

designate certain Federal lands as unsuitable for noncoal mining. This responsibility should rest with the States, and in any case, should not be included in legislation of this nature.

72 BURDEN ON SMALL OPERATORS

72 We recognize the need for reducing the burdens certain regulatory requirements, such as hydrologic tests, place on small mine operators. We believe that these burdens should be borne by the entire coal industry and its ultimate consumers and should not be shifted to the state regulatory authority.

72 FEDERAL MINERAL LEASE TERMS

72 In lieu of the language of section 523(b) of H.R. 2 and section 423(b) of S. 7 regarding Federal mineral lease terms and conditions, we recommend that the requirements of such an Act and the Federal lands program or the approved State program, whichever is applicable, must be incorporated into any Federal mineral lease, permit, or contract involving surface coal exploration, mining and reclamation.

72 FREQUENCIES OF MINE INSPECTIONS

72 While we well recognize the need for proper and timely inspection of mines to assure compliance with the law, we believe that strip mine legislation should not require complete inspections of every mine on an average of once per month. There needs to be flexibility in such a requirement to permit a state to allocate its manpower effectively. Some mining operations would not require a complete inspection on an average of once a month. Others may require frequent inspections for certain recurring conditions, such as stream pollution. We recommend that the final legislation require inspections no more frequently than an average of once per calendar quarter.

72 INTERIM REGULATORY PROVISIONS

72 We recommend that the language of section 502(c) of H.R. 2 stating that operators must comply with the interim regulatory provisions of the bill within one year of enactment be included in the final legislation.

72 PERIOD FOR PERMIT APPLICATION

72 We recommend the language of section 402(e) of S. 7 stating that those expecting to

pursue coal mine operations after State program approval or Federal program implementation
must file a permit application within 20 months of enactment be included in final legislation.
Also, an Act should require that the application be processed within 6 months of State program
approval and not later than 30 months from enactment.

72 BOND RELEASE PROVISIONS

72 We support the language of H.R. 2 in section 519(g) permitting the regulatory authority to
establish an informal conference procedure to resolve objections to bond release in lieu of formal
transcribed hearings.

73 NEPA COMPLIANCE

73 We recommend that any final legislation not contain the language of section 502(d) of S. 7
and section 702(d) of H.R. 2 which require the completion of an environmental impact statement
prior to approval of a state program or commencement of a Federal program. This impact
statement requirement is not germane in light of the extensive procedures which must be
completed in a State's development and Interior's final approval of a State program. The same is
true for the development and implementation of a Federal program where a State does not submit
or is unable to obtain approval of a State program. As impact statements will be required on a
site-specific or regional basis regarding proposed federal coal lease sales, requiring an extensive
impact statement prior to program approval or implementation is unnecessary.

73 POSITION STATEMENT OF THE WESTERN GOVERNORS' REGIONAL ENERGY POLICY OFFICE ON FEDERAL STRIP MINE LEGISLATION

73 We agree with the declaration and finding of Congress, as expressed in earlier and current
strip mine legislation that -

73 "Because of the diversity in terrain, climate, biologic, chemical, and other physical
conditions in areas subject to mining operations, the primary governmental responsibility for
developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation
operations subject to this Act should rest with the States"

73 In order to accomplish this and other objectives of federal strip mine legislation we
believe that any final bill should provide the following.

73 STATE ADMINISTRATION

73 It is imperative that states retain responsibility for administering and enforcing coal mine reclamation standards in order to adequately respond to unique conditions in each state, retain continuity in enforcement of reclamation standards, avoid creating a new federal bureaucracy, and avoid the problems of administering two standards within the same state (i. e., one for federal land, one for other land).

73 Specifically, we recommend that any legislation provide that:

73 At the request of the Governor of a state, the Secretary shall enter into a cooperative agreement with the state to provide state administration and enforcement of the provisions of the Act, including the interim and final performance standards, regardless of whether such state has a reclamation law as stringent or more stringent than such standards, provided that such state demonstrates it has or will have the capability to administer and enforce such standards.

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA

73 Senator JOHNSTON. Mr. Chairman, this strip mining bill will not reduce the price of coal, it will not increase the supply of coal, it will not help my State at all, it will not help most States of this Nation at all.

73 Nevertheless, I have supported strip mining in the past. Indeed, last year, and in the last Congress, it was my vote, or any one of our votes, that could be credited with saving the bill because it passed in the conference committee at the eleventh hour by one vote.

73 I say that not because I want any credit for having saved this bill. Frankly, the less that is known about that back home, probably the better off I will be politically. But I do mean to set the scene, I think, for what this Congress has done recently apropos Senator Jackson's statement we ought to balance the development with the environment. In my view this Congress, and the last Congress, they have not balanced development with the environment. We haven't done a darn thing for development. We have stopped development on the OCS off Alaska, we have created a set of rules and laws whereby even in the midst of the worst winter and energy crisis in years, we set the scene to stop OCS development off the Atlantic coast. Absolutely idiotic, in my view.

74 It is time, I think, for this country to wake up and do something.

74 UNIDENTIFIED VOICE. Hear, hear.

74 Senator METCALF. This is a hearing, not a demonstration. I know many statements that will be made will meet with the approbation of some of the audience and the disapproval of others. I hope we will conduct this hearing without a cheering section on either side.

74 Please proceed, Senator.

74 Senator JOHNSTON. I appreciate the fact that one person said, hear. I suspect I don't have many supporters out there.

74 Senator METCALF. I think you have quite a few, Senator.

74 Senator JOHNSTON. Nevertheless, Mr. Chairman, I do think it is time for us to wake up and do something. I don't say that as setting the scene to oppose this bill. But I announced the first day we brought the bill up that I thought we ought to achieve some kind of a balance, and I think one of the balancing factors we ought to have, is to attach to this bill, coal slurry pipeline legislation.

74 I don't know whether I would have the votes to sustain that kind of amendment, but I think we ought to consider it. If we are going to utilize the coal we need to utilize in this country, and everybody admits we do - President Carter said coal is the key to it, everybody says coal is the key to it - then we are going to have to have a better transportation system than we have.

74 I think it is going to take all the railroads can do, together with the coal slurry pipeline, to be able to move this coal. If we relied on the railroads alone I think the figures indicate we would have to have some of these unit trains, 100 cars in length, passing every 15 minutes, passing most railroad tracks. If that is not environmentally polluting, I don't know what is.

74 You are still going to have those units trains. You are still going to have a crash program of building railroad cars and renovating tracks and all of those things, but I think we need to consider this matter of utilization of coal in a most serious vein, and get on with providing a little of that balance.

74 I don't think it is going to kill this bill, Mr. Chairman. I think if people like myself are

willing to vote for the bill and, indeed, willing to save it from extinction, I think we can pass it
overwhelmingly. I know the President will not veto it. I would appeal to, let's balance that
environmental consideration which is at the heart of this bill, with the need to develop energy
sources which this country badly needs.

74 Thank you.

74 Senator METCALF. I thank the Senator from Louisiana. The Senator from Louisiana
was most effective and probably the most persuasive of the conference committee because he
was objective in his approach to the legislation last time.

74 Of course, I know when we get to the markup of this legislation, he will be just as
effective as he has been in all of the legislation heretofore.

75 Senator Hatch, at the last meeting of the committee, propounded some inquiries to
Secretary Andrus, regarding the ICF report and his questions have been responded to by ICF,
EPA, and CEQ. Senator Hatch, as I understand it, was not satisfied with those responses. I will
hold a hearing on that specific problem so he and some of the others may have a chance to
inquire into those specific responses. But I would hope that matter would not interfere today
with the testimony of these important witnesses from all around the country.

75 I am delighted we have a more representative group here today on our committee that we
have had before. One of the problems we have had is passing national legislation which not only
affects Pennsylvania and Kentucky and other Eastern States, but also affects the Middle Western
States and the States of New Mexico, Arizona, and the Northern Great Plains four corners area.
This legislation has to be developed on a national basis.

75 So we have the Senator from New Mexico here. We have for the first time representatives
from some of the eastern seaboard here, and today we have distinguished witnesses from the
Appalachian area. Unless there is some other business before the committee, I will start calling
the witnesses.

75 The first witness will be Mr. Charles Schwab of the Hawkeye Elkhorn Coal Co. Senator
Ford, will you introduce Mr. Schwab?

75 Senator FORD. Mr. Chairman, Charlie Schwab is from the Hawkeye Elkhorn Coal Co.,

Pike County, Ky. It was the largest coal company in the United States. I am very pleased Mr.
Schwab is here today.

75 Mr. SCHWAB. Thank you, Mr. Chairman and Senator Ford. With me is Herman Regan
and Doug Griffin of Kenvirons, Inc., of Frankfort, Ky.They have been engaged by our
association to assist me in the technical aspects of the testimony to be prepared for today.

75 We have a prepared statement which I understand has been delivered to all of the
members of the committee.I have been asked to limit my remarks and that my testimony be put
into the record.

75 Senator METCALF. I will make an order now, applying to these three-day hearings: the
prepared statements will be incorporated into the record as if read. We will be delighted to hear
your summary and highlights, gentlemen.

STATEMENT OF CHARLES SCHWAB, PRESIDENT, HAWKEYE ELKHORN
COAL CO., ACCOMPANIED BY HERMAN D. REGAN, JR.; AND DOUGLAS C. GRIFFIN,
KENVIRONS, INC., FRANKFORT, KY.

75 Mr. SCHWAB. I would like to point out I have been asked to testify before you on
behalf of the Kentucky Independent Coal Producers Association, Inc., which represents the great
majority of the responsible small and medium size coal producers in Kentucky who produce
approximately two-thirds of the coal that is mined in that State.

75 My purpose here today is to urge your serious consideration of the suggested changes that
appear in the formal testimony which we have delivered to you. I would like to point out some
of those particular points and highlights as we go through the testimony.

76 Section 401 of the bill provides for the Secretary to promulgate regulations within 6
months of the date of enactment of the bill. So much of the effect of this legislation is dependent
upon those regulations, we cannot help but wonder if some work has not already been done on
those, and, if so, could we have that work so we might be more specific in directing our
questions to the effect this bill may have upon our industry.

76 We are particularly concerned with the time factors in section 402 of the bill, particularly
with regard to compliance of certain parts of section 415, some of the information that would be
required would be available for compliance, under section 402, simply does not exist. In its

absence, it will be necessary many of our operations shut down for a period of time during which
this data must be developed.

76 I am sure it is not the intent of this committee that this legislation result in an interruption
in the production of coal. I would ask your serious consideration of the suggested changes we
have made that would prevent this interruption in our operations.

76 I am going to ask Mr. Regan and Mr. Griffin to address the visual presentation that is on
exhibit here at this time.

76 Mr. REGAN. Mr. Chairman, we, too, will summarize. A written statement is
incorporated in the statement of Mr. Schwab.

76 Senator METCALF. Are you going to testify from that?

76 Mr. REGAN. Yes, sir. There is a copy in your handout.

76 Senator METCALF. Will you make a sufficient identification so that when the record is
printed it will contain the appropriate reference.

76 Go ahead.

76 Mr. REGAN. Thank you, Mr. Chairman, we will do that.

76 We are graphically showing on the chart, which is titled "Sequence of Events Relative to
Permitting Processes" what the small responsible operator faces under the terms of the act as it is
proposed.

76 Second, the purpose of our testimony is to highlight problem areas associated with
application requirements in two areas. One from the time it would take to do it; second, and/or
the availability, or lack of availability, of data required. We are speaking of sections 406 and
408, reclamation plan requirements. The chart depicts what the situation is when the operator
says to his engineer apply for a permit.

76 At that time, a field study to determine the baseline of the existing situation takes place.
That sets off a series of chain reactions on the chart starting with air quality and proceeding down
and finishing with aquatic information.

76 There are four areas we feel will present a problem, Mr. Chairman. They deal with air
quality, subsurface, the hydrologic requirements, and topography. At this time, with your

permission. I would like to ask Mr. Griffin, who is an engineer and a hydrologist, to speak to the hydrology portion of that.

76 Mr. GRIFFIN. One of our primary concerns with the proposed Surface Mining Control and Reclamation Act is required hydrologic studies. It is accepted such studies are highly desirable.

76 However, the magnitude of the proposed requirements under current conditions presents formidable - sometimes impossible - conditions for individual coal producers.

77 This short subsection of the bill presents an unreasonable approach to a hydrological determination for the following reasons.

77 One: The required data does not exist.

77 Two: The time frame necessary to acquire the necessary data could vary from one to several years, depending upon the interpretation.

77 Three: The cost of data acquisition would be vast.

77 Four: Any assessment of all anticipated mining in the area is virtually an impossible task for an individual, independent producer seeking a permit in only one portion of the watershed area.

77 The U.S. Geological Survey publication, "Water Resources Data for Kentucky - Water Year 1975," shows 49 active flow measuring stations supplemented by approximately 30 more low-flow partial or annual stage stations in the eastern Kentucky coal fields. These few stations cover approximately 10,270 square miles. In contrast, most mine permits cover a relatively small area, usually less than 100 acres, which is a much smaller area than is measured by any of the existing stations.

77 In order to gather the seasonal data, a minimum of 1 year would be required and the reliability of such short-term data would most certainly be open to question.

77 It is doubtful if any meaningful data could be derived from such a short record.

77 Time factors for obtaining required data are significant. This makes significant the financial burden of gathering the data. Further, the requirements are based on the premise that sufficient trained personnel are available to design the data collection programs and make the

necessary hydrologic determinations. This is a fallacy.

77 In reality, the number of engineers specifically trained in hydrology is quite limited. Many of these are employed by governmental agencies involved in ongoing hydrologic programs and, therefore, are unavailable to producers.

77 In summary, the requirements dictated in S. 7 create a situation which requires the collection of data not heretofore assembled. It further creates unreasonable delay and cost factor application preparations; and requires personnel levels in the field of hydrology which simply do not exist.

77 Thank you.

77 Mr. REGAN. Thank you, Mr. Griffin. Now, Mr. Chairman, for the sake of time, to briefly summarize, the purpose of the chart, the sequence of events are necessary. From the start of the design of the baseline study until the issuance of a permit by the regulatory authority will take 22 1/2 months, assuming we can obtain the data in the full area we are concerned about, and subsurface topography and hydrologic in 1 year's time. We are also assuming the term "within a reasonable time" references the regulatory agency's action which is for a period of 60 days. The 22 1/2 months is further base on the assumption a public hearing will not be required.

77 If a public hearing is required, then we anticipate it would be 25 1/2 months before a permit could be issued to an operator. We say these things; we don't like to compare other bills. We don't. But we would not want to see something like 92-500, where the regulations were brought virtually to a standstill on the municipal waste treatment facilities. We don't believe that is the purpose of the act.

78 We appreciate the opportunity to present to you this time frame imposed on the operators with the hope we can work out something that is mutually agreeable.

78 Mr. SCHWAB. Thank you, Herman. To go on from what you have heard from Herman and Doug, it is obvious the perplexities of permitting under this act are far greater than those that have been placed on our small-and medium-size operators in any State law, including Kentucky.

78 We are concerned our small operators may not be able to cope with the degree of

long-range planning that is provided by all of these detailed, indepth requirements of sections
407 and 408. We would urge your consideration of the necessity for all of these requirements,
and the depth to which the data is required in considering the effect upon the operator who is
operating off his kitchen table as a desk, who doesn't have the staff to send out into the field to
collect this data. He doesn't have the financial resources to go out and hire a consultant to go out
and collect the data for him.

78 One of the unfortunate parts of any kind of regulation, that regulation, in and of itself,
begets bigness. The more detail you require of our small operators, the more we force them out
of business and we put into the hands of the larger operators the responsibility for producing the
coal we are going to have to have to meet the Nation's energy needs.

78 We urge, again, your consideration for the necessity of all of these items.

78 We have heard it said here this morning that the balance between the environment and
production is the most important cutlass of this legislation. I would, again, urge you to consider
a fact that is irrefutable. That the mountaintop removal method of mining is the most advanced
technology that is known in the coal business today, that it produces the greatest resource
recovery with the least land area disturbance with the most probable environmental results of any
method of mining that we know at this time.

78 I would urge your reconsideration of that as an accepted mining practice, and remove it
from the variance consideration which makes it nearly impossible for the small operator because
of the immediate development requirements, the prefinance requirements of the variance
procedure as it presently is written.

78 Senator JOHNSTON. I didn't get that last part. Would you repeat that last part?

78 Mr. SCHWAB. The immediate development requirements of the variance procedure, and
the prefinance requirements of the procedure, are things that make it extremely difficult for our
small operators to cope with the variance procedure for achieving the variance required for
mountaintop removal.

78 I urge your consideration of that as an accepted practice, mining practice. We also would

like to see the variance procedure itself opened somewhat so that alternatives can be the subject of the determination of the regulatory authority, whether that is the State authority or the Federal authority. The variance procedure, as it is presently written, precludes, for all practical purpose, any variance except that for mountaintop removal. We think there may well be alternative methods accomplishing the results intended hereby, and we urge your consideration of opening the door in the variance procedure for the regulatory authority to be entrusted with some degree of judgment.

79 With regard to the all important subject of high walls, I am not going to suggest to you we don't have the technology or the equipment to completely cover the high walls and restore to original contour. This can be done, although at great additional cost.

79 I do suggest to you that there are circumstances, particularly in our area of eastern Kentucky, where we are not blessed with the flat topography of Pennsylvania, where 90 percent of their reserves occur under a 10-degree slope, where restoring to the original contour and completely covering the high wall doesn't produce the best environmental result.

79 We would urge your consideration of the alternatives to completely covering the high wall, that the regulatory authority be empowered to exercise its judgment in those instances where there are alternative methods that do produce a better environmental result.

79 High-wall reduction with vegetation screening, in many instances, produces a much greater result than completely covering the high wall. High-wall reduction and vegetative coverage of the remaining portion of the high wall -

79 Senator JOHNSTON. Mr. Chairman, may I ask him what high-wall reduction is?

79 Mr. SCHWAB. High-wall reduction means reducing the amount of exposed high wall. By that phrase, we mean if you have a 90-foot-high wall, for instance, perhaps you are going to completely cover or reduce 60 or 80 feet of that high wall. That is what is meant by high-wall reduction. You may very well cover the remaining part of the high wall by vegetative screening.

79 Senator METCALF. I am not sure we completely understand even now your proposition

for high walls. This is one of the crucial parts of this legislation, as it was in the last Congress. It
is a matter that has been debated in the House and the Senate and in the conference committee. I
would hope the Senator from Kentucky, who I know understands this matter very well, will, with
his questions and his assistance when we mark up this bill, help us in determining what we
should do in this problem of high walls.

79 We don't have the high-wall problem in Montana as part of contour mining. You don't
have it in the Four Corners area of New Mexico and Arizona, Senator Domenici. But we are
passing national legislation. So we are glad to have the aid and assistance of the Senator from
Kentucky when we consider this question.

79 Mr. SCHWAB. Senator, given time, we could talk all day on the subject of alternative
methods of handling the high-wall problem. High-wall reduction and vegetative covering is only
one means of handling the problem. It is obvious, spoil placement in a flat range, or terraced
area, where rainwater runoff does not result in high-velocity water, and, therefore, encourages
additional erosion, is a better way of handling the spoil problem than to put it on a steep slope
where the rain is going to wash it away and you are going to have the problem of erosion, and
you are going to have the problem of controlling that erosion during the vegetative period,
particularly.

80 So what we are saying is let the regulatory authority have the authority to exercise their
judgment to permit the alternative methods and circumstances in which they do, in fact, produce
a better environmental result.

80 In closing, I would like very much to extend an invitation to the committee and suggest
very strongly - but particularly with regard to some of the new members of the committee - that
you do entertain the concept of a field trip for the members of your committee, and we invite you
to come to Kentucky, particularly eastern Kentucky, so we can show to you the evolution and
reclamation that has taken place in our State as a result of the evolution of legislation, the State
control of environment and reclamation practices.

80 Thank you. I will entertain any questions.

80 Senator METCALF. Thank you. We are very pleased and honored to have the Senator
from Kentucky here. I am going to call on him to interrogate the witnesses.

80 Senator FORD. I appreciate the opportunity you are offering me to interrogate the witnesses. I think from the question from the Senator from Louisiana, he does not understand what a high wall is.

80 Senator JOHNSTON. I understand what a high wall is, but not a high-wall reduction.

80 Senator FORD. I think it might be in our best interest for him to understand the language of the legislation, of what would happen, where they can ask questions, and where they can get an answer about the day-to-day operation of coal mining. If they have questions, I would like to answer their questions since I know the area very well. In fact, we had Secretary Andrus and Chairman Udall of the House, and others - and I think the staff from this committee - in Kentucky several weeks ago to look at the high wall and the hollow fill and some of the high-wall reduction methods that are being used in Kentucky.

80 So I would like to yield to them if they have questions and then we can bring up these points and mark up a bill, if that is all right with the chairman. I have a lot of questions I could ask, but it would just be questions. I think I understand reasonably well.

80 Senator METCALF. Let me say again, we are very pleased to have you on the committee, to have your help and support, to have your knowledge and experience as to Kentucky's situation. We will rely on that.

80 Senator DOMENICI. With reference to your chart, your flow chart, this is your interpretation of what a strip mining operation would have to do in order to initiate and complete an application for a mining permit.

80 Mr. REGAN. That is correct, yes.

80 Senator DOMENICI. That is based upon which bill, the bill before us?

80 Mr. REGAN. Yes. That is based upon S. 7.

80 Senator DOMENICI. I want to say at the outset, I have sat in on a number of hearings on the regulatory process and I commend you. I think it is indeed helpful to us to see in advance what you assume you are going to have to go through in order to obtain a coal mining permit. I don't think you ought to be very optimistic that any of the time frames within this bill are going

to be met.

81 I think, if anything, they are going to take longer than described here. Let me be a little more specific. You mentioned in these four initial indepth studies that your principal concern is that you cannot get them done in time. But you have not given the various reasons as to why this is the case. Information is not readily available and that small operators perhaps cannot do them at all.

81 But, you did not address whether or not the studies are needed.

81 Mr. GRIFFIN. I would like to answer that. We feel to some extent and to some degree a hydrologic study is needed. This version of the bill calls for hydrologic study based on seasonal flow data. It does not allow for utilization of existing data transferring data, loaded watersheds, or making use of any other accepted practice. It calls for measured data.

81 We feel this is one of the strict time factors that must be overcome. The governmental agencies who have normally collected such data have concentrated largely on larger watersheds where the impact is they get more data for the money they spend. We are now talking a whole different ball game on very small watersheds.

81 There is some question about whose responsibility it is to collect such general data, where the responsibility might fall.

81 Senator DOMENICI. Who regulates strip mining in your State now?

81 Mr. SCHWAB. The Department of Natural Resources and Environmental Protection.

81 Senator DOMENICI. Of the State?

81 Mr. SCHWAB. Of the State of Kentucky.

81 Senator DOMENICI. Is this a rather new law?

81 Mr. SCHWAB. The law is not so new. It has had many changes in regulations under the law each year as new practices have been developed and techniques have been developed and improved, the reclamation practices within the State.

81 Senator DOMENICI. Do you happen to have a similar flow chart showing how you happen to obtain a permit in the State of Kentucky?

81 Mr. REGAN. The flow chart for the Commonwealth of Kentucky, Senator, is entirely

different from that. You have to prepare a map of the area, then submit your mining plan
showing the location of your sedimentation structure. That is about the size of it. You do not
have to do an environmental assessment, if you will, premining, before you start mining.

81 Senator DOMENICI. Is it adequate in your opinion?

81 Mr. REGAN. Is it adequate?

81 Senator DOMENICI. Is the permit system and the regulation in your State adequate to
protect the various items that this bill intends to protect?

81 Mr. REGAN. The permit requirements in the Commonwealth of Kentucky are added to
protect or intended to protect water property and land use. Will it meet all the requirements of
this act? No, sir; it will not.

81 Senator DOMENICI. Are the added requirements of this act, in your opinion, needed to
protect the Commonwealth of Kentucky or the surrounding States?

82 Mr. REGAN. I think some added requirements are needed to do an assessment before you
start mining. We would call it a mini or small assessment. Not necessarily in the depths you are
calling for in the act. Otherwise, you cannot know what impact you are going to have upon the
environment when you finish your mining.

82 Senator DOMENICI. Do you people representing the Kentucky Independent Coal
Producers support this bill or not?

82 Mr. REGAN. Are we in favor of the bill?

82 Senator DOMENICI. Yes.

82 Mr. REGAN. We are in favor of the intent of the bill. But we are in favor of the bill as
written. We support the suggestions made by Mr. Schwab for amendment. They are contained
in Mr. Schwab's testimony. We, as engineers, and environmental engineers, can support those.

82 Senator DOMENICI. You talked about how long it is going to take for these small
operators. Do you have any estimate as to how much it is going to cost a small operator to
comply?

82 Mr. SCHWAB. Senator, if I may answer that question, there is some data contained in the

very highly publicized ICF report on that subject. For the eastern part of Kentucky, the cost of a new permit is estimated to be $33,450.

82 This takes into account the test drilling, the hydrologic assessment, and the cross section maps only. These are incremental costs over and above the costs now required by Kentucky law in accordance with the ICF report.

82 Senator METCALF. How much does Kentucky law require? How much does that presently cost?

82 Mr. SCHWAB. I don't have that data in this report to give to you. It is quite minimal, however, since the requirements basically are things you can do yourself and not have to go out and have these technologists do for you. It is when you get into the core drilling aspect, and particularly the core drilling aspect is an important part of it, the hydrologic assessment is the major part of the cost as reported in the ICF study.

82 Senator METCALF. Unless there is some objection, would you give us an estimate of how much it would cost under Kentucky law to get that data?

82 Mr. SCHWAB. We would be glad to get that figure for you.

82 [Subsequent to the hearing the following information was received:]

82 KENVIRONS, INC., Frankfort, Ky., May 31, 1977.

82 Re: Requested Supplemental Information regarding cost of meeting the Permit Requirements for Core Drilling and Hydrologic Studies as outlined in S. 7.

82 Senator LEE METCALF,

82 Chairman, Subcommittee, Minerals, Materials and Fuels, Senate Energy Committee, Dirksen Building, Washington, D.C.

82 DEAR SENATOR METCALF: Prior to listing the cost of meeting the above referenced requirements, I must emphasize that to obtain exact and true cost figures for these areas, or for that matter any other permit requirement of S. 7, is impossible to accomplish at this time. (Regulations will have to be written before an accurate cost estimate could be attempted.) For this reason any cost figures contained in this correspondence must be considered to be gross estimates.

82 The following asumptions were used in developing the estimated cost of core drilling and hydrologic study requirements proposed in S. 7:

82 1. Average surface mine permit in Kentucky covers 40-50 acres.

83 2. Core drilling regulations could require a minimum of one (1) core per acre.

83 3. Depth of core drilling will average 80-500 feet. (In order to meet hydrologic requirements, this depth could be greater than 500 feet.)

83 4. A meteorological station consisting of wind direction, speed, temperature, rainfall, etc. would be located on the site to insure that site specific data was obtained.

83 5. Flow monitoring station or stations would be required in order to obtain site specific data.

83 6. Water quality monitoring stations would be required above, below and in the permit area.Samples would be collected at least twice per month and analyzed for iron, total suspended solids, pH, and total manganese.

---

*2*Estimated costs:

1. Core drilling - $10 to $15 per foot. Cost per acre (1 core 80 to 500 ft. deep) $8 00	$7,500
2. Meteorological station - Cost per station $2 ,000	5,000
3. Flow monitoring station (continuous flow) - Cost per station (depending upon size of stream, flow, etc.)	1,000-25,000
4. Water quality sampling - For 4 parameters listed $2 0 to $30 per sample. Say $2 5 per sample. For 3 samples twice a month equals (per year)	1,800

In summary the cost for a 40-acre permit in Kentucky based upon the assumptions listed in this document range as follows:

Core drilling	$32,000 to $300,000
Meteorological station	2,000 to 5,000
Water quality	1,800 to unknown
Flow monitoring station n1	1,000 to 25,000
Total n2	36,800 to 330,000

---

83 n1 Cost of 1 flow monitoring station. Might need more than 1.

83 n2 Totals do not include cost of core analysis and cost of personnel to operate and maintain equipment, write reports, and collect data.

83 If you should have any questions regarding this matter, please do not hesitate to contact me.

83 Sincerely,

83 HERMAN D. REGAN, Jr., P.E., President.

83 Senator DOMENICI. I will yield to the other Senators. I do have some more questions later.

83 Senator JOHNSTON. Mr. Chairman, I am particularly sensitive to what he said about the small operators. We in the Congress have, on the one hand, always spoken little homilies about the virtues of small business, small businessmen, and the evils of big business.

83 Then, on the other hand, we come in and put in OSHA regulations and every other kind of regulation, including now strip mining regulations, which would have precisely the opposite effect of running the small man out of business. I don't know precisely what the mechanism is by which we ought to take care of the small operators, let him survive, but at the same time let him have some protection, some preassessment here which apparently State law has not provided for.

83 What would you suggest, a different set of rules for the small miners? Or how would you suggest we deal with that?

83 Mr. SCHWAB. We have suggested in our formal testimony that the responsibility for developing this data for those operators whose estimated production is contemplated to be less than 250,000 tons a year be borne by the regulatory authority. That the cost be borne by the regulatory authority. That still doesn't solve the time problem, and that still exists.

84 There must be some means of getting into the act of permitting production to go forward, even though it is required and paid for by the regulatory authority.

84 That is contained in the testimony.

84 Senator JOHNSTON. That, frankly, does not appeal to me that much. How do you tell if it is 250,000 tons? Or who makes that estimate?

84 Mr. SCHWAB. The determination would be made by the regulatory authority as to whether the applicant did qualify under that estimated production criteria.

84 Senator JOHNSTON. Probably if he is right under, he pays nothing; if he is right over, he pays everything.It looks like we could find a better way to do it than that. You mentioned in your testimony a minute ago you might have a mini assessment, not a full-blown assessment with 105 boxes on it, but maybe one with 50 boxes on it; is that what you had in mind?

84 Mr. SCHWAB. That certainly is an alternative. It certainly would be an alternative, as Mr. Griffin has suggested in connection with the hydrologic studies, that there be a correlation of existing data or an application of existing data to this particular permit area, as opposed to the requirement of collection of specific data for a specific stream, a specific area. These are also accepted hydrologic practices and are alternatives in that area that would cut down on the time, cut down on the expense that would be incurred by the small operator.

84 Senator JOHNSTON. I think we need to do some creative thinking to take care of that small operator. If that chart is correct over there, the little man is not going to be able to do it. The big huge corporate combines can do it, but not the little one.

84 I think there is a real place for the little man. I understand most of your mining in Kentucky is done by relatively small operators; is that correct?

84 Mr. SCHWAB. That is correct. It is about one-third of the production in the State of Kentucky that comes from operators who employ less than 20 men per mine. There is another third that comes from mines that employ less than 200 miners, and only one-third that comes from mines that employ more than 200 men.

84 Senator JOHNSTON. You referred in your earlier testimony to mountaintop mining to be a very environmentally sound kind of mining. That is where they just lop off the top of a mountain, isn't it?

84 Mr. SCHWAB. That is correct.

84 Senator JOHNSTON. Under the existing bill that is to be done by special variance?

84 Mr. SCHWAB. That is correct.

84 Senator JOHNSTON. You are suggesting they have the right to do it, or the variance procedure be expedited, or what was it you were saying?

84 Mr. SCHWAB. I am suggesting mountaintop removal be accepted from the variance procedure.

84 Senator JOHNSTON. It is my understanding the Kentucky mountain top removal gives you good flat land on that mountain top which is more valuable than having it returned to its original contour?

85 Mr. SCHWAB. That certainly is the case, Senator.

85 Senator JOHNSTON. You also testified that high-wall reduction is preferable to restoring to the original contour because of the erosion problem that comes when you are trying to restore to the original contour; is that correct?

85 Mr. SCHWAB. That is correct in some situations.

85 Senator JOHNSTON. Once you have the revegetation that sets in, the restoration to original contour would be preferable, would it not? Or would it?

85 In other words, I am trying to find out why it is preferable?

85 Mr. SCHWAB. The restoration to original contour does not permit alternative utilization of the land. In eastern Kentucky flatland is so scarce, you could have a spoil storage on the bench, as a level storage area, and utilize that for the production of grasses for the grazing of cattle, for future developments of housing areas which has and is being done, where these areas occur adjacent to cities, adjacent to developments now. These are alternative land uses that are all very important to the landowner in our area. He would like very much to have flat land instead of the contour on which he can grow nothing but trees again.

85 Senator JOHNSTON. I understand they are planting grapes for wine on some of these?

85 Mr. SCHWAB. That is being done, too.

85 Senator FORD. May I make a point or two? Time is running out and we need to get to others. I want to ask this question. First, I want everyone to understand we are talking about high Btu, lowsulfur coal, probably the best burning coal in the United States comes from this area. The coal is used in order to meet certain standards.

85 How many hydrologists do we have in Kentucky?

85 Mr. SCHWAB.It really is impossible to make a determination.

85 Senator FORD. How many practicing hydrologists do we have?

85 Mr. GRIFFIN. I would hesitate to make an estimate. It is not a large number.

85 Senator FORD. Would you say there is less than 10?

85 Mr. GRIFFIN. Outside the governmental agencies? There might be 10.

85 Senator FORD. Outside the governmental agencies you would be lucky to have 10 practicing hydrologists?

85 Mr. GRIFFIN. Probably.

85 Senator FORD.In trying to compare the two bills, we have one going on in the House and one going on here, the Senate version, S. 7, a provision applies to a royalty on Federal coal. How much Federal coal do we have in Kentucky?

85 Mr. SCHWAB. None that I know of.

85 Senator FORD. There wouldn't be any chance of that coming back to us; if those funds come back to us it would come back from States that do have Federal coal?

85 Mr. SCHWAB. That is my understanding.

85 Senator FORD. In the House bill, it gives the estimate of 250,000 tons or less per year produced by an operator makes him a small operator; am I correct on that?

85 Mr. SCHWAB. That is correct.

86 Senator FORD. Am I also correct the royalties that are collected would go to the State regulatory agency, at least a portion of that, and they, in turn, would pay for the necessary work for permitting the small operator?

86 Mr. SCHWAB. That is what is intended under the House bill.

86 Senator FORD. What is your time frame? What is your time frame as to when that permitting should be completed under the House bill?

86 Mr. SCHWAB. There is no time limit in the House or Senate bill

86 Senator FORD. If anybody is doing it for you, the time frame, it could go on forever?

86 Mr. SCHWAB. That is right.

86 Senator FORD. When your hydrologists make your studies, would it not be possible to have more than one watershed in a permitted area?

86 Mr. SCHWAB. That is possible, yes.

86 Senator FORD. Kentucky is supposed to be known as one of the best map States in the Union. Is there any mapping now we have available to give you any help at all?

86 Mr. SCHWAB. There are maps that would have to be updated.

86 Senator FORD. They would have to be updated in this study?

86 Mr. SCHWAB. Yes.

86 Senator FORD.Does the bill allow you to go to other materials already developed, or do you have to develop from scratch?

86 Mr. SCHWAB. In most instances you would be required to develop your own material.

86 Senator METCALF. We are delighted to have the Senator from Colorado here. We have had testimony from the Kentucky witnesses. You did not have a chance to hear them, but do you have any questions?

86 Senator HASKELL. No, I do not, Mr. Chairman. I apologize to the witnesses for not being here to hear them. As you say, I have been supplied with written copies of their testimony.

86 Senator METCALF. Mr. Schwab, you will be well represented in the markup of this bill by the Senator from Kentucky, and I know of no better advocate.

86 [The prepared statements of Mr. Schwab, Mr. Regan, and Mr. Griffin follow:]

87 TESTIMONY OF CHARLES F. SCHWAB PRESIDENT HAWKEYE ELKHORN COAL CO., INC. PIKEVILLE, KENTUCKY ON S. 7 "SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977" BEFORE SUBCOMMITTEE ON MINERALS, MATERIALS, AND FUELS COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE MARCH 1, 1977

87 I AM CHARLES F. SCHWAB, PRESIDENT OF HAWKEYE ELKHORN COAL CO., INC. OF PIKEVILLE, KENTUCKY. I HAVE BEEN ASKED TO TESTIFY BEFORE YOU ON BEHALF OF KENTUCKY INDEPENDENT COAL PRODUCERS ASSOCIATION, INC. WHICH REPRESENTS THE GREAT MAJORITY OF THE RESPONSIBLE SMALL AND MEDIUM SIZE COAL PRODUCERS IN KENTUCKY.

87 THIS SUBCOMMITTEE HAS SPENT MANY YEARS DRAFTING AND REFINING THE PROVISION OF S.7, AND IS TO BE COMMENDED FOR ITS DEDICATION TO

THESE AVOWED PURPOSES. IN THESE TIMES OF ENERGY CRISIS IT IS OF VITAL IMPORTANCE TO ADDRESS WITH ALL OF OUR SKILLS THE PROBLEMS RELATED TO PROVIDING AN ABUNDANT AND ECONOMIC CUPPLY OF ENERGY TO ASSURE THE STRENGTH AND CONTINUED ECONOMIC GROWTH OF THE NATION AND AVOID THE RECURRANCE OF THE COSTLY ECONOMIC AND HUMAN CONSEQUENCES OF THE WINTER OF '77.

87 I WOULD LIKE TO MAKE CLEAR AT THE OUTSET THAT I AM NOT HERE TODAY TO OPPOSE THE ENACTMENT OF FEDERAL STRIP MINE LEGISLATION; HOWEVER, WE DO STRONGLY URGE YOUR SERIOUS CONSIDERATION OF THE AMENDMENTS WHICH WE WILL PROPOSE IN DETAIL LATER IN THIS TESTIMONY. IT IS ABUNDANTLY CLEAR SUCH LEGISLATION WILL BE ENACTED BY THE 95TH CONGRESS. ON THE WHOLE, S.7 REPRESENTS CRITERIA WITH WHICH OUR SEGMENT OF THE INDUSTRY CAN LIVE; HOWEVER, THE COST OF OUR OPERATIONS WILL BE SIGNIFICANTLY INCREASED. MY PURPOSE HERE TODAY IS TO EXPLORE WITH YOU CERTAIN ALTERNATIVES TO SOME OF THE PROVISIONS OF THE BILL WHICH WOULD ENABLE THE RESPONSIBLE SMALL AND MEDIUM SIZE OPERATORS TO BETTER COMPLY WITH THE REQUIREMENTS OF THE ACT WITHOUT ANY ADVERSE AFFECT ON THE ENVIRONMENTAL RESULT EXPECTED FROM THIS LEGISLATION.

88 DURING THE YEAR 1976, KENTUCKY ISSUED 1,333 UNDERGROUNG MINING PERMITS, AND 1,667 SURFACE MINING PERMITS AFFECTING A TOTAL OF 40,000 SURFACE ACRES. THIS IS MORE PERMITS AND MINED ACRES THAN THE COMBINATION OF ANY TWO OTHER STATES.

88 DURING THE YEAR, 1976, KENTUCKY PRODUCED MORE THAN 140 MILLION TONS OF COAL.APPROXIMATELY ONE-THIRD OF THIS COAL WAS PRODUCED BY 39 MINES EMPLOYING MORE THAN 200 MEN PER MINE. THE TWO-THIRDS MAJORITY OF KENTUCKY'S PRODUCTION WAS FROM 2,300 MINES EMPLOYING LESS THAN 20 MEN PER MINE PRODUCING 46 MILLION TONS AND THE BALANCE OF 50 MILLION TONS FROM THE MEDIUM SIZE MINES EMPLOYING 20 TO 200 MEN PER MINE. I AM HERE SPEAKING ON BEHALF OF THE MAJORITY OF THE RESPONSIBLE OPERATORS OF THIS SMALL TO MEDIUM SIZE WHO PRODUCE TWO-THIRDS OF KENTUCKY'S COAL. THE COMPANY WHICH I OPERATE IS AMONG THIS MEDIUM SIZE GROUP EMPLOYING APPROXIMATELY 50 MEN AND PRODUCING ABOUT 500,000 TONS OF COAL PER YEAR. OUR COMPANIES ARE FOR THE MOST PART HOME-OWNED, FINANCED AND OPERATED IN OR NEAR THE COUNTIES IN WHICH WE LIVE. WE ARE MINING ON LAND OWNED BY OUR NEIGHBORS AND FEEL A COMMUNITY SENSE OF RESPONSIBLILITY TO CONDUCT OUR OPERATIONS IN A MANNER THAT RECOGNIZES THE INTERESTS OF OUR NEIGHBORS. MOST OF OUR COMMUNITIES ARE LARGELY DEPENDENT UPON THE CONTINUED MINING OF COAL FOR THEIR ECONOMIC WELL-BEING. OUR RESPONSIBLE SMALL AND MEDIUM SIZE COMPANIES WANT TO CONTINUE TO BE A PART OF OUR COMMUNITIES' ECONOMIC STABILITY.

88 I WOULD NOW LIKE TO DISCUSS WITH YOU CERTAIN ASPECTS OF S.7 ABOUT WHICH WE ARE UNCERRTAIN OR WISH TO COMMENT. THESE WILL BE DISCUSSED IN NUMERICAL ORDER AS THEY OCCUR IN THE BILL.

89 SECTION 401 REQUIRES THE SECRETARY TO PROMULGATE REGULATIONS WITHIN 180 DAYS OF ENACTMENT.SO MUCH OF THE EFFECT OF THIS LEGISLATION IS DEPENDENT UPON THE INTERPRETATION AND IMPLEMENTATION UNDER THE REGULATIONS WE CANNOT HELP BUT ASK IF THESE HAVE NOT ALREADY BEEN DRAFTED AND IF SO SHOULD WE NOT BE PERMITTED TO HAVE THESE IN ORDER THAT OUR QUESTIONS MIGHT MORE CLEARLY BE FOCUSED.

89 SECTION 402 (b) and (c) REQUIRE SPECIFIC COMPLIANCE ON SPECIFIC DATES.WITH REGARD TO COMPLIANCE WITH CERTAIN PARTS OF SECTION 415, PARTICULARLY SECTION 415(b)(10) WHICH WILL BE DISUSSED IN GREATER DETAIL LATER, THE DATA REQUIRED FOR COMPLIANCE IS IN MOST CASES SIMPLY NOT AVAILABLE WHICH WOULD REQUIRE A CESSATION OF OPERATIONS UNTIL SUCH DATA COULD BE DEVELOPED IF STRICT COMPLIANCE WITH THE WRITTEN WORD OF THE ACT IS REQUIRED. SURELY THIS IS NOT INTENDED. SOME LATITUDE SHOULD BE AFFORDED THE REGULATORY AUTHORITY TO PERMIT COMPLIANCE AS PROMPTLY AS PRACTICABLE AFTER THESE DATES UPON DEMONSTRATION BY THE PERMITTEE OF MEANINGFUL EFFORT TO COMPLY. SURELY THE REGULATORY AUTHORITY CAN BE ENTRUSTED WITH THE RESPONSIBILITY FOR DETERMINING REASONABLE ABILITY TO COMPLY FOR THE INTERIM PERIOD UNTIL THE STATE PROGRAM HAS BEEN APPROVED OR THE FEDERAL PROGRAM IMPLEMENTED.

89 IT IS ALSO NOTED THAT 402(b) REQUIRES COMPLIANCE FOR NEW PERMIT APPLICATIONS ON AND AFTER THE DATE OF ENACTMENT. SINCE THE REGULATIONS NEED NOT BE PROMULGATED FOR 180 DAYS AFTER ENACTMENT, THIS WOULD REQUIRE COMPLIANCE PRIOR TO THE AVAILABILITY OF THE REQUIREMENTS TO BE SET FORTH BY REGULATION. FOR ACTIVE PRE-ENACTMENT PERMITS, COMPLIANCE IS REQUIRED ONE AND ONE-HALF MONTHS BEFORE ISSUANCE OF THE REGULATIONS. THIS, TOO, WE FEEL IS NOT INTENDED. WE RECOMMEND THE FOLLOWING:

89 SECTION 402(b) LINE 9, P. 30 - AFTER THE WORD "AFTER" INSERT "SIX MONTHS FROM."

89 SECTION 402(c) LINE 15, P. 30 - DELETE "ONE HUNDRED AND THIRTY-FIVE, INSERT "ONE YEAR."

90 SECTION 406(d)(1) REQUIRES A PUBLIC HEARING PRIOR TO THE ISSUANCE OF A PERMIT RENEWAL. IT IS UNCLEAR THE CONDITIONS UNDER WHICH SUCH A PUBLIC HEARING IS TO BE HELD OR THE SUBSTANTIVE RESULT EXPECTED OF SUCH A HEARING. THE REQUIREMENTS OF 406(d)(1)(A) THROUGH (E) HAVING BEEN MET THERE SEEMS NO PURPOSE LEFT TO BE SERVED BY A PUBLIC HEARING AND WE URGE YOUR RECONSIDERATION OF THIS SEEMINGLY NEEDLESS REQUIREMENT.

90 I WOULD NOW LIKE TO INTRODUCE TO YOU MR. HERMAN REGAN, PRESIDENT OF KENVIRONS, INC., AN ENVIRONMENTAL ENGINEERING AND CONSULTING FIRM OF FRANKFORT, KENTUCKY WHO HAVE BEEN ENGAGED BY OUR ASSOCIATION TO ASSIST IN THE ENGINEERING ASPECTS OF MY TESTIMONY. WE HAVE ASKED MR. REAGAN TO PREPARE A VISUAL PRESENTATION OF THE PERMITTING REQUIREMENTS OF SECTIONS 407 AND 408.

90 MR. REAGAN.

90 PRESENTATIONS OF HERMAN REAGAN AND DOUG GRIFFIN.

90 IT IS CLEAR FROM WHAT YOU HAVE JUST SEEN AND HEARD THAT SECTIONS 407 AND 408 REQUIRE A MUCH GREATER DEGREE OF LONG RANGE PLANNING EMCOMPASSING MORE AREAS OF ACTIVITY THAN HERETOFORE UNDERTAKEN BY THE REQUIREMENTS OF MOST EXISTING STATE LAWS INCLUDING THAT OF KENTUCKY. WHILE ALL OF THESE AREAS NEED BE OF CONCERN WITH REGARD TO THE TOTAL ENVIRONMENTAL IMPACT OF MINING, IT IS DOUBTFUL THAT OUR SMALL OPERATORS WILL BE ABLE TO COPE WITH THIS

LEVEL OF PLANNING.

90 IT IS AN UNFORTUNATE FACT OF INCREASED REGULATION THAT IN AND OF ITSELF IT BEGETS BIGNESS. THE SMALL INDEPENDENT BUSINESSMAN IN COAL OR ANY OTHER BUSINESS SIMPLY IS UNABLE TO COPE WITH THE COMPLEXITIES OF SUCH INCREASED REGULATORY REQUIREMENTS AND GIVES UP IN FAVOR OF THE LARGER OPERATOR WHO HAS THE STAFF AND/OR THE CAPITAL TO EMPLOY SPECIALISTS CAPABLE OF GENERATING THE DATA WITH WHICH TO COMPLY.

91 WE DO NOT QUESTION THE NEED TO TREAT IN SOME DEGREE EACH OF THE REQUIREMENTS SET FORTH IN SECTIONS 407 AND 408, WE WOULD URGE YOU IN GOOD CONSCIENCE TO RE-EXAMINE THE NEED FOR THE DETAIL AND DEPTH OF THE REQUIREMENTS AND TO BE SURE THAT THE LOSS OF MANY OF THE RESPONSIBLE SMALL OPERATORS IN THE INDUSTRY IN FAVOR OF BIG OPERATORS IS TRULY NECESSARY TO ACHIEVE THE AVOWED GOALS OF ENERGY CONSERVATION AND PRODUCTION BALANCED AGAINST ENVIRONMENTAL PROTECTION. WE SINCERELY HOPE YOU WILL SEARCH YOUR CONSCIENCE FOR A LESS COMPLEX SOLUTION TO THE REQUIREMENTS OF ENVIRONMENTAL PROTECTION.

91 IN ORDER TO PROVIDE AT LEAST SOME MEASURE OF RELIEF FROM THE OVERPOWERFUL FINANCIAL BURDENS IMPOSED UPON THE SMALL OPERATOR BY THIS SECTION, WE PROPOSE THE FOLLOWING ADDITIONAL SUBSECTION TO SECTION 407:

91 LINE 5, P. 52 - IF THE REGULATORY AUTHORITY FINDS THAT THE PROBABLE ANNUAL PRODUCTION OF ANY COAL SURFACE MINING OPERATOR WILL NOT EXCEED 250,000 TONS, THE DETERMINATION OF HYDROLOGIC CONSEQUENCES REQUIRED BY SUBSECTION (b)(11) AND THE STATEMENT OF THE RESULT OF TEST BORINGS OR CORE SAMPLINGS REQUIRED BY SUBSECTION (b)(15) OF THIS SECTION SHALL BE PERFORMED BY THE REGULATORY AUTHORITY, OR SUCH QUALIFIED PUBLIC OR PRIVATE LABORATORY DESIGNATED BY THE REGULATORY AUTHORITY AND THE COST OF THE PREPARATION OF SUCH DETERMINATION AND STATEMENT SHALL BE ASSUMED BY THE REGULATORY AUTHORITY.

91 SECTION 409(a) ESTABLISHES A MINIMUM BOND REQUIREMENT OF $1 0,000. THIS MINIMUM WILL CREATE A HARDSHIP FOR THE SMALL AND MEDIUM SIZE OPERATOR WHEN COUPLED WITH THE 60 PERCENT RELEASE PROVISION OF SECTION 419(c)(1) AND THE FIVE YEAR REVEGETATION MINIMUM TERM PROVISION OF SECTION 415(b)(20). WE URGE RECONSIDERATION OF THE MINIMUM BOND REQUIREMENT FOR THOSE OPERATORS WHOSE PRODUCTION IS EXPECTED TO BE LESS THAN 250,000 TONS PER YEAR.

92 SECTION 509 CONTAINS NO APPARANT RELIEF FROM THE DECISION OF THE REGULATORY AUTHORITY WITH REGARD TO THE AMOUNT OF BOND TO BE REQUIRED FOR ANY GIVEN PERMIT APPLICATION. IT WOULD SEEM THAT IN THE ABSENCE OF STATED PER ACRE AMOUNTS OR AN UPSET PER ACRE LIMIT THERE SHOULD BE SOME APPEAL PROVISION TO AFFORD THE APPLICANT SOME REMEDY IN THE EVENT OF A QUESTIONABLE BOND AMOUNT BEING SET BY THE REGULATORY AUTHORITY.

92 SECTION 410(a) IS SILENT WITH REGARD TO THE TIME BY WHICH A PERMIT APPLICATION WILL BE GRANTED OR DENIED. WE UNDERSTAND THE DIFFICULTY IN SETTING A SINGLE RESPONSE PERIOD DUE TO THE WIDE VARIATION IN REVIEW TIMES. HOWEVER, IN THE ABSENCE OF A SPECIFIED TIME, PERHAPS

"WITHIN A REASONABLE TIME" COULD BE INSERTED AFTER THE WORD GRANT ON PAGE 57, LINE 23. THIS CHANGE WOULD BE CONSISTENT WITH THE LANGUAGE OF SECTION 414(b) WHICH MORE CLEARLY SETS FORTH THE OBLIGATION OF THE REGULATORY AUTHORITY TO RESPOND WITHIN A REASONABLE TIME. IT IS INTERESTING TO NOTE SECTION 414(a) REQUIRES A RESPONSE WITHIN THIRTY DAYS IN THE EVENT A PUBLIC HEARING HAS BEEN REQUIRED.

92 SECTION 415(b)(1) AND (2) SETS FORTH THE BASIC PURPOSES OF THIS LEGISLATION, I.E. MAXIMIZE THE RECOVERY OF THE SOLID FUEL RESOURCE AND RESTORE THE LAND AFFECTED SO AS TO SUPPORT AT LEAST THE SAME BUT PREFERRABLE HIGHER OR BETTER USES. THERE IS NO KNOWN MINING METHOD THAT MORE DIRECTLY MEETS THESE REQUIREMENTS THAN THE COMPLETE MOUNTAIN TOP REMOVAL METHOD OF MINING WITH SPOIL OR WASTE STORAGE IN HEAD-OF-HOLLOW OR VALLEY FILL AREAS.

92 MOUNTAIN TOP REMOVAL IS JUST WHAT THE NAME IMPLIES - COMPLETE REMOVAL OF ALL OVERBURDEN PERMITTING SUBSTANTIALLY COMPLETE RECOVERY OF ONE OR MORE SEAMS OF COAL WITH A RESULTING LEVEL OR GENTLY ROLLING AREA CAPABLE OF SUPPORTING MANY ALTERNATIVE AGRICULTURAL, COMMERCIAL, RESIDENTIAL OR RECREATIONAL USES IN THE FUTURE. THIS MINING METHOD PERMITS RECOVERY OF MANY SEAMS OF COAL NOT MINEABLE BY ANY OTHER METHOD BECAUSE OF SUCH FACTORS AS SEAM HEIGHT OR INADEQUATE ROOF CONDITIONS TO SUPPORT UNDERGROUND MINING. NO MINING TECHNOLOGY PERMITS A HIGHER RECOVERY OF IN-PLACE RESOURCE.

93 OVERBURDEN OR SPOIL IS STORED IN OFFSITE AREAS DESIGNED AND ENGINEERED TO ASSURE STABILITY OF THE WASTE MATERIALS. A SOLID UNDISTRUBED BERM IS LEFT AT THE OUTER EDGE OF THE DISTURBED AREA TO PREVENT FUTURE EROSION. THESE TECHNIQUES COMBINE TO ACHIEVE THE MOST DESIRABLE ENVIRONMENTAL RESULT OF ANY MINING METHOD.

93 THE MOUNTAIN TOP REMOVAL METHOD IS TREATED IN S.7 ONLY AS A VARIANCE WITH MOST RIGID REQUIREMENTS TO DEMONSTRATE CURRENT ALTERNATIVE USES FOR THE LEVEL LAND SO RESULTING INCLUDING A PRE-FINANCED PLAN FOR IMMEDIATE DEVELOPMENT. THESE REQUIREMENTS FAIL TO RECOGNIZE THAT MUCH OF THE RESOURCE TO BE RECOVERED DOES NOT LIE ADJACENT TO EXISTING DEVELOPMENTS WITH ELECTRICITY, WATER, AND SEWAGE FACILITIES READILY AVAILABLE, BUT RATHER OCCUR IN OUTLYING AREAS WHERE DEVELOPMENT MAY BE SOME YEARS IN THE FUTURE. THE PHYSICAL LOCATION OF THE RESOURCE DOES NOT IN ANY WAY ALTER THE INHERENT FACT THAT MOUNTAIN TOP REMOVAL IS UNQUESTIONABLY THE MOST EFFICIENT METHOD OF RECOVERY OF THE RESOURCE WITH THE LEAST SURFACE DISTURBANCE RELATIVE TO RECOVERY PRODUCING THE MOST DESIRABLE ENVIRONMENTAL RESULT OF ALL MINING TECHNOLOGY KNOWN TODAY.

93 WE URGE THE ACKNOWLEDGEMENT OF THESE READILY DEMONSTRABLE FACTS AND YOUR SERIOUS CONSIDERATION OF AN AMENDMENT SUCH AS WE HERE PROPOSE TO RECOGNIZE THE UNDENIABLE FACT THAT MOUNTAIN TOP REMOVAL TECHNOLOGY MORE NEARLY MEETS THE UNDERLYING PURPOSES OF THIS LEGISLATION AND SHOULD BE ACKNOWLEDGED AS AN ACCEPTED MINING PRACTICE.

93 WE PROPOSE THE FOLLOWING: SECTION 415(b)(3) LINE 21, P. 69 - AFTER "ACT:" ADD "AND PROVIDED FURTHER THAT IT SHOULD NOT BE REQUIRED TO

RESTORE TO APPROXIMATE ORIGINAL CONTOUR WHERE THE SURFACE MINING OPERATION WILL REMOVE AN ENTIRE COAL SEAM OR SEAMS RUNNING THROUGH THE UPPER FRACTION OF A MOUNTAIN, RIDGE, OR HILL BY REMOVING ALL OF THE OVER-BURDEN AND CREATING A LEVEL PLATEAU OR A GENTLY ROLLING CONTOUR WITH NO HIGHWALLS REMAINING, AND CAPABLE OF SUPPORTING POST MINING USES."

94 SECTION 415(c)(2) - DELETE.

94 SECTION 415(c)(3) - DELETE "OF THE NATURE DESCRIBED IN SUBSECTION (c)(2).

94 SECTION 415(b)(9) AS PRESENTLY WRITTEN MAY CREATE A SERIOUS SAFETY PROBLEM IN CERTAIN CASES WHERE WATER TABLES COULD BUILD UP PRESSURES BEHIND AUGER HOLES PLUGGED WITH IMPERVIOUS MATERIAL. WE PROPOSE THE FOLLOWING CHANGE:

94 SECTION 515(b)(9) LINE 24, P. 71 - AFTER "WITH" DELETE "AN IMPERVIOUS
AND NONCOMBUSTIBLE" ADD "BEST AVAILABLE NATURAL."

94 THIS CHANGE WOULD REMOVE THE POSSIBLE SAFETY HAZARD.THE CONTROL OF TOXIC DISCHARGES IS COVERED BY SEVERAL OTHER SECTIONS OF THE ACT AND WOULD HAVE TO BE DEALT WITH BEFORE BOND RELEASE IN ANY EVENT, SO THIS CHANGE DOES NOT DIMINISH CONTROL OVER THIS MATTER. WE URGE YOUR SERIOUS CONSIDERATION.

94 AS AN ACTIVE OPERATOR, I HAVE STUDIED SECTION 415(b)(10) AND SIMPLY CANNOT SEE ANY WAY BY WHICH TO COMPLY. LET ME EXPLAIN. SILT STRUCTURES ARE CONSTRUCTED TO IMPOUND RUN-OFF DURING MINING AND REVEGETATION OF THE DISTURBED AREAS INCLUDING THE SILT STRUCTURE ITSELF AND ANY ATTENDANT DRAINWAYS. LET US ASSUME REVEGETATION TAKES TWO YEARS. THIS IS TWO YEARS AFTER MINING IS COMPLETE AND THE OPERATOR HAS LEFT THE PREMISES AND IS MINING ELSEWHERE. THE SILT STRUCTURE LIKEWISE HAS BEEN REVEGETATED DURING THIS PERIOD.IS THE OPERATOR NOW TO RE-ENTER AND RE-DISTURB THE AREA OF THE SILT STRUCTURE TO REMOVE IT?WHERE IS THE MATERIAL TO BE PLACED? IS THE OPERATOR TO HAUL IT BACK UP THE SLOPE AND RE-ENTER AND RE-DISTURB THE MINED AREA TO STORE THIS MATERIAL?THE FACT IS THE MATERIAL PROBABLY COULD NOT BE HAULED UPSLOPE EVEN IF THE ALREADY RECLAIMED ROADS WERE REOPENED.

95 THE PROBLEM OF THE LONG TERM RESPONSIBILITY FOR MAINTENANCE OF THESE STRUCTURES HAS NO OBVIOUS OR EASY SOLUTION.REMOVING THE STRUCTURE DOES NOT, HOWEVER, SEEM TO BE THE ANSWER BECAUSE OF THE UNDESIRABLE NECESSITY OF DISTURBING AN AREA ALREADY STABILIZED AND THE PROBLEM OF MATERIAL STORAGE.WE RECOMMEND THE REQUIREMENT OF SECTION 415(b)(10)(c) BE DELETED.

95 SECTION 415(b)(20) PROVIDES FOR THE OPERATOR TO ASSUME RESPONSIBILITY FOR REVEGETATION FOR PERIODS OF 5 AND 10 YEARS DETERMINED BY RAINFALL. IN KENTUCKY, OUR CLIMATE CONDITIONS ARE SUCH THAT CONSISTENT REVEGETATION CAN BE ACHIEVED OVER AN 18 MONTH PERIOD. THE PROBLEM HERE IS REALLY RELATED TO BONDING AND THE CUMULATIVE EFFECT ON THE SMALL OPERATOR, THOUGH FINANCIALLY RESPONSIBLE, TO CONTINUE TO ARRANGE INCREASING BOND LIMITS BECAUSE OF THE 40 PERCENT RETENTION, WE RECOMMEND THE FOLLOWING CHANGES:

95 SECTION 415(b)(20)

95 (LINE 5, P. 77) - CHANGE "FIVE" TO "TWO"

95 (LINE 15, P. 77) - CHANGE "FIVE" TO "TWO"

95 AS AN ALTERNATIVE, A PARTIAL BOND RELEASE WHERE REVEGETATION IS ESTABLISHED WITH A 5 OR 10 PERCENT RETENTION FOR THE FULL FIVE OR TEN YEARS IS AN ALTERNATIVE TO RELIEVE THE BURDEN OF THE SMALL OPERATOR. NOTHING CONTAINED IN EITHER OF THE ABOVE PROPOSALS PREVENTS THE REGULATORY AUTHORITY FROM HOLDING THE FULL BOND FOR WHATEVER LONGER PERIOD MIGHT BE REQUIRED TO COMPLETE FULL COMPLIANCE IF A LONGER PERIOD SHOULD BE NECESSARY FOR WHATEVER REASON.

96 THE FOLLOWING RECOMMENDED CHANGES IN SECTION 415(c) WERE DISCUSSED IN CONNECTION WITH OUR RECOMMENDED ACKNOWLEDGMENT OF MOUNTAIN TOP REMOVAL AS AN ACCEPTED MINING PRACTICE:

96 SECTION 415(c)(1), P. 7,, LINE 9 CHANGE "3" TO "2"

96 DELETE SECTION 415(c)(2)

96 LINE 10, P. 79 - CHANGE (3) TO (2)

96 LINE 21, P. 80 - CHANGE (4) TO (3)

96 THE FOLLOWING CHANGE IN SECTION 415(c) IS ALSO RECOMMENDED:

96 SECTION 415(c)(3), P. 79, LINE 2 - DELETE "OF THE NATURE DESCRIBED IN
SUB-SECTION (c)(2)."

96 IT IS NOT POSSIBLE FOR ALL ALTERNATIVE POSSIBILITIES EVER TO BE FORSEEN AND PROVISION MADE TO ACCOMMODATE THEM. OUR TRUST MUST ALWAYS BE PLACED IN SOME JUDGEMENT BEING PROPERLY EXERCISED. WE HEREIN HAVE RECOMMENDED PLACING SOME TRUST IN THE JUDGEMENT OF THE REGULATORY AUTHORITY, WHETHER STATE OR FEDERAL, TO OPEN THE DOOR TO ALTERNATIVE VARIANCES IF THE STRINGENT CRITERIA OF SUBSECTIONS (A) THROUGH (G) ARE MET. SURELY YOU MUST AGREE THAT THESE REQUIREMENTS ARE SUFFICIENTLY STRONG IN AND OF THEMSELVES THAT ANY PERMIT GRANTING A VARIANCE MEETING THESE REQUIREMENTS WOULD PRODUCE AN ACCEPTABLE RESULT. IT SHOULD BE OBVIOUS THAT THE PUBLIC HEARING REQUIREMENT OF SUBSECTION (F) WOULD PRELUDE THE GRANTING OF AN UNACCEPTABLE VARIANCE. WE URGE YOUR SERIOUS CONSIDERATION OF THESE CHANGES.

96 PARTICULARLY IN EASTERN KENTUCKY WHERE SLOPES ARE STEEP, HEAD-OF-HOLLOW FILLS HAVE BECOME AN IMPORTANT SPOIL STORAGE AREA FOR MANY SOUND REASONS. FIRST IN IMPORTANCE TO THE OPERATOR IS THEIR PROXIMITY TO HIS WORKING AREA AND THE COST OF HAULING THE MATERIALS IS LESS THAT TO AN OFFSITE AREA. FROM THE ENVIRONMENTAL IMPACT STANDPOINT, PROPERLY ENGINEERED FILLS CONTROL RUNOFF OF WATER AND SEDIMENT BY CONTROLLING THE DEGREE OF THE MAIN SLOPE AND PROVIDING A VERY SHALLOW SLOPE AT THE TOE OF THE FILL. WATER FILTRATION IS OFTEN ACCOMPLISHED BY ROCK DRAINS IN THE BODY OF THE FILL. THERE REALLY IS

NO BETTER SPOIL STORAGE AREA THAN A PROPERLY ENGINEERED, DESIGNED AND CONSTRUCTED HEAD-OF-HOLLOW FILL.

97 THE LANGUAGE OF S.7 LEAVES UNCLEAR THE ACCEPTANCE OF HEAD-OF-HOLLOW FILLS AS APPROVED STORAGE AREAS. THIS MAY BE EXACTLY THE SORT OF THING THAT WOULD BE COMPLETELY CLEAR IF THE REGULATIONS WERE AVAILABLE TO US. BECAUSE OF THE GREAT RELIANCE OF OUR OPERATORS ON THIS METHOD OF SPOIL STORAGE WE WOULD PROPOSE THE FOLLOWING AMENDMENT:

97 SECTION 415(d)(1) P. 82, LINE 20 - ADD AFTER "OPERATIONS" THE FOLLOWING: "AND PROVIDED FURTHER, THAT HEAD OF HOLLOW FILLS SHALL BE DEEMED TO BE PROPER OFFSITE SPOIL STORAGE AREAS."

97 THIS AMENDMENT WOULD MAKE CLEAR THE ACCEPTANCE OF THIS SPOIL STORAGE METHOD WITHOUT DIMINISHING IN ANY WAY THE OTHER REQUIREMENTS OF ANY ACCEPTABLE SPOIL STORAGE AREA.

97 SECTION 417(c)(2) REQUIRES ALL INSPECTIONS TO OCCUR WITHOUT NOTICE TO THE PERMITTEE OR HIS AGENTS OR EMPLOYEES. THIS MANDATORY REQUIREMENT DEPRIVES THE INSPECTOR OF THE OPPORTUNITY TO INSURE THE PRESENCE OF THE OPERATOR DURING SUCH INSPECTION THEREBY MAKING POTENTIALLY NECESSARY ANOTHER TRIP TO THE SAME SITE TO INSURE NECESSARY REMEDIAL WORK IS FULLY UNDERSTOOD AND CAN BE CARRIED OUT PROPERLY. WHILE THE VALUE OF NO NOTICE INSPECTION IS FULLY RECOGNIZED AS AN EFFECTIVE ENFORCEMENT PROGRAM, THE OPTION OF ASKING THE OPERATOR TO BE PRESENT ALSO SERVES A USEFUL PURPOSE. WE WOULD RECOMMEND SUBSECTION (2) BEGIN WITH THE WORD "MAY" WHICH PRESERVES BOTH OPTIONS TO THE REGULATORY AUTHORITY.

98 SECTION 419(a) REQUIRES ADVERTISING PLACED ON FIVE SUCCESSIVE DAYS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE LOCALITY. OBVIOUSLY THIS IS AN OVERSIGHT IN THIS SECTION SINCE ALL OTHER PARTS OF THE BILL REQUIRING ADVERTISING RECOGNIZE THAT ONLY WEEKLY NEWSPAPERS ARE GENERALLY AVAILABLE IN MOST MINING AREAS. SUBSECTION (b), LINE 23, P. 100 ALSO PROVIDES MORE FREQUENT ADVERTISING THAN WEEKLY.SINCE THE REST OF THE BILL PROVIDES ONLY FOR WEEKLY ADVERTISING, WE ARE SURE THESE ARE OVERSIGHTS WHICH PROBABLY WOULD BE CORRECTED BY YOUR STAFF PRIOR TO FINAL APPROVAL OF THE BILL AND WE POINT THEM OUT ONLY SO THAT THEY MAY NOT BE OVERLOOKED.

98 WE CANNOT HELP BUT WONDER AT THE REASONS FOR INCLUDING SECTION 420. CERTAINLY THE RIGHTS OF ALL OUR CITIZENS ARE CLEARLY SET FORTH IN OTHER PLACES WITHOUT SEEMING TO INVITE LITIGATION BY EMPHASIZING THESE INHERENT RIGHTS. IF THIS INVITATION IS TO BE EXTENDED, THEN LET US BE SURE THAT ITS ACCEPTANCE INVOKES A DIFINITIVE RESPONSIBILITY. WE PROPOSE THE FOLLOWING ADDITION:

98 SECTION 420(d) LINE 17, P. 103 - AFTER "PARTY" ADD "AND IN ADDITION THERETO, IN THE EVENT THAT THE COURT DETERMINES THAT A PERSON HAS EXERCISED THE RIGHT TO COMMENCE A CIVIL ACTION HEREIN WITHOUT GOOD BASIS THEREFORE, MAY ALLOW RECOVERY OF ANY DAMAGES THAT MAY HAVE BEEN A CONSEQUENCE OF SUCH ACTION."

98 THE INCIDENCE OF SUITS CAUSING SERIOUS COSTLY DELAYS AND FINANCIAL DAMAGE TO BOTH PRIVATE AND GOVERNMENT PROJECTS IN RECENT YEARS DICTATES THE NEED FOR A MEANS OF REQUIRING

RESPONSIBILITY FOR FRIVOLOUS ACTS. WE URGE YOUR CONSIDERATION OF THIS ADDITION.

98 ALTHOUGH S.7 IS STYLED "SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977", UNDERGROUND MINES ARE EQUALLY TREATED UNDER THE ACT. WE THEREFORE URGE THE ADOPTION OF THE FOLLOWING IN RECOGNITION OF THIS FACT:

98 SECTION 428(2) LINE 25, P. 125 - ADD AFTER "SURFACE" THE FOLLOWING: "OR UNDERGROUND."

99 NO RESPONSIBLE OPERATOR COULD APPEAR BEFORE YOU AND NOT DISCUSS HIGHWALLS.BECAUSE THIS IS SUCH A CONTROVERSIAL SUBJECT I HAVE PURPOSELY LEFT IT TO BE DISCUSSED LAST. LET ME MAKE CLEAR THAT WE HAVE THE TECHNOLOGY AND EQUIPMENT TO RESTORE ORIGINAL CONTOUR AND COMPLETELY COVER HIGHWALLS. WE DO NOT, HOWEVER, BELIEVE THAT MONEY IS THE ONLY COST OF ACCOMPLISHING THIS.

99 IT IS EASY FOR THE GOVERNOR AND OTHER REPRESENTATIVES OF PENNSYLVANIA WHOSE LAW IS WIDELY ADVERTISED AS MORE STRINGENT THAN THIS PROPOSED BILL TO FAVOR COMPLETELY COVERING HIGHWALLS. AFTER ALL, APPROXIMATELY NINETY PERCENT OF ALL PENNSYLVANIA'S RESERVES OCCUR UNDER SLOPES OF LESS THAN TEN DEGREES AND THEIR REGULATIONS PROVIDE FOR TERRACING AS AN ALTERNATIVE, PRESUMABLE FOR THE REMAINING TEN PERCENT OF THEIR OPERATION WHICH OCCUR ON SLOPES ABOVE TEN DEGREES. KENTUCKY IS NOT SO BLESSED WITH SUCH TOPOGRAPHY.

99 THE ICF, INCORPORATED DRAFT REPORT SUBMITTED TO THE COUNCIL ON ENVIRONMENTAL QUALITY AND ENVIRONMENTAL PROTECTION AGENCY WHICH HAS BEEN SO WIDELY QUOTED IN THE PRESS AS CONCLUDING SUCH A MINIMAL EFFECT ON THE INDUSTRY OF THE ENACTMENT OF THIS LEGISLATION, CONTAINS SOME INTERESTING DATA THAT MAY SHED SOME LIGHT ON OUR PROBLEMS. PAGE II - 8 REPORTS "THREE STATES HAVE SUBSTANTIAL AREAS OF STEEP SLOPES (SOURCE: SKELLY & LOY, INC.), KENTUCKY, EAST, VIRGINIA, AND WEST VIRGINIA, SOUTH". PAGE II - 35 SETS FORTH COST ANALYSES OF THE OAK RIDGE MODEL MINES WHICH SHOW OPERATING COST COMPARISONS WHICH CLEARLY SHOW A COST OF $12.31/TON IN 1974 $FOR A 90 FOOT HIGHWALL AND A 25 DEGREE SLOPE TO ACCOMPLISH APPROXIMATE ORIGINAL CONTOUR AS AGAINST $7 .88/TON FOR THE NEXT HIGHEST DEGREE OF RECLAMATION ON SIMILAR TERRAIN. WHILE ICF GOES ON TO ADJUST THESE COSTS DOWNWARD, NOWHERE IS GIVEN ANY DETAILED EXPLAINATION OF THE REASONS FOR SUCH ADJUSTMENTS OTHER THAN ENGINEERING THEORY. IN THE ABSENCE OF ANY REAL JUSTIFICATION FOR CHANGE OR PRESENTATION OF ACTUAL OPERATING COSTS IN SUPPORT OF THE THEORIES PROPOSED ONE MUST ASSUME THE OAK RIDGE FIGURES REPRESENT ACTUAL COST DIFFERENCES WHICH IN THE CASE REPORTED ARE $4.43/TON WHICH IS MORE NEARLY $5.00/TON IN 1978 $.THIS CONTRASTS WITH ICF'S ADJUSTED FIGURES OF LESS THAN $1.00/TON. IN ACTUAL COST INCREASE OF $5 .00/TON WOULD RESULT IN MANY TIMES HIGHER UNEMPLOYMENT AND LOSS OF PRODUCTION THAN CONCLUDED BY ICF.

100 TURNING FROM ECONOMICS TO THE GENERAL CONCLUSIONS OF THE REPORT I WOULD LIKE TO QUOTE FROM THEIR PAGE 16:

100 "IT IS NOTED THAT WHILE IT APPEARS THAT APPROXIMATE ORIGINAL CONTOUR REGRADING PROVIDES A GENERALLY HIGH LEVEL OF ENVIRONMENTAL PROTECTION, IT DOES NOT ALWAYS ACHIEVE THE BEST

LEVEL OF PROTECTION. DURING THE CRITICAL PERIOD BETWEEN REGRADING AND THE ESTABLISHMENT OF A VEGETATIVE COVER, THE SITE IS PARTICULARLY VULNERABLE TO EROSION DUE TO RAINWATER RUNOFF.SOME STUDIES BY GOVERNMENT AGENCIES AND ENGINEERING FIRMS HAVE INDICATED THAT TERRACING IS OFTEN DESIRABLE IN REDUCING RUNOFF AND CONSERVING MOISTURE. FURTHER, IN MANY AREAS THE HAUL ROADS AND MINING BENCHES, WHEN PROPERLY RECLAIMED, HAVE CREATED NEW LAND-USE OPPORTUNITIES."

100 HEREIN LIES THE ENTIRE POINT I HOPE TO CONVEY TO EACH OF YOU. THERE IS NO OPPOSITION ON OUR BEHALF TO RESTORING ORIGINAL CONTOUR AND COMPLETELY COVERING HIGHWALLS AS A GENERAL CRITERIA FOR THE STANDARD OF RECLAMATION. WHAT WE ASK IS RECOGNITION OF THE FACT RECOGNIZED ALMOST UNANIMOUSLY BY CURRENT ENGINEERING REPORTS THAT THERE ARE CIRCUMSTANCES WHERE OTHER WAYS MAY PRODUCE A MORE DESIRABLE ENVIRONMENTAL AND LAND USE RESULT.

100 HISTORICALLY THERE HAS BEEN A COMINGLING OF THREE MINING RESULTS, ie HIGHWALLS, SPOIL OVER THE OUTSLOPE AND LANDSLIDES. THE DAMAGE THAT HAS BEEN DONE TO THE LAND BY PAST PRACTICES IS CLEARLY AND COMPLETELY DOCUMENTED. THERE ARE PROVISIONS IN THIS LEGISLATION TO RECLAIM AND RESTORE THESE LANDS WHICH WE COMPLETELY SUPPORT. LET ME POINT OUT THAT THE HIGHWALL HAS DONE NO PHYSICAL DAMAGE. THE PAST PRACTICE OF PLACING SPOIL OVER THE OUTSLOPE RATHER THAN IN A STABLE SPOIL STORAGE AREA IS THE PRACTICE RESULTING IN LANDSLIDES AND ALL OF THE ADVERSE CONSEQUENCIAL RESULTS. THE HIGHWALL HAS CAUSED NONE OF THIS.

101 THE GREAT MAJORITY OF THE LOW SULPHUR COAL RESERVES OCCUR IN THE STEEP SLOPE STATES. PRODUCTION OF THIS HIGH QUALITY COAL IS BADLY NEEDED IF NOT VITAL TO MAINTAIN AIR QUALITY IN HIGH DENSITY AREAS.

101 WE RESPECTFULLY SUBMIT THAT IN THOSE AREAS OF STEEP SLOPE MINING THE ALTERNATIVES OF HIGHWALL REDUCTION WITH APPROPRIATE HIGHWALL SCREENING BY THE USE OF VEGETATIVE COVER TO RESTORE AESTHETIC VALUES MAY BE A REASONABLE ALTERNATIVE TO COMPLETELY COVERING THE HIGHWALL BY PRODUCING A MORE SECURE ENVIRONMENTAL RESULT AND GENERATING THE OPPORTUNITY FOR BETTER LAND USE WHILE RETAINING THE RECOVERY OF MUCH OF THE HIGH QUALITY LOW SULPHUR COAL AVAILABLE FOR US.

101 WE SINCERELY HOPE YOU WILL NOT CLOSE YOUR MINDS TO RESPONSIBLE, SOUNDLY ENGINEERED AND ENVIRONMENTALLY ACCEPTABLE ALTERNATIVES IN FAVOR OF THE HIGHLY EMOTIONAL AESTHETIC ISSUES WHICH CONTRIBUTE NO HEAT IN OUR HOMES. REASONABLE PEOPLE SHOULD BE ABLE TO ACCEPT AND DEVISE RESPONSIBLE SOLUTIONS WHICH ADDRESS ALL OF OUR NEEDS. WE ASK ONLY THE OPPORTUNITY TO DEMONSTRATE TO THE RESPONSIBLE REGULATORY AUTHORITY THE SOUNDNESS OF THESE ALTERNATIVES FROM THE STANDPOINT OF ENVIRONMENTAL RESULT AND LAND USE OPPORTUNITY WITH THE OPTION LEFT IN THE HANDS OF THE REGULATORY AUTHORITY, STATE OF FEDERAL, TO AUTHORIZE SUCH ALTERNATIVES ON SUCH A SHOWING.

101 WE STRONGLY URGE THIS SUBCOMMITTEE TO SCHEDULE FIELD TRIPS FOR ITS MEMBERS TO THE STATES MINING THE MAJORITY OF THE NATION'S COAL PRODUCTION TO SEE FIRST HAND THE INDUSTRY PRACTICES THIS LEGISLATION IS DESIGNED TO REGULATE. NO ORAL TESTIMONY OR

PHOTOGRAPHIC EXHIBIT COULD POSSIBLY CONVEY THE UNDERSTANDING OF THIS INDUSTRY AND ITS PRACTICES WITH WHICH YOU SHOULD BE FAMILIAR IN YOUR EFFORTS TO DEVISE MEANINGFUL LEGISLATION. WE PARTICULARLY INVITE YOU TO KENTUCKY.

102 THANK YOU FOR PERMITTING ME THE OPPORTUNITY TO SPEAK TO YOU TODAY. I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

103 Testimony of Herman D. Regan, Jr. President Kenvirons, Inc. Frankfort, Kentucky on S. 7 "Surface Mining Control and Reclamation Act of 1977" before Subcommittee on Minerals, Materials and Fuels Committee on Interior and Insular Affairs U.S. Senate

103 March 1, 1977

103 Mr. Chairman, Gentlemen, my name is Herman D. Regan, Jr. I am a registered professional engineer in the Commonwealth of Kentucky and President of Kenvirons, Inc.Kenvirons, Inc. based in Frankfort, the capital city of Kentucky, is an interdisciplinary environmental engineering and management services firm.The corporation is managed by and consists of, technically oriented individuals, trained and experienced in environmental program management and impact assessments. Based on our extensive experience with environmental issues and our knowledge of Kentucky's coal industry, we are in a position to advise clients, government and industry on optimum procedures of developing and using energy resources in an environmentally sound and socially acceptable manner.

103 The Kentucky Independent Coal Producers, Inc., of Frankfort, Kentucky retained Kenvirons to study S. 7 (Surface Mining Control and Reclamation Act of 1977) and determine the impact of the Act on the operation of small responsible coal operators in Kentucky.

103 On behalf of our client and Kenvirons, I would like to express our appreciation for allowing us to present testimony before you on S. 7.We have followed the Act very closely over the years and are well aware of the time and effort you and your staff have spent on preparing the act.

103 The presentation will discuss the Act as it pertains to the sequence of events that must be followed by an applicant if a permit to mine (surface or deep) is to be issued. The purpose of this discussion is:

104 1. To graphically point out what an operator faces when he applies for a surface coal

mining and reclamation permit pursuant to an approved State program or a Federal program
under the provisions of the Act.

104 2. Highlight potential problem areas associated with the application requirements
regarding time to obtain Permit and/or lack of adequate data sources.

104 In order to graphically illustrate what an operator will face in complying with the Act, a
chart depicting the sequence of events that must take place before a permit to mine can be issued
under the proposed Act has been developed and is a part of the packet presented to you before
this meeting.

104 If I may direct your attention to the chart, you will notice that certain assumptions have
been made regarding the coal company that is going to file an application for a permit to mine in
accordance with the provisions of S. 7. Section 407 (Application Requirements) of the Act list in
407(b) the business items that must be in the permit application. The minimum requirements
shown on the chart essentially fulfill those requirements. The key point is the company is ready
to proceed with the application to mine and so informs their engineer. Timing to determine how
long it will take to obtain the permit starts at this point.

104 The first step in the process is to design a field program for a Baseline Study to collect
the data necessary to meet the requirements of Section 407 (Application Requirements), and
Section 408 (Reclamation Plan Requirement).Estimated time for design of such a field program
is fifteen (15) days.

104 Once the field program is designed a series of actions can take place at the same time in
the following areas:

104 Hydrologic

104 Subsurface (geology)

104 Air Quality

104 Soils

104 Topography

104 Archaeological & Historical

104 Socio-Economic

104 Land Use

104 Noise

104 Terrestrial

104 Aquatic

104 (See Illustration in Original)

105 The following areas are of real concern from the standpoint of time to accomplish and/or data availability:

105 Hydrologic

105 Subsurface

105 Topography

105 Air Quality

105 Section 407(b)(11) requires:

105 "A determination of the hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding area so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability:"

105 The item of concern of this provision is not that the hydrologic consequences have to be determined but rather the term "under seasonal flow conditions". At this time with your permission, I would like to introduce Mr. Douglas Griffin, Kenvirons Vice President for Water Resources to discuss the Hydrologic aspects of S. 7 in some detail. Mr. Griffin is a hydrologist and qualified to speak on this subject. When Mr. Griffin has finished his presentation I will return to finish the discussion on the chart.

105 - Mr. Griffin -

105 Thank you Mr. Griffin.

105 Section 407(b)(15) requires the permit application to contain a statement of the results of test borings or core samples, including analysis of the coal and the overburden. Estimated time

for subsurface literature search, drilling, analysis and preparation of the Subsurface Report is 175
days or 6 months.

105 Section 407(b)(13) requires:

105 "an accurate map or plan to an appropriate scale clearly showing (A) the land to be
affected as of the date of application and (Be all types of information set forth on topographical
maps of the United States Geological Survey of a scale of 1:24,000 or larger, including all
manmade features and significant known archeological sites existing on the date of application.
Such a map or plan shall among other things specified by the regulatory authority show all
boundaries of the land to be affected, the boundary lines and names of present owners of record
of all surface areas abutting the permit area, and the location of all buildings within one thousand
feet of the permit area;"

106 It is quite possible a new map will have to be prepared because the existing USGS
1:24,000 topograhical maps do not contain all of the data required in 407(b)(13). Most mapping
today is accomplished by aerial photography. It is commonly understood that aerial photography
for mapping purposes can not be accomplished during certain seasons of the year.The reason for
this is that due to foliage during the spring, summer and early fall it is impossible to distinguish
the many land and cultural features. Therefore an estimated time of 225 days of 7 1/2 months
was allowed for the Topography Section.

106 Air quality was mentioned as a possible time consuming effort for the following reasons:

106 Section 408(a)(6) requires:

106 "the steps to be taken to comply with applicable air and water quality laws and
regulations and any applicable health and safety standards;"

106 Section 501(5) states:

106 "surface coal mining operations" means -

106 (A) activities conducted on the surface of lands in connection with a surface coal mine or
surface operations and surface impacts incident to an underground coal mine, the products of
which enter commerce or the operations of which directly or indirectly affect interstate

commerce. Such activities include excavation for the purpose of obtaining coal including such
common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area
mining, and in situ distillation or retorting, leaching or other chemical or physical processing, and
the cleaning, concentrating, or other processing or preparation, loading of coal for interstate
commerce at or near the mine site: Provided, however, ..."

107 Should an operation include a coal preparation plant then the preparation plant falls
under the regulations for the Prevention of Significant Air Quality Deterioration [40 CFR Section
52.21(d)(1)(2)(3)] promulgated by the Environmental Protection Agency. Fugitive dust from
haul roads, or loading facilities could require a long term study if the operation is in or near a
Class I designated area.For these reasons an estimate of 245 days or 8 months is shown for Air
Quality. In most cases the time to accomplish the air quality section would be on the order of 30
to 60 days.

107 As mentioned previously, we have these highlighted as the four potential problem areas.
(Hydrologic, Subsurface, Topography, Air)

107 Preparation of subsurface map and cross section map can take place upon completion of
the subsurface report. Estimated time for Preparation of Map is 30 days.

107 Topographic map can be prepared within 30 days of completion of Topography Report,
Archaeological Report and Socio-Economic Report.

107 When all the reports shown (Air, Hydrologic, etc.) and the Topographic map and the
Subsurface map and Cross Sections are completed, a report on the existing environment can be
prepared. Estimated time of preparation of the Report is 30 days.

107 Upon completion of the topographic map, subsurface map, and the existing environment
report, the mining plan showing the information required by Section 407(b)(7) and 407(b)(8) is
prepared. Estimated time of preparation is 30 days.

107 Once the mining plan is completed the Reclamation plan as required by Section 407(d)
and Section 408 is prepared. Estimated time to prepare is 60 days.

107 Following the completion of the Mining and Reclamation Plan, the Impacts on the
Environment can be determined. Estimated time to complete is 30 days.

107 (Note: Application is filed at this point for NPDES Permit. Time to accomplish this task will not be discussed since this is an existing requirement under PL 92-500.)

107 Upon completion of Impacts on the Environment section the Application for Surface Coal Mining and Reclamation Permit can be completed and submitted to the approved State program or a Federal program under the provisions of S. 7 for their review and appropriate action. Time to prepare Application 15 days, submit application 3 days.

108 Section 413(a) requires that at the time of submission of an application an advertisement of the ownership, precise location, and boundaries of the land to be mined be placed in a local newpaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks.

108 Section 413(b) allows any person with a valid legal right thirty (30) days to submit written objections and request a hearing.

108 Section 414(b) states:

108 "If there has been no public hearing held pursuant to section 413(b), the regulatory authority shall notify the applicant for a permit within a reasonable time, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for the said disapproval. The regulatory authority shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor."

108 If there is a request for a public hearing, Section 413(b) states:

108 "Any person . . .. If written objections are filed and a hearing requested, the regulatory authority shall then hold a public hearing in the locality of the proposed mining with a reasonable

time of the receipt of such objections. The date, time, and location of such public hearing shall
be advertised by the regulatory authority in a newspaper of general circulation in the locality at
least once a week for three consecutive weeks prior to the scheduled hearing date . . .."

109 The regulatory body will act "within a reasonable time" to approve or disapprove a
permit and to call a public hearing.For estimating purposes this is assumed to be 60 days.

109 Section 414(a) states:

109 "If a public hearing has been held pursuant to section 413(b), the regulatory authority
shall issue and furnish the applicant for a permit and persons who are parties to the
administrative proceedings with the written finding of the regulatory authority, granting or
denying the permit in whole or in part and stating the reasons therefor, within thirty days of said
hearings."

109 Time required from start of Field Program to Preparation of Report on existing
environment is 14 months.(Assuming that the Hydrologic information can be obtained in one (1)
year.In similar cases requiring seasonal flow information it has taken two or more years.)

109 From preparation of Environmental Report to Submission of Application to regulatory
agency will take an estimated 4 1/2 months.

109 From Submission of Application to regulatory agency to issuance of permit 4 months
assuming no public hearing and "within a reasonable time" to be 2 months.

109 Many of the Eastern Kentucky operations utilize the mountaintop removal method of
mining. S. 7 would require a variance for this type of mining. A variance request requires a
public hearing. Time to obtain a permit if a public hearing is involved is estimated to be 7
months assuming "within a reasonable time" to be 2 months and the regulatory agency can rule in
favor of issuing the permit.

109 Total estimated time to obtain permit from start of Design of Field Program is:

109 a. 22 1/2 months if a public hearing is not required.

109 b. 25 1/2 months if a public hearing is required and the regulatory agency can issue the
permit.

109 In summary, we have graphically shown what an operator faces when he applies for a permit and highlighted the potential problem areas associated with the application requirements regarding time to obtain permit and/or lack of adequate data sources. The time was estimated on the average size permit for Kentucky. (40 to 60 Acres)

109 Once again, thank you for the opportunity to appear before this Committee.

110 Testimony of Douglas C. Griffin Vice President Kenvirons, Inc. Frankfort, Kentucky on S. 7 "Surface Mining Control and Reclamation Act of 1977" before Subcommittee on Minerals, Materials and Fuels Committee on Interior and Insular Affairs U.S. Senate

110 March 1, 1977

110 Mr. Chairman, Committee Members, my name is Douglas C. Griffin, I am a principal in the firm Kenvirons, Inc. of Frankfort, Kentucky, an Environmental Engineering and Management Consulting Firm representing the Kentucky Independent Coal Producers, Inc. I am a professional engineer registered in the states of Kentucky, Tennessee and South Carolina.I hold a Masters degree in Civil Engineering from the University of Kentucky with specialized study in water resources and hydrology.

110 One of our primary concerns with the proposed "Surface Mining Control and Reclamation Act of 1977" is the required hydrologic studies for mining permit applications. It is accepted that such study is desirable. However, the magnitude of the proposed requirements under current conditions presents a formidable - and sometimes impossible - set of circumstances for the coal producer.

110 As now written, (S. 7) requires "a determination of the hydrologic consequences of mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon the water availability;".

111 This short subsection of the bill presents an unreasonable approach to a hydrologic determination due to the following:

111 1. The required data does not exist.

111 2. The time frame necessary to acquire the necessary data could vary from one to several years, depending upon the interpretation,

111 3. The cost of data acquisition would be vast, and

111 4. Any assessment of all anticipated mining in the area is virtually an impossible task for an individual, independent producer seeking a permit in only one portion of the watershed area.

111 In virtually all hydrologic studies, the basic unit under consideration is the watershed, or the area which drains to a given point. By combining the mining site with the surrounding area, the basic unit becomes totally unworkable for the magnitude of study being proposed. The watershed usually is much larger than the area being proposed for a permit.This raises a multitude of unknown variables which must be considered.Assessment of cumulative impact is particularly difficult when it is impossible to make any meaningful determination of anticipated mining. Kentucky's system of land ownership is such that a great percentage of mineral and surface ownership is divided and most ownership is in relatively small tracts. This obviously complicates any attempt at a hydrologic study such as is proposed, even for a relatively small watershed. A determination of anticipated mining would necessarily involve determining the activities of others over which a producer probably would have no control. The only future activities which may reasonably be anticipated are those over which a producer has direct control.

111 Data establishing quantity and quality of water in surface and ground water systems, including dissolved and suspended solids under seasonal flow conditions, does not exist for most of the small streams in Kentucky. Virtually all data gathering efforts by governmental agencies have been concentrated in larger watersheds, and would not be site specific as required by S. 7.

111 The United States Geological Survey publication "Water Resources Data for Kentucky - Water Year 1975" shows 49 active flow measuring stations supplemented by approximately 30

more low-flow partial or annual stage stations in the Eastern Kentucky Coal Fields. There are also 26 water quality stations, 9 of which measure only temperature, with 18 more partial records stations and 9 observation wells for groundwater measurements. These few stations cover approximately 10,270 sq. miles. In contrast, most mine permits cover a relatively small area, usually less than 100 acres which is a much smaller area than is measured by any of the existing stations. The data to be required by S. 7 does not exist. Consequently a modification of the requirements relative to "seasonal" data should be made allowing use of existing data until such time as specific flow data become available.

112 In order to gather seasonal data, a minimum of one year would be required and, the reliability of such short-term data would most certainly be open to question. It is doubtful if any meaningful data could be derived from such a short record. At an absolute minimum, the data collection to satisfy the requirements of S. 7 would require monitoring of quantity and quality of flow for at least one year, but should be longer if meaningful data is to be gathered. The same applies to ground-water data, complicated by the fact that even less data exists than for flow.

112 Time factors for obtaining required data are significant. This makes significant the financial burden of gathering the data. Continuous monitoring will be necessary to gather data required by S. 7. Other climatological data such as precipitation, wind speed, and direction and temperature may be required and would have to be acquired by monitoring. These and associated laboratory costs add up to a significant cost factor. Most of the smaller companies are not equipped or staffed for such activities and therefore have to obtain outside expertise.

112 Further requirements are based on the premise that sufficient trained personnel are available to design the data collection programs and make the necessary hydrologic determinations. This is a fallacy. In reality, the number of engineers specifically trained in hydrology is limited. Many of these are employed by governmental agencies involved in ongoing hydrologic programs and unavailable to producers.Last year more than 3000 mining permits were submitted to regulatory agencies in the Commonwealth of Kentucky. It would be impossible for the existing personnel currently trained in the filed of hydrology to prepare the

number of studies of the type which would be required under S. 7. The same applies to review of such permit applications by the regulatory agencies. If it were possible to have the vast number of studies done, it is doubtful that regulatory agencies now have sufficient personnel for the necessary review.

112 According to Dr. Don J. Wood, former Assistant Dean of Graduate Study, College of Engineering, University of Kentucky, less than one-half of the graduates have the basic course in hydrology, and only about two advanced degree candidates pursue this course of study annually. Glen E. Murray, Kentucky State Conservationist for the U.S. Soil Conservation Service, states that this agency has difficulty in obtaining trained hydrologists at salaries in the $17,000 to $20,000 range. He attributes this difficulty to the fact that very few graduate with this specialty. Dr. Billy J. Barfield of the University of Kentucky Department of Agricultural Engineering confirms, adding that there has been very little incentive for students to pursue post graduate training in the area when the job market has been rather good without this training.

113 In summary, the requirements dictated by S. 7 create a situation which requires the collection of data not heretofore assembled. Further it creates unreasonable delay and cost factor application preparation; and requires personnel levels in the field of hydrology which simply are not available.

113 Thank you for your time.

114 Statement in Support of Testimony presented by Mr. Charles Schwab Kentucky Independent Coal Producers, Inc. on S. 7 "Surface Mining Control and Reclamation Act of 1977" before Subcommittee on Minerals, Materials and Fuels Committee on Interior and Insular Affairs U.S. Senate March 1, 1977

114 I am Herman D. Regan, Jr., President of Kenvirons, Inc., an environmental engineering and management services firm located in Frankfort, Kentucky. Kenvirons was retained by the Kentucky Independent Coal Producers, Inc. to review S. 7 and comment on the impact of the act on the small responsible independent operator from an environmental engineering standpoint.

114 This statement will be limited to two issues "mountaintop removal" and "return to approximate original contour".

114 Mountaintop removal is a surface mining method in which all overburden covering a coal seam is removed in order to recover virtually all of the coal. Excess spoil is hauled to a nearby hollow to create a valley fill, or "head-of-the-hollow" fill. In Eastern Kentucky area, surface-mining other than contour mining with full or partial haulback is mined by mountaintop removal.Mountaintop removal, with haulback and the use of valley fills, is the most successful coal surface mining and reclamation technology developed to date for steep slope areas.

114 There are numerous advantages to mountaintop removal methodology:

114 A. Recovers coal not recoverable by underground methods.

114 B. Recovers total coal seam reserve, eliminating the possibility of later reopening of the mine.

115 C.Relatively low ratio of acres disturbed to coal recovered.

115 D. Low rates of erosion due to surface water runoff.

115 E. Spoil stacked on solid bench to 20 feet above the bottom of the coal.

115 F. Aesthetically more acceptable than contour mining since no highwall is left.

115 G.Post-mining land-use potential since scarce flat land is created.

115 Mountaintop removal is totally responsive to one of the major purposes of S. 7 stated in Section 102(f):

115 "assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being, is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy;"

115 Eastern Kentucky surface mined coal is needed as an essential source of energy and, more importantly, as an essential source of clean energy as stated in the Clean Air Act.

115 In steep slope areas of Eastern Kentucky and elsewhere in Appalachia, no other existing surface mining technology can cause greater recovery of the solid fuel resource; no other surface mining technology can possibly recover more coal per acre of surface disturbed.

115 It is recommended that the Committee give serious consideration to classifying mountaintop removal as an accepted practice of surface mining, thereby removing the requirement for variance as required by S. 7 for this type mining.

115 Kenvirons fully supports your intent to protect the environment by placing the requirement to restore to the approximate or original contour in S. 7. However, it must be pointed out that it does not always follow that restoration to approximate original contour will achieve the best level of environmental protection when mining on steep slopes. The following arguments are respectfully submitted for not always requiring return to the approximate original contour:

116 4 uiring return to the approximate original contour:

116 "Topographic consideration for erosion control include slope steepness and length.As slope steepness increases, there is a corresponding rise in the velocity of the surface runoff, which in turn results in greater erosion. A doubling of the velocity of water produced by increasing the degree and length of the slope enables water to move soil particles 64 times larger, allows it to carry 32 times more soil material, and makes the erosive power, in total, 4 times greater." n1

116 Slope design should be based on the erodibility of the surface soils as well as stability against landslides. Restoring the approximate original contour may not be desirable in all cases. A reduction in relief and an overall flattening of the topography may be desirable from an erosion and sediment control standpoint. It must be remembered that shorter or flatter slopes are less erodible. n2

116 n1 Erosion and Sediment Control: Surface Mining in Eastern U.S., Environmental Protection Agency, Technology Transfer Seminar Publication, EPA-625/3-76-006, October 1976, p. 29.

116 n2 Ibid, p. 32.

116 A critical period in steep slope reclamation is the time between regrading and the establishment of a vegetative cover. It is during this period that the site is particularly vulnerable to erosion due to rainwater runoff. At the original contour, erosion potential could be high:

116 "The length and percent of slope are important factors in erosion control and vegetative establishment. A general rule-of-thumb is that as the percent of slope doubles, soil loss increases 2.6 times, and as the length of slope is doubled, soil loss increases 3.0 times. Thus as the steepness and length of slope increase, the amount of erosion and soil loss increase, making it difficult to revegetate these areas (i.e., steep and/or long outslopes, highwalls, and ungraded spoil banks) . . . Precautions must be taken to control erosion on sloping areas regardless of use. Diversions or terraces that break the slope length and remove runoff to a safe outlet also help in preventing stream siltation and damage to adjoining lands." n3

116 n3 Draft Final Report - Energy and Economic Impacts of H.R. 13950 ("Surface Mining Control and Reclamation Act of 1976", 94th Congress), ICF Incorporated, 1990 M Street, Northwest, Suite 400, Washington, D.C. 20036, p. V-15

116 This viewpoint was also expressed in a two-year study in Breathitt County, Kentucky by the U.S.D.A. Forest Service. Here, mechanical stabilization (terracing) was seen as useful in establishing a vegetative cover:

116 "Terraces, long an effective means of controlling surface runoff and soil erosion on agricultural land, also can be useful in checking runoff and erosion on surface-mined land.

116 It is not surprising that water is wasted and erosion results when long slopes of bare earth are exposed during mining to the forces of falling rain and subsequent overland flow. Although vegetation provides some protection against runoff and erosion, it often is necessary to increase the protection against high-intensity rains by some mechanical means. Terraces represent one alternative.

116 It has been found on agricultural land that while directly reducing runoff and erosion terraces also conserve moisture. This enhances the establishment and growth of vegetation. The vegetation, in turn, further regulates runoff and erosion.

116 Unfortunately, vegetative establishment on surfacemined land often is a long-term process. During the first year, perennial cover crops may not provide very efficient control, yet the first year is most critical on surface-mined areas. Furthermore, surface-mining may be

completed at a particular time of year when rapid establishment of vegetation is impossible.
Thus some form of mechanical stabilization, such as terraces, becomes necessary." n4

116 n4 Ibid, p. V-16.

116 Engineers, geologists, hydrologists, and soil scientists all believe that newly graded long
steep slopes are highly vulnerable to erosion and the steeper and longer the slope, the greater the
vulnerability.

116 Further is must be pointed out that in many areas of Eastern Kentucky, there is a shortage
of flat, flood-free land that could be developed for the following uses if the highwalls were left
and the benches properly reclaimed:

116 1. Housing and industrial use

116 2. Agricultural Purposes

116 3. Openings for wildlife (including food, cover and water)

116 4. Access roads or trails for:

116 a. Forest fire breaks

116 b. Forest fire control crews

116 c. Recreation, hiking, hunting, camping, fishing, etc.

116 For these reasons it is respectfully requested that the return to the approximate original
contour not be required where slope stability analysis indicates that the spoil material will not
remain stable following mining and reclamation or the owner of the property has potential uses
for the land that could not best be served by backfilling to the original contour.

119 Senator METCALF. I understand Mr. Clyde Moore, who is listed as the next witness, is
not here but that someone will testify for him.

119 Senator FORD. I am informed Charles Franzman will be taking Mr. Moore's place. That
is the information that came to me.

119 Senator METCALF. Please be mindful of the fact we have a rather long witness list
today. I am going to run right through until 2 o'clock. Today at 2 o'clock, the committee is
holding a meeting for the assignment of members to the subcommittees. The Senate goes into

session at 3 o'clock, and I have not had permission to continue this hearing beyond that time. So
I hope to complete this meeting by 2 o'clock.

119 Mr. FRANZMAN. Mr. Chairman, we will be brief.This is a summary of a larger report. I
would like to also say the presentation relies heavily on some photographs we have, some color
slides which we understand are difficult to project here in this room.Do you have copies of the
presentation? The photographs are inside.

119 Senator METCALF.Yes.

STATEMENT OF CHARLES FRANZMAN, LANDSCAPE ARCHITECT,
HARLAND BARTHOLOMEW AND ASSOCIATES, ATLANTA, GA., ACCOMPANIED BY
LAIRD ORR, LONDON, KY.; CHARLES DEAN, PINEVILLE, KY.; AND HENRY
SPALDING, HAZARD, KY.

119 Mr. FRANZMAN. If you could follow those photos it would be helpful and I
believe will answer some of the questions that have already been read.

119 My name is Charles Franzman. I am a landscape architect, land planner, and a partner in
the firm of Harland Bartholomew and Associates in Atlanta, Ga. I represent Mr. Laird Orr,
London, Ky., with me at the table, along with Mr. Charles Dean from Pineville, Ky., and Mr.
Henry Spalding, Hazard, Ky.Mr. Dean also represents the Asher interests who own large tracts of
land around Pineville, Ky.

119 These gentlemen are property owners in eastern Kentucky whose lands are leased to mine
operators. We are not here to oppose the Surface Mining Control and Reclamation Act of 1977
(S. 7) in principle but to suggest benefits to be gained by two important changes we would urge
you to consider.

119 Our firm prepared in 1975 a comprehensive, long-range surface mine reclamation plan for
a 10,000-acre tract for the Asher ownership in Bell County, Ky. Implementation of that 20-year
plan has begun.

119 The Kentucky Department of Natural Resources and Environmental Protection praised the
plan as the most comprehensive approach to reclamation ever submitted. Through the interest of
the U.S. Forest Service, I was asked by the University of Kentucky to present the plan to a
seminar of miners and planners in April of 1978. Dr. David Maneval, Science Advisor to the
Appalachian Regional Commission asked me to make a presentation of the plan to staff members

of his Commission and to Mr. James Paone, Chief, Division of Environment for the Bureau of
Mines, who requested a copy of the plan and reviewed it in detail.

120 We are now under contract to Mr. Orr to prepare a similar reclamation plan for his
8,700 acres in Bell County. We have also been asked in the last 2 weeks by Mr. Orville Lerch,
former alternate Federal cochairman of the Appalachian Regional Commission, to prepare a
reclamation plan for his coal-bearing properties in Pennsylvania. The interest of these
landowners is one of land values after the coal has been mined. Mr. Orr's land was partially
mined and left in unreclamined condition approximately 20 years ago. The land is steeply
sloping and in this condition it has present real estate value of $50 to $7 5 per acre.Because of the
nature of the terrain in Bell County, there are no tillable farms of as much as 300 acres even
though the climate and approximately 46 inches of annual rainfall make the area otherwise
suitable for a wide range of agricultural crops.

120 According to the Bell County Tax Commissioner, a productive farm of substantial size, if
available, in the county, would be worth $500 to $1 ,000 per acre. We are very aware that land
capable of producing food will become an increasingly valuable resource.

120 Many provisions of our plan far exceed requirements of the State of Kentucky; this can be
justified for two important reasons. The first is that it can be done at little or no greater cost than
that of minimum reclamation because the reclamation process is made an integral part of mining
rather than a separate followup operation. The second is that every acre of land disturbed by
mining left at a grade of 14 degrees (25 percent) or less, which slope can be worked with
ordinary farm implements.

120 Senator METCALF. Are you going forward and tell whether your plan meets the
requirements of this legislation?

120 Mr. FRANZMAN. Yes; it differs from the Federal requirements of S. 7 and H.R. 2 in two
important categories, and we will describe those.

120 We were brought into this assignment initially because of a reputation for planning
ecologically sensitive land developments throughout the Eastern United States. Of particular
interest was our planing of the Big Canoe development in the north Georgia mountains on terrain

similar to the Asher and Orr properties. Big Canoe has won numerous awards for planning,
ecological sensitivity, and construction methods, particularly for roads and drainage, as well as
land use; and was featured in the March 1976 issue of Southern Living magazine from which I
now quote:

120 The master plan by Bartholomew embodies the best practice of the landscape architecture
tradition: roads that work with, rather than against, the land, careful siting of major features for
views; preservations of key natural attractions. This is the art that conceals art, so that the place
"feels" right even if you can't say exactly why.

120 I will point out in the following testimony how this same professional approach can be
applied to reclamation.

120 In our study we came to recognize that the most obvious damage to landscape aesthetics
from surface mining come from two practices: (1) spoils deposited in steep banks downslope
from the coal outcrop and (2) unimproved highwalls. Our plan would eliminate the first of these
objections and mitigate the second. Spoil on the downslope is counter-productive to our goal of
creating valuable, attractive and productive real estate from all disturbed land. With respect to
highwalls, there is a better solution in the interest of all concerned than to recreate slopes greater
than 14 degree - 25 percent - and we would urge certain amendments to S. 7 without diminishing
the goals of this legislation.

121 The first amendment we would urge concerns the requirement to return contour mine
sites to original contour in terrain steeper than 14 degrees 25 percent. In the words of the
Kentucky Department for Natural Resources and Environmental Protection, this provision:

121 Could result in more environmental damage than leaving (a) solid bench and highwall
provided no material is permitted over [the] outslope.

121 While it is practical to completely cover the highwall as S. 7 requires on slopes of less
than 14 degrees - 25 persent - because the resulting land is usable and maintainable, our studies
indicate a more appropriate approach on steeper slopes for the following reasons:

121 1. Mine spoils can be as productive as nonmined land and revegetation can be

accomplished in a relatively short period by following proper land management practices. This requires access to the land by farm tractors or similar equipment which cannot operate efficiently or safely on slopes greater than 14 degrees - 25 percent. Shown here is a photograph of damaging ruts created by tractors in the course of maintaining a grassed slope of 18 degrees - 33 percent - on one of our interstate highways. This condition is common and obviously will result eventually in serious erosion and deterioration.

121 This slope is 33 percent or a three on one. Thirty-three percent is, I think, 18 degrees. It is steeper than we would return all of the mined lands. When the tractor tries to mow the grass on the interstate highways, they tend to slide down and they rut the land. It erodes. It either has to be maintained, and it cannot ever be returned to a completely stable condition. It is expensive and it is nonproductive.

121 2. Erosion from surface water runoff on back-filled slopes steeper than 14 degrees - 25 percent - cannot be controlled effectively. Continuous siltation of streams below and damage to vegetation will result.

121 3. Revegetation is materially speeded up by building the organic content of finished grade through tilling a series of cover crops into the soil. Increased organic content will provide greater rates of rainwater percolation to sustain growth of vegetation as well as to replenish the groundwater system rather than allowing surface water to run off. Retention of rainfall has obvious multiple benefits to the environment.

121 4. Water impoundments can be provided on the contour bench to further slow runoff, to preserve water for cattle, raise fish, or provide recreational opportunities. Shown here is a typical design for proper construction of water impoundment. (a) Designed for 25 or 50 year rainfall. (b) Islands for fish to spawn without disturbance from cattle. (c) Trees kept on north bank to prevent shading.

121 In my introduction to this suggested amendment with respect to steep slopes, I indicated that aesthetic objections to the highwall created by contour mining on steep slopes could be satisfied without return to original contour so that the bench can be detained for more productive uses.

122 If we are to engage in contour mining on slopes greater than 14 degrees - 25 percent - we must employ effective means to stabilize and screen the highwall. While many of our Nation's streams and valleys are flanked by attractive natural palisades well-weathered by centuries of exposure, when such effects are manmade, we believe it reasonable to take steps to speed the process and propose the following treatment.

122 The diagram illustrated is a slope typical in Kentucky of 27 dedegrees or about 50 percent.Equipment used in the operation and present economics would indicate a maximum highwall of 100 feet above the coal seam which would make a bench 200 feet wide. No spoil would be deposited over the downhill slope. We propose backfilling halfway up onto the highwall - 50 feet - which would produce a manageable and useful bench having a maximum slope of 14 degrees - 25 percent - and leave a highwall having a maximum height of 50 feet.

122 Calling on our successful experiences with near vertical cuts for roads at Big Canoe as illustrated by the following pictures, we would hydroseed and mulch the remaining highwall immediately with a mixture of cellulose fiber, grass and tree seeds. At Big Canoe, we did not include tree seeds and you will see that windborne seeds have lodged and germinated naturally in the grass cover. These cuts are from 2 to 4 years old and these recent pictures illustrate conditions after the most severe winter in our history.

122 We would expect that the highwall would be revegetated and screened as rapidly by this process as would be the case if spoil were returned to natural contour, yet the proposed solution would yield a useful and valuable bench.

122 The other amendment we would suggest to this legislation is with respect to mountaintop removal. Again, in agreement with the Kentucky Department of Natural Resources and Environmental Protection:

122 Mountaintop removal coupled with 100 percent haulback to properly designed and constructed hollowfill area is the most successful surface mining reclamation technology developed in Kentucky to date. It results in the least environmental damage, leaves the most productive land use and causes least waste of the solid fuel resource. It should not require a variance but be considered an approved mining method.

122 Following our objective of providing an attractive landscape, having land practical for farming and other land uses, we have designed criteria for hollow-fills having no slope greater than 14 degrees - 25 percent - and contoured to retain runoff and control erosion.

122 This is much more severe than Kentucky's requirement. It is engineered to be sound. But since the steep slope at the end is counterproductive to our desire of using all of the land for productive uses, we show you how you can construct a hollow-fill that is only 14 degrees.

123 This also far exceeds Kentucky requirements, has no steep slope and every square foot is productive. It is also slide-proof, having a grade less than the natural angle of repose.

123 The following detail specifies in plan and profile how a hollowfill may properly be done to be 100 percent useful when completed.

123 The mountaintop, after mining, would be graded for proper drainage, slowing runoff, providing impoundments to hold up to 25 year frequency rainfalls and have grades which are 100 percent suitable for farming.

123 We also submit that the variance procedures required in S. 7 are too restrictive and not practical with respect to mountaintop removal. The desirable land uses listed as acceptable in S. 7 may come to pass but they are not likely to be guaranteed in order to be permitted from so many aspects and by so many parties years before the land can be made available.

123 In summary, by following our criteria for contour mining, hollowfills, highwall vegetation and mountaintop removal on the Asher property where existing slopes are steep, every square foot of the 7,000 acres disturbed will be capable of cultivation in an aesthetically pleasing form. Fifty dollar per acre land will be worth $500 per acre or more, and a county which doesn't have a 300-acre farm today will have a productive 7,000-acre farm.

123 We are currently planning Mr. Orr's 8,700 acres to be reclaimed in this recommended manner so that the 20-year-old unsightly spoil piles will be cleared up in the process of mining and reclamation.The land will have no adverse esthetic or environmental qualities, will be productive, and will be valuable if we can apply the techniques described.

123 Mr. Chairman, we have shown that where original slopes are greater than 14 degrees - 25 percent - return to original contour is neither environmentally sound nor productive of useful land. Mountaintop removal can likewise be turned to valuable real estate on a sound environmental basis. We have a thoroughly researched method of accomplishing these approaches to reclamation.Our standards are basically more severe than those of S. 7, but mining interests indicate a willingness to follow them while they object to S. 7. The benefits to the landowner are apparent and coal can be mined which otherwise may not be.

123 We respectfully request your adoption of amendments incorporating these criteria in harmony with the objectives of the proposed legislation. The House Committee has requested us to furnish specifications for their use and we will do so for you also, if you wish.

123 Senator METCALF. I have only one question, and that is, in Wyoming we have coal seams that are 150 feet thick, and in Montana that are 100 feet thick. Sometimes the overburden is 14 feet thick. The coal operator is digging a great big trench out through that country.

123 What does your amendment do to a mining operation such as that?

123 Mr. FRANZMAN. I have not researched that condition. We did not work on that type of mining. Our amendment applies to slopes greater than 14 degrees.Anything up to that, returned to the natural contour that we can farm.If it gets beyond that, we can put it back to a slope of 37 degrees as it exists but we can't do anything with it, and the rainwater coming off the mountain above it will wash away this loose material and you can't get equipment back on it to keep it there. So, really, specifically, in answer to your question, I have not researched or studied how to handle the Western condition at all. We are specifically talking about steep slopes.

124 Senator METCALF. The Senator from Colorado has introduced a bill for exploring oil shale. Some of the waste from the oil shale is sort of a popcorn material. Perhaps we can ship it to Montana and Wyoming and fill up those trenches. Senator Ford?

124 Senator FORD. I will yield to the other Senators.

124 Senator DOMENICI. I am impressed with your ideas. I hope you will reduce them to specification for us, if the Chairman so desires.

124 Senator METCALF. It is so ordered. Please do that.

124 Mr. FRANZMAN. We will submit it.

124 [Material submitted by Mr. Franzman follows:]

125 Statement Presented to Subcommittee on Minerals, Materials and Fuels of The Committee on Interior and Insular Affairs United States Senate Washington, D.C. March 2, 1977

125 With Respect to Surface Mining Control and Reclamation Act of 1977 (S. 7)

125 Presented By Charles A. Franzman Harland Bartholomew and Associates Planners, Landscape Architect, Civil Engineers Atlanta, Georgia

125 Representing Mr. Laird Orr London, Kentucky

126 Mr. Chairman and members of the Committee, my name is Charles Franzman. I am a Landscape Architect, Land Planner and a Partner in the firm of Harland Bartholomew and Associates, Landscape Architects, Planners and Civil Engineers in Atlanta, Georgia. I represent Mr. Laird Orr, London, Kentucky with me at the table, along with Mr. Charles Dean from Pineville, Kentucky, and Mr. Henry Spalding, Hazard, Kentucky. Mr. Dean also represents the Asher interests who own large tracts of land around Pineville, Kentucky.

126 These gentlemen are property owners in Eastern Kentucky whose lands are leased to mine operators. We are not here to oppose the Surface Mining Control and Reclamation Act of 1977 (S. 7) in principle but to suggest benefits to be gained by two important changes we would urge you to consider.

126 Our firm prepared in 1975 a comprehensive, longrange surface mine reclamation plan for a 10,000 acre tract for the Asher ownership in Bell County, Kentucky. Implementation of that twenty year plan has begun.

127 The Kentucky Department of Natural Resources and Environmental Protection praised the plan as the most comprehensive approach to reclamation ever submitted. Through the interest of the U.S. Forest Service I was asked by the University of Kentucky to present the plan to a seminar of miners and planners in April of 1976. Dr. David Maneval, Science Advisor to the Appalachian Regional Commission asked me to make a presentation of the plan to staff

members of his Commission and to Mr. James Paone, Chief, Division of Environment for the Bureau of Mines, who requested a copy of the plan and reviewed it in detail.

127 We are now under contract to Mr. Orr to prepare a similar reclamation plan for his 8700 acres in Bell County. We have also been asked in the last two weeks by Mr. Orville Lerch, former alternate Federal Cochairman of The Appalachian Regional Commission to prepare a reclamation plan for his coal-bearing properties in Pennsylvania. The interest of these landowners is one of land values after the coal has been mined. Mr. Orr's land was partially mined and left in unreclaimed condition approximately 20 years ago. The land is steeply sloping and in this condition it has present real estate value of $50 to $7 5 per acre. Because of the nature of the terrain in Bell County there are no tillable farms of as much as 300 acres even though the climate and approximately 46 inches of annual rainfall make the area otherwise suitable for a wide range of agricultural crops.

128 According to the Bell County Tax Commissioner a productive farm of substantial size if available in the county would be worth $500 to $1 ,000 per acre. We are very aware that land capable of producing food will become an increasingly valuable resource.

128 Many provisions of our plan far exceed requirements of the State of Kentucky; this can be justified for two important reasons.The first is that it can be done at little or no greater cost than that of minimum reclamation because the reclamation process is made an integral part of mining rather than a separate follow-up operation. The second is that every acre of land disturbed by mining is left at a grade of 14 degrees (25%) or less which slope can be worked with ordinary farm implements.

129 We were brought into this assignment initially because of a reputation for planning ecologically sensitive land developments throughout the Eastern United States. Of particular interest was our planning of the Big Canoe development in the North Georgia mountains on terrain similar to the Asher and Orr properties. Big Canoe has won numerous awards for planning, ecological sensitivity and construction methods, particularly for roads and drainage, as well as land use, and was featured in the March 1976 issue of Southern Living magazine from which I quote: "the master plan by Bartholomew embodies the best practice of the landscape

architecture tradition: roads that work with, rather than against, the land; careful siting of major features for views; preservations of key natural attractions. This is the art that conceals art, so that the place 'feels' right even if you can't say exactly why." I will point out in the following testimony how this same professional approach can be applied to reclamation.

129 In our study we came to recognize that the most obvious damage to landscape aesthetics from surface mining come from two practices: (1) spoils deposited in steep banks downslope from the coal outcrop and (2) unimproved highwalls.Out plan would eliminate the first of these objections and mitigate the second. Spoil on the downslope is counter-productive to our goal of creating valuable, attractive and productive real estate from all disturbed land. With respect to highwalls, there is a better solution in the interest of all concerned than to recreate slopes greater than 14 degrees (25%) and we would urge certain amendments to S. 7 without diminishing the goals of this legislation.

130 The first amendment we would urge concerns the requirement to return contour mine sites to original contour in terrain steeper than 14 degrees (25%). In the words of the Kentucky Department for Natural Resources and Environmental Protection, this provision "could result in more environmental damage than leaving (a) solid bench and highwall, provided no material is permitted over (the) outslope."

130 While it is practical to completely cover the highwall as S. 7 requires on slopes less than 14 degrees (25%) because the resulting land is usable and maintainable, our studies indicate a more appropriate approach on steeper slopes for the following reasons:

131 1. Mine spoils can be as productive as non-mined land and revegetation can be accomplished in a relatively short period by following proper land management practices. This requires access to the land by farm tractors or similar equipment which cannot operate efficiently or safely on slopes greater than 14 degrees (25%). Shown here is a photograph of damaging ruts created by tractors in the course of maintaining a grassed slop of 18 degrees (33%) on one of our interstate highways. This condition is common and obviously will result eventually in serious erosion and deterioration.

131 (See Illustration in Original)

132 2. Erosion from surface water runoff on backfilled slopes steeper than 14 degrees (25%) cannot be controlled effectively. Continuous siltation of streams below and damage to vegetation will result.

132 3. Revegetation is materially speeded by building the organic content of finished grade through tilling a series of cover crops into the soil. Increased organic content will provide greater rates of rainwater percolation to sustain growth of vegetation as well as to replenish the groundwater system rather than allowing surface water to run off. Retention of rainfall has obvious multiple benefits to the environment.

132 4. Water impoundments can be provided on the contour bench to further slow runoff, to preserve water for cattle, raise fish or provide recreational opportunities. Shown here is a typical design for proper construction of water impoundment.

133 a. Designed for 25 or 50 year rainfall.

133 b. Islands for fish to spawn without disturbance from cattle.

133 c. Trees kept on north bank to prevent shading.

133 (See Illustration in Original)

133 In my introduction to this suggested amendment with respect to steep slopes I indicated that aesthetic objections to the highwall created by contour mining on steep slopes could be satisfied without return to original contour so that the bench can be retained for more productive uses.

134 If we are to engage in contour mining on slopes greater than 14 degrees (25%) we must employ effective means to stabilize and screen the highwall. While many of our nation's streams and valleys are flanked by attractive nautral palisades well weathered by centuries of exposure, when such effects are man-made we believe it reasonable to take steps to speed the process and propose the following treatment:

134 (See Illustration in Original)

134 Illustrated is a steep slope of 27 degrees (50%). Equipment used in the operation and present economics would indicate a maximum highwall of 100 feet above the coal seam which would make a bench 200 feet wide. No spoil would be deposited over the downhill slope. We

propose backfilling halfway up onto the highwall (50 feet) which would produce a manageable
and useful bench having a maximum slope of 14 degrees (25%) and leave a highwall having a
maximum height of 50 feet.

135 Calling on our successful experiences with near vertical cuts for roads at Big Canoe as
illustrated by the following pictures, we would hydroseed and mulch the remaining highwall
immediately with a mixture of cellulose fiber, grass and tree seeds.At Big Canoe we did not
include tree seeds and you will see that windborne seeds have lodged and germinated naturally in
the grass cover. These cuts are from two to four years old and these recent pictures illustrate
conditions after the most severe winter in our history.

135 (See Illustration in Original)

136 (See Illustration in Original)

137 We would expect that the highwall would be revegetated and screened as rapidly by this
process as would be the case if spoil were returned to natural contour yet the proposed solution
would yield a useful and valuable bench.

137 The other amendment we would suggest to this legislation is with respect to mountain top
removal. Again in agreement with the Kentucky Department of Natural Resources and
Environmental Protection: "Mountain top removal coupled with 100% haulback to properly
designed and constructed hollow-fill area is the most successful surface mining reclamation
technologh developed in Kentucky to date. It results in the least environmental damage, leaves
the most productive land use and causes least waste of the solid fuel resource. It should not
require a variance but be considered an approved mining method."

137 Following our objective of providing an attractive landscape having land practical for
farming and other land uses we have designed criteria for hollow-fills having no slope greater
than 14 degrees (25%) and contoured to retain runoff and control erosion. This also far exceeds
Kentucky requirements, has no steep slope and every square foot is productive. It is also
"slide-proof", having a grade less than the natural angle of repose.

138 The following detail specifies in plan and profile how a hollow-fill may properly be done
to be 100% useful when completed.

138 (See Illustration in Original)

138 The mountain top, after mining, would be graded for proper drainage, slowing runoff, providing impoundments to hold up to 25 year frequency rainfalls and have grades which are 100% suitable for farming.

139 We also submit that the variance procedures required in S. 7 are too restrictive and not practical with respect to mountain top removal. The desirable land uses listed as acceptable in S. 7 may come to pass but they are not likely to be guaranteed in order to be permitted from so many aspects and by so many parties years before the land can be made available.

139 In summary, by following our criteria for contour mining, hollow-fills, highwall vegetation and mountain top removal on the Asher property where existing slopes are steep, every square foot of the 7,000 acres disturbed will be capable of cultivation in an aesthetically pleasing form. Fifty dollar per acre land will be worth five hundred dollars per acre or more and a county which doesn't have a 300 acre farm today will have a productive 7,000 acre farm.

139 We are currently planning Mr. Orr's 8,700 acres to be reclaimed in this recommended manner so that the 20 year old unsightly spoil piles will be cleaned up in the process of mining and reclamation. The land will have no adverse aesthetic or environmental qualities, will be productive and will be valuable if we can apply the techniques described.

140 Mr. Chairman, we have shown that where original slopes are greater than 14 degrees (25%) return to original contour is neither environmentally sound nor productive of useful land. Mountain top removal can likewise be turned to valuable real estate on a sound environmental basis. We have a thoroughly researched method of accomplishing these approaches to reclamation. Our standards are basically more severe than those of S. 7 but mining interests indicate a willingness to follow them while they object to S. 7. The benefits to the landowner are apparent and coal can be mined which otherwise may not be. We respectfully request your adoption of amendments incorporating these criteria in harmony with the objectives of the proposed legislation. The House Committee has requested us to furnish specifications for their use and we will do so for you also if you wish.

141 Proposed Amendments S. 7 Surface Mining Control and Reclamation Act of 1977

141 Subcommittee on Minerals, Materials and Fuels Committee on Interior and Insular Affairs

141 Presented By Charles A. Franzman Harland Bartholomew and Associates Planners,
Landscape Architects, Civil Engineers Atlanta, Georgia

141 Representing

141 Mr. Laird Orr London, Kentucky

142 In harmony with the objectives of S. 7 the following substitute paragraphs are offered to
the proposed legislation.

142 These amendments address two subjects with Sec. 415:

142 1. Where slopes in excess of 14 degrees are contour mined it is not environmentally
sound nor productive of badly needed land for agricultural or other uses to restore the overburden
to approximate original contour.

142 2. Mountain top removal should be considered an approved mining method, resulting in
the least environmental damage and leaving the most productive land use. The variance
procedure in S. 7 is eliminated and certain standards are proposed.

142 Format

142 Those lines proposed to be deleted are struck through.Additions are underlined.

142 A brief discussion of the amendment and reasons in support thereof will follow the
amendment.

143 Sec. 415(b)(3) p. 68)

143 tion or as otherwise authorized pursuant to this Act): Provided, however, that where
original slopes exceed 14 degrees (the maximum slope considered safe and efficient for operation
of farm machinery) and where the landowner requests in writing, the highwall shall be covered to
the extent possible by replacing the grade of the bench to 14 degrees upward from the outcrop
and any remaining highwall shall be revegetated promptly by prescribed and approved methods:
and provided further, that surface coal mining which . . .

143 Discussion:

143 Replacement of slopes in excess of 14 degrees creates land subject to continuing erosion
and unsuited for economic production and management. Siltation of streams would continue
indefinitely and slides might result in some cases where slopes are excessive.

143 Leaving a bench will slow or completely eliminate water runoff when impoundments are
provided so that groundwater is recharged rather than losing water through runoff. Maximum
usable land can be achieved and the highwall can be screened through revegetation as quickly as
revegetation could be achieved on the spoil if the land were returned to steeper original contour.

144 Sec. 415(b)(3) (p. 69)

144 more than the angle of repose or 14 degrees, whichever is less, and to cover all
acid-forming . . . .

144 Discussion:

144 To assure safe and efficient management without danger from slides, to slow water runoff
in order to recharge the groundwater system, reduce flooding and siltation downstream and create
a maximum of usable land, any lands disturbed should be left no steeper than 14 degrees.

145 Sec. 415(b)(3) (p. 69)

145 cordance with the requirements of this Act: And provided further, That in surface coal
mining where the operation by removing an entire coal seam or seams running through the upper
fraction of a mountain, ridge, or hill and removing all of the overburden will create a level
plateau or gently rolling contour, capable of supporting postmining uses which the operator
demonstrates constitute equal or better economic or public uses of the affected land, as compared
with the premining uses, and are consistent with adjacent land uses and existing State and local
land use plans and programs, the operator need not restore to the approximate original contour
but shall insure that the toe of the lowest coal seam and the overburden associated with it are
retained in place as a barrier to slides and erosion, the reclaimed area is stable, the resulting
plateau or rolling contour drains inward from the outslopes except at specified points, no damage
will be done to natural waterways, and all other requirements of the Act will be met;

145 Discussion:

145 This addition incorporates mountain top removal into the Act as an approved procedure
rather than a variance. All provisions for environmental protection contained in section 415(b)
would remain and apply equally to this method of operation.

146 Sec. 415(c)(2) (p. 78)

146 Discussion:

146 Removal of the variance requirement for mountain top removal consistent with the
amendment to 415(b)(3) requires that this paragraph be deleted. Subsequent paragraphs would
apply to other variances which may be needed from time to time.

147 Sec. 415(d)(1) (p. 82)

147 mining operations: and provided further, That head-of-hollow fills shall be deemed to be
proper offsite spoil storage areas. Such offsite spoil storage areas shall . . . .

147 Discussion:

147 In coordination with standards prescribed in Sec. 415(b)(3) this amendment establishes by
definition that the referenced offsite spoil storage may properly involve properly designed and
constructed head-of-hollow fills to produce stable, manageable and productive land.

148 Sec. 415(d)(2) (p. 82, 83)

148 Discussion:

148 Deletion of this paragraph is consistent with foregoing amendments applicable to Sec.
415(b)(3) wherein the environment is better protected by limiting replacement of spoil to a
maximum of 14 degrees to prevent erosion and allow management of the productive land
resulting therefrom while at the same time revegetating and screening any exposed partial
highwall.

149 Senator METCALF. You have some innovative ideas, as the Senator from New Mexico
has commented.

149 Senator DOMENICI.You might be talking about a principle that is beyond your specifics
that interests me, and that might very well be the rigidity found in this bill, might not in each
circumstance be anything like the best way to do it.

149 Mr. FRANZMAN. That is correct.

149 Senator DOMENICI. Your concept of original contours and indicating there is a better way than a mandate that it be returned to the original contour, would seem to me to have equal application in the State of Montana or the State of New Mexico.

149 Do you have any ideas as to how you might approach the flexibility that you are particularly interested in having included in legislation.

149 Mr. FRANZMAN. It is a considerable probrem. You are writing a national bill. We have varying circumstances as we already talked about. This is why we have brought this particular problem up. It reflects a condition in one particular part of the country. In Pennsylvania, which has been used as an example of how it can be returned to original contour easily.

149 Chairman Udall last Friday, when we appeared before him, asked several times why is it they have such an easy time conforming to this. Well, 90 percent of the area there, I am told, is below 14 degrees, and only 10 percent is steeper, whereas in Kentucky about 90 percent of it is steeper.

149 To answer your question, how do you apply this kind of flexibility, I am not sure. We have done a study on how it can be done applied to the specific conditions. We would like, as I said, to submit those, and show how those solutions are. I am afraid if the people do follow national standards and put these things back in a steep slope, we will have worked against the intention of the bill.

149 I would like to work with your staff in further finding a way it can be included in a national bill.

149 Senator DOMENICI. Mr. Chairman, I think it is an extremely important part of writing the bill. Maybe it is a question of the States determining it, based upon certain criteria. We really may be mandating something that will either be impossible, more expensive, or even in the final analysis not the best way to end up with a reclamation project.

149 In our State, obviously the original contour could very well be what you would not want it returned to, just because of the particular topography, ecology, and desired uses. I would not want to change it if it impacts on anything, any kind of ecological of other kind of consideration

was adverse.But I really think we have to build some flexibility or we are probably
accomplishing the wrong thing in many instances.

149 Mr. FRANZMAN. This is important; I think you will be interested. Commissioner Witt
from Kentucky read this presentation, or the House version of it, last weekend. He said while it
is considerably more severe or restrictive than their law, he said everything about it is right. So I
think Kentucky would be interested in following this type of approach.

150 Secretary Bell, from the Department of Natural Resources in Kentucky, testified they
would like to see mountaintop removal made an acceptable form of mining rather than the
variance.

150 I do not know if you are aware of how long it takes to do mountaintop removal, but if the
miner will bring in the very large equipment they can do it more rapidly. He has to have a large
enough area to probably be there 10 years or more. If he does not bring that kind of equipment
in, then it takes longer to do the same number of acres.

150 At any rate, a smaller operation would not accomplish a 100 acres in several years. A
large operation would, but it would have to have 10 years worth of work to do it. If you already
know what you are going to put that use to, arrange the financing, arrange for zoning, land use
approval as required in the bill, it is impossible if the land won't become available for 1, 2, or 3
years later.

150 That is the problem with restrictions on mountaintop removal.

150 Senator DOMENICI. Thank you, Mr. Chairman.

150 Senator JOHNSTON. I think the witness has made perfect sense. I think we can structure
some language that will fit that fairly easily. There is some requirement in there - I was looking
for it a moment ago - that requires land be as productive after the mining as it was before, to
support the number of uses before. That would be one test you would have to meet.

150 Another would be not putting any spoil on the downslope. I suppose you could try to
provide for some reduction of the highwall or provide for necessary screening, but I think as far
as the draftsmanship, it would not be difficult to achieve that purpose.

150 It seems beyond argument we ought to achieve that purpose. We could get more useful

land that is more valuable and support more uses when you finish and it is more environmentally
sound. So where is the argument?

150 Mr. FRANZMAN. That is right.

150 Senator JOHNSTON.I think we ought to accommodate his testimony.

150 Senator METCALF. The Senator is already talking about highwall reduction.

150 Senator JOHNSTON. I am sold on it.

150 Senator HASKELL.I would like to congratulate you. I think that is some interesting
testimony. I think it would be very helpful. I can see your problem, a certain degree of steepness
becomes counterproductive. So then what tests do you apply in the reclamation plan? I think that
is what we are groping for.

150 I think what we are groping for, the basic underlying testing the Senator from New
Mexico talked about, you have to have some test to be sure that reclamation is done is an
acceptable way. Have you developed any such tests?

150 Mr. FRANZMAN. Yes; you can write minimum requirements such as I mentioned,
hydroseeding, the highwall, and you can set specifications for that, that this shall contain
cellulose fiber and so many pine seeds per gallon of slurry. In the case of the ones we used at Big
Canoe, we used a mix of grasses, 31 fescue, red and white clover, and depending on the season
of the year, and that is another flexibility. If it becomes available in the hot summer versus the
middle of the winter. You have to do the right thing. This is all possible.

151 The field of agriculture is very technically capable of solving these and we can write
minimum requirements for that.

151 Senator HASKELL. What I was thinking of, I don't suppose we want to write exact things
you are talking about in the legislation, but I was wondering if you had some suggestions that
might come out of your planning that would at least set up a test, an acceptable test, so that
proper planning procedures could be followed.

151 Could you supply us with that?

151 Mr. FRANZMAN.It sounds like a challenge. I would be willing to try to overcome.

151 Senator HASKELL. I would appreciate it if you would.It is all very well to see the problem but then there has to be a solution.

151 Mr. FRANZMAN.It is something that has to be, to a degree, the bill would apply, and then the implementation later.

151 Senator HASKELL. Thank you, sir, and thank you, Mr. Chairman.

151 Senator DOMENICI. One additional question. Have you ever seen this surface mining control flow chart before today?

151 Mr. FRANZMAN. Not until this morning. No, sir.

151 Senator DOMENICI. Do you ever involve yourself in the preparation of environmental impact statements?

151 Mr. FRANZMAN. Yes, sir; we have with regard to coal mining. Our firm does environmental impact statements. We did environmental assessment for the city of Williamsburg, Va., but not with regard to coal mining.

151 Senator DOMENICI. Have you studied the bill sufficient to give us your view as to whether or not the granting of a permit for mining might be construed to be a major Federal action and thus require an EIS in addition to this?

151 Mr. FRANZMAN.I don't believe I am qualified to do that.

151 Senator DOMENICI. Thank you.

151 Senator METCALF. I did not call on your colleagues. Do you have any additional statements?

151 Mr. ORR. No, sir; I think Mr. Franzman's testimony has done a real good job and we agree with it.

151 Senator METCALF. We have not had testimony heretofore on this very important problem. The Senator from New Mexico has highlighted the fact that most of the time we have been concerned with flatter land, without these mountainous conditions. The coal area of Montana and Wyoming, for instance, is largely prairie land. We have some mountains but we don't have coal in those. We have other problems. So we certainly welcome your testimony.

151 If we restore land to its original contour and the original contour is environmentally more

insecure than the contour that is suggested, it is counterproductive.

151 We will accept your offer to work with our staff, to work up the necessary language.

151 Mr. FRANZMAN. Thank you. In that regard, Chairman Udall also felt that the definition of original contour, he stressed the word "approximate," and he said you can do various things. The way the bill is written you cannot do those things. We discussed that and he agreed to that.

151 We will be happy to work with your staff.

152 Senator METCALF. We have Senator Ford on the committee now. We are delighted to have him here. We are impressed by your testimony.

152 Senator FORD. I want to make it perfectly clear I am for the legislation with two or three exceptions.

152 Senator METCALF. I think every member of this committee is concerned about stabilizing our coal industry which is the hub of a whole energy policy as far as I am concerned, at least in the next decade, or two. Coal has to be the basic supplier of energy to move the United States toward self-sufficiency.

152 As you have testified, we are passing national legislation; conditions in Illinois and Ohio are substantially different than they are in Montana and in New Mexico. We are going to try to make this bill just as flexible as possible. I welcome all of you to the "Hansen/Metcalf axis." We try to make a bill which can be enforced by the State agencies rather than a Federal bureaucracy.

152 Are there any further questions from the members of the committee for these witness?

152 We are delighted to have had you. Thank you.

152 Mr. Mears, you are from Kentucky?

152 Mr. MEARS. No; we are from Pennsylvania.

152 Senator METCALF. We are getting into Pennsylvania now.We are delighted to have you.

STATEMENT OF ED MEARS, MEARS COAL CO., ACCOMPANIED BY CHARLES BANKOSKY, CENTRAL, PA.

152 Mr. MEARS. I am Edward Mears, Mears Coal Co., Central, Pa.

152 Mr. BANKOSKY. I am Charles Bankosky, from the Mears Coal Co. in Central, Pa.

152 Mr. MEARS. Our concern is we do have a good law in Pennsylvania; you all know that.
But our concern is -

152 Senator METCALF. We all know that every time a Governor comes in here, whether it is
a Governor from Montana, Pennsylvania, or West Virginia, they say they have the best strip
mining law in the United States, and we will accept that, but we want to pass a Federal law that
addresses all of these problems.

152 Mr. MEARS. Our concern is we can't live with two masters, which is Federal and State.
We have laws in Pennsylvania. If we had this law put on our backs here, how are we going to
live with both of them? This is our biggest concern.

152 Senator METCALF. We are going to give it to your State to administer. A major
difficulty is that in the United States a whole lot of Federal land contains coal and the only
agency that can administer Federal coal land is the Congress of the United States. So we have to
pass national legislation.

152 Mr. MEARS. I understand that. We do want local control, State control. This is our main
issue. We cannot say that we can't contour and backfill to the original contour, because we are
already doing it. Chuck here has some comments on that.

152 Mr. BANKOSKY. I would like to address myself in particular to a few of the things that
have already been brought up. I must commend the gentlemen from Kentucky who did a superb
job in presenting, from the Kentucky Independent Coal Operators, this graph. I think, gentlemen,
you will realize the situation we are in in trying to secure the permits based on long permitting
processes. It is going to be a costly operation.

153 We are not sure the data is sufficiently available to us. We don't think we should be
required to submit to a process of permitting of this nature. We do, in the State of Pennsylvania,
have a very adequate permitting procedure right now. We don't feel we should have to comply
with or be subjected to permitting under these circumstances. We are also bonded in the State of
Pennsylvania and the bonds are very adequate for the lands that we are stripping right now.

153 The other thing we would like to say is right now in the State of Pennsylvania we are reclaiming a lot of land that has been previously stripped. A lot of the operators are going back into lands that have been stripped years ago and we are reclaiming these lands going into higher depth of overburdens of security coal.

153 We wonder what the higher royalty, or 35 cents per ton, will affect this and what we might realize in the State of Pennsylvania in regard to how much we might receive back to reclaim our lands.

153 I think we are doing an adequate job right now in getting these. We also, in getting back to the permitting process, we wonder why there is a restriction of 5 years applied to a permit. It seems to me this is going to inhibit the development of the coal operator to the extent that we cannot purchase new equipment, we are not going to be able to continue on with development knowing that possibly that our permits may be rescinded in 5 years.

153 Senator METCALF. What is your permit system in Pennsylvania?

153 Mr. BANKOSKY. Our permit system in Pennsylvania is indefinite. Once an operation is opened up, we can get amendments to our water permits in the watersheds, but there is no time restriction on it.

153 Senator METCALF. You have an indefinite permit once you have secured it?

153 Mr. BANKOSKY. Yes; the permitting process is not that difficult.

153 Senator FORD. I think we have area restrictions, bonding restrictions, and the maintenance of the land. I don't believe there is a time frame under which they have to operate or not.

153 What you are saying is once you get a permit under this law, then at the end of 5 years you have to repermit it?

153 Mr. BANKOSKY. Right.

153 Senator METCALF. I am going to ask the staff to prepare a list of restrictions in the various States. Montana has a 5-year permit. I want you to know they are lining up - as they say in Britain, they are "queueing up" - to get licenses in that State even with the 5-year permit.

153 Mr. BANKOSKY. We feel from the standpoint of an operator, we don't know what we can do in 5 years, or where we will be. Essentially, we look somewhat at this as a duplication of what we are doing now.

153 Here again, I guess I am addressing myself to the State of Pennsylvania. We are doing a tremendous job of reclamation. The permitting system seems to be very adequate for what we are doing. I think all of the operators are very well satisfied with what we have done, what we can do. We see no need at this time for Federal control or Federal intervention in our present system of strip mining. So we would ask your consideration, particularly in the area of permitting, and I have to almost agree with the gentleman from Kentucky who said the cost of a permit would probably exceed or come in the neighborhod of $3 3,000. I would venture to say he is probably very close to being right. I don't have any technical knowledge to back this up. But based on what our costs are now in securing permits in the State of Pennsylvania, and knowing the procedures which we will have to go through here, and not only the delays, then I have to concur with him that this is probably what we will be faced with.

154 So, we would ask your consideration, particularly in the permitting aspect of this. We would like to see less regulations be imposed on the small operators and give us an opportunity to proceed with the methods we have developed over the years for strip mining.

154 We don't need more Federal controls. I thank you, Mr. Chairman.

154 Senator METCALF. Would somebody from Pennsylvania prepare a chart similar to this chart presented by Mr. Schwab, for the permit system you have in Pennsylvania?

154 Mr. FRIEDMAN. I am Steven Friedman, Pennsylvania Coal Mining Association. We can do that.

154 Senator METCALF. I think it would be helpful if someone from Pennsylvania would tell us what their State requirements are in order for us to prepare a chart for the long permit qualifications that seem to spread interminably on the chart that was presented to us.

154 Senator FORD. What is the bonding procedure in Pennsylvania now?

154 Mr. MEARS. The bonding is going to be changed. It will be $1,000 per acre. A

minimum of $1,000 and up to $3 ,500.

154 Senator FORD. How long will that bond have to stay in effect?

154 Mr. MEARS. That is a 5-year bond. It will stay there after the job is completed, seeded, and approved.

154 Senator FORD. A 5-year bond?

154 Mr. MEARS. It may not last that long. The bond happens to be 5 years.

154 Senator FORD. How can that bond be terminated? And by whom?

154 Mr. MEARS. By the State.

154 Senator FORD. They can shorten the period?

154 Mr. MEARS. Yes; if you comply with all of the laws.

154 Senator FORD. What is the normal compliance?

154 Mr. MEARS. I would say about 3 years.

154 Senator FORD. Two full growing seasons?

154 Mr. BANKOSKY. Approximately, yes.

154 Senator FORD. Do they retain any percentage of the bond?

154 Mr. BANKOSKY. Upon completion of the plan a percentage of the bond can be released.

154 Senator FORD. Do you just go down to some place and get a bond and they send you premiums for the bond, or in some cases, like they do at home, you get a bond, somebody puts up a certificate for you? We put up cash.

154 Mr. MEARS. We generally put up certificates of deposit, which I understand is not going to be accepted now.

155 Senator FORD. In other words, your cash is tied up for 5 years on each permit? From $1,000 to $3 ,500 per acre for a 5-year period, or unless released by the State?

155 Mr. BANKOSKY. That is correct.

155 Mr. MEARS. Yes; that is as of March 15, this year.

155 Senator FORD. Did I understand your testimony that you are going back after coal that was within the small bank area and therefore reclaiming the small banks?

155 Mr. BANKOSKY. That is correct. The coal existing in the old strip places, some of the operators are going back in and going to greater depths to secure the small coal.

155 Senator FORD. How much Federal coal do you have in Pennsylvania?

155 Mr. BANKOSKY. I can't answer that.

155 Senator FORD. You don't have any? I understand there is no Federal coal in Pennsylvania, therefore, under S. 7 there would be no royalty on your coal mining in Pennsylvania. What I am getting at, under S. 7 it just relates to Federal coal and royalties there.

155 In H.R. 2 it goes royalties for all coal are returned to the State for certain things.

155 I think I made my point as far as the States being able to retrieve some funds in order to help the so-called small operator. Is it true that less than 10 percent of your reserves are over 14 degrees?

155 Mr. MEARS. I think it depends on the area you are operating in.

155 Senator FORD. In your State, we have to take it as a whole, is your reserve under or over 15 degrees? What is the percentage?

155 Mr. MEARS. I could not answer that.

155 Senator FORD. Are you an operator?

155 Mr. MEARS. Yes, sir.

155 Senator FORD. How much coal do you strip that is over 15 degrees?

155 Mr. MEARS. I would say 65 percent is over.

155 Senator FORD. Sixty-five percent is over?What is the largest degree?

155 Mr. MEARS. About 35.

155 Senator FORD. How much of your coal is stripped at 35 degrees?

155 Mr. MEARS. I would say about 15 percent of it.

155 Senator FORD. So 85 percent of the coal is less than that.

155 Mr. MEARS. Less than 30.

155 Senator FORD. So your regulation problem would be a little bit less than in some other States?

155 Mr. BANKOSKY. We are not addressing ourselves to the reclamation problems as much as the State of Kentucky.

155 Senator FORD. I would like to ask you a question if you don't mind, and get some answers, try to get an overall picture as to how it relates to one State against the other. We are trying to satisfy Montana, Wyoming, Pennsylvania, Kentucky, Virginia, other States, Tennessee, New Mexico, Colorado, and Louisiana. It is necessary.

155 Senator METCALF. If the Senator would yield for a moment. We have a compilation of the various States. Eastern Kentucky, for example, has 75 percent of its coal over 20 degree slopes. Pennsylvania has only 6 percent of its coal on slopes of over 20 degrees, Montana only 2 percent. So Tennessee, Virginia, West Virginia, Kentucky, and to a small extent Colorado - 10 percent - are the ones affected by steep slopes.

156 I will put this chart in the record. This is important.

156 [The material supplied by Senator Ford follows:]

156 SLOPE ANGLE DISTRIBUTION OF COAL BEDS WITH STRIPPABLE RESERVES

156 (By K. J. Englund, M. J. Bergin, M. D. Carter, C. R. Meissner, and J. B. Roen, USGS)

156 INTRODUCTION

156 Slope angles were determined in representative strip mining areas of Arizona, Colorado, Illinois, Kentucky, Maryland, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wyoming by personnel of the U.S. Geological Survey to provide the Strip Mining Task Force, assembled by the Council of Environmental Quality, with data relating to the slope angle distribution of coal beds with strippable reserves.

156 For the purpose of this study, slope determinations were made for 22 counties (table 1), selected by the Strip Mining Task Force, for coal beds known to contain strippable reserves as reported by Bureau of Mines Information Circular 8531, "Strippable Reserves of Bituminous Coal and Lignite in the United States." Available geologic maps that delineated coal bed outcrop lines on a topographic base were utilized for most slope angle determinations and coal resource reports provided additional data concerning the areas likely to contain recoverable coal reserves

in the selected beds. The angles of slopes along which these coal beds occur were determined by measuring the spacing of topographic contour lines and were assigned to the appropriate slope categories selected for this purpose by the Strip Mining Task Force as follows: (A) 0-10 degrees, (B) 10 degrees-15 degrees, (C) 15 degrees-20 degrees, (D) 20 degrees-25 degrees, and (E) 25 degrees +. The overall sampling technique and measurement procedure are described in the following section and modification to this approach, necessitated by the availability and distribution of data, are described for each county. A list of source material used in compiling slope angles, slope distribution tables, and histograms are also included for each county.

---

*5*RECOVERABLE STRIP COAL RESERVES OF THE UNITED STATES VERSUS SURFACE SLOPE ANGLES

State	Strippable reservas Jan. 1, 1968 n1 (millions of short tons)	Percent of reserves affected		
		Slope angle		
		Surface [*] 15 degrees	1[*] -20 degrees	(Degrees)20 degrees
Alabama	134	83	8	9
Alaska	4,411	97	2	1
Arizona	387	72	21	7
Arkansas	174	99	1	0
California	25	100	0	0
Colorado	500	70	20	10
Illinois	3,247	100	0	0
Indiana	1,096	100	0	0
Iowa	180	100	0	0
Kansas	375	100	0	0
Kentucky (east)	781	11	14	75
Kentucky (west)	977	90	10	0
Maryland	21	90	6	4
Michigan	1	100	0	0
Missouri	1,160	100	0	0
Montana	6,897	90	8	2
New Mexico	2,474	90	8	2
North Dakota	2,075	100	0	0
Ohio	1,033	91	8	1
Oklahoma	111	99	1	0
Pennsylvani	752	88	6	6
South Dakota	160	100	0	0
Tennessee	74	23	37	40

Texas	1,309	100	0	0
Utah	150	98	1	1
Virginia	258	1	4	95
Washington	135	100	0	0
West Virginia	2,118	38	19	43
Wyoming	13,971	88	8	4
Total	44,986	88	6	6

156 n1 From U.S. Bureau of Mines Information Circular 8531, p. 23.

157 Senator METCALF. The statement made heretofore, only 88 percent of Pennsylvania has a surface of 15 degrees.

157 Senator FORD. As soon as the State issues its regulations to comply with Federal law and the State takes over, you have no objection to the State doing it, or the Federal, but you don't want to have both?

157 Mr. MEARS. We would like to have State control.

157 Senator FORD. The bill requires that.

157 Mr. MEARS. We have run into this continuously where the Federal and the State have given us - they are both trying to compete with laws and it is really tough to try to live by this.

157 Senator FORD. Are you talking about safety or reclamation?

157 Mr. MEARS. I am talking about safety.

157 Senator FORD. We are very much interested and we have worked very hard on safety procedures with MESA, what it should be and how stringent.

157 The biggest problem we are talking about in strip mining legislation is regulations and what the bill imposes. So you are primarily deep mine -

157 Mr. MEARS. We have both.

157 Senator FORD. You are talking about primary safety features or having two masters; you just want one?

157 Mr. MEARS. That is right.

157 Senator FORD. I think this bill gives you just one.

157 Senator HASKELL. If the Senator would yield at that point. I was going to ask the

gentleman if he would send that to us. As I understand it, you do have licensing in Pennsylvania
and it is certainly not our intention to have two masters.That has been our intention for 4 years
now. I wonder, really, maybe you could do this: for the record have somebody take this S. 7 and
take the Pennsylvania law and see what, if any, additional requirements are imposed by S. 7.
Would you have somebody in your legal staff who could do that and submit that for the record?

157 Senator DOMENICI. The mining association.

157 Senator METCALF. Have they got it already?

157 Senator DOMENICI. Yes.

157 Senator METCALF. We will call on you later, but will you please give your name to the
reporter indicating that you are going to supply this?

157 Mr. FRIEDMAN. Yes; I am Steven Friedman, counsel for the Pennsylvania Coal Mining
Association, 2600, The Fidelity Building, Philadelphia, Pa. 19109 215-546-3000.

157 Senator JOHNSTON. Is it the substantive requirements of the law with respect to slope
and that sort of thing, or simply the procedural difficulties put on by the law?

157 Mr. BANKOSKY. I think it is just the procedural difficulties of the law.

157 Senator JOHNSTON. I am persuaded they do have a point. I don't know whether this bill
adequately provides for only the one master or whether the procedures are too onerous under this
bill. But if Pennsylvania does that, we ought to have something in the bill to recognize that, to
let them continue to do their own thing if they are doing it well and they have got a history of
having done it well.

158 I personally would like to see you come up with some solution to this that would give
you that right so long as you continue to do it, to meet the standards, that you are not being the
victim of Federal redtape.

158 Senator DOMENICI. I have no questions of the witnesses, but I would ask leave of the
chairman at some point in the record to have the State of New Mexico's present plan, permitting
and implementation, be made a part of the staff analysis. I believe for a Western State, that New

Mexico's present strip mining policies are probably as good as any in the United States. They were drafted by a merger of New Mexico's environmentalists and mining interests and they presently monitored by a commission that is composed of both conservationists, citizens, and members of the industry. I think it would serve us well to see how that is implemented from the standpoint of two masters.

158 Their suggestion and concern, Mr. Chairman, about two masters and the bureaucracy involved is shared by the Western Governors in terms of their concern, as the chairman knows, and I think our plan that is in operation will serve us well from the Western standpoint.

158 We don't have it ready today, Mr. Chairman, but as soon as it is we will submit it.

158 Senator METCALF. As soon as it is ready, we will incorporate it into the record.

158 [Not received in time to be included in the record.]

158 Senator METCALF. It has been the desire of this committee to turn over the whole implementation of the law to the respective States as soon as they have put into effect strip mining legislation that is at least as stringent as the minimum requirements of this legislation. So I am sorry Senator Hansen is not here. He and I have insisted all along that regulation, even on Federal lands, should lie with the States.

158 Now, in the Eastern States of the United States, we don't have much Federal land. However, we still need minimum uniform reclamation requirements. I think the bill would be helpful for a State such as Pennsylvania, which has strong and excellent reclamation laws. As I say, I am the chief sponsor of this bill, but I am not wedded to a single phrase or a single sentence in it.

158 That is why we are having extensive hearings today and the two following days. We will do our very best to accommodate your concerns.

158 Mr. Steven L. Friedman, of the Pennsylvania Coal Mining Association will be our next witness.

STATEMENT OF STEVEN L. FRIEDMAN, COUNSEL, PENNSYLVANIA COAL MINING ASSOCIATION, ACCOMPANIED BY VERNON KERRY, PORTERSVILLE, PA.; RUSSELL HALLER, KITTANNING, PA.; AND WILLIAM L. HARGER, BOYERS, PA.

158 Mr. FRIEDMAN. I am Steven L. Friedman counsel for the Pennsylvania Coal Mining Association, an association of independent surface mining operators located and mining coal in Pennsylvania. On my right is Vernon Kerry, of Portersville, Pa. To his right is William Harger, Boyers, Pa. Mr. Kerry is the chairman of the association. To my left is Russell Haller, Kittanning, Pa., a member of the association.

159 First of all let me say we will be happy to submit to the committee a chart similar to the chart prepared by the Kentucky Coal Producers, Inc.

159 It is my understanding reduced size copies of that chart are in possession of the committee and if counsel or staff could provide me with a copy, it might facilitate our preparation.

159 Senator METCALF. You will be provided with the testimony of Mr. Schwab and in his testimony the chart is reproduced. I have a copy.

159 Senator DOMENICI. Mr. Chairman, may I ask when you produce your flow chart that you include the time frames taken for each of the steps in the process?

159 Mr. FRIEDMAN. Absolutely, sir.

159 Senator DOMENICI. If you have an estimate of cost, of what it costs to do that, would you include that in your summary to the committee?

159 Mr. FRIEDMAN. Absolutely, Senator. I would respectfully request the witnesses' statement that I submitted to the committee, along with our proposed amendments that were submitted to the committee this morning, be included in the record.

159 As Mr. Mears has previously testified, the Pennsylvania regulatory system not only preserves and enhances the quality of virgin land, mined for the first time, but restores and reclaims thousands of acres of land previously mined and degraded under environmentally lax standards many years ago.

159 To quote a prominent Southern philosopher, "If it ain't broke, don't fix it."

159 The Pennsylvania statutory and regulatory system, developed through decades of regulatory experience, has repeatedly proved itself. Now, there is a myth circulating that its cousin, H.R. 2, brings the rest of the Nation up to Pennsvlvania's standards. Let me make it

clear, S. 7 does not incorporate Pennsylvania law. S. 7 materially and substantially alters the
Pennsylvania reclamation and environmental standards, and, in fact, the present Pennsylvania
law, the statute, the regulation, the administrative practices, could not be certified under section
403 of S. 7, and it would require total revision by the legislature of the Pennsylvania of the
statute as well as a total provision of the regulations and administrative practices in order to have
a possibility of being so certified.

159 Let me point out to the committee specific examples. I know what you are interested in.
We are all aware S. 7 seeks to impose uniform minimum standards across the country. We also
recognize there are western regions where you have great concern about depletion of already
diminished ground water and surface water availability. S. 7 automatically requires each
applicant to perform the costly hydrologic and balance studies. This is required in section
407(b)(11) and section 407(b)(14) and section 410(b)(3). It is even required twice because it is a
condition of the application for permit as well as a permit for the reclamation plan.

160 Now this imbalance study may be necessary in the arid western regions. It is not
necessary in Pennsylvania. We have suggested an amendment which would make it mandatory
in the West but make it discretionary with the regulatory authority in the eastern region.

160 Senator METCALF. What if we just said it was necessary on public lands?

160 Mr. FRIEDMAN. Well, Mr. Chairman, what I am saying is if you look at the eastern
regions and the water available conditions and the rainfall, it would be an unnecessary
requirement to have each applicant for a permit to perform a very costly study -

160 Senator METCALF. But you don't have any public lands in Pennsylvania.

160 Mr. FRIEDMAN. If that is the case, then, of course, we would not have any concern with
it. What we are concerned with is the mandatory requirement that applies to the East, and, I
might add, there are only three to four known hydrologists in the State of Pennsylvania. If a
study had to be performed, then it would be very difficult. There were other requirements, for
example, a chemical analysis of the overburden that is raised in the bill as a mandatory

requirement in sections 407(b)(15) and 408(a)(12) of S. 7.

160 Now in Pennsylvania the administrative practice has been to only require this in certain circumstances. Usually the chemical and any acid-bearing properties of the overburden can be determined from a review of the drill hold logs combined with other geologic data. Only in special situations where the preliminary view of the overburden indicates more information is needed is such a chemical analysis required.

160 We would only suggest as our proposed amendment set forth the regulatory authority or the Secretary administering the program, have the discretion, so in Pennsylvania you would not have to require this every time, you would not have to unnecessarily burden an operator.

160 Now, another situation, a part of the bill we are concerned about is, of course, the bonding requirements. S. 7 has the requirement of two independent estimates for the amount of the bond. This could be very costly, very time consuming, and we think unnecessary, especially since the regulatory authority and the officials with the authority to regulate the bill should have, and it has been our experience in Pennsylvania, they do have the experience to make a determination of the minimum amount of the bond. The minimum amount is $5,000 not $1 0,000. Our suggested amendment would reduce this amount from $10,000 to $5 ,000 to eliminate any possible discrimination or undue burden against small operators.

160 S. 7 has also imposed an unworkable restraint on the release of bonds, allowing bond releases to be held up if there is contribution of any suspended solids to streamflow or runoff above natural levels under seasonal Flow conditions as measured prior to any mining.

160 First it requires an operator, when he first makes application, for a whole year to study the flow conditions in the seasons. It imposes an unworkable standard. Any activity, of course, will contribute to suspended solids above the natural levels. Our suggested amendment would be to impose the standard as required under the current Federal and State discharge standards.

161 Now, getting into some of the procedures of the bill, and this is an area of great concern to Pennsylvania operators, for example: S. 7 provides as a condition for denial of a permit, the mere pendency of a proceeding, whether brought by the State, by private party under section 422,

to have an area declared unsuitable for mining. This can cause great confusion, great delay, and great jeopardy to thousands of acres of coal producing lands.

161 As you all know, these proceedings could be filed, they may not have any merit, but the mere fact they have been filed and they are pending - and I might add the bill does not require hearing shorter than 10 months after they are filed - the fact they were filed could tie up thousands of acres of land and seriously jeopardize vitally needed coal production.

161 Senator METCALF. You may be interested to know that Senator Ford and I have appeared before the Judiciary Committee asking for 100 more Federal District Judges, and more than 50 Circuit Court Judges. One of the things we are contemplating is no matter what kind of legislation we have, there are going to be some Federal suits, and they are the only judges who can hear those cases.

161 Mr. FRIEDMAN. With all respect to the judiciary, a proceeding can be filed and no matter how wide or sagacious a proceeding can be pending, it may take a long time if it is unmeritorious to get it dismissed. Meantime, the regulatory authority is sitting there with maybe thousands of acres of land which it cannot permit because the proceeding is pending.

161 We have suggested an amendment which would provide, if in fact a proceeding is pending, the only time a regulatory authority could consider denial of a permit in an area covered by that pending proceeding is if the State or the private party initiating the proceeding has satisfied a burden of proof; namely, that there is substantial likelihood on the success of the proceeding on the merits, the absence of irreparable public or private injury, and the presence of irreparable harm to the petitioning party. We think in this case, if in fact the pending proceeding has merit, and the burden has been satisfied, then it could arguably be grounds for a permit.

161 Senator DOMENICI. Who makes that decision?

161 Mr. FRIEDMAN. That decision would have to be made by the judge or the administrative officer who has the proceeding before him.

161 Senator METCALF. It would be made either by the administrative officer, but ultimately would have to be made, as you say, in the other application for a preliminary injunction by a

judge.

161 Mr. FRIEDMAN. That is right.

161 Now, another concern, Mr. Chairman, is the power given to the regulatory authorities to order cessation of operations. This is section 421(a)(2), without notice, without hearing, and finally without any defined time limit within which a postcessation hearing must be held.

161 This means an officer or representative of the office of the regulatory authority, if he perceives a condition that he believes is a condition of violation of the act and creates in his opinion conditions jeopardizing the safety or environmental damage, could issue an order; a coal operator might be shut down and yet it might be many months before a hearing could be scheduled before an administrative law judge.

162 I might add an administrative law judge under current procedures sitting in Arlington, Va., and this might, you know, really jeopardize fundamental due process rights. We have suggested an amendment which requires, if such an order is issued, that a hearing be held within 72 hours and that that hearing be held near or at the site. So immediately, without unnecessarily curtailing coal production, the validity of that cessation order would be adjudicated. If it is valid, fine. The determination be made with testimony, with inspection at the site. The hearing will be near the site. If it is not valid, the order will be lifted and coal production would not be unnecessarily curtailed.

162 I think we have already had some testimony this morning concerning the limitation of a permit to 5 years. I think, unless there are any more questions on that, the Pennsylvania practice is it is not 5 years, the permit is granted if the operator is in compliance with all of the conditions of the permit and the bond is still outstanding, then he is allowed to operate. We think, from an environmental point of view, that is a legitimate procedure and a procedure that has worked very effectively in Pennsylvania.

162 Now let me add one more significant amendment that we propose. In light of the fact that S. 7 covers a lot of ground, it attempts to impose very complex, very detailed, really legislation of an almost regulatory detail, to the whole country, a whole country that has very different coalfields. You have the Appalachian fields, western coalfields, southern, in Alabama. We have

suggested an amendment that would set up an advisory committee. We call it the advisory committee on environmental protection and reclamation standards. This advisory committee -

162 Senator METCALF. You are addressing a Senator who has a very cold attitude toward any advisory committee anywhere. I applaud the President who says he is going to eliminate advisory committees. I have announced to the Senate every time a piece of legislation has in it an advisory committee that I am going to stand up and question the advisability of such an advisory committee.

162 Mr. FRIEDMAN. Let me address the advisory committee here, Mr. Chairman. Here, I think, there is a compelling need for it. First of all, the committee will not have binding power on the Secretary. However, it would be an institutionalized form of input to the committee. We recommend that it be composed of representatives of the industry, operators, representatives of labor, other interested persons.

162 Senator METCALF. Every advisory committe, under the Federal Advisory Committee Act, has to be broadly based and broadly balanced. Not only industry and labor, but consumers, and laymen, and others. So that would be entirely up to the Secretary. He would have power without legislation to establish such an advisory committee.

162 Mr. FRIEDMAN. Mr. Chairman, we have added one more aspect of it, which I think further demonstrates the need in this situation. If you have a regulation that came out that affected three or less States, and I think under this bill and in light of the nature of the industry being regulated, the very different coalfields, it is conceivable we are going to have regulations coming out that may only apply to the northern Appalachian coalfield, which is Pennsylvania and others, or the southern Appalachian fields, which is Alabama, or the central Appalachian, which is parts of West Virginia and Kentucky. In that situation, the bill would require no such regulation could be promulgated unless the Secretary consulted the advisory committee whose members include operators and heads of regulatory authorities from those regions. That is our great concern.

163 The bill is covering a lot of different terrain, a lot of different agencies, different areas of technology, and so forth, I think the process of promulgating regulations in this bill is going to be

very difficult and very onerous.

163 With all due respect to the rulemaking process under the Administrative Procedures Act, I think we all know sometimes that does not guarantee you get the right expertise and input you should get. That is why we think it is especially required under this bill.

163 Mr. Chairman, we have submitted many other amendments that are included in this submission, in this book. If I can conclude, the theme of the amendments is to prevent S. 7 from disrupting, and as Senator Johnston so aptly said, unfairly and unnecessarily subjecting Pennsylvania to two masters. Pennsylvania could not qualify under this bill and it might be a long time before it ever could. Pennsylvania has a proven system. It works on paper, but more important, Mr. Chairman and members of the committee, it works in practice.

163 We honestly feel we cannot support the bill unless, at a minimum, these amendments are in there. So the Pennsylvania law is not necessarily a disruptive one.

163 Thank you for your time. We are available for questioning.

163 Senator METCALF. When we come to markup of the bill, I have already directed the staff to put in parallel columns of the proposed amendments. I am pleased, and I thank you very much for your suggested amendments. Leglislative history will show you will have made the suggestions and we will consider every amendment that has been proposed, even though you have had to abbreviate your testimony.

163 Mr. FRIEDMAN. Mr. Chairman, thank you very much.

163 Mr. HARGER. Could I make one comment, sir? About the safety -

163 Senator METCALF. Go ahead.

163 Mr. HARGER. I am very terrible concerned about this. I am concerned about safety. We seem to have reached the bottom in the last 3 or 4 years in reducing the number of fatals and the number of accidents. They have been reduced, but they seem to have been reduced to a level beyond which we are not able to reduce them. In investigating the various fatals that occur in the mines, both deep and strip - although I am not a deep miner - we get the recourse from the Nation. Most of the accidents that are now occurring are because of the willful failure on the part of the employee to obey existing rules and regulations or on gross negligence, with the possible exception of roof falls.

163 But all of the things seem to be caused by willful failures on the part of the employee to obey, and gross negligence. There is no penalty under the act for an employee that violates a rule.

163 Senator METCALF. We have a Federal Coal Mine Health and Safety Act. I would hope we would not incorporate it in this act.

164 Mr. HARGER. I apparently misunderstood a comment you made a minute ago. I withdraw my suggestion.

164 Senator DOMENICI. Mr. Chairman, I don't have any questions. I am not sure whether Senator Ford does, but I would say to Mr. Friedman, your observation about the Southern philosopher, I will give you one you can add with it, I don't know if it is Southern or not but I think it might be as apropos: that anything that is worth doing is worth overdoing. Perhaps that fits what you are talking about for the Nation better than your particular philosophy: "If it isn't broken, don't fix it."

164 Mr. FRIEDMAN. I appreciate that.

164 Senator DOMENICI. Have you included anything with reference t estimated costs of this bill over and above Pennsylvania's present policies?

164 Mr. FRIEDMAN. Senator, we have not included that data. However, in response to the request for information by the chairman, when we prepare the chart that parallels the Kentucky chart we will include that information in there so there will be a comparison of costs under present Pennsylvania law and under the procedures of S. 7.

164 Senator DOMENICI. One last question. I assume your State agency that carries out your reclamation and mining processes have adopted regulations and adopt them in regular course?

164 Mr. FRIEDMAN. Yes.

164 Senator DOMENICI. As a lawyer - I assume you are a lawyer - how many regulations does the State of Pennsylvania have to carry out their particular law?

164 Mr. FRIEDMAN. At most, 20 to 25 pages of regulations. As a number, I would say 100, maybe 75. If the Senator is interested, I would be more than happy to send down to you a copy of all of the applicable regulations on surface mining in Pennsylvania.

164 Senator METCALF. I would like to have that, not as a part of the record but for information that could be incorporated with information for the staff.

164 Now, this is a 145-page bill. I don't know if we will come out with a 100-page bill or a 200-page bill. But inevitably, there will emanate as a result of passage - if the bill passes - regulations that are longer than the bill. We would very much like to see what Pennsylvania has done.

164 Mr. FRIEDMAN. I would be happy to submit that.

164 Mr. HALLER. I would like to submit that one of the Senators made a very astute comment. For example, on the corporation setup, some of the tasks that are needed to do the things required in this act could be pushed on some corporate level. The small operators, and I think Mr. Mears touched on this briefly, we have to contract out our engineering and et cetera, and this escalates those costs, I would say, tenfold. I want you to know as small operators we are concerned about the regulatory effects this would have upon small operators and subsequent costs.

164 You ask what is the cost of this thing. What is the cost of a hearing? What is the cost of lost production? Idle equipment, those kind of intangibles that are there? I want you to be very conscious of this fact that we know such things could happen. Thank you.

165 Senator FORD. I would like to ask Mr. Friedman a question.

165 Your are representing the association?

165 Mr. FRIEDMAN. That is right.

165 Senator FORD. Then you should have this information on the tip of your tongue. What percentage of the coal, this is primarily a strip mine reclamation piece of legislation, what percentage of the coal strip mined in Pennsylvania is above 20 degrees?

165 Mr. FRIEDMAN. It is my understanding it would be approximately 20 percent - 20 to 15 percent.

165 Senator FORD. There is a statement on file with this committee before I arrived that it is much less than that. I think one point we need to understand there is that you are reclaiming land at a much smaller degree than lands we are talking about. Is that correct?

165 Mr. FRIEDMAN. That is correct.

165 Senator FORD. The other item I want to ask about the bonding, the gentleman who testified before you, and this is an important item, because as I understand it, the bonding is given only when cash is put on deposit or certificates of deposit are put up. These are released at a certain period of time. Is there any retainage of the bond? The two growing seasons, is that the normal procedure in Pennsylvania?

165 Mr. HALLER. The bond we put up, let's assume it is $1 ,000 an acre, and you go through the stripping process and you backfill. Then you are allowed, it is called partial completion. You would be allowed to have some bond release at that time. They would then keep it for one planting season.

165 Senator FORD. A planting season, not a growing season?

165 Mr. HALLER. One planting and one growing season. They would hold a minimal planting bond, say $2 00 an acre. But they would reduce it down to that minimal amount to assure that reclamation does grow.

165 What you put on, the grass or the trees, does grow.

165 Senator FORD. Provided, however, you have carried out the reclamation?

165 Mr. HALLER. All of the other requirements. That is correct. We do save topsoil in Pennsylvania.

165 Senator FORD. You have about the same type of land, maybe a little bit steeper, comparable to western Kentucky, where you are stripping.

165 Mr. HALLER. That is what we are saying. There are so many areas, hvdrologic and geologic conditions, written into this bill that it is difficult to say you must do this right here.

165 Senator FORD. The point I am trying to make is we are making it so expensive on small operators. How much in dollars would a small operator have to have under, sav, the House legislation anyone who strips or produces less than 250,000 tons a year is considered a small operator, how much would you sav a small operator in that category would have on deposit under the bill?

165 Mr. HALLER. I am in that category you are talking about. I have not less than 100 acres and up, depending on the backfill time and the planting season and so on, what I could have is up to 150 acres under bond in any given time. Multiply that by a 1,000 and you have got the total bill that I have to put up.

166 Senator FORD. That is in addition to the new procedure. The figure given here a while ago of $3 3,450 to get a new permit in something like 22 or 23 months, provided no hearing was conducted.

166 Mr. HALLER. Even the bonding requirements here are scaring us to death. You tell us, for example, what bonding company would touch a man that would have this type of requirement written in there?

166 Senator FORD. I don't know if I can tell you anything like that or not. I happen to operate under the circumstances once a piece of legislation was passed in Washington with the attempt - by the time the regulations were given to us the intent of the legislation was lost. So I won't venture to say what will come down in the final analysis of this procedure.

166 We have a different type of operation in Kentucky than in Pennsylvania.

166 Mr. HALLER. And than in Wyoming.

166 Senator FORD. Your surface mining in Pennsylvania, the overwhelming percentage of that is under 20 degrees?

166 Mr. FRIEDMAN. That is correct.

166 Mr. HALLER. Yes, sir.

166 Senator DOMENICI. I want to ask you, Mr. Friedman, on agreeing to provide information on the regulations, I don't share in this instance the chairman's lack of confidence in advisory group. I share his concern that frequently they are expected to do far more than they can ever do. But I am impressed that the President is promoting the notion that regulations ought to be understandable. I think one of the reasons they are not understandable, is that our laws are so complicated they provide broad authority and permit administrative interpretation is difficult to explain in plain English.

166 I have a serious concern, no matter what we try to do with this bill, that the regulations

that are going to flow from it are going to be incredible. I am impressed with any notion that will
aid in trying to get an early-on reading of their impact. I have no belief we will oversight these
regulations or those flowing by thousands of sheets every day. I would be interested in any
approach you might have, aside from your advisory group, that might get a better reading of the
regulations as they flow.

166 It would be experiment on this bill - although I think it is going to have a monument of
regulations, even though that is not my intention - so any ideas you might have of how they may
be looked at. Maybe there are other ideas that might be looked at by Congress and, if you could
supply it later we would put it in the record, if the chairman so desires.

166 Mr. FRIEDMAN. That is the model that has been in effect in Pennsylvania, to draft the
comprehensive regulations, and I will submit that to the chairman.

166 Senator METCALF. There is certainly a useful purpose the advisory committee serves, as
the Senator from New Mexico points out. Under the Federal Advisory Committee Act, we can
have advisory committees. I am sorry I made a misstatement that seemed to indicate we were not
going to be concerned with safety in this bill, Mr. Harger. Mine safety is a concern of everyone
of us. But it is not within the jurisdiction of the committee and not within the relevancy of this
bill. I am going to try to keep this bill strictly concerned with surface mining. So if someone
else wants to make a suggestion, I could make a point of order about that.

167 Thank you all very much.

167 [The prepared statement of Mr. Friedman and a subsequent submittal follow:]

167 STATEMENT OF STEVEN L. FRIEDMAN, COUNSEL, PENNSYLVANIA COAL MINING ASSOCIATION

167 Mr. Chairman and members of the Committee, I am Steven L. Friedman, counsel for the
Pennsylvania Coal Mining Association, an association of independent surface mining operators
located and mining coal in Pennsylvania. Appearing with me today is Vernon Kerry, Portersville,
Pa. and the Chairman of the Association, and Russell Haller, Kittanning, Pa., a member of the
Association.

167 At a time when there is an increasing consensus for energy independence, Pennsylvania's

surface operators are seeking to increase production and to tap our extensive surface mining coal reserves in the face of increased regulatory costs. Surface mining operators confront not only environmental and reclamation regulation, but also a labyrinth of Federal and State water quality laws, standards under the Coal Mine Health and Safety Act, and most significantly, rapidly escalating costs of coverage for liability under the Federal and State Black Lung Acts.

167 Pennsylvania operators have proudly mined coal under the strictest environmental and reclamation standards of any State in the Nation. Pennsylvania, as you are all aware, has had a surface mining law since 1941, which was amended as recently as 1973. Perhaps the most significant amendment was in 1963 when retention of vertical highwalls was prohibited. Other amendments have required preservation and replacement of topsoil, and the determination of bond amount based on the "cost of reclamation." Other provisions of Pennsylvania's water quality laws require minimal spoil on downslopes to control erosion and siltation.

167 The Pennsylvania regulatory scheme admittedly works.The approximately 40,000 acres mined, backfilled, and reclaimed pursuant to current Pennsylvania law, end up more stable and productive than prior to any mining. Significantly, Pennsylvania law specifically authorizes the remining of areas previously mined under environmentally lax standards with exposed highwalls and spoil piles. Once remined under current Pennsylvania law, these areas are reclaimed into stable, attractive, and productive areas. The Pennsylvania regulatory system not only preserves and enhances the quality of virgin land, mined for the first time, but restores and reclaims thousands of acres of land previously mined and degraded under environmentally lax standards.

167 To quote a prominent Southern philosopher, "if it ain't broke, don't fix it." The Pennsylvania statutory and regulatory system, developed through decades of regulatory experience, has repeatedly proved itself. S. 7 is proclaimed by you as a vehicle to bring the rest of the nation up to Pennsylvania standards.Unfortunately, its rhetoric falls woefully short of these worthy goals. As presently drafted, S. 7 is at best an inflexible effort to codify uniform, detailed regulations for different coal fields with strikingly different climate, terrain, and hydrology. Instead of establishing workable, environmental protection and reclamation standards for the

nation's coal fields, S. 7 will straitjacket and hamper Pennsylvania's effective and proven program.

167 We have carefully reviewed S. 7 and respectfully submit to the Committee the attached specific amendments to preserve the present Pennsylvania regulatory program, which is a vivid example of effective state governmental action. Pennsylvania does not need S. 7. S. 7 will unnecessarily interfere with Pennsylvania's present program. Indeed, without substantial amendments to its law, Pennsylvania's present program cannot even be certified pursuant to Section 403 of S. 7 to continue its effective environmental protection and reclamation efforts.

167 Without these amendments which we respectfully submit to you today, S. 7's inflexibility will destroy Pennsylvania's present program. As presently drafted, S. 7 imposes unnecessary mandatory procedures on Pennsylvania's present program, when in fact these procedures may only be justified in western coal fields. S. 7 also provides for mandatory hearing procedures at every stage of the permit process thereby inviting unnecessary delay, and it contains numerous other administrative and drafting problems which must be amended to provide the administrative flexibility which is necessary for Pennsylvania to continue its present excellent regulatory program.

168 I. REGULATORY INFLEXIBILITY

168 S. 7 imposes inflexible uniform minimum environmental protection and reclamation standards for the entire nation without regard for the different conditions and needs of the two general coal mining regions with totally different seams of coal, terrain, claimate, and ground water and sub-surface water conditions, namely: (1) the Eastern or Appalachian coal fields; and (2) the Western coal fields.

168 In the West, average annual rainfall is generally less than 26 inches and surface mining in these generally arid regions may have impact on diminished surface and ground water supplies vitally needed for grazing and agriculture. However, in the eastern Appalachian region, including Pennsylvania, average annual rainfall is in the range of 40 or more inches per year, and surface mining does not deplete or diminish surface or ground water flow or supply.

168 Within the Appalachian coal fields, there are three distinct mining areas - the northern

Appalachian (Pennsylvania, Ohio and western West Virginia), the central Appalachian (eastern West Virginia, Kentucky), and the southern Appalachian (parts of Tennessee and Alabama). These three regions differ substantially in terms of coal seams, terrain, nature of the overburden, and climate. In spite of these environmentally significant regional differences, S. 7 has inflexibly imposed inappropriate uniform standards.

168 S. 7 automatically requires each applicant for a permit to perform the costly study of the hydrologic consequences of mining and to include such a study in the reclamation plan. Sec. 407(b)(11); Sec. 407(b)(14); Sec. 410(b)(3). This hydrological imbalance study may only be necessary in the arid western regions, where surface mining may deplete ground waters.The proposed amendment limits this mandatory requirement to the western region, making it discretionary with the regulatory authority in the eastern region.

168 To conform S. 7 to Pennsylvania law, we have also suggested amendments which give the regulatory authority the discretion to require or waive other studies, data, or information, which are necessary in Pennsylvania only under special circumstances. For example, chemical analysis of the overburden is presently required in only a small percentage of Pennsylvania applications. Properly, the Pennsylvania regulatory authority has the discretion to decide when it needs to require this information. Unfortunately, Sections 407(b)(15) and 408(a)(12) of S. 7 inflexibly require a chemical analysis of the overburden in each application and reclamation plan. Usually, a review of the drill hole logs combined with other geologic data is sufficient to analyze the overburden. Clearly, the regulatory authority must have the discretion to determine whether or not to require this costly chemical analysis. The proposed amendments to Sections 407(b) and 408(a)(12) will conform S. 7 to current Pennsylvania law.

168 Pennsylvania law specifically authorizes permit amendments when additional documentation is filed which would have been sufficient if filed as part of the original application. S. 7, in contrast, requires a totally new application and a "revised reclamation plan" for any permit revision except those involving "incidental boundary revisions." Section 411(a)(3). To avoid unnecessary burden on the operator and the regulatory authority, we have suggested an amendment requiring a new application and reclamation plan only in those

instances involving "significant alterations to the reclamation plan." This is consistent with S. 7's current limitation of hearing and notice requirements to those amendments "involving significant alterations in the reclamation plan." Section 411(a)(2).

168 Another critical element of Pennsylvania law is incremental bonding which allows an operator to permit an area and then bond it in parts. This allows necessary flexibility to the operator who may be in the process of securing mineral rights from several adjoining landowners. While S. 7 implicitly refers to incremental bonding in Section 409, amendments to Section 407(b)(8)-(9) and Section 419 are necessary to insure that this necessary and environmentally sound Pennsylvania practice is permitted.

169 In a similar vein, an amendment has been proposed to Section 409 concerning the amount of bond, conforming this provision with Pennsylvania law and eliminating the burdensome and unnecessary "two independent estimates." In addition, the minimum bond amount is proposed to be reduced from $10,000 to $5 ,000 to conform with Pennsylvania law and prevent discrimination against small operators.

169 S. 7 has also imposed an unworkable restraint on the release of bonds, allowing bond releases to be held up if there is contribution of any suspended solids to streamflow or runoff "above natural levels under seasonal flow conditions as measured prior to any mining." Section 410(c)(2).Clearly, any land disturbance, even farming, contributes suspended solid solids to streamflow or runoff above "natural levels." Furthermore, the section as drafted requires a measurement of such seasonal conditions for a year prior to mining. The amendments eliminate this ridiculously burdensome requirement and allow denial of bond release only for contributions of suspended solids in excess of the applicable state or federal discharge standards.

169 S. 7 not only materially and significantly conflicts with Pennsylvania's reclamation requirements but fails to recognize environmentally sound reclamation techniques long permitted in Pennsylvania. Pennsylvania law specifically authorizes the terracing method of backfilling and reclamation of sites previously mined under the environmentally lax pre-1963 standards. There is no specific provision for terracing in Section 415(b)(3). This invaluable and environmentally sound reclamation technique must be specifically authorized or else

Pennsylvania could lose a means of reclaiming thousands of acres.

169 Section 412(a) of S. 7 requires a time consuming coal exploration permit, which is not required in Pennsylvania because most Pennsylvania exploration is done by drilling, not by potentially destructive excavation techniques. Accordingly, we suggest that Section 412(a) be amended so as not to require these permits for drill hole exploration.

169 Section 415(b)(15) of S. 7 is an impossibility. Thunderstorms, a late dynamite truck arrival, and any one of a hundred operational dislocations can change daily blasting schedules, making it physically impossible to give advance written notice of blasting. Likewise, section 415(b)(14) as drafted would require seismic recordings of each blast, an unnecessary and costly procedure that could financially cripple smaller operators. Pennsylvania's experience recognizes this, and section 415(b)(15) must be amended to require the use of explosives consistent with federal and state law. Section 415(b)(15) should not create a new substantive federal law of explosives.

169 II. PROCEDURAL CONFUSION

169 S. 7 creates a morass of procedures accompanying permit applications and operations and release of performance bonds. S. 7 provides mandatory hearing procedures for every phase of a permit from initial application to final release of bond. Such mandatory hearing procedures at every stage of operations could add tremendous legal and administrative expenses to the cost of mining without environmental justification. The proposed amendments make the decision to grant hearings discretionary with the Secretary or regulatory authority, allowing spurious and frivolous objections to permits and operations to be resolved without the unnecessary expense of a hearing. See amendments to Sec. 413(a)(b). Furthermore, the proposed amendment to section 413 properly places the burden of proof on the objector to prove by substantial evidence the basis for any challenge to a permit application. S. 7 unfairly and improperly places the burden on the applicant in such a pre-permit proceeding to prove that the application fully complies with all aspects of Federal and State law once any objector has raised any objections to a pending permit application or reclamation.

169 On the other hand, S. 7 gives the Secretary the power to order cessation of operations in

Sec. 421(a)(2) without notice or hearing or any defined time limit within which a post-cessation hearing must be held.The proposed amendment to Sec. 421(a)(2) would require a hearing within 72 hours of the cessation order at or near the site and is essential to prevent an ill-considered unsubstantiated closure order from putting an operator out of business.

169 Throughout S. 7, the proposed amendments re-define the standing of persons to raise objections in administrative proceedings or judicial proceedings as a "valid legal interest" of those who "are or may be adversely affected." See Sections 410(b)(4) and 414(c). This is essential to insure that S. 7 complies with the recent Supreme Court pronouncements. Village of Arlington Heights v. Metropolitan Housing Development Corp., U.S. (January 11, 1977); Sierra Club v. Morton, 405 U.S. 727 (1972).

170 S. 7 as drafted provides as a ground for denial of a permit in section 410(b)(4) the mere pendency of a proceeding under section 422 to have an area declared unsuitable for mining, whether initiated by the State or another person. This is an invitation to irresponsible gadflies to tie up thousands of acres of productive coal fields and seriously jeopardize coal production. The amendments require that if any pending proceeding is to be a ground for denial, it must be established already in that proceeding the likelihood of success on the merits, the absence of irreparable public or private injury, and the presence of irreparable harm to the petitioning party.

170 S. 7 has arbitrarily limited permits to 5 years. See Section 406(b). This arbitrary limit does not serve any legitimate environmental purposes. If the permittee is operating in compliance, the permit should continue. Furthermore, there is likewise no environmental necessity to require any successor in interest to reapply for a permit and secure approval of a reclamation plan if the successor has secured bond coverage and continues to operate in accord with the already approved permit and reclamation plan. The proposed amendments to Section 406(b) eliminate the arbitrary 5 year time limit and guarantee the right to successor to continue the permit, thus conforming Section 406(b) with Pennsylvania law.

170 III. OTHER PROBLEMS

170 The proposed amendments attempt to resolve numerous other administrative and drafting defects in S. 7. In light of the strikingly different mining conditions and regulatory authorities of

the various coal fields, it is essential that coal operators and the heads of regulatory authorities
have an institutionalized input into the process of promulgating regulations. The proposed
amendment to Section 401 provides for an Advisory Committee on Environmental Protection
and Reclamation Standards which shall include operators and heads of state regulatory
authorities. Furthermore, if a regulation specifically affects three states or less, then the Advisory
Committee reviewing those regulations must include operators and heads of regulatory
authorities from those states.

170 In order to avoid protracted delay in the permit and reclamation plan approval process, the
proposed amendments have inserted time limits to insure prompt action by the regulatory
authority. Section 410(a) has been amended to require action on a permit and reclamation plan
within ninety (90) days of submission to the regulatory authority. Section 413(b) has been
amended to include a thirty (30) day time limit to hold a hearing, if necessary, on any objections
to a permit application.

170 IV. CONCLUSION

170 S. 7 does not codify the already proven environmentally sound Pennsylvania law. Instead,
it inflexibly subjects Pennsylvania to standards suited, if at all, for other regions of the country.
It requires burdensome and environmentally unnecessary submissions of data by operators and
deprives the operators of the necessary flexibility so vital to insure environmentally sound and
efficient coal production. In summary, S. 7 as drafted will destroy the strictest, most effective
regulatory system in the country. The proposed amendments are essential to avoid such a
regulatory fiasco which can only jeopardize our vitally necessary coal production.

170 I am available for questions. Thank you.

171 ADVISORY COMMITTEE ON ENVIRONMENTAL PROTECTION AND RECLAMATION STANDARDS

171 ORIGINAL

171 Sec. 401. Not later than the end of the one-hundredand-eighty-day period immediately
following the date of enactment of this Act, the Secretary shall promulgate and publish in the
Fedral Register regulations covering a permanent regulatory procedure for surface coal mining

and reclamation operations setting mining and reclamation performance standards based on and
incorporating the provisions of title V and establishing procedures and requirements for
preparation, submission, and approval of State programs and development and implementation of
Federal programs under this title. Such regulations shall not be promulgated and published by
the Secretary until he has -

171 (A) published proposed regulations in the Federal Register and afforded interested persons
and State and local governments a period of not less than forty-five days after such publication to
submit written comments thereon;

171 (B) obtained the written concurrence of the Administrator of the Environmental Protection
Agency with respect to those regulations promulgated under this section which relate to air or
water quality standards promulgated under the authority of the Federal Water Pollution Control
Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et
seq.); and

171 (C) held at least one public hearing on the proposed regulations.

171 The date, time and place of any hearing held on the proposed regulations shall be set out
in the publication of the proposed regulations. The Secretary shall consider all comments and
relevant data presented at such hearing before final promulgation and publication of the
regulations.

171 Amendments - 1. Add to page 28 before "Not" - "(a)" and add to page 29, line 19 after
"regulations" - "and (D) consulted with and considered recommendations of The Advisory
Committee on Environmental Protection and Reclamation Standards as set forth in subsection (b)
herein."

171 2. Add to page 29, line 24, after "regulations." -

171 "(b) The Secretary shall appoint an Advisory Committee on Environmental Protection and
Reclamation

172 Standards composed of -

172 (1) the Director, Bureau of Mines, or his delegate, with his consent;

172 (2) not more than two directors or heads of a regulatory authority of any state in which

there is active surface mining operations subject to the provisions of this Act;

172 (3) not more than ten other persons who are knowledgeable in the fields of mining and environmental protection and reclamation standards at least one of whom shall be a representative of working coal miners, and at least six of whom shall be representatives of active surface coal mine operators;

172 (c) The Secretary shall designate the Chairman of the Advisory Committee. The Advisory Committee shall consult with, and make recommendations to, the Secretary on all matters including promulgation of regulations involving or relating to mining and environmental protection and reclamation standards and such determinations as provided in this title. The Secretary shall consult with, and consider recommendations of the Advisory Committee in the promulgation of any reglations or other determinations relating to mining and environmental protection and reclamation standards as provided in this title: Provided That any determination by the Secretary as provided under this title including promulgation of regulations that specifically affect mining and environmental protection and reclamation standards in less than three states consist of the director or head of a regulatory authority and representatives of surface coal mine operators from the three or less affected states.

172 (d) Advisory Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the Secretary, but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, United States Code, be fully' reimbursed for travel, subsistence, and related expenses.

172 Reasons

172 This amendment provides for an Advisory Committee on Environmental Protection and Reclamation Standards which shall be consulted by the Secretary prior to promulgation of regulations or other determinations to be made under this bill. The Advisory Committee shall be composed of representatives of the industry, management and Labor as well as of the regulatory

authorities. The amendment further provides that any special regulations affecting surface
mining activities in less than three states shall be reviewed by the Advisory Committee with coal
mining representatives and heads of regulatory authorities from the affected states.

173 The amendment insures that the different regulatory needs of various coal mining regions
subject to this Act will receive consideration during the promulgation of regulations and other
determinations by the Secretary in administering the bill.

174 PROPOSED AMENDMENTS TO S. 7

174 MARCH 1, 1977

174 SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

174 SUBMITTED BY:

174 PENNSYLVANIA COAL MINING ASSOCIATION 240 NORTH THIRD STREET HARRISBURG, PENNSYLVANIA 717-233-7909

175 ABANDONED MINE RECLAMATION FUND

175 Original

175 Sec. 301(d) The geographic allocation of expenditures from the fund shall reflect both the
area from which the revenue was derived as well as the program needs for the funds. Fifty per
centum of the funds collected annually in any State or Indian reservation shall be expended in
that State or Indian reservation by the Secretary or State regulatory authority pursuant to an
approved State abandoned mine reclamation program to accomplish the purposes of this title
after receiving and considering the recommendations of the Governor of that State or the head of
the governing body of that tribe having jurisdiction over that reservation, as the case may be:
Provided, however, That if such funds have not been expended within three years after being
paid into the fund, they shall be available for expenditure in any area. The balance of funds
collected on an annual basis may be expended in any area at the discretion of the Secretary in
order to meet the purposes of this title.

175 Amendment - Delete from line 4 "Fifty" and substitute "Eighty"

175 Sec. 301(d) as amended

175 The geographic allocation of expenditures from the fund shall reflect both the area from

which the revenue was derived as well as the program needs for the funds. Eighty per centum of
the funds collected annually in any State or Indian reservation shall be expended in that State or
Indian reservation by the Secretary or State regulatory authority pursuant to an approved State
abandoned mine reclamation program to accomplish the purposes of this title after receiving and
considering the recommendations of the Governor of that State or the head of the governing body
of that tribe having jurisdiction over that reservation, as the case may be: Provided, however,
That if such funds have not been expended within three years after being paid into the fund, they
shall be available for expenditure in any area. The balance of funds collected on an annual basis
may be expended in any area at the discretion of the Secretary in order to meet the purposes of
this title.

175 Reasons

175 This amendment increases the percentage of the reclamation fund to be returned to the
state where collected from fifty percent to eighty percent. In areas such as Pennsylvania, with a
long history of surface mining operations under prior minimum regulatory standards, there is a
significant need for additional reclamation and restoration. Since Pennsylvania has produced in
the past and is producing today significant tonnage, it is only appropriate that a substantial part of
the reclamation fees collected stay in Pennsylvania. This same justification is applicable to other
eastern coal mining states.

177 ADVISORY COMMITTEE ON ENVIRONMENTAL PROTECTION AND RECLAMATION STANDARDS

177 ORIGINAL

177 Sec. 401.Not later than the end of the one-hundred-and-eighty-day period immediately
following the date of enactment of this Act, the Secretary shall promulgate and publish in the
Federal Register regulations covering a permanent regulatory procedure for surface coal mining
and reclamation operations setting mining and reclamation performance standards based on and
incroporating the provisions of title V and establishing procedures and requirements for
preparation, submission, and approval of State programs and development and implementation of
Federal programs under this title. Such regulations shall not be promulgated and published by
the Secretary until he has -

177 (A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than forty-five days after such publication to submit written comments thereon;

177 (B) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

177 (C) held at least one public hearing on the proposed regulations. The date, time and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations.The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

177 Amendments - 1. Add to page 28 before "Not" - "(a)" and add to page 29, line 19 after "regulations" - "and (D) consulted with and considered recommendations of The Advisory Committee on Environmental Protection and Reclamation Standards as set forth in subsection (b) herein."

177 2. Add to page 29, line 24, after "regulation." -

177 "(b) The Secretary shall appoint an Advisory Committee on Environmental Protection and Reclamation Standards composed of -

178 (1) the Director, Bureau of Mines, or his delegate, with his consent;

178 (2) not more than two directors or heads of a regulatory authority of any state in which there is active surface mining operations subject to the provisions of this Act;

178 (3) not more than ten other persons who are knowledgeable in the fields of mining and environmental protection and reclamation standards at least one of whom shall be a representative of working coal miners, and at least six of whom shall be representatives of active surface coal mine operators;

178 (c) The Secretary shall designate the Chairman of the Advisory Committee. The Advisory

Committee shall consult with, and make recommendations to, the Secretary on all matters including promulgation of regulations involving or relating to mining and environmental protection and reclamation standards and such determinations as provided in this title. The Secretary shall consult with, and consider recommendations of the Advisory Committee in the promulgation of any reglations or other determinations relating to mining and environmental protection and reclamation standards as provided in this title: Provided That any determination by the Secretary as provided under this title including promulgation of regulations that specifically affect mining and environmental protection and reclamation standards in less than three states consist of the director or head of a regulatory authority and representatives of surface coal mine operators from the three or less affected states.

178 (d) Advisory Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the Secretary, but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, United States Code, be fully reimbursed for travel, subsistence, and related expenses.

178 Reasons

178 This amendment provides for an Advisory Committee on Environmental Protection and Reclamation Standards which shall be consulted by the Secretary prior to promulgation of regulations or other determinations to be made under this bill. The Advisory Committee shall be composed of representatives of the industry, management and Labor as well as of the regulatory authorities. The amendment further provides that any special regulations affecting surface mining activities in less than three states shall be reviewed by the Advisory Committee with coal mining representatives and heads of regulatory authorities from the affected states.

179 The amendment insures that the different regulatory needs of various coal mining regions subject to this Act will receive consideration during the promulgation of regulations and other determinations by the Secretary in administering the bill.

180 INITIAL REGULATORY PROCEDURES

180 Original

180 Sec. 402(f)(2) provide that upon receipt of inspection reports indicating that any surface coal mining operation has been found in violation of subsections (b) and (c) above, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and the necessary enforcement actions, if any, to be implemented pursuant to the Federal enforcement provisions of this title. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall nitify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection;

180 Amendment - Page 32

180 1. Add to line 11 "the same offense under" between the words "of" and "subsection"

180 2. Add to line 15 "willfully" between the words "being" and "violated"

180 Sec. 402(f)(2) as amended

180 The enforcement program shall - (2) provide that upon receipt of inspection reports indicating that any surface coal mining operation has been found in violation of the same offense under subsections (b) and (c) above, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being willfully violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and the necessary enforcement provisions of this title.

181 Reason

181 The intention of this subsection is to bring upon the permittee Federal enforcement where the permittee failed to abate a violation discovered during a State inspection. The reporting to the Secretary of two consecutive unrelated violations which the permittee has promptly abated

will cause numerous necessary Federal inspections and duplication of effort between the regulatory authorities. From time to time minor unintentional violations will occur on surface coal mining operations. Such violations can adequately be enforced by State inspections and it would be burdensome both upon the Secretary and the operator to have Federal inspectors in addition to those of the State enforcing such violations. Willful violations may need more strict enforcement and accordingly, two enforcement arms may be appropriate.

182 INITIAL REGULATORY PROCEDURES

182 Original

182 Sec. 402(f)(2) . . .When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection;

182 Amendment -

182 Page 48, Line 3

182 Insert after semi-colon "the name and address of such person providing information to the Secretary shall be made known to the operator in writing upon the operator's request."

182 Section 502(f)(1) - as amended

182 When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection; the name and address of such person providing information to the Secretary shall be made known to the operator in writing upon the operator's request.

182 Reasons

182 Many of the complaints the Secretary will receive will be from individuals who hold property interests contiguous with the surface coal mining operation. When the name and address of the person providing information to the Secretary is made known to the operator, the operator can make special efforts, to satisfy the complaints of his neighbor. The person providing information to the Secretary may also be making allegations of fact to substatiate a

criminal violation under the Act. In this regard the operator should have the right to confront his accusers. If the operator knows the individual's identity he may very easily be able to explain, to the inspector's satisfaction, the background of the alleged violation and avoid the necessity of a hearing.

183 INTIAL REGULATORY PROCEDURES

183 Original

183 Sec. 402(f)(3) for purposes of this section, the term "Federal inspector: means personnel of the Office of Surface Mining Reclamation and Enforcement and such additional personnel of the United States Geological Survey, Bureau of Land Management, or of the Mining Enforcement and Safety Administration so designated by the Secretary, or such other personnel of the Forest Service, Soil Conservation Service, or the Agricultural Stabilization and Conservation Service as arranged by appropriate agreement with the Secretary on a reimbursable or other basis;

183 Amendment - p. 33, line 2

183 Insert "trained in the provisions of this Act, the regulations promulgated hereunder, and the accepted physical and scientific means of inspecting surface coal mining operations" between the words "personnel" and "of."

183 Sec. 402(f)(3) as amended

183 For the purpose of this section, the term "Federal inspector" means personnel of the Office of Surface Mining Reclamation and Enforcement and such additional personnel trained in the provisions of this Act, the regulations promulgated hereunder, and the accepted physical and scientific means of inspecting surface coal mining operations of the United States Geological Survey, Bureau of Land Management, or the Mining Enforcement and Safety Administration so designated by the Secretary, or such other personnel of the Forest Service. Soil Conservation Service, or the Agricultural Stabilization and Conservation Service as arranged by the appropriate agreement with the Secretary on a reimbursable or other basis.

183 Reason

183 Inspectors must be adequately trained so that violations which they might cite against the

operator have a substantial chance of resulting in convictions or civil penalties before the courts.
It would be unfair to place the operator in a position of having to pay for expensive engineering
services, scientific evaluations, and attorneys fees in defense of an allegation of a violation which
is the result of an inspector's ingnorance of this Act or of testing techniques. Similarly, such lack
of training would be a burden upon the regulatory authorities and the courts.

184 FEDERAL PROGRAMS

184 Original

184 Sec. 404(d) Permits issued pursuant to an approved State program shall be valid but
reviewable under a Federal program. Immediately following promulgation of a Federal program,
the Secretary shall undertake to review such permits to determine that the requirements of this
Act are not violated.If the Secretary determines any permit to have been granted contrary to the
requirements of this Act, he shall so advise the permittee and provide him a reasonable
opportunity for submission of a new application and reasonable time to conform ongoing surface
mining and reclamation operations to the requirements of the Federal program.

184 Amendment

184 Page 39, line 6

184 1. Delete "an approved" and insert "a."

184 Page 39, line 7

184 2. Delete "but reviewable under a Federal program."

184 Page 39, lines 13 through 16

184 3. Delete "the permittee and provide him a reasonable opportunity for submission of a
new application and reasonable time to conform ongoing surface mining and reclamation
operations to the requirements of the Federal program" and insert: "the State and provide the
State regulatory authority a reasonable opportunity to conform its program to the requirements of
the Federal program; provided that the permittee must comply with the provisions of Section
402(b) and (c) during the interim."

184 Sec. 404(d) as amended

184 Permits issued pursuant to a State program shall be valid. Immediately following

promulgation of a Federal program, the Secretary shall undertake to review such permits to
determine that the requirements of this Act are not violated. If the Secretary determines any
permit to have been granted contrary to the requirements of this Act, he shall so advise the State
and provide the State regulatory authority a reasonable opportunity to conform its program to the
requirements of the Federal program; provided that the permittee must comply with the
provisions of Section 402(b) and (c) during the interim.

185 Reason

185 The Act as it now stands can lead to devastating results for the surface coal mine operator.
Under the Act a permittee may commence mining under a permit issued by a State program.
This permit, however, is reviewable by the Federal agency at its whim and if the Federal program
determines that the permit violates the requirements of the Act, the permittee must then apply for
a new permit under the Federal program. The new permit may be granted or denied.

185 Until a State program has been approved or disapproved the permits issued by it should be
valid. If the Federal program determines that the State is issuing permits in violation of the Act,
the Secretary should consider this in granting or withdrawing approval to the State program. It
should not retract permits to the detriment of the innocent applicants or permittees. The
applicant must have the right to rely upon the validity of the permit.

186 PERMITS

186 Original

186 Sec. 406(b) All permits issued pursuant to the requirements of this Act shall be issued for
a term not to exceed five years and shall be nontransferable: Provided, That a successor in
interest to a permittee who applies for a new permit within thirty days of succeeding to such
interest and who is able to obtain the bond coverage of the original permittee may continue
surface coal mining and reclamation operations according to the approved mining and
reclamation plan of the original permittee until such successor's application is granted or denied.

186 Amendment - Delete p. 42, line 25 and p. 43 lines 1-9 entirely and substitute "All permits
issued pursuant to the requirements of this Act shall be issued for a term to continue as long as

the permittee is operating in compliance with the requirements of this Act: Provided, That a
successor in interest to a permittee may continue to operate only if the successor in interest is
able to obtain the same bond coverage required of the permittee and continues surface coal
mining and reclamation operations according to the approved mining and reclamation plan of the
original or preceeding permittee."

186 Sec. 406(b) as amended

186 All permits issued pursuant to the requirements of this Act shall be issued for a term to
continue as long as the permittee is operating in compliance with the requirements of this Act:
Provided, That a successor in interest to a permittee may continue to operate only if the successor
in interest is able to obtain the same bond coverage required of the permittee and continues
surface coal mining and reclamation operations according to the approved mining and
reclamation plan of the original or preceeding permittee.

186 Reasons

186 This amendment eliminates any arbitrary time limits on the validity of a permit under this
Act. As long as the permittee is operating in compliance, the permit shall continue.
Furthermore, if a permit is transferred, as is permissible under Pennsylvania law, the new
permittee shall continue to operate under the same permit as long as he operates in accordance
with all the terms and conditions of the permit and the reclamation plan and is able to obtain the
same bond coverage.

188 PERMITS

188 Original

188 Sec. 406(c) A permit shall terminate if the permittee has not commenced the surface coal
mining and reclamation operations covered by such permit within three years of the issuance of
the permit: Provided, That with respect to coal to be mined for use in a synthetic fuel facility, the
permittee shall be deemed to have commenced surface mining operations at such time as the
construction of the synthetic fuel facility is initiated.

188 Amendment - Page 43, Line 11 Delete the word "and" and insert "or"

188 Sec. 406(c) as amended

188 A permit shall terminate if the permittee has not commenced the surface coal mining or reclamation operations covered by such permit within three years of the issuance of the permit, provided that with respect to coal to be mined for used in synthetic fuel facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic facility is initiated.

188 Reasons

188 As written this subsection may be interpreted to require the commencement of simultaneous reclamation operations with mining activities within three years. The functions are in reality separate and disjunctive.

189 APPLICATION REQUIREMENTS

189 Original

189 Sec. 407(a) Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this Act shall be accompanied by a fee as determined by the regulatory authority. Such fee shall be based as nearly as possible upon the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

189 Amendment - Delete from lines 13-18 "as determined by the regulatory authority. Such fee shall be based as nearly as possible upon the actual or anticipated cost of reviewing, administering and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit." Add to line 12 after "fee" - of one hundred dollars. If the anticipated cost of reviewing, administering, and enforcing permits issued pursuant to a State or Federal program exceeds the revenues obtained from the application fees, the regulatory authority may develop procedures to be reimbursed for the excess costs from the Abandoned Mine Reclamation Fund under the direction of the Secretary.

189 Sec. 407(a) as amended

189 Each application for a surface coal mining and reclamation permit pursuant to an

approved State program or a Federal program under the provisions of this Act shall be
accompanied by a fee of one hundred dollars. If the anticipated cost of reviewing, administering
and enforcing permits issued pursuant to a State or Federal program exceeds the revenues
obtained from the application fees, the regulatory authority may develop procedures to be
reimbursed for the excess costs from the Abandoned Mine Reclamation Fund under the direction
of the Secretary.

189 Reasons

189 There is no environmental or regulatory justification for adding additional financial
burdens to surface coal mine operators. The costs of administering this program should not be
completely imposed upon the coal operators, especially in light of the financial burdens already
imposed of this Act through the reclamation fee.

190 APPLICATION REQUIREMENTS

190 Original

190 Sec. 407(b)(4) if the applicant is a partnership, corporation, association, or other business
entity, the following where applicable: the names and addresses of every officer, partner,
director, or person performing a function similar to a director, of the applicant, together with the
name and address of any person owning, of record or beneficially either along or with associates,
10 per centum or more of any class of stock of the applicant and a list of all names under which
the applicant, partner, or principal shareholder previously operated a surface mining operation
within the United States;

190 Amendment - Add to line 24 after "United States;" - "within the five year period preceding
the date of submission of the application."

190 Sec. 407(b)(4) as amended

190 if the applicant is a partnership, corporation, association, or other business entity, the
following where applicable: the names and addresses of every officer, partner, director, or person
performing a function similar to a director, of the applicant, together with the name and address
of any person owning, of record or beneficially either alone or with associates, 10 per centum or
more of any class of stock of the applicant and a list of all names under which the applicant,

partner, or principal shareholder previously operated a surface mining operation within the
United States within the five year period preceding the date of submission of the application.

190 Reason

190 This amendment places reasonable time limits on the providing of information by the
business entity which is a permit applicant, and makes this scope consistent with the
requirements of Sec. 407(b)(3).

191 APPLICATION REQUIREMENTS

191 Original

191 Sec. 407(b)(6) a copy of the applicant's advertisement to be published in a newspaper of
general circulation in the locality of the proposed site at least once a week for four successive
weeks, and which includes the ownership, a description of the exact location and boundaries of
the proposed site sufficient so that the proposed operation is readily locatable by local residents,
and the location of where the application is available for public inspection;

191 Amendment

191 Page 47, line 8

191 1.Add the words "or newspapers" between the words "newspaper" and "of."

191 Page 47, line 9

191 2. Delete the words "at least once" and the word "four" and replace with the word "twice"
between the words "site" and "a" and replace the word "two" between the words "for" and
"successive."

191 Sec. 407(b)(6) as amended

191 A copy of the applicant's advertisement to be published in a newspaper or newspspers of
general circulation in the locality of the proposed site twice a week for two successive weeks,
and which includes the ownership, and description of the exact location and boundaries of the
proposed site sufficient so that the proposed operation is readily locatable by local residents, and
the location of where the application is available for public inspection.

191 Reason

191 In rural areas newspapers may only be printed on a weekly or bi-weekly schedule but frequently large city newspapers are circulated throughout the week. Therefore, the applicant should have his choice of running the notice in either the local newspaper once or twice when it is published and perhaps in the newspaper of general circulation in a larger city which is distributed in the same locality.

192 The amendment still requires the operator to publish the notice four times in the local or general newspapers in the area, but it reduces the lead time necessary for review of the application. It adds two weeks to the applicant's time period for submittal of the application which requires that the notice advertisement be provided to a regulatory authority. Narrowing the period from four weeks to two weeks does not reduce the likelihood of citizen participation.

193 APPLICATION REQUIREMENTS

193 Original

193 Sec. 407(b)(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

193 (9) evidence of the applicant's legal right to enter and commence surface mining operations on the area affected;

193 Amendment

193 Page 47, line 22

193 1.Delete the word "affected" and insert the word "bonded."

193 Page 47, line 25

193 2. Delete the word "affected" and insert the words "to be bonded only and/or the intent to secure such legal right on a contiguous area."

193 Sec. 407(b)(8) and (9) as amended

193 (8) The anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be bonded.

193 (9) Evidence of the applicant's legal right to enter and commence surface mining operations on the area to be bonded only and/or the intent to secure such legal right on a contiguous area.

193 Reason

193 The Act as drafted contemplates a large area to be permitted initially with subsequent smaller sections to be bonded as the mining operation commences and continues. This change would tie in the two tier system contemplated in the Act by requireing the operator to submit the starting and termination dates of each phase of the operation within the permit area as he contemplates bonding them.

193 The amendment conforms this requirement of the permit application with Pennsylvania law and makes this provision consistent with other provisions of this Act. Under Pennsylvania law, an applicant need not demonstrate legal right to enter until a performance bond is secured.Clearly, such a bond cannot be secured without such evidence of a legal right to enter. Therefore, operators are able to secure permits for areas and then secure performance bonds for parts of the permit area when the legal right to enter is secured.

194 "Incremental bonding," permitted under Pennsylvania law, is expressly recognized in Section 409(a) of this bill, at lines 20-25 and lines 1-3 on page 56.

194 "The bond shall cover the area of land within the permit area upon which the operator will initiate and conduct surface coal mining operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section."

195 Original

195 Sec. 407(b)(11) a determination of the hydrologic conse-quences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability;

195 Amendment - Add to line 4, before "a determination" - "for those bituminous coal surface

mines located west of the one hundredth meridian west longitude, and for all others when
requested by the regulatory authority,"

195 Sec. 407(b)(11) as amended

195 for those bituminous coal surface mines located west of the one hundredth meridian west
longitude, and for all others when requested by the requlatory authority, a determination of the
hydrologic consequences of the mining and reclamation operations, both on and off the mine site,
with respect to the hydrologic regime, quantity and quality of water in surface and ground water
systems including the dissolved and suspended solids under seasonal flow conditions and the
collection of sufficient data for the mine site and surrounding areas so that an assessment can be
made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology
of the area and particularly upon water availability;

195 Reasons

195 The bill presently requires an automatic and admittedly expensive study of the
hydrological balance of the ground water and surface water systems in and around the proposed
site which may be unnecessary for eastern surface coal mining. This information may be
necessary for western surface coal conducted in arid regions with generally less than 26 inches of
annual rainfall where surface coal mining may have significant impact on already diminished
subsurface waters.

196 APPLICATION REQUIREMENTS

196 Original

196 Sec. 407(b)(13) an accurate map or plan to an appropriate scale clearly showing (A) the
land to be affected as of the date of application and (B) all types of information set forth on
topographical maps of the United States Geological Survey of a scale of 1:24000 or larger,
inincluding all manmade features and significant known

196 Amendment - Delete from line 20 "an accurate map or plan" and substitute "accurate maps
or plans".

196 Sec. 407(b)(13) as amended

196 accurate maps or plans to an appropriate scale clearly showing (A) the land to be affected

as of the date of application and (B) all types of information set forth on topographical maps of
the United States Geological Survey of a scale of 1:24000 or larger, including all manmade
features and significant known

196 Reasons

196 As drafted, this section would require that all the information be put on one map. As a
practical matter, most Pennsylvania operators provide a U.S. Geologic Survey map and a 1:400
site map.This amendment allows the requested information to be supplied in two or more maps
or plans.

197 APPLICATION REQUIREMENTS

197 Original

197 Sec. 407(b)(14) the location of subsurface water, if encountered, and its quality

197 Amendment - Add to line 18, before "the location" - " for all bituminous coal surface
mines located west of the one hundredth meridian west longitude."

197 Sec. 407(b)(14) as amended

197 . . . for all bituminous coal surface mines located west of the one hundredth meridian west
longitude, the location of subsurface water, if encountered, and its quality

197 Reason

197 The location of subsurface water and any impact on its quantity or flow is a particular
concern for western surface coal mining conducted often in arid regions with generally less than
26 inches of annual rainfall. Such surface mining operations may have impact on the already
diminished subsurface waters.

197 In eastern surface coal mining, there is only, at worst, a temporary disturbance of the
subsurface water. In Pennsylvania, once the mining is completed, the aquifer is re-established
and the water table is recharged. The providing of this data by eastern surface coal operators
would be costly and unnecessary.

198 APPLICATION REQUIREMENTS

198 Original

198 Sec. 407(b)(15) a statement of the result of test borings or core samplings from the permit

area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the
chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of
potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum
lying immediately underneath the coal to be mined; and

198 Amendment - Delete from line 18 after "overburden" - "; "and add to line 20 after "mined"
- "when such information is deemed essential and requested by the regulatory authority;"

198 Sec. 407(b)(15) as amended

198 a statement of the reslt of test borings or core samplings from the permit area, including
logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical
properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid
or toxic forming sections of the overburden and chemical analysis of the stratum lying
immediately underneath the coal to be mined when such information is deemed essential and
requested by the regulatory authority;

198 Reason

198 Such chemical analysis of the overburden is not necessary in most cases. A review of the
drill hole logs has been usually found to be sufficient for the regulatory authority in
Pennsylvania. This analysis should be required only when the regulatory authority, in its
discretion, requires it. It cannot be automatically imposed in all cases.

199 APPLICATION REQUIREMENTS

199 Original

199 Sec. 407(b)(16) information pertaining to coal seams, test borings, or core samplings as
required by this section shall be made available to any person with an interest which is or may be
adversely affected: Provided, That information which pertains only to the analysis of the
chemical and physical properties of the coal (excepting information regarding such mineral or
elemental content which is potentially toxic in the environment) shall be kept confidential and
not made a matter of public record.

199 Amendments - 1. Insert "valid legal" between the words "and" and "interest."

199 Page 51, line 4

199 2. Insert "and the person to whom such information is made available executes under oath
a statement that said information (excepting information regarding such mineral or elemental
content which is potentially toxic in the environment) shall not be disclosed to any other person."

199 3. Insert after "person"-"If the regulatory authority finds that the probable annual
production of any coal surface mining operator will not exceed 250,000 tons, the determination
of hydrologic consequences required by subsection (b)(11) and the statement of the result of test
borings or core samplings required by subsection (b)(15) of this section shall be performed by
and the cost assumed by the regulatory authority, or, at the option of the coal surface mining
operator, by a qualified public or private laboratory selected by the coal surface mining operator."

199 Sec. 407(b)(16) as amended

199 information pertaining to coal seams, test borings, core samplings as required by this
section shall be made available to any person with a valid legal interest which is or may be
adversely affected: Provided, That information which pertains only to the analysis of the
chemical and physical properties of the coal (excepting information regarding such mineral or
elemental content which is potentially toxic in the environment) shall be kept confidential and
not made a matter of public record and the person to whom such information is made available
executes under oath a statement that said information (excepting information regarding such
mineral or elemental content which is potentially toxic in the environment (shall not be disclosed
to any other person.If the regulatory authority finds that the probable annual production of any
coal surface mining operator will not exceed 250,000 tons, the determination of hydrologic
consequences required by subsection (b)(11) and the statement of the result of test borings or
core samplings required by subsection (b)(15) of this section shall be performed by and the cost
assumed by the regulatory authority, or, at the option of the coal surface mining operator, by a
qualified public or private laboratory selected by the coal surface mining operator.

200 Reason

200 This change is made to conform with numerous other sections of the Act giving standing to only those people who have a cognizable interest in the mining operation as opposed to the citizenry at large.

200 The object of the amended confidentiality requirement is to prevent the unauthorized disclosure of competitive commercial information.

200 The amendment also provides for the regulatory authority to perform this often costly analysis and assume the cost for small operators. Operators may be substantially delayed by the inability of the regulatory authority or its selected laboratory to perform the analysis quickly enough. The amendment gives the operator the option to arrange for the analysis himself.

201 APPLICATION REQUIREMENTS

201 Original

201 Sec. 407(e) Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate official approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam inself.

201 Amendment - page 52, Line 4

201 1. Delete "pertaining to the coal seam itself" and insert "obtained by exploratory drilling"

201 Sec. 407(e) as amended

201 Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate official approved by the regulatory authority where the mining is proposed to occur, except for that information obtained by exploratory drilling.

201 Reason

201 This change clarifies what information pertaining to the coal must be recorded with the recorder at the courthouse and ties in with Section 407(d).

202 RECLAMATION PLAN REQUIREMENTS

202 Original

202 Sec. 408(a)(1) the identification of the entire area to be mined and affected over the
estimated life of the mining operation and the size, sequence, and timing of the subareas for
which it is anticipated that individual permits for mining will be sought;

202 Amendment - Page 52, Line 15

202 1. Delete the word "permits" and insert the word "bonds"

202 Sec. 408(a)(1) as amended

202 the identification of the entire area to be mined and affected over the estimated life of the
mining operation and the size, sequence, and timing of the subareas for which it is anticipated
that individual bonds for mining will be sought.

202 Reason

202 This change brings this section into conformity with the rest of the Act.

203 RECLAMATION PLAN REQUIREMENTS

203 Original

203 Sec. 408(a)(3) the use which is proposed to be made of the land following reclamation,
including a discussion of the utility and capacity of the reclaimed land to support a variety of
alternative uses and the relationship of such use to existing land use policies and plans, and the
comments of any State and local governments or agencies thereof which would have to approve
or authorize the proposed use of the land following reclamation;

203 (4) a detailed description of how the proposed postmining land use is to be achieved and
the necessary support activities which may be needed to achieve the proposed land use;

203 Amendment - Delete p. 53 lines 2-8 "[including . . . reclamation]" and lines 9-12 entirely.

203 Sec. 408(a)(3)-(4) as amended

203 the use which is proposed to be made of the land following reclamation

203 Reason

203 This omitted language is a severe and unwarranted federal regulatory incursion upon the
traditional power of state and local governments to regulate land use planning. Federal land use

planning has been rejected by Congress and should not be indirectly implemented through this
bill.

203 In addition, the inclusion of this unwarranted language improperly assumes that the
operator who usually only owns mineral rights has control over the owner of the surface rights of
the land.

204 RECLAMATION PLAN REQUIREMENTS

204 Original

204 Sec. 408(a)(6) the steps to be taken to comply with applicable air and water quality laws
and requlations and any applicable health and safety standards;

204 Amendment - Delete lines 22-24 entirely.

204 Reason

204 This bill is designed to insure proper state, or if necessary, federal regulation of surface
coal mining. It is not proper to impose upon the regulatory authority or the Secretary the burden
of determining if the operator is in compliance with all other applicable air and water quality
laws. Nor is it appropriate to burden the operator with the unnecessary requirement that he
explain how he is in compliance with numerous other air and water quality laws.

205 RECLAMATION PLAN REQUIREMENTS

205 Original

205 Sec. 408(a)(8) the consideration which has been given to insuring the maximum
practicable recovery of the mineral resource.

205 Amendment - Delete lines 5-7 entirely.

205 Reasons

205 This amendment eliminates from the reclamation plan the statement of consideration
given to insuring the maximum practicable recovery of the coal. This same information is
requested in greater detail in the permit application in Sec. 407(b)(7)-(8), (14).

206 RECLAMATION PLAN REQUIREMENTS

206 Original

206 Sec. 408(a)(10) the consideration which has been given to making the surface mining and
reclamation operations consistent with applicable State and local land use plans and programs;

206 Amendment - Delete lines 10-13 entirely.

206 Reason

206 This requirement in the reclamation plan is a severe and unwarranted federal regulatory
incursion upon the traditional power of state and local governments to regulate land use planning.
Federal land use planning has been rejected by Congress and should not be indirectly
implemented through this bill. Furthermore, the deleted language improperly assumes that the
operator, who may only hold the mineral rights, can control the post-mining uses of the surface
rights holder.

207 RECLAMATION PLAN REQUIREMENTS

207 Original

207 Sec. 408(a)(11) all lands, interest in lands, or options on such interests held by the
applicant or pending bids on interests in lands by the applicant which lands are contiguous to the
area to be covered by the permit;

207 Amendment - Delete lines 14-17 entirely.

207 Reasons

207 This amendment eliminates the requested information from the reclamation plan. The
information concerning all interests on lands contiguous to the permitted site is not relevant to
the environmental consideration of the reclamation plan and is an unnecessary burden on the
operator as well as requiring the disclosure of confidential trade information and secrets.

208 RECLAMATION PLAN REQUIREMENTS

208 Original

208 Sec. 408(a)(12) the results of test borings which the applicant has made at the area to be
covered by the permit, including the location of subsurface water, and an analysis of the chemical
properties including acid-forming properties of the mineral and overburden: Provided, That
information about the mineral shall be withheld by the regulatory authority if the applicant so
requests;

208 Amendment - Delete lines 18-24 entirely.

208 Reasons

208 The data to be included in the Reclamation plan pursuant to this subsection is already required to be included in the application for a mining permit pursuant to Sec. 407(b)(14) and (15). It is costly and unnecessary to prepare and submit the same data twice, once in the permit application and once in the reclamation plan.

209 PERFORMANCE BONDS

209 Original

209 Sec. 409(a) As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section.

209 Amendment - On page 55, line 24, insert the word "bond" between the wrods "succeeding" and "increments."

209 Sec. 409(a) as amended

209 As succeeding bond increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section.

209 Reason

209 This amendment conforms this section with other provisions of the bill, making it clear that incremental bonding, an essential element of Pennsylvania law, is expressly authorized.

210 PERFORMANCE BONDS

210 Original

210 Sec. 409(a) The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit and shall be determined by the regulatory authority on the basis of at least two independent estimates. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a

third party in the event of forfeiture and in no case shall the bond be less than $10,000.

210 Amendment - Delete lines 3-11 entirely starting with "the amount . . ." and substitute:
"The amount of bond required shall be in an amount determined by the regulatory authority based upon the total estimated cost of completing the approved reclamation plan.Said estimate shall be based upon the operator's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria as may be relevant, including the proposed land use and the additional cost to the regulatory authority which may be entailed in being required to bring personnel and equipment to the site after abandonment by the operator, in excess of the cost to the operator of performing the necessary work during the course of his surface mining operations.
No bond shall be filed for less than $5,000."

210 Sec. 409(a) as amended

210 The amount of the bond required shall be in an amount determined by the regulatory authority based upon the total estimated cost of completing the approved reclamation plan. Said estimate shall be based upon the operator's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria as may be relevant, including the proposed land use and the additional cost to the regulatory authority which may be entailed in being required to bring personnel and equipment to the site after abandonment by the operator, in excess of the cost to the operator of performing the necessary work during the course of his surface mining operations. No bond shall be filed for less than $5,000.

211 Reason

211 This amendment conforms this provision with Pennsylvania law. The provision for "at least two independent estimates" in this section as originally drafted may result in substantial delay in the bond approval process by the regulatory authority and is unnecessary in light of the expertise of the regulatory authority to review and approve permit applications and reclamation plans. The reduction of the minimum bond from $10,000 to $5 ,000 is necessary to prevent unnecessary burden upon and discrimination against small Pennsylvania surface coal operators

who conduct operations on a much smaller magnitude than western operators.

212 PERFORMANCE BONDS

212 Original

212 Sec. 409(c) The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.

212 Amendment

212 1. Delete from page 56, line 25, "may" and insert "shall".

212 2. Delete from page 57, line 2, the words "the satisfaction of".

212 Sec. 409(c) as amended

212 The regulatory authority shall accept the bond of the applicant itself without separate surety when the applicant demonstrates to the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.

212 Reason

212 Objective regulations may be promulgated to determine whether operators are entitled to self-bonding.

213 PERMIT APPROVAL OR DENIAL

213 Original

213 Sec. 410(a) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this Act and pursuant to an approved State program or Federal program under the provisions of this Act, including public notification and an opportunity for a public hearing as required by section 413, the regulatory authority shall grant or deny the application for a permit an notify the applicant in writing.

213 Amendment - Add to line 24 after "writing" - "within ninety days of the date of submission of the complete mining application and reclamation plan."

213 Sec. 410(a) as amended

213 Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this Act and pursuant to an approved State program or Federal program under the provisions of this Act, including public notification and an opportunity for a public hearing as required by section 413, the regulatory authority shall grant or deny the application for a permit and notify the applicant in writing within ninety days of the date of submission of the complete mining application and reclamation plan.

213 Reasons

213 This amendment insures that the regulatory authority shall review and act upon a complete mining application and reclamation plan within ninety days. The unnecessary delay in reviewing such applications can be costly to the operator and may even jeopardize the right to mine the coal depending on the terms and conditions of any lease or prospective lease for the mineral rights.

214 PERMIT APPROVAL OR DENIAL

214 Original

214 Sec. 410(b)(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 407(b) has been made and the proposed operation thereof has been designed to prevent significant irreparable offsite damage to hydrologic balance;

214 Amendment - Add to line 17 before "the assessment" - "for all bituminous coal surface mines located west of the one hundredth meridian west longitude".

214 Sec. 410(b)(3) as amended

214 for all bituminous coal surface mines located west of the one hundredth meridian west longitude, the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 407(b) has been made and the proposed operation thereof has been designed to prevent significant irreparable offsite damage to hydrologic balance;

214 Reasons

214 This amendment makes this expensive hydrologic study of ground water and surface water systems required only for western surface coal mining generally conducted in arid regions with

less than 26 inches of annual rainfall where surface coal mining may have impact on already
diminished subsurface waters.

214 The study is unnecessary for eastern surface coal mining. In eastern surface coal mining,
there is only a temporary disturbance of the surface and subsurface water. Once the mining is
completed, the aquifer is reestablished and the water table is recharged.

215 PERMIT APPROVAL OR DENIAL

215 Original

215 Sec. 410(b)(4) the area proposed to be mined is not included within an area designated
unsuitable for surface coal mining pursuant to section 422 of this Act or is not within an area
under study for such designation in an administrative proceeding commenced pursuant to section
422(a)(4)(D) or section 422(c) (unless in such an area as to which an administrative proceeding
has commenced pursuant to section 422(a)(4)(D) of this Act, the operator making the permit
application demonstrates that, prior to the date of enactment of this Act, he has made substantial
legal and financial commitments in relation to the operation for which he is applying for a
permit); and

215 Amendment - Take out page 58, line 25 to page 59, line 10 ["or is not . . . permit)] and
insert: "or it is within an area under study for such designation in an administrative proceeding
commenced pursuant to section 422(a)(4)(D) or section 422(c), and the State or any person
having a valid legal interest which is adversely affected, as the case may be, has demonstrated
irreparable harm to the private or public interest involved, the substantial likelihood of success
on the merits of the petition for designation of unsuitability and the lack of public injury or harm
to the permittee. If a permit is denied by reason of any such pending proceeding, the State or
other person, as the case may be, shall post bond or provide other security in an amount no less
than twice the market value of the coal to be mined."

215 Sec. 410(b)(4) as amended

215 the area proposed to be mined is not included within an area designated unsuitable for
surface coal mining pursuant to section 422 of this Act or it is within an area under study for
such designation in an administrative proceeding commenced pursuant to section 422(a)(4)(D) or

section 422(c), and the State or any person having a valid legal interest which is adversely affected, as the case may be, has demonstrated irreparable harm to the private or public interest involved, the substantial likelihood of success on the merits of the petition for injury or harm to the permittee. If a permit is denied by reason of any such pending proceeding, the State or other person, as the case may be, shall post bond or provide other security in an amount no less than twice the market value of the coal to be mined.

216 Reason

216 The amendment eliminates frivolous "suitability" proceedings from being abused to prevent environmentally sound surface mining operations from proceeding in given areas. This amendment is consistent with current law which requires that any person petitioning for "unsuitability" prevail on the merits and not jeopardize the public interest or the permittee. Furthermore, if the permit is denied, bond or other security is required to be posted by the petitioning party in the suitability proceedings.

217 REVISION OF PERMITS

217 Original

217 Sec. 411(a)(2) Provided, That any revisions which propose a substantial change in the intended future use of the land or significant alterations in the Reclamation Plan shall, at a minimum be subject to notice and hearing requirements.

217 Amentment - Page 61, line 6. Delete line 6, "in the intended future use of the land.

217 Sec. 411(a)(2) as amended

217 (2) . . . Provided, That any revisions which propose a substantial change or significant alterations in the Reclamation Plan shall, at a minimum, be subject to notice and hearing requirements.

217 Reason

217 This omitted language constitutes a severe and unwarranted incursion upon the traditional power of states and local governments to regulate land use. Federal land use planning has been rejected by Congress and should not be indirectly implemented through this bill.

217 The bill as drafted improperly assumes that the operator, who usually only owns the mineral rights, has control over the owner of the surface rights.

218 REVISION OF PERMITS

218 Original

218 Sec. 411(a)(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

218 Amendment - Add to line 9 before "Any extensions" - "For all bituminous surface coal mines located west of the one hundredth meridian west longitude," and add to line 11 after "permit" - "For all other surface coal mines, any extensions to the area covered by the permit which result in significant alterations in the reclamation plan must be made by application for another permit."

218 Sec. 411(a)(3) as amended

218 For all bituminous surface coal mines located West of the one hundredth meridian west longitude, any extensions to the area coverred by the permit except incidental boundary revisions must be made by application for another permit. For all other surface coal mines, any extensions to the area covered by the permit which result in significant alterations in the reclamation plan must be made by application for another permit.

218 Reason

218 The bill's original language, requiring new applications for any permit revisions "except incidental boundary revisions" is contrary to Pennsylvania law and inconsistent with the practical needs of eastern surface mining operations. The amendment conforms this provisions with Pennsylvania law for eastern surface mining operations and eliminates needless expense for permit revisions except those with significant environmental consequences or impact on the reclamation plan. The language of this subsection is preserved for western surface mining operations which are of much larger magnitude where permit amendments may affect the reclamation plan.

219 REVISION OF PERMITS

219 Original

219 Sec. 412(a) Each State or Federal program for a State shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority. Such regulations shall include, at a minimum, (1) the requirement that prior to conducting any exploration under this section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

219 Amendment - 1. Add to page 61, line 24, after "surface" - "by excavation" and delete from page 62, line 8, "roads, drill holes,"

219 Sec. 412(a) as amended

219 (a) Each State or Federal program for a State shall include a requirement that coal exploration operations which substnatially disturb the natural land surface by excavation be conducted in accordance with exploration regulations issued by the regulatory authority. Such regulations shall include, at a minimum, (1) the requirement that prior to conducting any exploration under this section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation of all lands disturbed in exploration, including excavations and the removal of necessary facilities and equipment.

219 Reason

219 This section's reference to "excavation," an exploratory technique used only for western coal, is designated to regulate western coal exploration which may have environmentally significant effects. Coal exploration in Pennsylvania and other Eastern coal mining areas is almost always done by drilling bore holes with no significant environmental consequences. Eastern coal exploration, therefore, limited to drilling bore holes, does not require a permit process.

220 PUBLIC NOTICE AND PUBLIC HEARINGS

220 Sec. 413(a) . . . least once a week for four consecutive weeks. The regulatory authority shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies have obligation to submit written comments within thirty days on the mining applications with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall be made available to the public at the same locations as are the mining applications.

220 Amendment - 1. Add to line 6 after "authority" - "when it is deemed essential" and delete from line 14 "have obligations to" and insert "may".

220 Sec. 413(a) as amended

220 (a) . . . for four consecutive weeks. The regulatory authority, when it is deemed essential, shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within thirty days on the mining applications with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall be made available to the public at the same locations as are the mining applications.

220 Reason

220 These amendments, leaving to the discretion of the regulatory authority, the decision to notify all local bodies of hearings and for such local bodies to participate therein, are necessary to prevent any delay or protraction of these hearings by understaffed local bodies. The bill's original language in line 14 provided that the "local bodies" "have obligations" to "submit written

comments." The understaffed local bodies, unable to make timely submissions, could needlessly
delay hearings for weeks and months.

222 PUBLIC NOTICE AND PUBLIC HEARINGS

222 Original

222 Sec. 413(b) Any person with a valid legal interest or the officer or head of any Federal,
State, or local governmental agency or authority shall have the right to file written objections to
the proposed initial or revised application for a permit for surface coal mining and reclamation
operation with the regulatory authority within thirty days after the last publication of the above
notice. If written objections are filed and a hearing requested, the regulatory authority shall then
hold a public hearing in the locality of the proposed mining within a reasonable time of the
receipt of such objections.

222 Amendment - 1. Delete from page 64, line 2, "shall" and insert "may".

222 2.Insert on page 64, line 3, after "hearings" and before "in" - "or hearings on successive
days".

222 3. Delete from page 64, line 4, the words "a reasonable time" and substitute the words
"thirty days".

222 Sec. 413(b) as amended

222 (b) Any person with a valid legal interest or the officer or head of any Federal, State, or
local governmental agency or authority shall have the right to file written objections to the
proposed initial or revised application for a permit for surface coal mining and reclamation
operation with the regulatory authority within thirty days after the last publication of the above
notice. If written objections are filed and a hearing requested, the regulatory authority may then
hold a public hearing or hearings on successive days until completed in the locality of the
proposed mining within thirty days of the receipt of such objections.

222 Reason

222 This amendment, substituting a "thirty day" requirement in lieu of "a reasonable time,"
will insure prompt hearings, if necessary, and avoid costly delays in the permit process. In
addition, the amendment gives the regulatory authority the discretion to hold a public hearing

when merited objections are raised, rather than automatically whenever any objections are raised
regardless of merit. It also requires continuous hearings to save expenses for all parties involved
and administrative red tape.

223 PUBLIC NOTICE AND PUBLIC HEARINGS

223 Original

223 Sec. 413(b) . . . The regulatory authority may arrange with the applicant upon request by
any party to the administrative proceeding access to the proposed mining area for the purpose of
gathering information relevant to the proceeding. At this public hearing, the applicant for a
permit shall have the burden of establishing that his application is in compliance with the
applicable State and Federal laws. Not less than ten days prior to any pro-

223 Amendment - 1. Delete from page 64, lines 12-15 the words "the applicant for a permit
shall have the burden of establishing that his application is in compliance with the applicable
State and Federal laws." and substitute the following words: "the objector shall have the burden
of establishing that the application does not comply with all the requirements of the applicable
State or Federal program under this Act."

223 Sec. 413(b) as amended

223 The regulatory authority may arrange with the applicant upon request by any party to the
administrative proceeding access to the proposed mining area for the purpose of gathering
information relevant to the proceeding. At this public hearing, the objector shall have the
burden of establishing that the application does not comply with all the requirements of the
applicable State or Federal program under this Act."

223 Reason

223 It would be exceedingly difficult, if not impossible, to carry the burden of proof that the
application for a permit will comply with State or Federal requirements in all respects. The
normal procedure in an evidentiary hearing is to attach the validity or substantiality of the
application and to show that an environmental problem will occur if the proposed strip mining
operation is permitted to commence. It narrows the issues at the hearing to only those which are
raised by objections but does not require the applicant to prove all aspects of his application,

many parts of which may not be at issue. In addition, if the burden of proof is on the objector,
superfluous and spurious objections will be discouraged. As the section currently stands, the
objector can delay an application with little, if any, investment or expense on his part. In the
interests of time, judicial expenditure and effort, and the recovery of energy, this section should
be changed to conform with existing administrative law.

225 PUBLIC NOTICE AND PUBLIC HEARINGS Original

225 Sec. 413(c) For the purpose of such hearings, the regulatory authority may administer
oaths, subpena witnesses, or written or printed materials, compel attendance of the witnesses, or
production of the materials, and take evidence including but not limited to site inspections of the
land to be affected and other surface coal mining operations carried on by the applicant in the
general vicinity of the proposed operation. A verbatim transcript and complete record of each
public hearing shall be ordered by the regulatory authority.

225 Amendment - 1. On page 64, line 11, after the word "operation" add the following
sentence: "the Federal Rules of Civil Procedure or the State Rules governing Civil Procedure
shall apply to the hearing"

225 Sec. 413(c) as amended

225 (c) For the purpose of such hearings, the regulatory authority may administer oaths,
supena witnesses, or written or printed materials, compel attendance of the witnesses, or
production of the materials, and take evidence including but not limited to site inspections of the
land to be affected and other surface coal mining operations carried on by the applicant in the
general vicinity of the proposed operation. The Federal Rules of Civil Procedure or the State
Rules governing Civil Procedure shll apply to the hearing.

225 Reason

225 All trials and hearings should conform to existing legal practice. To do otherwise is to ask
for chaos and having each hearing conducted in perhaps a different fashion.Civil Procedure
uniformity allows the hearings to proceed in an orderly and efficient manner; and allows the
parties and their attorneys, if any, to conduct themselves accordingly.

226 DECISIONS OF REGULATORY AUTHORITY AND APPEALS

226 Original

226 Sec. 414(b) If there has been no public hearing held pursuant to section 413(b), the regulatory authority shall notify the applicant for a permit within a reasonable time, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved"

226 Amendment - 1.Delete from page 65, line 24, "a reasonable time" and insert "ninety days of the date of submission of the application: and delete from page 65 line 24 to page 66, line 3, "taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed."

226 Sec. 414(b) as amended

226 (b) If there has been no public hearing held pursuant to section 413(b), the regulatory authority shall notify the applicant for a permit within ninety days of the date of submission of the application.

226 Reason

226 This amendment imposes a ninety day time limit for notifying a permit applicant of the action on the permit application and eliminates opportunities for costly and needless delay by the regulatory authority.

227 DECISIONS OF REGULATORY AUTHORITY AND APPEALS

227 Original

227 Sec. 414(b) . . . Within thirty days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for the said disapproval. The regulatory authority shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

227 Amendment - 1. Insert on page 66, line 11 "or hearings on successive days until

completed" between the words "hearing" and "within"

227 2. Delete from page 66, line 12 "interested" and substitute "with a valid legal interest"
between the words "parties" and "at".

227 Sec. 414(b) as amended

227 Within thirty days after the applicant is notified that the permit or any portion thereof has
been denied, the applicant may reguest a hearing on the reasons for the said disapproval. The
regualtory authority shall hold a hearing or hearings on successive days until completed within
thirty days of such reguest and provide notification to all parties with a valid legal interest at the
time that the applicant is so notified.

227 Reason

227 This provision is designed to avoid the delays and unjustified continuances which
presently exist in the administrative and judicial systems, causing losses, aggravation, and
expenses to litigants on both sides of the case and increased expenses and unnecessary paperwork
for the regulatory authority.

227 This change is made to conform with numerous other sections of the Act giving standing
to only those people who have a cognizable interest in the mining operation as opposed to the
citizenry at large.

228 DECISIONS OF REGULATORY AUTHORITY AND APPEAL

228 Original

228 Sec. 414(c) Any applicant or any person who has participated in the administrative
proceedings as an objector, and who is aggrieved by the decision of the regulatory authority, or if
the regulatory authority fails to act within a reasonable period of time, shall, have the right of
appeal for review by a court of competent jurisdiction in accordance with State or Federal law.

228 Amendment - Delete from line 19 "participated" and insert "a valid legal interest" and
delete from line 20, "an objector," and insert "a party".

228 Sec. 414(c) as amended

228 Any applicant or any person who has a valid legal interest in the administrative
proceedings as a party, and who is aggrieved by the decision of the regulatory authority, or if the

regulatory authority fails to act within a reasonable period of time, shall, have the right of appeal
for review by a court of competent jurisdiction in accrodance with State or Federal law.

228 Reason

228 This amendment insures that only objectors who were parties to the administrative
proceedings and who have a valid legal interest can secure judicial review of the actions or
inactions of the regulatory authority.

229 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

229 Original

229 Sec. 415(b)(2) . . . uses of which there is a reasonable likelihood, so long as such use or
uses do not present any actual or probable hazard to public health or safety or pose any actual or
probable threat of water diminution or pollution, and the permit applicants' declared proposed
land use following reclamation is not deemed to be impractical or unreasonable, inconsistent
with applicable land use policies and plans, involves unreasonable delay in implementation, or is
violative of Federal, State, or local law;

229 Amendment

229 1.Delete from lines 20-21, "or probable"

229 2. Delete from line 22, "or probable"

229 3. Delete from lines 23-25 p. 67; and line 1 p. 68. "and the permit applicants' declared
proposed land use following reclamation is not deemed to be impratical or unreasonable,
inconsistent with applicable land use policies and plans," and substitute, in line 1, "does not
involve" and "nor".

229 Sec. 415(b)(2) as amended uses of which there is a reasonable likelihood, so long as such
use or uses do not present any actual hazard to public health or safety or pose any actual threat of
water dimunition or pollution, does not involve unreasonable delay in implementation, nor is
violative of Federal, State, or Local law.

229 Reasons

229 The amendment deletes "probable hazard and "probable" threat and seeks to eliminate a
vague catch-all standard for defining "hazard" and "threat." The continued references in this

section to "land use policies" are part of numerous land use restrictions appearing throughout this
bill [see 408(a)(3) and 411(a)(2)]. These land use restrictions constitute a severe and
unwarranted federal incursion on land use planning traditionally left to the state and local
authorities. Federal land use planning was rejected by Congress and should not be indirectly
implemented through this bill.

230 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

230 Original

230 Sec. 415(b)(3) with respect to all surface coal mining operations backfill, compact (where
advisable to insure stability or to prevent leaching of toxic materials), and grade in order to
restore the approximate original contour of the land with all highwalls, spoil piles and
depressions eliminated (unless small depressions are needed in order to retain moisture to assist
revegetation or as otherwise authorized pursuant to this Act):

230 Amendment - Add to line 11 after "Act", "Provided, that backfilling shall be permitted by
the regulatory authority when it is deemed appropriate by means of terracing or grading where
the steepest contour of the highwall shall not be greater than thirty-five degrees from the
horizontal, with the table portion of the restored area a flat terrace without depressions to hold
water and with adequate provision for drainage;"

230 Sec. 415(b)(3) as amended

230 with respect to all surface coal mining operations backfill, compact (where advisable to
insure stability or to prevent leaching of toxic materials), and grade in order to restore the
approximate original contour of land with all highwalls, spoil piles, and depressions eliminated
(unless small depressions are needed in order to retain moisture to assist revegetation or as
otherwise authorized pursuant to this Act): Provided, That backfilling shall be permitted by the
regulatory authority when it is deemed appropriate by means of terracing or grading where the
steepest contour of the highwall shall not be greater than thirty-five degrees from the horizontal,
with the table portion of the restored area a flat terrace without depressions to hold water and
with adequate provision for drainage;

230 Reason

230 This amendment conforms this section with Pennsylvania law which specifically authorizes terracing as an acceptable form of backfilling and restoration of the land after mining where it is appropriate. Terracing is a common and acceptable reclamation practice in Pennsylvania and has been effectively used to restore and reclaim prior unregulated mining areas into a stable, attractive profile without highwalls and with the original drainage patterns.

231 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

231 Original

231 Sec. 415(b)(10)(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations reguiring the discharge of water from mines;

231 Amendment - Delete from lines 18-19, "using the best technology available" and delete from lines 21-22 "above natural levels under seasonal flow conditions as measured prior to any mining" and substitute "in excess of discharge standards set by applicable state or Federal law"

231 Sec. 415(b)(10)(B) as amended conducting surface coal mining operations so as to prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area in excess of discharge standards set by applicable State or Federal law.

231 Reason

231 This section, as drafted, not only imposes an unprecedented new standard, as set forth above, but by applying the "best technology currently available" invidiously discriminates against small operators who may not be able to subsidize the best technology currently available. In addition, the section, as drafted, by referring to "seasonal flow conditions as measured prior to any mining" would require the operator to study and record flow conditions for an entire year prior to submission of the application.The amendment properly subjects the operator to standards set by applicable State or Federal law.

232 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

232 Original

232 Sec. 415(b)(10)(E) replacing the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from mining:

232 Amendment - add to line 6 after "replacing", "pursuant to applicable state law"

232 Sec. 415(b)(10)(E) as amended replacing, pursuant to applicable state law, the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from mining;

232 Reasons

232 The amendment eliminates any implication that this section establishes a new federal substantive law of reparian rights, which is an area traditionally and appropriately left to state law.

233 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

233 Original

233 Sec. 415(b)(15)(A) provide adequate advance written notice by publication and/or posting of the planned blasting schedule to local governments and to residents who might be affected by the use of such explosives and maintain for a period of at least two years a log of the magnitudes and times of blasts; and

233 Amendment - Delete from line 9, "advance written"; from line 10, "by publication and/or posting"; from line 11, "to local governments and". Delete from line 14, "magnitudes and times of blasts".

233 Sec. 415(b)(15) as amended provide adequate notice of the planned blasting schedule to residents who might be affected by the use of such explosives and maintain for a period of at least two years a log of the blasts,

233 Reason

233 This amendment eliminates the requirement of notice to local governments and makes these provisions conform with existing Pennsylvania requirements. This amendment also eliminates the impractical and often impossible requirement of "advance written" notice "by publication and/or posting". Blasting schedules are subject to the daily and momentary caprice and shifts in weather conditions and cannot be planned sufficiently in advance to always allow advance notice by publication. This amendment also eliminates the tremendously costly, burdensome, and unnecessary requirement that the operator make seismic recordings of each blast which is required in this section as drafted by the reference to "magnitudes".

234 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

234 Original

234 Sec. 415(b)(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That the regulatory authority may permit the retention after mining of certain access roads where consistent with State and local land use plans and programs and where necessary may permit a limited exception to the restoration of approximate original contour for that purpose;

234 Amendment - Delete from lines 10-12, "where consistent with State and local land use plans and programs" and substitute "requested by property owner".

234 Sec. 415(b)(17) as amended insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion siltation, pollution of water, damage to fish or wildlike or their habitat, or public or private property: Provided, That the regulatory authority may permit the retention after mining of certain access roads where requested by property owner and where necessary may permit a limited exception to the restoration of approximate original contour for that purpose;

234 Reason

234 This amendment deletes the reference to compliance with land use programs. This bill

contains numerous and unwarranted restrictions on land use planning traditionally and
appropriately left to State and local regulations, [see 408(a)(3), 411(a)(2), and 415(b)(2)].
Federal land use planning was rejected by Congress and should not be indirectly implemented
through this bill.

235 VARIANCE PROCEDURES

235 Original

235 Sec. 415(c)(1) Each State program may and each Federal program shall include
procedures pursuant to which the regulatory authority may permit variances for the purposes set
forth in paragraph (3) of this subsection.

235 Amendment - Delete from line 6 "may" and substitute "shall" and delete from line 8
"may" and substitute "shall".

235 Sec. 415(c)(1) as amended

235 Each State proqram shall and each Federal program shall include procedures pursuant to
which the regulatory authority shall permit variances for the purposes set forth in paragraph 3 of
this subsection.

235 Reasons

235 These amendments assure that the variance procedures which provide essential
administrative flexibility to regulatory programs, are a requirement of every state regulatory
program.

236 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

236 Original

236 Sec. 415(c)(3)(F) a public hearing is held in the locality of the proposed surface coal
mining operation prior to the grant of any permit including a variance; and

236 Amendment - Insert in line 19 "if written objections are filed" between the words
"variance" and "and".

236 Sec. 415(c)(3)(F) as amended

236 a public hearing is held in the locality of the proposed surface coal mining operation prior
to the grant of any permit including a variance if written objections are filed; and

236 Reason

236 If no objections are filed and the permit application or variance is within the purview of the Act, conducting a public hearing will only create an administrative burden as well as undue delay.

237 INSPECTIONS AND MONITORING

237 Original

237 Sec. 417(b)(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those -

237 Amendment - 1. Insert in line 5 after "operations" and before "which" the words "located west of the one hundredth meridian west longitude".

237 Sec. 417(b)(2) as amended

237 (2) for those surface coal mining and reclamation operations located west of the one hundredth meridian west longitude which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those -

237 Reason

237 This amendment makes this provision applicable only to western surface coal mining which is often conducted in arid regions with generally less than 26 inches of annual rainfall. Such surface mining operations may have an impact on the aquifer and already diminished subsurface water supplies. In Pennsylvania, surface coal mining operations only temporarily disturb the aquifer which is reestablished immediately once mining is completed and the groundwater recharged.

238 INSPECTIONS AND MONITORING

238 Original

238 Sec. 417(c) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one inspection per month for the surface coal mining and reclamation operations covered by each permit; (2) occur without prior notice to the permittee or

his agents or employees; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act and the regulatory authority shall make copies of such inspection reports immediately and freely available to the public at a central location in the pertinent geographic area of mining.

238 Amendment - 1. Delete from line 9 "one" and insert "three" and delete from line 10 "inspection per month" and insert "inspections per year" and insert in line 12 after "employees"-"during regular business hours, but notice shall be provided to the permittee or his agents or employees immediately upon arrival at the site."

238 Sec. 417(c) as amended

238 (c) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than three inspections per year for the surface coal mining and reclamation operations covered by each permit; (2) occur without prior notice to the permittee or his agent or employees during regular business hours, but notice shall be provided to the permittee or his agents or employees immediately upon arrival at the site; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act and the regulatory authority shall make copies of such inspection reports immediately and freely available to the public at a central location in the pertinent geographic area of mining.

238 Reason

238 This amendment reduces the mandatory number of annual inspections from twleve to three. This will save substantial costs of manpower, time and money for operations with sustained patterns of compliance and allow the regulatory to concentrate monitoring efforts on those operations with a less consistent record of compliance.

239 This amendment also requires that monitoring inspections be conducted during normal business hours and insures that, once on the site, notice is given to the permittee by the inspectors for their own safety.

240 INSPECTIONS AND MONITORING

240 Original

240 Sec. 417(g) No employee of the State regulatory authority performing any function or duty

under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation.Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than $2 ,500.00 or by imprisonment of not more than one year, or by both.

240 Amendment - 1. Insert in line 9 the words "or Federal" between the words "State" and "regulatory"

240 2. Delete from line 19 "$2,500.00" and substitute "$10,000.00".

240 Sec. 417(g) as amended

240 No employee of the State or Federal reglatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than $10,000.00 or by imprisonment of not more than one year, or both.

240 Reason

240 Federal employees as well as State employees charged with the administration and enforcement of this Act who have direct or indirect financial interests in surface coal mining operations should be subject to stiff penalties. Such individuals would clearly be in a position to use their office for their own personnel gain. The penalty suggested herein is the same criminal penalty that will be imposed upon the operator who makes false statements upon his application. See Section 418(h).

241 PENALTIES

241 Original

241 Sec. 418(a) In the envorcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 402 or during Federal enforcement of a State program pursuant to section 421 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 421, the civil penalty shall be assessed.

241 Amendment - Delete lines 15-17 "except that if such violation leads to the issuance of a cessation order under Section 421, the civil penalty shall be assessed."

241 Sec. 418(a) as amended

241 In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to Section 402 or during Federal enforcement of a State program pursuant to Section 421 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary.

241 Reason

241 This amendment provides administrative discretion for imposing a civil penalty which is based on a cessation order. It is arbitrary and unnecessary to have an automatic mandatory penalty provision, especially since the cessation of operations itself is a drastic penalty.

242 PENALTIES

242 Original

242 Sec. 418(a) In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 402 or during Federal enforcement of a State program pursuant to section 421 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 421, the civil penalty shall be assessed.

242 Amendment - Delete lines 15-17 "except that if such violation leads to the issuance of a cessation order under Section 421, the civil penalty shall be assessed."

242 Sec. 418(a) as amended

242 In the enforcement of a Federal program or Federal lands program or during Federal enforcement pursuant to Section 402 during Federal enforcement of a State program pursuant to Section 421 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary.

242 Reason

242 This amendment provides administrative discretion for imposing a civil penalty which is
based on a cessation order. It is arbitrary and unnecessary to have an automatic mandatory
penalty provision, especially since the cessation of operations itself is a drastic penalty.

243 PENALTIES

243 Original

243 Sec. 418(f) Any person who willfully and knowingly violates a condition of a permit
issued pursuant to a Federal program, a Federal lands program, or Federal enforcement pursuant
to section 402 or during Federal enforcement of a State program pursuant to section 425 of this
Act or fails or refuses to comply with any order issued under section 425 or section 426 of this
Act, or any order incorporated in a final decision issued by the Secretary under this Act, except
an order incorporated in a decision issued under subsection (b) of this section or section 504 of
this Act, shall, upon conviction, be punished by a fine of not more than $1 0,000" or by
imprisonment for not more than one year or both.

243 Amendment - 1. Delete from page 96 line 1, "$1 0,000" and insert "$5 ,000" and delete
from line 2 "for not more than one year" and insert "for not more than six months."

243 Sec. 418(f) as amended

243 (f) Any person who wilfully and knowingly violates a condition of a permit issued
pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to
section 4502 or during Federal enforcement of a State program pursuant to section 4525 of this
Act or fails or refuses to comply with any order issued under section 4525 or section 4526 of this
Act, or any order incorporated in a final decision issued by the Secretary under this Act, except
an order incorporated in a decision issued under subsection (b) of this section or section 5704 of
this Act, shall, upon conviction, be punished by a fine of not more than $5,000, or by
imprisonment for not more than six months or both.

243 Reason

243 This amendment reduces the criminal sanction for wilful violations of this bill from a
felony to a misdemeanor. A felony level sanction is too harsh a penalty especially in light of the

multiple other sanctions available, including civil penalties and cessation of operations.
Furthermore, a felony level sanction is too harsh in light of the fact that any defendant personally
charged under these provisions may be prosecuted on a theory of vicarious liability. The officer
of the mine operator may be charged with the conduct or omissions of their employees.

245 RELEASE OF PERFORMANCE BONDS OR DEPOSITS

245 Original

245 Sec. 419(a) The permittee may file a request with the regulatory authority for the release
of all or part of a performance bond or deposit. Within thirty days after any application for bond
or deposit release has been filed with the regulatory authority, the operator shall submit a copy of
an advertisement placed on five successive days in a newspaper of general circulation in the
locality of the surface coal mining operation. Such advertisement shall be considered part of any
bond release application and shall contain a notification of the precise location of the land
affected, the number of acres, the permit number and the date approved, the amount of the bond
filed and the portion sought to be released, and the type and the approximate dates of reclamation
work performed, and a description of the results achieved as they relate to the operator's
approved reclamation plan.

245 In addition, as part of any bond release application, the applicant shall submit copies of
letters which he has sent to adjoining property owners, local governmental bodies, planning
agencies, and sewage and water treatment authorities, or water companies in the locality in which
the surface coal mining and reclamation activities took place, notifying them of his intention to
seek release from the bond.

245 Amendment - Delete from page 97, line 12, "within" to page 98, line 7, "bond" entirely.

245 Sec. 419(a) as amended

245 The permittee may file a request with the regulatory authority for the release of all or part
of a performance bond or deposit."

245 Reason

245 Whether any piece of land has been adequately reclaimed is a matter of objective, as

opposed to subjective, determination. Such criteria as to whether surface or subsurface pollution
exists and the probability of further pollution is a matter of scientific observation and testing for
the inspector. Similarly, the inspector is trained in planting techniques and will be familiar with
whether the property has been properly revegetated in accordance with the terms of this Act.

246 Inviting the subjective views of citizenry on the pros and cons of the surface coal mine
operation at this point will accomplish nothing, since the land has now been reclaimed and
revegetated in accordance with the objective standards set forth by this Act and the regulations.
The requirements deleted from this section create an expensive system of advertising, lengthy
paperwork for the regulatory authority, and an undue delay upon the surface coal mine operator
in obtaining the return of his bond.

247 RELEASE OF PERFORMANCE BONDS OR DEPOSITS

247 Original

247 Sec. 419(b) Upon receipt of the notification and request, the regulatory authority shall
within a reasonable time conduct an inspection and evaluation of the reclamation work involved.

247 Amendment - 1. Delete from line 9 "a reasonable time" and substitute "thirty days,
weather conditions permitting"

247 Sec. 419(b) as amended

247 (b) Upon receipt of the notification and request, the regulatory authority shall within thirty
days, weather conditions permitting , conduct an inspection and evaluation of the reclamation
work involved.

247 Reason

247 The operator must have some certainty as to when he will be able to remove his
equipment from one mining operation to another; and when it will be possible for him to "turn
over" the bond that has been posted with the regulatory authority. The insertion of the thirty day
time period for the inspection of the reclamation complies with the intent of the Act in that the
regulatory authority should not only protect the public from the damages that can result from
surface coal mine operations but also protect the surface coal mine operator in his performance of
the vital function of supplying energy resources for the nation.

248 RELEASE OF PERFORMANCE BONDS OR DEPOSITS

248 Original

248 Sec. 419(c)(2) No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining and as set forth in the permit."

248 Amendment - 1. Insert in line 16 between the words "area" and "above" the following language - "in excess of discharge standards set by the applicable State or Federal Act."

248 2. Delete from lines 16-18 the words "above natural levels under seasonal flow conditions as measured prior to any mining and as set forth in the permit."

248 Section 419(c)(2) - as amended

248 (2) No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to stream flow or runoff outside the permit area in excess of discharge standards set by the applicable State or Federal Act.

248 Reason

248 This Act calls for more stringent discharge requirements than the existing Federal or State Water Quality Acts. Since those Acts are geared to achieve certain water quality standards and criteria, this Act should not place a greater burden upon surface mine operators than other water dischargers within the jurisdiction. In addition, this Act presumes to pre-empt those Acts which preceeded it in time. If the operator is required to discharge to natural levels or less based on seasonal flows, some reclamation projects may never achieve bond release status and ultimately the operator may be overextended onhis bonding capability, driving him out of business.

249 RELEASE OF PERFORMANCE BONDS OR DEPOSITS

249 Original

249 Sec. 419(f) Any person with a valid legal interest or the officer or head of any Federal, State, or local governmental agency shall have the right to file written objections to the proposed

release from bond to the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the regulatory authority shall inform all the interested parties, of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the regulatory authority in a newspaper of general circulation in the locality twice a week for two consecutive weeks.

249 (g) For the purpose of such hearing the regulatory authority shall have the authority and is hereby empowered to administer oaths, subpena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim transcript and a complete record of each public hearing shall be ordered by the regulatory authority.

249 Amendment - Delete these sections entirely.

249 Reason

249 This amendment eliminates the requirement of a hearing during the bond release which may unduly delay and protract the tenure of operations at great cost to the operator without environmental justification. There are numerous other remedies under the act which can cure any problems during the bond release.

249 This is in conformity with the proposed amendment to Section 419(a). Reclamation standards must be set forth in the regulations as objective criteria so that the the operator knows during the reclamation process exactly what is expected of him. As was stated previously, the criteria are subject to scientific and physical testing for which the mine inspector would presumably be trained. It is assumed that the Secretary would not cause or permit a State program to be approved unless the program encompassed a staff of qualified and competent inspectors. The operator cannot, and should not, be subjected to what the citizenry at large considers to be aesthetic in the reclamation process.

251 CITIZEN SUITS

251 Original

251 Sec. 420(a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behal.

251 Amendment - Insert in line 11 "valid legal" between the words "an" and "interest", and change "an" to "a".

251 Sec. 420(a) as amended

251 Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf.

251 Reason

251 This change is made to conform with numerous other sections of the Act giving standing to only those people who have a congizable interest in the mining operation as opposed to the citizenry at large.

252 CITIZEN SUITS

252 Original

252 Sec. 420(d) . . . The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure."

252 Amendments - Delete from line 18 "may" and substitute "shall".

252 Sec. 420(d) as amended

252 The court shall , if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedures.

252 Reason

252 The requirment of posting of bond will prevent spurious and vexatious law suits. This section as drafted may be interpreted as superceding the Federal Rules of Civil Procedure as they relate to the posting of bond on temporary restraining orders and preliminary injunctions. This amendment clarifies that the Federal Rules, as drafted, will apply to actions under this section.

253 CITIZEN SUITS

253 Original

253 Sec. 420(f) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including attorneys fees) in an appropriate United States District Court.

253 Amendment - Delete from line 8 "including attorneys fees". Add after "Court" the words "provided the provisions of subsection 420(b) are met."

253 Sec. 420(f) as amended

253 Any resident of the United States who is injured in any manner throught the failure of any operator to comply with any rule, regulation, order or permit issued pursuant to this Act may bring an action for damages in an appropriate United States District Court provided the provisions of subsection 420(b) are met .

253 Reason

253 This amendment eliminates from the recovery of damages attorneys fees. The bill as drafted allows persons to conceivably recover attorneys fees incurred in prior administrative and judicial proceedings against the operator allowing windfall recoveries for unmerited or even frivolous claims. This is not a proper element of compensation which must be limited to direct injury resulting from any violation of this bill or any regulation or order thereunder.

254 ENFORCEMENT

254 Original

254 Sec. 421(a)(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 402, or section 404(b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, but such violation does not create an imminent danger to the health or safety of the public, or cause can be reasonably expected to cause significant, imminent environmental harm

to land, air, or water resources, the Secretary or authorized representative shall issue a notice to
the permittee or his agent fixing a reasonable time but not more than ninety days for the
abatement of the violation.

254 If, upon expiration of the period of time as originally fixed or subsequently extended, for
good cause shown and upon the written finding of the Secretary or his authorized representative,
the Secretary or his authorized representative finds that the violation has not been abated, he shall
immediately order a cessation of surface coal mining and reclamation operations or the portion
thereof relevant to the violation.

254 Amendment

254 1. Add to page 106, line 13 after "violation" - "conditions permitting".

254 2. Delete from page 106, line 18 "shall" and substitute "may" and add to line 21 after
violation "subject to the procedures of this section."

254 Sec. 421(a)(3) as amended

254 When, on the basis of a Federal inspection which is carried out during the enforcement of
a Federal program or a Federal lands program, Federal inspection pursuant to section 402, or
section 404(b) or during the Federal enforcement of a State program in accordance with
subsection (b) of this section, the Secretary or his authorized representative determines that any
permittee is in violation of any requirement of this Act or any permit condition required by this
Act, but such violation does not create an imminent danger to the health or safety of the public,
or cause or can be reasonably expected to cause significant, imminent environmental harm to
land, air, or water resources, the Secretary or authorized representative shall issue a notice to the
permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of
the violation conditions permitting.

255 If, upon expiration of the period of time as originally fixed or subsequently extended, for
good cause shown and upon the written finding of the Secretary or his authorized representative,
the Secretary or his authorized representative finds that the violation has not been abated, he may
immediately order a cessation of surface coal mining and reclamation operations or the portion
thereof relevant to the violation subject to the procedures of this section.

255 Reason

255 Weather conditions have tremendous impact upon surface coal mine operations. During the severe snows and cold the surface coal mine operation is at a standstill. Virtually all surface coal mine operations were non-operative in the Commonwealth of Pennsylvania during the bitter cold month of January, 1976. Any time limitation placed upon the operator must take into consideration the forces of nature, God or war.

255 This change places discretion in the Secretary as to whether to order cessation of operations. There are certainly those events such as strikes, walkouts, breakdowns, and acts of God which will occasionally occur to prevent an operator from correcting a condition imposing environmental harm. The Secretary should have the authority to evaluate the cause of the operator's failure to correct and to grant the operator an extension if the cause is justified.

256 ENFORCEMENT

256 Original

256 Sec. 421(a)(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation which the notice or order applies. Each notice or order issued under this section shal be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs.

256 Amendment - Insert after "occurs" - " Provided, That any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within seventy-two hours of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing. The burden of proof shall be on the Secretary or the regulatory authority, as

the case may be, to establish by substantial evidence the basis for the cessation order or notice."

256 Sec. 421(a)(5) as amended

256 Notices and orders issues pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs: Provided, That any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within seventy-two hours of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing. The burden of proof shall be on the Secretary or the regulatory authority, as the case may be, to establish by substantial evidence the basis for the cessation order or notice.

257 Reason

257 This amendment guarantees due process of law and fundamental fairness to the operator who has received notice of a cessation order issued without opportunity for hearing. This section, as drafted, allowed such an order to issue, without prior notice or hearing, without providing any procedures or time limits within which the basis of any such order can be adjudicated. An order could issue, shutting down an operator without good cause, and continue in effect for months until a hearing can be scheduled and held. The amendment insures that any cessation order must be immediately justified at a public hearing within seventy-two hours.

258 ENFORCEMENT

258 Original

258 Sec. 421(c)(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized repre sentative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice or violation.

258 Amendment - Delete from lines 12-13 "or can reasonably be expected to cause". Delete from line 15 "shall" and substitute "may".

258 Sec. 421(c)(2) as amended

258 When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative may immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation.

258 Reason

258 The remedy proposed by this section is the drastic cessation order shutting down any mining operations. This should only be done where actual harm occurs or is occuring to the environmnet. It is unreasonable to cease mining operations because a reasonable expectation of harm is forseen. This is because the operator may well have discovered the potentiality for harm himself, and may very well be in the process of correcting the environmentally dangerous situation. A miner who is diverting some of his equipment to prevent environmental harm should not have his mining operations shut down as the result of the potentiality of that harm.

259 This is in conformity with the prior proposed amendment to this subsection. The

Secretary should have discretion so as not to be required to shut down a surface coal mine operation where the operator is using his best efforts to correct a dangerous environmental situation. As the Act now reads, the Secretary would have no alternative but to order a cessation of mining operations.

260 DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

260 Original

260 Sec. 422(c) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of fact with supporting evidence which would tend to establish the allegations.

260 Amendment - Insert on line 15 "valid legal" between the words "an" and "interest."

260 Sec. 422(c) - as amended

260 "(c) Any person having a valid legal interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations."

260 Reason

260 This change is made to conform with numerous other sections of the Act giving standing to only those people who have a cognizable interest in the mining operation as opposed to the citizenry at large.

261 DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

261 Original

261 Sec. 422(d)(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

261 Amendment - 1. Insert on page 116, line 1, "building" between "park" and "or".

261 2. Insert on page 116, line 2, "unless waived by the owner or duly constituted authority controlling such property" after "cemetary".

261 Sec. 422(d)(5) as amended

261 (5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park building, or within one hundred feet of a cemetery unless waived by the owner or duly constituted authority controlling such property.

261 Reason

261 There is no reason why surface coal mine operations cannot be conducted closer than three hundred feet from structures such as are designated in the subparagraph without doing any damage to them. This permits waiver for instance when the school house or church is abandoned. This section should be flexible to permit maximum energy resource recovery.

261 To maintain an artificial barrier around parks for aesthetic purposes only would make billions of tons of coal reserves unaccessable. Many parks consist of thousands of acres with perimeters of many thousands of miles. Thousands of acres of coal reserves would be lost if a three hundred foot perimeter was maintained. It is more logical to restrict the mining activity in relation to the proximity of park buildings as opposed to park boundaries.

262 DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

262 Original

262 Sec. 422(c)(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

262 Amendment - Insert on line 17 "or temporarily closed" between "relocated" and "or".

262 Sec. 422(e)(4) - as amended

262 (4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or temporarily closed or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

262 Reason

262 This permits the regulatory authority to exercise discretion in closing roads where necessary for maximum energy resource recovery and is consistent with the concept of relocating roads.

263 REVIEW BY THE SECRETARY

263 Original

263 Sec. 425(a)(1) A permittee issued a notice or order by the Secretary pursuant to the provisions of subparagraphs (a)(2) and (3) of section 421 of this title, or pursuant to a Federal program or the Federal lands program or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination.Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof.

263 Amendment - 1. Insert in page 118, line 17, "valid legal" between the words "an" and "interest".

263 2. Insert in page 119, line 2, "valid legal" between the words "an" and "interest".

263 Sec. 425(a)(1) as amended

263 (1) A permittee issued a notice or order by the Secretary pursuant to the provisions of subparagraphs (a)(2) and (3) of section 421 of this title, or pursuant to a Federal program or the Federal lands program or any person having a valid legal interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having a valid legal interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof.

264 Reason

264 This change is made to conform with numerous other sections of the Act giving standing to only those people who have a cognizable interest in the mining operation as opposed to the citizenry at large.

265 COMMONWEALTH OF PENNSYLVANIA

265 SURFACE MINING CONSERVATION AND RECLAMATION ACT

265 Act of May 31, 1945, P.L. 1198, Act No. 418, and Amendments, Including Laws of 1971 (52 P.S. 1396.1 et seq.)

265 Department of Environmental Resources Bureau of Land Protection and Reclamation Division of Mine Reclamation

265 Harrisburg - 1971

266 INTRODUCTORY NOTE

266 This publication has been prepared for the convenience of the staff of the Department of Environmental Resources and the public and has been prepared in loose-leaf form to permit the insertion of current revisions as they are available.

266 Editorial changes have been made in the form of the original enactment to assist the reader. For example, a table of contents and section headings have been added. In addition,

references to certain amendments have been added following the section or provisions affected
thereby.

266 The attention of the reader is directed to the Act of December 3, 1970, Act No. 275
amending the Administrative Code of 1929 (71 P.S. 51 et seq.), which established the
Department of Environmental Resources and transferred to it certain functions of existing
agencies including functions provided in the law set forth in this publication.

267

3
SURFACE
MINING
CONSERVA
TION AND
RECLAMAT
ION ACT
*3*TABLE
OF
CONTENTS

Section	Heading	Page
1	Purpose of Act	1
2	Short Title	1
3	Definitions	1
3.1	Operator's License; Penalty	2
3.2	Specifications for Construction Projects	3
4	Mining Permit; Reclamation Plan: Bond	3
4.1	(Repealed)	7
4.2	Health and Safety	7
4.3	Violation Notices; Suspension of License; Cease and Desist Orders	8
4.4	(Repealed)	8
5	(Repealed)	8
6	(Repealed)	8
7	(Repealed)	8

8 (Repealed)
8
9 (Repealed)
8
10 (Repealed) 8
11 (Repealed)
8
12 (Repealed)
8
13 (Repealed)
9
14 (Repealed)
9
15 (Repealed)
9
15.1 (Repealed)
9
15.2 (Repealed)
9
15.3 Conservation Districts and Inspectors
9
16 (Repealed)
11
17 (Repealed)
11
18 Surface Mining Conservation and Reclamation Fund
11
18.1 Release of Operator on Transfer of Operation
11
18.2 Injunctive Relief
11
18.3 Remedies of Citizens
12
19 Repealer
12
20 Effective Date
12
Additional provisions from the Act of November 30, 1971, Act No. 147 12

---

268 No. 94

268 AN ACT

268 Amending the act of May 31, 1945 (P.L. 1198, No. 418), entitled, as amended, "An act providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; and providing penalties," eliminating insurance and bond requirements in certain cases.

268 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

268 Section 1. Section 4, act of May 31, 1945 (P.L. 1198, No. 418), known as the "Surface Mining Conservation and Reclamation Act," is amended by adding a subsection to read:

268 Section 4. * * *

268 (j) Notwithstanding the provisions of subclause J. of clause (2) of subsection (a) and subsections (c) and (d) of this section, in the case of applications for the surface mining of minerals other than anthracite and bituninous coal where the department determines that the amount of marketable minerals to be extracted does not exceed two thousand (2,000) tons, no certificate of insurance nor bond shall be required.

268 Approved-The 18th day of October, A.D. 1973.

268 MILTON J. SHAPP

269 No. 355

269 AN ACT

269 Amending the act of May 31, 1945 (P.L. 1198), entitled, as amended, "An act providing for the conservation and improvement of land affected in connection with surface mining, regulating such mining; and providing penalties." further defining certain terms and further providing for license fees and exceptions.

269 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

269 Section 1. The definition of "minerals," "surface mining," and "operator" in section 3, section 3.1 and subsection (c) of section 4.2, act of May 31, 1945 (P.L. 1198), known as the "Surface Mining Conservation and Reclamation Act," amended November 30, 1971 (P.L. 554), are amended to read:

269 Section 3. Definitions.-The following words and phrases, unless a different meaning is

plainly required by the context, shall have the following meanings:

269 "Minerals" shall mean any aggregate or mass of mineral matter, whether or not coherent, which is extracted by surface mining, and shall include but not be limited to limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and anthracite and bituminous coal.

269 "Surface mining" shall mean the extraction of minerals from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including but not limited to strip, drift, and auger mining, dredging, quarrying, and leaching, and activities related thereto, but not including those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings. "Surface mining" shall not include (i) the extraction of minerals (other than anthracite and bituminous coal) by a landowner for his own non-commercial use from land owned or leased by him; nor (ii) [the extraction of such non-coal minerals for commercial purposes in an amount less than five hundred (500) tons per acre of aggregate or mass of mineral matter in any given year; nor (iii)] the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes, so long as such work is performed under a bond, contract and specifications which substantially provide for and require reclamation of the area affected in the manner provided by this act; nor [(iv)] (iii) to the handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

269 "Operator" shall mean a person, firm, corporation or partnership engaged in surface mining, as a principal as distinguished from an agent or independent contractor, and, who is or becomes the owner of the minerals as a result of such mining. Where more than one person, firm, corporation or partnership is engaged in surface mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of this act.

269 Section 3.1. (a) After January 1, 1972, it shall be unlawful for any person to proceed to mine coal or to conduct an active operation to mine other minerals, by the surface mining method as an operator within this Commonwealth without first obtaining a license as a surface mining

operator from the department.Applications for licensure as surface mining operators shall be
made in writing to the department, upon forms prepared and furnished by the department, and
shall contain such information as to the applicant, or when the application is made by a
corporation, partnership or association as to its officers, directors and principal owners, as the
department shall require. The initial application for licensure shall be accompanied by a fee of
[five hundred dollars ($500).] fifty dollars ($5 0) in the case of persons mining two thousand
tons or less of marketable minerals, other than coal, per year and a fee of five hundred dollars (
$5 00) in the case of persons mining coal or more than two thousand tons of other marketable
minerals per year. It shall be the duty of all persons licensed as surface mining operators to
renew such license annually, and pay for each such license renewal the sum of fifty dollars ($5
0) in the case of persons mining two thousand tons or less of marketable minerals other than coal
and the sum of three hundred dollars ($3 00) in the case of all other operators. The application
for renewal of a license as a surface mining operator shall be made annually on or before January
1 of the next succeeding year.

270 Penalty. - Any person who proceeds to mine minerals by the surface mining method as
an operator without having applied for and received a license as herein provided or in violation
of the terms thereof shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to
pay a fine of not less than five thousand dollars ($5 ,000) or in an amount not less than the total
profits derived by him as a result of his unlawful activities, as determined by the court, together
with the estimated cost to the Commonwealth of any reclamation work which may reasonably be
required in order to restore the land to its condition prior to the the commencement of said
unlawful activities, or undergo imprisonment not exceeding one year, or both.The fine shall be
payable to the Surface Mining Conservation and Reclamation Fund.

270 (b) The department shall not issue any new surface mining operator's license or renew any
existing surface mining operator's license to any person or operator if it finds, after investigation,
that the applicant for licensure or renewal has failed and continues to fail to comply with any of
the provisions of this act, or of any of the acts repealed or amended hereby. Where the applicant
is a corporation, partnership or association, the department shall not issue such license or renewal

if, after investigation, it finds that any officer or director or principal owner of such corporation,
partnership or association has failed and continues to fail to comply with any of the provisions of
this act, or of any of the acts repealed or amended hereby, or if any such officer or director or
principal owner is or has been an officer or director or principal owner of any other corporation,
partnership or association, which has failed and continues to fail to comply with any of the
provisions of this act, or of any of the acts repealed or amended hereby.

270 Section 4.2. Health and Safety.-* * *

270 (c) From the effective date of this act, as amended hereby, no operator shall open any pit
for surface mining operations (other than borrow pits for highway construction purposes) within
one hundred feet of the outside line of the right-of-way of any public highway or within three
hundred feet of any occupied dwelling house, unless released by the owner thereof, or any public
building, school, park or community or institutional building or within one hundred feet of any
cemetery, or on the bank of any stream. The secretary may [after notice and public hearing,]
grant operators [exceptions] variances to the distance requirements herein established where he is
satisfied that special circumstances warrant such exceptions and that the interest of the public and
landowners affected thereby will be adequately protected. Prior to granting any such variances,
the operator shall be required to give public notice of his application therefor in two newspapers
of general circulation in the area once a week for two successive weeks. Should any person file
an exception to the proposed variance within twenty days of the last publication thereof, the
department shall conduct a public hearing with respect thereto.

271 Section 2. Anyone who has paid a license fee of five hundred dollars ($5 00) prior to
the effective date of this act and who, during 1972, mined two thousand tons or less of
marketable minerals other than coal shall upon application to the department, be paid a refund of
four hundred fifty dollars ($450).

271 Approved-The 28th day of December, A.D. 1972.

271 MILTON J. SHAPP

272 No. 418

272 AN ACT

272 Providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; and providing penalties. (Amended November 30, 1971, Act No. 147.)

272 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

272 Section 1. Purpose of Act. - This act shall be deemed to be an exercise of the police powers of the Commonwealth for the general welfare of the people of the Commonwealth, by providing for the conservation and improvement of areas of land affected in the surface mining of bituminous and anthracite coal and metallic and nonmetallic minerals, to aid thereby in the protection of birds and wild life, to enhance the value of such land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to prevent and climinate hazards to health and safety, to prevent combustion of unmined coal, and generally to improve the use and enjoyment of said lands. (Amended November 30, 1971, Act No. 147.)

272 Section 2.Short Title. - This act shall be known and may be cited as the "Surface Mining Conservation and Reclamation Act." (Amended November 30, 1971, Act No. 147.)

272 Section 3. Definitions. - The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

272 "Minerals" shall mean any aggregate or mass of mineral matter, whether or not coherent, which is extracted by surface mining, and shall include but not be limited to limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculate, clay, and anthracite and bituminous coal.

272 "Surface mining" shall mean the extraction of minerals from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including but not limited to strip, drift, and auger mining, dredging, quarrying, and leaching, and activities related thereto, but not including those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings. "Surface mining" shall not include (i) the extraction of minerals (other than anthracite and bituminous coal) by a landowner for his own

non-commercial use from land owned or leased him, nor (ii) the extraction of such non-coal minerals for commercial purposes in an amount less than five hundred (500) tons per acre of aggregate or mass of mineral matter in any given year, nor (iii) the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes, so long as such work is performed under a bond, contract and specifications which substantially provide for and require reclamation of the area affected in the manner provided by this act; nor (iv) to the handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

272 "Pit" shall mean the place where any coal or metallic and nonmetallic minerals are being mined by the surface mining method.

272 "Operation" shall mean the pit located upon a single tract of land or a continuous pit embracing or extending upon two or more contiguous tracts of land.

272 "Active operation" shall mean one in which the surface mine operator has removed a minimum of five hundred (500) tons per acre of aggregate or mass of non-coal mineral matter for commercial purposes in the preceding year.

272 "Land" shall mean the surface of the land upon which surface mining is conducted.

272 "Tract" shall mean a single parcel of land or two or more contiguous parcels of land with common ownership.

273 "Operator" shall mein a person, firm, corporation or partnership engaged in surface mining, as a principal as distinguished from an agent or independent contractor, and, who is or becomes the owner of the minerals as a result of such mining.

273 "Landowner" shall mean the person, firm, corporation or partnership, or the persons, firms, corporations, or partnerships in whom the legal title to the land is vested.

273 "Overburden" shall mean the strata or material overlying a mineral deposit or in between mineral deposits in its natural state and shall mean such material before or after its removal by surface mining.

273 "Spoil pile" shall mean the overburden and reject minerals as piled or deposited in surface mining.

273 "Land affected" shall mean the land from which the mineral is removed by surface mining, and all other land area in which the natural land surface has been disturbed as a result of or incidental to the surface mining activities of the operator, including but not limited to private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, spoil banks, culm banks, tailings, repair areas, storage areas, processing areas, shipping areas, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are situated.

273 "Abandoned" shall mean an operation where no mineral has been produced or overburden removed for a period of six months, verified by monthly reports submitted to the department by the operator and by inspections made by the department, unless an operator within thirty (30) days after receipt of notification by the secretary terming an operation abandoned submits sufficient evidence to the secretary that the operation is in fact not abandoned and submits a timetable satisfactory to the secretary regarding plans for the reactivation of the operation.

273 "Degree" shall mean the inclination from the horizontal and in each case shall be subject to a tolerance of five (5) degrees.

273 "Terracing" shall mean grading where the steepest contour of the highwall shall not be greater than thirty-five degrees from the horizontal, with the table portion of the restored area a flat terrace without depressions to hold water and with adequate provisions for drainage, unless otherwise approved by the department.

273 "Contouring" shall mean reclamation achieved by beginning at or beyond the top of the highwall and sloped to the toe of the spoil bank at a maximum angle not to exceed the approximate original contour of the land, with no depressions to accumulate water and with adequate provisions for drainage.

273 "Secretary" shall mean the Secretary of Environmental Resources of the Commonwealth of Pennsylvania.

273 "Department" shall mean the Department of Environmental Resources of the Commonwealth of Pennsylvania. (Amended November 30, 1971, Act No. 147.)

273 Section 3.1. Operator's License; Penalty. -(a) After January 1, 1972, it shall be unlawful for any person to proceed to mine coal or to conduct an active operation to mine other minerals, by the surface mining method as an operator within this Commonwealth without first obtaining a license as a surface mining operator from the department. Applications for licensure as surface mining operators shall be made in writing to the department, upon forms prepared and furnished by the department, and shall contain such information as to the applicant, or when the application is made by a corporation, partnership or association as to its officers, directors and principal owners, as the department shall require. The application for licensure shall be accompanied by a fee of five hundred dollars ($5 00). It shall be the duty of all persons licensed as surface mining operators to renew such license annually, and pay for each such license renewal the sum of three hundred dollars ($30 00). The application for renewal of a license as a surface mining operator shall be made annually on or before January 1 of the next succeeding year.

274 Penalty. - Any person who proceeds to mine minerals by the surface mining method as an operator without having applied for and received a license as herein provided or in violation of the terms thereof shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than five thousand dollars ($5 ,000) or in an amount not less than the total profits derived by him as a result of his unlawful activities, as determined by the court, together with the estimated cost to the Commonwealth of any reclamation work which may reasonably be required in order to restore the land to its condition prior to the commencement of said unlawful activities, or undergo imprisonment not exceeding one year, or both.The fine shall be payable to the Surface Mining Conservation and Reclamation Fund.

274 (b) The department shall not issue any new surface mining operator's license or renew any existing surface mining operator's license to any person or operator if it finds, after investigation, that the applicant for licensure or renewal has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby. Where the applicant is a corporation, partnership or association, the department shall not issue such license or renewal if, after investigation, it finds that any officer or director or principal owner of such corporation, partnership or association has failed and continues to fail to comply with any of the provisions of

this act, or of any of the acts repealed or amended hereby, or if any such officer or director or principal owner is or has been an officer or director or principal owner of any other corporation, partnership or association, which has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby. (Amended November 30, 1971, Act No. 147.)

274 Section 3.2. Specifications for Construction Projects. - It shall be the duty of architects, engineers, or others persons preparing specifications for construction projects and which specifications include the requirement that the construction contractor supply fill for such project, to include within such specifications a specific reference to this act and the regulations pertaining thereto adopted by the department. If such a reference is omitted from the specifications and reclamation and planting of the land from which the fill was removed by the construction contractor is required under this act, any contract based on such specifications may be amended, at the option of the construction contractor, to allow a reasonable price for the reclamation and planting of the land affected in accordance with a plan acceptable to the secretary. (Added November 30, 1971, Act No. 147.)

274 Section 4. Mining Permit; Reclamation Plan; Bond. -(a) Before any person licensed as a surface mining operator shall hereafter proceed to mine minerals by the surface mining methods, he shall apply to the department, on a form prepared and furnished by the department, for a permit for each separate operation, which issued shall be valid until such operation is completed or abandoned, unless sooner suspended by the secretary. As a part of each application for a permit, the operator shall, unless modified or waived by the department for cause, furnish the following:

274 (1) Map and Related Information. An accurately surved map or plan, in duplicate, on a scale of not less than two hundred feet to the inch in a manner satisfactory to the secretary, showing the location of the tracts of land to be affected by the operation contemplated, and cross-sections at intervals of not more than one hundred feet. Such surveyed map or plan and cross-sections shall be prepared and certified by a registered professional engineer or registered surveyor and shall show the boundaries of the proposed land affected, together with the drainage

area above and below such area, the location and names of all streams, roads, railroads and utility lines on or immediately adjacent to the area, the location of all buildings within one thousand feet of the outer perimeter of the area affected, the names and addresses of the owners and present occupants thereof, the purpose for which each such building is used, the name of the owner of the area and the names of adjacent landowners, the municipality or township and county, and if in a township, the nearest municipality. Such map or plan shall also show the results of test borings which the operator has conducted or shall conduct at the site of the proposed operation and shall include the nature and depth of the various strata, the thickness of any coal or mineral seam, a complete analysis of any coal, the mineral seam, an analysis of the overburden. the crop line of any coal. or mineral or minerals to be mined and the location of test boring holes. The information resulting from test borings, shall be deemed confidential information and shall not be deemed a matter of public record. Acrial photographs of the tract or tracts of land to be affected by the operation shall also be provided if such photographs are required by the secretary.

275 (2) Reclamation Plan. A complete and detailed plan for the reclamation of the land affected. Except as otherwise herein provided, or unless a variance for cause is specially allowed by the department as herein provided, each such plan shall include the following:

275 A. A statement of the highest and best use to which the land was put prior to the commencement of surface mining.

275 B. The use which is proposed to be made of the land following reclamation;

275 C. Where conditions permit, the manner in which topsoil and subsoil will be conserved and restored. If conditions do not permit the conservation and restoration of all or part of the topsoil and subsoil, a full explanation of said conditions shall be given, and alternate procedures proposed;

275 D. Where the proposed land use so requires, the manner in which compaction of the soil and fill will be accomplished;

275 E. A complete planting program providing for the planting of trees, grasses, legumes or shrubs, or a combination thereof approved by the department as best calculated to permanently

restore vegetation to the land affected. If conditions do not permit the planting of vegetation on all or part of the land affected, and if such conditions pose an actual or potential threat of soil crosion or unavoidable siltation, then alternate procedures shall be proposed to prevent the threat of soil crosion or unavoidable siltation. If such procedures do not prevent these conditions, they shall not be approved by the department;

275 F.A detailed timetable for the accomplishment of each major step in the reclamation plan, and the operator's estimate of the cost of each such step and the total cost to him of the reclamation program:

275 G. Unless the reclamation plan provides for contouring, as herein defined, it shall contain a full explanation of the conditions which do not permit contouring and it shall, in the case of anthracite or bituminous coal, provide for terracing as herein defined. Other alternatives to contouring or terracing may be proposed, in conjunction with such proposed land uses as water impoundment, water-oriented real estate development, recreational area development, industrial site development or solid waste disposal area development, and unless such proposed alternatives or uses pose an actual or potential threat of water polluiton, are deemed impractical or unreasonable, involve unreasonable delay in their implementation, or are violative of Federal, State or local law, such alternatives and uses shall be approved by the department;

275 H. Such other or further information as the department may require;

275 I. Except where leases in existence on the effective date of this amending act do not so provide or permit, the application for a permit shall include, upon a form prepared and furnished by the department, the written consent of the landowner to entry upon any land to be affected by the operation by the operator or by the Commonwealth or any of its authorized agents within a period of five years after the operation is completed or abandoned for the purpose of reclamation, planting, and inspection or for the construction of any such mine drainage treatment facilities as may be deemed necessary by the secretary for the prevention of stream pollution from mine drainage:

275 J. The application for license or renewal 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 to do business in Pennsylvania covering all surface damage protection, to be written for the term of the license or renewal.The total amount of insurance shall be not less than one hundred thousand dollars ($1 00,000); the secretary may waive the provisions of this clause upon a finding that the applicant is possessed and will continue to be possessed of ability to pay personal injury or property damage claims within the requirements of this clause.

276 K. The application shall also set forth the manner in which the operator plans to divert surface water from draining into the pit and the manner in which he plans to prevent water from accumulating in the pit. No approval shall be granted unless the plan provides for a practicable method of avoiding acid mine drainage and preventing avoidable siltation or other stream pollution. Failure to prevent water from draining into or accumulating in the pit, or to prevent stream pollution, during surface mining or thereafter, shall render the operator liable to the sanctions and penalties provided in this act and in "The Clean Streams Law,: and shall be cause for revocation of any approval, license or permit issued by the department to the operator.

276 (b) Upon receipt of an application, the department shall review the same and shall make such further inquiries, inspections or examinations as may be necessary or desirable for a proper evaluation thereof. Should the secretary object to any part of the proposal, he shall promptly notify the operator by registered mail of his objections, setting forth his reasons therefor, and shall afford the operator a reasonable opportunity to make such amendments or take such other actions as may be required to remove the objections. No application shall be approved with respect to any operator who has failed, and continues to fail to comply with the provisions of this act or of any act repealed or amended hereby, as applicable, or with the terms or conditions of any permit issued under "The Clean Streams Law" of June 22, 1937 (P.L. 1987), as amended, or where any claim is outstanding against any operator, or in the case of a corporate operator against any officer or director, under this act or any act repealed or amended hereby. Should any operator be aggrieved by any action of the secretary under this subsection, or by the failure of the secretary to act upon his application for a permit, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said

Board he may further appeal as provided by the Administrative Agency Law.

276 (c) Prior to commencing surface mining, the operator shall file with the department a bond for the land affected by each operation on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the requirements of this act and of the act of June 22, 1937 (P.L. 1987), known as "The Clean Streams Law." The amount of the bond required shall be in an amount determined by the secretary based upon the total estimated cost to the Commonwealth of completing the approved reclamation plan. Said estimate shall be based upon the operator's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria as may be relevant, including the proposed land use and the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site after abandonment by the operator, in excess of the cost to the operator of performing the necessary work during the course of his surface mining operations. When the plan involves the reconstruction or relocation of any public road or highway, the amount of the bond shall include an amount sufficient to fully build or restore the road or highway to a condition approved by the Department of Transportation. No bond shall be filed for less than five thousand dollars ($5 000.00).Liability under such bond shall be for the duration of surface mining at each operation, and for a period of five years thereafter, unless released in whole or in part prior thereto as hereinafter provided. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth and approved by the secretary: Provided, however, That the operator may elect to deposit cash or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash deposit or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash or securities, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth,

in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any securities so deposited, upon depositing with him, in lieu thereof, other negotiable securities of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said securities as the same becomes due and payable: Provided, however, That where where securities, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the operator, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator.

277 (d) The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional application and bond. Upon receipt of such additional application and related documents and information as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the secretary shall promptly issue an amended permit covering the additional acreage covered by such application, and shall determine the additional bond requirement therefor.

277 (e) Notwithstanding the provisions of subsections (c) and (d) of this section, in the case of applications for the surface mining of minerals other than anthracite and bituminous coal where the department determines that the mineral to be extracted exceeds the amount of overburden by a ratio of at least four to one, and the surface mining operations are reasonably anticipated to continue for a period at least ten years from the date of application, the term of the bond shall be for the duration of the license issued under this act and for five years thereafter. In lieu of the bond required by subsections (c) and (d) of this section, the operator, in the case of applications hereinbefore mentioned by this subsection (e), may elect to annually pay to the department, for deposit in the Surface Mining Conservation and Reclamation Fund established by this act, an amount equal to ninety-five per cent of the average bond premium, as established by the

Insurance Commissioner, which the operator would otherwise be required to pay in order to obtain the bond required by subsections (c) and (d) of this section. Said amount shall be retained by the Commonwealth and shall not be refundable to the operator. Payment thereof shall excuse the operator from compliance with the bond requirements of subsections (c) and (d) of this section with respect to such operation.

277 (f) Within ninety days after commencement of surface mining operations and each ninety days thereafter unless modified or waived by the department for cause, the operator shall file in triplicate an operations and progress report with the department on a form prescribed and furnished by the department, setting forth (i) the name or number of the operation; (ii) the location of the operation as to county and township and with reference to the nearest public road; (iii) a description of the tract or tracts; (iv) the name and address of the landowner or his duly authorized representative; (v) a monthly report of the mineral produced, number of employes and days worked; (vi) a report of all fatal and nonfatal accidents for the previous three months; (vii) the current status of the reclamation work performed in pursuance of the approved reclamation plan; and (viii) such other or further information as the department may reasonably require. In addition to the foregoing, the operator shall annually furnish to the department a new map, based upon a survey, showing the status of the operation at the conclusion of each year of operation, indicating the area affected and restored during the preceding year, particularly with relation to the property lines and boundaries shown upon the map and survey furnished with the original application.

277 (g) As the operator completes each separate step of the approved reclamation plan, he may report said completion to the department and request the release of that portion of the bond and collateral which relates to the completed portion of the reclamation plan. Upon the receipt of such notification and request, the secretary shall cause the premises to be inspected, and if he finds that the work has been performed in a proper and workmanlike manner and is in compliance with the approved reclamation plan and with the law applicable, he shall release that portion of the bond and collateral which relates to the completed portion of the reclamation plan:
Provided, however, That the secretary may withhold an amount equivalent to five per cent of said

amount for a period of five years from the completion date of said work, as a contingency allowance for the reimbursement of the Commonwealth of any cost encountered due to after-discovered faulty or negligent work on the part of the operator. Upon release of all or part of the bond and collateral as herein provided, the State Treausrer shall immediately return to the operator the amount of cash or securities specified therein.

278 (h) If the operator fails or refuses to comply with requirements of the act in any respect for which liability has been charged on the bond, the secretary shall declare such portion of the bond forfeited, and shall certify the same to the Department of Justice, which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operator has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare such portion of said collateral forfeited thereon, and shall direct the State Treasurer to pay said funds into the Surface Mining Conservation and Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Surface Mining Conservation and Reclamation Fund. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to contest such action and appeal therefrom as herein provided.

278 (i) Should any operator be aggrieved by any decision or action of the secretary with respect to the amount of any bond, the terms, conditions or release thereof, or any other matter related thereto, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by the Administrative Agency Law. (Amended November 30, 1971, Act No. 147.)

278 Section 4.1. (Repealed November 30, 1971, Act No. 147.)

278 Section 4.2. Health and Safety. - (a) Except as otherwise provided hereunder, all surface mining operations coming within the provisions of this act shall be under the exclusive jurisdiction of the department and shall be conducted in compliance with such reasonable rules and regulations as may be deemed necessary by the secretary for the health and safety of those persons engaged in the work and for the protection of the general public. Separate rules and regulations shall be promulgated for each mineral. The secretary through the mine conservation

inspectors shall have the authority and power to enforce the provisions of this act and the rules
and regulations promulgated thereunder by him. In addition, should the secretary determine that
a condition caused by or related to surface mining constitutes a hazard to public health or safety,
he shall take such measures to abate and remove the same as are provided by section 1971-A of
the act of April 9, 1929 (P.L. 177), known as "The Administrative Code of 1929," and as
otherwise provided by law for the abatement of nuisances. For the purposes of this section, any
condition which creates a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or
hazardous condition, including but not limited to any unguarded and unfenced open pit area,
highwall, water poll, spoil bank and culm bank, abandoned structure, equipment, machinery,
tools or other property used in or resulting from surface mining operations, or other serious
hazards to public health or safety, is hereby declared to be a nuisance within the meaning of
section 1971-A of "The Administrative Code of 1929."

278 (b) The use of explosives for the purpose of blasting in connection with surface mining
shall be done in accordance with regulations promulgated by and under the supervision of the
secretary.

278 (c) From the effective date of this act, as amended hereby, no operator shall open any pit
for surface mining operations (other than borrow pits for highway construction puposes) within
one hundred feet of the outside line of the right-of-way of any public highway or within three
hundred feet of any occupied dwelling houses, unless released by the owner thereof, or any
public building, school, park or community or institutional building or within one hundred feet of
any cemetery, or of the bank of any stream. The secretary may, after notice and public hearing,
grant operators exceptions to the distance requirements herein established where he is satisfied
that special circumstances warrant such exceptions and that the interest of the public and
landowners affected thereby will be adequately protected.

279 (d) Upon the completion of any surface mining operations, and prior to the release by the
secretary of all or any portion of the bond or collateral pertinent thereto, the operator shall
remove and clean up all temporary or unused structures, facilities, equipment, machines, tools,
parts or other materials, property, debris or junk which were used in or resulted from his surface
mining operations.

279 (e) Nothing contained in this act shall be construed to prohibit the relocation of any public road in the manner provided by law. (amended November 30, 1971, Act No. 147.)

279 Section 4.3. Violation Notices; Suspension of License; Cease and Desist Orders. - Any mine conservation inspector shall have the right to enter upon and inspect ail surface mining operations for the purose of determining conditions of health and safety and for compliance with the provisions of this act, and all rules and regulations promulgated pursuant thereto. Should an operator fail to comply with the requirements of this act, or any rules or regulations promulgated pursuant thereto, the mine conservation inspector shall report the matter to the secretary who shall immediately notify the operator by registered mail of such failure. Unless the operator complies with the act, and such rules and regulations, within thirty (30) days from the receipt of such notice, the secretary may, after hearing and final determination, suspend the surface mining operator's license of the operator and issue a cease and desist order requiring the operator to immediately cease surface mining within this Commonwealth until such time as it is determined by the secretary that the operator is in compliance. A mine conservation inspector shall have the authority to order the immediate stopping of any operation that is started by an unlicensed operator, or without the operator thereof having first obtained a permit as required by this act, or in any case where safety regulations are being violated or where the public welfare or safety calls for the immediate halt of the operation until corrective steps have been started by the operator to the satisfaction of the mine conservation inspector. Any operator who believes he is aggrieved by the action of the mine conservation inspector may immediately appeal to the secretary, setting forth reasons why his operation should not be halted. The secretary shall determine when the operation shall continue. (Amended November 30, 1971, Act No. 147.)

279 Section 4.4. (Repealed November 30, 1971, Act No. 147.)

279 Section 5. (Repealed November 30, 1971, Act No. 147.)

279 Section 6. (Repealed July 16, 1963, P.L. 238.)

279 Section 7. (Repealed November 30, 1971, Act No. 147.)

279 Section 8. (Repealed November 30, 1971, Act No. 147.)

279 Section 9. (Repealed July 16, 1963, P.L. 238.)

279 Section 10. (Repealed November 30, 1971, Act No. 147.)

279 Section 11. (Repealed November 30, 1971, Act No. 147.)

279 Section 12. (Repealed November 30, 1971, Act No. 147.)

280 Section 13. (Repealed July 16, 1963, P.L. 238.)

280 Section 14. (Repealed November 30, 1971, Act No. 147.)

280 Section 15. (Repealed November 30, 1971, Act No. 147.)

280 Section 15.1. (Repealed November 30, 1971, Act No. 147.)

280 Section 15.2. (Repealed November 30, 1971, Act No. 147.)

280 Section 15.3. Conservation Districts and Inspectors. - (a) The Commonwealth shall be arranged by the secretary into mine land and water conservation districts, which the secretary may at any time redistrict. Each district shall have a mine conservation inspector.

280 The Governor shall commission and appoint mine land and water conservation inspectors from among persons holding valid unexpired certificates of qualification issued by the department under this act and each mine conservation inspector shall hold office during good behavior or until removed from office as herein provided.It shall be the duty of the secretary to assign the inspectors to their respective districts.

280 (b) The qualifications for certification of a candidate for the office of mine conservation inspector shall be as follows: The candidate shall be of temperate habits, of good repute as a person of integrity, in good physical condition, shall be between the ages of twenty-five and fifty-five years, shall have successfully passed the examination for mine conservation inspector provided herein, shall have had sufficient practical experience in surface mining and conservation or in lieu thereof specialized education or a combination of education and experience as specified by the secretary, and shall have served in a probational status for a period of at least six months in this Commonwealth, which shall be evaluated by the secretary.

280 (c) The board shall enter into a contract with the State Civil Service Commission as provided in section 212 of the "Civil Service Act" of 1941 for the purpose of authorizing the Civil Service Commission to conduct examinations as needed for the position of mine

conservation inspector. The Civil Service Commission shall, with the cooperation and approval of the board, prepare examinations for mine conservation inspector from time to time and shall administer such examinations in accordance with the commission's regular procedure.

280 After the examination is completed and graded and a list prepared, the Civil Service Commission shall certify the entire list of successful candidates to the Governor and to the department. Appointments to the position of mine conservation inspector shall be made by the appointing authority from among the names on the certified list.

280 (d) Candidates for the office of mine conservation inspector who have submitted such proof as the board shall require that they are otherwise qualified as set forth herein shall be examined on and must give evidence of having such theoretical as well as practical knowledge and general intelligence respecting mining and conservation as will satisfy the examining board of their capability and fitness to perform the duties imposed upon mine conservation inspectors under this act. The principal portion of such examination shall be in writing but each applicant shall also undergo an oral examination. The questions and answers thereto in the oral examination shall be reported verbatim by an expert stenographer, or shall be mechanically recorded, and typewritten fully, or reproduced by some other method, to assist the examining board in the work of rating the qualifications of the candidates.

280 (e) The manuscripts and other papers of applicants for the office of mine conservation inspector and together with tally sheets and the correct solution of each question as prepared by the board, and the stenographer's report or other record of the oral examination for inspectors, shall be filed with the department for a period of time of not less than eight years.

280 (f) The names of all successful candidates who are properly qualified under the provisions of this section to fill the office of mine conservation inspector shall be certified by the examining board to the Governor and to the department. A certificate of qualification shall be issued to each successful candidate by the secretary.A certificate so granted shall be valid for a period of four years from the date of the examination unless the holder has received an appointment in the interim period in which case the certificate shall become permanent unless the appointee has

voluntarily relinquished the position within a period of one year after appointment. A certificate of qualification of a person honorably discharged from the armed forces of the United States shall not expire until the first examination occurring more than six months following his release from military service.

281 (g) The board shall, after the examination, furnish to any candidate, on request, a copy of all oral and written questions given at the examination marked as answered by the candidate "solved right," "imperfect" or "wrong," as the case may be.

281 Mining inspectors presently serving shall continue to serve without re-examination.

281 (h) Each mine conservation inspector shall, before entering upon the discharge of his du[*] give a surety bond in the sum of five thousand dollars ($5 ,000), conditioned for the fait[*] discharge of his duties. No person who is acting as manager or agent of any surface mining practice, or as mining engineer, or who is directly or indirectly interested in operating any surface mine shall at the same time act as mine conservation inspector.

281 (i) In case a mine conservation inspector becomes incapacitated to perform the duties of his office, or is granted a leave of absence by the secretary, the secretary may appoint temporary to the office a person he deems qualifed to fulfill the duties of the inspector. The temporary inspector shall act until the regular inspector is able to resume the duties of his office.

281 (j) Each mine conservation inspector shall devote the whole of his time to the duties of his office. It shall be his duty to thoroughly examine each operating mine in his district as often as necessary for compliance with this act. He shall keep in his office a record of all examinations of mines, showing the condition in which he finds them, on a form supplied by the secretary. He shall also perform such other duties as the secretary may require.

281 (k) Within thirty days after a mine conservation inspector attains the age of sixty-five, he shall undergo a physical examination and a copy of the phsyician's findings shall be furnished to the secretary. The same procedure shall be followed each succeeding year after the age of sixty-five is reached. If, as a result of the physical examination, it is found that the inspector is physically unable to perform the duties of a mine conservation inspector, he shall submit his

resignation to the Governor. Failure to submit resignation will constitute cause for removal from office by the secretary.

281 (l) A mine conservation inspector may be dismissed for cause as defined in the "Civil Service Act" of 1941 as amended. If such mine inspector feels that his dismissal was improper or unjustified, he may appeal to the State Civil Service Commission for a hearing in accordance with the provisions of the "Civil Service Act" and the contract to be entered into between the board and the Civil Service Commission. The decision of the Civil Service Commission shall be final and may not be appealed.

281 (m) The mine conservation inspectors shall be allowed all necessary expenses incurred by them in enforcing the several provisions of this act in the respective courts of this Commonwealth, if they have obtained the consent of the department before such expense is incurred, the same to be paid by the State Treasurer, on warrant of the Auditor General, issued upon presentation of itemized vouchers approved by the court before which the proceedings were instituted, and also by the secretary.

281 (n) Each mine conservation inspector may also incur traveling expenses, and such other expenses as may be necessary for the proper discharge of his duties under the provisions of this act. Each mine conservation inspector shall have an office in his district, which may be at his place of residence if a suitable room, approved by the secretary, is set apart for that purpose. The secretary shall have authority to procure for the mine conservation inspectors, on their request, furniture, instruments, chemicals, typewriters, stationery and all other necessary supplies, which shall be paid for by the State Treasurer, on warrant of the Auditor General issued upon presentation of vouchers approved by the secretary. All furniture, instruments, plans, books, memoranda, notes and other materials pertaining to the office of the mine conservation inspector, shall be the property of the Commonwealth, and shall be delivered by the mine conservation inspector to his successor in office.

282 (o) At the conclusion of the examination of a mine, the mine conservation inspector shall discuss with representatives of management his findings and recommendations.

282 (p) To enable the mine conservation inspector to perform the duties imposed upon him by

this act, he shall have the right at all times to enter upon the land affected by any former or present surface mining operation in his district or any surface mining operation in any other district when directed to do so by the secretary, to make examinations or obtain information; and upon the discovery of any violation of this act, or upon being informed of any violation of the act, or upon the discovery of any nuisance, he shall institute proceedings against the person or persons at fault, under the provisions of this act. (Added January 19, 1968, P.L. 1012; subsections (a) and (b) amended and subsections (m) through (p) added November 30, 1971, Act No. 147.)

282 Section 16. (Repealed November 30, 1971, Act No. 147.)

282 Section 17. (Repealed September 2, 1961, P.L. 1210.)

282 Section 18. Surface Mining Conservation and Reclamation Fund. - All funds received by the secretary from license fees, and from forfeiture of bonds, and of cash deposits and securities, shall be held by the State Treasurer in a special fund, separate and apart from all other moneys in the State Treasury, to be known as the "Surface Mining Conservation and Reclamation Fund," and shall be used by the secretary for the purpose of the foresting or reclaiming of land affected by surface mining of any coal or metallic and nonmetallic minerals, or for any other conservation purposes provided by this act, and for such purposes are hereby specifically appropriated to the department. Funds received from the forfeiture of bonds and collateral shall, if physicially possible, be expended by the secretary for reclaiming and planting the area of land affected by the operation upon which liability was charged on the bond. Any funds received from such forfeitures relating to land where reclaiming and planting is determined by the secretary to be physically impossible, may be used by him for the foresting or reclaiming of other lands affected by surface mining of any coal or metallic and nonmetallic minerals or for any other conservation purposes provided by this act. (Amended November 30, 1971, Act No. 147.)

282 Section 18.1. Release of Operator on Transfer of Operation. - Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease, or otherwise, the secretary may release the first operator from all liability under this act as to that particular operation: Provided, however, That both operators have registered and have otherwise complied

with the requirements of this act and the successor operator assumes as part of his obligation
under this act all liability for grading, planting and reclamation on the land affected by the former
operator. (Amended November 30, 1971, Act No. 147.)

282 Section 18.2. Injunctive Relief. - In addition to any other remedy at law or in equity or
under this act, the Attorney General may apply to the Commonwealth Court for relief by
injunction, or to the court of common please of the county wherein the operation is situated to
enforce compliance with, or restrain violations of, any provisions of this act, or any rule,
regulation or order made pursuant thereto. The Commonwealth Court is hereby vested with
jurisdiction to hear and determine all such actions by the Attorney General regardless of where
they may arise in the Commonwealth.

282 The remedy prescribed in this section shall be deemed concurrent or contemporaneous
with any other remedy, and the existence or excercise of any one remedy shall not prevent the
exercise of any other remedy. (Amended November 30, 1971, Act No. 147.)

283 bection 18.3. Remedies of Citizens. - Any citizen of this Commonwealth having
knowledge that any of the provisions of this act are willfully and deliberately not being enforced
by any public officer or employe whose duty it is to enforce any of the provisions of this act,
shall bring such failure to enforce the law to the attention of such public officer or employe. To
provide against unreasonable and irresponsible demands being made, all such demands to
enforce the law must be in writing, under oath, with facts set forth specifically stating the nature
of the failure to enforce the law. The stating of false facts and charges in such affidavit shall
constitute perjury and shall subject the affiant to penalties prescribed under the law for perjury.
If such public officer or employe neglects or refuses for an unreasonable time after demand to
enforce such provision, any such citizen shall have the right to bring an action of mandamus in
the court of common pleas of the county in which the operation which reiates to the alleged lack
of enforcement is being conducted. The court, if satisfied that any provision of this act is not
being enforced, may make an appropriate order compelling the public officer or employe, whose
duty it is to enforce such provision, to perform his duties, and upon failure to do so such public
officer or employe shall be held in contempt of court and shall be subject to the penalties

provided by the laws of the Commonwealth in such cases. (Amended August 8, 1963, P.L. 623)

283 Section 19. Repealer. - All acts or provisions thereof inconsistent herewith are hereby repealed: Provided, however, That the act of Assembly, approved the eigteenth day of June, Anno Domini one thousand nine thousand forty-one (Pamphlet Laws, one hundred thirty-three), entitled "An act relating to coal stripping operations; providing for the health and safety of persons employed therein and for the inspection and regulation of such operations by the Department of Mines; requiring certain information and reports, and presribing penalties," and the act of Assembly, approved on the twenty-fifth day of June, Anno Domini one thousand nine hundred thirty-seven (Pamphlet Laws, two thousand two hundred seventy-five), entitled "An act to promote safety for the traveling public on State highways, to extend the responsiblity for subsidence of such highways by the failure of vertical and lateral support, and declaring said subsidence a public nuisance; to provide for inspection of mine maps by the Department of Highways, and the furnishing to said department of copies of such mine maps in certain cases; to authorize entry by the Department of Highways into mines in certain cases; and to provide for notices to the Department of Highways of certain mining operations under or adjacent to highways; and providing penalties," and all other acts and provisions thereof, which regulate the mining of bituminous coal shall not be repealed or nullified by this act, but shall remain in full force and effect. Nothing in this act shall be construed to abrogate or modify the power and jurisdiction of the Department of Mines to make rules and regulations, and to administer the laws of the Commonwealth applicable to open pit mining.

283 Section 20. Effective Date. - This act shall become effective immediately upon its final enactment: Provided, however, That any person who is in business when the act shall become effective shall have ninety (90) days to files his plans, specifications and bond.

283 Approved-The 31st day of May, A.D. 1945.

283 EDWARD MARTIN

283 Additional provisions from the Act of November 30, 1971, Act No. 147:

283 Section 16. Repealer. - (a) The following acts and all amendments thereof are repealed in so far as they are inconsistent herewith:

283 (1) The act of May 18, 1937 (P.L. 654), entitled, as amended, "An act to provide for the safety and to protect the health and morals of persons while employed; prescribing certain regulations and restrictions concerning places where persons are employed, and the equipment, apparatus, materials, devices and machinery used therein; prescribing certain powers and duties of the Department of Labor and Industry relative to the enforcement of this act; and fixing penalties."

284 (2) The act of June 18, 1941 (P.L. 133), entitled "An act relating to coal stripping operations; providing for the health and safety of persons employed therein and for the inspection and regulation of such operations by the Department of Mines; requiring certain information and reports, and prescribing penalties."

284 (3) The act of June 27, 1947 (P.L. 1095), known as the "Anthracite Strip Mining and Conservation Act."

284 (b) All other acts and parts of acts repealed in so far as they are inconsistent herewith.

284 (c) All other acts and provisions thereof, which regulate the mining of any coal or metallic and nonmetallic minerals shall not be repealed or nullified by this act, but shall remain in full force and effect. Nothing in this act shall be construed to abrogate or modify the power and jurisidiction of the Department of Environmental Resources to makes rules and regulations, and to administer the laws of the Commonwealth applicable to surface mining.

284 Section 17. Preemption of Local Regulation. - Except with respect to zoning ordinances, all local ordinances and enactments purporting to regulate surface mining are hereby superseded. The Commonwealth by this enactment hereby preempts the regulation of surface mining operations as herein defined.

284 Section 18. Effective Date. - This act shall take effect January 1, 1972. For the purpose of orderly administration of this act, the Department of Environmental Resources may, by regulation, defer the date for compliance with any of the several provisions of this act regarding application, bonding, licensure or permits, provided that said dates shall not be deferred for a period in excess of six months from the effective date of this act.

284 Where prior to the effective date of this amendment, an operator has permanently ceased the removal of minerals by surface mining at all mining operations within this Commonwealth and bonds have been posted for those operations but the reclaiming and planting of lands affected by such operations have not been completed and the bonds released, the lands shall be reclaimed and planted and bonds released, in accordance with the requirements of the act to which this is an amendment as they existed immediately prior to the effective date of this amendment.

285

*5*Size of Company, Production and Employees Bituminous Coal Surface Mining Industry - Strip, Auger and Refuse Recovery Commonwealth of Pennsylvania 1975

Size of Compan	Number	Total Production	Total # of Employees	Average # of Employees
Over 2,000,000 tons	1	2,280,000	440	440
1,000,000-2,000,000	2	2,263,000	465	233
750,000-1,000,000	2	1,616,000	140	7 0
500,000-749,999	7	5,289,000	687	98
200,000-499,999	29	8,397,000	1,912	65
150,000-199,999	17	3,923,000	656	39
100,000-149,999	44	5,373,000	1,147	26
50,000-99,999	88	5,963,000	1,381	16
25,000-49,999	89	3,295,000	929	10
Under 25,000 tons	224	2,048,000	1,120	5
Total	503	39,447,000	8,877	

285 Source: Statistical Report Department of Environmental Resources Commonwealth of Pennsylvania 1975

286

(215) KINGSLEY 6-3000
CABLE ADDRESS REYWAL TELEX 83-1320
March 29, 1977
Senator Lee Metcalf, Chairman
1121 Dirksen Senate Office Bldg.
Washington, D.C. 20510
Re: S.7
Dear Senator Metcalf:

286 I testified on behalf of the Pennsylvania Coal Mining Association along with Russell Haller, William Harger and Vernon Kerry (Pennsylvania coal mine operators) at the Subcommittee hearings on S.7. The Association submitted an extensive package of amendments in order to insure that the universally acclaimed and environmentally proven Pennsylvania program is not disrupted or destroyed by S.7.These amendments only seek to conform certain inflexible provisions of S.7 with the existing Pennsylvania law and practice which has resulted in the most effective surface mining and reclamation program in the nation. The Commonwealth of Pennsylvania and the Pennsylvania Department of Environmental Resources (the Pennsylvania regulatory authority) have reviewed our amendments with us and have endorsed and fully support most of the amendments (which were previously submitted to you and the committee several weeks ago).

286 You will find enclosed the complete package of amendments fully endorsed and supported by the Pennsylvania coal mine operators, 286 [See Illustration in Original] the Commonwealth of Pennsylvania, and the Pennsylvania Department of Environmental Resources. Also enclosed is a short summary of these amendments jointly endorsed by the state and the industry in Pennsylvania. Both the state and the industry in Pennsylvania consider these amendments essential without which they cannot support S.7. I would welcome the opportunity to meet with you and your staff to review these amendments.

287 Also enclosed, under separate cover, are several amendments for which the state has taken no position but which are considered vitally essential to the Pennsylvania coal mining industry.

287 You will also find enclosed a copy of a chart similar to that prepared by the Kentucky Association which demonstrates the current timing of the Pennsylvania permit process and the costs incurred at each stage of the process. This was specifically requested by you. We hope that

this will illustrate the unnecessary impact, delay and cost which will result from S.7's procedures
as currently drafted.

287 Respectfully yours,

287 Steven L. Friedman

287 SLF: iw

287 cc: Franklin H. Mohney

287 Pennsylvania Coal Mining Association

287 William Harger

287 Russell Haller

287 Vernon Kerry

287 Norman Williams, Esquire

288 SUMMARY OF PROPOSED AMENDMENTS TO S. 7 * Submitted By
COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES PENNSYLVANIA COAL MINING ASSOCIATION
WESTERN PENNSYLVANIA SURFACE COAL MINE OPERATORS ASSOCIATION

288 * This summary refers to proposed amendments to S.7 which are arranged in the
accompanying booklet in sequence by section, page, and line of the Act.

288 The proposed amendments to S.7 seek to preserve the environmentally effective
Pennslyvania program and allow the regulatory authority the necessary flexibility and discretion
to function properly.

288 PERMIT APPLICATION AND RECLAMATION PLAN REQUIREMENTS

288 1. Hydrological Imbalance Study

288 While this may be appropriate for western mining in arid climates with less than 26 inches
of rainfall, it is not necessary for every permit in Pennsylvania where there is more than 40 inches
of rainfall. This costly requirement should not be required for every Pennsylvania permit, but
should be discretionary.

288 See Proposed Amendments to S.7 at:

288 1. Sec. 407(b)(11), p.48, lines 4-14

288 2. Sec. 408(a)(12), p.54, lines 18-24

288 3. Sec. 410(b)(3), p.58, lines 17-22

288 4. Sec. 417(b)(2), p.90, lines 4-8

289 2. Improper Land Use Controls

289 Congress has already decided that land use planning is properly a local role. These requirements incorrectly assume that the operator has control over the surface rights and uses.

289 See Proposed Amendments to S.7 at:

289 1. Sec. 408(a)(3), p.53, lines 1-8

289 2.Sec. 408(a)(10), p.54, lines 10-13

289 3. Sec. 411(a)(2), p.61, lines 5-8

289 4. Sec. 415(b)(17), p.76, lines 4-14

289 3. Duplicative and Unnecessary Requests for Data

289 Various provisions in the permit application and reclamation plan require duplicative or unnecessary data. Thus, analysis of the overburden and data concerning efficient recovery of coal is required twice, first in the permit application and then in the reclamation plan. Sec. 408(a)(6) unnecessarily requires explanation of compliance with all air and water quality laws and health and safety standards. Other provisions unnecessarily require disclosure of confidential data concerning interest in adjacent lands. Where such disclosure is necessary, an amendment is proposed such as to Sec. 407(b)(10) limiting disclosures to persons with a valid legal interest.

289 See Proposed Amendments to S.7 at:

289 1. Sec. 407(b)(4), p.46, lines 14-24

289 2. Sec. 408(a)(8), p.54, lines 5-7

289 3. Sec. 408(a)(10), p.54, lines 10-13

289 4. Sec. 408(a)(11), p.54, lines 14-17

289 5. Sec. 408(a)(6), p.53, lines 22-24

289 6. Sec. 407(e), p.51, lines 24-25; p.52, lines 1-4

290 4. Miscellaneous See Proposed Amendments to S.7 at:

290 1. Sec. 410(a)-insure prompt action on permit application within 180 days.

290 2. Sec. 407(a), p.45, lines 9-18-limit permit fee to the cost of reviewing all permits under

program.

290 3. Sec. 407(b)(13), p. 48, lines 20-25-allow data in permit application for site to be on more than one map.

290 4. Sec. 407(b)(6), p. 47, lines 7-15-change unnecessarily time consuming advertising requirements to twice a week for two successive weeks.

290 5. Technical Amendments See Proposed Amendments to S.7 at:

290 1. Sec. 406(c), p. 43, lines 10-17-eliinates requirement of simultaneous mining and reclamation within 3 years of permit.

290 2. Sec. 415(b)(2), p. 67, lines 16-19-eliminates redundant language.

291 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

291 1. Sec. 415(b)(10)(B), p. 72, lines 17-25-this standard concerning contribution of suspended solids to runoff "above natural levels under seasonal flow conditions as measured prior to any mining" is unworkable and ridiculously requires the applicant to measure the flow conditions for a year prior to mining. This same unworkable standard appears in the bond release section, Sec. 419(c)(2).

291 2. Sec. 415(b)(10)(E), p. 73, lines 6-12-this section improperly preempts state law of riparian rights.

291 3. Sec. 415(b)(15)(A), p. 75, lines 9-14-eliminate unworkable advance notice for blasting, unnecessary recording requirements.

291 BONDING

291 1. Incremental Bonding

291 Pennsylvania has a 2 tier system allowing one permit for a given area to be mined and bonded incrementally, while S. 7 implies a 2 tier system with a reclamation plan for an area to be covered by two or more permits.

291 See Proposed Amendments to S. 7 at:

291 1. Sec. 407(b)(8)-(9), p. 47, lines 20-25.

291 2. Sec. 409(a), p. 55, line 23 to p. 56, line 3.

291 2. Amount of Bond

291 There is no need for 2 independent estimates of a bond amount. Pennsylvania's regulatory
authority has expertise to set amount.

292 See Proposed Amendments to S. 7 at :

292 1. Sec. 409(a), p. 55, lines 23-25; p. 56 lines 1-3

292 3. Release of Bond

292 Release of bond must be clearly left to the expertise of the regulatory authority, and should
not be burdened or disrupted by notice and hearing requirements.Likewise, the discharge
standards for bond release should conform with existing state and federal law.

292 See Proposed Amendments to S. 7 at:

292 1. Sec. 419(a), p. 97, lines 10-24, p. 98, lines 1-7

292 2. Sec. 419(b), p. 98, lines 8-11

292 3. Sec. 419(c)(2), p. 99, lines 12-18

292 4. Sec. 419(f)-(g), p. 100, lines 11-25; p. 101, lines 1-8

292 ADMINISTRATIVE AND JUDICIAL PROCEDURES

292 1. Standing

292 These amendments insure that only persons whose valid legal interest comes within the
U.S. Supreme Court's holding in Sierra Club v. Morton, 405 U.S. 727 (1972) which may be
adversely affected, have standing to challenge permit applicants or secure other relief.

292 See Proposed Amendments to S. 7 at:

292 1. Sec. 414(c), p. 66, lines 19-25

292 2. Sec. 420(a), p. 101, lines 10-13

292 3. Sec. 422(c), p. 113, lines 15-21

292 4. Sec. 425(a)(1), p. 118, lines 13-24; p. 119, lines 1-6

293 2. Discretionary Hearings

293 Pennsylvania law provides for discretionary informal hearings prior to decision on a
permit, and only quarantees a formal adjudicatory hearing after action on permit and places the
burden on the objector in all such proceedings. The following amendments conform S. 7 with

Pennsylvania law and insure that any hearings held before action on a permit are promptly held
so as to avoid unnecessary delay. S. 7 would require costly and dilatory hearings on every one of
Pennsylvania's 1200 annual permit applications.

293 See Proposed Amendments to S. 7 at:

293 1.Sec. 413(a), p. 63, lines 5-19.

293 2. Sec. 413(b)-(c), p. 63, line 20 to p. 65, line 13

293 3. Sec. 415(c)(3)(F), p. 80, lines 17-19.

293 3. Cessation Orders

293 Issuance of an order shutting down operations without discretion on the part of the
regulatory authority may unnecessarily curtail coal production at a site for months without any
basis. The amendments change S. 7's inflexibility as to cessation orders. It is also vitally
necessary that a hearing be held within seven days in order to comply with basic due process.

293 See Proposed Amendments to S. 7 at:

293 1. Sec. 421(a)(2), p. 105, lines 6-17.

293 2. Sec. 421(a)(3), p. 105, lines 24-25; p. 106, lines 1-21

293 3. Sec. 421(a)(5), p. 107, line 20 to p. 108, line 10.

294 4. Inspections and Monitoring

294 The amendment mandates notice to the operator once on the site, insuring the safety of the
inspector.

294 See Proposed Amendments to S. 7 at:

294 1. Sec. 417(c), p. 91, lines 8-18

294 5. Penalties and Enforcement

294 A felony sanction is too harsh. Likewise, violations of the conflict of interst provisions by
regulatory employees should be subject to similar sanctions imposed on operators. The
regulatory authority must have more discretion as to civil penalties and the operator should have
access to any persons filing complaints.

294 See Proposed Amendments S. 7 at:

294 1. Sec. 402(f)(2), p. 32, lines 9-25

294 2. Sec. 417(g), p. 92, lines 14-20

294 3. Sec. 418(a), p. 93, lines 9-17

294 MISCELLANEOUS

294 1. Sec. 401(a), p. 28, lines 18-25, p. 29, lines 1-24 Advisory Committee to insure local input on promulgation of regulations.

294 2. Sec. 402(f)(3), p. 33, lines 1-11 the proposed amendment insures that any federal inspectors are properly trained in surface mining technology and inspection techniques.

295 Mr. HUNTER. To understand the Federal Register, you have to have 28 years of education. That was a survey that came out.

295 Senator FORD. That is more education than any lawyer has.

295 Senator METCALF. Yes; I think it is one of the great disadvantages.

STATEMENT OF LOUIS HUNTER, EXECUTIVE VICE PRESIDENT, NATIONAL INDEPENDENT COAL, RICHLANDS, VA., ACCOMPANIED BY RAYMOND PECK, ATTORNEY; JAMES W. McGLOTHLIN, UNITED COAL CO.; ROBERT WINGFIELD, CENTRAL COAL CO.; AND DENNIS WILLIS, ENGINEER, WISE, VA.

295 Mr. HUNTER. I am Louis Hunter, executive vice president, National Independent Coal, Richlands, Va. I want to introduce the four gentlemen with me. To my right is James W. McGlothlin, who is president of United Coal Co., Grundy, Va. To his right, Mr. Raymond Peck, Washington, D.C., formerly with the Interior Department.

295 To my immediate left is Mr. Robert Wingfield, Central Coal Co., Grundy, Va., and to the extreme left, Mr. Dennis Willis, professional engineer, and head of the mining division of Litton Engineering Co., Wise, Va.

295 Mr. McGlothlin will speak briefly and Mr. Willis will present a visual presentation, and Mr. Wingfield will speak briefly.

295 Mr. McGLOTHLIN. Mr. Chairman, Senator Ford, I am James W. McGlothlin. I certainly appreciate the opportunity to speak before you today. As Mr. Hunter has said, I am president of United Coal Co. of Grundy, Va. I am also president of Tri-County Independent Coal Operators Association of Virginia, a director of the Virginia Coal Association, and a director of the National Independent Coal Operators Association. I welcome the opportunity to discuss Senate

bill S. 7 and House bill H.R. 2 with you in regard to their impact on not only the coal industry,
but the citizens of this country as well.

295 The first objection I have to these bills is, I guess the most relevant objection anyone could
have, and that is there is no way, as has been suggested here today, for the U.S. Congress to write
a bill which would encompass the various problems as they exist in the surface mining industry
today, which spans the depth and breadth of our Nation and which encompasses so many diverse
problems. The environmental problems that occur as a result of surface mining in Virginia are
totally different from those occurring in Montana and Wyoming, and, therefore, any bill written
with the intention of covering the broad spectrum of mining will be either too lax in its standards
in order to permit mining, or too stringent, which will severely prohibit and restrict coal mining
to the point it will be detrimental to the Nation and particularly to the consumers of energy in our
Nation.

295 Senator METCALF. Let me interrupt again. The Constitution of the United States says
that the Congress of the United States is the sole agency to administer the public lands. Isn't that
correct?

295 Mr. McGLOTHLIN. Yes, sir; I didn't mean to infer they should not do that on public
lands.

295 Senator METCALF. Then we have to pass Federal legislation to take care of coal mining
on the public lands, which is all over the West. The public lands are the lands on which the coal
occurs.

296 Mr. McGLOTHLIN. I think that also can be done -

296 Senator METCALF. So you are telling me that what we should do is write a bill that just
applies to strip mining on the public lands, is that right? And let the States take care of
themselves?

296 Mr. McGLOTHLIN. No, sir; What I mean to say is most public lands I am aware of are
situated in the Western part of the country and the problems are probably very similar. But when
you put this bill together with the Eastern part of the United States, such as our States - we have
25 percent of our reserves, as shown by a Bureau of Mines study, that are on slopes greater than

20 degrees. The goal of the Federal Government to return that to the original contour, for instance, is quite different from the goal of most citizens and the State legislature of Virginia, simply because we were making tremendous use of that land now, where we have created a flat bench, where we have taken the top of the mountain off and we will be able to demonstrate - I don't mean to say Federal lands should not be subject to proper reclamation and I understand that would be a proper duty and function for the Congress to write such a law.

296 But, hopefully, if a Federal law is written, which I assume is almost a certainty from what I have heard here this morning, that a great deal of attention will be paid to the different problems that are encompassed in both the eastern and the western parts of the country.

296 The State of Kentucky, for instance, in the eastern part of the State, has 75 percent of its reserves which are on slopes of greater than 20 degrees. So the goals of Kentucky, Virginia, and West Virginia, too, has steep slope mining, has to be quite a bit different from the goal encompassed in this act.

296 We have airports, schools, homes, recreational facilities, located on surface mined land. I live in a valley myself, and it must not be 200 feet between the mountains. We have to have a river and a road and houses on both sides there, and there is little room to do anything else. We are moving up to this surface mined land. We are able now with the help of good engineering firms in our State, to bring about a project, one of which I would like to show you here, which I don't believe could be worked out under the Federal bill. In this particular case, we are taking our present airport and lowering it 200 feet to what we call the Clammorgan seam of coal, and the end result is instead of a 300-foot strip, we are going to have 5,000 feet and an 18-hole golf course, and 88 acres of land.

296 Senator METCALF. We certainly need the golf course.

296 Mr. McGLOTHLIN. Contrary to popular belief, even coal miners like recreation. With elimination of contour mining, which is what we are talking about in the State of Virginia, we would not be able to have this type of project. We cannot return our slopes to the original contour. They are too steep. The swell factor is so great we would have 40 or 50 percent of the material left over, with no place to put it.

296 I hope the Congress will give some attention to that problem, that what we will come up with is contour mining that allows material to be placed in valley fills with proper vegetation where we can make use of this land. The mountaintop technique, in my opinion, should not be a matter of variance, by permission, but it should be a matter of course, that if done properly would be permitted under the law.

297 The last very important point I want to make is the biggest problem we encounter in the coal industry, particularly with the small mine operators, is that we do not have such things as registered and certified engineers, hydrologists, core drilling machines, or the technical assistance and data, to be able to comply with this act. The bureaucracy and redtape, it would absolutely abolish most of the small mining companies.

297 Now, I think we can accomplish the ends of the act and all purposes by merely changing one particularity of the bill. My suggestion is that you pass the act and instead of having the Secretary of the Interior enforce these provisions, allow the State 18 to 24 months to come into compliance, which will be at that point if they do not comply, then the Secretary would take over enforcement of the act.

297 This would mean we would not have a jump from State to Federal and then back to State. We would stay with the State and there would be a great impetus on both industry and the State to come into compliance. Also, we are familiar with dealing with the State and the mountains of paperwork would not put many of the operators out of business. I don't think the State should be told what form they will permit or exactly how they should regulate like this. Let them do it on an individual basis, but cause them to come up with the effect Congress wants. If they don't do that, then take the whole thing in 24 months and put it under the Secretary. But give us that one last chance to prove we can do proper reclamation. Do it also with the thought in mind that many citizens, many States, don't want a return to the original contour.

297 A property owner, many property owners, would rather have their land surface mined to get the flat land than have it the way it is. In our county, the mountainous terrain is almost valueless without surface mining. We have a problem with - we have some of the highest quality coal in the Nation. We are just not going to be able to mine it if you pass this act. Then if you

pass it, even if you pass it, allowing us not to have to return it to original contour, I don't believe
we can do it under the permitting structure you have set up.

297 So it seems to me that Congress can achieve its purposes very simply if you just tell the
State you either do this within 24 months or we will write our regulation, we will take the whole
thing away.

297 But it is going to be the most confusing thing in the world for us to jump in 8 months, or
whatever the period might be, 6 months or whatever, over to the Federal Government, and
hopefully, somewhere down the road back to the State. I don't want to be a forecaster of doom,
but our company not only produces coal but we sell coal. We sell about 6 million tons, or we
sold about 6 million tons last year. I think the effect of this act is at least a deterioration in
production of 100 million tons.

297 If that happens, we will have the worst energy crisis the country can imagine.

297 The other thing I am speaking of, I don't believe we will have that kind of interruption in
production because the States will be able to deal with this problem and the operators, they will
have to deal with it under this system.

298 That concludes what I would like to suggest. But I would like for Mr. Willis to show us
what we can do in our own State, using our own people, with our own regulations, about 2
minutes.

298 Mr. WILLIS. What I would like to show you, to my left we have an artist's rendering -

298 Senator DOMENICI. Will you supply your names to the reporter, so we will know who is
talking?

298 Mr. HUNTER. Yes.

298 Mr. WILLIS. This is an area where the Grundy airport is located. United has spent more
than $1 00,000 studying the feasibility of this operation. It involves lowering the mountaintop
approximately 200 feet, replacing and upgrading the existing airport facility, which is now 2,300
feet in length, which will be a 5,000-foot runway, developing a recreational and residential
complex, comprising 420 acres of developable land.

298 This project involves 31 million cubic yards of material, with a recovery of 1.8 million tons of coal. I would point out this area has been surface mined previously. I would like to point out to the committee, this bill had not been a law at that time. When it was previously strip mined, if the land had been restored to its original contour, this project would not have been feasible.

298 The overburden ratio is a ratio of the overburden to the coal and would not permit this project becoming feasible.

298 In preparing this study, we had to work with several agencies, with the FAA, with the Division of Aeronautics, developing the airport plan, which affects the mine plan involving erosion and sediment control, design of hollow-fills, environmental impact assessment, and a site plan which shows development of property either on the rendering I have on my left for an 18-hole golf course, and 82 lots, or, I have a land use map here and there is an alternative, a 9-hole course, 236 lots.

298 Basically, this is a very major project. We have come up with several factors which the State is now in the process of updating their present regulations, and are incorporated into the regulations, some of the things we have used in this insofar as erosion and sediment control is concerned.

298 I think this project is going to provide very much needed residential areas and recreational facilities to southwestern Virginia that is very needed.

298 Mr. WINGFIELD. I am not certain I would be allowed to testify.

298 Senator METCALF. We have had four witnesses listed and each has come forward here with others accompanying them. We still have a number of witnesses to get to today -

298 Mr. WINGFIELD. You have given everyone else a great deal more time.

298 Senator METCALF. I am going to have to restrict the time. There are eight witnesses left. I don't know whether this committee will be allowed to meet after 3 o'clock but I am going to have to recess for a meeting of the full committee at 2 o'clock. I will give you 2 minutes.

298 Mr. WINGFIELD. My name is R. L. Wingfield. I am from Dallas, Tex., and Grundy, Va.

298 I am here to talk about the new S. 7, alias the old S. 7, alias S. 425. Senator FORD. Tell me where you are from again?

299 Mr. WINGFIELD. Grundy, Va.

299 Energy has been my business since 1939. I was an independent oil and gas producer from 1947 until I became an independent coal operator in 1967. I know that everyone has refused to believe that a real energy crisis has been ticking away like a time bomb for over 25 years.

299 Well, just recently Mother Nature has finally exploded in our face, and has forced most American to begin to believe what every expert in or out of the coal industry has warned about for over 30 years; America's greatest need, other than peace, is energy, because without energy nothing moves, nothing happens and the Nation simply shuts down. And coal is our great domestic energy resource.

299 Make no mistake, gentlemen your lifestyle and mine has changed forever. This crisis is real, and is not going to go away.

299 I shall not remind you again of our most recent devastating winter temperatures, and the sharp and immediate effect they had had on the Nation's economy. I do, however, want to clearly point to one unavoidable fact: The absolute failure of government at all levels to deal effectively with the problem. All of the regulations, allocations, guidelines, price controls and monstrous redtape of the Federal bureaucracy, only succeeded in bringing the Nation to its knees.

299 This near national disaster had its overall beginnings years ago, in hundreds of committee hearings identical in many ways to this hearing today. Now, S. 7 would only compound the many mistakes of the past.

299 Since 1969, the typical cost of mining southwest Virginia coal has increased dramatically from $5 per ton to today's cost of $3 0 per ton, a whopping increase of 600 percent. In addition, each miner before 1969 averaged 20 tons of coal per man shift, but today that production is down to as low as 5 tons per man shift.

299 Maybe Congress doesn't know, but everyone else knows about imported cameras, watches, shoes, electronics, and steel and their economic impacts on American industry and jobs.

A simple course in economics 101 points out that all you have to do is increase the costs of production and marketing with the complications of government regulations, allocations, guidelines and all of a sudden American coal will cost more to produce than it can be sold for.

299 Polish coal already comes down the St. Lawrence Seaway, South African coal pours into Florida, Georgia, and Alabama, and Australian coal floods Japan. Is anybody aware of the last 18 months' recession in the U.S. coal industry? Foreign coal has been beating our brains out. Enactment of S. 7 would be just like throwing gasoline on the fire, that is, if there were enough gasoline left to throw.

299 S. 7 is just more of the same old principle of reaction instead of intelligent planned action.

299 Most people do not understand either S. 7 and its parallel House bill, H.R. 2, or today's surface mining methods as practiced under State law. I know this from personal experience after visiting with over 100 Members of Congress. Many believed that they knew what last year's bill provided. Several had actually read some of the committee reports. But my lawyers tell me a report is not the law and the differences between what some Members told me what they thought was in the bill and what is actually there would be the difference between success and failure of an entire industry.

300 Senator METCALF. I am going to have to interrupt you. Your statement will be incorporated into the record completely just as if read. One of the problems we have had this morning, is that every time you call a witness you get a panel. We have called you as a witness, Mr. Hunter, and we have five witnesses. We are limited in time. I do apologize greatly to all of you. I hope you will put your statements in the record and they will be seriously considered.

300 Mr. PECK. Mr. Chairman, I do not have a prepared statement. I was simply here to advise the panel. I have only one comment, and it deals with the comments that transpired in the beginning of the session. Of course, the Interior Department now has regulations detailed, complicated, complex and too complicated regulations that govern all public lands except Indian lands, and Indian land regulations are now in the process of being promulgated. As far as the

public lands are concerned, at least the department has acted, the regulations were based on predecessor legislation to the one which is under consideration today.It would be my strong recommendation or suggestion, that those regulations be allowed to permit their opportunity to go through, existing mines will have to be in full compliance by next November, new mines are being approved now, based on their detailed provisions, to interpose on top of that layer of regulations. The proposed legislation, as it is now drafted, applicable to both private and public lands would disrupt the on-going process and delay even further the production of those vitally necessary western coal lands.

300 Senator METCALF. Certainly, the Congress has already delegated to the Secretary of the Interior the power to issue such regulations. But there are many Members of Congress who are not quite satisfied with the regulations that have been issued.

300 Senator FORD. Let me ask a quick question. Did I understand you to say you mined or sold 6 million tons last year?

300 Mr. MCGLOTHLIN. Yes, sir.

300 Senator FORD. You are a pretty big operator, aren't you? You moved over 6 million tons.

300 Mr. MCGLOTHLIN. That was from several States.

300 Senator FORD. You are still a pretty big operator in my terminology. In Kentucky the big ones only produce 4 to 5 million tons. That is a little better than a million tons -

300 Mr. MCGLOTHLIN. My company produced a little more than 4 million tons and sold 2 million tons for others.

300 Senator FORD. You produced over 4 million?

300 Mr. MCGLOTHLIN. All of the coal is produced from mines which produce somewhere between 100-200,000 tons annually. So we have 60 mines doing that, roughly.

300 Senator FORD. So your mines produce 4 million tons? How much Federal coal is in your State?

300 Mr. MCGLOTHLIN.Not 1 ton to my knowledge.

300 Senator FORD. I understand you are very much in favor of the highwall reduction and

mountaintop removal method of mining. I am not a lawyer, maybe you and I can communicate.

301 Did you hear the presentation of the second witness here this morning?

301 Mr. MCGLOTHLIN. Yes; I have been here throughout the hearing.

301 Senator FORD. Can you live with 14degrees as he presented it this morning?

301 Mr. MCCLOTHLIN. No; I see no way we could since all of our land -

301 Senator FORD. Return it to 14degrees; can you live with that?

301 Mr. MCGLOTHLIN. I would refer that question to Mr. Willis.

301 Mr. WILLIS. I would think there would be some cases which would create some problems. But for the most part, since 99 percent of the coal that is surfaced mined in Virginia reserves are on slopes deeper than 14degrees -

301 Senator FORD. I am talking about returning the highwall, returning to 14 percent, where you could make agricultural land out of it. The agriculture equipment could go over it.The reduction of highwall to only 14 percent.

301 Mr. WILLIS.Yes; I think that is possible.

301 Senator FORD. The diagram over there, is that in the process now? Are you planning that, or what?

301 Mr. WILLIS. That is planned. We are waiting on approval from the Federal Aviation Agency.

301 Senator FORD. Have you submitted a permit to do that?

301 Mr. WILLIS. We have been talking to the Division of Mining and Reclamation.

301 Senator FORD. Have you submitted application for it?

301 Mr. WILLIS. No, we have not.

301 Senator FORD. So this is just a picture in the thinking stage.

301 Mr. WILLIS. It is more than the thinking stage.

301 Senator FORD. A little bit beyond it?

301 Mr. WILLIS. It has pretty well gone beyond that. We have talked to contractors about bidding for the excavation and material.

301 Senator FORD. When are you going to submit bids for it?

301 Mr. WILLIS. They are to submit bids now.

301 Mr. MCGLOTHLIN. We have one bid that will be returned to us in 10 days.

301 Senator FORD. You have already advertised for bids?

301 Mr. MCGLOTHLIN. Yes, sir; We privately asked for bids -

301 Senator FORD. Privately asking for bids? Don't snow me here, now. I am asking you, this picture you have over there with the 18hole golf course, a 5,000-foot runway, all that sort of stuff, are you with us on it? Are you really going to advertise for bids? Or are you just drawing a picture up here for this committee to look at?

301 Mr. MCCLOTHLIN. No, sir. It is definitely going to happen.

301 Senator FORD. How can I or the chairman of this committee be assured it is definitely going to happen? I will take your word for it, I guess. There is nothing concrete other than you have got some pretty pictures here for us to look at today, and take your counsel's advice when you answer.

301 Mr. MCGLOTHLIN. There are two answers to it. We have spent $7 0,000 with our engineer, and I don't know how much more the company has spent! I don't have the budget on that.

302 Senator FORD. Is it your company?

302 Mr. MCGLOTHLIN. Yes, sir.

302 Senator FORD. You don't know how much you have spent?

302 Mr. MCGLOTHLIN. Over and above the $7 0,000, it is in-house work other than that. But two quick answers about it. First, we did not go to the newspapers and say here is a project. We contacted probably 10 or 12 or the largest contractors in the Nation, construction companies, and asked them to come down and take a look at this project and come back in 30 days or 60 days and tell us what they would do the project for.

302 So, however you would say it, that is what we have done.

302 Senator FORD. That is all I have.

302 Senator METCALF. Let me say, having flown some of these airlines down into southwestern Virginia, and eastern Kentucky, that airport looks pretty good. We land in Montana right behind a mountain, across from a graveyard. But I have been more frightened in West Virginia and Kentucky. If this bill would lengthen the landing strips, I would certainly think we had done something very constructive.

302 I am sure Senator Ford would agree, that all of you have made a strong case this morning for a reconsideration of the standards. We are certainly going to take your oral testimony and your complete written testimony into consideration.

302 [The prepared statements of Mr. McGlothin and Mr. Wingfield follow:]

302 STATEMENT OF JAMES W. MCGLOTHLIN, PRESIDENT, UNITED COAL COMPANIES, GRUNDY, VA.

302 I am James W. McGlothlin, President of United Coal Companies of Grundy, Virginia. I am also President of Tri-County Independent Coal Operators Association of Virginia, a Director of the Virginia Coal Association, and a Director of the National Independent Coal Operators Association. I welcome the opportunity to discuss Senate Bill No. 7 and House Bill No. 2 with you in regard to their impact on not only the coal industry, but the citizens of this country as well.

302 The first objection I have to these bills is that there is no way for the federal government to properly regulate an industry which spans the breadth of our nation and encompasses so many diverse problems. The environmental problems that occur as a result of surface mining in Virginia are totally different from those occurring in Montana and Wyoming and, therefore, any bill written with the intention of covering the broad spectrum of mining will be either too lax in its standards in order to permit mining or too stringent, which will severely prohibit and restrict coal mining to the point it will be detrimental to the nation and particularly to the consumers of energy in our nation.

302 Today almost all states are dealing with the matter of surface mining on an individual basis and great progress has been made in terms of rectifying the problems occurring in each state and their individual localities where surface mining occurs. The states are best able to deal with the problems as they exist on a specific basis and, certainly, each individual state and

locality is better able to set the goals it wishes to obtain under its surface mining methods. A good example of the variance between the federal objectives and the state objectives can be found in a comparison of the proposals under Senate Bill No. 7 and House Bill No. 2 and the objectives desired in the state of Virginia in regard to returning the slopes to the original contour.

In Virginia we are presently making use of surface mine land for upgraded purposes such as airports, housing developments, agricultural purposes, etc. This use of our land is occurring because flat land has been created by the surface mining of coal. The reclamation that took place on this property allowed better use of the land even though the surface mining occurred on what is known as extremely steep slopes, in many cases exceeding thirty degrees. At the conclusion of my speech, I should like to show you one of the projects that my company is currently about to begin which, upon final completion, will present our community with a large airport containing a 5,000-foot runway, a housing subdivision, recreational area, and a suitable place for improved living that is not available without surface mining, since 90 percent of the construction of this project will be paid for by recovery of the coal deposits lying under this mountaintop. This plan has been worked out in cooperation with three engineering firms, the Virginia Department of Mined Land Reclamation, the Federal Aviation Agency, the Army Corps of Engineers, and many other federal and state agencies.

303 The problems arising in this project, as you will see when it is later presented, are monumental; however, because they can be worked out on a local level, they are not insurmountable and, therefore, allow the project to proceed. If the federal surface mining act were, in fact, in existence today, our company would not have undertaken such a task because of the bureaucracy and red tape written into HR-2 and S-7.

303 It is my belief that well in excess of 100 million tons of coal will be lost to the nation each year in production if this bill is passed. The cost of surface mining production will be terrific and the price of coal will sky-rocket. Last year nearly 300 million tons of coal were produced by the underground mining method and approximately 360 million tons of coal were produced by the surface mining method. Most of the surface mined coal was dedicated to the generation of electricity or power use coming from industrial plants. Naturally, if there is a shortfall in

production of anywhere near 100 million tons, the country will suffer at a time when we need coal to supplement other sources of energy.

303 I am confident you are beginning to wonder why I predict a shortfall of 100 million tons or better in production in the first year of implementation of this federal surface mine act. The reasons are simple.

303 First, the bureaucracy of acquiring a permit will totally eliminate most small and medium sized operators from continuing in the surface mining business. Most of these operators do not have registered or certified engineers, hydrologists, the equipment or technicians to do core drilling, or most of the expertise required to obtain a surface mining permit under the act and to continue compliance therewith while mining progresses. The same operators are not substantial enough to acquire proper bonding or to acquire proper permit fees required by the act. These provisions will certainly take their toll on small and medium operators who are unable to comply because of technical or financial reasons.

303 Secondly, the production of surface mined coal will be drastically reduced because of the elimination of contour mining without a return to the original contour. This provision is impossible of compliance and makes little sense in many areas because the environmental damage of attempting to comply will be greater than the initial impact of surface mining. There is no known technique for preventing water from sliding from a pane of glass which is slanted to any appreciable degree nor is there any known method of refilling a surface mine cut to its original contour and hoping it will stay in place, irrespective of the care and attention given to it by the operator. It makes much greater sense to permit contour mining or steep slope mining, causing the material to be placed in hollow fills where possible and over the out-slopes where it can be, in fact, stabilized. This would, in effect, create flat land for future development and, so long as the hollow fills are terraced, stabilized, and revegetated, there is no environmental damage. The benefit from allowing this type of mining is obvious in that it will permit the continued recovery of coal in many of the Appalachian states and promote the creation of flat, usable land which is so desperately needed by communities such as mine, which has houses and homes hanging over every available site on the river banks and creeks and which allows no room

for the enjoyment of residential living. Unless contour mining is allowed without return to the original contour, a great deal of the reserves in our part of the country will be lost forever, causing a severe shortfall in production and economic chaos in terms of unemployment.

303 Thirdly, it seems also necessary to me to permit as a matter of course mountaintop removal rather than as a variance from return to original contour. Mountaintop removal of all of the overburden and valley fills with proper terracing, stabilization, and revegetation is one of the most environmentally acceptable forms of surface mining and, in addition to being environmentally sound, creates even greater areas for living space than contour mining. I wholeheartedly endorse the allowance of mountaintop removal as a form of surface mining so long as it is environmentally acceptable, rather than a variance from the position of return to the original contour.

304 At this time, I would like to introduce Mr. Dennis Willis of the engineering firm of Thompson and Litton, and together we will show you a project which employs both mountaintop removal and contour mining and which, I am happy to say, will become one of the more pleasant living areas in our country. After this presentation, I would like to then conclude my remarks in summation.

304 [Visual Presentation.]

304 In summation, I believe the United States Congress will cause monumental problems in the production of electrical energy if HR-2 and S-7 are passed. This will happen because there is going to be a shortfall in the production of coal by the surface mining method without any known way to offset said shortfall, and it will come at a time when we most severely need the production of electrical energy by the use of coal rather than by the use of foreign crude oil or natural gas which is in such short supply already. In 1968, Congress passed the Coal Mine Health and Safety Act which has not reduced injuries or fatalities, but has caused a tremendous decrease in underground production; however, this decrease was recovered by the increased production of coal through surface mining methods. If this act is passed, there will be no alternative method to replace the shortfall in production.

304 My suggestions for being able to obtain the ends of these bills are as follows:

304 1. Require each state to adopt within an eighteen-month period a law encompassing the objectives and environmental purposes of HR-2 and S-7, but without spelling out the bureaucratic process in doing so and allowing each state to develop its own bonding and engineering standards so as to fully comply with the intent of the act. This would allow the states to adopt such techniques as may be feasible in their areas to achieve these goals and yet do so with a minimum of bureaucratic red tape. In the event the standards were not achieved within eighteen months, the Secretary of the Interior would be empowered to then enforce such standards in each state, superseding all state authority.

304 2. Amend the standards to permit contour mining without return to the original contour where hollow or valley fills could be made with proper terracing, stabilization, and without damage to the surrounding environment.

304 3. Allow mountaintop removal as a matter of course so long as valley fills could be achieved with proper terracing, stabilization, and without damage to the environment.

304 This would achieve the same purpose with the two exceptions listed above, but without causing the industry to go through the upheaval caused by the 1969 Federal Coal Mine Health and Safety Act and, hopefully, cause no loss or shortfall of production while the standards are being achieved in each state where the industry is already accustomed to working with the state. Failure to meet these standards would cause forfeiture of state approval and, thereby, place each operator in that particular state under federal control of the Secretary of the Interior. This, obviously, would be a great incentive to both state and industry to achieve the standards set forth in these proposed acts.

304 I appreciate your careful attention to these matters, your dedication to the purposes stated in the act, and hopefully, your regard for the needs of both the industry and the citizens of the United States in terms of energy requirements.

304 Thank you.

304 STATEMENT OF R. L. WINGFIELD, CENTRAL COAL CO., GRUNDY, VA.

304 Mr. Chairman and members of the committee, my name is R. L. Wingfield. and I am from Dallas, Texas and Grundy, Virginia.

304 I am here to talk about the new S. 7, alias the old S. 7, alias S. 425.

304 Energy has been my business since 1939, I was an independent oil and gas producer from 1947 until I became an independent coal operator in 1967.

304 I know that everyone has refused to believe that a real energy crisis has been ticking away like a time bomb for over twenty-five years.

305 Well, just recently Mother Nature has finally exploded in our face, and has forced most Americans to begin to believe what every expert in or out of the coal industry has warned about for over thirty years; America's greatest need, other than peace, is energy, because without energy nothing moves, nothing happens and the nation simply shuts down. And coal is our great domestic energy resource.

305 Make no mistake, Gentlemen, your lifestyle and mine has changed forever.This crisis is real, and is not going to go away.

305 I shall not remind you again of our most recent devastating winter temperatures, and the sharp and immediate effect they have had on the nation's economy. I do, however, want to clearly point to one unavoidable fact: The absolute failure of Government at all levels to deal effectively with the problem.All of the regulations, allocations, guidelines, price controls and monstrous red tape of the Federal bureaucracy only succeeded in bringing the Nation to its knees.

305 This near national disaster had its overall beginnings years ago, in hundreds of committee hearings identical in many ways to this hearing today. Now, S. 7 would only compound the many mistakes of the past.

305 Since 1969, the typical cost of mining South West Virginia coal has increased dramatically from $5.00 per ton to today's cost of $3 0.00 per ton, a whopping 600% increase. In addition, each miner before 1969 averaged 20 tons of coal per man shift, but today that production is down to as low as 5 tons per man shift.

305 Maybe Congress doesn't know, but everyone else knows about imported cameras, watches, shoes, electronics and steel and their economic impacts on American industry and jobs.

A simple course in Economics 101 points out that all you have to do is increase the costs of production and marketing with the complications of government regulations, allocations, guidelines and all of a sudden American coal will coal will cost more to produce than it can be sold for.

305 Polish coal already comes down the Saint Lawrence Seaway, South African coal pours into Florida, Georgia, and Alabama, and Australian coal floods Japan. Is anybody aware of the last 18 months' recession in the U.S. coal industey?Foreign coal has been beating our brains out. Enactment of S. 7 would be just loke throwing gasoline on the fire, that is if there were enough gasoline left to throw.

305 S. 7 is just more of the same old principle of reaction instead of intelligent planned action.

305 Most people do not understand either S. 7 and its parallel house bill, H.R. 2 or today's surface mining methods as practiced under State law. I know this from personal experience after visiting with over one hundred members of the Congress. Many believed that they knew what last year's bill provided. Several had actually read some of the committee reports. But my lawyers tell me a report is not the law and the differences between what some members told me what they thought was in the bill and what is actually there would be the difference between success and failure of an entire industry.

305 Let me give you an example: Most people think that under S. 7 mining operations on steep slopes would be allowed to do what we are doing now, creating valuable flat land for people to use. Mr. Chairman, this is simply not true. The bill would require that the approximate original contour be restored, and Section 402(d). Would allow a variance from this requirement only where the entire top of a mountain is to be removed, and the fill can be placed in the head of a hollow. (Sections 415(b)(3), 415(d)). Why should the Congress insist that we put the land back to its original contour when the owners themselves don't want it put back? Can anyone here really say that farms, schools, hospitals and airports are all that bad? I hope not, because everyone down our ways thinks they're just great.

305 Another widespread misconception is that the timetables of S. 7 would allow operators to

phase in their operations to meet its new requirements. Mr. Chairman, this is also not true.
Many of these requirements are impossible in any time frame. Further, all of the requirements
that really matter to an ongoing operation would have to be completed within one hundred thirty
five days (Section 402(c)).This can't be done.

305 These facts are not understood by the members of Congress, let alone the media and the
well-intentioned environmentalists who support this bill.

305 Mr. Chairman I have accused members of Congress of not reading or understanding this
bill, but I must confess that even some coal operators and owners also havent's read it.This is
tragic for the industry and America, because some have testified that if you would just give them
a few crumbs, minor amendments, they could continue to mine coal. As I have pointed out, this
is simply not the case.

306 After the President's veto of H.R. 25, the predecessor to S. 7, the Environmental
Protection Agency and the President's Council on Environmental Quality asked that an
independent study of the bill's impacts be prepared. This study, by ICF, Inc., points out that H.R.
13950, the Melcher Bill introduced in the closing days of the 94th Congress, was indeed
ambiguous, and would result in what the authors described as "unintended effects due to
mismatches between the apparent intent and the actual wording of the bill."

306 ICF, Inc., discovered what I already knew, namely that that bill was in fact very different
from what the Congress had believed it to be.

306 And, Mr. Chairman, nothing has changed to this day, and I am convinced that the
Congress still doesn't understand S. 7.

306 Further, Mr. Chairman, the ICF Report sets out in great detail what many of us in industry
have been saying all along, this proposed legislation is incredibly complex. Many of its
provisions are vague and ambiguous. At the very best, long delays and extensive litigation can
be anticipated in obtaining permits. At the very worst, proper permit applications can be denied.

306 Over and over S. 7 has been presented as nothing more than a bill to require the
reclamation of surfaced mined land. However, this is a far cry from the truth.

306 Many supporters of this bill seem to be deliberately misleading the President, the Congress, the national news media and last but not least the poor American taxpayer, who already cannot pay his energy bills.

306 Death and taxes have always before been the only two irrevocable things in life. Now there are three.

306 A new Federal Agency, once created, is like death and taxes. It just won't go away.The new Federal Agency that would be created by this bill will just continue to grow and grow and finally, combined with all of the other strangulating Government agencies, the economic health of our Nation will become terminal.

306 The only possible benefit visible to us in this proposed new Federal Agency will be that hundreds or thousands of individual people will gain jobs in the Civil Service section of the Federal Government. It is redundant to point out that these new people will be in the non-profit, non-productive sector of our economy. When it becomes obvious to Congress and the American people that this bill is a mistake, after creating an additional costly layer of Federal bureaucrats, it will then be too late.

306 For years and years, in exchange for our votes our Government has promised the American people something for nothing. All of a sudden, thst something has turned into "nothing." Like no natural gas - just empty pipelines full of echos. Even Congress itself can't put a gun to someone's head and force him to drill for gas or produce coal and sell it for less than it costs.

306 Everyone knows by now, that our dependence on arab oil continues to grow daily. Would you believe what the next national shock might be? How about America becoming dependent on foreign coal? Congress in all of its wisdom could by enactment of this bill put the kiss of death on the American coal industry.

306 It is sheer folly to even consider the complete dismantling of the surface coal mining industry, especially in view of the critical political unrest in the volatile Middle East oil producing nations and the alarming headlines in today's newspapers about our record $1 .7 billion balance of payments deficits. Let us take the necessary time to solve the energy crisis

without becoming panic-stricken over the strip mining of coal which is already adequately
controlled by the coal mining states themselves.

306 Mr. Chairman, I am a businessman and I understand my responsibility to protect the
environment.

306 Very soon, the full Congress will again consider a surface mine bill. I am convinced that
few, if any, members of this body have actually read S. 7 I am also convinced that none of the
individual members' staff understand S. 7.

306 Coal is our Nation's most valuable energy resource, and the Arabs don't own it. S. 7 is the
most important bill now before the Congress, and it can be read in just two hours.

307 If Congress is so unconcerned about the energy crisis as to vote again on this bill without
understanding it, then I say that the surface coal mining industry is just that two hours from
eternity.

307 Now, why can't each member of the Senate read S. 7 and let the folks back home know
that this time his votes will reflect his own personal judgment.

307 Mr. Chairman, thank you for allowing me the opportunity to appear before your
committee.

STATEMENT OF B. V. COOPER, EXECUTIVE DIRECTOR, VIRGINIA
SURFACE MINING AND RECLAMATION ASSOCIATION, BIG STONE GAP, VA.,
ACCOMPANIED BY JAMES P. BROOKS, DISTRICT NO. 28, COMPENSATION BOARD,
UMWA LOCAL NO. 7276; AND BILL WILLIS, PRESIDENT, UMWA LOCAL NO. 9967,
DRYDEN, VA.

307 Mr. COOPER. Mr. Chairman, members of the committee, I am B. V. Cooper, executive director of the Virginia Surface Mining & Reclamation Association. Our office is
located at Big Stone Gap, Va., in the heart of Virginia's coalfields. Like Senator Ford, I am not a
lawyer, either. I am a mechanical engineer. I hope you will forgive the lack of legal analysis of
the bill.

307 Senator FORD. I like nonlegal interpretation.

307 Senator METCALF. We are going to need some engineering assistance.

307 Mr. COOPER. With the bill as written, Senator, I may be applying to you for a job; I
don't think I will have one by then.

307 I have with me two gentlemen I would like to have available for questions. I have on my left Mr. James Brooks, who is a member of UMWA Local 7276, and a member of the District Compensation Board, and he lives in Wise, Va. On my right, Mr. Bill Willis, president of Local 9967, UMWA, and he is from Dryden, Va.

307 We may appear to be strange bedfellows here today, but we have the same problems. I hope these gentlement will be able to answer some questions you may have. Our association's membership consists of about 180 primarily small companies who mine coal from the surface method, and who also do some underground mining, and among our membership are quite a few suppliers and services to the industry.

307 Mr. Chairman, I am going to skip a major portion of my testimony in the interest of time. But I would like to say one thing: I want to thank this committee and compliment them for their approach this morning. For the first time in a long time I feel as if some serious consideration is being given to the problems that the industry has been talking about for a long time and we thank you for your consideration that you have shown so far.

307 The proponents of this and other bills have told us very clearly what they want and what the people who administer the bill want. I would like to very briefly try to make a case on something that I don't think has had much said about it yet. That is the question of what do the citizens of the States want?

307 We have had a few people who have claimed to represent the citizenry, and I would like to indicate the State of Virginia, at least, they have not done a very good job of representing the citizens at large. I would like to refer you to the fact the UMWA membership in Virginia, the people who actually have to mine the coal, to the best of my knowledge, is solidly opposed to many of the requirements in this bill, as I think these gentlemen will indicate.

308 I have also furnished copies of letters and other documents from our Lieutenant Governor, our recently retired attorney general, and former Lieutenant Governor. I think it is interesting also that the Honorable Mills Godwin, Governor of Virginia, last week sent a delegation to Washington consisting of the secretary of natural resources, our Attorney General and other people to very strongly point out the fact that Virginia citizens felt their bill was proper

for them. I think if one has any question about what the majority of Virginia citizens feel is
proper, one only has to look at the resolution which I have attached to my testimony, a resolution
unanimously passed - without one dissenting vote, to the best of my knowledge - by Virginia's
General Assembly stating the bill and its enforcement would be improper for our citizens. And
we want to keep it that way.

308 S. 7, in my opinion, is not a reclamation bill, although it purports to be, and I am sure the
intentions which resulted in that writing were good. But, in fact, in Virginia, would amount to a
ban on surface mining because we cannot technically nor can we economically comply with the
provisions in it.

308 Title II in its entirety, we feel is a very questionable one. We feel it would superimpose
another bureaucracy upon what we feel in Virginia is an adequate State enforcement
authorization.

308 Title III established the so-called abandoned lands program. While under the Senate bill
we would not participate to the extent we would in the House bill, the fact is in conference we
could very well have a melding together of the requirements. I trust someone will carefully look
at what is in the House bill also.

308 The fact is, in Virginia, if some reasonably anticipated compromise between the two bills
were to be worked out, we would find ourselves in the position of having the consumer pay the
fantastic sum of nearly $7 ,000 per acre for every acre of Virginia's 18,000 or so acres of
abandoned lands, lands which are all privately owned, no Federal or State lands are involved.
Lands which would typically have a market value of $1 00 to 250 an acre. We think that title is
simply not proper.

308 There is a fantastic possibility for waste. We feel individual property rights would be
quickly abused if the bill were enforced the way it is written, and we urge you to consider that
entire section. We think it speaks for itself if one reads it closely.

308 Title IV, of course, covers environmental impacts of the bill of surface mining. Our basic
statement is one which Senator Domenici brought up earlier, and that is the detail in the bill. In
Virginia, we are now in the process of working out an entirely new and stringent set of

regulations for our bill, and the one area I feel we have finally been successful in, in my experience of almost 6 years of working with State and Federal agencies, is to have everyone ultimately understand one cannot specify both the methods and the results and then hold the operator responsible. The methods and the techniques and the timing will inherently dictate the results.

308 We feel this is the problem with the environmental impact section of S. 7 which specifies in minute detail the procedures, the paperwork, the techniques, the mining methods, even, and it is certainly impossible to mine coal under the provisions in that section in southwest Virginia.

309 I believe the statement I gave you, Senator Metcalf, will show why Virginia will suffer the most disastrous impact of any State in the Nation under this bill. The effect of S. 7 - not the words, but the effect - is a ban on mining coal on slopes over 20 degrees based on the best information that these gentlemen with me, who have to do the job, based on information from attorneys who have consulted for us, and based, importantly, on testimony of people like Mr. Willis, the consulting engineer.

309 We would urge you to consider specifying methods and then take responsibilty for the results; or, specify the results and let us come up with the methods to do the job.

309 As I indicated earlier, I am opposed to this legislation. Our members are opposed.Our citizens are opposed. But under the assumption a bill is going to be passed, we do urge and ask that you allow us to get results by whatever means technologically we feel is feasible.

309 Some wit told us before we came to Washington that we should simply install high-wall guardrails; people would think they were roads and nobody would complain. But it is more serious than that.

309 In southwestern Virginia we are using the land, notwithstanding other testimony that has been given on the House side, we are using a considerable amount of this land for grazing, airports, schools, hospitals, housing, and we need the flatland. The town where I live has only one main street. The reason is you can't get another main street in because of the mountains on either side.

309 The prices on flatland are fantastic in that area.

309 Going on a bit further, the assumption under S. 7 and H.R. 2 is, for some reason, the original contour is best. It is not best in our area. You can't graze cattle on it. You can't use it for much except to look at. We think the burden of proof should be on the regulatory authority, not the coal miner, and the burden of proof be such that the regulatory authority would be required to show the operator cannot properly stabilize an area. Under the variance procedure, it is not possible, in my opinion, to get a variance that is practical and useful.

309 Mountaintop provides for a very small percentage of our mining in Virginia. Requirements of 415(d), which, interestingly enough, used to be printed brazenly in the bill, and now has been buried in the back, defines steep slopes as slopes over 20 degrees. Eighty-five percent of the mining today is between 20 and 25 degrees. You will see we will have a problem with that section.

309 There are numerous other problems with the bill.I will skip the rest of my testimony in the interest of time and make this committee the offer to specify in detail the areas we feel are going to cause great difficulty.

309 I think the choice facing this Congress is very simple on this measure and on H.R. 2. If the industry is wrong the worst thing that is going to happen is we are going to continue to supply the country with critically needed energy at a reasonable price and we will conduct mining operations in a manner which suits most, but not all, of the citizens. If the proponents of this bill are wrong and it is passed as written, the country will be plunged into disaster. I don't think that is much of a choice.

309 I think the only prudent course, if a bill is going to be passed - and I wish that were not the case - is to correct the wrongs and allow low coal mining to continue. Under this bill, regulation comes first, reclamation is second, and coal mining is third, a poor third.

310 Mr. Chairman, that concludes my formal testimony. If you have any questions or comments for the gentlemen with me, or from me, we will be happy to try to respond.

310 Senator FORD. You say in your area of southwest Virginia -

310 Mr. COOPER. The southwestern corner of the State of Virginia.

310 Senator FORD. How many hydrologists do you have that would be available?

310 Mr. COOPER. Sir, I am sure there would be a few around. I am not personally acquainted with a one, unless some of the people I know happen to have that capability. I don't know of any hydrologists.

310 Senator FORD. What would you say would be the initial cost to permit an area under the Federal legislation in your State if this bill is passed as is? What would be the approximate cost? Give us a ballpark figure. I don't think you can give us an exact figure.

310 Mr. COOPER. If I may bracket it, I may base the answer on some recent experience and give you a fairly good bracket. The best estimate I could come up with for permitting under our present law and regulations, for a small permit - I am talking about 10 to 20 acres, this is fairly typical - I would say if an operator is able to do some of this in-house work, he might get that done for something on the order of $5,000 to $1 2,000 and, of course, that does not include the bonding, which now in Virginia is a minimum of $80 00 an acre, and it may go to $1 ,000. We are working with our regulatory agency now to develop a much more stringent set of regulations which I referred to earlier. We did have a cost analysis done on that for just a 10-acre permit, which is rather small.

310 The cost of those regulations, which I would say, are maybe 30 or 40 percent of the way between nothing and S. 7, was estimated by an engineering consulting firm, to be over $2 3,000 for a small operator to get a permit. As an engineer, I did serve in the Corps of Engineers in the Army. I did move a little dirt. The best estimate I can give you is to comply in the few cases where it would be feasible to comply.

310 I think you are going to be talking a range of $3 5,000 to $50,000 or $6 0,000, and I cannot prove that, but everything I know tells me that is going to be the ballpark figure, based on the other items.

310 Senator FORD. Do you think the other estimate of 22 months to complete the permit requirements is reasonable?

310 Mr. COOPER. If you are asking do I think it will happen -

310 Senator FORD. Do you think that estimate is a reasonable estimate?

310 Mr. COOPER. For the kind of things required, I don't think it will happen that way. We have been told by some groups they will come to every hearing, drag us through courts, oppose every permit. As a matter of practice, I don't think the bill accounts for that. I think probably most of the operators I represent would simply give up. They operate literally out of the glovebox of a pickup truck. They don't have the ability to cope with this. Now, in Virginia, in most cases, we can get a permit and go through the regulatory requirements in something under 60 days, if the operator has done his homework.

310 If he is not prepared, it takes longer and it should take longer.

311 Senator FORD. Have you reviewed section 20 of S. 7 as it relates to suits?

311 Mr. COOPER. Yes, sir.

311 Senator FORD. Do you think this will be a deterrent to securing applications?

311 Mr. COOPER. I certainly most definitely think it will.We are beginning to experience in Virginia some suits. This is a personal opinion, but the only thing I could call them would be harassing in nature.

311 We are being privately told we can't get you banned, but we will drive you crazy with the paperwork; this sort of thing.

311 Senator FORD. Did you hear the testimony of the association from Pennsylvania?

311 Mr. COOPER. Yes, sir.

311 Senator FORD. They recommended certain Administrative Law Judge procedures, a time limit on injunctions, a time limit as to what you refer to as harassment.

311 I think there are rights involved here and we have to give the rights to everyone. Would you agree; some sort of association?

311 Mr. COOPER. I don't have a copy of the testimony. I would want to review it in detail. If a bill happens, obviously there should be some protection there. It has been suggested by some, possibly one way to cut some of this stuff out would be to simply write in a provision which would make anyone protesting a permit or filing suit, or whatever, liable for damages if he were found to be acting without cause and if his argument had no merit.

311 I doubt if that will seriously get any overwhelming support in the Congress, but I think it will tend to separate the wheat from the chaff.

311 Senator FORD. I am trying to recall your testimony now. Do you do any mountaintop removal mining in your area?

311 Mr. COOPER. Yes, sir; But it is probably out of some 300-plus operations actually mining coal. I would estimate 30 of those involve mountaintop removal, either totally or as a portion of the overall operation.

311 Senator FORD. I recall your saying you would approve the mountaintop removal and the hollow-fill method?

311 Mr. COOPER. I felt without restoration to the original approximate contour should be allowed as a matter of course. It should be the burden of the regulatory authority to show that was not feasible. Now it is the other way and we will never get a variance.

311 Senator FORD. Can you live with the reduction of highwall to 14 degrees?

311 Mr. COOPER. That would be difficult thing to do in our area. If I might, these gentlemen might have a better feel. They do the mining; I don't. Would it be all right to have them answer that, sir? They actually operate the equipment.

311 Senator FORD. That would be fine. I was looking over their testimony. They seem to be deep miners rather than surface miners.

311 Mr. BROOKS. No, sir.

311 Mr. WILLIS. No, sir.

311 Senator METCALF. Can you respond?

312 Mr. BROOKS. I started my mining career underground, worked 5 years and came out. I have been on surface mines 25 years. I don't believe there is any of the territory we are strip mining right now in Westmoreland property, which is a pretty big outfit, with as little as 14 degrees. It is all steeper.

312 Senator FORD. What I am saying is reduce the highwall to 14 degrees.If you are strip mining on 26 degrees but you return it, reduce it to 14 degrees - that was the testimony earlier

today that instead of returning to the approximate original contour, you return to 14 degrees -
they indicate in that testimony you could have farm equipment you could get over 1j degrees, that
it could be farmed and you would not have the problem of erosion and other problems if you
returned it to the original contour.

312 Mr. BROOKS. You couldn't do this on a steep slope. What are you going to do with the
extra dirt you are going to have?

312 Senator FORD. This is your highwall - indicating - this is your bench right now. What I
am saying is you reduce it to only 14 degrees and leave the balance of the highwall. You don't
think you can do that?

312 Mr. BROOKS. I don't think so.

312 Mr. COOPER. If I may comment briefly, Virginia's law as it is now written already
requires reduction of highwall - I believe the phraseology is something like to the maximum
extent feasible.

312 What we are attemping to do now is to retain more and more of the material on the bench.
Of course, we are not excepting very shallow slopes -

312 Senator FORD. It seems very strange to me you find people who are surface mining in a
much steeper area, or at least as steep, and they say you can do this and it makes it a better piece
of property than it would be if you put it back. I don't know why you feel it cannot be done, and
others who are professionally oriented and have projects going say they can do it.

312 Mr. COOPER. Mr. Chairman, I am not saying that it cannot be done. It has been my
experience that most of the people who have said they could do it fell in one of two categories:
either they were mining in States such as Pennsylvania and Ohio, which have very few steep
slopes, relatively, or they were mining in areas where they had a combination.

312 We have some of these in Virginia, too. Part of the area will be quite steep; part quite
shallow. In those cases, it might be feasible to take the extra material, which typically in our area
is going to give you an expansion factor of 30 percent, some of it could be hauled in those cases,
and we could do some highwall reduction. In fact, we are doing it.

312 I don't think there is a mining company in this Nation that can go into the areas where these gentlemen are mining where the average is about 25 to 26 degrees, and as a matter of daily practice, over a long period of time, return the entire area to the approximate original contour.

312 The authors of the bill conveniently put another section in which makes it almost impossible to store spoil off-site without going through another long series of requirements. We feel it is just not practical. We do now try to reduce the highwall as much as possible under existing law.

313 Senator FORD. Do you use the practice in the surface mining in Virginia where you leave a hump, an outcrop, where you leave the original contour there for so many feet, and then you strip, and then you have your highwall which gives you stability; do you use that type of surface mining?

313 Mr. COOPER. You are speaking of leaving a lip, so to speak?

313 Senator FORD. All of the terminology I am not familiar with.

313 Mr. COOPER. That is probably not the term, either. We are not doing much now, but under the regulations which are being drafted, there are provisions in there to go more to the candid practice to which you are referring, to prevent as much of the material as possible from going over the slope.

313 That can be done by various means and the one you mentioned is a very good means and it is one of those being considered.

313 Senator FORD. Very quickly, there are other witnesses and I don't want to take too much time but it is very interesting to me to get the various opinions from different States. Did I understand you to say you were in the process of developing more stringent regulations in Virginia?

313 Mr. COOPER. Yes, sir. We are working with the State now to develop those.

313 Senator FORD.Would any of the spurring of the burr under your saddle be the Federal bill which seems to be underway?

313 Mr. COOPER. I would be misleading you if I said that has not been a spur, and it has

been for a long time. Ever since I have been with this association, starting in 1971, there has
been an interest among the operators, and you can call it self-interest, or moral enlightenment, or
whatever -

313 Senator FORD. Self-preservation, I think.

313 Mr. COOPER. That may be a good term, sir. But whatever the cause, sir, they have been
working diligently and I believe the testimony of the State enforcement people last week in the
House indicated we are making progress -

313 Senator FORD. We are making progress. I understand those of us who have been on the
State level have made some progress and I am very pleased with some of the progress that has
been made.

313 There is one thing that disturbs me. That we would pass a piece of legislation here, or one
that says let each State do its own thing, and not come back to the Federal Government - let them
do it - we would have 50 different interpretations, and the language that is used here - I am still
wet behind the ears as far as Washington is concerned, I am just starting my third year - but the
language says equal or better, or something similar to that. So different studies - we could wind
up with 50 different interpretations or 50 different laws.

313 We don't have those now and I think we are trying to put some stability into this operation.
If we can once get to a point where it is there and it is a fact, we can finally leave you alone for a
while, give you a chance to operate under this legislation. Would you rather have a piece of
legislation now that is going to be it, and be left alone to try to work under it, rather than each 2
years come back or 5 years, and have your problems continually. Wouldn't you rather have
something stable? You have it in Pennsylvania. But you don't have the same thing in Kentucky,
Montana, New Mexico, Wyoming.

313 A gentleman was talking the other day about Australia, Africa, and eastern Kentucky and
other eastern coal is really concerned because 10 million tons of western coal came up the Ohio
River right past Kentucky and we are the largest coal producing State in the Nation, and we are a
little bit concerned about it, too.

314 Mr. COOPER.We are concerned, and it is indicated in a section of my testimony I did

not mention, the business of applying standards uniformily on conditions that are not uniform,
that is what concerns us.

314 I have indicated in my testimony, it is my opinion, I have talked with people in
Pennsylvania, Ohio, all over the place - Kentucky, which we are right across the line from - and
the fact is nearly 40 States have regulated industry, all major coal producing States have, and they
have done it in a manner which suits the people in those States.

314 We are tole it will equalize competition, which can only mean costs are going to rise in
certain areas such as ours. On the other hand, we are told it is not going to cost us any more. I
think it is very interesting, the electric lights being used in Richmond, the capital of Virginia,
while they debate more stringent surface mining laws for our industry, those lights are being
generated by coal that came in from out of State because we can't compete in our own State
capital.

314 I think that says quite a bit. I do not think it is proper for the Federal Government to inject
itself into a competitive situation in the manner this bill would attempt to do. There are
situations which are proper. But I think this is not the proper way to go about it.

314 Senator FORD. Where did the coal come from that generated the lights for the electricity
in Richmond?

314 Mr. COOPER. I would not want to make my friends from West Virginia mad, so I could
not answer that.

314 Senator FORD. West Virginia will be here for testimony and to say they have a better law
than you have, and if they do it, you better look at the kind of regulations they have in West
Virginia so you can get with them.

314 Mr. WILLIS. Mr. Chairman, from what I have read on this about the spoil, I believe you
are allowed to put one cut. I am just a worker, earn my pay for the day. There is no way the way
we are working now that we can move to fall back under the bill, because it says nothing else can
go over. We are in solid sandstone. It has to be shot. If the bill goes through the way it is, I am
out.

314 Senator METCALF. I want to make one comment. I am delighted to have the United

Mine Workers here. When I was first running for office in Montana, the United Mine Workers
had a whole district in Montana. They had underground mines at Grand Coulee and Red Lodge.
We don't have a single member of the United Mine Workers now. I am probably the only person
here who will say a good word for Tony Boyle. But Tony Boyle came up out of the mines of
Montana and was the district president - and was a fine district president - so I am delighted to
have your testimony. I wish we had your union out in Montana again instead of the operating
engineers and so forth that are mining coal.

314 I will have all of your statements put in the record.

314 [The prepared statements of Mr. Coper and Mr. Brooks follow:]

315 PUBLIC HEARING ON S.7 SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

315 1 MARCH 1977

315 TESTIMONY OF B. V. COOPER EXECUTIVE DIRECTOR

315 VIRGINIA SURFACE MINING & RECLAMATION ASSOCIATION, INC.

316 MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM B. V. COOPER, EXECUTIVE DIRECTOR OF THE VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION. OUR OFFICE IS LOCATED AT BIG STONE GAP, VIRGINIA IN THE HEART OF VIRGINIA'S COALFIELDS. WE REPRESENT SOME 180 COAL SURFACE MINING COMPANIES AND SUPPLIERS. OUR MEMBERS PRODUCE ABOUT THREE-FOURTHS OF ALL COAL SURFACEMINED IN VIRGINIA AS WELL AS A SIGNIFICANT PORTION OF VIRGINIA'S UNDERGROUND COAL OUTPUT.

316 VIRGINIA'S COAL SURFACE MINING INDUSTRY DIRECTLY EMPLOYS NEARLY 3,000 PEOPLE, AND SEVERAL THOUSAND MORE ARE EMPLOYED IN SURFACE MINING-RELATED JOBS - SUCH AS TRUCKING, SHIPPING, EQUIPMENT SALES AND SERVICE, INSURANCE, FUEL SALES, AND OTHER FIELDS.

316 VIRGINIA PRODUCES ABOUT 36 MILLION TONS OF COAL ANNUALLY - ABOUT 24 MILLION TONS BY UNDERGROUND MINING AND ABOUT 12 MILLION TONS BY SURFACE MINING.

316 AS WE HAVE ADVISED THIS COMMITTEE IN THE PAST, WE ARE EXTREMELY CONCERNED ABOUT THE CONTENT OF S.7 AND SIMILAR MEASURES. WE APPRECIATE THE OPPORTUNITY TO RESTATE THESE CONCERNS AND TO PROVIDE SOME ADDITIONAL INFORMATION WHICH WE TRUST YOU WILL CAREFULLY CONSIDER.

316 PROPONENTS OF S.7 AND ITS PREDECESSOR BILLS HAVE DONE AN EXTREMELY THOROUGH JOB OR MAKING A CASE FOR THEIR CONTENTION THAT A FEDERAL COAL SURFACE MINING BILL IS ABSOLUTELY NECESSARY.

317 THEY HAVE USED THE VAST RESOURCES OF THE U.S. CONGRESS AND VARIOUS AMBITIOUS FEDERAL AGENCIES, AND THEY HAVE CITED CAREFULLY STRUCTURED STUDIES WHICH SUPPORT THEIR PREVIOUS CONCLUSIONS.

317 THESE PROPONENTS HAVE TOLD US WHAT THEY WANT. THEY HAVE TOLD US WHAT THE BUREAUCRACIES WHICH WOULD EXPAND AND GROW EVEN MORE POWERFUL WITH THE BILL'S PASSAGE WANT.AND THEY HAVE TOLD US WHAT THE ADMINISTRATION, WHICH UNFORTUNATELY HAS RECEIVED SOME VERY QUESTIONABLE ADVICE ON THIS MEASURE, WANTS.

317 SADLY, THE ONLY GROUP WHOSE DESIRES THEY HAVEN'T CONSIDERED IS THE GROUP WHICH WILL HAVE TO PAY THE TERRIBLE PRICE OF THIS BILL - THE TAXPAYERS.THE CITIZENS OF VIRGINIA CERTAINLY DON'T WANT S.7. I HAVE GOOD REASON FOR SAYING THAT.

317 IN 1975, JUST PRIOR TO THE COAL TRUCK CONVOY WHICH CAME TO WASHINGTON PROTESTING FEDERAL SURFACE MINING LEGISLATION, WELL OVER 20,000 PERSONS FROM VIRGINIA'S FEW COAL PRODUCING COUNTIES SIGNED A DOCUMENT OPPOSING THE BILL. AND YOU SHOULD KNOW THAT THE LARGEST CITY IN OUR COALFIELDS HAS ONLY ABOUT 4,000 PEOPLE.

317 I HAVE FURNISHED YOU TODAY LETTERS FROM VIRGINIA'S LT. GOVERNOR, THE HONORABLE JOHN DALTON, AND FROM THE HONORABLE ANDREW MILLER WHO UNTIL RECENTLY WAS VIRGINIA'S ATTORNEY GENERAL. BOTH LETTERS URGE THAT THIS LEGISLATION BE DEFEATED. FURTHER, THE HONORABLE HENRY HOWELL, A FORMER LT. GOVERNOR OF VIRGINIA, HAS STATED HIS STRONG OPPOSITION TO THE BILL.

318 INTERESTINGLY, ALL THREE OF THESE GENTLEMEN ARE SEEKING THE OFFICE OF GOVERNOR IN THE FORTHCOMING ELECTION. SURELY, THEY HAVE A BETTER THAN AVERAGE FEEL FOR WHAT VIRGINIANS REALLY WANT.

318 I HAVE ALSO INCLUDED A LETTER FROM ONE OF THE MOST RESPECTED STATE SENATORS IN VIRGINIA, THE HONORABLE JOHN BUCHANAN. DR. BUCHANAN IS WELL KNOWN IN SOUTHWEST VIRGINIA FOR HIS WORK AS A CHAMPION OF THE ENVIRONMENTAL MOVEMENT. YET, EVEN DR. BUCHANAN STATES HIS PREFERENCE - AND THAT OF HIS CONSTITUENTS - FOR STATE CONTROL RATHER THAN FEDERAL.

318 I WOULD ALSO REFER YOU TO THE ENCLOSED EDITORIAL OF THE 18 FEBRUARY 1977 ISSUE OF THE BRISTOL, VIRGINIA HERALD-COURIER WHICH POINTS OUT THE BASIC UNREASONABLENESS OF H.R. 2 AND S. 7 WHEN APPLIED TO OUR MOUNTAINS. THE HERALD-COURIER IS THE MAJOR NEWSPAPER IN OUR COALFIELDS AND USUALLY REFLECTS IN ITS EDITORIALS THE MAJORITY OPINION IN THE REGION.

318 THEN, LAST THURSDAY, VIRGINIA'S GOVERNOR, THE HONORABLE MILLS GODWIN, SENT OUR ATTORNEY GENERAL, TAX COMMISSIONER, EMPLOYMENT COMMISSIONER, AND SECRETARY OF NATURAL RESOURCES TO WASHINGTON TO TESTIFY BEFORE THE HOUSE INTERIOR COMMITTEE ON H.R. 2. THEIR MESSAGE WAS VERY SIMPLE: VIRGINIA HAS A GOOD LAW, IT IS BEING ENFORCED, AND A FEDERAL LAW IS NEITHER NEEDED NOR WANTED.

318 FINALLY, VIRGINIA'S ENTIRE GENERAL ASSEMBLY, REPRESENTING ALL OF [*] PASSED A JOINT RESOLUTION URGDE CONGRESS TO DEFEAT THIS MEASURE.

319 SO YOU SEE, VIRGINIA IS STRONGLY OPPOSED TO STILL ANOTHER UNWARRANTED FEDERAL INTRUSION WHEREBY THE WILL OF A FEW IS INFLICTED UPON THE MAJORITY.

319 IF THE CONGRESS IS TRULY CONVINCED THAT MOST CITIZENS OF THE NATION WANT A FEDERAL COAL SURFACE MINING BILL, THEN LET US SIMPLY INSERT A PROVISION WHICH ALLOWS EACH STATE TO DECIDE FOR ITSELF WHETHER TO PARTICIPATE IN THE FEDERAL PROGRAM, SUCH DECISION TO BE THE RESULT OF A POPULAR VOTE DURING EACH STATE'S NEXT GENERAL ELECTION. SURELY, YOU WOULD AGREE THAT THIS WOULD BE A FAIR WAY TO SETTLE THE QUESTION ONCE AND FOR ALL.

319 THIS BILL, IF ONE BELIEVES THE INNOCENT-SOUNDING WORDS WHICH HAVE BEEN CAREFULLY CHOSEN TO MASK ITS REAL CHARACTER, DOES NOTHING MORE THAN FACILITATE COOPERATION BETWEEN THE SECRETARY OF THE INTERIOR AND THE STATES WITH RESPECT TO SURFACE COAL MINING OPERATIONS; ALLOW ACQUISITION AND RECLAMATION OF ABANDONED LANDS; AND "OTHER PURPOSES".

319 WHO COULD POSSIBLY ARGUE WITH SUCH GOALS?I, FOR ONE, COULD BECAUSE I'VE READ THE BILL. I TRUST THAT EACH OF YOU HAS ALSO CAREFULLY DIGESTED EACH WORD.

319 THIS IS NOT A RECLAMATION BILL. IT IS PURELY AND SIMPLY A LAND USE BILL AND A BAN STRIP MINING BILL. THE WORD "BAN" IS NEVER USED, BUT THE RESULT IS JUST EXACTLY THAT - A BAN.LET'S COVER JUST A FEW OF THE MORE INTERESTING PROVISIONS, AND I BELIEVE YOU WILL SEE WHAT I MEAN. THERE ARE LITERALLY DOZENS OF IMPRACTICAL, SHORT-SIGHTED, PUNITIVE, HARASSING, AND OTHERWISE UNREASONABLE REQUIREMENTS IN THIS BILL. BUT THE FOLLOWING ARE A SMALL SAMPLE WHICH SHOULD SERVE TO SHOW THE REAL NATURE OF THE BILL SO INNOCENTLY DESCRIBED IN ITS PREAMBLE.

320 ONE OF THE FIRST OF NUMEROUS INCONSISTENCIES IS IN SECTION 101.(E) WHEREIN IT IS STATED THAT, RECOGNIZING DIVERSITIES BETWEEN STATES,

320 PRIMARY GOVERNMENTAL RESPONSIBILITY FOR DEVELOPING, AUTHORIZING, ISSUING AND ENFORCING REGULATIONS SHOULD REST WITH THE STATES. THE BILL THEN PROCEEDS TO TOTALLY SMASH THAT FAINT HOPE BY SPECIFYING IN MICROSCOPIC DETAIL EVERY ACTION, DECISION, AND MOVE OF THE STATES - AND THE SEVERE PENALTIES TO BE IMPOSED FOR FAILURE TO COMPLY.

320 TITLE II OF THE BILL ESTABLISHES YET ANOTHER MASSIVE FEDERAL BUREAUCRACY WHICH WILL BE SUPERIMPOSED ON EXISTING STATE ENFORCEMENT AGENCIES. THIS NEW BUREAUCRACY IS REQUIRED TO DUPLICATE NUMEROUS FUNCTIONS OF OTHER EXISTING FEDERAL AGENCIES, SUCH AS COLLECTING AND DISTRIBUTING DATA ON MINING, MONITORING COAL RESEARCH PROGRAMS, ETC.

320 NOW LET'S REVIEW WHAT COULD WELL BE ONE OF THE MOST INTERSTING TITLES OF THE BILL. TITLE III ESTABLISHES A PROGRAM FOR RECLAMATION OF SO-CALLED ABANDONED LANDS - THAT IS, LANDS MINED BEFORE RECLAMATION LAWS WERE PASSED AND THEREFORE NOT RECLAIMED.

320 TO FULLY APPRECIATE THIS TITLE, YOU HAVE TO FIRST UNDERSTAND SOME BASIC FACTS ABOUT ABANDONED LANDS. LET'S USE VIRGINIA'S SITUATION AS AN EXAMPLE.

321 AT MOST, VIRGINIA HAS ABOUT 18,000 ACRES OF ABANDONED LANDS WHICH COULD CONCEIVABLY JUSTIFY ANY DEGREE OF RECLAMATION. A 1972 STUDY CONDUCTED JOINTLY BY THE STATE ENFORCEMENT AGENCY,

INDUSTRY, AND THE U.S. SOIL CONSERVATION SERVICE SHOWED THAT NO MORE THAN FIVE-TO-TEN PERCENT OF VIRGINIA'S ABANDONED LANDS PRESENTED ANY SIGNIFICANT ENVIRONMENTAL PROBLEMS.

321 EVERY ACRE OF THIS LAND IS PRIVATELY OWNED. NO STATE OR FEDERAL LANDS ARE INVOLVED.

321 APPROXIMATELY THREE-FOURTHS OF THIS LAND IS ALREADY SCHEDULED TO BE REMINED FOR ADDITIONAL COAL AND MUST THEN BE RECLAIMED UNDER VIRGINIA'S LAW.AND VIRGINIA STATUTES ALREADY PROTECT SURROUNDING LANDOWNERS AND RESIDENTS FROM DAMAGE CAUSED BY SUCH LANDS.

321 NOW - LET'S SEE WHAT THIS BILL WOULD REQUIRE FEES FROM ROYALTIES ON ALL FEDERAL SURFACE COAL AT 35 CENTS PER TON AND ALL FEDERAL UNDERGROUND COAL AT 15 CENTS PER TON WOULD BE SET ASIDE. FIFTY PERCENT OF THE FUNDS WOULD BE SPENT IN THE STATE WHERE COLLECTED. THE REMAINDER WOULD APPARENTLY BE SPREAD AROUND THE COUNTRY - INCLUDING VIRGINIA.

321 WE THEN HAVE A SITUATION WHEREIN HUGE SUMS CAN BE SPENT ON PRIVATE LAND, MOST OF WHICH IS GOING TO BE REMINED AND RECLAIMED ANYWAY - LAND WHICH TYPICALLY HAS A SURFACE VALUE OF $100 TO $2 50 PER ACRE. AND, OF COURSE, THIS TITLE CONVENIENTLY IGNORES THE FACT THAT TVA HAS ALREADY MADE A MULTIMILLION DOLLAR GRANT TO VIRGINIA FOR THIS PURPOSE - MORE THAN ENOUGH TO RECLAIM EVERY ACRE OF SUCH LANDS IN THE STATE.

322 THE FACT THAT MANY OWNERS DON'T WANT THEIR LAND RECLAIMED BY THE GOVERNMENT HASN'T CONCERNED THE AUTHORS OF THIS BILL.THEY HAVE SIMPLY PROVIDED IN SECTION 305(A)(4) THAT ANYONE WHO REFUSES TO AGREE TO RECLAMATION - IF THE SECRETARY OF THE INTERIOR CONSIDERS RECLAMATION TO BE IN THE PUBLIC INTEREST - CAN HAVE HIS LAND ENTERED AND RECLAIMED. AND, THE COSTS OF SUCH RECLAMATION WILL BE CHARGED AGAINST THE LAND.

322 THE FEDERAL GOVERNMENT COULD SQUANDER HUNDREDS OF MILLIONS OF THE TAXPAYERS' MONEY UNDER THIS TITLE ALONE.AND UNDER THE EVEN MORE AMBITIOUS PROVISIONS OF H.R. 2, THE TAXPAYERS WOULD BE HIT FOR OVER $2 1/2 BILLION OVER THE LIFE OF THE PROPOSED PROGRAM. WE THINK THIS TITLE SPEAKS FOR ITSELF.

322 TITLE IV SUPPOSEDLY COVERS CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE MINING. WHAT IT IN FACT DOES IS TO CREATE AN IMPRACTICAL, CONFUSING, AND UNNECESSARY SERIES OF HURDLES WHICH MUST BE CLEARED BEFORE COAL CAN BE MINED. ONE OPERATOR RECENTLY STATED THAT THE ONLY PERSON WHO COULD MINE COAL UNDER THIS BILL WOULD BE A WEALTHY MAGICIAN WITH A LAW DEGREE. HIS COMMENT IS NOT FAR FROM THE MARK.

322 ONE OF THE MAJOR PROBLEMS WITH THIS TITLE IS THE SERIES OF UNNECESSARY PUBLIC NOTICES AND PUBLIC HEARINGS REQUIRED. OUR REASON FOR OPPOSING THEM IS SIMPLE: THEY WILL BE USED TO DELAY AND BLOCK SURFACE MINING OPERATIONS ON A ROUTINE BASIS. SEVERAL ENVIRONMENTAL GROUPS HAVE TOLD US THAT UNDER THESE PROVISIONS, THEY WILL APPEAR AT EVERY HEARING AND OPPOSE EVERY PERMIT, EVERY RENEWAL, AND EVERY BOND RELEASE AS A MATTER OF PRACTICE. SUCH A PROVISION IS AN OPEN INVITATION TO HARASSMENT.

323 AFTER CAREFULLY READING THESE PROVISIONS AGAIN, I WAS REMINDED OF A STATEMENT MADE TO ME DURING THE COCKTAIL HOUR OF AN ENVIRONMENTAL CONFERENCE AT OHIO UNIVERSITY IN 1972. THE SPEAKER WAS A HIGH-RANKING OFFICIAL OF A NATIONAL ENVIRONMENTAL ORGANIZATION.HE SAID, "WE'RE GOING TO GET STRIP MINING BANNED ONE WAY OR THE OTHER. WE'RE NOT GOING TO CALL IT A BAN, BECAUSE IT'S NOT SOCIALLY ACCEPTABLE TO BAN INDUSTRIES AND PUT PEOPLE OUT OF OWRK. WE'RE GOING TO SAY WE'RE SAVING THE ENVIRONMENT.WE'LL SIMPLY ASK FOR SO MANY REGULATIONS THAT YOU CAN'T COMPLY. WE'LL SAVE THE ENVIRONMENT, AND YOU'LL BE OUT OF BUSINESS. THERE AREN'T MANY MEMBERS OF CONGRESS FOOLISH ENOUGH TO VOTE AGAINST THE ENVIRONMENT." I LAUGHED WHEN HE SAID IT.BUT I'M NOT LAUGHING ANYMORE.

323 SECTION 415(B)(3) CONTAINS THE WELL-KNOWN APPROXIMATE ORIGINAL CONTOUR REQUIREMENT. THIS REQUIREMENT IS TOTALLY UNREALISTIC AND UNNECESSARY. IN THE APPALACHIAN MOUNTAINS, IT IS ENTIRELY FEASIBLE TO MINE AND RECLAIM AN AREA IN A SATISFACTORY MANNER WITHOUT RETURNING IT TO THE ORIGINAL CONTOUR. THE FACT IS THAT THE ORIGINAL CONTOUR IS FAR LESS USEFUL FOR FUTURE DEVELOPMENT THEN AN ALTERNATE POST-MINING CONFIGURATION.

323 PROPONENTS OF THE MEASURE TELL US THAT VARIANCES ARE ALLOWED UNDER THE BILL. THE ONLY VARIANCE EVEN REMOTELY POSSIBLE IF FOR MOUNTAIN TOP REMOVAL, WHICH IS PRACTICAL ON RELATIVELY FEW OF OUR OPERATIONS. AND TO OBTAIN A VARIANCE, AN OPERATOR MUST GO THROUGH THE MAZE OF REQUIREMENTS IN SECTION 415(C) - INCLUDING ANOTHER PUBLIC HEARING. FROM A PRACTICAL STANDPOINT, THERE IS LITTLE CHANCE OF GETTING A VARIANCE, AND THERE IS NO JUSTIFICATION FOR RETURNING MINED AREAS TO THE APPROXIMATE ORIGINAL CONTOUR.

324 PROBABLY THE MOST HONEST COMMENT ON THE SUBJECT WAS MADE RECENTLY BY ONE OF THE BILL'S BACKERS WHEN HE TOLD A GROUP OF COAL OPERATORS THAT THE ORIGINAL CONTOUR REQUIREMENT WOULD NOT BE DELETED BECAUSE, AS HE PUT IT, "I JUST HAVE A HANG-UP ABOUT HIGHWALLS." SURELY, THIS IS NOT SUFFICIENT REASON TO CREATE THE HAVOC THIS PROVISION WILL CAUSE.

324 SECTION 415(D) CONTAINS THE REQUIREMENTS FOR MINING ON STEEP SLOPES - THAT IS, SLOPES OVER 20 DEGREES. AFTER MANY DISCUSSIONS WITH QUALIFIED MINING ENGINEERING CONSULTANTS, PROFESSORS OF MINING ENGINEERING, AND EXPERIENCED SURFACE MINE OPERATORS, IT BECOMES APPARENT THAT IT WILL BE NEITHER TECHNICALLY NOR ECONOMICALLY FEASIBLE TO CONDUCT SURFACE MINING OPERATORS IN ACCORDANCE WITH THIS SECTION.

324 IT IS GROSSLY DISCRIMINATORY IN THAT IT AMOUNTS TO A BAN ON MINING SLOPES OVER 20 DEGREES. WHILE STATES SUCH AS OHIO AND PENNSYLVANIA WOULD LOSE ONLY A VERY SMALL PERCENTAGE OF THEIR STRIPPABLE RESERVES UNDER THE 20 DEGREES CRITERION, VIRGINIA WOULD LOSE 85% OR MORE.THIS IS BASED ON DATA CONTAINED IN THE 1973 CEQ REPORT ON SURFACE MINING. IF WE ACCEPT FIGURES CONTAINED IN THE U.S. GEOLOGICAL SURVEY REPORT BY MR. KENNETH ENGLUND AND HIS ASSOCIATES, VIRGINIA'S LOSSES APPROACH 95% OF STRIPPABLE RESERVES.

324 THOSE WHO CALL FOR FAIRNESS THROUGH UNIFORM STANDARDS FOR

THE ENTIRE COUNTRY ARE THE MOST EFFECTIVE CRITICS OF THEIR OWN ARGUMENT. ON THE ONE HAND, THEY TELL US THAT THE LAW WOULD EQUALIZE COSTS AND RESULT IN FAIRER COMPETITION.THE ONLY REASONABLE CONCLUSION ONE CAN REACH FROM THIS STATEMENT IS THAT COSTS WILL RISE SIGNIFICANTLY IN STATES WHICH ARE ACCUSED OF NOT HAVING STRIP MINING LAWS WHICH MEET THE PROPOSED FEDERAL STANDARDS.

325 YET, ON THE OTHER HAND THEY STEADFASTLY MAINTAIN IN THEIR COMMENTS TO THE INDUSTRY THAT WE ARE OVERSTATING THE PROBABLE COST IMPACT AND TECHNICAL DIFFICULTY OF THE BILL. SO YOU CAN SEE WHY SOME OF US ARE HAVING TROUBLE WITH THE FAIRNESS LOGIC.

325 THERE IS NO CONVINCING EVIDENCE THAT LACK OF A NATIONAL COAL SURFACE MINING LAW HAS ANY MEASURABLE EFFECT ON COMPETITION.TAKEN TO ITS LOGICAL CONCLUSION, SUCH A PHILOSOPHY HAS FRIGHTENING POSSIBILITIES. WHEN THE FEDERAL CONGRESS INJECTS ITSELF INTO FREE ENTERPRISE TO THE EXTENT THAT IT MUST PASS LAWS TO COMPENSATE FOR DIFFERENCES BETWEEN STATE LAWS - LAWS WHICH WERE PASSED IN ACCORDANCE WITH THE WILL OF THE CITIZENS OF THE RESPECTIVE STATES - THEN WE ARE INDEED ON A DANGEROUS COURSE.

325 SHORTLY AFTER PRESIDENT KENNEDY'S INAUGURATION, HIS ENERGY ADVISORS PREDICTED OUR CURRENT CRISIS. THE CONGRESS WAS MADE FULLY AWARE OF THE SITUATION. YET, WELL OVER A DECADE AND A HALF LATER WE STILL HAVE NO NATIONAL ENERGY POLICY, NO LEADERSHIP TAKING US TOWARD LONGTERM ENERGY SELF-SUFFICIENCY, AND VERY FEW WILLING TO ADMIT THAT IN OUR ECOLOGICAL ENTHUSIASM WE ARE COMMITTING ENERGY SUICIDE.

326 THE FEW WORKABLE PROPOSALS WHICH HAVE BEEN INTRODUCED IN CONGRESS ARE BURIED IN COMMITTEE AND PROBABLY WON'T BE GIVEN SERIOUS CONSIDERATION UNTIL IT'S TOO LATE TO TAKE ADVANTAGE OF THEM. PASSAGE OF THIS BILL WOULD BE ANOTHER GIANT LEAP FORWARD IN THIS COUNTRY'S LEMMING-LIKE RUSH AWAY FROM A REASONABLE BALANCE BETWEEN CONSIDERATIONS OF ENERGY PRODUCTION, ECONOMIC STABILITY, AND ENVIRONMENTAL PROTECTION.

326 THE FACT IS THAT COAL IS THE ONLY RELIABLE AND ABUNDANT MEDIUMTERM ENERGY SOURCE AVAILABLE IN THIS NATION. AND WHEN ANYONE SERIOUSLY SUGGESTS THAT WE CAN DOUBLE COAL PRODUCTION UNDER THIS BILL AND UNDER OTHER INCREASINGLY UNREASONABLE ENVIRONMENTAL CONSTRAINTS, IT IS EASY TO SEE WHY THE COUNTRY WAS LITERALLY KNOCKED TO ITS KNEES BY ENERGY SHORTAGES DURING RECENT WEEKS. WHEN UNFOUNDED ASSUMPTIONS, GROUNDLESS HOPES, AND AGREEMENT WITH UNREALISTIC ENVIRONMENTAL DEMANDS ARE SUBSTITUTED FOR SOUND PLANNING AND FIRM ACTION, THE RESULT IS NOT HARD TO PREDICT.

326 PRUDENCE DICTATES THAT THIS BILL BE KILLED NOW. CONGRESS HAS AN OPPORTUNITY TO SHOW THE NATION THAT REASON, FAIRNESS, AND A CONCERN FOR THE LONG-TERM WELL-BEING OF OUR CITIZENS ARE MORE IMPORTANT THAN PACIFYING THOSE WHOSE LOFTY IDEALS MIGHT BE ADMIRABLE BUT WHO DO NOT UNDERSTAND WHAT A TERRIBLE PRICE THE COUNTRY IS PAYING TO STATISFY THEIR IMPRACTICAL DEMANDS. I HOPE THE CONGRESS WILL TAKE ADVANTAGE OF THIS OPPORTUNITY.

326 GENTLEMEN, IN THE INTEREST OF TIME, I HAVE COVERED ONLY A FEW OF

THE MORE DEVASTATING PROVISIONS OF S.7. WITH YOUR PERMISSION, OUR ASSOCIATION WILL SOON FURNISH YOU WITH A DETAILED TECHNICAL ANALYSIS OF THE BILL WHICH WE URGE YOU TO CONSIDER. WE ALSO INVITE YOU TO VISIT US AND SEE FOR YOURSELVES WHY WE FEEL AS WE DO ABOUT THIS BILL.

327 THE CHOICE FACING THE CONGRESS IS REALLY VERY SIMPLE: IF INDUSTRY IS WRONG IN ITS VIEWS OF THIS BILL, THE WORST THAT CAN HAPPEN IS THAT WE WILL CONTINUE TO SUPPLY THE NATION WITH CRITICALLY NEEDED ENERGY WHILE CONDUCTING MINING AND RECLAMATION OPERATIONS IN A MANNER WHICH SUITS MOST - BUT NOT ALL - OF OUR CITIZENS.

327 IF THE PROPONENTS OF THIS BILL ARE WRONG, THIS COUNTRY WILL BE PLUNGED STILL FURTHER INTO THE DEPTHS OF ENERGY SHORTAGES CREATED IN LARGE MEASURE BY ENVIRONEMNTAL EXTREMISM; STILL FURTHER INTO A DEADLY INFLATIONARY SPIRAL AIDED BY OUTRAGEOUS IMPORTED OIL PRICES; STILL FURTHER INTO THE TRAP OF SHAMEFULLY WASTEFUL FEDERAL SPENDING; STILL FURTHER INTO THE PROBLEMS OF HIGH UNEMPLOYMENT; AND STILL FARTHER FROM A NATIONAL ENERGY POLICY.

327 MANY THOUGHTFUL PERSONS VIEW THIS AS NO CHOICE AT ALL.

328 [*]

329
COMMONWEALTH of VIRGINIA
Office of the Lieutenant Govemor
Richmond 23219
January 10, 1977
The Honorable Jimmy Carter
President-alect of the United States
The Transition Office
The White House
Washington, D.C. 20500
Dear Covernor Carter:

329 I have recently been advised that certain Members of Congress plan to introduce in the current session of Congress another version of the federal surface mining bill which was vetoed last year by President Ford. You stated during the campaign that you would have signed this bill. Since it seems likely that the bill will again be passed, I earnestly urge you to reconsider your position. For it is my firm belief, and the belief of many other Virginians, that federal legislation is simply not needed to control the surface mining of coal in Virginia and in most other states.

329 Virginia and nearly 40 other states now have laws which, in the opinion of their respective legislatures, meet their requirements. These various state laws take into account the differences between states in climate, terrain, coal quantity and quality, and the desires of the affected citizens.

329 These are precisely the kinds of factors which cannot be fairly addressed by a single set of federal requirements. Such a federal law could, in fact, be counter-productive since another bureaucracy would be superimposed on state enforcement agencies. This would add confusion, stifle innovation in mining and reclamation methods, and very likely result in reduced coal production.

329 The bill vetoed by President Ford last year was aimed primarily at preserving the topography of coal-bearing lands in the West. I suggest that the standards and criteria which may be appropriate to the West are not necessarily appropriate to the different topographical and geological situation in the East.

329 Virginia's first coal surface mining law was passed in 1966. Stringent new provisions were added in 1972. Still further improvements were made in 1974. In 1975, Virginia's Board of Conservation and Economic Development approved a far-reaching set of new implementing regulations to guide enforcement officials in assuring that our law is effective.

330 To the best of my knowledge, Congress has not held formal public hearings on surface mining since early 1973; therefore, Congress has no basis at present for judging the adquacy of the laws Virginia and many other states have adopted or amended since then.

330 Virginia law requires coal operators to post a money bond to guarantee that mined lands are reclaimed.Practically every acre of land mined since 1966 has been restored.

330 Because of its complicated and unnecessarily stringent requirements, the proposed federal law would cause a serious loss of coal production at a time when coal is becoming a precious energy resource. It would result in significant unemployment and economic dislocation in the coal fields of Southwest Virginia. It would create yet another federal bureaucracy just when public discontent with big government has reached a peak.

330 For these and other reasons, I urge you to consider not what the states weren't doing ten years ago, but what they are doing now. I believe you will agree that control of coal surface mining should be left to the several states rather than handed over to an inflexible federal bureaucracy.

330 Very truly yours,

330 John N. Dalton

330 JND/pho

330 cc: The Honorable William C. Wampler

330 The Honorable Morris K. Udall

331
COMMONWEALTH OF VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
SUPREME COURT BUILDING
1101 EAST BROAD STREET
RICHMOND VIRGINIA 23219
804-786-2071
January 7, 1976
The Honorable Morris K. Udall
Committee on Interior and Insular Affairs
House of Representatives
Washington, D.C. 20515
Dear Mr. Udall:

331 Having been advised that you will hold hearings in the near future to determine whether federal coal surface mining legislation should again be considered by the Congress, I respectfully request that the following views be made a part of the hearing record.

331 Coal suface mining provides a significant source of employment in Southwest Virginia. The citizens of the Commonwealth, however, have recognized that uncontrolled surface mining can adversely affect the environment. For this reason, the Virginia General Assembly has enacted legislation to require the proper control of coal surface mining in order to prevent injurious effects upon the people and resources of this State.

331 Since the inception of this legislation in 1966, Virginia's coal surface mining laws, which are found in Chapter 17 of Title 45.1 of our Code, have become increasingly rigorous in the requirements which are imposed upon mine operators. Pursuant to these laws, new regulations pertaining to mulching, expedited seeding, and improved drainage have been added to Virginia's program. Other regulations which would increase the amount of overburden retained on the bench are now under consideration. It is important to observe that these requirements have been developed and promulgated by Virginia's legislature and administrative agencies, which are in the best position to consider the unique needs of the Commonwealth's environment and its mining industry.

331 The success of Virginia's regulatory program depends upon its implementation. The agency which administers the program is supported by permit fees which are paid by mine operators. Originally, these fees were set at six dollars per acre for new permits. In 1974, the General Assembly increased these fees to twelve dollars per acre.A bill, which I support, is currently before the legislature which would increase the fees to thirty-six dollars per acre. If this bill is adopted at the upcoming Session, it will enable the Commonwealth to employ more mine inspectors and to upgrade its administrative resources, so that an even more effective job may be done.

332 I would also point out that Virginia's effort to reclaim orphaned land, which was surface mined prior to the institution of State controls, and has been significantly assisted by a recent agreement between the Tennessee Valley Authority and Virginia's Department of Conservation and Economic Development. This program is underwritten, in part, by a federal grant of $6 ,000,000. Although the approach embodied in the TVA-State agreement may not find favor with those in Washington who insist that federal programs should regulate every aspect of an activity, I am confident that this straightforward and cooperative TVA-State project will successfully reach its goal.

332 In conclusion, it is my opinion that the Commonwealth is fully capable of responsibly addressing and correcting, through her own legislature and agencies, the environmental disruptions caused by surface mining. I believe that the people of Virginia have made, and will continue to make, such a commitment and would very much regret yet another effort by this Congress to preempt their ability to make decisions through their State government. I, therefore, would urge the Congress not to enact a comprehensive surface mining law similar to the one which was vetoed in 1976.

332 If there is a role for the federal government in the control of coal surface mining, I firmly believe that it should not go beyond the encouragement and reinforcement of State regulatory programs. Such an approach would not only be productive of programs which reflect the unique circumstances found within each State, but would be more economical for the national government as well. My staff stands ready to work with yours to explore alternatives to massive and preemptive federal controls.

332 With kindest regards, I am

332 Sincerely yours,

332 Andrew P. Miller

332 Attorney General

332 7: 1/100Th 6

333
COMMONWEALTH OF VIRGINIA
SENATE
February 16, 1977
The Honorable Morris K. Udall,
Chairman
House Interior Committee
House of Representatives
Washington, D.C. 20515
Dear Mr. Udall:

333 The proposed Federal Coal Surface Mining Legislation is causing serious concern in Virginia, among those oriented toward environmental protection as well as representatives of industry. I believe there is a general preference for State, rather than Federal, regulation of surface mining and reclamation.

333 Virginia has had a law for regulation of surface mining since 1968. The regulations were tightened pursuant to amendments of 1972. As a strong advocate of mined land reclamation, I supported these amendments. I consider the present reclamation practices to be incomparably superior to those prevailing prior to 1972.

333 While advances in mining technology and new knowledge relating to its environmental effects require frequent updating of surface mining and reclamation laws, I believe this can best be done on the level of State government.

333 Respectfully yours,

333 John C. Buchanan

334 6 BRISTOL HERALD COURIER Fri., Feb. 18, 1977

334 OUR OPINION

334 The Strip Mines

334 President Carter, of course, despite the pleadings of defeated congressional candidate Charles Horne of Abingdon, favors strict regulation of strip mining.

334 Now, his energy czar, James Schlesinger, has put it on paper. He told the House Interior Committee in a letter Wednesday that "expeditious passage" of additional regulations on strip mining is needed as a "prerequisite to greater use of coal."

334 He added: "This nation cannot expect to increase its reliance on coal unless mining and burning (of coal) can be done in a healthful and environmentally sound manner."

334 What he is saying is that the regulations and the environment come first; the nation's need for the energy which coal can provide comes second. In the extreme, he seems to be saying that homes may go unheated breadwinners may lose their jobs, and people might even freeze to death for lack of coal - but, at least, the air will be clean and the countryside pretty.

334 A key provision in all strip-mining regulations has to do with the controur - the shape - of the land. Environmentalists would have strip mine operators restore all stripped land to its approximate original contour.

334 If the land's flat, that doesn't represent much of a problem. But if it's mountainous, as it is in West Virginia, Eastern Kentucky and Southwest Virginia, the problem is compounded tremendously. It is difficult, if not impossible, to rebuild a mountain once it's knocked down to get at the coal.

334 It seems likely, as many contend, that small strip mine operators would be forced out of business (there go the jobs and the coal) if required to meet economically prohibitive standards of reclamation. And most certainly the larger operators would simply tack onto the price of coal the cost of reclamation.

334 Moreover, owners of land on which coal might be strip-mined could claim, conceivably, that the government, by imposing strict regulations, prevents them from leasing their land, or mining it themselves. Could they get compensation?

334 Without doubt, regulations are needed for reclamation and to reduce air pollution.But those regulations ought to be reasonable - not the ultimate, perfect proposals handed down by environmentalists.

334 Coal is the nation's most abundant natural resource for the production of energy.Gas and

oil reserves will be depleted within a few decades; coal will still be with us.

334 President Carter, who has promised to reduce the federal bureaucracy and lessen the impact of federal edicts on our lives, keeps moving in the opposite direction.

334 We hope that, somehow, the Congress will practice the art of politics carefully when it considers strip mining regulations, and that a compromise can be effected which not only will insure a reasonable approach to environmentalism but also will not deprive the nation, and its people of the benefits which coal can provide.

335 COMMONWEALTH OF VIRGINIA

335 GENERAL ASSEMBLY

335 HOUSE GOINT RESOLUTION NO. 270

335 Memorializing Congress to allow regulation of surface mining of coal to remain in the hands of the states.

335 WHEREAS, coal is our nation's most abundant fassil fuel; and

335 WHEREAS, our nation faces an energy crisis of potentially devastating proportions, with coal being the only reliable and proven energy source available to meet our needs for the foreseeable future; and

335 WHEREAS, over one-half of our total coal production now comes from surface mines; and

335 WHEREAS, recognizing the necessity to properly control surface mining and reclamation operations, Virginia and thirty-seven other states, including all major coal-producing states, now have surface mining laws; and

335 WHEREAS, these laws are based on the desires and judgments of the citizens of the respective states, taking into account differences in climate, terrair, coal quality and quantity, transportation facilities, and other unique considerations; and

335 WHEREAS, there is overwhelming evidence that House Resolution 2 and similar bills before the Congress would result in reduced coal production, greater dependence upon foreign oil, increased unemployment in the coal-producing counties of Virginia and other states, and unnecessary economic disruptions throughout our nation; and

335 WHEREAS, the United Nine Workers of America voted overwhelmirgly on September
twenty-nine, nineteen hundred seventy-six, at their Cincinnati, Ohio, convention to withdraw
their previous support of federal coal and surface mining legislation; now, therefore, be it

335 RESOLVED by the House of Delegates, the Senate concurring, That regulation of coal
surface mining and reclamation should remain the exclusive responsibility of the several states,
and that Congress should refrair from forcing federal intrusion into this area which is, and ought
to remain, a matter properly under the control of those citizens directly affected; and, be it

336 * send copies of this resolution to the President of the United States, the President of the
United States Senate, the Speaker of the House of Representatives, the Secretary of the Interior,
and the members of the Virginia delegation to the United States Congress as an expression of the
sense of this body.

336 Agreed to by the House of Delegates, February 4, 1977

336 Agreed to by the Senate, February 17, 1977

336 THE ROANOKE TIMES, Friday, February 25, 1977

336 Godwin Opposes Mine Curb

336 WASHINGTON (AP) - The State of Virginia and the Duke Power Co. on Thursday
opposed federal strip mining control legislation on grounds it would cut back jobs and production
in central Appalavhian coal fields.

336 B.B. Parker, president of Duke Power, said nearly half of the utility's coal comes from
central Appalachian strip mines, and that many of these mines would would be inoperable under
the provisions of the legislation.

336 If Congress passes a strip mine law, Parker said, it should drop requirements for
eliminating nearly vertical cuts and for restoring the land to its approximate original contour.

336 Parker said the regulation of strip mines is better left to state governments, a position
echoed by a delegation of Virginia state government officials at a congressional hearing.

336 Gov. Mills Godwin submitted a statement saying Virginia has protected its environment.

Regulation of strip mining is reviewed periodically by the legislature, he said.

336 The federal bill, the governor said, would have a substantial impact on the livelihood of most of those living in the six coal-mining counties of southwestern Virginia. Many of the smaller operators are likely to be forced out business, he said, because they have neither the money nor the know-how to restore to the condition required by the proposed federal law.

336 The arguments were a familiar part of opposition to a uniform federal strip mining law. Rep. Morris Udall, D-Ariz., chairman of the House Interior Committee, noted the proposed bill is similar to a Pennsylvania law governing a flourishing strip mining industry which works terrain much like Central Appalachia.

336 The attorney general of Wyoming, Frank V. Mendicino, said his state essentially favors federal legislation.

336 State governments can assume some supervision over strip mining under the proposed law, provided local standards are as tough as those in the federal law. Mendicino, however, said the legislation should be modified to allow state control over mines on federal as well as state lands and supervision of reclamation funds.

337 A STAGGERING 12 BILLON DOLLARS ADDITIONAL COST EVERY YEAR TO THE AMERICAN CONSUMER if Strip Mine Bill is passed.

337 Does your SENATOR and CONGRESSMAN Really CORE??

337 [*]

338 SUMMARY OF VIRGINIA COAL SURFACE MINING LAW AND REGULATIONS

338 FACTS ABOUT COAL SURFACE MINING IN VIRGINIA

339 SUMMARY OF VIRGINIA

339 COAL SURFACE MINING LAW

339 PERMITS - Coal surface mining operations cannot be legally conducted in Virginia unless the Operator obtains a permit from the Virginia Department of Conservation and Economic Development.

339 BOND - The law requires a bond of $2 00 to $1,000 per acre, with a $2 ,500 minimum for more than five acres. (Under current policies of the Virginia Division of Mined Land

Reclamation, bond is usually set at $8 00 or more per acre.) Bond is not released until the area is satisfactorily reclaimed.

339 NON - COMPLIANCE NOTICE - The law allows a non-compliance notice to be served, stating conditions to be corrected and the time limit for correction. Failure to comply with the notice can result in the permit being revoked and bond being forfeited.

339 PERMIT FEES - The law requires a $12 per acre fee with no maximum. A $6 per acre annual renewal fee is required.

339 PROSPECTING PERMIT - The law requires a prospecting permit. This permit can cover no more than 10 acres, must be bonded at $300 per acre, and requires a permit fee of $10 per acre.

339 EMERGENCY ORDER - The law provides for immediately closing down an unsafe operation or one which threatens to damage property or the environment.

339 SELECTIVE MINING SITES - Under the law, the Director may delete from a permit any areas the mining of which, in his opinion, will adversely affect surrounding areas or endanger public health or safety.

340 SUMMARY OF VIRGINIA

340 COAL SURFACE MINING REGULATIONS

340 RIGHT TO MINE - The operator must indicate that he has the legal right to mine property covered by a permit application before a permit is granted.

340 PLANS - The permit application must be accompanied by detailed plans for mining operations and reclamation.

340 HAUL ROADS - The operator must maintain haul roads properly, must seed all road construction slopes, and must surface the road in such manner as to prevent debris from being deposited on state highways.

340 CURRENCY OF RECLAMATION - The operator must adhere to standards which require that reclamation closely follow coal removal.

340 REVEGETATION - Specified types and quantities of seed, fertilizer, and mulch must be applied to all disturbed areas. In addition, 1,000 tree seedlings must be set on each acre of outslope, and an 80% survival rate is required.

341 FACTS ABOUT COAL SURFACE

341 MINING IN VIRGINIA

341 1.Over 2,000 persons are directly employed in Virginia surface mining companies. These employees provide direct support for an estimated 7,500 people in Southwest Virginia.

341 2. Over $2 5 million in direct wages are paid annually to surface mine employees. These wages result in circulation of an estimated $75 million annually in Southwest Virginia's economy.

341 3. If surface mining were banned in Virginia, numerous retail stores and service industries would also collapse. Mass unemployment would result, and an estimated 30,000 persons throughout the state - including railroad employees and east coast shipping employees - would lose their means of support.

341 4.Surface mine employees belong to the same union and, job for job, are paid approximately the same wages as their underground counterparts.

341 5. When all factors are considered, reliable estimates place the surface mining industry's contribution to Virginia's economy at $175 million annually.

341 6. Coal-bearing lands are subjected to a quadruple tax burden in Southwest Virginia; a property tax; a mineral right tax; during the year coal is mined, a so-called "development" tax (this "development" tax amounts to nearly $1 00 per acre for the average coal lands); and a severance tax on coal which was passed by the 1972 Virginia General Assembly and increased by the 1976 General Assembly.

341 7. In addition to the above taxes, the typical Southwest Virginia county also imposes on the coal industry a personal property tax and a tools and equipment tax.

341 8. Surface-mined coal cannot be obtained safely or economically through deep mining techniques. This coal is near the surface, and the material above it is not strong enough to allow safe removal of the coal.

341 9. Virginia's original coal surface mining law was passed in 1966. In the 1972 session, Virginia's General Assembly passed what many have called a model coal surface mining law. Without VSMRA's strong support, this law would have had little chance of passing.This law and

the implementing regulations have the support of the industry and will assure that reclamation of Virginia's surface mines is among the best in the nation. The 1972 law was further strengthened by the 1974 General Assembly, and much stronger implementing regulations were made effective in 1975.

341 10. In Southwest Virginia where level land is rare, reclaimed surface mines are being used for home sites, orchards, farms, pastures, schools, shopping centers, airports, parking lots, and recreation areas.

341 11. All land which is surface mined in Virginia must be reclaimed in accordance with strict state laws. If reclamation is not accomplished, the operator forfeits the bond and loses his right to conduct future mining operations in Virginia unless he meets stringent conditions imposed to preclude further forfeitures.

341 12. Land cannot be mined in Virginia unless both the surface owner and the mineral owner agree and are compensated by the operator.

341 13. Over half the nation's coal production and about one-third of Virginia's coal production come from surface mines. Most of Virginia's coal has a very low sulphur content.

342 STATEMENT OF JAMES P. BROOKS, DISTRICT No. 28, LOCAL 7276 UMWA

342 Mr. Chairman and Members of the Committee, my name is James P. Brooks, I am from District 28 local 7276 U.M.W.A. Southwest Virginia. I am a member of the District 28 Compensation Executive Board and Chairman of the 7276 local mine and Safety Committee.

342 In April of 1975 when this same bill was before a Committee up here, I lost 2 weeks wages on a wildcat strike in protest of this bill, my Health services and pension fund lost thousands of dollars in royalty to our fund, and this bill and our opinion has neither one changed. As you all know our 1976 Constitutional Convention by a great majority voted against a federal bill and for a State by State strip mine bill, because of the different terrain in our several coal producing states.

342 If this bill is passed, there will be millions of tons of coal that can never be recovered by deep mining because some of these seams of coal are too thin to be deep mined. There will be

thousands of lives lost over the next few years because of trying to mine this outcrop coal that has very little cover over it. I speak of this from experience because in 1948 when I was an underground miner, I was covered up in a roof fall while trying to help drive a drain way out side under this bad top near the outside. I have 25 years surface and 5 years underground mining experience. This should qualify me to speak on this subject. The first 7 days of 1977 there was 7 miners killed in the mines which is just statistics to most people who do not realize the dangers of mining coal, but I can assure you it means much more to their families and widows and children. It also means more to me because these are my fraternal brothers. This slaughter continues in spite of our 1969 health and safety act. I believe that most of the testimony presented to this Committee in favor of this bill has been by people that have never worked in an underground coal mine or even seen one, yet they say to me go back underground.

342 Also, people point to the Pennsylvania strip mine bill and say they are doing this kind of mining in Pennsylvania. But no one has mentioned the fact that over the past three (3) to five (5) years, 9 million dollars have been pulled out of our dues money to subsidize the Pennsylvania anthracite pension and health services fund. Part of this Pennsylvania anthracite fund comes from stripping anthracite coal. Looking at the facts, I don't believe our bituminous funds can survive under this great loss of monies to our funds that comes from the royalty of strip mine coal that comes from our steep slope mines that will be abolished by this bill.

342 This Committee was shown slides of about ten mine sites in Southwest Virginia. One of these was of the back bone Ridge mine in the city of Norton, Virginia where reclamation and seeding had not been done because the mining had not been completed. I don't believe the fact was mentioned that a hospital and shopping center was being build on this so called raped land, that sold for $2 8,000 per acre. We have a deep mine brother with us who is on the board of directors of this hospital who is available for comment if any Committee member is interested.

342 We also have a multi-million dollar airport in Wise that will accommodate jet aircraft that would not have been possible under this bill. This is only two examples of what can be done with this strip mined land in this rugged hill country of the Appalachian mountain region.

342 In closing, this land is my home where I sincerely hope to work at my trade as a strip
miner until retirement age and live the rest of my remaining days in the peace of my home land.

342 Gentlement, I thank you for the privilege you have granted me by listening to what I had
to say.

342 Senator METCALF. I have been in touch with Senator Byrd's office, and he says perhaps
I can get unanimous consent after 3 o'clock to have this committee meet while the Senate is in
session.

342 The next witness is from West Virginia. I need a little clout with Senator Byrd, so I can
tell him that if he is going to get his West Virginia witness heard, he had better give me consent
to hold this hearing.

342 Mr. BROOKS. Could I say one word on safety? I told you in that statement I gave you
there, I told you I was an underground miner to begin with. I was covered up in a slate fall trying
to drive a drainway toward the outside. That is one point. I have often wondered how many lives
were saved by strip mining coal on the outcrop.

343 I have just often wondered about that.

343 Senator METCALF. Ihave wondered, too. Of course, I am going to assist on another
committee concerning a mine safety hearing both on coal and other underground mining.

343 We will be in recess until 3:15 or after. I will return as soon as I can find out what the
floor action is.

343 [The hearing was recessed from 1:40 to 3:25 p.m.]

343 AFTERNOON SESSION

343 Senator METCALF. The subcommittee will be in order. We have a slight change in the
order of witnesses. We are going to hear first from the American Mining Congress. Then we are
going to hear from the National Coal Association. Our last witnesses will be the West Virginia
Surface Mine Reclamation Association, if that is satisfactory.

343 We have heard about the small operators. We are now delighted to have you here as
representing the large coal producers.

343 Mr. YOUNG. I am Stephen G. Young, of Consolidation Coal Co. I am going to lead off for the American Mining Congress-National Coal Association panel. I think Mr. Sturm would just as soon go ahead and proceed with the entire panel and answer any questions you care to ask us.

343 Senator METCALF. I really wanted to accommodate Mr. Strum if I could.

343 Mr. STURM. If you don't mind, then let me go forward, Senator.

343 Senator METCALF. I hope you catch your plane.

343 Mr. STURM. I am Donald L. Sturm. I am with Peter Kiewit Sons', Inc., Omaha, Neb. Our company, through subsidiaries -

343 Senator METCALF. You operate Decker mines in Montana?

STATEMENT OF DONALD L. STURM, VICE PRESIDENT AND DIRECTOR, PETER KIEWIT SONS, INC., OMAHA, NEBR., REPRESENTING THE AMERICAN MINING CONGRESS

343 Mr. STURM. Yes. Our company through subsidiaries, has three active coal mines, one called Big Horn Coal Co. in Sheridan, Wyo.; the other called Rosebud Coal Sales Co., out of Hanna, Wyo.; and Decker Coal Co. out of Decker, Mont.

343 Decker Coal Co. was the largest single coal mine, last year, in the United States, mining about 10 million tons.

343 Our total operation during 1976 was about 13 million tons. We have contracted to about double that 13 million, we have contracted to go about 26 million tons by 1980, assuming we can open the other areas we are contracted to open.

343 I believe last year we were the largest surface mining coal company in the West.

343 Senator METCALF.The largest in America. Who is larger?

343 Mr. STURM.I think Consolidation Mines has more coal than we do, but we are the largest in the West. I think last year we were the eighth largest coal producer in the United States and No. 1 in the West.

344 We have operated in Wyoming since 1943, and we have operated in Montana since 1971. We have operated in a climate where we have been subjected to reclamation and strip

mining laws, and we are very comfortable in that environment. The States of Wyoming and
Montana probably have the stiffest reclamation laws on the books and we have been able to do
our thing and make some money at the same time, and ship quite a bit of coal.

344 We take the position that because of the strict laws within the States of Montana and
Wyoming, and because of the Federal 211 regulations, that where we operate we don't really
need a Federal strip mine law. However, we recognize one is coming. Really, our position is:
Make it subject to the site specific situations that exist in our area and let the regulatory agencies
within the States of Wyoming and Montana govern the site specific regulations. Don't set
Federal standards that nobody could meet. Make those standards flexible enough so the local
agency can administer their laws within the situation existing.

344 Senator METCALF. You know this bill; you have read it; do you think we are setting
Federal standards you can't meet?

344 Mr. STURM. Yes.

344 Senator METCALF.All right, now talk to me about them.

344 Mr. STURM. I am going to get to that. We feel the provisions of this bill as well as the
House bill are vague and complicated, and that at almost every step of the process we are
subjected to public hearing and citizen suits. We have that under the laws of the State of Montana
and Wyoming -

344 Senator METCALF. We can't stop that. You know very well, no matter what kind of bill
we pass, there will be citizen suits.

344 Mr. STURM. Yes. But -

344 Senator METCALF. Every time I try to attack a piece of legislation in the 20-some years I
have been in Congress, the first thing I said was the bill is vague and incomprehensible, it is
ambiguous, and so forth. So let's have some more specifics.

344 Mr. STURM. I am going to get to the specifics. Let me start off with the mine
reclamation fund. We are now talking about coal mining on Federal land. The testimony I heard
this morning, and you heard this morning, had to do with mining in the East. Basically
non-Federal coal.

344 We take the position that the Senate version of the reclamation fund is far superior than the House version. The apparatus established here is that a part of the Federal royalty, we trust, which is now 50 percent and another 50 percent goes to the State, would be set up in some kind of a fund and that money would be made available for reclamation of work and lands. That does not add another burden to the cost of mining which the House bill did.

344 We would suggest, however, the reclamation fund be made up of only the Federl Government's portion of the Federal not the States' portion. I don't think the bill is specific as to where this 35 cents comes from. We would suggest that it only come from the Federal portion. The States have stated with the States.

345 Senator METCALF. What about private land? No funds at all?

345 Mr. STURM. No money would come from the State royalty or from private lands.

345 There are going to be situations where the 35 cents will be higher than the Federal Government's share of the royalty. In other words, a 12 1/2 percent Federal royalty will only take place on the Federal leases and renewal of current Federal leases. Right now, most of those royalties will be 17 1/2 cents.

345 If the State is going to get half of that, obviously the Federal Government will not have 35 cents.

345 We recommend either the total Federal royalty or 35 cents, whichever is the lower, go into this Federal reclamation fund. We also suggest the reclamation be maintained on a State-by-State basis and that one-half of that reclamation fund stay in the State for State purposes, capital improvement purposes, and the other half stay with the State for their orphaned lands, and until those orphaned lands are then reclaimed. Then that money would be available for any other area.

345 Once that money is then used to reclaim any other areas, that the 35 cents stay in the States for capital improvements in that State.

345 Section 406 of the bill, we would recommend in lieu of a 5-year term for the mining permit, that the mining permit extend for the life of a logical mining unit. We also would recommend that section 406(d)(1) having to do with public hearings on the renewal of a permit,

that that is too cumbersome and we would like to have that stricken from the bill. We fear not the input by the public to the regulatory agency, but to introduce that into an application for permit renewal, particularly when you have a massive investment, we feel is unnecessary, that the regulatory agency can protect the people of this country.

345 The big problem we have with the strip mining bill has to do with the alluvial valley and the hydrological problems. We feel there is no way that we could meet the criteria established there.

345 First of all, the alluvial valley test is something that only applies to the West. There is really hardly an area out there that would not be affected or would not be within the definition of alluvial valley. The hydrologic consequences of mining and reclamation on and off the site is provided for. We have no way of going off the site on somebody else's property to determine the hydrological consequences. We could do so on our property and we would be happy to do so - and we have done so.

345 Nor, can we or anybody else for that matter, other than a governmental agency, ascertain the cumulative impact of mining upon the hydrology and upon the water table. The operator, we or any other coal company, can only estimate the impact and not really determine the impact of mining.

345 We would suggest that the bill be modified to provide that the operator attempt to estimate the impact upon the hydrology of the area that the mining will cause, and the real study of this, and cumulative impact of it, be left to the States and the Federal Government as part of the environmental impact statement, as part of the regional environmental impact statement as well as the site specific.

346 We have done this. We are continuing to do it. It has worked in the West. The EIS prepared by the governmental agencies is the area, and is the document, that should measure the impacts.

346 The alluvial valley provision, which is related to the hydrology provision, appears in section 410(b)(5).Here, the applicant, as part of the application for a permit, must demonstrate the mining would not have a substantial adverse effect on the alluvial valley for current or potential farming.

346 Section 415(b)(15)(f) requires the alluvial valley be preserved throughout the mining process as well as the hydrologic functions of that area.

346 We feel the use of the words, "significant," "substantial," and "potential" are vague terms and are things that we have no way of meeting. We cannot anticipate the impact on potential farming because we really don't know what is coming on downstream.We feel the question of mining in alluvial valley is something that should be left to the regulatory agency and that they, on a site specific basis, in Wyoming, Montana, wherever, are much better able to make those determinations as to whether mining should take place and whether the area can be reclaimed.

346 There is no way you can mine coal in Montana wihtout somehow affecting an alluvial valley. We cannot preserve it. That is the word that is used in the statute during the mining process. We certainly can restore it.

346 We would strongly suggest the word restore be used in lieu of maintain or preserve. It is interesting to note the legislature of the State of Wyoming and Montana, within the last few weeks, have addressed this question of alluvial valley floors in their legislative process. Both States have seen fit now to include this type of language in their reclamation acts.

346 They feel on a site specific basis they are able to handle this and I can tell you on a site specific basis they have handled it. We have mined, and will continue, if we can, to mine in these areas. We can and have reclaimed the land.

346 We really urge this provision be stricken from the bill and let it go bakc to the regulatory agencies within the States and make the determination of whether mining should take place.

346 Leaving the alluvial valleys and making some quick comments, because some of this has been covered this morning, section 414 of the bill: we request a specific time limitation be included as to the period in which a mining application has to be studied and determined, much like the State of Montana, where a clock begins to tick, so to speak, when a completed application is produced by the mining company.

346 We feel that type of provision in the Federal law would get the administrative process

moving faster, than if no time limitations were included within the bill. The original contour question was discussed at length today. This has a play in the West as well. Our position is it may not be the best solution to have the land reclaimed to the original contour, and that this should be a matter left to the State agency on a site specific basis so they can determine whether it really is wise to reclaim the land to the original contour.

346 Section 415(b)(12) provides that a strip mine may not be conducted within 500 feet of an active or abandoned underground mine. The way this section reads, if the strip mine was there first, and the underground mine came second, the strip mine would have to shut down and let the underground mine continue.

347 We would recommend the section be reworded so that whatever mine was there first had priority.

347 Senator METCALF. Do you have any instances in mind?

347 Mr. STURM.I don't have anything in particular. But I can see it coming. We have a mine at Hanna, Wyo., where this might very well happen, where we have been there for many years, and I can see it happening in the Decker area, in the West particularly, as the need for coal increases which I would anticipate, as you mentioned this morning, over the next 10 to 20 years this is our answer to this national problem.

347 At section 415(b)(2), it is provided a 10-year bond has to be posted to insure the reclamation of lands in an area wherein there is less than 26 inches of average annual precipitation.We have reclaimed land within 5 years and we feel it would be unreasonable for us to economically have a bond posted for 10 years when we have done it in 5. We would suggest a 10-year limitation be reduced to 5 - presuming the State agency is satisfied that we have revegetated.

347 The last comment I would like to make, which nobody mentioned yet today - and I guess maybe they have no need - and that has to do with the withdrawal of Federal coal from mining in the West where the surface estate is owned by somebody else, other than the Federal Government. This is unlike the House bill.

347 Senator METCALF. You are referring to the Mansfield amendment? Can we simply

make a note of that? It has been argued back and forth and we will save your time and ours.

347 Mr. STURM. Fine. It would take our Federal coal reserves that we have under lease, that we have sold where we have bought the surface over the coal, we could not mine the coal even where we own the surface. So we are not in favor of this provision, nor are we of the House bill.

347 The last thing I would like to mention is something I think I started with. I think it is extremely important. I think this morning's testimony also indicates how important it is, and that is having a bill, having an act, that is susceptible and conducive to being interpreted within the site specific situation that exists where the mine is, rather than having rigid Federal standards that really can apply over these vast * * *

347 We would recommend a delegation, if you will, of authority of both law and administration be made to a State like Wyoming or Montana, so that the agencies within those areas, people who know the conditions, can make decisions that are a little bit more intelligent than having a national law wherein you cannot anticipate everything that can happen.

347 Thank you.

347 Senator METCALF. Thank you, Mr. Sturm. From 2 o'clock on, we have been meeting with the Interior Committee for assignment to subcommittees. Because it is of concern this morning, I twisted Senator Ford's arm, and so he will be a member of this subcommittee.Let me officially welcome you, Senator, as a member of our subcommittee and thank you for accepting.

348 Senator FORD. I just took my arm out of the sling.

348 Senator METCALF. Mr. Sturm, did you want to leave?

348 Mr. STURM. If you have questions, I would like to try to address myself to them.

348 Senator METCALF. You are the first witness who has addressed himself to the problems of western mining. Senator, Mr. Sturm is with the Decker Mining Co., which has the largest strip mining operation in Montana. They have a shovel which gets a whole coal car at once and reaches out further than a football field. It is a rather large and an exceptional operation.

348 I have seen it. It is a very impressive operation.

348 You are able to exist under the state mining laws of the State of Montana?

348 Mr. STURM. Yes, we are, and thrive.

348 Senator METCALF. They only have a 5-year permit, is that right?

348 Mr. STURM. Their permit is year to year.

348 Senator METCALF. You are able to operate under those regulations?

348 Mr. STURM. We are able to live with them, yes.

348 Senator METCALF. It would not change anything if these regulations were put in Federal standards and we turned over the administration to the State of Montana or the State of Wyoming?

348 Mr. STURM. We are also trying to get them to go - as long as we meet the mining and reclamation standards. The problem is before we get the extension, the next year has run. So we are continually in the process of renewing the permit.

348 Senator METCALF. On Thursday we will have both the Governors of Montana and Wyoming here to testify. Fortunately, we have the Governors' Conference convening in Washington right now, so we will have several Governors available. Believe me, I am delighted you are out there operating the Decker mine. I am impressed with your operation and the kind of mining you are doing.

348 I don't think it is my intention or the intention of anyone on this committee to close or stifle your operation. Nevertheless, we are glad to have you.

348 Senator FORD. Let me ask a question if I may. You have a surface mine operation. We don't like to refer to it as strip mining anymore. It is like a junkyard operation is scrap now.

348 Are you familiar with the surface operations in Kentucky, eastern Kentucky, Pennsylvania, West Virginia, as it relates to Montana surface mining?

348 Mr. STURM. Except that it is very shallow.

348 Senator FORD.What is the amount of overburden of your top soil; how far down would you have to go to get your seam of coal?

348 Mr. STURM. Obviously it changes everywhere in Montana or Wyoming. But we have an

average ratio of overburden of coal of, say, 2 1/2 to 1. In the East you have a much greater ratio
of overburden of coal. Your seams are a lot thinner and you have to move a lot more overburden
to get to the coal.

348 Senator FORD. What is the difference in the type of coal, the Btu that you get in
stripping, compared to eastern coal?

348 Mr. STURM. First of all, our coal is low sulfur and probably the highest Btu in the West.

348 Senator FORD. I want to know the comparison with the East.

349 Mr. STURM. The Btu at Decker, and it is different in the other two mines, it changes, it
is just like people. Everywhere you go, they change. Our coal at Decker, it is about 9,500 Btu.
In the East it would go between 10 to 12, depending on where you find it, and the sulfur content
would probably be higher. But our coal is what you would call EPA coal. In other words, it
beats the 1.2 pounds per million Btu.

349 Senator FORD. Do you have any trouble with highwalling in your area? Do you have
such things as highwall?

349 Mr. STURM. Yes. We have an area where we are going to open up a mine in the next
few years. We would have a problem with highwalls.

349 Senator FORD. You don't have a problem with highwall now?

349 Mr. STURM.Not with Decker.

349 Senator FORD. There is no such thing as the highwall problem in Montana?

349 Mr. STURM. I shouldn't say that. We have a highwall at the mining site at Big Horn.

349 Senator FORD. What is the depth of the highwall?

349 Mr. STURM. 200 feet; 3,000.

349 Senator FORD. How many of those do you operate?

349 Mr. STURM. How many mines?

349 Senator FORD. What percentage of your operation would have a 200-foot highwall?

349 Mr. STURM. That is that one mine which we are going to expand to 200 million tons of
our total - of our total it is probably 10 percent of our total production.

349 Senator FORD. How do you cut a highwall now in the western States?

349 Mr. STURM. Some of the areas you will make it into a pond or a lake. We are not
finished mining in this area. We will probably do a lot of reclamation.

349 Senator FORD. You are giving me problems. What is the law in the State of Montana for
reduction of highwalls?

349 Mr. STURM. We don't have a problem. It is original highwall with variances.

349 Senator FORD. What variances?

349 Mr. STURM. I really don't know. We haven't had the problem.

349 Senator FORD. You just return to original contour?

349 Mr. STURM. Yes.

349 Senator FORD. What is the original degree?

349 Mr. STURM. We don't have much problem; 20 percent, 20 degrees.

349 Senator FORD. I don't believe I am getting through to you. What is the degree of slope
you surface mine there; what is the sharpest degree of surface you mine in Montana?

349 Mr. STURM. I think it is probably less than 20 percent.

349 Senator FORD. What are the percentage of reserves in Montana that are under 20
percent?

349 Mr. STURM.I think in our case we have probably a billion tons.

349 Senator FORD. What percentage, 90 percent; 95 percent?

349 Mr. STURM. I would say 90 percent.

349 Senator FORD. Under 20 degrees. Ninety-five percent of that reserve under 20 degrees?

349 Mr. STURM. Yes.

350 Senator FORD. Then your problem is minute compared to these other problems.

350 Senator FORD. If you have 95 percent of your reserves under 20 percent, then you don't
have any problem with highwall?

350 Senator METCALF. Our problem in Montana is not with respect to highwall.

350 Mr. STURM. In southwest Wyoming you would start getting into that problem.

350 Senator FORD. How much overburden do you have in Wyoming?

350 Mr. STURM. Probably six-to-one ratio. The area I am thinking, I don't know if we would have enough drilling to give you a good answer. What we are looking at is an area where the seam is a lot thinner. You have a multiple seam, maybe 10 or 15 seams. This is not something we have done. These other people have probably done it. We have been fortunate to have two or three seams of nice thickness.

350 Senator FORD. What is a nice thickness?

350 Mr. STURM. Fifty-two feet.

350 Senator FORD. We would be lucky to have 52 inches where we operate.

350 Mr. STURM. What I am thinking of, we have two lifts. One is 26 feet, and we go down and take another 26 feet.

350 Senator FORD. Our people in Kentucky have to go out there with a bucket to get a barrel. Do you know the overburden, what depth in feet?

350 Mr. STURM. I really cannot give that to you. I am really not that up on it.

350 Senator FORD. Would it be 10 or 12 feet, 3 or 4 feet?

350 Mr. STURM. It would be more than that.

350 Mr. PAUL. It runs 70 to 80 feet, but you are - your ratios are very good.

350 Senator FORD. So there is a big, big difference in the operation in the western States compared to the eastern States?

350 Mr. STURM. Oh, yes.

350 Senator METCALF.Do you want to be excused now?

350 Mr. STURM. If I may, sir.

350 Senator METCALF. I am very pleased as a Montanan to have a representative of our strip mining industry.

350 [The prepared statement of Mr. Sturm follows:]

351 AMERICAN MINING CONGRESS

351 1100 RING BUILDING

351 WASHINGTON, D.C. 20036

351 TELEPHONE 202/331-8900 TWX 710-822-0126

351 ESTABLISHED 1897

351 J. ALLEN OVERTON, JR., President

351 Statement of

351 Donald L. Sturm

351 Vice-President and Director

351 Peter Kiewit Sons', Inc.

351 Omaha, Hebraska

351 before the

351 Minerals, Materials and Fuels Subcommittee

351 United States Senate Committee on Energy and Natural Resources

351 March 1, 1977

352 Mr. Chairman and Members of the Committee:

352 My name is Donald L. Sturm. I am a Vice President and a member of the Board of Directors of Peter Kiewit Sons', Inc., which headquarters in Omaha, Nebraska. Peter Kiewit Sons', Inc., through operating coal mining subsidiaries, has engaged in coal mining for approximately 35 years and is the owner and operator of several large surface coal mines in Wyoming and Montana. Peter Kiewit Sons', Inc.'s coal mining activities include the operations of the Big Horn Coal Company, a wholly-owned subsidiary near Sheridan, Wyoming, Rosebud Coal Sales Company, a wholly-owned subsidiary near Hanna, Wyoming, and Decker Coal Company, a joint venture between wholly-owned subsidiaries of Peter Kiewit Sons', Inc. and Pacific Power & Light Company, located near Decker, Montana. The Decker mine is the largest single coal mine in the United States today. During 1976, Peter Kiewit Sons', Inc. surface mined more coal in the western United States than any other coal company.

352 In addition to the operating mines to which I have just referred, the total production of which approximated 13,000,000 tons in 1976.Peter Kiewit Sons', Inc. has submitted applications

for permits to develop other mines in the Decker area, which will add another 8,000,000 tons per annum to its production. These mines are commonly referred to as the North Extension, which is immediately north of the present Decker operation, and the East Decker mine, which is located on the east side of the Tongue River directly across the river from the present Decker mine. The Final Environmental Impact Statement for both of these mines is almost complete.

353 As the operating partner of several other joint ventures, Peter Kiewit Sons', Inc. has submitted applications for developing three other mines in southern Wyoming, which will add approximately 11,000,000 more tons of production. These mines will be located near Rock Springs and Kemmarer, Wyoming.

353 I appreciate the opportunity to appear today before your committee to present comments on S. 7, the "Surface Mining Control and Reclamation Act of 1977." I intend to discuss specific provisions of S. 7, which I feel contain major deficiencies and which, if passed, would unnecessarily impede or prevent the development of coal at a time when the Nation needs to increase coal production in order to avert serious energy shortages. We seriously feel that S. 7 contains provisions which will hinder, if not stop, development of our mines.

353 Prior to commenting on specific provisions of S. 7, I would like to state our position as to the need for federal coal surface mining legislation. We believe there is no need for federal coal surface mining legislation within the States of Wyoming and Montana since surface coal mining on private, state, and federal coal is already regulated by these states. During the past several years, state legislatures of the major coal producing states have either enacted new mined land reclamation laws, or amended existing reclamation laws in order to preserve environmental quality. It should also be noted that on May 17, 1976, the federal 211 regulations were promulgated dealing with surface mining reclamation for federal coal, and these regulations permit the states to assume full reclamation authority over federal lands if the state laws are at least as stringent as the federal requirements. The point is that reclamation of surface mined land in the West and particularly within the States of Wyoming and Montana, is already effectively regulated, and reclamation is being performed successfully under state law and federal regulations.

354 It is our firm opinion that if S. 7 becomes law in its present form, coal production in the United States will be severely reduced.Some of the terms and provisions of S. 7 are vague and readlessly complicated and as a result create the potential for endless litigation. Every permit application for a surface mine will be subject, as a result of the public hearing and citizens suit provisions, to repeated challenges in court and throughout the administrative process.The resultant delays will not be in accord with the urgent national objectives of increasing domestic energy production while protecting the environment.Additionally, some of the tests established by this bill are in actuality prohibitions.

354 It is important for the Committee to recognize that significant progress has been made in improving mining and reclamation techniques. The inflexible national standards imposed by S. 7 is not take into account new surface mining and reclamation technology which has developed in the last several years, and which will continue to change in the future. Additionally, these national standards do not take into account the considerable variations in each state of tapegraphy and other conditions. State and local governments are closely attuned to local conditions, and they can effectively deal with the particular problems of mined land reclamation associated with local conditions. The states have ample ability to deal with locally differing climate, geology, terrain, biology, and social conditions.

355 The legislative responses of the states where my company operates, tailored to meet the special needs of the people and the region, have been effective. Furthermore, environmental protection is a firmly established corporate policy of my company, and I might add is now a firmly established policy of all responsible mining companies. On behalf of Peter Kiewit Sons', Inc., I extend an invitation to the members of the committee to visit our Big Horn, Rosebud or Decker mine operations and see first hand that there has been no lack of concern for the environment.

355 Before turning to my specific comments on S. 7, I would like to point out that during the current legislative sessions of both the States of Montana and Wyoming, bills were introduced which would regulate mining on alluvial valley floors. Both legislatures willed the bills by overwhelming majorities, thus demonstrating that these states have recognized that there is not a

need to provide for faflexible legislation banning mining on the alluvial valley floors. These
states recognize that an absolute prohibition on mining is rot the answer and that reclamation of
alluvial valley floors subsequent to surface mining can be successfully accomplished. The states'
reclamaties laws, administered by the state agencies involved, can and have dealt effectively on a
case by case basis with the problems associated with mining of alluvial valley floors.

355 It is our position that the laws of the States of Wyoming and Montana and the current
federal regulations are sufficient to ensure that only lands that can be reclaimed are mined and
that reclamation will in fact take place. In the event that the Congress feels it necessary to have a
federal statute regulating surface coal mining and reclamation, we feel that parts of the present
bill should be amended or deleted. The specific provisions of S. 7 which I respectfully request
that the Committee consider for amendment, are as follows:

356 1. Section 301. ABANDONED MINE RECLAMATION FUND. SOURCE AND OBJECTIVE OF FUND

356 We recognize that, unlike H.R. 2, the House version of the Surface Mining Control and
Reclamation Act, Section 301 does not impose a separate and additional reclamation fee of 35c
per ton of coal produced by surface coal mining, but that amounts in the fund will be derived in
part by an allocation of 35c per ton of coal from the royalties received by the federal government
on federal coal produced by surface mining. The western states, such as Montana and Wyoming,
during recent years have passed strong and effective laws to provide for reclamation of lands
disturbed by surface coal mining.

356 In our current mining operations within the States of Wyoming and Montana, we are
currently accruing the full cost of reclaiming the disturbed lands. We will and must continue to
accrue reclamation costs for our current, as well as future, operations.

356 The proposed reclamation fund under S. 7 has objectives other than reclamation of
"orphaned lands." These other objectives are the protection of health and safety, the protection,
construction or enhancement of public facilities, and the improvement of lands and water to a
condition useful in the economic and social development of the area.

356 We propose the following amendments to this section:

356 (a) That the deposit to the reclamation fund come solely from the federal government's share of the royalty.

356 (b) That where the federal government's share of the royalty is less than 35c per ton (this would occur where the federal royalty does not go to 12 1/2% of the selling price until the federal lease is renewed), that its entire portion of the royalty be placed in the reclamation fund.

357 (c) That a separate fund be created for each state within which coal mining takes place and federal royalties are received.

357 (d) That one-half of the fund be allocated to the reclamation of "orphaned lands" existing within the state, with the balance to be used in the state for capital improvements as determined by the state legislature, without any time limitation.

357 (e) That after the "orphaned lands" within said state have been reclaimed, that one-half of the reclamation fund then be made available for orphaned land reclamation in other states.

357 (f) That after "orphaned lands" in the other states have been reclaimed, that the reclamation fund for the particular state be made totally available for capital improvement projects within said state.

357 2. Section 406. PERMITS.

357 (a) Section 406(b) - Term of Permits

357 The limitation contained in Section 406(b) of the term of a permit to a period not to exceed five years is unreasonable, given the length of time required to study the project prior to issuance of a permit. The environmental impact statement which is prepared to analyze the impact of a proposed mine must discuss the mine plan over the life of the planned operations, including mining and subsequent reclamation, which in most cases will be longer than five years. We request that the provision containing the five-year limitation for the permit life be amended to provide for a permit term equal to "mine life" or "life of the logical mining unit" which is consistent with present federal regulations.

358 (b) Section 406(d)(1) - Public Hearings on Permit Renewal

358 The requirement in Section 406(d)(1) that, prior to permit r renewal , public hearings be

held on the status of the existing permit is unnecessarily burdensome. During the initial term of the permit, the appropriate regulatory authority will require the mine operator to satisfactorily comply with the terms and conditions of the existing permit and will make certain that the present surface coal mining and reclamation operation is in full compliance with the environmental protection standards contained in S. 7. The requirement for another public hearing is unnecessary and should be eliminated.

358 3. Section 407. APPLICATION REQUIREMENTS.

358 (a) Section 407(b)(11) - Hydrologic Consequences

358 Section 407(b)(11) requires all operators, as part of the permit application, to make a determination of the hydrologic consequences of the mining and reclamation operations, both on and off the mine site. Additionally, the applicant must collect and provide in the application sufficient data for the mine site and surrounding areas so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability.

358 We submit that these requirements are extremely onerous and subject the mine operator to a burden which could take years to overcome since it will not be possible to collect the data in a relatively short period of time, if at all. It is also impossible for the applicant to make a determination in advance of all the hydrologic consequences requested by this section, and any information provided would represent an "estimation" of the hydrologic consequences, rather than a "determination." Accordingly, we request that Section 407(b)(11) be amended to provide for an estimation of the hydrologic consequences of the mining and reclamation operations.

359 (b) Section 407(b)(11) - Cumulative Impacts

359 Since Section 407(b)(11) requires an operator to collect and provide sufficient data so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area, both on and off the mine site. The drafters of this legislation have assumed that the applicant has the legal right and the capability to enter other property to collect sufficient data necessary to study the hydrology of the entire region. Unless the current legislation specifically gives operators the legal rights to enter upon property which the operator does not own, it may be

impossible for the operator to supply the requested data. Furthermore, this section forces a liability upon the applicant with regard to cumulative impacts on areas not necessarily related to his mining operation since the provisions of the bill require a determination of the probable cumulative impacts of all anticipated mining. On-going regional environmental impact studies should suffice to make a determination of what those probable cumulative impacts might be. Federal and state agencies have assumed the responsibility for analyzing the cumulative impacts of mining operations by virtue of the fact that federal and state laws have been passed requiring environmental impact statements covering activities such as the application for and the granting of a strip mine permit, and this is appropriately the responsibility of the federal and state regulatory authorities.

360 4.Section 410. PERMIT APPROVAL OR DENIAL.

360 (a) Section 410(b)(4) - Areas Under Study

360 Section 410(b)(4) specifies that a permit may not be approved if the area proposed to be mined is under study for designation as unsuitable for surface coal mining pursuant to Section 422 of S. 7. We contend that the phraseology of S. 7 is such that endless litigation regarding suitability would be the result.Such vague and subjective standards could apply to essentially any area of the United States. On-going mining and reclamation practices are scientific procedures, the results of which are continuously monitored and incorporated into the plan of operation. We submit, therefore, that Section 410(b)(4) be stricken from the bill.

360 (b) Section 410(b)(5) - Alluvial Valley Floors

360 The provisions of Section 410(b)(5) require that no permit be approved unless the applicant affirmatively demonstrates that "the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would not have a substantial adverse affect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible." In analyzing the prohibitions of this

section, it is important to also consider Section 415(b)(10)(F) which requires surface coal mining operations, in meeting certain applicable performance standards of the bill, to "preserve throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semi-arid areas of the country." The prohibition on mining on an alluvial valley floor is clear. The statutes use of ambiguous and imprecise language, such as "significant," "substantial," and "potential," will make it impossible for a coal mine operator to affirmatively demonstrate that his surface coal mining operation will not violate the standards set forth in Section 410(b)(5). The rigid and prohibitory approach of Section 410(b)(5) and Section 415(b)(10)(F) to surface coal mining in alluvial valley floors completely fails to recognize that under site specific circumstances it is possible to mine alluvial valley floors and still be able to assure the maintenance of the hydrologic functions of the area and restore the area to its original condition.

361 Additionally, federal and state environmental protection acts have made the federal and state governments responsible for making determinations of the types of impacts required by Section 410(b)(5). It is our position that by reason of both the placement of EIS responsibility and the lack of clear understanding of what the terms "alluvial valley." "hydrologic consequences," and "cumulative impacts," mean, no mining company should be required to determine or even guess at those impacts.

361 As previously mentioned, the States of Wyoming and Montana have in the past three weeks overwhelmingly defeated bills in respective state legislatures which would have prohibited surface coal mine operations in alluvial valleys in those states. These states recognize that it is in the alluvial valleys in the arid and semi-arid west that reclamation is most easily accomplished because of the presence of the two essentials, topsoil and water. Both of these states now have mine and reclamation laws which allow a site specific determination of whether to allow mining in an alluvial valley.

362 At the time when the west was settled, under the various Homestead Acts, those areas which are now called alluvial valleys were settled first, and the homesteaders owned the coal.Under Section 410(b)(5), almost all fee coal in these alluvial valleys would be prohibited

from mine development. With passage of S. 7 the owners of that fee coal could have taken from them property rights without due process and without compensation.

362 We urge that Section 410(b)(5) be stricken from the bill or amended so as to allow, on a site specific basis, within the purview of the state control, the consideration of whether or not mining should take place on an alluvial valley. Since the use of the word "preserving" in Section 415(b)(10)(F) can very easily be interpreted as an absolute prohibition on mining in alluvial valley floors, we recommend that this section be amended to provide for the "return during or after mining and/or reclamation the essential hydrologic functions of alluvial valley floors in the arid and semi-arid areas of the country."

362 If Section 410(b)(5) is not stricken, it should at least be amended to contain a clause providing that the provisions of this section would not apply to those surface coal mining operations wherein significant financial investments or legal obligations have been entered into prior to the date of enactment of the bill.

363 5. Section 414. DECISIONS OF REGULATORY AUTHORITY AND APPEALS. Time Limitations for Permit Issuance

363 Section 414 appears to have no defined time limits within which a permit would be granted. We request that specific time limitations for permit issuance and permit review be inserted into the bill so that, as a minimum, a permit could be issued after the concluding phase of the environmental impact statement analysis.

363 6. Section 415.ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS.

363 (a) Section 415(b)(3) - Approximate Original Contour

363 Section 415(b)(3) specifies that any permit issued under the Act meet all applicable performance standards which would include the requirement to bring the post mined surface to the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated. The inflexible approach provided by the provisions of Section 415(b)(3) fails to recognize that restoring the land to the approximate original contour may not necessarily result in the restoration of the land to its best use. We recommend modification of this provision to allow site specific determination as to the final contour by the state agency.

363 (b) Section 415(b)(12) - Activities Near Underground Mines

363 Section 415(b)(12) specifies that surface coal mining activities would not be allowed within 500 feet from active or abandoned underground mines. We would recommend that the bill state that whichever type of mining, surface or underground, occurred in the area first would have a priority right to continue mining according to their plan of operations. The later operation would come under the provisions of this Act.

364 (c) Section 415(b)(2) - Responsibility for Successful Revegation

364 Since we have accomplished successful revegetation within the five-year period, we suggest that Section 415(b)(20) be amended to provide for an operators assumption of responsibility and liability for successful revegetation for a period of five years in areas with less than 26 inches of annual average precipitation in lieu of the ten years provided for in the bill.

364 7. Section 422. DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING.

364 (a) Section 422(a)(3) - Criteria for Designation

364 We submit that the criteria used to describe areas unsuitable for surface coal mining are extremely ambiguous, and could rule out mining in almost any part of the country. Because of the lack of clarity in Section 422(a)(3), it is our judgment that continuous delay of permit issuance could occur by critical commentary from any one of a number of sources, official and unofficial. We request that Section 422(a)(3) be rewritten so as to clearly define those reasons why lands would be declared unsuitable for surface coal mining.

364 (b) Section 422(a)(6) - Grandfather Clause

364 We also request that Section 422(a)(6) be modified so that the requirements of the section will not apply where significant legal and financial commitments have been made prior to the date of enactment of the bill.

364 8. Section 423. FEDERAL LANDS.

364 Section 423(e) - Withdrawal of Federal Coal From Mining

364 Section 423(e) provides that all federal coal underlying lands with respect to which the United States is not the surface owner are withdrawn from all forms of surface mining operations and open-pit mining. This provision has been commonly referred to as the Mansfield

amendment to S. 425 of the 93rd Congress. This provision is extremely unfair both to western land owners and to operators who have purchased or want to purchase mining rights from the federal government.

365 It is true that this provision does not effect the right to mine coal from the affected lands by using underground mining techniques. However, it is important for the committee to note that much of the coal in these lands can only be mined by surface mining methods. This is due to the thickness of the coal seams, and the thinness of the overburden material. Consequently, underground mining of the coal deposits is not feasible.

365 My company, and I am sure the same situation exists with other companies, has entered into legal commitments and agreements on the basis of what we believe to be the right to mine strippable coal pursuant to our federal coal leases. Such agreements include contracts for the sale of coal to large utility customers for use as fuel in electric generating facilities and, additionally, include contracts for the purchase of mining equipment costing millions of dollars. The affect of this provision would be the confiscation of our strippable coal deposits granted to us under our federal coal leases, and would thus make performance of our coal supply contracts impossible. It is possible we could incur substantial financial liabilities as a result of not being able to perform our contracts.

365 Under the various homestead acts where the surface lands subject to the Ransfield amendment were transferred into private ownership with the coal deposits being reserved to the United States, recognition was given to the possibility of damage to the surface estate by those acquiring coal deposits from the United States and, therefore, these laws required the coal mining companies to obtain the surface owners consent to mine and additionally required the payment of damages. Section 423(e) takes away from the surface owner a very valuable right, the right to give consent. Additionally, if the surface estate has been acquired by the coal mining company, this provision would still prohibit the mining of the coal. It is important for the committee to understand that the property rights of the surface owner and the property rights of the coal lessee would be taken away by Section 423(e) without due process of law, and without provision for just compensation.

366 The reasons cited in support of Section 423(e) are that this section will protect the ranchers and farmers without giving them control over public resources.Our experience in the States of Wyoming and Montana demonstrates that the surface owner needs no protection and the surface land owners with whom we have dealt are not opposed to having their lands mined. The ranchers and farmers have been able to negotiate in the free market place terms advantageous to them. The interests and rights of these surface owners should not be restricted should they desire to have the coal underlying their surface mined.

366 Lastly, the committee should recognize that this provision is highly detrimental to the public, since low sulphur western coal would be denied to the public.This coal can and should play an important part in ending our energy shortage. In view of the checkerboard pattern of ownership in the States of Wyoming and Montana, this section makes impossible any orderly and economic recovery of the nation's coal resources.A coal company simply will not be able to develop a logical mining unit if all federal coal over which the surface is in private ownership is excluded from mining. We submit, therefore, that Section 423(e) be deleted from the bill.

367 9. STATE VERSUS FEDERAL REGULATION

367 We have dealt with, and are continuing to deal with all of the alleged problems S. 7 purports to address, including reclamation, alluvial valley mining, hydrology, surface owner consent and other considerations. We approve of the provisions of Section 423(d) whereby the state may elect to regulate surface coal mining and reclamation operations on federal lands within the state, but request that this section be amended to specifically allow state approval of all mine and reclamation plans on a site specific basis. Section 101(e) states that the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the states. We feel the responsibility has been appropriately placed with the states.

367 CONCLUSION

367 It is the position of my company that the mining of coal and the reclamation of mined areas in the States of Wyoming and Montana, have been effectively controlled by the laws of those states as well as by current federal regulations. Thus, at least in those states which have

stringent mining and reclamation statutes and regulations, the state agencies should continue to control surface coal mining and reclamation since they are more responsive to site specific conditions.

367 In the event that federal surface coal mine legislation is deemed necessary, we respectfully request that the amendments discussed above be given serious consideration.

367 Thank you.

368 Senator METCALF.Our next witness is Mr. Young.

STATEMENT OF STEPHEN YOUNG, CONSOLIDATION COAL CO.

368 Mr. YOUNG. Mr. Chairman, Governor Ford, we have three panelists from the American Mining Congress and the National Coal Association. After me would be John Paul of Amax Coal Co., and J. L. Jackson of Falcon Coal Co. We think it might be most constructive, since we will have a little bit of overlap on the subject matter, we are trying to cover comprehensively, if we could hold the questions until last. Of course, that is however you want to do it, sir.

368 I am substituting here for Gene Samples, who is president and chief operating officer of Consolidation Coal Co. Consolidation produces coal, about 54 million tons annually, and operates in eight States in the East, the Midwest and the West, in North Dakota since 1929, and we are the Nation's largest coal company in terms of employees and I guess financial figures. We are the second largest producer.

368 We produce about 54 million tons annually, about 70 percent of which is underground coal production.

368 Our panelists will attempt to address the substantive and procedural aspects of S. 7 in our comments and in our written submissions which we have already filed with the committee. We have - these final statements, we hope the committee will feel free to call upon us if there are any questions.

368 We think it is critically important that this bill be reviewed today in its historical context. The bill was written and conceived at a time, some 4 or 5 years ago, when our national political leaders were advocating the elimination of surface mining of coal as a matter of national policy.

This bill was perceived as a way of implementing that goal. The bill, in short, was concerned as
a means of encouraging the shift to the deep mining of coal as a matter of national policy.

368 Senator METCALF. That may all be true. I have been an advocate of surface mining
legislation for 8 or 10 years now. We have not viewed this as an advocacy of elimination of
surface mining. We had hoped long before this we would have some stabilization of the surface
mining industry and maybe the lawsuits over, and we could begin to start mining coal to alleviate
the energy situation.

368 I don't know to whom you refer as political, but as far as this committee is concerned, we
have not, and I repeat we have not advocated elimination of surface mining.

368 Mr. YOUNG. Mr. Chairman, I say that in the context the industry is of the opinion this
must be behind some -

368 Senator METCALF. I don't care what the industry's opinion is. I am telling you what the
opinion is of several of the advocates of this legislation. If that is the industry's opinion - I have
never agreed with Mr. Bagge, for instance - if that is his opinion, he is wrong and you are wrong.

368 We want to start mining coal. We want to stabilize the mining of coal all over the United
States.

368 Mr. YOUNG. The reason I think the witnesses are urging radical amendments in some
areas is to permit mining of coal under the bill.

369 Senator METCALF. Very well. But please don't question the motives of the members
of the committee and political leaders throughout the United States.

369 Mr. YOUNG. I will certainly follow that.

369 It is certainly especially ironic, we feel, in what we feel as the purpose, that this bill takes
such a strong stand against underground mining. It is to this single issue that I personally want to
spend a portion of the time alloted to me.

369 Each of the five areas I chose to address are proposed to be regulated with respect to
underground mining are either explicitly regulated by MESA and the Federal EPA or the
complete authority exists under existing legislation for the accomplishment of these objectives.

369 Nevertheless, this so-called surface mining bill would require deep coal mines, some 2,200 of them, large and small, to obtain surface mining permits. You would have to amend these permits even to improve your roadways or to put in an airshaft, or something like that.

369 You would have to get an amendment of your permit. You would have to amend your permit to get a new stockpile.

369 Four of these areas, the first four areas, are in section 415 of the bill. The first is subsidence. MESA presently has the authority to deal with this issue where it is a problem. But more importantly, it treats the issue of subsidence in the context of the overriding concern for the safety of the miner. Roof control and mining technology, which are directly related to the problem of subsidence, therefore, are primarily concerned with the safety of the miner. Any proposal that would compromise this objective should be summarily rejected.

369 Therefore, the entire question of subsidence should be left up to MESA as the appropriate and exclusive regulatory authority.

369 Second, backstowing. Another regulatory purpose of the bill is to require the backstowing of mine and processing wastes to the mine workings. Such a requirement imposed for environmental purposes will, I believe, raise serious questions in the safety of underground miners. Mine safety officials have voiced serious concern about this issue. It should be eliminated from the bill and treated, if at all, only by MESA.

369 Overall, I understand European mining companies and authorities have gone away from backstowing as a method of controlling subsidence.

369 Three, impoundments. The problem of impoundments created by the refuse disposal of underground mines are presently comprehensively regulated by MESA, as an aspect of its underground regulatory authority. Conflicts in regulatory authority established by this bill would usurp MESA's existing jurisdiction and its program for the protection of the public in this vital area. It should be eliminated from the bill.

369 Fourth, water discharge. The act also attempts to regulate the release of suspended solids from coal mines. This effect of underground mining, and surface mining also, for that matter, in another portion of the bill, is presently adequately and comprehensively regulated by the National

Pollution Discharge Elimination System under the Federal EPA. This additional regulation would, therefore, be wholly redundant.

370 The fifth area, in another section of the bill, subsection 415(b)(12), on page 74, relates to the operations near underground mines. This subsection would bar mining within 500 feet of an active underground coal mine without any consideration as to whether it can be done safely. Nothing in this subsection defines what constitutes an existing mine. Additionally, the provision fails to account for the vertical distance whereby the surface mining of coal above a deep mine can be achieved safely. For instance, 500 feet may not be sufficient distance between surface and underground operations when unconsolidated matter is involved. In most cases, 500 feet is adeqate. On the other hand, considerably less distance is required where you are dealing with limestone or rock material; because this involves worker safety this is more properly a function of MESA. Moreover, MESA is continuously and very effectively regulating the relationship of underground and surface mining and should continue to do so as the sole agency.

370 Additionally, MESA should have the discretion to authorize mining closer than 500 feet from the underground mines in instances where it can be accomplished safely.

370 I am reliably informed there are a number of mines in several States that would be seriously affected by this provision and surface mining could not continue.

370 To impose a complicated and overlapping regulatory structure which interjects conflicting environmental objectives and duplicate regulation on deep mining will be counter-productive.

370 Underground mining is already comprehensively regulated by MESA under the Coal Mine Health and Safety Act, and we think section 416 can only frustrate the principal objective of the legislation, the safety of the miner.

370 S. 7 would directly conflict with MESA and the EPA authority in several critical areas. In short, all significant portions of the bill purporting to deal with any aspect of underground coal mining should be totally eliminated from the bill.

370 Our next panelists are John Paul and J. L. Jackson.

STATEMENTS OF JOHN PAUL, AMAX COAL CO., AND J. L. JACKSON, FALCON COAL CO., REPRESENTING THE NATIONAL COAL ASSOCIATION

370 Mr. PAUL. My name is John H. Paul. I am Vice President of Public Affairs for Amax Coal Company, a division of Amax, Inc.

370 I appreciate the opportunity to be here today and testify on S. 7. Amax is the third largest producer of coal in the United States. We have operations in the States of Illinois, Indiana, Kentucky and Wyoming. Currently, a majority of our production comes from our eastern mines, although next year our Belair Mine, which is in Wyoming, will produce about 50 million tons of coal and will be the largest coal mine in the United States.

370 Industry representatives from National Coal and the American Mining Congress, testified before Mr. Udall on January 12th, that the association did not believe there was a need currently for legislation in this area. I believe the testimony of that panel at that time substantiates that position. I would also add recent statements and announcements by State officials, by elected representatives, by union representatives, and others, have also commented on the fact there have been changes in the States since the time the Congress began deliberation in this area, and he really questioned whether in fact the need does exist, and we believe the House and Senate should take another look at that question of need.

371 However, our purpose here today is to address the specific objections to the proposed legislation. I think I would first state I don't think we in the industry see many substantial changes in some of the very critical areas. We have testified at markup sessions that have attempted to have changes made in the past.

371 There are numerous areas within the proposed legislation which we believe are in fact unnecessary and/or ambiguous and the panelists will talk about all of them that are of particular interest to them.

371 I would like to address several issues that are of particular interest to Amax and other miners who mine the same geographic locations we do.

371 I have submitted a full written statement. I hope that it will be incorporated into the record. It draws on a lot of issues which I will not dwell on in my oral testimony.

371 An area of the bill which is of major concern to all coal operators, regardless of size or

location, is the issue of hydrology. Subsection 407(b)(11) requires all operators to include in the permit application, among other things, a determination of the hydrologic consequences of the mining and reclamation operations both on and off the mine site. With respect to the hydrologic regime the quantity and quality of water, etc., and those measures are in regard to seasonal flows and seasonal conditions.

371 All of that is aimed at the probable cumulative impact of the hydrology of that area. This requirement applies to all surface mine operators who are required to file a permit application within 20 months after enactment of this act.That is regardless of whether a State program has been approved at that time or whether a Federal program has been finally implemented. I think it should be noted, Mr. Young testified 416(b)(9) also imposes requirements on underground mines in regard to hydrologic balance at the mine site, and again, in associated off-site areas.

371 Most western operations involve Federal lands and therefore all are required to file environmental impact statements. That statement includes site specific hydrologic information which should be sufficient for a determination of the on-site impact of the mining activity.

371 However, a determination which will satisfy the regulatory authority as to the cumulative impact appears to be extremely onerous, if not impossible within the time frames as we see them in the bill. You must remember, the States have up to 18 months in which to submit, the State program and the regulations. The Secretary then has a 6-month period for approving it and it is subject to the 6 months additional time, if there is legislative activity required by the State and the Secretary may approve those programs in whole or in part.

372 So you are looking at a considerable amount of time. The program may not be approved yet we may be required to file this on-site, offsite hydrologic data within the period of enactment.

372 Legal questions concerning access to surrounding areas create substantial problems. It is also unclear, assuming you can obtain the necessary approvals for these offset studies, what is the anticipated mining that we have to study to look at the off-site impact, as current proposed?

372 The operator would be required to project the cumulative hydrologic impact of the mining

operations in the area of his proposed operation. We would recommend that the hydrology provision be modified to provide that the regulatory authority must clearly outline the cumulative hydrologic impacts which must be determined and so forth precisely in the surrounding areas in which these impacts would be measured. These are very important in this bill. Anything that could be done to straighten out these things would make it much easier for the operator.

372 The application of the hydrologic requirements in 415(b)(10) as it applies to alluvial valleys has been referred to in our written testimony and by one of our previous witnesses who discussed it at some length. This section requires the operator to minimize the disturbance to the hydrologic balance at the minesite and then in associated offsite area, is also an interim standard which applies to all existing mines, regardles of size or location, not later than 135 days from enactment. Frankly, we question whether the allowed time provides a realistic opportunity for the operator to make the necessary changes which in many cases will be already approved ongoing coal mining operations, in order to meet these hydrologic requirements.

372 We would suggest that some modification be made to those requirements. Subsection 501(27) must be reviewed in connection with subsection 410(b)(5) which prohibits the issuance of a permit if there is a substantial adverse effect in whether mining can be practiced, including potential mining and ranching.

372 The third section provides the central hydrologic functions of alluvial valley floors must be preserved through the mining and reclamation process.

372 Mr. Sturm addressed that problem in some degree. I would just like to state we don't operate in the identical areas in which they operate, but we do operate substantial reserves in Wyoming and Montana, and this alluvial valley floor provision, as you then reas these three sections together, is going to cause us potentially serious problems out there. Under this language, and the combination of the three sections, it would be very easy to read into this language in fact mining cannot proceed in those alluvial valley floors.

372 If you look at the area of Wyoming, Campbell County, where we operate, from a hydrologic point of view, probably the whole county is in an alluvial valley and a case could be so argued under the language of this bill.

372 I think too many times the dialog between the proponents and the opponents of this legislation has become bogged down and perhaps counterproductive because individual subsections are discussed without a total review of the probable impact of all of the cumulative language. I think lack of clear definitions and varying interpretations of all applicable language could result in restrictions which preclude mining in areas where there are perennial intermittent - or perennial streams.

373 If the bill is enacted, we believe it is imperative the legislative history make clear the implementing regulations, recognize each type separately with regard to its importance to the overall agricultural activity in the area.

373 My written testimony contains detailed references to all of the applicable language covering alluvial valley prohibitions. However, I think again, Mr. Sturm mentioned the overall approach combined with what we believe is ambiguous and difficult to define language in some cases, creates a potential prohibition of major surface mining reserves in the West.

373 The subject of areas unsuitable in land-use planning must be carefully addressed. Section 402 establishes a procedure whereby each State shall establish a land-use planning process in order for the State to be eligible to assume primary regulatory authority pursuant to section 403.

373 Not only is this the establishment of a federally required and enforced zoning program, but we believe it ignores the needs and goals of the individual States.

373 In subsection 422(e), there is a long list of criteria, such as affects fragile and historic lands, and important historic, cultural, scientific, and esthetic values, and natural systems. I don't know what the phrase "natural systems" means. These criteria are vague and are subject to future subjective determination by the regulatory authority. In fact, under the broadest interpretation of all of this criteria, I think you could potentially preclude mining, potentially everywhere in the United States.

373 If there is to be federally imposed State use planning, and we do not support that concept, it is our opinion the States are the ones to determine the criteria that should be included in the program, in order to meet their own individual needs and goals.

373 The impact of this section becomes even more critical in the overall mining process when it is recognized that 422(c) allows any person having an interest which is or may be adversely affected to petition the regulatory authority to have an area designated unsuitable for surface mining.

373 At this point, I would like to direct the committee's attention to the absolute necessity of inserting a true grandfather clause in S. 7. I believe the grandfather clause should be clear and incorporate both existing operations, presently producing coal, and those operations to which we have made significant financial and other commitments. The House bill does include a grandfather clause, including the alluvial valley, although again, we have serious questions about all of the language in those grandfather clauses.

373 I think our position in regard to the grandfather clause is supported by last year's House testimony and last year's House committee report that accompanied the legislation. I think the recently submitted ICF study also addresses the issue of grandfather clauses and I believe their conclusion is, it is in fact, necessary; and I believe they have suggested language in their report.

374 I understand you don't want to go into the Mansfield amendment, but I want to be on record that that provision could have tremendous impact and, unfortunately, is not only prospective impact but, as we read that language, it would affect our existing operations and current leases.

374 Senator METCALF. We will take judicial notice that you are against the Mansfield amendment.

374 Mr. PAUL. Thank you, Mr. Chairman. I have addressed a few of the major problems. These areas point out if the bill is enacted in its present form it could prevent the mining of millions of tons of coal without, we believe, true regard to the goal of the legislation which is, if in fact, mining can be conducted and reclamation to meet the standards of the act.

374 Thank you for the opportunity to appear here today. I will be happy to answer any questions after Mr. Jackson reads his statement.

374 Mr. JACKSON.Mr. Chairman, Senator Ford, I am J. L. Jackson. I am president of Falcon

Coal Co., which is engaged in the surface mining of coal solely in the Commonwealth of Kentucky. I am also a director of the National Coal Association.

374 I appreciate this opportunity to appear before this subcommittee. All of Falcon Coal's operations are conducted on the steep slopes of eastern Kentucky. I will try to confine my remarks to some of the aspects of the bill which affect such operations. However, I do believe that my comments are applicable to most of the mountainous terrain of Appalachia. I will attempt to confine my remarks to those aspects that most directly affect production. In order to save time, I will discuss only some of the significant concerns with which I am most familiar.

374 I would like to stray from the written statement, if I may, and file it and just cut down on the time. I know we don't have very much time here.

374 To set the stage for remarks I would like to make, I would like to focus your attention on the principal causes of environmental damage from mining on the steep slopes. I don't know, Senator, whether you have visited the Appalachian coal mining areas and have seen the damage that we have there that none of us are proud of -

374 Senator METCALF. I have visited so many strip coal mines and surface mines sometimes it makes me sick at my stomach.

374 Mr. JACKSON. That is what we are here about and I understand that. Those are the legacy we have to live with. I meant we are tarred, to a certain extent, with the brush that caused those things, and we are trying to demonstrate now that is not the way we do our business any more.

374 Senator METCALF. And I certainly assure you I want you to be able to continue to mine coal in every area of the United States. That is the purpose, I think, of every man on this committee and we welcome your criticism of this legislation.

374 Mr. JACKSON. I think there has been so much association with the environmental damage, especially in the steep slope areas with the high walls, and I think that is an area that needs to be looked at in more depth and clarified. The actual environmental damage results from excessive spoil being placed on the outslope.We have not found a way to stabilize this spoil material that is put on these incline surfaces. The amount of spoilage put there has been

attributed to it, but any amount you put there is difficult to control.

375 Unfortunately, all of the high walls you have seen have been left in conjunction with an operation that has taken that spoil, that has originally been in place against that high wall, and put it on an inclined slope, down a dip from the coal seam. The instability of that material has created landslides. We have not been able to control the erosion of that material, which has caused sedimentation of the streams, the leaving of any minerals that have been in that consolidated material have caused mineralization. And all of the problems, I want to emphasize, are caused by putting this spoil material in an unstable situation.

375 We have had problems with revegetation on that. If you can't make it stay still long enough, you can't get anything to grow on it. So how can we avoid this, still mine it, and still provide environmental protection.

375 I think one way we can do this is the mountaintop mining. Is mountaintop mining the answer? I would like to pose that question. We think it is.

375 We have demonstrated in eastern Kentucky, in precipitous terrain, that mountaintop mining is not only an acceptable but a superior means of mining and protecting the environment, and resulting in better land uses than before the mining was accomplished. We think it is an acceptable and approved mining technique.

375 In the bill we think it should not be handled as a variance of some other allowed mining technique that has been written in the bill. We think we have demonstrated that it is acceptable in all respects and should be recognized as such and should be permitted, and not as a second cousin of something else and called a variance.

375 We have been taking the excess spoil material that is not kept on the mountaintop after the mining is done and we have been carefully placing it in certain hollows, in the heads of the hollows where the creek comes up against the side of the ridge. We can't do this in all hollows because they are not all susceptible to holding this material in a stable situation.

375 The department within the State studies the high wall and if it conforms to the criteria that we believe will allow us to maintain stability, erosion, sedimentation, slides, we get permission to make that a spoil disposal area.

375 We have been using these, and I know this is recognized in the bill as one of the ways for waste spoil disposal. We think it is a good one. I have said previously in testimony the three major benefits, without being more specific as to land uses of mining in Appalachia and more specifically, in mountaintop mining, is in order to get our coal out, get our machinery, and we have to build access. We build roads that are far better than anything that ever existed in that area previously. We haul heavy truckloads of coal over there. We spend much time and effort in maintaining those roads, and when that mine is completed, we have the basis there for a blacktop top or whatever you like, which will be there for years and years to come if we keep some kind of maintenance of that in the future.

376 So we are providing access to areas that were previously inaccessible. I think this is very important. Then when you get there, with this access we have provided, we are providing a flatland, and flatland in Appalachia is very much at a premium. About the only flatland that exists for the local people to use are along the creek banks and the flood plains. These are fine for short-term purposes but because of the terrain and the flooding that occurs in watersheds up above the creeks, these flood plains always are flooded during certain times of the year, so you can't put a permit on those.

376 These are areas we are providing which are high enough in elevation, they are above the flood plain, so we are providing additional flatland, much additional flatland, in addition to what has been there previously.

376 If we are allowed to leave a configuration on these mountaintop areas, such that we grade the mountaintop back toward the center, the rainfall that actually falls on the area that has been mined will drain back toward a central location, where it is above a solid base, so there is no question about causing landslides. Then we can accumulate the water, slow down the runoff, let the sediments fall out, and then, by controlled drainage, drain it over a drainway, a spillage, over the mountainside where there has not been any mining done. Therefore, we can control erosion and sedimentation that way.

376 In addition, it provides a water source at the mountaintop that would not otherwise be provided. Otherwise, you would have to go down to the creeks and either dam up the creeks or

whatever, in order to have a water source. I think these three basic ingredients, the access to the flatland, and the water source, open the door to many, many uses that have not been available to this land in the past.

376 The land-use situation, I think, is very important in this bill. We think this type of mining is compatible with private landowners' desires because of the preferred uses. I don't know how many people realize it, but most of the land in Appalachia is privately owned, the surfaces. We lease the minerals, sometimes the minerals have been separated from the surface. The surface owner is only interested in the use of the land after the mining is done. In our situation, there is not an instance where we have not made settlement with the landowner, the surface owner, where he does not own the minerals, settle with him for inconvenience, damage, or whatever, to his land. But these same surface owners are very interested in the configuration at which we leave that land. I think this has been overlooked, to a certain extent, in this legislation and their wants and desires as to how the land may be left should be taken more into consideration.

376 It is very difficult for us to make a very extensive, broad land-use plan when you may be mining on 100 acres on which there may be 10 different surface owners. Each one of those guys has his own opinion as to what use he would like to put that surface when the mining is done.

376 I think, generally, our experience has been with the flatland that we have left, they wanted it planted in grasses suitable for grazing. The main reason, I think, for this is it the most immediate purpose to which they can put the land. I think after years of grazing, and the planning and growth of certain legumes, and grasses on there, with the conditioning of the material, with the spoil that has been left up there, eventually that land will be suitable for agricultural purposes. I think it suitable for some limited agricultural use now, such as hay meadows and alfalfa, and certainly as a grazing field for cattle.

377 We have experimented with vineyards on the mountaintops and have met with, we think, substantial success. We think this is one of the possible land uses that will be available through providing this flatland and the water.

377 Another concept I would like to get into is the original-contour concept. Is it an answer, or is it the answer, or what?

377 I think the original-contour concept is the answer. There are instances where we are doing it at the present time. The circumstances dictate, although Kentucky law does not say we have to do this, the circumstances so dictate we reclaim the land in that manner. But there are many other instances where it is not the answer in our opinion.

377 If you have to put the land back to as steep a configuration as it was originally, you limit the land uses. If you have to do it that way in order to protect the environment, then, even though it limits the land use, usually you have a tradeoff, so you have to make the decision of which way to go.

377 Why is the answer, if the committee thinks it is the answer, that it control landslides, sedimentation, stabilization, and does it allow vegetation? I think some of the consultant studies that have been presented will dictate and will indicate the steeper the configuration of the land when you put this disturbed spoil back in place, if it were originally at 25 degrees, and you put it back that way, it is much more difficult to control erosion, landslides, sedimentation, and to establish revegetation than if you were to put it back at, say, half that degree of slope.

377 I recognize we have to have some suitable place to put the rest of the spoil because we can no longer put it on the downslope. That is certainly not an appropriate place for it. I don't advocate that we be allowed to do that. But in instances where we can put it in another location and prove we can better control the environmental damage, and that we can provide better land uses.I think the bill should have some flexibility and allow variations from the original-contour concept.

377 I don't know why there has been so much concern with highwall. I don't think the highwall or elimination of the highwall is not true environmental protection. I think it has certain negative esthetic and cosmetic impressions and these are worth something to us. But whether they are worth more than the true environmental protection and the additional land uses that might be provided by alternates, I can't say I agree with that.

377 Will other techniques accomplish the land-use goals more efficiently? I think they will. I think. I think what I have been saying about the land-use configuration that is less steep will accomplish the true role of this environmental bill.

378 There are other problems within the bill that I think some of the other gentlemen have addressed. The one I did not intend to speak on, but which I think is very appropriate, is the situation of the prohibition of surface mining within 500 feet of an active or abandoned mine, underground mine, as I understand it is going to take many millions of tons of coal out of the coffers of the State of Kentucky if that is true, and if it is put into effect.

378 Where we have old underground mines, where they have actually mined out all of the coal that they can through underground mining techniques and coal seams which are above drainage - which means they outcrop on the oustide of the ridge, at a certain elevation - and you can go all around the perimeter of a ridge and find that coal seam there, because of the instability of the roof conditions, if you get with a certain limited amount of overburden or a certain limited amount of material above the underground mine, you have to quit mining. You can't go all the way and punch the mine out the side of the hill.

378 So where this underground mining has been conducted, there is a perimeter of coal that is left between the area where the underground mining was stopped and the actual outcrop of the coal seam at the surface. The best technique we have for recovering that additional coal is where these mines have been worked out, go back and do contour mining and pick up this additional coal.You can do it by stripping. You can do it auger mining. Personally, I don't think auger mining is a preferable way from the standpoint it provides too much waste.

378 With auger mining you can recover approximately 30 percent of the area you penetrate with the auger. In strip mining, you can recover essentially 100 percent. I don't know what was intended by this language. Maybe some kind of safety protection or what. But I think this certainly needs to be looked at. It will eliminate millions and millions of tons of good mineable reserves that cannot be recovered by any other means if we stick to that particular language.

378 There are some other ambiguities and contradictions, I think, in the proposed bill which should be noted and dealt with. The problem areas I have discussed are of major importance to me and to what I think would be a workable and a sensible bill that really has the objectives of allowing mining, as you have said the committee intends to do, while providing meaningful

assurance to environmental protection.

378 We know we have to protect the environment and we are ready to do that.We don't want a bill that would be punitive and restrictive so we can't conduct the mining process and do our best to provide better land uses and good environmental protection.

378 I appreciate this opportunity. Thank you, very much. If you have any questions of me, I will try to answer those at this time.

378 Senator METCALF. Thank you all. Senator Ford?

378 Senator FORD. I have two or three questions I would like to ask. I will not take very long.

378 Chairman Udall visited Kentucky several weeks ago, as he did the Pine Mountain area, about which we had testimony earlier today, and he made this statement after he visited there: If we can put the language in the bill to leave the land in better condition after it has been mined, as some of this has been shown to be, and I think that speaks very well for the type of operation out there.

379 Mr. Franzman, who was representing Mr. Orr, and who testified this morning, indicated mountaintop removal and hollow-fill can be a very unique and fine procedure. Why does the industry prefer to use the head of a hollow-fill for soil replacement rather than the original contour?

379 Mr. JACKSON. Senator Ford, I think in contrast to what some people believe, once you set the stage and say we cannot put spoil on the downslope, then you have changed the cost of surface mining as it has been allowed.

379 In Kentucky, as you know, we have come from no restriction on replacement of the spoil, when mining was originally down there, the contour mining, the material was simply shot and blasted above the coal seam. These are hard and consolidated rocks and you simply don't take bulldozers and push them directly off the coal seam on the downslope.

379 The cost of mining is proportional to the amount of overburden that you move and how far you move it.So obviously, the closest place you can get it off the coast is to simply push it over the side of the hill. Because of the land slide problems and our strip mining legislation in

Kentucky, we have progressed from that to a limitation now of only a pit of a certain width. If the degree of slope to conform with a particular degree of slope, and then all of the spoil, except 40 percent has to be put back up on the bench, or put in some other disposal area, so now we are limited ot 40 percent.

379 If we eliminate that other 40 percent, and we have to put the spoil material somewhere else, we can no longer do this with bulldozers or in-loaders, where we have carried the material and dumped it over the side.We have to load this material in rear dumptrucks, or some other larger capacity hauling units. Then it is simply a matter after you have loaded the material, the distance you have to haul it, as to what it costs you.

379 If the haul distance is shorter to put it behind you on the bench and restore the original contour, that may very well be cheaper than your next alternative.My real objection to doing this is in all instances, if I have to put that material back out, any degree of slope, that is too steep, it is going to be very difficult for me to maintain it there in a stable manner. And I am going to be responsible for the work I do, and I know that. We may have a 5-year limitation on the thing and get our bond released. But someone is going to be looking down my throat more than 5 years from now if the spoil I put back against that highwall does not stay up there.

379 So my objection to it is not cost at all. It is whether or not that is a preferable way to actually protect the environment. I have to live with the landowner, too. He has his ideas about what he would like to use that land for, and I have to get his permission before I ever mine. It is a lot easier to get his permission if I can show him I can leave a gently sloping piece of land up there, rather than a steep configuration that it had before it was ever mined.

379 Senator FORD. Mr. Jackson, are you saying a 14-degree slope, where agricultural equipment would be able to travel over, in reduction of highwall area, that sort of procedure, would be acceptable, or would you say acceptable in addition to the hollow-fill?You are going to have some hollow-fill even with that reduction at the highwall, leaving it at 14 degrees. But do you think this would comply with the surface owner's desire?

380 Mr. JACKSON. Yes; I think it would. Senator Ford, regardless of whether we go

through the original contour concept in all instances or not, there have to be additional spoil disposal areas. You are taking the volume of rock that was undisturbed, sedimentary rock, and you are blasting it. You have about a 30 percent swell, so you have about 30 percent of the original material that was there that is not going to fit back up there anyway. You have to provide some relief for this excess spoil material.

380 What I am saying is in many instances it might be better to take 50 percent of it and put it back in a hollow-fill or something so you can leave the bench or the configuration there in a much more usable manner. Like you say, at that degree you can control the sedimentation, you can control the landslides, you can establish better revegetation. I think the surface owner will be much happier; yes.

380 Senator FORD. Before I go to the next question, the hollow-fill is only an improved area where the creek does not come up - what kind of area would be approved for the head of the hollow-fill? What would have to be taken into consideration to be sure it is the right place to put your overburden?

380 Mr. JACKSON. The degree of the slope of the hollow-fill and the configuration you leave that fill in there once you are through, in our instances at the head of the hollow where the creek runs against the side of the ridge, it becomes very steep and in some hollows it is steep for some 200 or 300 feet. In others, there is a definite break. So the hollow-fill would tow-out, or the point of the hollow-fill would be at an inclination of something no greater than 10 degrees, and I am not certain what the criteria; I don't have our engineer with me.

380 But only those hollow-fills that have that particular configuration are susceptible to the permission by the department.There are many hollow-fills or hollows that are closer to the area we are working that we are not allowed to make hollow-fills in because we can't demonstrate the material will be stable.

380 Senator FORD. If no coal mining was involved, could the landowner level his land to achieve the use he wants to make of his land?

380 Mr. JACKSON. I guess he could if he could afford to do it. But we are spending millions and millions of dollars in earthmoving, is what we are doing.This is paid for by the value of the

coal we extract. As a practical matter, if a surface owner wanted to level a mountaintop up there,
just for the additional value and the additional use he could put that land to, he could not afford
to do this.

380 This is one of the reasons - I have had some of the private owners tell me they feel so
strongly about their right to voice in the consideration of the condition the land is left in. If the
fill is returned it has to be returned to that slope and there are other alternates, then they intend to
question this in the courts.

381 Senator FORD. What you are saying to this committee then is not only can you secure
the coal from the property but you can leave the property in a more valuable condition than it was
prior to your going in surface mining, that you can leave land that is very desirable, particularly
in eastern Kentucky, because it is very level?

381 Mr. JACKSON. Right.

381 Senator FORD. Not many people understand, men will take a year or so of their lives to
make a bench to build a house on, because that bench becomes level and the land is very
desirous.

381 Mr. JACKSON.All I am saying about that, Senator Ford, is if we can demonstrate there
are preferable land uses such as that, and in addition, if we can demonstrate all of the other
criteria of the bill for protection of the environment, like your sedimentation and all of the other
things that can be adequately assured, then there ought to be in the bill some flexibility for a
variation for that type of thing.

381 Mr. YOUNG.Also in the contour mining of a very steep mountain like that, it has been
done in the past, you can only ring around the edge of the mountain and sometimes auger in.
When you auger in you get maybe 55 percent recovery - don't hold me to that figure.

381 Senator FORD. I think it is less.

381 Mr. YOUNG. You certainly waste a lot of coal. Also, you cannot deep mine thin seams.
So a very important aspect of mountaintop mining, you can get two or three seams of coal some
of which would never be mineable by present underground techniques. You can get 100 percent
of the coal. I think that is very valuable.

381 Here is a point I would like to make. On page 80 of the bill, it requires absolutely that you leave a tow around the mountain, at the bottom seam, when you mountaintop mine. I think that should not be an absolute requirement. That ought to be up to the discretion of the administrative authority.

381 The tow around a large mountain might be 2 or 3 miles of coal you are leaving around the mountain, whereas the administrative authority might say it is not necessary for stability purposes or other reasons in this particular seam and this particular mountaintop to leave that and waste that coal.

381 Senator FORD. Where did you say you represent most of your coal, you are the second largest producer in the country?

381 Mr. YOUNG. Most of it is in the East, Virginia, Ohio, Illinois, and Pennsylvania. We have small operations in the West and considerable reserves in the West.

381 We are right across the border from you in Middlesburg, Ky. We are down in Tennessee with an underground mine down there, too.

381 Senator FORD. I understand 70 percent is deep mining?

381 Mr. YOUNG. Yes, sir.

381 Senator FORD. Let me get something out on the table here. You hear someone talking about it, and you don't see much of it in print, but I would like to know if this bill in effect would restrict the development of Appalachian coal and/or encourage the production of western coal?

381 We have two fine gentlemen here, our friends, and one is going to have 50 million tons of production next year from western States. I am very familiar with Mr. Jackson's operation and I am pleased that Chairman Udall on his visit liked it, and Secretary Andrus, but Mr. Paul, you are going into a large operation in the western part of the country where there are totally different mining techniques than east of the Mississippi and the two gentlemen to your left.

382 Could you give the committee the benefit of your opinion as to what this bill would do in relationship to western coal and eastern coal?

382 Mr. PAUL. We have operations in west Kentucky, which are obviously different than in

eastern Kentucky, however, they are also different from the situations in Wyoming.

382 Senator FORD. You really have two different situations in one State?

382 Mr. PAUL. Yes; In your State we have two separate distinct coalfields with two separate distinct problems. We don't have contour programs in Muhlenberg County and those areas that J.L. is confronted with. I think the industry's position, in response to your question, would be a great deal of us feel we are both getting it.J.L. has discussed the provisions dealing with contour, original contour, and mountaintop mining which are critical to eastern Kentucky, Tennessee, Virginia, and perhaps Alabama also. Whereas our situation in west Kentucky, where you deal with the hydrologic problems, the designated areas are unsuitable, all of the procedures that we have outlined in our papers, they are going to have potentially significant impacts.

382 When you go west to Wyoming, and you go to Campbell County area, around Gillette, where all of the major developing is coming in, I testified to you orally the alluvial valley provisions, the hydrology provisions, are tremendously important to those operations. If interpreted as I interpret them, they conceivably could move vast sums of current reserves and have an immediate impact on current production.

382 The ICF study, for instance, says alluvial valleys going from low to high, but they indicate by 1985 if the alluvial valley provisions were interpreted adversely to us, it could affect over 100 million tons of production in 1985 out there.

382 So I would say we all have our problems. We have our problems in the Midwest, in the areas of Indiana and Illinois, that are not the problems Mr. Jackson is confronted with nor are they exactly identical to the problems we have in west Kentucky.

382 I think basically all of those provisions impact and if interpreted adversely to us by the regulatory authority, whether it be State or Federal, the impacts will be felt all over the Nation and the loss of tons could be considerable.

382 Senator FORD. With your permission I would like to submit for the record two pictures, and I have several more, of the reclaimed land under present Kentucky law. I think the pictures will indicate what can be done and what is being done in eastern Kentucky in reclaiming the

land, and it also indicates what Mr. Jackson will do which relates to mountaintop removal and
hollow-fill, that his area will look identical to this in eastern Kentucky that we now have in
western Kentucky. But we do have two separate problems, the hydrologic problem you
mentioned.

382 [The picture referred to appear on the facing page.]

383 [See Illustration in Original]

384 Senator FORD. Now, let me ask one other question. Do you have the people, or are the
people available to do the job, the hydrologists, the engineering, that sort of thing; are those
people available in quantities necessary to keep you up to date? We are talking about several
hundred acres and a permit, we were talking this morning about 8,700 acres, under the planned
stripping and reclamation. It is not just something you start, but it is a long term basis of several
thousands of acres. Are the people there?

384 Mr. PAUL. It is our opinion if this legislation passes, Senator, the hydrologists are going
to be the most sought-after individuals in the world, I think. I think there is going to be a
problem and it is not going to be just for the small companies. I know this morning you had
testimony from several people and there was testimony on the House side that in fact the House
bill provides a separate section, an attempt to do the hydrologic work for the small operators, and
they call a small operator anybody who produces under 250,000 tons. I contend the provisions
are not just the problems of the small operators.

384 Granted, the small operators don't have the staff the big operators or big companies have,
but the requirements of this bill are much broader than currently confronted with. We had
problems with one of the largest environmental sections of the coal industry and I know we are
not going to be staffed.And, I don't know where we are going to get the people to address these
problems.

384 The smallest operators, perhaps J.L. is not a small operator but he is familiar with the
operators in eastern Kentucky and is in a better position to assess if they can meet it and how.

384 Senator FORD. Are there any jobs that can be done, say, by inhouse people? Securing
water, checking the water drainage at certain periods of time. They don't have to have a degree or

a Ph.D. to do that. What I am trying to get to, as I understand it, we have gotten sophisticated now. We have hydrologists, engineers, and we are really going gung-ho. We even have what we call paramedicals for doctors now. But why can't we in eastern Kentucky, where we have a pretty decent community college system, provide courses for your employees where they would be qualified after a certain period of time to do certain things that would help you or help the small operator to alleviate them of that responsibility of having very, very expensive people come in and do this work?

384 Mr. JACKSON. Senator Ford, I think we are going to have to do that. We have started in a mild way a program similar to this in conjunction with some of the small colleges in the mining areas. We have sent our engineers over with the staff at the college to try to design some courses and some field experience in various aspects of mining technology such as water sampling and checking for sedimentation and siltations to see how effective that we are in the control of mineralization in conjunction with the University of Kentucky. They have their people up on the property almost continuously looking for better vegetation to put back on the reclaimed areas.

384 But as John Paul says the even smaller operators have a much bigger problem.They cannot afford to have a staff of technicians and technical graduates that some of the larger operations even our size have. There is going to be a tremendous need for that under this legislation. I don't know how we are going to get it all done.It would be a tremendous roadblock. The little operators are going to have to go to the larger operators and pay them a contract fee or something to try to get them - and, of course, that is your competitor; that is not a very good process either - and it will create a tremendous problem.

385 Senator FORD. What I think we will have to do under this legislation is use some commonsense. If we can use the commonsense approach that come from those with experience and that is admitted by those who are trying to secure the passage of this legislation, those people are doing a good job. The language of the bill, if it provides that, I am going to go with that.

385 This is what I want. This is what I see should be done. Hopefully, we can get into that kind of position in the final analysis of it. I do understand you then, that you think an accepted

permitting practice should be under this legislation of mountaintop removal and hollow-fill;
those two things must be accepted under the permit rather than under the variance?

385 Mr. JACKSON. I think they should be. If you don't do it that way, there is always going
to be a disagreement or there is always a possibility for - my lawyer always told me if you can't
agree to something, don't put it in the agreement. If it is acknowledged that this is an acceptable
mining practice and mining technique, then I don't see why we don't admit it and put it in the bill
that way.

385 Senator FORD. Let me ask you, you all are big operators, and I say that in a very
respectful terminology, but the Senator from Louisiana this morning was talking about the small
operator from we always talk about we are going to take care of the small operator and that sort
of thing but when we develop our legislation we put the small fellow out of business and the big
fellow gets bigger.

385 Say this legislation is passed as is, even with the mountaintop removal and the hollow-fill
as acceptable permitting practices, what would it do to the 250,000 ton per year or less operator;
what would it do to him?

385 Mr. JACKSON. Senator Ford, I can't answer that any better than I can the question
someone asked me in the past, some of our stockholders, as a matter of fact. If this legislation
were to pass, what would it cost?

385 The reason I can't answer that is until we know how the regulations are drawn up and
exactly what this bill needs, it can be anywhere from a small amount to putting us out of
business. The permitting process here I can see almost infinitely lays in getting a mining permit.
This costs money. You have your investment in your men and equipment, and especially the
small operator, smaller than we are, they are going to have a very difficult time getting their
mining permits approved.

385 I think this permitting aspect, although this was not part of my subject matter for me to
address here today, is one that is very, very serious. If we put processes in here - I think someone
presented a critical flow diagram or something, to show how many hands these things have to go
through. Any one of them can stop the thing almost indefinitely. This is the type of thing that

will put you out of business. I think that is really the biggest threat to the small operator and to
the operator our size, not necessarily your return to original contour or mountaintop mining.

386 That is what I think we are most concerned with.

386 Senator FORD. I have several problems relating to the bill. I am going to be with the bill,
but I hope we can get a bill out with some commonsense in it. What we are doing, we are relying
on those to develop the regulations and interpret the regulations to really tell you whether they
can operate or not, and they will have to develop those regulations under the language of the
legislation that is passed.

386 I think we need to have some oversight on those regulations before they are actually put
on you to comply with, to see what our intent from this side, as it gets out on your side, is one
and the same. The small operator, for instance, I talked to someone the other day where they
purchased over 2 years ago - or ordered a piece of equipment - and that piece of equipment cost
in the neighborhood of $500,000. They put up $2 00,000. I am probably talking about peanuts
for some of the large operators. But they put $2 00,000 down and it is a noncancelable contract.
It arrived last month. He didn't mine much last month because of the weather.They have a piece
of paper for $2 60,000. If this legislation goes into effect, they are going to eat that equipment,
go bankrupt, and some fellow who can get along is going to pick that up for a song.

386 I don't think we ought to pass bills here that would put a person out of business or an
operation out of business that is complying with the law, and just bankrupt him.

386 So I am looking at a term to allow them to continue their operation, or Government
purchase. Do you have a time frame that they ought to be allowed to continue?How long does
most of this equipment last? What is wear and tear and depreciation on it?

386 Mr. JACKSON. It varies with the type of equipment and type of mining. As we were
noting earlier, we have, not only in Kentucky, but a tremendous variation in mining equipment
from east to west, but it is more variant over the entire United States.

386 What I would hope the committee would avail themselves of, it could turn out some of the
people we have looked at as maybe some of our worst enemies on this mining control, which has

meant the State regulatory authorities can help come to our rescue and be one of the best sources
of coming up with reasonable regulations and reasonable permitting processes of anyone. I don't
think we should discount them too heavily. Whether we are happy with the job they have done
in protecting the environment. Where they have knowledge in these areas, this committee should
avail itself of that information before making a final decision on what the permitting process
should be and the regulations.

386 Senator FORD. There is no Federal coal-mining land in Kentucky. There would be no
royalty applied to that coal. But only 50 percent of that royalty will go back to the State in which
the coal is mined and the other 50 percent would go to the States that have no coal.

387 So if Kentucky has no Federal coal, we would have to pay no royalty; but we would be
entitled to our share of that money that would be taken from the royalties. There is no provision
in there for the State to have a hydrologist and the engineering work and everything else done in
the Senate bill as there was in the House bill. But the royalties are different.

387 There is no time frame as to when the State should complete that permitting. This
morning we were talking about 22 to 23 months to complete the permitting. I think we are going
to have to back up a little bit and take a hard look at what we are imposing upon the industry.

387 I think we ought to do the right thing. There ought to be a balance, as Senator Jackson
said this morning, between the environment and the industry. But we can't just go tilting too far
one way.

387 I am talking too long. I think the chairman would like to ask some questions.

387 Senator METCALF.I want to compliment everybody today for bringing to the attention of
the committee questions of the highwall, questions of backfill, and so forth. They really have
probably not been addressed in such detail by this committee before.

387 I think we have had some substantial, although perhaps at times repetitious, testimony
here today. I hope when legislation emerges from this committee it will be a little more
satisfactory and all the dire consequences and prophecies you people from the American Mining

Congress and the National Coal Association have made would never come to pass if this
legislation is enacted.

387 I certainly welcome you, Senator Ford, to the committee. I think your knowledge of
eastern mining operations is going to have a very great impact on this legislation and the
questions you have asked have made the record more complete.

387 Unless you have further questions - we have had these people for almost 2 hours.

387 Mr. JACKSON. We appreciate the opportunity.

387 Senator METCALF.We are going to have to live with this legislation and with coal
mining for an awfully long time. We thank you for coming.

387 I want to assure you that your recommendations and suggestions will be carefully
considered.

387 [The prepared statements of Mr. Samples, Paul, and Jackson follow:]

388 STATEMENT OF CONSOLIDATION COAL COMPANY before the Subcommittee on Minerals, Materials and Fuels of the Committee on Energy and Natural Resources of the United
States Senate on S. 7, Surface Mining Control and Reclamation Act

388 March 1, 1977

389 Mr. Chairman and distinguished members of the Subcommittee

389 My name is Gene Samples. I am president and chief operating officer of Consolidation
Coal Company, the nation's largest coal company and second largest producer, producing about
fifty-four million tons annually. My company operates in eight states located in the East,
Midwest, and West. We produce coal by both the underground and surface mining methods;
about 70 per cent of our production is from underground mines. Despite this high percentage of
underground production, my company holds large reserves of coal, much of it in the West and
mineable only by suface mining methods.

389 Our country is in the throes of an unusually severe winter that has produced many
emergencies due to energy shortages.It is now experiencing a situation similar to one experienced
three years ago following the oil embargo imposed by the Middle East nations: that, of course, is
a dramatically heightened interest in America's energy situation, its alternate energy sources -

including coal - and the prospects for the utilization of these sources in the near-term.

389 Hopefully, following this crisis, we will not do what we did after the oil embargo, which was essentially nothing. We are dependent on foreign energy today to a greater degree than we were in 1973. America must face up to its ever-worsening energy situation, and the Congress must provide the direction to make the critical decisions that will help us move forward to an era of adequate energy. We hope this direction will come without redundant bureaucracy and its endless mass of regulations.

390 One of the chief impediments to expansion of the coal industry in recent years has been the negative impact of federal legislation. I feel strongly that the bill under consideration here today would be another example of detrimental legislation.

390 For all the reasons that have been set forth by other coal industry officials in testimony before this Committee, I am firm in my belief that this legislation would establish a whole new layer of bureaucracy and a new set of requirements that will unnecessarily compound the delays in coal development at a time when we can ill-afford another wasted day.

390 Further, with what I hear from the media, it would appear that this Committee might well pass a bill imposing national standards upon our industry, notwithstanding the comprehensive and painstaking efforts of the several states to pass and implement responsible controls based upon the geographic peculiarities of the many dissimilar mining locations.

391 It would be folly to force this legislation upon the Nation's coal industry. As in the Clean Air Act travesty for the coal industry I fear that, after passage of this legislation, Congress will later stand idly by as the regulatory authorities lop off vital parts of our coal resources which don't happen to fit S.7's idealized pattern, and, in the process build interminable new layers of bureaucracy.

391 BILL INVITES LITIGATION AND DELAY

391 The one aspect of this bill that constitutes the greatest single impediment to increased coal production is the potential for endless and repetitive litigation inherent in the numerous ambiguous terms and requirements of the bill. Every operation is open to challenge at every step of the detailed administrative proceedings as well as in the courts.

391 In addition, under the "Citizen Suits" provision, Section 420, specific statutory authority is granted to sue the federal government, the state agencies, and the operators. This authority is in addition to all existing rights to bring suit under other statutes and the common law. In other words, no action taken or decision made by the regulatory authority is above challenge.

391 In the past few years, particularly, we have watched in utter frustration while groups with a cause to champion or an axe to grind - but without the national interest at heart - have brought energy development to a virtual standstill. Coal development in the entire Northern Great Plains was halted by a single lawsuit. A hydroelectric dam has been prevented because of pretended concern for the 2-1/2" Snail-darter fish. The construction of a badly needed nuclear power plant was halted because discharged waters raised the temperature of the ocean water a few degrees along a few miles of the New England coast. This list goes on and on. Something might be said in defense of each of these actions, I know, but the overall pattern of obstructive delay and disregard for the backbone of our economy is a violation of the trust to the American people.

392 SURFACE MINING DISCOURAGED AND PROHIBITED

392 Presumably, the underlying concept of this proposed legislation is that if certain lands cannot be reclaimed, they should not be mined.It would seem to follow, conversely, that if certain lands can be reclaimed, development of these lands should be permissible within the framework of surface mining regulations.

392 I enthusiastically endorse the concept that mining should not proceed if effective reclamation cannot be accomplished. But too many provisions of this bill state or imply a simple prohibition of surface mining regardless of whether reclamation is achievable.

393 An example is subsection (e) on page 117, dealing with the withdrawal of all federal coal from surface mining where the surface is not owned by the United States Government.

393 SURFACE MINING SAFER

393 In addition, the language in this provision, and in other portions of the bill, seems to encourage mining by underground methods.

393 I'd like to make two points in this regard:

394 Although the coal mining industry is making a successful concerted effort to improve the safety of underground mining, surface mining remains, and will continue to be the safer - and, for that matter - the more productive method of mining. My company's frequency rate of disabling accidents, which is far superior to the industry average, is revealing when a comparison is made between underground and surface mining methods.

394 In 1976, Consolidation's accident frequency rate of 13.31 injuries per million man-hours in underground operations was more than twice as high as the accident frequency rate of 5.68 injuries per million man-hours in surface operations. Incidentally, the 5.68 frequency is slightly better than the experience rate for federal civilian employees, according to the National Safety Council's figures.

394 It seems to me that while the industry is devoting millions of dollars and millions of man-hours to improving its safety performance, the federal government should not be discouraging the safest method of producing coal.

394 Secondly, the method of mining also determines the percentage of coal that can be mined in a given reserve. Surface mining techniques can essentially recover all the coal in a reserve, whereas underground mining, depending on the method employed, will always recover less and often only 50% as much. At this time of energy shortages we need to maximize our productive effort, conserve its finite resources and not constrain them unnecessarily.

395 BILL OVERLAYS UNDERGROUND MINING

395 This bill, unlike some earlier versions, attempts to consolidate regulations governing the surface effects of underground mines into one section, Section 416. In my opinion, this has been helpful. Now in one simple amendment the Committee can and should strike this travesty from this bill.

395 Underground operations, mine stability, subsidence, and disposal of mine refuse involve extremely complex geological and engineering considerations. Further, they cannot be divorced from the paramount concern for mine safety. These matters, including comprehensive provisions relating to coal refuse disposal and impoundments, are exhaustively covered by the Federal Coal Mine Health and Safety Act of 1969.

395 Our environmental consultants advise me that language on page 87, lines 8-13 would be interpreted to require a "zero discharge" meaning runoff water cannot contain any suspended solids. Similar zero discharge language is also found on the bottom of page 72. Strict but liveable standards are already set by federal EPA. You would be requiring the coal mining industry to do what even farmers cannot do.

396 I conclude that a great deal of additional study is required before underground operations are included in the proposed legislation. You have excluded minerals other than coal for that very reason.

396 HYDROLOGIC DATA EXCESSES

396 One of the most onerous provisions of S. 7 involves the requirements for hydrologic data in section 407. The accumulation of a sufficient amount of data to satisfy the requirements of the bill could take a year or more and would involve great expense.

396 A more reasonable approach would be to require a description of the hydrology of the permit area, water levels and water table measurements, and data regarding the dissolved and suspended solids under seasonal flow conditions. In the fragile regions of the country the bill seems to be most concerned about, the regulatory authority should be empowered to request additional data where necessary. The determination of the cumulative effect of "all anticipated mining" in the area seems more appropriately to be the responsibility of the regulatory authority.

397 ALLUVIAL VALLEY FLOORS

397 The section dealing with alluvial valley floors has been addressed comprehensively by other spokesmen. It is only for that reason that I limit my severe misgivings to the following

observation:

397 It is impossible to determine accurately how much tonnage would be put off limits by the section dealing with alluvial valley floors on page 59. Previous estimates have been as high as 66 billion tons of strippable reserves.It may well be that high; it could be higher. In any event it would be more tonnage than this nation can afford to lock up. I can corroborate the claim that the impact would be grave by looking at the effect upon Consol's reserves.

397 The alluvial valley floors provision would cut the heart out of our logical mining units, rendering many of our most attractive western coal reserves infeasible for economic development.

397 LANDS UNSUITABLE

397 Another section of S. 7 sets up a mechanism to declare as "unsuitable for mining" lands that are "fragile" or "historic", renewable resource lands, natural hazard areas, or lands where surface mining is deemed incompatible with existing land use programs. These ambiguous standards could apply to almost any area as being unsuitable for surface mining.

398 Again, if the land can be reclaimed, these kinds of subjective prohibitive restraints should not be imposed on the mining of coal.

398 APPROXIMATE ORIGINAL CONTOUR

398 As written, this bill authorizes variances from the requirement to reclaim land to approximate original contours for mountaintop mining only. But the reasons for permitting variances for post-mining industrial, commercial, residential, and recreational uses remain valid no matter what form of mining is employed.

398 In many instances, reclaiming to approximate original contours may not be suitable for the post-mining use of the land that is contemplated. Adoption of the bill's language in its present form unnecessarily ties the regulatory authority's hands and unreasonably restricts the uses to which the land can be put after mining.

398 I have not addressed myself to all of the deficiencies that I believe are contained in this proposed legislation. Mining problems have been cited by other industry witnesses, and I concur in their objections.

398 Nevertheless, I do wish to reemphasize my firm belief that this bill is ill-conceived and ill-timed.The scenario facing Congress several years ago, when certain of its members were convinced that deficient local regulation compelled sweeping federal controls, has changed markedly. Passing S. 7 in its present form would be an act of incredible excess and irresponsibility in light of existing state laws and the pressing need for the development of our domestic energy resources.

399 The coal mining industry is repeatedly demonstrating the effectiveness of its surface mining and reclamation practices. I am proud of the work my own company has accomplished in these areas, and I encourage the members of the Committee to get a firsthand look at reclamation work effected by my company and other companies in the industry.

400 STATEMENT BY

400 JOHN H. PAUL

400 VICE PRESIDENT, PUBLIC AFFAIRS

400 AMAX COAL COMPANY

400 INDIANAPOLIS, INDIANA

400 before the

400 SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS

400 with respect to

400 SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 S.7

400 UNITED STATES SENATE

400 Washington, D.C.

400 March 1, 1977

401 Mr. Chairman and Members of the Subcommittee:

401 My name is John H. Paul. I am Vice President of Public Affairs for Amax Coal Company, a division of Amax Inc. I appreciate the opportunity to testify before this Subcommittee on the proposed "Surface Mining Control and Reclamation Act of 1977", S.7.

401 Before going into the specific problems we have with S.7, I would like to state that I see no present need for a federal law that would supersede existing state regulation of surface mining and reclamation. In light of recent public announcements by state officials, unions and associations opposing federal legislation, I ask that the Subcommittee continue to examine this position.

401 I believe that during the passage of time since Congress began deliberation on the issue of federal surface mining legislation, and industry was given the opportunity to testify in 1973, any justification for Congressional action has ceased to exist. Currently 38 states have laws

concerning surface mining, including every major coal producing state.Since 1973 when the Interior Committee held hearings, 29 of those states have either enacted new legislation or amended their existing laws. Significant changes in regulations implementing the laws has been an ongoing process. Also the Department of the Interior has completed a major revision of regulations governing surface mining and reclamation on coal mined on federal lands.

402 When analyzing most new legislation, one usually finds and argues that increased costs, bureaucracy and procedural red tape, which is often unnecessary, will have such an adverse impact on industry that we are forced to address primarily those provisions. In the case of S.7, the situation is even more grevious.

402 The general approach, and the specific language in most of the important subsections, remains either verbatim or substantially similar to what confronted the coal industry during the entire 94th Congress. Apart from the well recognized need to increase coal production to meet the Nation's energy needs, it does not appear that any meaningful effort has been made to incorporate any of the suggestions of industry to correct significant deficiencies in the currently proposed legislation, which will prohibit present or proposed mining, cause delay of mining operations, impose unnecessary burdens and costs, and allow for administrative interpretation of important sections which will result in serious delays and continual litigation.

403 There are numerous areas within the proposed legislation which we believe are either unnecessary or have been improperly approached. However, the following issues are of significant importance to Amax mining operations or will substantially delay and impede future operations:

403 (1) Alluvial Valleys

403 Subsection 501(27) defines alluvial valley floors as follows: ". . . unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities." Two other subsections must be reviewed in connection with the definition. Subsection 410(b)(5) prohibits the issuance of a permit for mining on an alluvial valley floor (as defined in Subsection 501(27)) west of the 100th meridian unless the regulatory

authority finds, in addition to other requirements, that the proposed operation will not "have a substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible." An evaluation of the alluvial valley question must be made with a reading of the above two subsections in light of a third Subsection 415(b)(10)(F) which provides that "as a minimum" surface coal mining operations be conducted in such a manner that will preserve "throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semi-arid areas of the country . . ." This subsection reintroduces the language of the vetoed H.R. 25 and would therefore shut down existing operations notwithstanding the financial commitment involved, the fact that the mine is presently producing under an approved state permit or the commitments made for the coal. This is not only patently unfair, but would violate existing contract rights.

405 Too many times dialogue between proponents of the legislation and members of industry has become bogged down and counterproductive because individual subsections are discussed and amendments suggested without a total review of the probable impact of the cumulative language which addresses the issue of mining in alluvial valley floors. Lack of clear definitions and varying interpretations of all applicable subsections raise the following points:

405 (a) The definition of alluvial valley floors in Subsection 501(27) could include every dry wash west of the 100th meridian. If the other important Subsections 410(b)(5) and 415(b)(10)) were clear and not subject to continual discussion as to intent, and were truly aimed at protecting essential areas, perhaps the definition in 501(27) would be adequate.However, because of possible conflicting interpretation and regulatory application, areas intended to be protected should be clearly defined. For instance, these provisions would include perennial, intermittent and ephemeral streams. If the Bill is enacted, it is imperative that the legislative history make clear that implementing regulations recognize each type of stream separately with regard to its

importance within the overall regional agricultural activity.

406 (b) Subsection 410(b)(5) provides that substantial adverse impact on alluvial valley floors will prevent the issuance of a permit. Granted there is an attempt to limit the prohibition by excluding undeveloped range lands. Nowhere is there a clear definition or explanation as to what constitutes undeveloped range land or what is the meaning of significant. Also, the prohibition clearly appears applicable to possible future farming activity since Subsections 410(b)(5) talks in terms of "economic feasibility." The above interpretation ignores the overall impact of a proposed mining and reclamation activity as it relates to broad or regional agricultural usages. The intention appears to be a prohibition of mining where there will be a substantial adverse effect on alluvial valley floors where farming or ranching can possibly occur in the distant future without regard to whether mining and reclamation can be successfully accomplished.

407 (c) We direct the Subcommittee's attention to the report of the House Committee on Interior and Insular Affairs on H.R.25 as well as to the recent ICF Report - the former makes clear a realization of the necessity to establish effective grandfather protection assuring the continued operation of mines currently producing coal. Recognizing this need, last year's House Interior and Insular Affairs Committee Report on H.R.13950 stated:

407 "However, the alluvial valley floor provisions will not apply to . . . ongoing mining operations which, in the year before enactment of this Act, produced coal in commercial quantities on or adjacent to alluvial valley floors or had obtained specific permit approval to do so from a state regulatory authority . . ."

407 Indeed the more recent ICF report recommends the following amendatory language:

407 ". . . paragraph (5) shall not affect those surface coal mining operations which in the year preceding the enactment of this Act had specific permit approval by the state regulatory authority to conduct surface mining operations within or near said alluvial valley floor." (p. V-45)

408 (d) There has never been a precise analysis as to just how much coal could be foreclosed from mining under these provisions. No doubt one reason for the lack of this precise analysis is

the vague and imprecise language contained in the legislation. Analyzing this language, the Bureau of Mines in 1975 estimated that "given the scientifically imprecise" wording of the provisions, up to 66 billion tons of the strippable coal reserve base could be locked up, and up to 66 million tons of annual production could be lost. However, the Bureau went on to state that from an engineering standpoint, "the ambiguous or difficult-to-define language, such as 'significant', 'substantial', and 'potential', make it impossible to develop a precise minimum figure." These figures have never been reputed.

408 (2) Hydrology

408 Subsection 407(b)(11) requires all operators to include in the permit application, among other things, "a determination of the hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding area so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability."

409 This requirement applies to all surface mine operators who are required to file a permit application within 20 months after enactment of this Act whether or not a state program is in existence at that time. (It should be noted that Subsection 416(b)(9) imposes requirements on underground mines in regard to hydrologic balance at the mine site and in associated off-site areas.) Most major western surface mining operations involve federal land and/or minerals and, therefore, have an approved or pending environmental impact statement. That statement includes site specific hydrologic information which should be sufficient for a determination of the on-site impact of the mining operation. A determination which will satisfy the regulatory authority as to the "cumulative impact" appears to be extremely onerous if not impossible within the time frames required by the Bill for individual operators regardless of size and expertise, or location. Legal questions concerning access to "surrounding areas", however defined, create substantial problems. It is also unclear, assuming you can obtain necessary approvals for off-site study, what

the scope is of the "anticipated mining" to be studied. As currently proposed, the operator would be required to project the cumulative hydrologic impacts of mining operations in the area of his proposed operation. We would recommend that the hydrology provision be modified to provide that the regulatory authority must clearly outline the cumulative hydrologic impacts which must be determined and set forth precisely the surrounding areas within which these impacts must be measured. Additionally, the time period is totally unrealistic for the required hydrologic studies in view of the magnitude of the undertaking and the fact that seasonal flow conditions must be measured. Therefore, it is imperative that the time frame within which this testing must be accomplished should be extended for both small and large operators, and the requirement should not come into play until at least a year after the state regulatory authority has come into existence.

411 We also believe that consideration should be given to the establishment of a procedure whereby operators have the opportunity to conduct the studies themselves, or select a third party consultant from an approved list provided by the regulatory authority. In the event the third party approach is employed, the studies would be the responsibility of the consultant and the cost of funding such studies would be shared by the operators benefiting from this study.

411 The application of the hydrologic requirements in Subsection 415(b)(10) as it applies to alluvial valleys has been previously discussed. However, this subsection, which requires the operator to "minimize the disturbance to the prevailing hydrologic balance at the mine site and in associated off-site areas . . . ", is also an interim standard which applies to all existing mines, regardless of size or location, not later than 135 days from enactment. It is questionable whether the allowed time for compliance provides a realistic opportunity for the operator to make any necessary changes in the approved, ongoing operation in order to meet the detailed, complicated hydrologic requirements of Subsection 415(b)(10).

412 (3) The Mansfield Amendment

412 Opponents and proponents of the proposed legislation have argued this issue continually. Objections to this provision, and to the similar provision in the proposed House bill, have not only come from the coal industry. Substantial objections, in fact, have been raised by surface

owners who are not related in any manner to the coal industry. Section 423(e) of S. 7 changes surface owner consent and prohibits surface mining of federal coal where the surface is owned by a non-federal party. Numerous approaches have been proposed and none have been satisfactory. The Department of the Interior estimates that 38% of federally owned mineral rights to coal are under lands where the surface is privately owned. This provision is violative of individual contract and property rights and totally ignores the surface rights that have been bought or leased in recent years solely for the purpose of mining the federal coal. Additionally, preventing the mining of this urgently needed low sulphur coal would guarantee our increasing dependence on foreign fuels. This provision totally ignores the question of whether mining and reclamation can be accomplished in accordance with the environmental requirements of the Act! The question of surface owner protection should not be addressed in the proposed legislation and the statutory and legal rights currently in existence in the individual states should continue in force.

413 (4) Areas Unsuitable - Land Use

413 Section 402 establishes a procedure whereby each state shall establish a land use planning process in order for the state to be eligible to assume primary regulatory authority pursuant to Section 403.Not only is this the establishment of a federally required and enforced zoning program, but it ignores the needs and goals of the individual states. Subsection 422(a) sets forth a list of criteria such as: "(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; or (C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology." The criteria are vague and subject to future subjective determination by the regulatory authority. In fact, under the broadest inter-pretation this could potentially preclude mining anywhere in the United States. In addition, if there is to be federally imposed state land use planning, and we do not support that concept, the states should be the ones to determine what criteria should be included in the

program in order to meet their individual needs and goals.

414 The impact of Section 422 becomes even more critical in the overall mine planning process when it is recognized that Subsection 422(c) allows "any person having an interest which is or may be adversely affected" to petition the regulatory authority to have an area designated unsuitable for surface mining. The procedures for permit approval or denial in Subsection 410(b)(4) provide that "the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to Section 422 or is not within an area under study for such designation in an administrative proceeding . . . " We question the protection for operators who have made substantial legal and financial commitments in regard to federal lands. Subsection 422(b) provides that the "Secretary may permit surface coal mining on federal lands prior to the completion of review." Whether the Secretary will actually allow mining to proceed on federal lands under review is certainly questionable, and litigation under this provision is certain. In addition, the time which will be required to formally complete the review of federal lands could last for years. In any case, it is clear that there will be substantial delays in permitting new mines required to meet national energy goals.

415 (5) Timing Procedures

415 Section 402(c) adopted the language of H.R. 25 and makes some of the most significant interim procedures applicable to existing operations within 135 days. The applicable provisions require prior or better uses, approximate original contour, topsoil segregation, hydrologic standards, redesign and reconstruction of waste pile dams, native vegetation and steep slope restrictions. 135 days for compliance with these requirements is totally unrealistic and in many cases not humanly possible. Moreover, these provisions will be enforced before regulations are promulgated explaining what they mean.

416 Not later than 20 months from the date of enactment, all operators must file an application for a permit. (Section 402(e)). The operator will be subject to federal enforcement within 135 days and, unfortunately, will have to comply with ambiguous standards before they have been clarified. A realistic time frame within which an application and permit must be filed should be based on the approval of a regulatory authority, not the enactment of the Act. An

application should not be required until at least a year after the state or federal regulatory authority has come into existence.

416 (6) Miscellaneous

416 There are many other areas of concern within S. 7 which may have the effect of prohibiting or delaying mining and will certainly result in unnecessary costs which ultimately must be borne by the consumers. Among these concerns are requirements for return to original contour and an unworkable variance procedure for mountain mining. Mandated top soil requirements fail to recognize the individual needs of the states and the varying mining conditions which exist in the individual states. The extensive requirements imposed on underground mining have no place in a federal surface mine bill and should be excluded.

417 Mr. Chairman, I have addressed a few of the major problems that we have with S. 7. These few areas alone point out that if this Bill is enacted in its present form, it will prohibit the mining of millions of tons of coal without considering the fact that that coal could be mined while maintaining or improving the environment through present reclamation techniques.It may also preclude the continued operation of existing deposits which are either being mined or to which significant financial and legal commitment has been made.

417 In conclusion, we subscribe to the concept of proper reclamation requirements and that areas which cannot be reclaimed should not be mined. However, S. 7 appears to be aimed at restricting mining through detailed, unclear, subjective requirements that impose unnecessary requirements on the states and the operators.

418 All in all, we as an industry, want to be judged by our present activity and not that of the past. This Bill fails to recognize present surface mining and reclamation techniques by which we can extract coal and return the land to the same or better than premining condition. The coal industry has vastly improved its attitude and actions toward mining and reclamation; it is our hope that others so concerned will be receptive to our point of view. If an equitable middle ground is not reached on this legislation, the effect upon miners, producers, utilities and the American citizen will be greater than is presently anticipated. It will also unnecessarily place us all behind the energy eight ball.

418 Again, thank you for providing this opportunity to testify.

419 STATEMENT BY

419 J. L. JACKSON

419 PRESIDENT

419 FALCON COAL COMPANY, INC.

419 LEXINGTON, KENTUCKY

419 before the

419 SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS

419 with respect to

419 SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 S. 7

419 UNITED STATES SENATE

419 Washington, D.C.

419 March 1, 1977

420 Mr. Chairman and Members of the Subcommittee:

420 My name is J. L. Jackson. I am president of Falcon Coal Company, which is engaged in the surface mining of coal solely in the Commonwealth of Kentucky. I am also a Director of National Coal Association.

420 I appreciate the opportunity to appear before this Subcommittee. Since Falcon Coal Company's operations are conducted on the steep slopes of Eastern Kentucky, I will confine my remarks to some of the aspects of the Bill which affect such operations. However, I do believe that my comments are applicable to most of the mountainous terrain of Appalachia. I will attempt to confine my remarks to those aspects that most directly affect production. In order to save time, I will discuss only some of the significant concerns with which I am most familiar.

420 I would also like at this time to state that I think Kentucky has adequate surface mining and reclamation legislation, and has improved its enforcement mechanism with the hiring of qualified technical personnel in the last couple of years.However, it is my understanding that we are here today to discuss only the pending legislation.

421 In Eastern Kentucky, we are utilizing a technology which permits the mountaintop

mining of coal and which creates gently rolling terrain after mining. Falcon Coal Company has several of these operations and this same technology is used in other areas of Appalachia. All of the mining areas have ridgebacks and hollows, and mountaintop technology utilizes the heads of the hollows as permanent spoil placement areas. The hollow fills are graded to blend in with the mined area to provide large contiguous level areas. Flat land is extremely valuable and desperately needed in many areas of Appalachia. It provides a land form that can be used for numerous beneficial and productive postmining uses, whereas the land prior to mining was so rugged and steep that little or no productive use could be made of it. Even the growth that occurs on the undisturbed slopes is for the most part scrub vegetation.

421 Although I realize that Section 415(c) is intended to provide a variance mechanism to permit mountaintop mining, it establishes so many unrealistic conditions, that few operations will be able to qualify for the variance. In effect, mountaintop mining would be prohibited.

422 In order to comply with Section 415(c)(3) the operator would have to prove a postmining use and that it is obtainable by submitting data regarding the following:

422 (1) expected need and market;

422 (2) assurance of investment in necessary public facilities;

422 (3) assurance of private financial capability; and

422 (4) demonstration that the postmining use is pursuant to a preconceived design and schedule attached to the reclamation plan. (Section 415(c)(3)(C)(i)-(vii) In addition, the permissible postmining uses are limited to industrial, commercial (including commercial agricultural), residential or public facility (including recreational facility). These detailed requirements make the variance, as a practical matter, unavailable.It is not possible, in most cases, to specify the exact postmining use as early as when the mining plan is submitted. Many times it will be 10 years or more before mining is completed and the land will be available for ultimate postmining uses. Obviously, a financial commitment or other data required so far in advance is not practical, and in most cases not possible. Furthermore, the language of the exception, by including only commercial agricultural uses, would not permit small, private farms to take advantage of the exception.

423 Over 90% of the surface affected by Falcon Coal Company's surface mining operations is privately owned, primarily by numerous individual residents. Falcon Coal Company and most other operators do not own the land. We are not real estate developers, and cannot make a commitment for the land's postmining uses. Each owner has his own ideas about what he wants to do with his land, and by the time mining is completed there may be as many proposed uses as there are owners; all, however, preferred to original uses available. The restrictive variance for mountaintop mining will be unavailable because the operator cannot make a commitment for the postmining land uses. Consideration should be given to the fact that level land provided by mountaintop mining is valuable and is desperately needed and wanted by the private landowner in Appalachia. After all, the land is theirs and their desires should be of primary concern. It would be economically impossible to provide such improved land except in conjunction with the mining of coal. The Bill should recognize that mountaintop mining is an acceptable mining practice that is more protective of environmental damages than the proposed return to approximate original contour. It, therefore, should be specifically authorized and excluded from the requirements of return to approximate original contour so long as it meets the other standards of the Act. In this way, the complicated variance procedure could be eliminated. If Section 415(c) must be retained, it should provide more realistic prerequisites. The restrictive postmining uses should be eliminated provided the operator can show that equal or better uses can be obtained after mining. Data requirements as to specific market need, commitment of public agencies and data as to financial capability should be deleted.

424 I would like to urge you to reconsider the requirement to return all surface mining on steep slopes to approximate original contour. This requirement is counterproductive to the achievement of some of those standards in the Bill specifically related to environmental protection (e.g. stability, erosion, sedimentation and drainage control). In many cases putting back unconsolidated material on steep slopes is an unsound practice and can lead to erosion and sedimentation problems in comparison with other spoil disposal techniques which are available. The requirement to return the surface to approximate original contour is primarily an aesthetic or cosmetic oriented provision, not a provision attendant to true environmental protection. Many of

you feel that the practice of return to approximate original contour is necessary to eliminate landslides, sedimentation and mineralization. These problems are associated with placement of spoil on the downslope and not with the highwall that is left from contour stripping. Some of the practices of the past, such as failure to cover toxic material and the indiscriminate dumping of waste materials down the hillsides, have created the problems.Unfortunately, those who were not aware of what was happening tended to identify the problem with the existence of the highwall.
The vertical highwall, however, is in most cases stable and contributes little if anything to the environmental problems associated with past surface mining. If you don't like the appearance of the highwall and want to legislate its elimination, do it openly for that purpose and not under the guise of protecting the environment against sedimentation, landslides, mineralization and the like.

426 The requirement of return to approximate original contour will deny the operator the use of other acceptable land forms that are utilized in many other large scale landscape operations such as highway construction and flood control projects. These land forms include diversion terracing, stair stepping, and partial backfilling.

426 In spite of the urgent need for additional flat land, the requirement to return the land to approximate original contour ignores better postmining uses and the desires of the landowner to do what he wants with his land after mining. Other configurations will often support postmining uses which are equal or better economic or public uses in comparison with the premining use.
Leveling land for better uses can be achieved as part of postmining reclamation and will establish a base for agriculture, homes, schools, hospitals and other public buildings throughout Appalachia. The floodplain is often the only level land available. More important in an economic sense, industrial development, which could help diversify the Appalachian economy, is stifled when no suitable industrial sites are available. Because of the rough terrain with its very limited uses, citizens of Appalachia have been eking a tough existence out of the hills for many years. By requiring return of Appalachia's slopes to approximate original contour, you are limiting land use and denying Appalachia's citizens the opportunity to take advantage of new uses that may be provided only through the expensive earth-moving mining process. Under the

proposed legislation, the use of head of hollow fill would be limited to the deposit of excess spoil material from the return to original contour and mountaintop mining techniques. The head of hollow fill, however, is currently used as an effective method for eliminating or controlling landslides, controlling sedimentation and has additional valuable environmental effects. Presently head of hollow fill is allowed and is being successfully used under existing Kentucky law.

428 Another objection to the return-to-original-contour concept is that it prevents creation of new water sources. New water sources may be created by leveling basins in mountainous terrain so that the land is graded back toward the center of the reclaimed area.Water accumulates in the mountaintop basins, runoff is slowed down, sediment falls out, and clear water can be drained from the area through use of a drainpipe over the hillside at an undisturbed location. Requiring return to approximate original contour would not permit this.

428 It is recommended that certain exceptions be provided for variances to approximate original contour mining. If an operator can show a land form that will achieve better environmental protection, he should not be required to return the land to approximate original contour. Similarly, if the operator can show equal or better postmining uses while complying with the environmental standards of the Act, he should not be required to return to approximate original contour. If these exceptions are granted, the operator should be able to take advantage of the off-site spoil placement provisions of Section 415(d) which permits head of hollow fill. Head of hollow fill has been effectively used for spoil disposal purposes and for eliminating or controlling landslides and controlling sedimentation under Kentucky's existing law.

429 Operators are required to comply with the hydrologic requirements of Subsection 407(b)(10) for new permits obtained immediately after enactment and for all existing operations within 135 days. Section 415(b)(10) requires, among other things, that each operator protect against the addition of suspended solids to stream flow above natural levels under seasonal flow conditions as measured prior to any mining. In many areas where mining has been conducted for generations, data as to flows prior to any mining are simply not obtainable. Even in areas where mining has not yet occurred, it will take at least a year to obtain seasonal flow data. Compliance

immediately or within 135 days would be impossible assuming seasonal means all four seasons
of the year. Appalachia is crisscrossed with a network of streams and creeks, and compliance
with Section 415(b)(10) within 135 days will be impossible and even more so if there is any
delay in promulgating the federal regulations.

430 There are many other ambiguities and contradictions in the proposed Bill which must be
noted and dealt with. The problem areas that I have discussed are of major import to a workable,
sensible Bill that truly has the objective of allowing the surface mining of coal while providing
meaningful assurance of adequate environmental protection.

430 Thank you for the opportunity to comment on my very serious concerns with the proposed
legislation.

431 Senator METCALF.You are the witness we have been waiting for all day.

STATEMENTS OF BEN LUSK, PRESIDENT, WEST VIRGINIA SURFACE
MINING AND RECLAMATION ASSOCIATION, AND JOHN W. STURM, VICE
PRESIDENT, WEST VIRGINIA APPLIED RESEARCH INSTITUTE

431 Mr. LUSK. Thank you, Mr. Chairman. My name is Ben Lusk. I am president of
the West Virginia Surface Mining and Reclamation Association. Our Association is the Nation's
largest organization dealing specifically with the surface mining and reclamation industry.

431 We feel our research programs in the past 4 years have accomplished a great deal in
bringing about this proper balance we keep talking about between the environment and the
mining of coal.

431 We have introduced our written testimony. We will deviate from it in the interests of time
and summarize it.

431 Basically, we ask for the opportunity to show a slide presentation, because I think we
could graphically describe it a lot better than we can verbally and show you some of the ways in
West Virginia how we are eliminating highwalls, preventing any spoil from being cast on a
downslope on deep slopes.

431 We are not saying the total concept of mining the way we are mining in West Virginia is
necessary for the entire Nation. We do it out of necessity because it is our law and we have to.

Unfortunately, this proper balance we keep talking about has not been that successful in our
State. For example, in 1971, we amended our 1967 laws and brought about all of these changes
in our State statutes and regulations. We went from 616 active mines to 278.

431 Senator FORD. Deep or surface?

431 Mr. LUSK. I am talking about all surface mining now. We went from 27.9 million tons
down to 18 million tons. We went from 212 mining companies down to 109. This happened
over a period of 4 years. Our production is currently off 33 percent.

431 I am not saying the reason our production is down so much is because of the law. I am
saying it is very difficult for the smaller operator to comply with the West Virginia law.

431 We are here to testify today, to suggest to you maybe hindsight in some cases is a little bit
better than foresight. If you look at the way West Virginia experienced, or what has happened to
West Virginia since the passage of the 1971 act, the rules and regulations in 1972, control
placement provision in 1973, which effectively eliminates highwalls and prevents spoil site, you
can see how we have progressed, but you can see how our industry has declined.

431 It is distressing to us to have to yield to Kentucky each year as the Nation's largest coal
producing State when West Virginia held that title for 39 years. It is not coincidental that it
happened right after West Virginia passed its surface coal mining act in 1971-72.

431 Senator FORD. Let me ask you something. Are you saying then you have reduced the
production in West Virginia as a result of your legislation?

432 Mr. LUSK. I think as a result of legislation our production has gone downhill.

432 Senator FORD. How much?

432 Mr. LUSK. We have gone down 33 percent since 1971 when we passed a bill.

432 Senator FORD. So the coal in West Virginia - I don't mean to interrupt you, but it is a
point I think we ought to get in here - you are saying by your reclamation program in West
Virginia you reduced your production of coal by 33 percent?

432 Mr. LUSK. I am saying in 1971, prior to the passage of the bill, we were mining 27.9

million tons of coal a year. Today we are mining less than 20 million tons a year, surface
mining.

432 Senator METCALF. May I interrupt? Wouldn't you in West Virginia prefer that we have
national uniform legislation?

432 Mr. LUSK. For what reason, sir?

432 Senator METCALF. You have high standards, and you are suggesting that those
standards have been so high that people have gone someplace else to get their coal. Now,
wouldn't you prefer that West Virginia's standards be relatively, at least, uniform throughout the
country so your competitive position is uniform?

432 Mr. LUSK. That is like asking when I stopped beating my wife.

432 Senator METCALF. I didn't mean to ask the question like that.

432 Mr. LUSK. We have been in opposition to - we have testified before this committee, this
is the third time now in the last 6 years, in favor of some sort of minimum guidelines.
Unfortunately, we are not in favor of S. 7 because in our opinion the smaller operators in our
State will be hurt tremendously.

432 Senator METCALF. I am glad to have that testimony. But the fact that we are seeking to
pass Federal legislation which rather meets the standards you have in West Virginia, or in
Montana, or in Kentucky, seems to me to be helpful to you in your State because of the fact it
applies uniformily throughout the United States.

432 Mr. LUSK. I really cannot predict what will happen. I would hope our State government
would be able to continue on the way they have in the last 7 or 8 years and progress as we have
progressed without interference from the Federal Government, quite frankly. We feel we have
been extremely successful. Our Governor will be here tomorrow telling you, I believe, the same
thing.

432 I think when we show you the slides, you will have to agree some of the things going on in
West Virginia are very endemic to our areas. But I cannot say the West Virginia operators can
live with the Montana law as currently written, or the Pennsylvania law, or the Iowa law. We do
know we can live with it in West Virginia.

432 I can't tell you what Kentucky can do or Virginia can do. I don't have that much expertise.

432 Senator METCALF. I would hope we would finally pass legislation, Senator, that we will not make requirements that are so hard that no mining company can live up to them. But we will establish a floor under legislation, under the various State laws, so that we all compete on a relatively uniform level. That is one of the reasons I have consistently insisted if States substantially comply with the uniform regulations the bill contains, they can live with the law.

433 We have two very able Senators who debated this on the floor of the Senate and we have tried to work with them. In West Virginia you had a Member of Congress who said we should not have any strip mining whatsoever, and who voted against every version of the control bill because he did not feel we should have coal mining of that sort. I have never taken that position, and I don't think any member of this committee takes that position.

433 What we want to do is help West Virginia, help Montana, and Wyoming, and other States, to establish basic legislation so we can place every State on a competitive basis. I would hope that as a result of such uniform standards, perhaps coal production in West Virginia would increase.

433 Mr. LUSK. Quite frankly, if S. 7 were to pass in its present state, without the amendments of some of the comments we have heard today, we would have a great deal of difficulty as a smaller operator. I think the testimony we have heard today is quite excellent. I don't want to bore you with repeating most of the stuff.

433 But I think a couple of things from the smaller operator standpoint should be emphasized. For example, we have heard the debate about the 500-foot restriction from the abandoned or inactive deep mine. One point that has not been brought up: In West Virginia we are pocketed with thousands of small punch mines, where people have mined their house coal. It is endemic to our area. It is all over the place.

433 If we had to maintain 500 feet from the site of that punch mine, it would eliminate a great deal of our vast coal reserves.

433 Senator METCALF.We have that in Montana, too. We have a man with a horse in

Fresno, and he does some mining and ships a truckload of coal. What can we do to exempt that sort of thing?

433 Mr. LUSK. Leave it to the States to decide whether it is in a safe condition or not.

433 Senator METCALF. I am not sure whether we should leave it to the States. The States have done a pretty lousy job, if you ask me, in enforcing strip mining laws. When you fly over the United States and see the devastation that the coal companies have made, you are just sick.

433 This is the reason this legislation is before us today and we don't leave these things to the States because the States have not been able to do the job. You know that just as well as I.

433 Right down in West Virginia, your own country, the devastation that the coal companies have left in that State is horrible.

433 Mr. LUSK. Senator Metcalf, I hate to disagree. But when you are talking about West Virginia, I agree with you that -

433 Senator METCALF. The landscape speaks for itself.

433 Mr. LUSK. I agree with you that our State of West Virginia did not do a very good job of enforcing the law prior to 1967 which was in effect since 1939. I do admit the fact, and I do agree, that we did mine coal in West Virginia in a very irresponsible manner as far as how it affected our environment. Even previous to the law.

433 At the same time, since 1967, I do feel certain the current mining industry, not the ones we were associating all of the environmental abuse with, are not defacing the land; they are not causing environmental damage, in my opinion. We internalize all of the adverse environmental costs which are passed along to the public. I think we are doing a tremendous job. At the same time, our industry volunteers up to $2 million a year into a special reclamation fund, very similar to your orphan lands reclamation fund. We have been reclaiming land since 1963 in West Virginia to go back and clean up those areas.

434 We are proud of our State government, what they have done, and we are proud of our industry. I think quite frankly with industry and the Government and the public, any environmental groups, working together we can solve our problems. Like the gentleman from

New Mexico mentioned today, I think people working together can get these things
accomplished.

434 The only way we are going to bring about this proper balance is if both ends of the
spectrum could get together a little bit to write a rational bill. We have to put a bill in that the
smaller operator can live with the bigger operator without any abuse.

434 I think we can do that. I think we may have some answers for you today as far as deep
slope mining is concerned, but there are certain portions of the bill that are basically impossible
to accomplish from the smaller operator's standpoint, and I think even from the larger operator's
standpoint.

434 For example, the filling of auger holes is an impossibility. I think a small operator could
not wait 5 years to get his bond released; he doesn't have that much capital laying around to
continue mining.

434 There is no way he can pay for the permit requirements, the hydrologic studies, or the core
drilling. It is a very expensive process. As a matter of fact, we kid John Sturm, our technical
services director, as being our token hydrologist in the State of West Virginia. Basically, he is
the only one I know of, right now.

434 We had a public hearing in West Virginia on a 42-acre permit that lasted 14 months. The
operator was extremely small. It just about bankrupted him, except for people helping him out of
a very adverse situation. If we had to have a public hearing for every permit hearing we had each
year, if any of them lasted for 14 months - if they only lasted for 1 day - it would tie up our
operators in the State of West Virginia in the courts, on a daily basis in West Virginia, and on a
year-round basis.

434 Now, how do we eliminate the highwall? How do we maintain the spoil up on the bench
without casting it over the side?And how do we eliminate the adverse effects we talk about so
much on steep slopes?

434 In 1972, we started in southern West Virginia the haulback method of mining. Since that
time, we have received an EPA grant to study the environmental effects of it. We also have eight
ongoing research projects.

434 I think at this time, without objection, I will turn this over to John Sturm, our technical services director, and director of our Applied Research Institute, to give you some specifics on the various projects we are involved in on the haulback method.

434 Senator METCALF. May I ask you a question before that? Section 428 of this bill provides the extraction of coal for commercial purposes, where the surface coal mining operation affects 2 acres or less. Is that too small a definition? Do you think it should be 3 acres, 5 acres, 10 acres?

435 Mr. LUSK. Are you saying the applicant has applied for 2 acres?

435 Senator METCALF. You don't have any permit as far as this bill is concerned when it affects commercial operations of 2 acres or less.

435 Mr. LUSK. This basically exempts somebody, I would think, from punch mining or digging house coal for their own purposes, in their own house. That is not exactly a mining operation.

435 Senator METCALF. Should that be a higher figure, that exemption?

435 Mr. LUSK. I don't know.Basically, you are not talking about a mining company. You are talking about individuals.

435 Senator METCALF. I am talking about a mining activity for commercial purposes that affects 2 acres or less that is exempt from any provision in this act. Now, is that too small or too large?

435 Mr. STURM. By State statute in West Virginia, we have to have a mining permit regardless of the size, sir -

435 Senator METCALF. Then it doesn't make any difference what this act provides, you are going to have to a get a mining permit under the State law; is that correct?

435 Mr. STURM. Yes, sir.

435 Mr. LUSK. I hate to argue with my cohort here, but we do have a provision very similar to that in West Virginia that allows areas, for example, where they are building a hospital and happen to reach a pocket of coal when they are building the foundation, instead of taking the coal out of that 1-or 2-acre area and throwing it away, they do allow those individuals to sell the coal

so they don't waste it, and still build the hospital, without getting a permit.

435 Those situations have arisen. I think it is good from that standpoint.

435 Senator METCALF. I remember when they were building Garrison Dam, they ran into a seam of coal. For several years we had a great big pile of coal out there that we could not sell because that was a period when coal was not in very much demand.

435 I don't see anything in this law that would prevent any of that nor do I see anything in this law that would prevent this mine operator who handles a truckload of coal once a week, or something like that, from having complete opportunity to mine without any permit whatsoever. You might have to do it under West Virginia law, but you don't have to do it under this proposed regulation exemption of 2 acres.

435 Mr. LUSK. Is there a time period on that? Can I mine 2 acres a day and not get a permit?

435 Senator METCALF. Do you know any mining company that mines 2 acres a day?

435 Mr. LUSK. Yes, sir; disturbs acreage -

435 Senator METCALF. Decker doesn't in Montana, and they say they are one of the largest mining operations in the country.

435 Mr. LUSK. We have coal companies in West Virginia that mine less than 75 tons a day, which would be how many linear feet -

435 Senator METCALF. I don't know.

436 Mr. LUSK. About one-tenth of an acre, I would imagine. We have some very small companies, Mr. Chairman.

436 Senator METCALF. We are trying to exempt the one-man operation. But go ahead, Mr. Sturm.I want to emphasize today we have had some very informative witnesses' testimony and certainly we are going to consider that testimony.

436 Mr. STURM. Since 1971, the operators in West Virginia, as Mr. Lusk pointed out, have spent millions of dollars in applied research in order to abide by our 1971 act. In 1973, they came up with this lateral movement, this haulback as they call it. At the same time, our

association has been instrumental in obtaining Environmental Protection Agency grants. We have one presently for the environmental impact of steep slope mining which studies this whole aspect of it and tries to identify the problems and causes of the haulback system.

436 We also have another Environmental Protection Agency grant, which is to study the new surface mining technology to minimize environmental disturbance, which is our longwall system we have. We have a joint venture with Skelly and Loy to study the environmental assessment, and also it is a study of cross ridge mountaintop removal mining methods.

436 We have numerous research projects with the U.S. Forest Service, and also with the Bureau of Mines, the West Virginia University, the West Virginia Polytechnic Institute.

436 We have started a steering committee for surface mine research in West Virginia. We have helped develop the Council for Surface Mining Research in Appalachia. We are the only State which opens up our industry to an interdisciplinary, interagency evaluation of surface mining each year.

436 For instance last year, as well as over the past 6 years, we have visited over 125 sites in West Virginia, and, of course, after each one we tour in the summer, it comes out in the paper that West Virginia toured their showcase sites this week, this sort of thing. So at least we are proud to have at least 125 showcase sites in West Virginia.

436 Last year alone, we had over 100 State, Federal, private and environmental representatives on this tour. Of course, we publish our data in an interagency evaluation tour book and that is available for public record.

436 I might point out, or, as Mr. Lusk has pointed out and several other people, the lateral movement concept, the haulback concept, is what we in West Virginia are very proud of and which gives us zero uncontrolled spoil placement over the placement - you have to do something with the excess spoil material.

436 It also provides for no disturbance below the tow of the outcrop and no disturbance above the highwall.In other States they go above the highwall, destroying the trees and vegetation, to bring it down and make a smooth gradual transition. Environmentally, this is unsound and that is not the way to do it.

436 What I would like to show you now is a short slide presentation of the haulback concept, some valley fills associated with the haulback that must be recognized by this committee as an approved mining technique. The haulback concept is also used in our mountaintop removal operations. We use the same concept.

437 We haul the material to an area, replace it, regrade it, and see it as soon as possible after replacement. Then we get stabilization and the vegetation necessary.

437 Slide 1. The reason we are here, because of operations like this, of which we are not unique in West Virginia and the Appalachian region. A typical site of mining, prior to 1965 or 1967, in that area. Then, uncontrolled outslope placement and push and shove, throw it over your shoulder, the easiest way to move it downslope.

437 Slide 2. Now from the area, a typical haulback operation in West Virginia looks like this. I would like to point out all operations on steep slopes, 50 percent or greater, which is every operation in southern West Virginia, employs the haulback concept.

437 Slide 3.I am standing on top of this haulback operation. Behind me, I am standing on a bench, I am looking down also on a bench - you might call this terracing. The steepness of the fill material here is about 60 percent. This material was placed here by trucks, and now, of course, we have access into our area.

437 Slide 4. What I would like to do is take you through a short cycle of the haulback. In West Virginia, you have to build your pond, get constructed - slide 5 - and you seed it as soon as possible after construction. Slide 6. At the same time, you are building your haul road, and when you get your haul roads and your ponds built before you have extracted any coal whatsoever, you have to have them certified by a professional engineer and land surveyor. That is before we mine any coal. We have tied up thousands and thousands of dollars in the operation. Then when we get them satisfied, we can start on our active operation. Slide 7. In this case, this is the first haulback operation in West Virginia in 1972 by Hobeck Mining and Construction Co. The material is being moved here by in-loaders and Bucyrus Erie shovel in this case. Slide 8. It is loaded into off-the-road type trucks, anywhere from as big as 100-ton rock trucks, as we call them. These trucks truck the material to the valley fill which is our storage placement facility for

our offsite storage. This is to take care of that extra 30-percent swell.

437 Slide 9. It is trucked back to the valley fill. Slide 10. This is the valley fill associated with this job. This valley fill is built by very stringent criteria. The slopes on it are no deeper than 2-to-1. It has a minimum 16-foot wide core, et cetera. The rock core is not just a superficial thing. It runs from the natural ground all the way up through the face of the valley fill. When you get the valley fill constructed - slide 11 - here you have an open cut area which is as much as 1,500 feet, possibly 900 to 1,500 feet open. Then you start your active haulback operation. We start extracting the material and placing it back at the other end of the pit. Slide 11. We place it back. If we have toxic material, then we place that adjacent to the highway and bury it with enough material to cover the toxic material. Then we bring our rock trucks up, with surfacing material, and we slough these outslopes with the original top soil, where in West Virginia if we do overburden analysis, and we prove there is replacement material that is equal to or better than the top soil. In all cases, most of our shales are better than original top soil. The pH's are near neutral to the pH's seven to eight. They are high in nutritive capacities and they are actually soils that would be developed thousands and thousands of years from now.

438 What we have done is just overturn the process and we are building a new soil now. Slide 12. The material looks thusly when it is stacked back. Of course, we manipulate these outslopes so they are stable. Slide 13. We seed them as soon as possible with hydroseeding equipment because handseeding just isn't done too much any more. You cannot cover the terrain and cover the area necessary, because this haulback contour operation travels very rapidly around the contour of the mountain and your reclamation is always maintained. You don't have problems somewhere along the line of trying to catch up on your reclamation because your backfilling operation is right behind it.

438 Slide 14. This picture is 4 years old. This area had just been seeded 2 weeks prior to that, and you can see a green haze. Slide 15. Last year, this picture looks like this. That is a haulback operation. This is the first one in West Virginia. It is called the Scarlett operation. Now I would like to show you a few valley fills.

438 Slide 16. This is a valley fill in southern West Virginia, very steep terrain, by Robinson and Phillips, constructed by the same criteria you saw before.

438 Slide 17. This is a valley fill near Charleston by Princess Susan Coal Co., the haulback concept. You can see on the top of that stopback material, there is a flat bench maintained at the top. In this operation, there is zero highwall, there is no highwall in this operation. In cases where we can put the material back and have enough room and don't have to stack the material too deep so we can actually work those outslopes and we totally eliminate the highwall. But you take an operation that is on 65 percent bus slopes, then sometimes you have to leave a little bit of the wall in order to stack that material so it is in environmentally sound conditions. The mountaintop operation - slide 18 - this is a mountaintop job turned into a farming unit. You can see some cattle scattered there in the lower left-hand corner.

438 Slide 19. This is another operation in Eccles County, West Virginia. Slide 20. We have controlled placement on all of our outslopes and all of our outslopes on our mountaintop jobs are no steeper than 50 percent. We feel we can maintain that. We feel we can work that through revegetation easily. We leave the trees at the outcrop, we don't destroy down below the tow of the outcrop.

438 Slide 21. Another mountaintop operation in central West Virginia.Slide 22. Now, gentlemen, in northern West Virginia, we have conditions like they have in Pennsylvania and we can go to approximate original contour. This is over in Nicholas County where it could be an area type operation if the machinery was big enough. This is also a haulback operation, but it was regraded to the approximate original contour.

438 Slide 23.This is an approximate original contour in north central West Virginia, Randolph County. Slide 24. This is an operation in Upshur County, a small operation; this fellow only mines about 35-40 acres per year, but he does a fantastic job.He is a very small operator. He is a proud Italian operator.

439 Slide 24. This is an approximate original contour in northern West Virginia, up in Tucker County. Slide 25. Another one in Monongalia County. We do this on all of our operations that we can go back to approximate original contour.However, our law only requires us to go back to 30 feet, to leave a maximum of a 30-foot highwall. However, in some areas we have to leave a high-wall but I know of no cases today where an individual is leaving a 30-foot

highwall. It is something less or no highwall whatsoever.

439 Slide 25.This is another one. Slide 26, slide 27, slide 28, I can keep on.

439 In southern West Virginia, the haulback concept is our main mining method and we employ that on contour and mountaintop removal and we have to have the off-site storage, in the upper righthand corner, on our valley fill. We have to have some way to take care of our excess material.

439 We don't believe you have to shoot it over the outslope. You can carry it back and put it in there. But there has got to be some provisions in here because it is an acceptable mining method. EPA has told us it is acceptable. It is the greatest thing since sliced bread, we have been told.

439 End of slide presentation.

439 That concludes my testimony, sir. Mr. Lusk and I will be happy to answer any questions.

439 [The prepared statement of Mr. Lusk follows:]

440 TESTIMONY BY BEN E. LUSK, PRESIDENT WEST VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION And JOHN W. STURM, VICE-PRESIDENT WEST VIRGINIA APPLIED RESEARCH INSTITUTE Before The COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

440 March 1, 1977

441 MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS BEN LUSK, PRESIDENT OF THE WEST VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION (WVSMRA). I APPRECIATE THE OPPORTUNITY TO APPEAR TODAY TO DISCUSS PENDING FEDERAL SURFACE MINING LEGISLATION. THE WVSMRA IS THE NATION'S LARGEST ORGANIZATION DEALING SPECIFICALLY WITH THE SURFACE MINING AND RECLAMATION INDUSTRY. ALSO, THE WVSMRA IS IN FAVOR OF THE ESTABLISHMENT OF FEDERAL GUIDELINES FOR INDIVIDUAL STATES TO FOLLOW IN THE REGULATION OF THE SURFACE MINING INDUSTRY. WE BELIEVE THAT UNIFORM GUIDELINES ARE NECESSARY TO:

441 (1) BRING ABOUT ENVIRONMENTAL IMPROVEMENT OF LAND DISTURBED DURING THE SURFACE MINING PROCESS;

441 (2) ELIMINATE THE UNCERTAINTY SURROUNDING THE FUTURE OF THE INDUSTRY SO THAT PROPER PLANNING AND EXPANSION CAN BE SUCCESSFULLY ACCOMPLISHED WITHOUT THE THREAT OF ADVERSE LEGISLATION AND REGULATION WHICH HAS BEEN LOOMING OVER THE INDUSTRY FOR THE PAST SEVERAL YEARS; AND

441 (3) PROVIDE FOR A MORE ECONOMICALLY STABLE INDUSTRY BY THE ELIMINATION OF THE COMPETITIVE INEQUITIES THAT ARE ASSOCIATED WITH THE VARIOUS DIFFERENCES OF INDIVIDUAL STATE REGULATIONS.

441 IT IS OUR HOPE THAT WITH FEDERAL GUIDELINES, THESE PROBLEMS WILL BE ELIMINATED AND THE SURFACE MINING INDUSTRY CAN PROCEED FORWARD TO PROVIDE MUCH NEEDED COAL, WHILE AT THE SAME TIME, INSURING THAT PROPER ENVIRONMENTAL PROTECTION BE MAINTAINED.

442 HOWEVER, ALTHOUGH THERE MAY BE A NEED FOR FEDERAL ASSISTANCE IN BRINGING ABOUT A MORE STABLE AND ENVIRONMENTALLY SOUND INDUSTRY, IT IS MY OPINION THAT SB-7, IN ITS PRESENT FORM, IS NOT THE VEHICLE TO ACCOMPLISH THIS GOAL.

442 I. ADEQUATE TIME MUST BE ALLOCATED FOR PROPER INVESTIGATION INTO TODAY'S SURFACE MINING & RECLAMATION INDUSTRY ALTHOUGH IT IS UNDERSTANDABLE THAT CONGRESS WOULD LIKE TO COMPLETE ITS WORK ON THIS LEGISLATION AS SOON AS POSSIBLE, I FEEL THAT QUICK PASSAGE WITHOUT PROPER INVESTIGATION INTO THE VARIOUS CHANGES THAT HAVE OCCURRED IN THE INDUSTRY DURING THE PAST FOUR YEARS, IS WRONG. OUR ASSOCIATION, THE INDUSTRY AND OTHER STATES HAVE SPENT MILLIONS ON DEVELOPING NEW MINING METHODS THROUGH RESEARCH, WHICH WAS NOT PRESENT WHEN THIS COMMITTEE STARTED ITS WORK ON THIS LEGISLATION SIX YEARS AGO. UNFORTUNATELY, NONE OF THE NEW MINING METHODS RECENTLY DEVELOPED ARE RECOGNIZED IN SB-7 AND IT APPEARS THAT ALL OUR EFFORTS, AND THE EFFORTS OF OTHER STATES, TO BRING ABOUT A MORE ENVIRONMENTALLY SOUND INDUSTRY, WERE IN VAIN.

442 I AM HOPEFUL THAT AFTER 100 YEARS OF SURFACE MINING IN THE UNITED STATES AND SIX YEARS OF HARD WORK BY THIS COMMITTEE AND ITS STAFF FOR A WORKABLE FEDERAL BILL, THAT THIS COMMITTEE WILL DELAY ACTION ON SB-7 UNTIL THERE HAS BEEN TIME ALLOCATED TO PROPERLY INVESTIGATE THE CURRENT STATE OF THE ART.

443 II. THERE IS A NEED FOR A MAJOR UPDATING OF SB-7

443 WHEN READING SB-7 AS INTRODUCED LAST MONTH, WE WERE DISTURBED TO FIND THE RESULTS OF THE EMOTIONALISM GENERATED IN THE EARLY 70'S, STILL PRESENT IN 1977.WE WERE HOPEFUL THAT THE POLITICAL AND EMOTIONAL INFLUENCE WHICH SURROUNDED THIS CONTROVERSIAL ISSUE WOULD HAVE BEEN PLACED ASIDE IN AN ATTEMPT TO AFFECT WORKABLE LEGISLATION WHICH WOULD BE A BENEFIT TO THE NATION. INSTEAD, WE FIND UNDER TITLE NO. 1, SECTION 101(G), THAT COAL IS THE ONLY MINERAL NEEDING REGULATION AND THE MINING OF OTHER MINERALS STILL NEEDS INVESTIGATION. THIS FINDING IS SIX YEARS OLD AND IGNORES COMPLETELY AN ELEVEN-YEAR OLD STUDY BY SECRETARY OF INTERIOR STEWART UDALL. HIS INVESTIGATION FOR THE 89TH CONGRESS, ENTITLED "SURFACE MINING IN OUR ENVIRONMENT," SHOWS THAT TWO-THIRDS OF THE THREE MILLION PLUS ACRES OF LAND DISTURBED IN THE UNITED STATES BY SURFACE MINING WERE DISTURBED BY THE MINING OF MINERALS OTHER THAN COAL. WHY RUSH TO REGULATE AN INDUSTRY THAT DISTURBS ONE-THIRD, WHILE DELAYING ACTION TO REGULATE THE OTHER TWO-THIRDS.

443 SECONDLY, SECTION 102(J) STATES THE PURPOSE OF THIS BILL IS TO ENCOURAGE THE FULL UTILIZATION OF THE COAL RESOURCES THROUGH THE DEVELOPMENT AND APPLICATION OF UNDERGROUND EXTRACTION TECHNOLOGIES. WE CAN FIND LITTLE REASON WHY EMPHASIS ON DEEP MINING SHOULD BE STRESSED IN A "SURFACE MINING CONTROL ACT." OBVIOUSLY, WITH 54 PERCENT OF THE NATION'S COAL NOW EXTRACTED BY SURFACE MINING, SECTION 101(B) STATING THAT THE OVERWHELMING PERCENTAGE OF THE

NATION'S COAL RESERVES CAN ONLY BE EXTRACTED BY UNDERGROUND MINING IS ALSO INCORRECT.

444 III. MORE CONSIDERATION MUST BE GIVEN TO CLIMATIC CONDITIONS

444 IDEALISTICALLY, IT WOULD BE GOOD TO HAVE UNIFORM RECLAMATION STANDARDS FOR THE ENTIRE NATION. HOWEVER, IT IS OBVIOUS THAT THERE ARE CERTAIN SITUATIONS THAT ARE ENDEMIC TO INDIVIDUAL AREAS. FOR EXAMPLE, WE ACCEPT THE FACT THAT SPECIAL REQUIREMENTS ARE NECESSARY TO ACCOMMODATE THE DIFFERENCES IN TOPOGRAPHY AND GEOLOGY FROM STATE TO STATE. BUT, THERE HAS TO BE MORE CONSIDERATION AND RECOGNITION GIVEN TO CLIMATIC CONDITIONS WHICH ARE ALSO DIFFERENT FROM STATE TO STATE. IN THE EASTERN UNITED STATES, FOR EXAMPLE, WE HAVE BEEN SUCCESSFUL IN ACHIEVING ADEQUATE VEGETATION IN TWO GROWING SEASONS. THERE IS NO NEED FOR STATES, WITH ADEQUATE RAINFALL, TO BOND LAND FOR FIVE YEARS IN ORDER TO PROVE THEY CAN GROW SOMETHING WHICH TAKES ONLY 18 MONTHS TO ACCOMPLISH.

444 IV. MORE CONSIDERATION MUST BE GIVEN TO SMALL OPERATORS

444 THERE IS NO POSSIBLE WAY THAT THE SMALL OPERATOR CAN ECONOMICALLY COMPLY WITH THE VARIOUS PERMIT REQUIREMENTS OF SB-7. THE ESTABLISHMENT OF THE FILING FEE, WHICH IS TO COVER THE ENFORCEMENT AND ADMINISTRATION OVER THE LIFE OF THE OPERATION, WOULD BE ENORMOUS. IT'S BEEN CALCULATED THAT THE ENGINEERING NECESSARY FOR ESTABLISHING PROPER PREPLANNING COULD COST AS HIGH AS $50,000 - $1 00,000 WITH THE HYDROLOGIC AND TEST BORING STUDIES THAT ARE MANDATORY. ADD TO THAT THE COST OF CITIZEN'S SUITS, AND THE LENGTHY PERMIT REVIEW PROCESS, THE SMALL OPERATOR COULDN'T POSSIBLY STAY IN BUSINESS.

445 HR-2 RECOGNIZES THIS PROBLEM WITH THE SMALL OPERATOR AND GRANTS AN EXEMPTION FOR COMPANIES UNDER 250,000 TONS ANNUALLY AND REQUIRES THE STATE TO PAY FOR CORE DRILLING AND HYDROLOGIC STUDIES. THE STATES, UNDER HR-2, CAN CHARGE THE SMALL OPERATORS THAT COST UNDER THE PERMIT FEE REQUIREMENT. SB-7 AND HR-2 HAVE TO TAKE INTO CONSIDERATION THE ADVERSE ECONOMIC ASPECTS THESE PROVISIONS WILL HAVE ON SMALL BUSINESS.

445 V. PUBLIC HEARINGS AN ADMINISTRATIVE NIGHTMARE (SEC. 420)

445 IF IT IS MANDATORY FOR EVERY PERMIT APPLICATION TO BE ACCOMPANIED BY A PUBLIC HEARING, NO MATTER HOW VALID THE REASON, THERE IS NO WAY THE STATES CAN ADMINISTER THIS PROVISION. IN WEST VIRGINIA, FOR EXAMPLE, THERE ARE AN AVERAGE OF 300 PERMITS GRANTED ANNUALLY. LAST YEAR THAT WOULD HAVE MEANT AT LEAST 300 PUBLIC HEARINGS. RECENTLY, UNDER OUR PUBLIC HEARING PROCEDURE IN THE WEST VIRGINIA LAW, WE EXPERIENCED A PUBLIC HEARING WHICH TOOK 14 MONTHS TO RESOLVE. ALSO, IN SB-7, UNDER THE CITIZEN SUITS PROVISION, SPECIFIC STATUTORY AUTHORITY IS GRANTED TO SUE THE FEDERAL GOVERNMENT, THE STATE AGENCIES AND THE OPERATORS. OBVIOUSLY, WITH THIS STATUTE AND THE EXISTING RIGHTS TO BRING SUITS UNDER OTHER STATUTES, THERE WOULD BE NO END TO LITIGATION. THERE IS NO WAY THIS PART OF THE ACT CAN BE ADMINISTERED BY THE STATE AGENCIES OR COMPLIED WITH BY THE MINING COMPANIES, ESPECIALLY THE SMALLER OPERATORS.

446 VI. OTHER AREAS OF CONCERN

446 A. (SEC. 415(b)(9) - FILLING OF AUGER HOLES IS AN IMPOSSIBILITY. ACCORDING TO THE U.S. BUREAU OF MINES, THERE IS NO TECHNOLOGY AVAILABLE FOR THE FILLING OF AUGER HOLES. BACKFILLING AND COMPACTION IS SUCCESSFUL WHEN ACCOMPLISHED WITH IMPERVIOUS CLAY MATERIAL AND WE BELIEVE THAT SB-7 MUST TAKE THIS INTO CONSIDERATION AS AN ACCEPTED AND SUCCESSFUL PRACTICE.

446 B. (SEC. 415(b)(12) - MINING WITHIN 500 FEET OF AN ACTIVE UNDERGROUND
MINE IS PROHIBITED WITHOUT TAKING INTO CONSIDERATION WHETHER IT CAN BE DONE SAFELY, NOR DOES IT TAKE INTO ACCOUNT THE VERTICAL DISTANCE WHERE SURFACE MINING CAN BE DONE SAFELY. THE REGULATORY AUTHORITY SHOULD BE GIVEN THE DISCRETION TO PERMIT MINING WHERE IT CAN BE ACCOMPLISHED WITHOUT CREATING AN UNSAFE CONDITION.

447 C. (SEC. 402(f) - SB-7 CALLS FOR THE INTERIM FEDERAL ENFORCEMENT PROGRAM TO START IN 135 DAYS AFTER ENACTMENT. WE BELIEVE THAT MORE TIME IS NEEDED TO APPLY FOR ALL THE VARIANCES REQUIRED TO BE IN COMPLIANCE. HR-2 REQUIRES SIX MONTHS AND ALTHOUGH IT GRANTS MORE TIME THAN SB-7, IT ALSO FALLS SHORT OF CONSIDERING ALL THE PAPER WORK NECESSARY TO SUCCESSFULLY COMPLY WITH ALL THE PROVISIONS OF THE INTERIM STANDARDS.

447 D. (SEC. 415(d)(2) - NEW TECHNOLOGY FOR RETURNING THE MINED AREA TO THE APPROXIMATE ORIGINAL CONTOUR MUST BE TAKEN INTO CONSIDERATION. MOUNTAIN TOP REMOVAL WITH VALLEY FILLS, THE "HAULBACK" METHOD, WHICH WAS DEVELOPED IN WEST VIRGINIA IN 1972, AND TERRACING AS ALLOWED IN THE PENNSYLVANIA LAW, SHOULD BE PERMITTED AND RECOGNIZED UNDER LAW AND NOT BE SUBJECT TO A VARIANCE. TO EXPLAIN THE SUCCESSFUL NATURE OF MOUNTAIN TOP REMOVAL AND THE "HAULBACK," THE NEXT PORTION OF OUR TESTIMONY CAN BE BEST PRESENTED BY MR. STURM, WHO WILL SHOW YOU HOW WE, IN WEST VIRGINIA, ARE ABLE TO ELIMINATE HIGHWALLS AND PREVENT SPOIL FROM BEING PLACED ON STEEP SLOPES.

449 MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS JOHN STURM, DIRECTOR OF TECHNICAL SERVICES FOR THE WEST VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION (WVSMRA) AND VICE-PRESIDENT OF THE WEST VIRGINIA APPLIED RESEARCH INSTITUTE (WVARI), WHICH IS THE RESEARCH BRANCH OF THE ASSOCIATION.

449 SINCE 1971, WHEN WEST VIRGINIA'S LATEST SURFACE MINING ACT WAS PASSED, THE OPERATORS IN WEST VIRGINIA HAVE SPENT MILLIONS OF DOLLARS ON APPLIED RESEARCH DEVELOPING MINING METHODOLOGIES THAT WOULD MINIMIZE ENVIRONMENTAL DISTURBANCE.

449 AT THE SAME TIME OUR ASSOCIATION WAS INSTRUMENTAL IN OBTAINING AND IMPLEMENTING SEVERAL RESEARCH PROJECTS WHICH HAVE BEEN COOPERATIVELY FUNDED BY OUR INDUSTRY AND STATE AND FEDERAL GOVERNMENTS.

449 DURING THE PAST FIVE YEARS OUR ASSOCIATION HAS RECEIVED TWO GRANTS FROM THE U.S. ENVIRONMENTAL PROTECTION AGENCY. THE FIRST, "NEW SURFACE MINING TECHNOLOGY TO MINIMIZE ENVIRONMENTAL DISTURBANCE" AND THE SECOND IS "ENVIRONMENTAL IMPACT OF STEEP SLOPE MINING."

449 WE HAVE ALSO RECEIVED A JOINT GRANT WITH SKELLY & LOY FROM THE U.S. BUREAU OF MINES TO STUDY "CROSS RIDGE MOUNTAIN TOP REMOVAL" MINING METHODS. WE HAVE NUMEROUS RESEARCH PROJECTS WITH THE U.S. FOREST SERVICE, USBOM, THE WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES, WEST VIRGINIA UNIVERSITY AND VIRGINIA POLY. INSTITUTE: WE WERE INSTRUMENTAL IN THE DEVELOPMENT OF THE STEERING COMMITTEE FOR SURFACE MINING RESEARCH IN WEST VIRGINIA AND WE HELPED ESTABLISH THE COUNCIL FOR SURFACE MINING RESEARCH IN APPALACHIA.

450 WE ARE THE ONLY STATE THAT OPENS UP OUR INDUSTRY TO AN INTERDISIPLINARY INTERAGENCY EVALUATION OF SURFACE MINING. FOR THE PAST SIX YEARS, THE ONE WEEK LONG TOUR ACROSS WEST VIRGINIA HAS VISITED OVER 125 SITES. LAST YEAR ALONE THERE WERE OVER 100 STATE, FEDERAL, PRIVATE AND ENVIRONMENTAL REPRESENTATIVES ON THIS TOUR. AND THERE EVALUATION IS PUBLISHED FOR PUBLIC RECORD.

450 IN WEST VIRGINIA, WE HAVE DEVELOPED THE LATERAL MOVEMENT CONCEPT OF SURFACE MINING, COMMONLY REFERRED TO AS THE "HAULBACK." AND I AM CERTAIN THAT IF THIS COMMITTEE WOULD REALIZE THE CONCEPT BEHIND THE "HAULBACK" METHOD IT WOULD BE INCORPORATED INTO THIS FEDERAL SURFACE MINING BILL AS AN APPROVED MINING METHOD AND WOULD NOT REQUIRE THE VARIENCES AND PUBLIC HEARINGS ASSOCIATED WITH STEEP SLOPE MINING OPERATIONS. WHAT I WOULD LIKE TO DO IS TAKE YOU THROUGH A VERY BRIEF CYCLE OF A "HAULBACK" OPERATION IN WEST VIRGINIA. AS IT RELATES TO STEEP SLOPE MINING, THEN I WILL SHOW YOU THE SAME CONCEPT APPLIED TO MOUNTAIN TOP REMOVAL, AND THEN COMPARE APPROXIMATE ORIGINAL CONTOUR TO OUR "HAULBACK" CONCEPT.

451 Senator METCALF. On the problem we have had in previous testimony, regarding the stabilization of regraded spoil, you say that in 4 years you have gotten some vegetation.There has been erosion and sometimes the top material goes out of it. How do we guarantee stabilization with your haulback principle?

451 Mr. STURM. I don't know where to approach that.

451 Senator METCALF.I am just trying to refer to some of the testimony that has been presented before.

451 Mr. STURM. As far as placing material in West Virginia, the Department of Natural Resources, of course, aided us in our endeavors to replace everything on steep slopes.We had a lot of landslides. We had a lot of offsite spillage prior to 1971. It was felt there had to be something, we knew there had to be something - and this was to minimize environmental disturbances and to stop landslides.

451 Since 1973, Ben Green, chief of the division of reclamation in West Virginia, says there has been no major landslides, like there used to be in southern West Virginia, due to our

haulback concept. There have been landslides where roads have given away. We have shot material over the outslope by loading holes too heavy, that sort of thing. But as far as material replacement is concerned, we have had no major landslides.I think that speaks for itself.

451 As far as toxic material is concerned -

451 Senator METCALF. We had analogous problems in highway construction all over the United States, too. The same sort of landslides. When they had a slope, they used to take it out with a cut and fill. I am sorry this committee doesn't have jurisdiction over some of those matters.

451 Mr. STURM. I think a point brought up earlier, that I don't think was brought out clear enough, was the outcrop barrier being left. This is environmentally unsound. Economically, it is ridiculous. But, environmentally, it is unsound. What you do in leaving an outcrop area of mountaintop removal operation, you merely form a huge sponge, setting up on top of the mountain, and you form unstable conditions. If you use french draina, like we use in West Virginia, the hard rock and the base of the fill, the water naturally percolates down like it does in a normal soil, it percolates through the interior of the fill material and out through natural ground, natural drainways, just like it was prior.

451 Mr. LUSK. Do you want to hit toxic materials?

451 Mr. STURM. As far as toxic materials are concerned, they have to be covered by a depth of material that is sufficient enough to support vegetation and also to seal them off from oxygen so they don't produce acid problems from the pyritic material contained therein.

451 There have been so many studies, it is unbelievable. Peabody has spent thousands of dollars on this sort of thing. Also our industry in West Virginia. We are lucky in West Virginia to have the foremost authority on material lacement as far as toxic material. If we were working on the report in West Virginia right now, it is an EPA man, produced by Richard Smith from West Virginia University which identifies toxic strategy, identifies methods for handling such material in the pit. It identifies the methods to analyze and evaluate and handle all the ramifications thereof. In West Virginia, we have been practicing these techniques for the past 5 years.

452 I had the wonderful opportunity to work under Dr. Richard Smith, and I am a soil scientist, and that is why I have our operators in West Virginia do that so they do not produce acid situations. I would like to point out as far as acid water is concerned, by another EPA report by Ron Hill, who is chief of the extraction technology branch, Cincinnati, Ohio. He stated at the Louisville convention that deep mine drainage, that the acid produced in the United States is primarily deep mine drainage, and by 1978, he said, in a couple of years, he thought 95 percent of the water problems as far as acid water is concerned will be from deep mine discharges. That is the advances surface mining industry has made.

452 If you try to control us from mining through old, abandoned deep mines, OK, we are mining through old, deep mines, we are treating the water we run into. We are taking care of it. We are mining out all works, total daylighting -

452 Senator METCALF. Through the surface mine operation?

452 Mr. STURM. Yes; we will take all of the mineral, part of the mineral. If there is any water involved, we will treat that water, discharge it. And, of course, we have got our MPDS permit. We have our State permit. We monitor that water on a daily basis.Everyone in this room is involved in coal mining. On July 1 this year, we will monitor that water on a weekly basis.

452 There is definite and very limited criteria, I might add by the national pollutant elimination system. We feel as everybody does, over the past 5 years there have been so many advances in the industry, not just in West Virginia, but in the entire industry. There have been so many advances that H.R. 2 or S. 7, anyone of them, realizes what has been done in the industry. Some time needs to be taken to study the state-of-the-art and the provisions in the bill so we can continue to provide the Nation with the energy it needs.

452 Senator METCALF. Do you have anything further to add, either of you?

452 Thank you very much. Thank you for a most illuminating testimony. When I talked about the devastation in West Virginia.I was talking about things that took place before 1971 and your new laws and your new administration. You go out to Montana and you can see where the landscape has been destroyed, just as badly as has been done in West Virginia. Some of the

conditions are just as deplorable. We are trying to correct that, whether it is out West or back
here. Your testimony has been very helpful. Thank you very much for coming.

452 This completes the witness list for today. We have two more days of hearings. Tomorrow
we will start with two Governors and we have a list of witnesses that I thought was relatively
short. But each witness comes flanked by five colleagues, it may take as long as today.

452 If it starts off that way tomorrow, I am going to try to restrict the testimony. I don't know
how much opportunity I will have to hold hearings while the Senate is in session, but we will
hear as many people as possible.

452 So the subcommittee will be in recess until tomorrow at 10 a.m., at which time we will
reconvene in this room.

452 [Whereupon, at 5:50 p.m., the hearing was recessed, to reconvene, Wednesday, March 2,
1977, at 10 a.m.]

WEDNESDAY, MARCH 2, 1977

453 U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES, OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Washington, D.C.

453 The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office
Building, Hen. Lee Metcalf presiding.

453 Present: Senators Metcalf, Bumpers, Ford, Bartlett, and Domenici.

453 Also present: D. Michael Harvey, chief counsel; Norm Williams, professional staff
member; and Ted Orf, deputy minority counsel.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM
THE STATE OF MONTANA

453 Senator METCALF. The subcommittee will please be in order.

453 This is a hearing of the Subcommittee on Public Lands and Resources. We are continuing
our review of possible effects of the steep slope requirements and other provisions of S. 7, the
Surface Mining Control and Reclamation Act of 1977. It should be understood that S. 7 is a
modified version of H.R. 25, the bill vetoed in May 1975, by President Ford.

453 Yesterday we heard from various coal industry spokesmen regarding problems they
anticipate encountering in complying with S. 7. I believe we were given a very thorough briefing.

453 Today we shall address ourselves to the viewpoint of residents of the six Appalachian States where mining for coal is widespread in mountainous areas, and where the devastating impacts of both underground and surface mining for coal have become everyday facts of life.

453 Coal mining yields energy - energy we Americans shall be needing in ever greater quantities. Coal mining provides jobs for thousands of local people. Coal mining generates profits for industry. All this is obvious.

453 What is not so obvious to those of us who may live outside the coal-producing regions is that coal mining has often brought with it the blight of siltation, landslides, stream pollution, burning gob piles - the progressive ruination of water supplies, roads, homes, and farms.

453 Far too many Appalachian communities have felt the suffocating grip of these environmental impacts of coal mining. We must not forget, nor should we neglect to rectify, the terrible debt which our coal-producing regions have had to assume in order to stoke the furnaces of the Nation.

454 S. 7 is specifically designed to begin repayment of that old debt and to remove the specter of future environmental degradation caused by coal mining.

454 Requiring the mined site to be returned to the approximate original contour and to its previous range of usefulness and productivity is basic to the bill's environmental protection performance standards. The bill stipulates that on slopes exceeding 20 degrees, except for the first cut, no spoil may be placed downslope of the bench.

454 In combination with other performance standards, the steep slope provisions should virtually eliminate the historic environmental abuses of strip mining by guaranteeing rapid stabilization of spoil material. Such, at least, has been the clear intent of Congress in twice passing this legislation.

454 Of course, I come from a western State with coal reserves which are about to be tapped on a huge scale. Let me express my personal conviction that coal mining operations need not and certainly must not be allowed to thrust upon neighboring communities the social and

environmental costs which have become the coal industry's hallmark in Appalachia. I expect today we shall come to a clearer understanding as to how S. 7 can accomplish that purpose.

454 Now we wish to hear from those who have lived as neighbors over the years with coal mining in Appalachia.

454 We are especially honored by the opportunity to have some of the Governors from the affected States testify on this very important legislation. The National Governors Conference is in town and we are privileged to have several of them up here to tell us how this legislation will affect their respective States.

454 The first of the Governors is the Governor of Kentucky. Yesterday we heard witnesses from Kentucky. We are also pleased to have a distinguished new member of the committee and a new member of the subcommittee assigned just yesterday afternoon, Senator Ford.

STATEMENT OF HON. WENDELL H. FORD, A U.S. SENATOR FROM THE STATE OF KENTUCKY

454 Senator FORD. It is a pleasure for me to be here this morning. I received my assignment yesterday. It also gives me a great deal of pleasure to present the first witness. I want you to notice my sign here that we are trying to be frugal on this committee and we just use up some of the old paper we have around.

454 It gives me a great deal of pleasure to present the first witness this morning, a longtime friend of mine, not only a personal friend but a political friend, the present Governor of Kentucky.

454 I think he comes to this committee with an extremely well-qualified background after serving 10 years in the Kentucky Legislature, 4 years as Speaker, 3 years as Lieutenant Governor and 3 years as Governor of Kentucky.

454 During this period of time, he has had an opportunity to debate and to see that legislation was enacted and now, as Governor of Kentucky, he has had opportunity to oversee the Natural Resources and Environmental Protection Agency which has the responsibility of supervising in the Commonwealth of Kentucky, surface mining and its reclamation.

455 I think this committee can take note of Governor Carroll's statement this morning. I

think his knowledge and background give us insight that probably no other Governor in the
United States can give us. So it gives me a great deal of pleasure to present to you, Mr.
Chariman, and to those in the audience, the distinguished Governor of the Commonwealth of
Kentucky, Hon. Julian M. Carroll.

STATEMENT OF HON. JULIAN M. CARROLL, GOVERNOR OF THE STATE
OF KENTUCKY; ACCOMPANIED BY ROBERT D. BELL, SECRETARY, DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION; JOHN D. WITT,
COMMISSIONER, BUREAU OF NATURAL RESOURCES; AND PERRY R. WHITE,
DEPUTY SECRETARY

455 Governor CARROLL. Mr. Chairman, Senator Ford, thank you very, very much.
For the record, my name is Julian M. Carroll. I am Governor of the Commonwealth of
Kentucky. I thank you for this opportunity to address the committee.

455 Mr. Chairman and Senator Ford, I would first like to address you as the Chairman of the
Committee on Natural Resources and Environmental Management of the National Governor's
Conference and give you the pleasant news, and I am sure the Chairman and Senator Ford will be
happy to hear, as well as this committee, that yesterday at my committee session I asked my
committee to endorse this legislation recognizing that there were some changes that needed to be
made in it, but endorsing certainly the intent and purpose of this legislation which we did in our
committee session yesterday morning with one vote of opposition.

455 Then yesterday afternoon I took it to the floor in a preliminary session of all of the
Governors and asked them to endorse the policy committee of my policy recommendation of my
committee, and it was endorsed by all of the Governors of the United States yesterday afternoon
with the exception of two.

455 Recognizing again, as I told the members from the floor, that I would be here this
morning, along with other Governors, to testify concerning some aspects of the legislation; but I
did think you would like to know of that strong support for this legislation you have from the
National Governors Conference.

455 Senator METCALF. Governor Carroll, we are very pleased to have that support. I wish
that you were able to come up here and handle this bill on the floor of the Senate, considering
your impressive accomplishment.

455 Believe me, we are concerned about some of the issues you raised. I have repeatedly said, that while I am the chief sponsor of this legislation, I am not wedded to a single line of it. Already yesterday I heard testimony from Kentucky operators which convinced me there has to be some modifications along the line your are going to suggest later on today. But I am very pleased we had this almost unanimous support from Governors throughout the United States.

456 Governor CARROLL. Thank you, Mr. Chairman, very, very much. Now I would like to address you both as a public official concerned with the impact of this legislation on central Appalachia and, of course, as the Governor of the Commonwealth of Kentucky.

456 I personally support the objectives of this legislation with enthusiasm just as I supported and voted for Kentucky's first effective strip mine legislation. Mr. Chairman, Senator Ford is well aware of this. But you might be interested to know when I was a young legislator in 1964 in the Kentucky General Assembly, I served as one member of a five-member committee that wrote Kentucky's first effective strip mine legislation and a member of Mr. Ford's staff was present in this room, was our director of the Legislative Research Commission at that time, and he knows full well we gained the reputation that year of having the strongest piece of strip mining legislation in the United States.

456 We, of course, have continued to upgrade our legislation since, and of course, are continuing to do so. Having lived through them, that experience, I know how difficult it is for Members of Congress as this legislation moves to its final resolution. There are many strident voices, each of whom speaks from their particular point of concern. Much of what they say is conflicting, and obviously ultimately, it is the committee and the Congress that will have to make the choice between those conflicting positions.

456 It seems that a comfortable majority of both the House and the Senate will vote for this legislation. Since passage is no longer the issue, in my opinion, it behooves each of us who are parties of interest to do all that we are able to do to perfect this legislation now in the interest of the Nation.

456 I have deep convictions that a number of changes in this legislation are indeed warranted. I appreciate the Chairman's statement that he is receptive to those kinds of responsible changes in

this legislation. I would be remiss as a public official if I did not dedicate my efforts toward improvement of this legislation.

456 Kentuckians know about coal. We know about its blessings and certainly we know all there is to know about its problems. Coal is important to Kentucky's environment. We have seen the consequences of uncontrolled and unregulated strip mining and we moved aggressively to improve our regulatory law and to improve its enforcement.

456 Coal is important as a form of energy. Over 90 percent of our electricity consumed by Kentuckians is generated from the burning of coal. Coal is important to Kentuckians economically.It is one of the most important assets in the economic balance sheet of our Commonwealth.

456 As Governor, it is my job to formulate and then to achieve public objectives with respect to the environment, to energy and to our economy. Unfortunately, these objectives often stand in stark conflict. In my role as Governor then, I must achieve the best final resolution of these conflicting objectives. And, of course, that is your task as you consider the Surface Mining Control and Reclamation Act of 1977.

456 The crucial question then is: Is S. 7, in its present form, the most appropriate resolution of the conflicting objectives of energy recovery, economic development, and protecting our natural environment? Respectfully, I say to you, I really do not think so.

457 It is vital that you understand the particular impact of this legislation on the steep slope area of central Appalachia and that you understand also the differences between central Appalachia and northern Appalachia.

457 Now, Mr. Chairman, I have with me today three members of my staff. The gentleman that is now standing is Secretary Robert Bell, my secretary of Natural Resources and Environmental Protection in Kentucky. I have, at my right. Mr. John Witt who is my commissioner of the Department of Reclamation who has a fantastic record; he is an engineer and is one of our fine public officials in Kentucky. To his right is Mr. Perry White who has been associated with me for many years as a lawyer and as a general counsel for our Department of Natural Resources and Environmental Protection.

457 I have asked Secretary Bell to stand and go to the display I have brought for the committee to see because it so clearly depicts what I am about to tell you.

457 Central Appalachia is composed of southern West Virginia, the western part of Virginia, northeasern Tennessee, and eastern Kentucky. The topography of the area is characterized by rugged relief and steep slopes; generally speaking, the slopes in this area are in excess of 20 degrees.

457 In our national debate, it is often argued that the Pennsylvania experience can be easily and simply transposed to other parts of the Appalachian areas. Quite honestly, that simply is not so. To suggest this is both unfair and unrealistic. Reports made to this very committee in March 1973 pointed out that almost 99 percent of the strippable reserves of Pennsylvania underlie slopes which measure less than 15 degrees.

457 One further but vital point needs to be made about the central Appalachian region. The coal found on the steep slope areas of this region is the finest coal to be found within the United States.It has a high Btu content and, even more important, it has a low sulfur content. It is a coal that the Nation desperately needs to achieve other national environmental objectives as expressed in the Clean Air Act.

457 This point I make specifically because the recent legislation under the Clean Air Act, once interpreted into a point of sulfur content of the coal, basically requires that sulfur content on the average to be less than six-tenths or seven-tenths of 1 percent of the coal in order to try to meet the ambient air standards of the National Clean Air Act.

457 About three-fourths of that kind of coal in the United States is located in that region. So we can begin to see the importance of this coal to the national energy problems in this country.

457 Additionally, Mr. Chairman, in that respect, I might point out there is a direct correlation between low-sulfur coal and steep slopes. There is a correlation between less steep slopes and higher sulfur coal which is to say the coal of the other regions where the slopes are 10 or 15 degrees have a higher sulfur content. The coal with the greater degree has the lower sulfur content.

457 There are two provisions of this legislation which are of overriding concern to this central

Appalachia and, thus, to Kentucky. These relate two terms you have heard many, many times which I shall use again today for the purpose of explaining our problems with the current drafting of this legislation. One relates to what we call mountaintop removal, the other relates to what we call the approximate original contour.

458 Mountaintop removal technology has many major advantages. Save for the esthetic change which obviously must occur, it is environmentally preferable to all other steep-slope extraction techniques, it recovers the maximum amount of coal from the particular location; it disturbs the least surface acreage for the tonnage that is removed. It recovers solid fuel resource not possible of recovery by underground methods, and it provides, at least in the long term, an excellent post-mining land-use potential, and it extracts a highquality, low-sulfur coal sorely needed, as I said, to achieve national environmental objectives under the Clean Air Act.

458 S. 7, as well as H.R. 2, as written, will seriously inhibit, if not preclude, this mining and reclamation technology. We ask the question: Why should we adopt a national policy which will make it more difficult, if not impossible to pursue such technology?

458 On Saturday, February 5, 1977, Chairman Udall and Secretary of the Interior Cecil Andrus viewed examples of mountaintop removal in the steep-slope areas of eastern Kentucky. Both officials quite honestly and, in our judgment, agreed that the law ought to permit such type of reclamation practices.

458 I might add, Mr. Chairman, that there were staff members from this committee as well as from the House committee present that day also. We deeply appreciated their comments. Kentucky sincerely believes that in steep-slope areas, modern mountaintop removal technology should be recognized as a proven and acceptable practice.

458 With respect to contour mining, there is a provision in the legislation which always requires return of the mined area to what we call the approximate original contour with all highwalls eliminated. Some observers always associate the engineering problems caused by the improper handling of spoil and the overburden with the esthetic problem of exposed highwalls, especially since the two problems result from the same operations, that is the removal of earth to reach a coal seam.

458 It is clearly the handling of the overburden and spoil that has contributed most to erosion, to sedimentation, to acid drainage, landslides, and water pollution. The historical practice of allowing overburden and spoil to be cast over the outslope has been the practice which has most degraded our environment.

458 The proposed act prohibits, or certainly drastically restricts, placement of overburden over the outslopes. This is a strong, positive feature of the proposed legislation and Kentucky supports that provision.

458 Sedimentation in streams from the mining operation generally derives from long uninterrupted slopes with a less than adequate vegetative cover. There is no disagreement among our engineers, the geologists, the hydrologists, and the soil scientists. Newly graded long, steep slopes are highly vulnerable to erosion, and the steeper and longer the slope, the greater the vulnerability.

458 Therefore, the requirement in steep-slope areas that would always require restoration to approximate original contour is open to serious challenge. We urge, of course, a reconsideration of that requirement.

459 In order to insure stability of the regraded steep slope, it may be necessary to utilize some residual highwall for the purpose of constructing the fill so that it will drain properly and not erode the fill material.In this respect, the act's language which states: "All highwalls eliminated" gives us some reason for concern. At this time we are not able to learn specifically whether the present language would permit such an engineeringly sound and environmentally acceptable restoration of the removed material.

459 Three authoritative studies, produced for the Federal Government at great expense, and I am told at almost $1 million, published in 1976 and 1977, endorse mountaintop removal technology and it questions the conceptual basis of always returning mined steep slopes to their approximate original contour. We are concerned that these studies may not have been called fully to the committee's attention.

459 We have other major concerns. Unquestionably, we believe that the procedural requirements set forth in the legislation ought to be reexamined and wherever the procedures do

not achieve a worthwhile environmental objective, they should be discarded. Black coal cannot be produced from redtape.

459 The legislation does not require the State regulatory authorities to act on a permit application within a specified time period. Investors are entitled to a timely answer, even if that answer is no.

459 Good morning, Senator Bumpers.

459 Senator BUMPERS. Good morning, Governor.

459 Governor CARROLL. We are concerned about how proceeds of the Abandoned Mine Reclamation Fund will be distributed among the States. In the interests of both simplicity and fairness, we urge you to redistribute this fund to a State in the same amount as collected in a State.

459 We ask the question: Have you provided sufficient funds within your authorizations to adequately support the costs that will have to be borne by the State regulatory authorities? Now is the time to examine this carefully. All the good that accrue from this legislation will be lost if the State regulatory authorities are physically and fiscally unable to discharge their responsibilities.

459 Our budget in Kentucky, by the way, gentlemen, for this one department alone is $2 .5 million, and I believe the committee has authorized approximately $1 0 million for some 25 States. We question whether or not that is enough to cover the job adequately.

459 Kentucky, with its judicial determinations on the broad-form-deed question, may be a unique one for our State. We wonder if you have really addressed the rights of the small surface landowner. Many of these small landowners will not want the final configuration of their land returned to the approximate original contour. Their only valuable legacy from a strip mine may be a bench of level land.

459 I might quickly say under this broad-form deed, really, the owner of the land, as a result of interpretation by the courts, has little rights when it comes to mining of his land. One of the rights he really enjoys is to be able to negotiate with the coal mining company so that when they get through mining his land they leave him with some usable, level land. We are fearful, as this

act is presently drafted, would forfeit that right of these individuals who own their land under the broad-from-deed provisions.

460 Senator METCALF. May I interrupt there for a moment?

460 Governor CARROLL. Yes, indeed, Mr. Chairman.

460 Senator METCALF. You will recall this bill was debated in the Senate. I don't know whether it was the first veto or the second veto, there was quite a colloquy with your then-Senator from Kentucky, Senator Cook, and a discussion of the problems you raised. Quite frankly, it was a compromise that we worked out. It was not satisfactory to anybody, but it was worked out because of the Kentucky situation. We will take another look at that language, but it was Senator Cook who helped us draft the language that is now in the bill.

460 Governor CARROLL. We appreciated that and we knew of his effort, but quite honestly, Mr. Chairman, it is our judgment even the compromise does not yet specifically solve the problem. As I have done here in my statement, I just picked out one particular thing to show our problem. If you don't believe we really have one, you ought to come to Pikeville, Ky., where we play a football game on a 70-yard field. That may be unique.

460 Senator BUMPERS. It is unique. I am going to come to Pikeville to see a 70-yard football field.

460 Senator FORD. The Senator from Arkansas is so out of shape he couldn't make 70 yards.

460 Senator METCALF. I will leave the Governors to determine such matters.

460 Governor CARROLL. In all honesty, I must agree with the contention of the industry that there is much technical data required under this act prior to the mining that simply does not exist at this time.

460 The argument made by industry spokesmen that this data should be developed by appropriate Federal and State agencies does indeed have some merit.

460 At this time, Mr. Chairman, I would like to enter into the record two position papers that I have asked our Kentucky Division of Reclamation to prepare on the subjects of mountaintop removal and the approximate original contour. We have some real fine people in these

departments, as I said to you. Mr. Witt, to my right, is a professional engineer and he is our commissioner of the Department of Reclamation. These materials were prepared under his supervision as well as the supervision of our secretary, Robert Bell, who is indeed a well-recognized person in State government in our Commonwealth.

460 I would also like to enter into the record a statement made by Secretary Bell of our department to the House on last Friday. We would also like to forward some additional commentary on the legislation, particularly with respect to the hearing process that we should have concluded, certainly, and certainly we understand the committee will be open a few more days and we would like to have that entered into the record, Mr. Chairman, if we might.

460 Senator METCALF. Without objection, the various requests are granted. The record will be held open a sufficient time. I don't know when we will get around to marking up this bill, but it won't be next week.

460 [The prepared statement of Mr. Bell, the position papers, and a subsequent submittal follow:]

461 STATEMENT OF ROBERT D. BELL, SECRETARY DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION COMMONWEALTH OF KENTUCKY FRANKFORT, KENTUCKY

461 ON HR 2 FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

461 TO THE SUB-COMMITTEE ON ENERGY AND THE ENVIRONMENT COMMITTEE ON INTERIOR AND INSULAR AFFAIRS U.S. HOUSE OF REPRESENTATIVES FEBRUARY 25, 1977

462 MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM ROBERT D. BELL, SECRETARY OF THE KENTUCKY DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION. I APPRECIATE VERY MUCH THE OPPORTUNITY TO ADDRESS THE COMMITTEE.

462 IN ORDER THAT YOU MIGHT UNDERSTAND MY INTEREST IN THE FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, I WOULD LIKE TO EXPLAIN THAT I AM APPOINTED BY AND SERVE AT THE PLEASURE OF THE GOVERNOR OF THE COMMONWEALTH OF KENTUCKY. AT THE STATE LEVEL, OUR DEPARTMENT HAS RESPONSIBILITY FOR MOST OF THE FUNCTIONS PERFORMED AT THE FEDERAL LEVEL BY THE DEPARTMENT OF THE INTERIOR AND THE ENVIRONMENTAL PROTECTION AGENCY. UNDER THIS LEGISLATION, THE DIVISION OF RECLAMATION IN OUR DEPARTMENT WOULD BECOME THE STATE REGULATORY AUTHORITY.

462 THE COMMONWEALTH OF KENTUCKY ENTHUSIASTICALLY SUPPORTS THE BROAD OBJECTIVES OF THE PROPOSED LEGISLATION. GOVERNOR JULIAN M.

CARROLL HAS PERSONALLY EXPRESSED THIS SUPPORT ON SEVERAL PUBLIC OCCASIONS. HAVING SAID THIS, LET ME NOW SAY EMPHATICALLY THAT THERE ARE PROVISIONS OF THE PROPOSED LEGISLATION WHICH WE THINK SHOULD BE CHANGED.

462 WITHIN A WEEK, WE WILL COMPLETE A COMMENTARY WHICH WILL ADDRESS PRACTICALLY EVERY SECTION OF THE PROPOSED LEGISLATION. THROUGH OUR KENTUCKY CONGRESSIONAL DELEGATION, WE WILL TRANSMIT THIS COMMENTARY TO THE STAFF OF THE APPROPRIATE COMMITTEES FOR THEIR CONSIDERATION.

463 AT THIS TIME, WE HAVE THE FOLLOWING MAJOR CONCERNS:

463 WE BELIEVE MANY OF THE PROCEDURAL REQUIREMENTS SET FORTH IN THE BILL COULD BE SIMPLIFIED IN THE INTEREST OF THE ENVIRONMENT, THE PUBLIC, THE GOVERNMENT AND THE INDUSTRY;

463 WE ARE CONCERNED ABOUT THE ABANDONED MINE RECLAMATION FUND AND THE PROCEDURES UNDER WHICH THE PROCEEDS FROM THIS FUND WILL BE ALLOCATED TO THE STATES;

463 WE ARE WORRIED AS TO WHETHER OR NOT THERE WILL BE SUFFICIENT FEDERAL FINANCIAL SUPPORT OF THE STATE REGULATORY AUTHORITIES;

463 WE WORRY ABOUT THE RIGHTS OF SURFACE LAND OWNERS WHO ARE IMPACTED BY SURFACE MINE OPERATIONS AND WHETHER THOSE RIGHTS ARE FULLY PROTECTED BY THIS LEGISLATION.

463 ALL OF THE ABOVE CONCERNS AND OTHERS WILL BE ADDRESSED IN THE COMMENTARY WHICH WILL BE PROVIDED TO THE COMMITTEE.

463 TODAY, I WILL ADDRESS ONLY TWO ISSUES WHICH RELATE SPECIFICALLY TO STEEP SLOPE MINING IN THE CENTRAL APPALACHIAN AREA. THESE ARE: (1) MOUNTAINTOP REMOVAL AND (2) APPROXIMATE ORIGINAL CONTOUR.

464 EASTERN KENTUCKY, SOUTHERN WEST VIRGINIA, SOUTHWESTERN VIRGINIA AND NORTHEASTERN TENNESSEE MAKE UP CENTRAL APPALACHIA. GENERALLY, CENTRAL APPALACHIA HAS NATURAL GROUND SLOPE ANGLES GREATER THAN TWENTY DEGREES. ACCORDING TO DATA PREPARED FOR THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, LESS THAN FOUR PERCENT OF THE COAL SURFACE MINED IN CENTRAL APPALACHIA COMES FROM SLOPES OF LESS THAN FIFTEEN DEGREES. OVER SEVENTY PERCENT OF CURRENT SURFACE PRODUCTION COMES FROM SLOPES OF MORE THAN TWENTY-FIVE DEGREES.

464 IT IS IMPORTANT FOR US TO DEMONSTRATE TO THE COMMITTEE THAT THE CHARACTERISTICS AND DEGREE OF SLOPE IN CENTRAL APPALACHIA ARE IN NO WAY COMPARABLE TO THOSE FOUND IN NORTHERN APPALACHIA WHICH CONSISTS OF EASTERN OHIO, WESTERN PENNSYLVANIA, NORTHERN WEST VIRGINIA AND MARYLAND.

464 WHEN IT IS ARGUED THAT THE PENNSYLVANIA EXPERIENCE CAN SIMPLY BE TRANSPOSED TO CENTRAL APPALACHIA, IT IS UNREALISTIC; IT IS UNFAIR. ACCORDING TO THE SAME AUTHORITATIVE SOURCE CITED ABOVE, OVER EIGHTY-FIVE PERCENT OF THE STRIPPABLE RESERVES IN PENNSYLVANIA UNDERLIE SLOPES WHICH MEASURE LESS THAN TEN DEGREES; ALMOST NINETY-NINE PERCENT UNDERLIE SLOPES WHICH MEASURE LESS THAN FIFTEEN

DEGREES.

464 WE HAVE PREPARED TWO POSITION PAPERS WHICH ADDRESS THE ISSUES OF MOUNTAINTOP REMOVAL AND APPROXIMATE ORIGINAL CONTOUR. MR. CHAIRMAN, I WOULD LIKE TO ENTER EACH OF THESE POSITION PAPERS INTO THE RECORD.

465 IN PREPARATION OF THESE TWO POSITION PAPERS, WE HAVE RELIED ON RECENT AUTHORITATIVE CONSULTING STUDIES PERFORMED FOR THE FEDERAL GOVERNMENT. THESE ARE:

465 EVALUATION OF CURRENT SURFACE COAL MINING OVERBURDEN HANDLING TECHNIQUES AND RECLAMATION PRACTICES, PHASE III: EASTERN U.S. , PREPARED BY MATHTECH INC., PRINCETON, NEW JERSEY, FOR THE U.S. DEPARTMENT OF THE INTERIOR, JULY 1976.

465 EROSION AND SEDIMENT CONTROL: SURFACE MINING IN EASTERN U.S. , PREPARED BY HITTMAN ASSOCIATES, COLUMBIA, MARYLAND, FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, OCTOBER 1976.

465 ENERGY AND ECONOMIC IMPACT OF HR 13950 , PREPARED BY ICF INC., WASHINGTON, D.C., FOR THE U.S. COUNCIL ON ENVIRONMENTAL QUALITY AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY, JANUARY 1977.

465 IN OUR OPINION, THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS WHICH ARE SET FORTH IN THESE MOST RECENT COMPREHENSIVE AND AUTHORITATIVE STUDIES DO NOT SUPPORT THE PROVISIONS IN THE LEGISLATION WHICH RELATE TO MOUNTAINTOP REMOVAL AND RETURN TO APPROXIMATE ORIGINAL CONTOUR IN STEEP SLOPE AREAS. WE ARE CONCERNED THAT ALL OF THIS INFORMATION MAY NOT HAVE BEEN MADE AVAILABLE TO THE MEMBERS OF THE COMMITTEE.

465 MOUNTAINTOP REMOVAL

465 IN CENTRAL APPALACHIA, COAL SURFACE MINING USING MODERN MOUNTAINTOP REMOVAL EXTRACTION TECHNOLOGY ACCOUNTS FOR A SUBSTANTIAL PROPORTION OF ALL SURFACE MINING TONNAGE; IN EASTERN KENTUCKY APPROXIMATELY FIFTY PERCENT.

466 PROFESSIONALS KNOWLEDGEABLE ABOUT BOTH RECLAMATION AND MINING AGREE THAT MOUNTAINTOP REMOVAL TECHNOLOGY, ESPECIALLY AS IT HAS BEEN DEVELOPED OVER THE LAST TWO TO THREE YEARS, HAS THE FOLLOWING MAJOR ADVANTAGES:

466 SAVE FOR THE AESTHETIC CHANGE WHICH OCCURS, IS ENVIRONMENTALLY PREFERABLE TO ALL OTHER STEEP SLOPE EXTRACTION TECHNIQUES;

466 RECOVERS MAXIMUM OF SOLID FUEL RESOURCE;

466 DISTURBS LEAST SURFACE ACREAGE FOR TONNAGE REMOVED;

466 RECOVERS SOLID FUEL RESOURCE NOT POSSIBLE OF RECOVERY BY UNDERGROUND METHODS;

466 PROVIDES (AT LEAST IN THE LONG TERM) AN EXCELLENT POST-MINING LAND USE POTENTIAL; AND

466 EXTRACTS A HIGH QUALITY LOW-SULFUR COAL SORELY NEEDED TO ACHIEVE NATIONAL ENVIRONMENTAL OBJECTIVES (CLEAN AIR ACT).

467 HR 2 AND S 7, AS WRITTEN, WILL SERIOUSLY INHIBIT, IF NOT PRECLUDE THIS MINING AND RECLAMATION TECHNOLOGY. WHY SHOULD WE ADOPT A NATIONAL POLICY WHICH MAY MAKE IT MORE DIFFICULT, IF NOT IMPOSSIBLE, TO PURSUE SUCH TECHNOLOGY?

467 ON SATURDAY, FEBRUARY 5, 1977, CHAIRMAN UDALL AND SECRETARY OF THE INTERIOR CECIL ANDRUS VIEWED TWO EXAMPLES OF MOUNTAINTOP REMOVAL IN THE STEEP SLOPE AREAS OF EASTERN KENTUCKY: MOUNTAIN DRIVE COAL COMPANY, BELL COUNTY, AND FALCON COAL COMPANY, BREATHITT COUNTY. BOTH OFFICIALS AGREED THAT THE LAW OUGHT TO PERMIT SUCH PRACTICES.

467 THE COMMONWEALTH OF KENTUCKY SINCERELY BELIEVES THAT IN STEEP SLOPE AREAS MODERN MOUNTAINTOP REMOVAL TECHNOLOGY SHOULD BE RECOGNIZED AS A PROVEN AND ACCEPTABLE PRACTICE.

467 SUGGESTED CHANGES TO SUBSECTION (C) OF SECTION 515, TITLE V OF HR 2 ARE ATTACHED TO OUR POSITION PAPER. WE URGE CONSIDERATION OF THESE CHANGES.

467 APPROXIMATE ORIGINAL CONTOUR

467 THE CONGRESS, UP TO THIS POINT-IN-TIME, HAS EMBRACED THE CONCEPT OF RETURN TO APPROXIMATE ORIGINAL CONTOUR - EVEN TO A ALL STEEP SLOPE AREAS. ENGINEERS OF THE KENTUCKY STATE REGULATORY AUTHORITY - THE DIVISION OF RECLAMATION - DO NOT AGREE THAT RETURN TO APPROXIMATE ORIGINAL CONTOUR IS ALWAYS THE BEST PRACTICE.

468 RETURN TO APPROXIMATE ORIGINAL CONTOUR, INCLUDING ELIMINATION OF ALL HIGHWALLS, IS PROPER ONLY WHERE THE PRACTICE IS ENGINEERINGLY CORRECT AND ENVIRONMENTALLY SOUND.

468 IN GENERAL, ORIGINAL SLOPES WHICH EXCEED ABOUT TWENTY-FIVE DEGREES SHOULD NOT BE RETURNED TO APPROXIMATE ORIGINAL CONTOUR. IN THIS INSTANCE, THE PARTIAL REDUCTION OF HIGHWALL ACCOMPLISHED BY RECONSTRUCTION OF A SLOPE TWENTY-FIVE DEGREES OR LESS IS PREFERABLE. THE REMAINING OVERBURDEN SHOULD BE BACKHAULED TO A DESIGNED SPOIL AREA.

468 THE SPOIL ON THE SOLID BENCH AND IN THE SPOIL STORAGE AREA - SHOULD BE PROPERLY GRADED, DRAINED, AND REVEGETATED SO AS TO ACHIEVE A SCREENING WITHIN FIVE YEARS AFTER PLANTING.

468 THE ADVANTAGES OF PLACING MORE OVERBURDEN IN SPOIL STORAGE AREAS AND LESS OVERBURDEN ON THE SOLID BENCH ARE OBVIOUS AND INCLUDE:

468 THE OVERBURDEN ON BOTH THE SOLID BENCH AND IN THE SPOIL STORAGE AREA CAN BE RESTORED WITH GRADUAL SLOPES;

468 BOTH AREAS WILL BE MORE STABLE AND LESS SUBJECT TO EROSION;

468 ADDITIONAL YARDAGE PLACED IN THE SPOIL STORAGE AREA WILL HAVE

MUCH LESS SURFACE EXPOSURE; AND

468 BOTH SLOPES CAN BE TERRACED MORE EASILY.

469 HISTORICALLY, IT HAS BEEN DIFFICULT FOR ENVIRONMENTALISTS TO DISASSOCIATE THE ENGINEERING PROBLEMS CAUSED BY IMPROPER HANDLING OF SURFACE MINE SPOIL AND OVERBURDEN FROM THE AESTHETIC PROBLEM OF EXPOSED HIGHWALLS - ESPECIALLY SINCE THE TWO PROBLEMS RESULT FROM THE SAME OPERATION, REMOVAL OF MATERIAL TO REACH A COAL SEAM.

469 IN OUR OPINION, IT IS CLEARLY THE HANDLING OF OVERBURDEN AND SPOIL THAT HAS CONTRIBUTED MOST TO THE ASSOCIATED PROBLEMS OF EROSION, SEDIMENTATION, ACID DRAINAGE, LANDSLIDES AND WATER POLLUTION. THE HISTORICAL PRACTICE OF ALLOWING OVERBURDEN AND SPOIL TO BE CAST OVER THE OUTER SLOPE AND THE CONSTRUCTION OF FILL BENCHES AT THE OUTER EDGES OF THE SOLID, OR UNDISTURBED, BENCH AREA HAVE BEEN THE PRACTICES WHICH MORE THAN ANY OTHERS HAVE ENVIRONMENTALLY DEGRADED OUR SURFACE MINING AREAS.

469 "PLACEMENT OF LARGE VOLUMES OF UNCOMPACTED SPOIL AT ITS NATURAL REPOSE ANGLE ON STEEP SLOPES BELOW THE ELEVATION OF THE COAL SEAM CROPLINE WILL GENERALLY RESULT IN LANDSLIDES AND SEVERE EROSION." AGREED. THE PROPOSED ACT PROHIBITS, OR DRASTICALLY RESTRICTS, PLACEMENT OF OVERBURDEN OVER THE OUTSLOPES. THIS IS A STRONG POSITIVE FEATURE OF THE PROPOSED LEGISLATION; KENTUCKY SUPPORTS THIS PROVISION.

469 SEDIMENTATION IN STREAMS FROM A MINING OPERATION GENERALLY DERIVES FROM LONG, UNINTERRUPTED SLOPES WITH A LESS THAN ADEQUATE VEGETATIVE COVER. THERE IS NO BASIC DISAGREEMENT AMONG ENGINEERS, GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. NEWLY GRADED LONG STEEP SLOPES ARE HIGHLY VULNERABLE TO EROSION AND THE STEEPER AND LONGER THE SLOPE, THE GREATER THE VULNERABILITY.

470 FROM AN ENGINEERING VIEWPOINT, THE PROVISION IN THE LEGISLATION WHICH IN STEEP SLOPE AREAS WOULD ALWAYS REQUIRE RESTORATION TO APPROXIMATE ORIGINAL CONTOUR IS OPEN TO SERIOUS CHALLENGE.

470 WE BELIEVE IT IS ILLOGICAL TO ARGUE THAT STEEP SLOPE AREAS PRESENT UNUSUAL RECLAMATION PROBLEMS AND THEN CONTEND THAT ORIGINAL SLOPES SHOULD ALWAYS BE RECREATED AFTER MINING BY CONSTRUCTING MANMADE SLOPES OF UNCONSOLIDATED, LESS STABLE MATERIAL THAN EXISTED BEFORE MINING.

470 A SUGGESTED AMENDMENT TO SECTION 515(D)(2) WHICH WOULD MAKE THE RETURN TO APPROXIMATE ORIGINAL CONTOUR REQUIREMENT OR STEEP SLOPES CONSISTENT WITH SOUND ENGINEERING PRINCIPLES IS ATTACHED TO OUR POSITION PAPER. WE URGE ITS CONSIDERATION.

470 UNDISTURBED NATURAL BARRIER

470 SECTION 515(c)(4)(A), TITLE V, HR 2, RELATING TO MOUNTAINTOP REMOVAL, REQUIRES A NATURAL BARRIER BE RETAINED IN PLACE AT THE TOE OF THE LOWEST COAL SEAM IN ORDER TO ACT AS A CONSTRAINT TO SLIDES AND EROSION. THIS IS AN EXCELLENT MINING AND RECLAMATION PRACTICE. WE BELIEVE THE ACT WOULD BE STRENGTHENED IF THIS REQUIREMENT WAS EXPLICITLY SET FORTH AS ONE OF THE PERFORMANCE STANDARDS APPLICABLE

TO ALL STEEP SLOPE MINING.

471 A SUGGESTED ADDITION TO THE ACT, SECTION 515(B) 22, WOULD ADD A NEW GENERAL PERFORMANCE STANDARD WHICH WOULD REQUIRE IN ALL SURFACE MINING AN UNDISTURBED NATURAL BARRIER BE LEFT SO AS TO PREVENT SLIDES AND EROSION. THIS IS ALSO ATTACHED TO OUR POSITION PAPER. WE URGE ITS CONSIDERATION.

471 REPRESENTATIVES OF TWO PROFESSIONAL NATIONAL CONSULTING ORGANIZATIONS WHO HAVE SUCCESSFULLY COMPLETED A LARGE NUMBER OF CONSULTING ASSIGNMENTS FOR THE FEDERAL GOVERNMENT - IN THE EXPLICIT AREA OF EASTERN U.S. SURFACE MINING - ARE WITH ME TODAY. I AM CONFIDENT THAT THEY WILL SUPPORT MY STATEMENT AND OUR POSITION PAPER. I EARNESTLY HOPE YOU WILL AVAIL YOURSELF OF THEIR EXPERTISE AND THEIR INDEPENDENT PROFESSIONAL JUDGMENT. THANK YOU.

472 Position Paper MOUNTAINTOP REMOVAL AND THE FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (HR 2 and S 7)

472 Prepared By Division of Reclamation, Bureau of Natural Resources Department for
Natural Resources and Environmental Protection Commonwealth of Kentucky
February 14, 1977

472 Introduction and Background

472 The Commonwealth of Kentucky - including the state regulatory authority, the
Department for Natural Resources and Environmental Rrotection - supports federal legislation to
control the surface mining of coal. Governor Julian M. Carroll has publicly stated that the
Commonwealth supports the Act's broad objectives but believes the proposed legislation can be
perfected and strengthened - especially from the point-of-view of engineering and environmental
considerations.

472 The Commonwealth intends to provide comment on a number of procedural provisions in
the legislation. Such commentary will be provided in testimony before the respective committees
of the Congress or will be provided in written form to the General Counsel of these committees.

472 The Commonwealth sincerely feels that two substantive areas of the legislation may be
counter-productive to the Nation's environmental and energy objectives. These are:

472 (1) Such stringent criteria are established in order to qualify "mountaintop removal" coal
surface mining and reclamation technology as an approved method that the method is all but
precluded in Appalachia; and

472 (2) The requirement to restore acreage affected by contour mining in steep slope areas
(over 20 degrees to their "approximate original contour."

473 This paper addresses the issue of "mountaintop removal." A separate paper addresses the
issue of "approximate original contour."

473 Throughout the two position papers, constant reference will be made to two recently
published studies which we believe to be the most current and authoritative studies which have
been completed to date on surface mining in the Eastern United States. These reports are as
follows:

473 Evaluation of Current Surface Coal Mining Overburden Handling Technigues and
Reclamation Practices, Phase III: Eastern U.S.; U.S. Department of the Interior, Bureau of Mines;
July, 1976, prepared under contract by Mathtech, a division of Mathematica, and Ford, Bacon
and Davis Utah Inc., a subsidiary of Ford, Bacon and Davis; and

473 Erosion and Sediment Control, Surface Mining in the Eastern U.S., U.S. Environmental
Protection Agency; October, 1976, prepared under contract by Hittman Associates, Columbia,
MD.

473 In our considered opinion, neither of the two authorities cited above give conceptual or
technical support to the provisions of the legislation which relate to "mountaintop removal" or
return to "approximate original contour" in steep slope areas.

473 What is Mountaintop Removal?

473 Mountaintop removal is a surface mining method wherein" . . . 100 percent of the
overburden covering a coal seam is removed in order to recover 100 percent of the mineral.
Excess spoil material is hauled to a nearby hollow to create a valley fill." n1

473 n1 Erosion and Sediment Control: Surface Mining in Eastern U.S., Environmental
Protection Agency, Technology Transfer Seminar Publication, EPA-625/3-76-006, October,
1976, p. 98.

474 "When many cuts are made across the mountaintop, and the top is completely removed,
leaving no final highwalls, the mining method is called mountaintop removal." n2

474 n2 Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III: Eastern U.S., U.S. Department of Interior, Bureau of Mines, USBM Contract No. S0144081, prepared by Mathtech, Inc., Princeton, New Jersey, July 22, 1976, p. 107.

474 "Mountaintop removal, practiced only in steep slope areas, is, as the name implies, a method in which the entire top of a mountain is removed to recover virtually 100 percent of a high-lying coal seam or seams . . . in varying degrees, mountaintop removal involves the use of both contour and area mining techniques. The degree to which each technique is used depends upon topography and mining equipment." n3

474 n3 Ibid., p. 41.

474 House report No. 94-1445 described mountaintop removal as follows:

474 "A variant of contour mining is called 'mountain-top removal'. This method of mining proceeds entirely through the elevation following the coal seam. It permits nearly complete recovery of the coal seam, or of multiple coal seams if done sequentially. The overburden is placed downslope in the so-called 'head-of-the-hollow fill.' The end result is not a serpentine bench and highwall but rather a flat area comprising the 'solid bench' from which the coal has been removed, and the contiguous 'fill bench' where the overburden has been deposited." n4

474 n4 U.S. Congress, House Committee on Interior and Insular Affairs, "Surface Mining Control and Reclamation Act of 1976," House Report No. 94-1445, 94th Congress, 2d Session, to accompany HR 13950, U.S. Government Printing Office, Washington, D.C., August 31, 1976, p. 26.

474 Mountaintop Removal in Appalachia and in Eastern Kentucky

474 Many topographical areas of Appalachia are characterized by socalled steep slopes (over 20 degrees). In these areas practically all contemporary surface coal mining is by either contour mining with full or partial haulback or by mountaintop removal.

475 In 1976, Mathtech, a division of Mathematica, Inc., estimated that in Eastern Kentucky this methodology was used at 30 percent of all surface mines; that 49 percent of the tonnage in steep slope areas was mined by the mountaintop removal method. n5

475 n5 Bureau of Mines, op.cit., p. 108.

475 Argument for Mountaintop Removal

475 In the opinion of professional engineers of the Kentucky Division of Reclamation, mountaintop removal coupled with haulback and the use of valley fills is the most successful coal surface mining and reclamation technology yet developed for steep slope areas.

475 House Report No. 94-1445 on HR 13950 cited a 1974 report of Mathematica and Ford, Bacon and Davis as supporting the conceptual basis on which the proposed legislation rests.However, this very report set forth numerous advantages of the mountaintop removal methodology. Among these were the following:

475 "(1) Recovers coal not recoverable by underground methods.

475 (2) Recovers total coal seam reserve, eliminating the possibility of reopening of the mine by later miners.

475 (3) Relatively low ratio of disturbed acres to coal tonnage.

475 (4) Relatively low rates of erosion due to surface water runoff.

475 (5) Spoil stacked on solid bench to a height of 20 feet above bottom of coal.

476 (6) More acceptable aesthetically than conventional contour mining, if no highwall is left.

476 (7) Excellent post-mining land-use potential." n6

476 n6 Design of Surface Mining Systems in Eastern Kentucky, Vol. II, Appalachian Regional Commission, Report ARC-71-66-71, prepared by Mathematica, Inc., Princeton, New Jersey, and Ford, Bacon & Davis, Inc., New York, New York, January 19, 1974, p. II-23.

476 Today this same consulting organization, after considerable additional field research in the Eastern United States, concludes: "Today, using improved mountaintop removal methods, it is possible to get nearly 95 percent coal recovery and to leave the land better than it was before mining." n7

476 n7 Bureau of Mines, op.cit., p. 109.

476 Further, the authors of this current study consider this technology "to be a method that is

very sound from environmental and resource recovery viewpoints . . ." n8 and, "As practiced in
1975, mountaintop removal and haulback mining methods were environmentally sound." n9

476 n8 Ibid., p. 132.

476 n9 Ibid., p. iv.

476 Hittman Associates point out ". . . considering the areal nature of these operations and the
overall reduction in relief that is achieved, the potential for offsite sediment damage is likely to
be less than for a contour strip mine disturbing an equal area of land." n10

476 n10 Environmental Protection Agency, op.cit., p. 10.

476 Grim and Hill, in October, 1974, also pointed out that mountaintop removal technology
has, from the standpoint of soil loss potential, a distinct advantage over other methods. n11

476 n11 Elmore C. Grim and R. D. Hill, Environmental Protection in Surface Mining of Coal,
Environmental Protection Technology Series, EPA-670/2-74-093, October, 1974, p. 74.

477 Mountaintop removal technology is completely responsive to one of the major purposes
of the Act itself:

477 HR 2, Sec. 102(f) "assure that the coal supply essential to the Nation's energy
requirements, and to its economic and social well-being, is provided and strike a balance between
protection of the environment and agricultural productivity and the Nation's need for coal as an
essential source of energy;"

477 Eastern Kentucky and Appalachia steep slope surface mined coal is needed not only as an
essential source of energy but also as an essential source of clean energy to meet the Nation's
environmental objectives as expressed in the Clean Air Act.

477 "Of the national coal production having a sulfur content of one percent, or less, the
Appalachia region is projected to contribute almost 71 percent. The value of the vast reserves of
Appalachia lowsulfur coal is enhanced by its contribution to air quality. This factor becomes
increasingly important as a growing proportion of utility fuel needs are met by coal." n12

477 n12 U.S. Congress, House Report, op.cit., p. 12.

477 The very first general performance standard set forth in Sec. 515 of the Act itself reads as follows:

477 "(b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to -

477 (1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;"

478 In steep slope areas of Eastern Kentucky and elsewhere in Appalachia, no other surface mining technology can cause greater recovery of the solid fuel resource; no other surface mining technology can possibly recover more coal per acre of surface disturbed.

478 HR 2 and S 7 and Mountaintop Removal

478 Section 515, subsection (c) of HR 2 and Section 415, subsection (c) of S 7 provide that an applicant who meets certain requirements may be granted a variance from the requirement to restore to approximate original contour:

478 ". . . where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c)(4)(A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection."

478 What are these requirements? We quote further from HR 2, Section 515(c):

478 "(3) In cases where an industrial, commercial (including commercial agricultural), residential or public facility (including recreational facilities) development is proposed for the postmining use of the affected land, the regulatory authority may grant a variance for a surface mining operation of the nature described in subsection (c)(2) where -

478 (A) after consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use;

479 (B) the equal or better economic or public use can be obtained only if one or more

exceptions to the requirements of section 515(b)(3) are granted;

479 (C) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be -

479 (i) compatible with adjacent land uses;

479 (ii) obtainable according to data regarding expected need and market;

479 (iii) assured of investment in necessary public facilities;

479 (iv) supported by commitments from public agencies where appropriate;

479 (v) practicable with respect to private financial capability for completion of the proposed development;

479 (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

479 (vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

479 (D) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

479 (E) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

480 (F) a public hearing is held in the locality of the proposed surface coal mining operation prior to the grant of any permit including a variance; and

480 (G) all other requirements of this Act will be met."

480 The state regulatory authority of Kentucky is not aware of any mountaintop removal permits presently existing which would have responded to all requirements set forth in 515(c)(3).

480 The crucial constraint and language is "In cases where an industrial, commercial (including commercial agricultural), residential or public facility (including recreational

facilities) development is proposed for the postmining use of the affected land . . ." However, it is not clearly understood what is meant by "commercial (including commercial agricultural)." Nowhere in the Act is this defined. Practically all previously mined mountaintop removal permits are, or could be, used for general agricultural purposes - especially for hay production and grazing. In the short term, only in occasional instances will there be opportunity in Eastern Kentucky, and probably elsewhere in steep slope areas of Appalachia, to have postmining uses (resulting from mountaintop removal) that will be industrial, commercial or residential in nature - mainly because of the lack of essential public utility service.Nevertheless, even in the long term, if this methodology improves the land-use potential in an area that is deficient in usable level land, there should be no limitations placed on its future use.

481 Summary, Conclusions and Recommendations

481 "As a general rule, the steepest slopes and greatest relief occur in Central Appalachia . . . " n13 (Southern West Virginia, Southwestern Virginia, Eastern Kentucky and Northeastern Tennessee)

481 n13 Bureau of Mines, op.cit., pp. 17 and 20.

481 In this area, coal surface mining using modern mountaintop removal extraction technology accounts for a substantial proportion of all surface mining tonnage; in Eastern Kentucky approximately 50 percent.

481 Professionals knowledgeable about both reclamation and mining agree that mountaintop removal technology, especially as it has been developed over the last two to three years, has the following major advantages:

481 - Save for the aesthetic change which occurs, is environmentally preferable to all other steep slope extraction techniques;

481 - Recovers maximum of solid fuel resource;

481 - Disturbs least surface acreage for tonnage removed;

481 - Recovers solid fuel resource not possible of recovery by underground methods;

481 - Provides (at least in the long term) an excellent post-mining land use potential; and

481 - Recovers, for the most part, a high quality low-sulfur coal sorely needed to achieve other national environmental objectives (Clean Air Act).

481 HR 2 and S 7, as written, will seriously inhibit, if not preclude, this mining and reclamation technology. Why should we adopt a national policy which may preclude such preferred technology or even make it more difficult, if not impossible, to pursue such technology?

482 On Saturday, February 5, 1977, Congressman Morris K. Udall and Secretary of the Interior Cecil Andrus viewed two excellent examples of mountaintop removal in the steep slope areas of Eastern Kentucky (Mountain Drive Coal Co., Bell County; Falcon Coal Co., Breathitt County). Both officaials agreed that the law ought to permit such practices. n14

482 n14 Louisville Courier-Journal, February 6, 1977, A-1; and Lexington Herald-Leader, February 6, 1977, A-1.

482 The Commonwealth of Kentucky sincerely believes that in steep slope areas modern mountaintop removal technology ought not require a variance under the Federal Surface Mining and Control Act of 1977, but should be a recognized and acceptable practice. We believe the two most recent (1976) and authoritative studies on Eastern United States surface mining, which have been cited throughout this position paper, fully support this position.

482 Suggested changes to subsection (c) of Section 515, Title V of HR 2 are attached and identified as "Exhibit A." We urge consideration of these changes.

484 Exhibit A - Mountaintop Removal

484 Suggested Changes in Subsection (c), Section 515, Title V of HR 2 Submitted by the Commonwealth of Kentucky

484 515(c)(1): Where the mining operation will remove an entire seam or seams running through the upper fraction of a mountain, ridge or hill by removing all the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting postmining uses in accord with the requirements of restoring the mined area to approximate original contour as provided in subsection 515(b)(3) or 515(d) of this section shall not apply where -

484 (2) the reclaimed area will be suitable for an agricultural, industrial, commercial, residential or public use (including recreational facilities);

484 (3) (A) after consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use, as compared with the pre-mining use, and is

484 (i) compatible with adjacent land uses;

484 (ii) obtainable according to data regarding expected need and market;

484 (iii) assured of investment in necessary public facilities;

484 (iv) supported by commitments from public agencies where appropriate;

484 (v) practicable with respect to private financial capability for completion of the proposed development;

484 (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use;

485 (vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site; and

485 (viii) consistent with adjacent land uses, and existing State and local land use plans and programs.

485 (B) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opprotunity of not more than sixty days to review and comment on the proposed use;

485 (C) all other requirements of this Act will be met.

485 (4) In granting a permit pursuant to this subsection the regulatory authority shall require that -

485 (A) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

485 (B) all other requirements of this Act will be met.

485 (5) The regulatory authority shall promulgate specific regulations to govern the issuance of permits in accord with the provisions of this subsection, and may impose such additional requirements as it deems to be necessary.

485 (6) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

486 Position Paper

486 Return to "Approximate Original Contour" and the Federal Surface Mining Control and Reclamation Act of 1977 (HR 2 and S 7)

486 Prepared By Division of Reclamation, Bureau of Natural Resources Department for Natural Resources and Environmental Protection Commonwealth of Kentucky February 14, 1977

486 Introduction and Background

486 The Commonwealth of Kentucky-including the state regulatory authority, the Department for Natural Resources and Environmental Protection-supports federal legislation to control the surface mining of coal . Governor Julian M. Carroll has publicly stated that the Commonwealth takes the position that certain provisions within the proposed legislation can be perfected and strengthened-especially from the point-of-view of engineering and environmental considerations.

486 The Commonwealth intends to provide comment on a number of procedural provisions in the legislation. Such commentary will be provided in testimony before the respective committees of the Congress or will be provided in written form to the General Counsel of these committees.

486 The Commonwealth sincerely feels that two substantive areas of the legislation may be counter-productive to the Nation's environmental and energy objectives. These are:

486 (1) Such stringent criteria are established in order to qualify "mountaintop removal" coal surface mining and reclamation technology as an approved method that the method is all but precluded in Appalachia; and

486 (2) The requirement to restore acreage affected by contour mining in steep slope areas (over 20 degrees) to their "approximate original contour."

487 This paper addresses the issue of "approximate original contour." A separate paper addresses the issue of "mountaintop removal."

487 Throughout the two position papers, constant reference will be made to two recently published studies which we believe to be the most current and authoritative studies which have yet been completed on surface mining in the Eastern United States. These reports are as follows:

487 Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III: Eastern U.S. ; U.S. Department of the Interior, Bureau of Mines; July, 1976, prepared under contract by Mathtech, a division of Mathematica, and Ford, Bacon and Davis Utah Inc., a subsidiary of Ford, Bacon and Davis; and Erosion and Sediment Control, Surface Mining in the Eastern U.S., U.S. Environmental Protection Agency; October, 1976, prepared under contract by Hittman Associates, Columbia, MD,

487 In our considered opinion, neither of the two reports cited above give conceptual or technical support to the provisions of the legislation which relate to "mountaintop removal" or return to "approximate original contour" in stoop slope areas.

487 What is Return to "Approximate Original Contour"?

487 Section 701, Title VII (HR 2), defines "approximate original contour" as follows:

487 "For the purpose of this Act - (23) 'approximate original contour' means that surface configuration achieved by back filling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with section 515(b)(8) of this Act;"

488 Section 515(b) of Title V, HR 2, sets forth the general performance standards and requires mined areas to be returned to "approximate original contour" as follows:

488 "General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to -

488 (3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated . . ."

488 Section 515(b)(3) provided further, however, that where "the thickness of coal deposits relative to the volume of overburden is large" and therefore where overburden is insufficient to restore the approximate original contour the general requirement is waived. Generally, this condition is present only in the Western United States. The section provides further that where overburden is large relative to the thickness of coal deposits (Eastern United States) the operator shall restore to approximate original contour and shall haul the excess overburden to a waste or fill area.

488 A variance from return to "approximate original contour" is provided in Section 515(c) to permit the "mountaintop removal" mining and reclamation technology developed in the last four to five years in Appalachia - and especially in Eastern Kentucky. However, the Commonwealth of Kentucky believes the criteria established in the proposed Act are such as to practically preclude this technology. (See otherposition paper dated February 14, 1977, entitled "Mountaintop Removal and the Federal Surface Mining Control and Reclamation Act of 1977," prepared by the Commonwealth of Kentucky.)

489 Section 515(d)(4) imposes additional performance standards to steep-slope surface coal mining:

489 "For the purposes of this section, the term 'steep slope' is any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or state."

489 Section 515(d)(2) imposes the requirement of restoration to "approximate original contour" as follows:

489 "(2) complete backfilling with spoil material shall be required to cover completely the

highwall and return the site to the approximate original contour, which material will maintain
stability following mining and reclamation."

489 It is precisely the language above just quoted - applicable specifically to steep slope
areas-that concerns the professional engineers of the Kentucky Division of Reclamation. From
an engineers' viewpoint, the legislative mandate may be contradictory in itself. The remainder of
this paper addresses this issue.

489 Steep Slopes in Appalachia.

489 Eight Appalachian states make up the coal surface mining area of the Eastern United
States. Mathtech and Ford, Bacon and Davis Utah, Inc., in their recent study entitled Evaluation
of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices,
Phase III: Eastern U.S., produced for the United States Department of the Interior, Bureau of
Mines, in 1976, divided the overall area into three regions as follows:

490 Northern Appalachia: eastern Ohio, western Pennsylvania, northern West Virginia and
Maryland

490 Central Appalachia: southern West Virginia, southwestern Virginia, east Kentucky and
northern Tennessee

490 Southern Appalachia: central and southern Tennessee and northern and central Alabama
n1

490 n1 Evaluation of Current Surface Coal Mining Overburden Handling Techniques and
Reclamation Practices, Phase III: Eastern U.S., prepared for U.S. Department of Interior, Bureau
of Mines, USBM Contract No. SO 144081, prepared by Mathtech, Inc., Princeton, New Jersey,
and Ford, Bacon & Davis Utah Inc., Salt Lake City, Utah, July 22, 1976, p. 17.

490 It is often suggested by members of the House Committee on Interior and Insular Affairs,
or its staff, that the Pennsylvania experience can be simply transposed to other areas of
Appalachia. Mathtech's description of the general topography of the entire area should be noted
here:

490 "Topography in the Appalachian coal region ranges from gently rolling in central Alabama
and northeastern Ohio to mountainous in southern West Virginia, southwestern Virginia, and east

Kentucky. As a general rule, the steepest slopes and greatest relief occur in Central Appalachia, which is mountainous, followed by Northern Appalachia, best described as rolling-to-hilly, and Southern Appalachia, where gently rolling terrain predominates. Topographic relief for the region, depicted in Figure 15, ranges from 2,500 feet in southwestern Virginia to 300 feet in parts of Ohio and Alabama.

490 Qualitatively speaking, most mining in Central Appalachia takes place on steep slopes, defined here as natural ground slope angles greater than 17 degrees. Natural ground, slope angles as high as 35 degrees were observed at some active mines in southern West Virginia. Slope angles in Northern Appalachian are more gradual, with angles of 10-18 degrees being the rule at active mines visited during the field survey. It should be noted here that there are some very steep slope areas in the Northern Appalachia coal region, but available data suggest that most of the surface mining activity takes place in rolling and hilly terrain. Topography at mines visited in south-central Tennessee and central Alabama is best described as gently rolling, with natural ground slope angles less than ten degrees being the general rule." n2

490 n2 Ibid., p. 20.

491 It seems apparent from the above that there is considerable variation in topography and relief throughout Appalachia. Consequently, mining conditions and reclamation procedures must vary from area to area just as they must from site to site.

491 Conceptual Basis for "Approximate Original Contour"

491 Readings of the Report of the Committee on Interior and Insular Affairs, House of Representatives, which were issued in conjunction with prior versions of HR 2, indicate that some provisions of the legislation were greatly influenced by certain consultant studies.One of these, Design of Surface Mining Systems in Eastern Kentucky , was published in 1974 under the auspices of the Appalachian Regional Commission. The reports, based on field work that dated back as far as 1971, were authored by Mathematica, Inc., Princeton, New Jersey, and Ford, Bacon and Davis, Inc., New York, New York.

491 This report did seem to suggest that return to approximate original contour was a panacea for the evils and excesses of coal surface mining, especially when it stated, "Elimination of the

highwall and permanent fill bench would, in our opinion, significantly reduce the major remaining environmental impacts of surface mining." n3

491 n3 Design of Surface Mining Systems in Eastern Kentucky, Vol I, prepared for Appalachian Regional Commission, Report ARC-71-66-71, prepared by Mathematica, Inc., Princeton, New Jersey, and Ford, Bacon & Davis, Inc., New York, New York, January 29, 1974, p. 5.

491 Historically, it has been difficult for environmentalists to disassociate the engineering problems caused by improper handling of surface mine spoil and overburden from the aesthetic problem of exposed highwalls - especially since the two problems result from the same operation, removal of material to reach a coal seam. However, engineers of the Kentucky Division of Reclamation believe that the two problems, (1) outslope overburden and (2) highwalls, must be disassociated - at least from an engineer's viewpoint - if appropriate solutions are to be achieved.

492 In our opinion, it is clearly the handling of overburden and spoil that has contributed most to the associated problems of erosion, sedimentation, acid drainage, landslides and water pollution . The historical practice of allowing overburden and spoil to be cast over the outer slope and the construction of fill benches at the outer edges of the solid, or undisturbed, bench area have been the practices which more than any others have environmentally degraded our surface mining areas.

492 "Placement of large volumes of uncompacted spoil at its natural repose angle on steep slopes below the elevation of the coal seam cropline will generally result in landslides and severe erosion." n4 Agreed. The proposed Act prohibits, or drastically restricts, placement of overburden over the outslopes. This is a strong positive feature of the proposed legislation; Kentucky supports this provision.

492 n4 Bureau of Mines, op.cit., p. 32.

492 In general, the Kentucky Division of Reclamation sees no insurmountable problem in restoration of approximate original contour in non-steep slope areas or those slopes twenty degrees or less. However, we still do not believe this will always be the most desirable practice.

Even in some slopes exceeding twenty degrees - say up to twenty-five degrees - it may be possible and engineeringly feasible to reconstruct to approximate original contour provided appropriate principles of soil mechanics are followed. However, again we believe it is not always desirable to completely eliminate highwalls and reconstruct to approximate original contour and especially where original slopes range above twenty-five degrees. We believe the recent works of recognized national authorities support our contentions.

493 Arguments Against Return to Approximate Original Contour

493 Sedimentation in streams from a mining operation generally derives from long, uninterrupted slopes with a less than adequate vegetative cover.

493 The staff of both the Senate and House Committees considering this legislation have in their possession initial draft copies of a consultant study prepared by ICF, Inc. for the Council on Environmental Quality and the Environmental Protection Agency. Considerable attention has been given those portions of this study which tend to support HR 2 and S 7. However, in our opinion, sections of this study seem to clearly challenge the conceptual basis of return to approximate original contour in steep slope areas.

493 "Unfortunately, vegetative establishment on surface-mined land often is a long-term process.During the first year, perennial cover crops may not provide very efficient control, yet the first year is most critical on surface-mined areas. Furthermore, surface-mining may be completed at a particular time of year when rapid establishment of vegetation is impossible. Thus some form of mechanical stabilization, such as terraces, becomes necessary." n5

493 n5 Willie R. Curtis, U.S.D.A. Forest Surface, "Terraces Reduce Runoff and Erosion on Surface-Mine Benches," Journal of Soil and Water Conservation, September-October, 1971.

493 "Thus it appears that while approximate original contour generally provides a good level of environmental protection, it does not always achieve the best level of protection when mining on steep slopes." n6

493 n6 Energy and Economic Impacts of H.R. 13950 ("Surface Mining Control and Reclamation Act of 1976," 94th Congress); prepared for the Council on Environmental Quality and Environmental Protection Agency, Contract No. EQ 6AC016, prepared by ICF, Inc.,

Washington, D.C., February 1, 1977, p. v-16.

493 "It has also been argued that approximate original contour regrading could preclude some desirable post-mining land-uses. In many areas of Appalachia, there is a shortage of relatively flat, flood-free land available for development. On many steep slopes, the approximate original contour has limited land-use value. In such areas, previous contour mining operations have creted new land-use opportunities." n7

493 n7 Ibid., pp. v-16 and v-17.

494 One U.S.E.P.A. publication points out some specific reasons for not returning the contour mined area to its original slope.

494 "If highwalls are not reduced and the benches are properly reclaimed, they can provide land conducive for:

494 1. Pasture development,

494 2. Access roads or trails that can be used as:

494 a. Forest-fire breaks,

494 b. Entrance to remote areas for forest fire control crews,

494 c. Logging activities,

494 d. Recreation such as horseback riding, hiking, camping, hunting and fishing,

494 3. Openings for wildlife (including food, cover and water),

494 4. Housing and industrial sites." n8

494 n8 Elmore C. Grim and R.D. Hill, Environmental Protection in Surface Mining of Coal, Environmental Protection Technology Series, Environmental Protection Agency, EPA-670/2-74-093, October, 1974.

494 In some cases, sediment from landslides or mudslides contribute to the problem. Landslides are almost always caused by negligence on the part of the operator and/or the failure to utilize geologic and engineering expertise.

494 From an engineering viewpoint, the provision in the legislation which in steep slope areas would always require restoration to approximate original contour is open to serious challenge.

494 Hittman Associates, in a 1976 study performed for the Environmental Protection Agency,

points out the following:

494 "Topographic consideration for erosion control includes slope steepness and length. As slope steepness increases, there is a corresponding rise in the velocity of the surface runoff, which in turn results in greater erosion. A doubling of the velocity of water produced by increasing the degree and length of the slope enables water to move soil particles 64 times larger, allows it to carry 32 times more soil material, and makes the erosive power, in total, 4 times greater." n9

494 n9 Erosion and Sediment Control: Surface Mining in Eastern U.S., Environmental Protection Agency Technology Transfer Seminar Publication, EPA-625/3-76-0006, prepared by Hittman Associates, Columbia, Maryland, October, 1976, p. 29.

495 Hittman Associates 1976 report also points out:

495 "Slope design should be based on the erodibility of the surface soils as well as stability against landslides. Restoring the approximate original contour may not be desirable in all cases. A reduction in relief and an overall flattening of the topography may be desirable from an erosion and sediment control standpoint. It must be remembered that shorter or flatter slopes are less erodible." n10

495 n10 Ibid., p. 32.

495 And again, ICF, Incorporated, 1977 says:

495 "However, it does not always follow that approximate original contour will achieve the highest level of environmental protection when mining on steep slopes. The process of overburden removal and replacement effectively results in replacing well-defined strata with a more homegeneous composition. Although approximate original contour regrading may produce an external appearance that resembles pre-mining conditions, the underlying geologic conditions are quite different. The regraded material behaves quite differently from the original site in terms of density, stability, premeability, and other factors." n11

495 n11 Council on Environmental Quality, op.cit., p. iv.

495 There is no basic disagreement among engineers, geologists, hydrologists and soil scientists. Newly graded long steep slopes are highly vulnerable to erosion and the steeper and longer the slope, the greater the vulnerability.

495 Mathtech - based on an exhaustive study of surface mining operations in the Eastern United States - reported in 1976 as follows:

495 "Restoration of long, uninterrupted slopes has resulted in erosion, cited by many mine operators in northern Appalachia as their major problem." n12

495 n12 Bureau Mines, op.cit., p. iv.

496 "When all backfilling and grading has been completed, and the long uninterrupted slopes of the hills have been restored . . . erosion and sedimentation occur. Several mine operators interviewed in Ohio and Pennsylvania stated that backfilling of the final cut and control of erosion were their two biggest problems." n13

496 n13 Ibid., pp. 25 and 26.

496 "Erosion and sedimentation are major problems, particularly since revision of reclamation laws to require contour restoration, including backfilling of the final cuts in rolling areas of Ohio, Pennsylvania and northern West Virginia." n14

496 n14 Ibid., p. 31.

496 The proponents of rigid application of the return to approximate original contour concept - even in steep slope areas - are simply not sufficiently advised of the current "state of the art."

496 Where placing overburden over the outslope is prohibited - as it is in the proposed legislation - consideration should be given to alternate placement of spoil overburden. Considering "swell," it will always be necessary to place some material in approved waste or fill areas - even when total restoration to approximate original contour is achieved. We submit that it is probably more desirable to "haulback" and place more of this material in waste areas after partial reduction of highwall - and especially where original slopes are in excess of twenty-five degrees.

496 We believe it is illogical to argue that steep slope areas present unusual reclamation problems and then contend that original slopes should always be recreated after mining by constructing man-made slopes of unconsolidated, less stable material than existed before mining.

496 Other cases in which partial reduction of a highwall may be the most viable approach to environmental protection include the remining of previously abandoned benches or mining in areas near abandoned benches where division of the spoil material can aid in the establishment of vegetation on both the new and old sites.

497 The Highwall Myth

497 It is common to read of the environmental problems associated with highwalls. Among others, it is argued that highwalls are unsightly and unstable; that they contribute to erosion and sedimentation; that they cause landslides; that they contribute to water pollution through acid mine drainage; that they are unsafe for wildlife.

497 Highwalls have been associated by some with every environmental problem in Eastern Kentucky. Although highwalls are usually present where environmental problems - landslides, sedimentation in streams, toxic water, and degradation of aesthetics - are abundant, the highwall per se is responsible for possibly only one of these problems - degradation of aesthetics.

497 It is possible that there are certain areas where slope stability analysis would indicate a potential problem of highwall instability. These areas should not be mined. The premining requirements required by HR 2 (core drilling, geologic and hydrologic examination) should identify such areas. Section 522 of HR 2, Designating Areas Unsuitable for Surface Coal Mining, also provides a mechanism for safequarding these areas.

497 It has been suggested that exposed highwalls contribute to toxic water pollution. This may be the case in isolated instances, but in general, acid drainage originates from exposed spoil, not solid rock highwalls.

497 Toxic water pollution is caused by the shattering and exposure of pyritic overburden. Associated with a small percentage of Eastern Kentucky's coal seams are shale and sandstone strata that contain varied types of pyrite. In their lithified state the pyrites are fairly stable, but when the rocks are shattered blasting and exposed to air and water, as in spoil handling, the iron and sulfur separate forming new compounds, one of which is a weak solution of sulfuric acid.Toxic water pollution results when this shattered rock remains on the surface or when impounded water seeps through spoil containing these strata. This can be prevented by proper

premining planning and spoil segregation.In almost all cases, the toxic strata are located directly above the coal seam and in the lower 1/3 of the highwall. This being the case, a partial backfill method, with no material over the outslope, utilizing proper spoil segregation, would eliminate toxic water pollution.

498 It is also argued that from a safety point-of-view highwalls represent a hazard to wildlife. We simply place no credence in this argument and know of no professional wildlife biologist who makes such a representation.

498 We believe, therefore, that the only viable argument which can be made against highwalls rests on an aesthetic premise. If highwalls are considerably reduced and if proper vegetation and screening are required, we believe the problem of aesthetics can be obviated.

498 Proposed Solution

498 If it is concluded - as it properly should - that in mining steep slope areas overburden and spoil should not be cast over the outslope and that the construction of fill benches are undesirable, then alternatives for proper placement of spoil and overburden should be considered.

499 We believe the Committees of Congress, and their respective staffs, have not been properly appraised of recent developments in the handling, hauling and placement of overburden and spoil in well designed and engineered spoil storage areas.

499 Mathtech, in their 1976 report to the U.S. Bureau of Mines, addresses this development in great detail:

499 "There have been many dramatic changes in steep slope mining practices over the past several years, and there will be more changes in the future. Spoil haulage trucks, until several years ago used only at the largest mines, are now a virtual necessity for mining in compliance with the reclamation laws in all states but Virginia. Although construction equipment is used for overburden removal and spoil replacement at an estimated 97 percent of the mines in the region, it is likely, as large established companies move into Appalachia, that draglines will be used to mine large mountaintop areas. An increasing percentage of supervisory personnel in the state reclamation agencies are civil engineers with highway design and construction experience. The

effect of this trend can be seen in the regulations governing methods for construction of sediment basins and hollow fills. It is likely that further highway construction principles and procedures will be sued in steep slope mining areas in future years." n15

499 n15 Ibid., p. 82.

499 "Haulback mining, which is generally used only in steep slope areas, is a method in which dozers and loaders are used for overburden removal, and trucks are used for spoil haulage and placement.There are many variations of this method, but in all of them some spoil is deposited on the solid pit floor and some is permanently stored in selected hollows." n16

499 n16 Ibid., p. 39.

499 Kentucky believes that surface mined steep slope areas should be returned to approximate original contour with all highwalls eliminated - wherever such practice is engineeringly feasible and environmentally sound. As a general rule, it may be technologically possible - though not necessarily desirable - to do this where original slopes were up to twenty-five degrees.Above that degree of slope, however, it is probably engineeringly and environmentally sound only to reconstruct a more gradual slope and to haul all excess overburden and spoil to properly designed and engineered waste or fill areas. The latter areas should always be constructed on twenty degree or less slopes and toe out on natural slopes not exceeding ten degrees.

500 We believe the residual highwall left when constructing slopes to twenty degrees which were originally in excess say of twenty-five degrees will be only a few feet in height - somewhere between ten and twenty feet depending on exact factors present.This residual highwall - with proper planting and vegetation - could be satisfactorily screened within five years. (See illustration attached)

500 Contour mining on these steeper slopes can produce more coal and result in stable, vegetated gentle slopes by the utilization of a partial backfill method, covering all but the upper ten to twenty feet of the highwall.

500 With the utilization of the partial backfill method, the finished product is gently sloping with terraces to minimize erosion and stream sedimentation. All other material is placed in a stable spoil storage area, designed by engineers and constructed under professional supervision.

500 Undisturbed Natural Barrier

500 Section 515(c)(4)(A), Title V, HR 2, relating to mountaintop removal, requires a natural barrier be retained in place at the toe of the lowest coal seam in order to act as a constraint to slides and erosion. This is often referred to as the box cut method and is an excellent mining and reclamation practice.We believe the Act would be strengthened if this requirement was explicitly set forth as one of the general performance standards. Accordingly, we recommend amendment to the Act to guarantee this practice.

501 Summary, Conclusions and Recommendations

501 Special conditions need to apply to surface mining in steep slope areas - those above twenty degrees. These conditions most often prevail in Central Appalachia (southwestern West Virginia, western Virginia, northwestern Tennessee and eastern Kentucky).

501 The Congress, up to this point-in-time, has embraced the concept of return to approximate original contour - even to all steep slope areas. Engineers of the Kentucky state regulatory authority - the division of Reclamation - do not agree that return to approximate original contour is always the best practice.

501 Return to approximate original contour, including elimination of all highwalls, is proper only where the practice is engineeringly correct and environmentally sound.

501 In general, original slopes which exceed about twenty-five degrees should not be returned to approximate original contour. In this instance, the partial reduction of highwall accomplished by reconstruction of a slope twenty-five degrees or less is preferable. The remaining overburden should be backhauled to a designed spoil storage area. Both areas - on the solid bench and on the spoil storage area - should be properly graded, drained, and revegetated.The low residual highwall remaining should be revegetated so as to achieve a screening within five years after planting.

502 The advantages of placing more overburden in spoil storage areas as opposed to placing too much of this overburden on the solid bench are obvious and include:

502 - The overburden on both the solid bench and in the spoil storage area can be restored with gradual slopes;

502 - Both areas will be more stable and less subject to erosion;

502 - Additional yardage placed in the spoil storage area will have much less surface exposure;
and

502 - Both slopes can be terraced more easily.

502 One additional precaution required in Kentucky is to prevent the inclusion of trees and
brush in the regraded spoil. Such a practice has been observed to occur in the past and often
results in an unstable condition.

502 Suggested changes to Section 515, Title V of HR 2 are attached which would, in our
opinion, strengthen the proposed legislation. The first of these Sec. 515(b)22 would add a new
general performance standard which would guarantee in all surface mining an undisturbed
natural barrier be left so as to prevent slides and erosion. The second of these would amend
Section 515(d)(2) to make the return to approximate original contour requirement on steep slopes
consistent with sound engineering principles. These are marked Exhibits A and B.

504 EXHIBIT A - STEEP SLOPES

504 Suggested addition to Sec. 515(b) to provide an additional general performance standard.

504 Sec. 515(b)(22), Title V, HR 2 Submitted by Commonwealth of Kentucky

504 Add:

504 Sec. 515(b)(22) an undisturbed natural barrier beginning at the elevation of the lowest coal
seam to be mined and extending from the outslope for such distance as the regulatory authority
shall determine shall be retained in place as a barrier to slides and erosion;

505 EXHIBIT B - STEEP SLOPES

505 Suggested amendment to Sec. 515(d)(2), Title V of HR 2 Submitted by Commonwealth of
Kentucky

505 Amend Sec. 515(d)(2) to read:

505 (2) Complete backfilling with spoil material shall be required to cover completely the
highwall and return the site to the approximate original contour, unless slope stability analysis
indicates that the spoil material will not remain stable following mining and reclamation in

which event the highwall shall be reduced to the maximum extent consistent with sound engineering technology, and provide further that a vegetation plan has been approved which is reasonably calculated to screen the remaining portion of the highwall within five years after initial seeding or planting.

506 COMMONWEALTH OF KENTUCKY, DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION, OFFICE OF THE SECRETARY, Frankfort, Ky., March 15, 1977.

506 Hon. WENDELL H. FORD, U.S. Senator, Dirksen Senate Office Building, Washington, D.C.

506 DEAR SENATOR FORD: Our department has previously submitted to you, and has entered into the record of the appropriate committees of the Congress, statements and position papers which address certain issues relating to the Federal Surface Mining Control and Reclamation Act of 1977.

506 One position paper addressed the issue of "Return to Approximate Original Contour" and was dated February 14, 1977. Attached to this position paper, identified as "Exhibit B," was a suggested amendment. Since then we have considered this issue in more detail and wish to categorically reaffirm our recommendation to amend the law as previously suggested. For your convenience an additional copy of Exhibit B is attached.

506 We had also introduced into the record another position paper which addressed the issue of "Mountaintop Removal"; this paper was also dated February 14, 1977. Since the date of this submission, we have reexamined this issue in some considerable detail. We are now of the opinion that the suggested amendment provided at that time and identified as "Exhibit A" would not be the best way to accomplish our desired objective. In this instance the desired objective is to simply permit mountaintop removal mining and reclamation technology as it has been successfully pioneered and developed in Kentucky during the last two or three years, without a tedious and all-but-impossible variance and exemption procedure.Consequently, we now urge your consideration of different language which would accomplish this objective in a more direct and straightforward manner. This material, now identified as "Exhibit A-Revised," is also attached.

506 As indicated in the formal statements made by representatives of the Commonwealth before both House and Senate committees, we also are providing at this time a more lengthy commentary - with suggested amendments - that addresses a large number of procedural and legal items within the proposed legislation. We offer this commentary from no posture of opposition, nor do we offer it in any obstructive sense. We simply believe that there are a large number of sections within this legislation which will cause major problems, not only for individual citizens, landowners and the mining industry, but also for the state regulatory authority. In the final analysis, the state regulatory authority has to carry the ultimate responsibility for administration and execution of the act on behalf of all parties. We offer this commentary in a constructive sense. A large number of our professional staff - both lawyers and engineers - have worked very hard to produce this material.We hope that it may prove to be of value.

506 Finally, we have one last major concern. The Act as written would not allow, in contour mining, leaving a bench of relatively level land, even where there is a bonafide demonstrated post-mining land use of equal or higher value than the pre-mining use. In this connection, we are also most apprehensive about the Act's lack of recognition of the surface owners' rights to have influence over the final configuration of the land - especially where the surface rights and the mineral rights are separate. We believe that this situation - which exists in both dejuris and defacto terms - is simply not recognized in this legislation and represents a serious drafting defect which will cause untold administrative, legal and operational problems.

506 Suggested amendments which would address this problem are being drafted.As soon as we can possibly complete these drafts, they will be forwarded to you.

506 At this time, may I express our sincere and grateful appreciation for the consideration and efforts you have made on behalf of our state in the interest of perfecting a workable federal surface mining and control act.

506 Respectfully, ROBERT D. BELL, Secretary.

506 Attachments.

507 [See Illustration in Original]

508 EXHIBIT A (REVISED) - MOUNTAINTOP REMOVAL

508 Insert the following after the word "Act;", (H) Section 515(b)(3), Page 86, Line 3; (S) Section 415(b)(3), Page 69, Line 21:

508 "And provided further, that in surface coal mining where the mining operation will remove an entire coal seam or seams running through the upper section of a mountain, ridge or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining agricultural, industrial, commercial, residential or public facility uses, the requirements of this section with respect to restoration to approximate original contour with all highwalls, spoil piles and depressions eliminated shall not be applicable."

508 Insert after the word "area", (H) Section 515(d), Page 98, Line 12; (S) Section 415(d), Page 81, Line 25:

508 "or to those situations where the mining operation will removal an entire coal seam or seams running through the upper section of a mountain, ridge or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining;"

508 EXHIBIT B - STEEP SLOPES

508 Suggested amendment to (H) Section 515(d)(2), Page 99, Line 13; (S) Section 415(d)(2), Page 82, Line 25.

508 (2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour, unless slope stability analysis indicates that the spoil material will not remain stable following mining and reclamation in which event the highwall shall be reduced to the maximum extent consistent with sound engineering technology, and provided further that a vegetation plan has been approved which is reasonably calculated to screen the remaining portion of the highwall within five years after initial seeding or planting [which material will maintain stability following mining and reclamation].

508 Governor CARROLL. Thank you, Mr. Chairman. In closing, I ask that you consider the words of Funson Edwards, an east Tennessee high school principal, who once wrote:

508 Appalachia is the song of distress and despair, written on the faces of the aged and destitute, whose spirit has been broken by unfulfilled promises from landlords and politicians.

508 If we write the right words, this act can be a new song of hope for Appalachia. This act could be the fulfilled promise of statesmen.

508 Thank you, Mr. Chairman and members of the committee.

508 Senator METCALF. Thank you very much for an excellent statement, Governor Carroll.
Senator Ford.

508 Senator FORD. I would be glad to ask the Governor some questions. Governor Carroll, can you tell us the source of the statement you made that in Pennsylvania 99 percent of the strippable reserves on slopes which measure 15 degrees?

508 Governor CARROLL. Yes, Senator Ford. In preparing our testimony for this committee, we did a substantial amount of resource work. Fortunately, we found this committee in years past, the work they have done, had actually done that work for us. I will ask Mr. Bell to point that out to the committee at this time.

508 Mr. BELL. That data came from a report made to the Senate Committee on Interior and Insular Affairs, Senate Resolution 45. The identification on this document is serial No. 93-8; the 93d Congress, first session.The actual data came from page 52, "A Table of Strippable Reserves in Appalachia and Slope Angle."

509 Senator FORD. Mr. Chairman, yesterday, didn't we enter into the record information which substantiates that information?

509 Senator METCALF. Exactly. Yesterday we entered into the record a table of percentages of slope in every State. Senator Ford, by interrogatio, brought out and reaffirmed the testimony that was in previous hearings of this committee.

509 Senator FORD. I think one of the important points that must be made in the decisionmaking process here is the type of quality of coal being mined in the various areas, not only the eastern United States, but also the western area.

509 You stated in your statement that central Appalachia is of high quality, the coal mined there. Would you or one of your associates elaborate briefly on this?

509 Governor CARROLL. Actually, gentlemen of the committee, one of the major problems this country is going to have in the near future is supplying low sulfur coal to meet the national clean air standards.

509 Now one of the technologies that has been developed that you have heard much about are called scrubbers, installation of scrubbers, can take the sulfur out of some of the higher sulfur coal and thus will permit some higher sulfur coal to be burned which has a percentage of sulfur content greater than the six-tenths or seven-tenths that I previously stated; that the Clean Air Act would require to be burned if you did not have a scrubber.

509 But I think we have to admit something that is extremely important for the consuming public in America, that is, if these scrubbers are just unbelievably expensive. While a major utility can install a scrubber and put it in the rate base and capitalize it over a long period of time, and even then it has a direct impact upon the cost of the electricity that is finally consumed by the consumer, and the consumer pays the cost of that scrubber.

509 When it comes to a small industry, it is just totally impossible. It is just too much to ask a small industry to install scrubbers in order to burn higher sulfur content coal.

509 I mention this, while it is not directly a problem for this committee as such in these hearings, but this bill can have a direct impact in this area. At the moment, as a result of legislation previously passed by the Congress, we are now converting, my memory is, about 82 installations around the country at the moment by order of FEA, from oil and gas back to coal.

509 Many of these have previously, by the way, been ordered to convert from coal to oil and gas. I mention that just for interest in the face we are now having to convert back, and I would say to you: if we are not extremely careful in this legislation, we are not going to be able to mine the coal that these new converted plants, both industrial and higher power reduction plants, are going to require in order to use coal. Obviously, they do not have, nor will they have, oil and gas to use and will have to burn coal.

509 My point, quite frankly, gentlemen, is this: There is a direct correlation between this act and the requirement of production of fuel. I make that very quickly in hopes it will be of some

value to this committee.

509 Senator FORD. I would like to add to that statement. Scrubbers take 10 percent of the energy that is produced by a generating facility to operate these scrubbers and produce the sludge that no one has been able to determine what we should do with it.

510 I think the Federal Government has lost the point somewhere, on the point of trying to assist local industries and power facilities with this problem.

510 Governor, why can't we mine additional coal from less steep slopes?

510 Governor CARROLL. That is obviously a good question.It is one we must answer, we must face up to. Why don't we go to deep mines, why don't we go to areas where the slopes are not near as steep?

510 My point previously was, obviously, there is a direct relation between the degree of the slope and the sulfur content of the coal. My memory is, while I do not have it in front of me, and the gentlemen at my right and left, can probably tell me, but my memory is about 71 percent of all the coal of a percent in half-degree content is located in this Appalachian region.So you can see how valuable this steepslope coal is.

510 Additionally, there is another point that must be made and that point is, it takes anywhere from 2 to 4 years to open up a deep mine operation. At the same time, a deep-mine operation is a very highly capitalized business. Thus, we must maintain the production of lowsulfur coal, particularly during the next 3 to 5 years while we are in the process of trying to prepare for the technology of using coal with a higher sulfur content. At the same time, while we are trying to move to investments in other kinds of coal mining such as deepcoal mining.

510 Senator FORD. In your statement you said there were several reports or studies that do not support the original contour. This same statement, I think, is made in Secretary Bell's position papers. If I may, could either your or Secretary Bell tell us what these studies were, what they said, and when they were produced?

510 Governor CARROLL. Senator Ford and members of the committee, again, in our process of research in working in this regard, we went on to the studies which were made for the benefit, primarily, of this committee at a cost of approximately - I said of a million dollars - and it is our

judgment these studies have not been fully considered in the drafting of this legislation.

510 I would like to ask, Mr. Chairman, Secretary Bell at this time to take just a couple of minutes and note those studies for the record.

510 Senator METCALF. We would be delighted.

510 Mr. BELL. The first of these is a publication produced for the Environmental Protection Agency by Hittman Associates of Columbia, Md. It is entitled, "Erosion and Sediment Control, Surface Mining in the Eastern United States." I will just briefly quote:

510 Restoring the approximate contour may not be desirable in all cases. A reduction in relief and overall flattening of topography may be desirable from an erosion and sediment control standpoint. It must be remembered that shorter or flatter slopes are less erodable.

510 That is page 32. I understand that study took 15 months to produce on surface mining in the entire eastern United States.

510 The second of these is a 2-year study performed by ManTech, a division of Ford, Bacon, and Davis, produced for the Department of Interior with a $5 ,000 study produced in four volumes. The third volume, Phase III, relates specifically to the eastern United States. From the report:

511 Restoration of long uninterrupted slopes has resulted in erosion cited by many mine operators in northern Appalachia as their main problem. Again, the final cut must usually be completely backfilled in accordance with recently revised reclamation laws in Ohio and Pennsylvania. When all backfilling and grading has been completed and the long uninterrupted slopes of the hills have been restored, erosion and sedimentation occur.

511 Finally, a report just produced for the Council on Environmental Auality and the Environmental Protection Agency by ICF, Incorporated. I quote from the executive summary:

511 It is noted that while it appears approximate, original contour recreating provides a general high level of environmental protection, it does not always achieve the best level of protection. During the critical period between recreating and the establishment of a vegetation cover, the site is generally vulnerable to erosion due to rain, water and runoff.

511 We will just make the reports available to the committee.

511 Senator FORD. I would suggest, with your approval, the staff review these and give us a report. Since learning this information, they seem to clearly challenge our requirement to always return a mine area to the approximate original contour. I would like to have a little better information on that.

511 Senator METCALF. If you would yield. The first two documents are a part of the committee's file and were considered, at least, in the first markup of the legislation on the Senate side.

511 Now some of this material, Governor, as you know, emanated from that very long and drawn out conference and something in a conference with the House, we reached compromise language.

511 We will, however, review those studies and I am delighted you brought them to our attention.

511 The third study, the ICF study, if you will recall, when Secretary Andrus - I almost said, Governor, we are surrounded by Governors.

511 Senator FORD.That is all right, I like it.

511 Senator METCALF. Senator Hatch had some interrogatories about that, so we are aware of the contents of that study. I put some matters relating to that ICF study in a letter to the Secretary in the record yesterday.

511 Senator FORD. Mr. Chairman, I have taken up too much time. I want to ask one more question of Governor Carroll while he is here and make it part of the record.

511 As he stated earlier, Chairman Udall, Secretary of the Interior Andrus, Mike Harvey of this committee, along with myself and others, visited eastern Kentucky. One of those sites that we landed on and Chairman Udall was impressed with, I think he made the statement at that time, "If you give me the language to produce the land in this condition, I will see it is incorporated at least in the House bill."

511 That area in which we landed, yesterday testimony by, I believe Mr. Franzman from Atlanta who is a member of the firm who is developing the area we observed. Mr. Laird Orr, I

think it is referred to as Asher Properties there, this is what we are talking about when we talk about mountaintop removal and hollow fill.

512 Was my statement correct as it related to Chairman Udall?

512 Governor CARROLL. That is correct, Senator Ford.

512 Senator FORD. Let me ask a final question and then I will turn it over to the other Senators. Do you think this legislation will affect the production of coal?

512 Governor CARROLL. Generally speaking, throughout the United States, probably not. The coal production throughout the United States is so vast, I doubt if this one particular piece of legislation, at this time dealing only with surface mining, would directly affect the production.

512 The coal has got to be produced at some price, in some way, in order to meet the requirements of this country. It probably would have some impact upon it.

512 I can say without any hesitation at all, it will have a rather drastic impact, a rather significant impact, on the production, the mining and production of low-sulfur-content coal.

512 Senator FORD. I have no further questions at this time, Mr. Chairman.

512 Senator METCALF. Senator Bumpers?

512 Senator BUMPERS. Governor Carroll, what percentage, if you know, of the Nation's coal reserves are represented by the red marks on your map? You hear various figures of what the reserves are, 300 billion, 500 billion tons.

512 Mr. BELL. The red here indicates low-sulfur coal. We use the illustration to show the correlation between that and the steep-slope areas as expressed as a total of the percentage of the reserves of the entire Nation. It would be a small percentage expressed in terms of the low-sulfur coal. This is the finest coal in the world, Senator, in this area in terms of both low ash, high Btu, and low, sulfur content. I believe that 23 percent of all utilities in the Nation use this coal.

512 Senator BUMPERS. How does the sulfur content of that coal compare with, say, the Powder River Basin?

512 Mr. BELL. I am not sure I know the sulfur content. The comparative data between the

eastern United States and the western United States is, the western United States coal generally
has such a lower Btu content that in order to burn and get the same heat efficiency, you are going
to produce more sulfur in terms of just the lower percentage of sulfur.

512 This area of central Appalachia, almost all of this coal, generally speaking, is less than 1
percent sulfur content.

512 Senator BUMPERS. Could you tell me, maybe I am repeating myself, could you tell me
about how many tons of reserves of lowsulfur coal in central Appalachia still remain?

512 Governor CARROLL. I am told there is about 350 million tons on 25 degrees slopes in
eastern Kentucky alone.

512 Senator BUMPERS. I was going to say, aren't we using 500 to 600 million tons a year in
the country now?

512 Governor CARROLL. That is correct. Total coal.

512 Senator BUMPERS. You are talking about eastern Kentucky.

512 Governor CARROLL. We probably could take these tables that are in the record and put
that information together.

512 [The tables referred to appear on the following page.]

---

*7*TABLE 3-8. - SULFUR CONTENT OF CENTRAL APPALACHIAN SURFACE

MINED COAL AS A FUNCTION OF SLOPE ANGLE
7[Millions of tons per year]

Sulfur content	Total	0-9.9 degrees	10 degrees-14.9 degrees	15 degrees-19.9 degrees	20 degrees-24.9 degrees	25 degrees +
Less than 1 percent	40.17	0.35	0.53	0.75	6.58	31.96
1 to 1.49 percent	15.80	.12	.41	.44	3.48	11.35
1.5 to 1.99 percent	7.30	.09	.37	4.12	.95	1.77

2 to 2.99 percent	1.42	.19	.32	.22	.36
.33					
More than 3 percent	.34	0	0	.34	0
0					
Total	65.03	.75	1.65	5.87	11.37
45.41					
PERCENTAGE OF TOTAL PRODUCTION					
Less than 1 percent	61.8	0.5	0.8	1.1	10.1
49.1					
1 to 1.49 percent	24.3	.2	.6	.7	5.4
17.5					
1.5 to 1.99 percent	11.2	.1	.6	6.3	1.5
2.7					
2 to 2.99 percent	2.2	.3	.5	.3	.6
.5					
More than 3 percent	.5	0	0	.5	0
Total	100.0	1.1	2.5	8.9	17.6
69.8					

513 Source: Based on Bureau of Mines field survey, January 1973.

*5*TABLE 3-9. - COAL PURCHASED FOR STEAM ELECTRIC PLANTS, BY REGION OF PRODUCTION

5[Millions of tons per year]

	Surface		Underground	
	Quantity	price per ton n1	Quantity	Price per ton
Low sulfur (less than 1 percent S) steam electric coal:				
North Appalachia	3.30	$8.90	1.82	$15.01
Central Appalachia	21.32	9.90	31.01	10.63
South Appalachia	3.88	7.54	2.00	9.85
Total, Appalachia	23.50	9.45	34.83	10.80
Total, United States	57.30	7.69	37.32	10.61
All steam electric coal:				

North Appalachia	54.42	8.93	50.91	9.29
Central Appalachia	35.75	9.51	48.14	10.23
South Appalachia	8.99	8.07	4.11	10.30
Total, Appalachia	99.16	9.04	103.16	9.75
Central (western Kentucky, Illinois, and Indiana)	87.92	6.05	39.08	7.99
Total, United States	229.16	7.71	145.02	9.40

513 n1 Value, F.O.B. mine.

513 Source: Based on Federal Power Commission Form 423, data supplied to CEQ by the FPC, 3d quarter, 1972.

513 Mr. BELL. I think I could get you the figure you are asking for. There are 898 million tons strippable reserves in Appalachia on slopes 25 degrees or above.

513 Senator BUMPERS. That is the low-sulfur coal?

513 Mr. BELL. Yes, sir.

513 Senator BUMPERS. That would be less than two-tenths of 1 percent of this country's reserves then, assuming the 500 billion tons is correct.

513 Mr. BELL. Yes, sir. But it would be 70 or 80 percent of the Nation's low-sulfur coal.

514 Senator BUMPERS. Are you saying 898 million tons represents more than 50 percent of this county's low-sulfur coal?

514 Mr. BELL. I think it represents more than that, of low-sulfur, high Btu coal.

514 Senator BUMPERS. Mr. Chairman, do you care to take issue with that?

514 Senator METCALF. I was going to interrupt and have him add high Btu western coal. Our tremendous reserves of low-sulfur coal, as you pointed out, it was also relatively low Btu and maybe you have to burn as much, because of the low Btu, as you burn for other higher sulfur coals in some other areas.

514 But if you just say low-sulfur coal, there is just tremendous reserves in Montana, the Powder River Basin, the Dakotas.

514 Governor CARROLL. The Chairman has properly explained it, and that is you must take both the Btu content and sulfur content to arrive at how much coal has got to be produced to create a Btu unit. Then, generally speaking, you have to burn about twice as much of the western coal to create same Btu's you would with the Appalachian coal whose sulfur content, in some instances, is higher even than the western coal.

514 But once you average it up, Btu's make this coal the finest coal in the world.

514 Senator BUMPERS. Governor, can you tell me what the current market price for low-sulfur coal in central Appalachia is compared to the higher sulfur coal?

514 Governor CARROLL. I am sorry, we don't seem to have that information.

514 Senator BUMPERS. Does it normally bring a premium?

514 Governor CARROLL. Yes.

514 Senator BUMPERS. Do you know how many dollars? I think the current price on coal is $15, $1 7 a ton.

514 Mr. BELL. There are so many gradations of price based on quality and other factors, it is impossible to tell.

514 Senator BUMPERS. Could you state the normal premium as a percentage as opposed to dollars?

514 Governor CARROLL. Approximately, probably 10 percent.

514 Senator BUMPERS. Governor, would you agree with me that Congress has the responsibility to see that the coal mined in this country, and I agree with you as to its importance, I happen to come from one of the three counties in my home State that produces coal; I have seen what happened in the 1920's, the results are still there plainly visible for everybody. Would you agree with me that it is important for us to provide in this bill that reclamation of strip mining be of the very highest, that we use the very highest technology we have, and the land be reclaimed to the maximum amount practicable under the circumstances?

514 Governor CARROLL. I most certainly would, Senator Bumpers.That is why I support the concept of this legislation. Before you came in, and you may have known it because I think you were present at the end of the conference and might have heard the conference's adoption of a resolution recommended by me, supporting this legislation.

515 Just as in my State, as you have mentioned in your own home county, you can go into Kentucky and see some of the worst examples you can find anywhere in the world of poor strip mining practices, poor reclamation practices.

515 We passed our first effective law, as I said earlier, in 1964, and again in 1966, when I was a freshman legislator, and to give you an example, even in enforcement before Governor Ford's term and my term, as an example of how we tried to concentrate on enforcement, we have collected in the last 6 years $8 00,000 in fines and forfeitures compared with a previous 4 years of $27,000.

515 To give you some comparison of how we have escalated the really enforcement of our act, we are strong supporters of standards nationally of good strip mining and reclamation practices. That is why we support this bill, but we really believe we can accomplish those best by the change in the mountaintop removal provision in the bill and the provision of the bill that requires what the bill says, return to approximate original contour, we are not quite sure what that means. If it means we can't use some of the top of that highwall for the spillage increase of a drainage ditch, we have serious problems that will put more sedimentation down the outslope in our judgment than we are doing now.

515 Senator BUMPERS. I agree with you on that point in your testimony. I think first of all when you are talking about putting the land back to original contour, Franklin County, Ark., where the coal seam is, for instance, 14 to 18 inches thick, and you are talking about 350-foot seams in the West, you are talking about two entirely different things.

515 Second, there was substantial testimony here yesterday, I apologize, Mr. Chairman, for having missed it, I read some of it, about a considerable amount of research going on in this country now to invent new methods of reclamation and indeed to change the contour because changing the contour is absolutely necessary in some instances.

515 But the point is, we ought to change it back to the very highest and best possible contour for future generations.

515 Governor CARROLL. Absolutely.

515 Senator BUMPERS. Let me ask you one question. On page 6 of your testimony you say:

515 The historical practice of allowing overburden and spoil to be cast over the outslope has been the practice which has most degraded our environment.

515 I am not sure I understand that, maybe you could clarify it.

515 Governor CARROLL. When you mine a seam of coal, there are two basically esthetic and environmentally objective provisions or practices that come from it. One is called the highwall which is up the mountain slope; the other is called the downslope. The highwall, esthetically, just does not look good. It does not cause a great deal of damage. The damage comes from the water spilling back over on the bench and carrying the fill material that has been pushed over the outslope down into the rivers and streams and the sedimentation to the farms. In many instances in the past, on top of houses and over the top of graveyards.

516 You can find the most emotionally disturbing circumstances known to man if you go up there and look, even in Kentucky, in times past when those things were allowed. We don't allow that kind of thing anymore.

516 You will have some witnesses from Kentucky here today who will tell you about it and they will tell you the truth about what used to go on in Kentucky years ago. We don't permit it anymore since Governor Ford was Governor and since I am Governor, we require they comply with the act.

516 We don't think they ought to put any material over that downslope. We think that material ought to be saved and put into an approved fill area we call, generally, the head of the hollow fill which, by the way, has another use in our area. Certainly the fine Senator from West Virginia - good morning, Senator Randolph - he knows in his State with all of the hills he has got, it is hard to find a good piece of level ground to put something on, so these hollow fills are important to us to be able to build schools on and houses on them. They are very expensive as a matter of fact, once you build them.

516 Senator RANDOLPH. Also to create lakes where there could have been a stubble field.

516 Senator BURMPERS. Governor, let me say finally I will work to try to change that back to the original contour provision. I think it is in the Nation's best interest to try to change to that provision.

516 Finally I would make this observation. I was terribly dismayed when President Ford vetoed this bill last year. I think coal is our ace-in-the-hole. We are going to have to burn substantially more quantities of it than anybody is willing to admit right now in the next 10 to 20 years.

516 I think it is important for the operators of this country to have the guidelines right now as quickly as possible. If I were an operator considering going into a new mine, I would be most hesitant to do it. We won't know and he won't know what his costs are going to be, the consumer won't know what his cost is going to be until we get something finalized on this.I am hoping, under the leadership of Senator Metcalf on this committee, and Congressman Udall in the House, we will have something on the President's desk very shortly. With that we need to make a monumental effort to find the technology. There must be a technology to remove the sulfur.

516 I think one of the most critical problems in this country right now are the acid rains which are developing as a result of SO2 in the atmosphere. You cannot overemphasize the necessity of removing the sulfur. I think initially we ought to try to burn as much of the low sulfur coal as we can and simultaneously try to develop new technology to get the sulfur out of the atmosphere.

516 I had a couple of questions, but my distinguished colleague, who knows a lot more about surface mining than I do, is here.

516 Senator METCALF. Governor Carroll, you and the other witnesses from Kentucky have, I think, made a very outstanding contribution to this hearing. You have demonstrated there is a technology for better restoration and reclamation than restoring to original contour in mountaintop mining. You then ask the question, why should we adopt a national policy which would make it difficult if not impossible to pursue that technology? Certainly we are going to have to seek an answer to that question.I think that thanks to Senator Ford and Congressman

Perkins, we had a delegation up here from Kentucky today and your appearance will be of great help to us in writing this legislation. Thank you very much for coming.

517 We are especially privileged and honored to have as representatives the Governors of some of our most important States.It is a special privilege of this committee to welcome you. I am pleased the distinguished Senator from West Virginia is here.

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

517 Senator RANDOLPH. Thank you, Mr. Chairman. I was impressed with Senator Bumpers in the comments that he made in those final minutes, and I think it is very important that we act now.

517 There is a time to act, and a time perhaps to pause and to delay, but it is very important we act upon this legislation. At the Federal level, it is long overdue; so that those in this important industry do have the opportunity and the obligation and the challenge to cooperate as you, Mr. Chairman, want the cooperation in bringing a law into being which will be fair, which will be well reasoned and which will permit us to produce the coal and also to properly reclaim the land.

517 I am gratified also that the former Governor of Kentucky, who is now a new member of your committee, Wendell Ford, is here. Often times we have some discussions, never arguments, about whether Kentucky or West Virginia produces more coal. There certainly is no argument on the surface mining tonnage; that is greater from Kentucky than it is from West Virginia. But for his intense interest in this subject matter as well as the matters of energy generally, as he has presided over his subcommittee, I would want the record to indicate my appreciation of his efforts.

517 Senator Domenici from New Mexico, who works side-by-side with me and other members of the environment on the Public Works Committee, I am sure is giving attention to the problems that are being weighed in this hearing.

517 Mr. Chairman, I am not here to engage in pleasantries because I could speak on and on about the youthful and the knowledgeable and, we believe, the progressive Governor of our State of West Virginia, John D. Rockefeller, IV. But in having the opportunity to present him formall

to you, I believe he has been called, and challenged frankly, to a position of leadership in our State of West Virginia.

517 It is a position that he does not assume, he asked for it and the people gave him the opportunity and I think he will accept it as a commitment not only on this subject matter, but on the many other problems that face us in West Virginia, as of course all the States. Really, Jay undertakes his leadership in West Virginia in a very difficult time. I call it a crisis period. I think sometimes we can overwork that, sometimes create crisis where they don't exist, and to the degree they exist.

518 But this is a period of crisis in relationship to our need to move forward primarily with the use of coal. Of course, broadly based, new innovative methods of creating energy and distribution, use in this country, are highly desirable. I just think it was 18 years ago when there was a beginning in the Congress to do what now is being done in reference to a department in the Cabinet on energy.

518 I make no critical comment. That is not my purpose, but sometimes it is a long time in doing what we should have done earlier. We are prone to act after the fact often rather than before the fact.

518 I am not critical of the Eisenhower administration, or the Johnson administration, or the Kennedy administration, or the Nixon administration, or the Ford administration except to say under those presences the program was not brought into focus. It was not adopted, it was not pursued as apparently it is now being pursued in both the legislative and the executive branches of government. It is not enough to look backward. I am not critical in any sense.

518 I am only saying now, not later, now, we must act and the new Governor of our State, I think, already has proved to us that he understands - he wouldn't mind my saying in the years I have known him - he has not grown taller in height physically, but I am not using the word improperly, he has had a period of testing in our State and he has had a time of maturing and it has all been, as I said, on the plus side.

518 I think it is good for us as West Virginians, and I am sure Senator Percy in a sense feels he is a part of West Virginia.

518 Senator BUMPERS. Senator, Woodrow Wilson used to say some men grow and some swell. Are you saying Jay has grown?

518 Senator RANDOLPH. That is correct; it surely is indeed. I am glad there is a partnership in West Virginia between Sharon and Jay. She sits behind him today, but really, she works beside him and I think that is very important for us to realize.

518 There are going to be the accomplishments and the benefits, I think, that will flow from the cornucopia - that is a good word, I can even spell it - to all citizenry and to that wide group of people that are collectively the United States of America.

518 They have wanted to come and share with us some of the things they have seen and sensed in the State of West Virginia. He testifies, of course, on surface mining and reclamation legislation. I know all of you will listen to what he has to say and listen very intently. I need not tell you, but I will for the record, that I have been an active and cooperative person in connection with some drafting, some changes made in that past bill which did not become law when even upon a weekend we brought an owner/operator of a mine in West Virginia who was able to come and show by pictures, and graphs, and charts exactly what could be done and should be done in connection with mountaintop mining.

518 We remember the efforts made then as we come to present now formally just another Governor, yes, to be sure, but a youthful Governor, a progressive Governor, and I think he is going to help us, by his very testimony, to have the background, as it were, for a well-reasoned legislation.

519 I think it is very, very important that he testify, he give you his analysis on what I can say is a timely and vital subject. Thank you, Mr. Chairman.

519 Senator METCALF. Governor, before I call on you, with all due respect to the accolades paid you by the Senator from West Virginia, I am going to call on my distinguished colleague, the Senator from Illinois, to welcome you on the committee.

519 Senator Percy.

519 Senator PERCY. Senator Metcalf, I will have to declare a conflict of interest before I say anything. I don't know whether Sharon and Jay have a greater affection for Jennings Randolph

than they have for Chuck Percy, but certainly his being here to present our Governor means a
great deal, I know, and to Sharon Rockefeller.

519 We have attended the Senator's prayer breakfasts for 10 years and we have worked
together on the Senate floor. I have had deep discussions with you on energy just as I have
shared them with Governor Rockefeller.

519 Our coal is very high-sulfur coal compared to West Virginia but also we have adopted
very stiff standards in my State and I certainly am very supportive of this legislation. I know
West Virginia has been a leader in first worrying about the problem and then doing something
about it.

519 I know of no one who, despite my conflict of interest, is more qualified, has thought more
about the problems and the various aspects and concerns of it, and is more qualified to appear
before this committee than Governor Rockefeller. I am very honored and pleased indeed to
accept the invitation to sit with you for a few minutes this morning. However, I will have no
questions.

519 Senator METCALF. We will be delighted to have you as a member of the committee,
Senator.

519 Senator DOMENICI. I would only want to tell the Governor, or ranking Republican
whom you probably know, the former Governor of Wyoming, Senator Hansen, is not with us and
I want you to know why. He is extremely ill in the hospital. He would want me to explain his
absence. He has taken a vital interest in this legislation and he would want to be here. But that
explains his absence and I wanted you to know that. Thank you, Mr. Chairman.

519 Senator METCALF. I can only add my welcome to all of the greetings you have been
given, Governor Rockefeller. We look forward to your testimony with a great deal of interest
and a great deal of respect. We are very pleased to have you here to tell us about mining in your
area and the impact that it has on national legislation.

519 Governor Rockefeller.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, GOVERNOR OF THE
STATE OF WEST VIRGINIA; ACCOMPANIED BY DAVID CALLAHAN, DIRECTOR,
DEPARTMENT OF NATURAL RESOURCES

519 Governor ROCKEFELLER. I am already embarrassed, my testimony in statement form will be less than the comments that preceded them.

519 Senator PERCY. That is customary.

519 Governor ROCKEFELLER. Having said that, however, my name is Jay Rockefeller, Mr. Chairman. I am the Governor of the State of West Virginia, and on behalf of my State I am pleased to appear before this committee to comment on proposed Federal legislation which should provide for the surface mining of coal in an environmentally acceptable way.

520 I don't think there is any other reality, Mr. Chairman, but that the central issue here today and for your consideration is whether or not we favor, or other States favor, or you favor, the return of surface-mined lands to their approximate original contour. Senate bill No. 7 embraces this concept. It is, in essence, the essence of the bill and I wholeheartedly support this concept.

520 Since the adoption of the Surface Mining and Reclamation Act of 1967, West Virginia has, in my judgment, been recognized as the leader in reclamation among all coal-producing States and is currently the second largest coal-producing State in this Nation. It used to be the largest. We do advocate Federal surface mining legislation which will, in measure, equalize reclamation standards among the States and by so doing alleviate the West Virginia distinct competitive disadvantage in the present-day marketplace because of the reclamation standards it has chosen, through legislation and through administrative rules and regulations, to adopt and make substantially commonplace.

520 We are confident West Virginia will have, therefore, minimum difficulty adapting to the operational and environmental standards of the proposed legislation. We strongly support strict compliance to procedures and methodologies which insure environmental protection and natural resource conservation.

520 Since we have been successful, in the main, in addressing these problems without severely restricting the production of coal, West Virginia respectfully requests that the committee consider the following points which we believe will significantly and realistically strengthen the bill.

520 No. 1: The proposed legislation does not, in my judgment, adequately allow for the mountaintop removal method, proven through practice in West Virginia, to be environmentally equivalent to the contour method of surface mining. We welcome the opportunity, and in fact I would formally request, Mr. Chairman, the opportunity for the demonstration of the validity of this concept of mountaintop removal to members of your committee.

520 We feel it is not only more substantial in its recoverable coal opportunities and in a State where approximately 2 percent of the land is flat and the rest is not, that it will increase valuable or potentially valuable flat space. But also in fact, that it is environmentally at least equivalent to contour mining.

520 Operational standards should reflect the most current and effective means of surface mining and reclamation, thereby strengthening present efforts at the State level. The legislation should provide for the return to approximate original contour while giving maximum consideration to the control of surface drainage both during and after active operations.

520 The legislation should enhance the acceptability of all valid methods. By addressing these more current methods of surface mining, the Congress must insure flexibility that allows for the exercise of regulatory initiatives within the State and industrial initiative, both of which have been responsible, especially recently, for notable progress in West Virginia.

521 No. 2: In addition to being a national leader in the reclamation of lands associated with active surface mining operations, West Virginia has one of the most effective programs of abandoned mined land reclamation of any State. For example, in the past 13 years, West Virginia has reclaimed more than 25,000 acres of abandoned mined lands.

521 Senate bill No. 7, however, requires the purchase of private lands as a prerequisite for reclamation. It is our experience that the use of easements without purchase is a more effective way to achieve, in West Virginia, the basic purpose and intent of this legislation. We have encountered relatively little, if any, objection on the part of landowners or lessors upon whose land there is orphaned land reclamation to be done. In terms of requesting this, in terms of going in, doing the job based on the per ton charge which we put upon them, from our special reclamation fund, we then return the land to them after we have done the job.

521 Senator BUMPERS. Mr. Chairman, I have to leave to preside. I would like to interrupt to ask him a further question on that. I was interested in this business about you were reclaiming 25,000 acres of land in West Virginia. Where did you get the money for that? Do you have a fee system?

521 Governor ROCKEFELLER. We have something which is a special reclamation fund. We get the money from the permits and from the process before the strip mining begins. We, in fact, one of my concerns in the State is we have built up a surplus or a carryover within that reclamation fund and, therefore, probably not doing as much as we could do.

521 Senator BUMPERS. How do you handle orphan lands on private lands?

521 Governor ROCKEFELLER. We ask for an easement and we get an easement.

521 Senator BUMPERS To go in and do it?

521 Governor ROCKEFELLER. Yes.

521 Senator BUMPERS. Does he participate in the cost?

521 Governor ROCKEFELLER. No. The cost is borne by the State from the special reclamation fund and we have not had a problem in landowners rejecting it.

521 Senator BUMPERS. I am sure you haven't. But how do you decide which landowner is going to get his land reclaimed?

521 Governor ROCKEFELLER. That is a process within the Department of Natural Resources. There is so much land to be reclaimed yet, it is simply what can be done on a first-service basis.

521 Senator BUMPERS. Couldn't you go much faster if you had an alternative method of allowing the landowner to participate in the cost?

521 Governor ROCKEFELLER. I don't see that as a necessity. If we have surplus funds more than we are currently using in the special reclamation fund, then that landowner has, for example, purchased or leased that land some substantial time after the strip mining might have been done. It is not clear to me why he should be forced to get into that process of payment.

522 Senator BUMPERS. I won't pursue that any further now, but I think that is an area of considerable interest to the committee.

522 Governor Carroll objected to the present method of allocating reclamation fees to orphan lands. I am curious; do you have that same objection? Are you familiar with that part of the bill?

522 Governor ROCKEFELLER. Yes, I am. You see what essentially happens is, all of this is paid for, this special reclamation; that is the reclamation of orphaned land. In fact, not by the State itself from State moneys, but by the industry through the special reclamation fund. The money is taken from them, put into the special reclamation fund, it is not a part of any general revenue budget of the State. For example, the industry is essentially pledging its good faith, so to speak, for work that has not been done by others in the past in recognition of the damage that has been done in the past before effective reclamation.

522 Senator BUMPERS. What you are doing is spreading that same philosophy nationwide in the bill then. Mr. Chairman, I believe right now we have, I think, a 15-cent fee.

522 Governor ROCKEFELLER. Thirty-five cents per ton and 15 cents additional under the Federal suggestion.

522 Senator BUMPERS. That is to be allocated by the Secretary. For example, West Virginia and Kentucky and the big coal-producing States, Illinois, Montana, Wyoming, will be producing by far the lion's share of that fund; but some of it will be going to the State of Arkansas, which is a very minimal producer of coal, to reclaim orphaned lands there that were created back in the 1920's.

522 Now if you take a parochial view of that, of course, you could object to that if you came from a coal-producing State. That is my question.

522 Governor ROCKEFELLER. I am on point 2, I am coming to that in point 3 where I address that. I might say, in a kind of rough computing, we figure West Virginia would pay about $2 0 million if the Federal legislation were passed, As it stands, we would get back about $1 0 million. That would be for socioeconomic and various other purposes.

522 Senator BUMPERS. Please excuse me.

522 Governor ROCKEFELLER. If a national surface mine reclamation policy and program related to abandoned mined lands is going to be effective, it must recognize and not penalize a

State whose efforts have been successful in achieving the purposes of this legislation.

522 Number three, it is my understanding that the purpose of Senate bill 7 is to assure environmentally sound reclamation of surface mined lands. This being the case, all revenues associated with this legislation should be dedicated to this purpose.

522 If, on the other hand, it is the intention of the Congress to address the associaed question of socioeconomic impacts resulting from surface mining activity, it is my recommendation that the issue be examined in the full context that it deserves and that is, separately.

522 I understand and appreciate the concern of Congress in this matter and would suggest that if we are to develop our coal resources in the national interest, we in fact must make the commitment to ameliorate all impacts resulting from such coal development.

523 Number four, present language suggests the possibility of multiple hearings for one permit application. While the public has a constitutional right to be heard, in every sense, redundant hearings may not serve any reasonable public or environmental purpose. This perspective is based on West Virginia's experience in public hearings and in the processing of some 250 surface mining permits annually.

523 My point there, Mr. Chairman, is to say I think hearings are essential. People must have, as in the bill, legal rights, they must have sound purpose, and they should be able to be heard. But as I read the bill, there is the possibility for such an extension of hearings that with all of the pre-engineering planning that must go on of necessity, the delay of the beginning of the stripping operation could be necessarily delayed.

523 There is a difference there between a State that might grant say 10 permits a year and a State like West Virginia or more so in the case of Kentucky which would grant 100, 200, or 1,000. So the whole public hearing cost, the time related to that, becomes important. It is for that reason only that I mention it.

523 Now concluding, Mr. Chairman, as Governor of the State of West Virginia, I appreciate having the opportunity to comment on this critical legislation. I reemphasize that we as a State who will be directly affected, do support this Federal surface mining legislation. We do support

the approach to return to approximate original contour. I encourage the committee to re-evaluate
and realign the specificity of the bill to provide guidance or to allow flexibility for State which in
the judgment, if the bill passes, that the Secretary of the Interior is carrying out their
environmental responsibilities.

523 Again I express my appreciation and offer the services of the State of West Virginia for
whatever assistance we might provide to this committee and Congress in preparing a refined and
workable national surface mining law.

523 Mr. Chairman, I would also like to commend you and those Members of Congress and
their staff who have recognized the continuing importance of developing a comprehensive
solution to the problem of balancing our growing need for coal, which can, and will, be mined in
the State of West Virginia in an environmentally acceptable fashion. Thank you.

523 Senator METCALF. Thank you very much, Governor. The committee has been very
impressed that the Governors of the two largest coal producing States in America have come in
and overall made suggestions for improving the bill.

523 I did not approve of President Ford's veto, but it may be we will have a better surface
mining bill as a result of this consideration this year than we had in the other bill and there may
be something to be gained in the delay.

523 If the committee will indulge me, I would like to recognize Senator Randolph.

523 Senator RANDOLPH. You are very kind, Mr. Chairman. I will only ask one or two
questions.

524 Senator METCALF. Senator Randolph has been very helpful in perfecting this
legislation and working in committee, on the floor, and in drafting it. I am very pleased he is
here today.

524 Senator RANDOLPH. Thank you, Mr. Chairman. I am again privileged to be here with
you today, especially because of the presence of the Governor of West Virginia. May I ask, not
as a pleasantry Governor, but I will not discuss your appointments you made in the State of West
Virginia. Suffice it to say the gentleman who sits on your left, I have known him a long, long

time and you made a good appointment in the director of natural resources, David Callahan.

524 Governor ROCKEFELLER. Thank you.

524 Senator RANDOLPH. I speak for West Virginia when I say that and I commend you for your selectivity based on a man who will produce for you a good record.

524 On your point four, Governor, would you describe for the committee the permit processing system as it would relate to the public hearing?

524 Governor ROCKEFELLER. I believe on page 62, there would be under "Public Notice and Public Hearing, Section 413," while there are a number of requirements that each permit would be put in newspapers for 4 consecutive weeks, any person with a valid and legal interest would have the right to request a hearing and then the public hearing would be held in the locality of the proposed strip mining site.

524 Then there would be another period, as I read it, where the notice of public hearing in newspapers of general circulation at least once a week for 3 consecutive weeks, there is an earlier section saying a similar thing, at least once a week for 4 consecutive weeks in newspapers.

524 Then, if those hearings are not satisfactory, there is an appeal process in section 414 which allows for more hearings to be held. We did - and again, within a 30-day period, we did some sort of inexact computation. Our director of reclamation figured it would be possible, taking sort of a negative view of the thing, or trying to take a negative view for the purpose of calculation, that there could be anywhere from five to seven different hearings on the processing of a permit.

524 That may or may not be true, but I think it would be unnecessarily redundant if that were true.

524 Senator RANDOLPH. I thank you very much. The permit problem has been one that has not plagued West Virginia, but it has been a matter of concern and if I might direct a question to Mr. Callahan, how many permits are issued, Dave, on let's say a yearly basis or a monthly basis, or what is the situation at present in the State? We have 34 counties in West Virginia out of our 55 that produce coal. I am not saying all of them surface mine coal.

524 Mr. CALLAHAN. Senator, we receive and process approximately 250 permits per year.

This varies year to year, but 250 would be a good number.

524 Senator RANDOLPH. Are you speaking of permits for just surface mining?

524 Mr. CALLAHAN. Yes, sir.

525 Senator METCALF. Would the Senator from West Virginia yield to me?

525 Senator RANDOLPH. Yes.

525 Senator METCALF. For how long a time are the permits granted?

525 Mr. CALLAHAN. The permits are granted on an annual basis.

525 Senator METCALF. Does each surface miner have to renew his permit every year?

525 Mr. CALLAHAN. Yes.

525 Senator METCALF. This legislation provides for a 5-year permit, as you know.

525 Mr. CALLAHAN. Yes, sir.

525 Senator METCALF. Some of the industry came here and told us they cannot live with
permits issued for only a 5-year period because of the financing and so forth.I was wondering
how long your permits were for. They are renewed annually?

525 Mr. CALLAHAN. Yes, sir.

525 Senator DOMENICI. How long does that process of the initial permit take?

525 Mr. CALLAHAN. The initial permit must be granted or rejected by the administrative
authority within 30 days after the completed permit application is made to the State. However, it
takes a considerably longer period of time than that for an operator to fulfill all requirements as
far as the preplanning for drainage and revegetation and so on.

525 Senator DOMENICI. I have a number of questions, but I would yield back to Senator
Randolph.

525 Senator RANDOLPH. Governor, you mentioned the need to enhance the acceptability of
all methods of surface mining. Would you expand on that in relation to techniques of mining?

525 Governor ROCKEFELLER. Yes, sir; two examples of that would be haulback technology

which, back in 1970 and 1971 when I was an outright abolitionist in terms of strip mining, I
thought there should be none at all because the practices, in my judgment, that were being carried
out at that time in terms of reclamation; but since then, there was no haulback technology being
practiced anywhere in the State of West Virginia and since then haulback technology has become
fairly well standard on the steep slopes of southern West Virginia.

525 We have at this point in West Virginia, not by law particularly but by administrative rule
and regulation, absolutely no dirt being thrown over the side of a mountain for any purpose
whatsoever which was commonplace in 1970 and 1971.

525 Another example of that would be mountaintop removal. There was not, as I was aware
of, substantial mountaintop removal a number of years ago. But that is now commonly
practiced.I have been to a number of those sites as you know very well, Raleigh and Boone
Counties, and you cannot get a whole lot steeper slope than that where mountaintop removal
provides first of all, nothing at all being thrown over the side, but valley fill placement, control
placement. The mountaintop which is theoretically flat, it is not entirely flat, it is somewhat
sloped down toward the center so an area of drainage in a winding system of drainage down the
mountain is created.

526 That is not mandated or directed in West Virginia law. It has been something that has
been a combination of industry and regulatory initiative that has come about because of the
flexibility.

526 Senator RANDOLPH. I remember the help from Mr. Morton when he came to show us
exactly what the problem was, how the mining could take place. Do you have any specific
proposals for the mountaintop mining for the committee? You suggested in your statement you
would have.

526 Governor ROCKEFELLER. Yes, sir.

526 Senator RANDOLPH. I think this is a very important area of consideration in the bill, Mr.
Chairman.

526 Governor ROCKEFELLER. My suggestion would be rather than to have mountaintop
removal achievable only by variance which is under the current legislation, mountaintop removal

should not be mandated, should not be dictated, but should not be disallowed or allowed to come
under a variance procedure. This would simply be allowed to happen if that is an acceptable
environmental approach in the committee's judgment.

526 I think, quite frankly, it is at least equal to contour reclamation.I think it is better. You are
dealing so obviously and totally with a solid base you are creating, as you can never really
entirely do with contour mining, something usable and you are recovering 100 percent of the
coal.

526 Senator RANDOLPH. Mr. Chairman, that is the effort I was making, as you recall, in the
last bill; the suggestion and recommendation which Governor Rockefeller presents here today. I
am very appreciative of the opportunity to be with you and I thank you, Mr. Chairman, and I
thank you, Governor.

526 Governor ROCKEFELLER. Thank you, Senator, very much.

526 Senator METCALF. Senator, we have appreciated your help and your assistance in this
legislation, in all legislation that pertains to the environment, particularly in this legislation. We
look forward to continuing to have your assistance. Certainly I think what the Governor has
demonstrated here is a viable alternative that should be at least recognized in the bill. The
Senator from New Mexico, then I will recognize the Senator from Kentucky.

526 Senator DOMENICI. Thank you, Mr. Chairman. Governor, I have only been up here in
the Senate for 4 years, but let me tell you the predicament I find myself in, and a couple of
pluses.

526 Probably in your statement, Governor, the most important of it is the second to last
paragraph where you say:

526 I encourage the committee to reevaluate and realign the specificity of the bill to provide
guidance rather than restriction.

526 Now I am not trying to be a prophet of gloom, but I suggest there may be a lot more
specificity and mandate to this bill than many of you assume. Yesterday for the first time since I
have been here, we had an opportunity, because a strip mining bill has been passed by the
Congress and vetoed by President Ford, to have a group of interested operators take S. 7 and

provide us with what was their opinion of the mandatory permit requirements under this bill.

527 Let me go into detail. You are not the first Governor to tell us their State law is the best.
Pennsylvania has been here and said: Make everyone do what we are doing, but don't make us do
anymore. The State of New Mexico has written a communication to that effect. The State of
Kentucky thinks their reclamation and environmental protection department and their present
rules are the best.

527 Senator METCALF. Wait until you hear from the State of Montana.

527 Senator DOMENICI. And the State of Montana will be in. But very, very helpful to the
committee is that we have a bill people are assuming is already law. And, for the first time they
sat down as experts and told us what they are going to have to do as a minimum to comply with
this law to obtaining permit.

527 Now I am going to give this flow chart on S. 7 to you and your expert today, with the
chairman's permission.I am going to ask you to put up alongside of this your present permit
system if you would, Governor, and share it with this committee so you will see and we will see
whether or not we are providing guidance or whether we are making a mandatory process which
the regulators are going to get ahold of and, perhaps, you will have something you have never
imagined to administer.

527 So I will share that with you and I will be very appreciative, even on short term, if you will
put your experts to analyzing this.

527 Senator METCALF. We asked that of representatives of the State of Kentucky yesterday,
and we would appreciate it if your staff would work out a parallel of the permit system.

527 Governor ROCKEFELLER.We will do that.

527 [Subsequent to the hearing, Governor Rockefeller submitted the following for the record:]

527 STATE OF WEST VIRGINIA, DEPARTMENT OF NATURAL RESOURCES, Charleston, W.Va., March 29, 1977.

527 HON. PETE V. DOMENICI, U.S. Senator, Dirksen Senate Office Building, Washington,
D.C.

527 DEAR SENATOR DOMENICI: At your request, I am pleased to enclose a flow chart graphically depicting the Procedures for Obtaining a Surface Mining Permit in West Virginia. As I had mentioned, we feel we have an efficient and reliable method of reviewing applications and issuing permits.

527 Also, I wish to express my appreciation for having the opportunity to appear before the Committee so as to better explain West Virginia's approach to surface mining reclamation. In addition, your specific interest in the various components of our program is very much appreciated.

527 If we may be of any further assistance, please do not hesitate to notify me immediately.

527 Sincerely.

527 DAVID C. CALLAGHAN, Director.

527 Enclosure.

528 [See Illustration in Original]

529 (A) Time variable might involve method by which application is received, I.E. mail or in person.

529 (B) Legal Advertisement required to be published one time per week for three weeks.

529 (C) Protest period provided thirty days from first date of publication of legal advertisement.

529 (D) This step is responsibility of applicant and time period varies according to their efforts.

529 (E) Time required varies according to scheduling and complexity of application and pre-plan.

529 (F) Reflect general range of time required, which varies as to the quantity and nature of required changes in plans, maps, etc.; workload schedules of sections/agencies; complexity of application; protests; conditions of proposed area for mining; etc. (Incremental time periods are appropriately reflected in each step - which may be simultaneous or separate).

529 (G) Thirty (30) days represents maximum time which director has to render final decision

on a "correct and complete application". (This premise of "correct and complete" is a broad
assumption based on findings of review procedure participants so noted in previous step).

529 (H) Varies according to availability and scheduling of key individuals; and complexity of
application.

529 Senator DOMENICI. I asked your expert how long it varied and he said 30 days to
approve or disapprove, but he said people have to do a lot of work before that, but I would share
a fact about this. They say if everything runs a minimal amount of time, this takes 22 1/2
months, so I will share that with you as a starter so you can put that into your expert analysis.

529 Now second, I would assume that on your private land permits for strip mining you feel
the people of West Virginia comply with all environmental requirements that your State thinks
appropriate, is that correct?

529 Governor ROCKEFELLER. As an absolute statement I would say, no. There are always
some who choose to try to do less.

529 Senator DOMENICI. But you assume your law requires what you as a Governor
interested in environment and mining have placed as minimums.

529 Governor ROCKEFELLER. Yes, but if you will forgive me, Senator, our law in our State
in my judgment is not as adequate as our reclamation. For example, we allow in the law no more
than 30 feet of highwall, but in practice under administrative regulation, we allow 10 feet or less.
In the Federal bill, it calls for an inspection on the strip mine every 30 days. We do it every 15
days. This is all rules and regulation and the kind of flexibility that I think regulation within a
State ought to be able to have if it is doing the job.

529 Senator DOMENICI. I assume you are familiar with the NEPA law and the impact
statements that are required under that Federal law to some extent.

529 Governor ROCKEFELLER. Yes, sir.

529 Senator DOMENICI. I would tell you as a result of interpretation that any permit
application on Federal land for coal mining has now been construed to be a major Federal
decision requiring an environmental impact statement.

529 Now there is some concern that by making this strip mining law national, that we might encourage an interpretation that any application for strip mining on your non-Federal land might be a major Federal decision requiring the application of NEPA and the filing of an impact statement.

530 Now assume this is possible. I won't even say probable because you are an optimist and so am I. Would you have any comments on whether we ought to require NEPA statements in addition to the requirements of a workable stringent surface mining law on private land?

530 Governor ROCKEFELLER. No. If the State, by judgment of the Secretary of the Interior, is doing the job of reclamation; if by judgment of the Secretary of the Interior is not, the inconvenience in the time delay of not doing the job, in that event it would be acceptable to me.

530 Senator DOMENICI. We are assuming this law will have to be complied with or the permits are not going to be granted. I would also assume that the requirements of an environmental impact statement will be inherent in this law. They are going to be there as the minimum requirement imposed on a State or there will be no applications granted by you or anyone else.

530 So given that, I would assume you would want this to cover the impact rather than a separate impact statement. Do I read you correctly?

530 Governor ROCKEFELLER. No, sir. What I would like to see, and speaking only for the State of West Virginia, is under the bill for the Secretary of the Interior to be able to make the judgment, and a hardheaded one, that if our State is through its preplanning, its engineering which is a very lengthy process for even somebody to submit for a permit, and then you have the 30 days - if that is doing the job, approximately contour, et cetera, that what you are suggesting wouldn't be applicable and it would be my assumption under the terms of the Federal bill it would not be applicable.

530 Senator DOMENICI. I think we are saying the same thing. I did not perhaps say it as lucid as you did. Do you have concern in your State for mining on prime agricultural lands? Is that part of the overall State concern?

530 Governor ROCKEFELLER.No, I am sure I am wrong in some county or in some instance.
But in the main, we do not have - perhaps, Senator Randolph, there could be in Lewis County
that possibility, but in the main it is not an agricultural problem, but there is some commonality
between grazing areas; in other words the gentle slopes of the northern part of the State and strip
mining.

530 Senator DOMENICI. So you are saying there is not substantial prime agricultural land
that is presently being strip mined, or that is downstream a ways that might be strip mined, is that
correct, Governor?

530 Governor ROCKEFELLER.Yes, sir.

530 Senator FORD. Governor, I have been where you are and I know you don't like it
anymore than I did, to be interrogated, to be asked a lot of questions where you don't have all of
the details. I hope we are not pushing too hard on this.

530 In your opinion and in your study of this legislation, would you be allowed to continue the
reclamation program in West Virginia, or would you be required to make it more stringent than
you are now operating under in West Virginia?

530 Governor ROCKEFLLER. In my judgment, we would have to in some cases make it
more stringent and there might have to be some adjustments within the law. It would be my
purpose then to accomplish that.

531 Senator FORD. Under this legislation, the authority for carrying out the legislation
would be within the States. That is where I think it should be and where I want it to be, and I feel
that is where it will be.

531 Are you in a position to handle this new legislation as it relates to hydrologists and all of
the other requirements that will be made under the bill?

531 Governor ROCKEFELLER.In my judgment, yes, sir.

531 Senator FORD. Financially?

531 Governor ROCKEFELLER. Yes, sir.

531 Senator FORD. Now one item I want to bring to your attention; you suggested the money
be sent back to the States for the removal of the orphaned banks. The Senate version of this

legislation only applies royalty to Federal coal. Is there any Federal coal in West Virginia?

531 Governor ROCKEFELLER. No, I don't think so.

531 Senator FORD. Therefore, under the Senate bill, there would be no royalties applied. I am not sure how that money would be divided back to West Virginia. Under the House version of the legislation, they would put 15 cents on deep mine and 35 cents on surface; then they have a formula by which it would be returned and I think that is what you meant when you made your statement when you said you would probably be $20 million in royalties and you would get back about $1 0. Is that correct?

531 Governor ROCKFELLER.Yes, sir.

531 Senator FORD. Have you taken into consideration if only that royalty goes to Federal lands, Federal coal, how much you would get back?

531 Governor ROCKEFELLER. No, because if I had it at this point, I would have to think West Virginia would not either give or get any money.

531 Senator FORD. So you would be left, some of the money you would expect to use would come from this royalty in order to upgrade your department in West Virginia, would you not?

531 Governor ROCKEFELLER. As the bill is currently written. But my own view is that concept of the socioeconomic adjustment for coal ought not to be addressed in a bill which is environmental in its purpose. That is simply just my view, I just threw it out for consideration.

531 Senator FORD. You stated a few moments ago you allow by law highwalls of 30 feet, but by regulation 10. Have your regulations ever been challenged?

531 Governor ROCKEFELLER. No, sir.

531 Senator FORD. Legally I am talking about. If your law allows a 30-foot highwall and if by regulation you allow for 10, I wonder how you get away with that.

531 Governor ROCKEFELLER. Because of a very effective system of having substantial discretion in the hands of the director of the department of natural resources, Mr. Callahan, or whoever it might be. He is allowed, for example, to declare in West Virginia, at his sole discretion, that such-and-such lands shall not be subject to any strip mining for any reason

whatsoever; maybe its beauty, maybe some other strategic consideration on his part. But he has
broad discretion.

532 Now of course if there is somebody in that position who wishes to misuse that, one
always has a problem. But I think the concentration on reclamation is going to be so broad
nationally and certainly in West Virginia, that I think that discretion, that flexibility is creative,
not negative.

532 Senator FORD. Is it your interpretation under this legislation it would eliminate even the
10 feet?

532 Governor ROCKEFELLER. No. This legislation as I would like to see it -

532 Senator FORD. I mean as written.

532 Governor ROCKEFELLER. It is not entirely clear. As I read it, I would think there
would be the possibility that may require language changes or not. To put at the top at the
reclamation area, not on the slope but the top of the reclamation area, that small amount of
grading may be 4 or 5 feet which is necessary to take the runoff from the undisturbed ground,
from the reclamation area, and begin to loop it down the mountain in an uncontrolled fashion so
when the reclamation is first done and neither grass nor trees nor anything else has taken root and
the soil is not firm and a big rain comes, it won't all wash down the hill.

532 There is, in my opinion, a definite need for environmental purposes to take care of the
drainage problem and that can only be done at the top of the disturbed area, the reclamation area.

532 Senator FORD. I believe in your statement you said you wanted the mountaintop removal
as an acceptable permitting practice under this legislation rather than granted as a variance, am I
correct?

532 Governor ROCKEFELLER.Yes, sir.

532 Senator FORD. In your thought, as it relates to mountaintop removal, are you then
supporting the view of a hollow-fill?

532 Governor ROCKEFELLER. Yes, sir, provided again that it be a controlled placement by
which I mean the proper drainage rock base placed in a way so as not to disturb watershed and
that it all be engineered and pre-planned and approved.

532 Senator FORD. Many in my State, and I can only talk to that as many other Senators talk to their States, but many times it is taken beyond a hollow and they have to carry it beyond that to make the distance much further so the engineering and environmental practices are very definitely of importance here. But have you experimented or entertained any type of reclamation as it relates to the highwall in, say, reducing it; the highwall only up to 14 percent?

532 We had testimony yesterday that impressed several members of this committee hereby taking it to the 14 degrees, not above that, you could take untillable land and make it tillable in the future, that you would have the ability to graze cattle, that you have the ability to take agricultural equipment over this land and when you return it, do not exceed an excess of 14 degrees and several people testified to that yesterday as an acceptable practice; that the determination would be made for certain areas and this would be a practice provided that was presented in front of a permitting rather than afterwards.

533 Governor ROCKEFELLER. In Pennsylvania, for example, where there are no steep slopes and in northern West Virginia, generally northern West Virginia where there are less steep slopes but where there is grazing, and in southern West Virginia where there are very steep slopes, there are no animals, no cows, no grazing, no sheep, it is too steep. But in areas where it is less steep, there are farmers who will prefer to have, for example, water impoundment result from reclamation which is not exactly direct back to contour and that will be to their advantage.In impoundment water for drinking, it is difficult in our terrain.That is something that should be left on a case-by-case basis.

533 Senator FORD. What you are saying, in your State, which is 1 out of 50, you are having different problems in different areas. You say northern West Virginia where the slopes are rolling are less steep than those in southern West Virginia, that you have a different problem as it relates to reclamation.

533 Governor ROCKEFELLER. That is correct, Senator.But in saying that, I would not excuse any part of the State from broad general standards that apply.

533 Senator FORD. I think we are all after the same thing here, a good surface mining piece

of legislation that will improve the environment and will somehow accommodate the production
of coal. Now two quick questions and I will stop.

533 One, after the passage and enforcement of this legislation in 1971, I believe that is the date
for West Virginia, and you say in your statement it is not severely, and you underscore the word
"severely," restricting the production of coal. How much reduction in the production of coal has
this new law caused West Virginia?

533 Governor ROCKEFELLER. We produced about 108 million tons the year before last;
109 million tons last year. If all things are equal and everybody is at work all the time in the
mines which, as you know, has not been the case, we should have shot up substantially more.

533 What I am trying to say on that is the excuse that production will suffer a reduction is not
a concern of mine if these are nationally applied standards. Our problem in West Virginia has
been that because of the cost being spent per acre on reclamation, we are selling our coal on the
market, our strip coal, at about anywhere between $5 and $8 less per ton than some other States
because we are choosing voluntarily, not even by law, but by rules and regulations and our own
discipline to carry out rules and regulations which is expensive but which we think is important.

533 Senator FORD. There were some individuals yesterday who testified from West Virginia
and they testified your production of coal was reduced by one-third.

533 Governor ROCKELLER. That would be hard for me to agree with.

533 Senator FORD. That is a matter of record. I wanted to be sure -

533 Governor ROCKEFELLER. You have to be careful in production of coal. It is just not
reclamation, how may days were lost through work stoppages, all kinds of things.

533 Senator FORD. This was over a 5- or 6-year period, it had been reduced gradually and
production as of 1971 and last year -

534 Governor ROCKEFELLER. There is, over a longer period of time, sir, some truth in
that statement.

534 Senator FORD. I would forego any other questions I have, some others I would like to get
into. I appreciate your being here today and I think we are all after the same thing and I agree

with you, we must have uniformity throughout the country as it relates to this problem and I think the new technology - I think your Senator had indicated you had grown taller in many respects and I think you have, since 1970, when you proposed to abolish all strip mining, that new technology has come on board and that we are in a position to develop it.

534 In Bell County, just one county in Kentucky, the largest farm here today is probably 300 acres and that is at the outside, with some of this mountaintop removal and hollow-fill, we will be able to develop farmland and help the economy and not depend just primarily on resources being boom or bust over the years. We will be able to stabilize our economy.

534 I thank you for your very generous offer of time today.

534 Senator METCALF. Governor, I think it should be emphasized and brought out, the point you make, that States such as West Virginia and Pennsylvania and others having strong reclamation programs will be helped if we have uniform reclamation standards applying equally all over the United States, so the competitive situation will be more equitable. Wouldn't you agree that if other States had to enforce the same standards that West Virginia requires of its operators, West Virginia coal would be placed on a more competitive basis?

534 Governor ROCKEFELLER. I agree with that, sir.

534 Senator METCALF. May I make a clarification in the record.When Senator Ford was talking about the abandoned mine reclamation fund, he mentioned 35 cents a ton for royalties from the Federal surface mined coal, and 15 cents a ton of royalties on Federal underground mined coal. West Virginia and many other States have no Federal land coal, so you would pay nothing.

534 Nevertheless in the distribution of that fund, half of the fund would go back to the State in which it originated but the other half is to be distributed on an annual basis and expended at the discretion of the Secretary.Now West Virginia, Kentucky, or any other State - Arkansas - would be eligible to participate in that half of it.

534 I suppose, in balancing utilization of the reclamation fund, the Secretary would say, let them expend the balance of their own portion of the fund before he would distribute it; but you would be entitled, and every State in the Union would be entitled, to participate in that second half of the fund.

534 Senator FORD. Mr. Chairman, I always like that and the fee is my friend; I would not let it be in there. He may not be my friend and I would like to have the formula in there to tell me how much I might receive so I could establish a budget on which I could depend in the years to come.

534 I think the Governor has a problem trying to balance the budget, do these things in West Virginia. He would like to have things stabilized.

534 Senator METCALF. But it is not as stated: You put nothing in but you get something back.

535 Senator FORD. It could be.

535 Senator METCALF. It could be. Every State would be entitled to participate.

535 Senator RANDOLPH. Chairman Metcalf, may I make one comment. Yesterday morning at the White House when the President spoke briefly to Senators and representatives prior to the press conference that he gave in reference to the Cabinet structure creating a Department of Energy, Dr. Schlesinger said these words: "We will make a far better use of coal in the future than we have in the past."

535 I think that is a story that indicates to this administration the importance of coal. We will begin March 21 in this committee hearings on the utilization of coal, coal conversion. I think it is, therefore, very important, Mr. Chairman, that the matters in reference to surface mining be determined as quickly as possible so that utilization of coal can take place under acceptable mining reclamation techniques so that the Nation itself would be well served and still the quality of life would be preserved which I think is highly important.

535 I think we must not be polarized in this job that is to be done when we must work together from the standpoint of the production of coal and the acceptable methods by which it can be mined to serve the Nation in our needs.

535 Senator METCALF. Of course. It is the desire of this committee, the desire of the chairman, that any energy policy must be anchored on coal. Senator Jackson has expressed the desire, this committee can probably enact legislation that would be one of the first pieces of major legislation signed by the President.We are working toward that end.

535 Senator FORD. Mr. Chairman - Dave, I will be sending you a letter. There are a large number of permits in some States, smaller numbers in other States, but those States that give smaller numbers of permits give larger acreage. I wanted to say in Pennsylvania and Kentucky, our number of permits are much greater but the number of acres permitted is much smaller.

535 My records indicate you had 450 permits with an average acreage of 350 acres. If my records are correct, and I can't say they are, but that came from a fairly reliable source. In other States, the permits are overwhelming. In Kentucky the average is probably, per permit, 200 acres or less and I would like to know why.

535 So we could get into the permitting, it may reflect to some of the answers we are trying to find as pertinent to the hearings. I won't bother with that now though.

535 Senator METCALF. The Senator from New Mexico.

535 Senator DOMENICI. My Chairman, I want to share another concern I have with the Governor. First, I want to put in perspective that I think my goals for this legislation are about the same as yours. My State, New Mexico, does not have anything similar to the problems in your State and I think you know that.We have a lot of Federal land, you don't have very much. We have no contours to speak of, you have significant contour problems. We don't have very much water, but we are in basins where activity might have very drastic effects a long way from where you are working, because all of the water is kind of connected out there.

536 But I have a genuine concern, Governor, that the rulemaking and regulatory process that this bill is going to bring into effect is just fraught with opportunity. Just to consider these disparities in terms of the regulatory process, even though the goal may be some minimum standard of reclamation in mind, and I would like for you to have your experts look at that too.

536 As you know, the Secretary will be charged under this bill in a very short time frame establishing the basic tabulations and there is a hearing process, a publication process.

536 The State of Pennsylvania recommended that perhaps we ought to impose in that initial regulatory process some kind of advisory group which some of us don't take very well because

we are not sure advisory groups work all that well. But they would provide an opportunity for
confrontation aside from the public hearings as that initial series of rules and regulations are
developed.

536 They used their own State as an example. They announce rulemaking and there is an
advisory group that participates in sort of a dialog as these regulations are made. I don't know
that that is the best approach but they have a short time frame in which to get these major
regulations developed that apply to the basic requirements.

536 I would like you and your experts to address some way of making sure that appropriate
input and recognition of the rigidity versus the guidance concept you have spoken of takes place
in that regulatory process and rulemaking process.

536 I have no innovative ideas of my own other than maybe to defer the operative nature of the
bill until they are finished since that has a time frame and then let us look at it. I have thought of
that, but beyond that, I have no thoughts.

536 If you would think that issue through as you analyze what might be the propensity given
this bill and our constantly being besieged, the regulations don't reflect the intention of the laws
we have drawn.We hear that from everybody. Then maybe you would have some suggestions as
to how we might better assure the minimal and the guidance nature of that initial
regulatory-making process.

536 Governor ROCKEFELLER. We will do that, Senator.

536 Senator DOMENICI. Thank you, Governor. Thank you, Mr. Chairman.

536 Senator METCALF. I want to say to you, Governor, with your help and the support you
have given us today and the help you have given in your State, I hope we can get strip mining
legislation that will be satisfactory to you in your State and help you in the recommendation of
these various laws, the administration of these various laws.

536 We appreciate your giving us the benefit of your experience.

536 Governor ROCKEFELLER. Thank you, Mr. Chairman.

536 Senator METCALF. We have permission to sit while the Senate is in session so I am
going to call one more witness and then we can take a recess.

536 The next witness will be Dr. R. A. Bohm, director of Appalachian projects at the University of Tennessee. We are very pleased to have you here and we will call the other witnesses this afternoon after the recess.

537 Do you have a prepared statement, Dr. Bohm? You can summarize it or go right ahead.

537 Dr. BOHM. I have a short prepared statement which I have shortened even further for this presentation. I would like to read it.

537 Senator METCALF. Usually if you read a prepared statement, it will be shorter than the summary.

STATEMENT OF DR. R. A. BOHM, DIRECTOR, APPALACHIAN RESOURCES PROJECTS AND PROFESSOR OF FINANCE, UNIVERSITY OF TENNESSEE, KNOXVILLE, TENN.

537 Dr. BOHM. Mr. Chairman, my name is Robert A. Bohm. I am currently director of the Appalachian Resources Project and associate professor of finance at the University of Tennessee.

537 During the past 6 years my colleagues and I have been extensively involved in research on identifying and measuring the environmental impacts of coal mining, and on the economics of the coal industry. All of this work has dealt directly or indirectly with probable environmental, energy supply, and energy demand consequences of alternative reclamation strategies for surface coal mines.

537 My purpose in testifying today is to place on the record the significant findings of this research as it relates to Senate bill 7, the Surface Mine Control and Reclamation Act of 1977.

537 Much of the debate surrounding past attempts to enact Federal surface mine reclamation has centered upon the economic impact of requiring back to approximate original contour reclamation. Perhaps the most widely held fear has been that such a strict reclamation standard would cripple the coal industry and greatly hinder America's chances of achieving some measure of energy independence.

537 Because of this widespread concern, the first study I wish to discuss is our analysis of the Tennessee Valley Authority's back to contour national demonstration surface coal mine at Massengale Mountain, Tenn.

537 This project was undertaken by TVA specifically to eliminate some of the uncertainty surrounding the feasibility, cost and other economic factors of back to approximate original contour reclamation under steep slope mining conditions. Following the discussion of the Massengale study, I would like to present some of our findings on the environmental impacts of surface mining and back to contour reclamation. I will close by attempting to identify the policy implications of these research projects.

537 Massengale Mountain lies in the northern Cumberland plateau region of Campbell County, Tenn. The topographic relief of the mountain varies from 1,410 feet to 3,250 feet above sea level. The slope at the mine site averaged 25 degrees; however, the variance around this average was from 21 to 36 degrees. The distance from the mine site to the tipple is approximately 10 miles.

537 The north side of Massengale was mined during 1971-73. Reclamation was conducted in accord with TVA's 1971 surface mining reclamation and conservation requirements. The mining and reclamation activity that took place on the north side of Massengale may be termed advanced conventional or simply conventional. The reclamation required leaves a residual highwall and is roughly equivalent with what would be required under the 1972 Tennessee surface mine law.

538 On the south side of Massengale Mountain an experimental method of back to contour mining and reclamation was undertaken from 1973 to 1976. The technique employed at Massengale to achieve approximate back to contour results is known as truck haulback. Both TVA and its contractor, the Long-Pit Mining Co., felt that this was the most feasible approach to recovering coal and reclaiming land on inaccessible steep slopes.

538 As the name implies, using truck haulback, spoil that cannot be directly pushed into an available lower cut must be loaded on trucks and moved to a permanent storage site.

538 Data generated at Massengale Mountain allow direct comparison of back to contour reclamation with less thorough reclamation methods. Our analysis of these data has led to the following conclusions.

538 The incremental production cost of back to contour mining over conventional mining is

approximately $2 .67 per ton in 1973 dollars. The range of estimates of the incremental cost computed from the Massengale data are from $2.40 to $2 .93 per ton which is between 18 percent and 22 percent of the total cost of coal per ton on the experimental side of Massengale. These incremental production costs translate into increased delivered costs to electric utilities of between $0.01 and $0.10 per million Btu depending on location.

538 With a sufficient increase in capital, production losses can be avoided. At Massengale the capital output ratio for back to contour mining was increased by 31.6 percent over conventional mining and, as a result, the actual production loss was approximately zero. However, if additional capital cannot be obtained, production losses might be as high as 10 percent or 15 percent.

538 Our analysis suggests an interregional shift of coal production as a result of back to contour reclamation requirements that will lead to a 4 percent to 5 percent decline in central Appalachian surface coal production. The decline will be offset, however, by a 6 percent to 7 percent increase in deep mine production.

538 Back to contour reclamation as carried out at Massengale Mountain will greatly increase the demand for large trucks and dozers.Wide application of the truck haulback technique will result in new demand for large off-the-road trucks greatly taxing existing production capacity. For example, at 1973 production levels, USBM mining district eight, which is the heart of central Appalachia, would have required 805 trucks to perform back to contour reclamation by the truck haulback method if all surface mines over 15 degrees adopted this method.

538 In 1975-76, the annual U.S. production of this type of truck was about 1,000 units. The ability of the mining industry to obtain a sufficient number of these trucks will largely determine the extent of short-run production declines in central Appalachia as a result of back to contour reclamation requirements. Although the need for additional dozers will be significant with wide adoption of truck haulback, studies suggest sufficient industry capacity to meet this demand.

539 Based on the Massengale experience, back to contour reclamation will result in increased employment in coal mining in central Appalachia. Although our analysis predicts a decline in central Appalachian surface production of from 4 percent to 5 percent as a result of

back to contour reclamation requirements, the new lower level of production will require more labor per ton of coal, for example, truck drivers and dozer operators performing reclamation tasks.

539 Using production coefficients from Massengale and 1973 employment data for eastern Kentucky, for example, the net effect would be an 11.9 percent increase in employment in surface coal mining. The enhanced position of deep mining would result in a 6.9 percent increase in eastern Kentucky deep mine employment while approximately 1,300 nonmining jobs would be created in supporting local industry.

539 Senator METCALF. Would you mind an interruption. One of the reasons given for President Ford's veto would be loss of employment, but you are saying there would be an increase of employment.

539 Dr. BOHM. Certainly in central Appalachia.

539 Senator METCALF. Not only in the mines, but in such places where they manufacture these large trucks.

539 Dr. BOHM. I wasn't even considering that part in what I just said. I was just thinking about the increased employment required to do the reclamation test at the surface mines, the increased employment in deep mining that is now more competitive than it was before pricewise, plus the secondary-type jobs, the increased number of druggists you are going to need, for example.

539 In addition to that, you have also suggested quite correctly there will be increased employment and spinoff effects in the equipment industries associated with the reclamation task.

539 Senator METCALF. It has always been my experience it takes more men, more bulldozers, more operating engineers to do the reclamation work than it does to do the regular mining work. To put it back it takes more employees than it does to take it off.

539 Dr. BOHM. I don't know about that.

539 Senator METCALF. Some of our mining in the West is that way. We have huge shovels and automatic equipment that dig up those 150-foot seams pretty fast, but then you get men on

bulldozers, shovels and trucks to make the backfill. It seems to me you have more employees around there than for reclamation.

539 Dr. BOHM. A lot of truck drivers and bulldozer operators putting the dirt back.

539 Financing new equipment necessary for back to contour reclamation may be difficult for small miners. Capital markets definitely will not be overwhelmed by the additional investment back to contour reclamation will require the coal industry to make. However, the cost of new equipment necessary to perform back to contour reclamation will be high relative to the total assets of small mines.

539 For small operators on higher slopes in western Virginia, Tennessee, eastern Kentucky, and West Virginia, the issue is whether: one, they are willing to undertake such heavy future financial commitments and two, financial institutions will be willing to make the required loans to small miners. The first of these matters depends on the success of the national energy policy to increase the production and use of coal. Lender resistance will also be reduced if a clear future role for coal is defined, however, it is not clear that the prospect of a large increase in demand would be sufficient in this regard.

540 The truck haulback technology employed at Massengale is an efficient back to contour technique for steep slope surface coal mines in central Appalachia. This does not mean that truck haulback will be employed in all cases. However, our study found that alternative techniques such as the Pennsylvania block cut method have no clear cut economic advantage over the truck haulback technique for steep slope central Appalachian mines. In addition, truck haulback appears much better suited than alternative techniques to the geologic, geographic, and access conditions encountered in this region.

540 Retaining bench width limitations in conjunction with back to contour reclamation will result in inefficient resource recovery and higher costs per ton. The need for bench width limitations as an environmental safeguard is eliminated by back to contour reclamation requirements since casting spoil down slope will be prohibited. Bench width restrictions were not enforced on the back to contour side of Massengale. As a result, Long-Pit was able to operate at a more favorable overburden to coal ratio given their sale price of coal. The important

and somewhat paradoxical implication of this conclusion is that back to contour reclamation is compatible with efficient resource recovery in coal mining.

540 Central Appalachia is the location of a good proportion of the low sulphur coal available in the eastern United States, and as a result, this region's coal is of great importance to both national energy and environmental policy. Although the Massengale project represents but a single case study of the impact of back to contour reclamation, the broader economic implications of the Massengale experience are probably widely applicable to central Appalachian steep slope surface coal mining.

540 On the whole, based on our analysis of the Massengale project, it does not appear that the aggregate economic impact of back to contour reclamation requirements will be calamitous, and certainly it will not result in the ruin of the coal industry in central Appalachia.

540 In addition, the impact of a Federal law today should be significantly less than if one were passed in the early 1970's. For example, as noted earlier, the cost of back to contour over conventional reclamation at Massengale was between 18 percent and 22 percent of total cost. However, since 1973 State laws have become more rigid and many require back to contour reclamation. If reclamation required by the States today is more thorough than that required on the conventional side of Massengale, then the percentage increase in cost resulting from a Federal law will be less than experienced at Massengale.

540 Analysis of the Massengale project has led to the identification of the market for large trucks as a potential bottleneck in the successful execution of back to contour reclamation. Clearly, in cases where truck haulback is the most efficient method of back to contour reclamation, any difficulty in obtaining the required trucks will result in reclamation being undertaken with a less desirable equipment configuration which will lead to higher costs or production delays and declines.

541 Fortunately, due to repeated delays in enacting a Federal surface mining reclamation law, this important market has had ample time to anticipate and adjust to increases in demand that will arise in conjunction with back to contour reclamation.

541 Also, compared with 2 to 3 years ago, the pressure of competing demands for large trucks,

for example, highway construction, hydroelectric projects, cooper mining, is relatively low.
Finally, the truck haulback technique will almost certainly not be applied to 100 percent of all
central Appalachian surface coal mines over 15 degrees. These favorable omens, however, do
not eliminate the prospect of a serious bottleneck in the market for large trucks.

541 It must be pointed out that both the national debate over Federal surface mine regulation
and the Massengale project have skirted the most significant question that should be asked about
back to contour reclamation. This technique is intended to represent a method of both protecting
the environment and simultaneously recovering valuable and needed coal. To what extent,
therefore, will back to contour reclamation succeed in reducing the environmental damages that
have been shown to result from surface mining on steep slopes?

541 These environmental damages represent the external costs of surface coal production that
historically have not been reflected in the selling price of coal. At the University of Tennessee,
we have classified these external costs as tangible or intangible and as long term or short term. A
tangible external cost is defined as one that is potentially measurable in real terms, for example,
dollars.

541 The principal intangible external environmental cost of surface mining, both in the long
term and short term, is the esthetic loss associated with an unreclaimed mine site. Clearly, back
to contour reclamation can result in a significant reduction in this cost. Also, back to contour
reclamation is likely to be effective in reducing most long term environmental impacts,
particularly those resulting from water contamination by heavy metals.

541 On the other hand, back to contour reclamation does not appear to be particularly effective
in controlling short term tangible damages of surface mining under steep slope conditions. Short
term damages are those that occur either concurrently with mining activity or shortly thereafter.

541 In our study of "The Economics of the Private and Social Costs of Appalachian Coal
Production," sponsored by the National Science Foundation, it was discovered that many
households living in close proximity to contour surface mines experienced damages to their
lands, crops, and property in excess of $1 ,500 per household as a direct result of mining activity
between 1967 and 1973.

541 In one steep slope watershed, Fork Mountain, Tenn., the total household damage attributable to mining activity between 1967 and 1973 was $108,300 or about $0 .74 per ton of coal mined in the watershed during that period. This type of external cost is not likely to be eliminated by back to contour reclamation, nor is there an established procedure for compensating those households damaged.

542 Our NSF study established that the principal causes of household damage were flooding and siltation. In a subsequent study sponsored by the Energy Research and Development Administration entitled, "Environmental Aspects of Coal Production in the Appalachian Region," evidence is being accumulated which clearly implies that back to contour reclamation will increase peak flows, flooding, and siltation over amounts experienced with conventional reclamation.

542 These findings suggest the need for careful study and monitoring of the degree of environmental protection afforded by back to contour reclamation. Also, these results imply that in cases where back to contour reclamation fails to adequately protect the environment, that an alternative approach be permitted, or if no acceptable reclamation technique is available, that mining be prohibited.

542 Finally, our studies indicate the need for moving toward a formal procedure of compensating residents of coal mining regions for damages incurred that cannot be prevented by reclamation.

542 The results of the several studies reviewed in this statement lead to five specific recommendations for Federal surface mine reclmation policy. These are:

542 One: Federal back to contour surface mine reclamation requirements should be phased in over a 2-to 3-year period.Unless back to contour requirements are phased in slowly, critical equipment markets may not be able to meet new demands and short run declines in production will be unavoidable.

542 If the gentleman from Kentucky is right, it takes 22 1/2 months to process an application - that takes care of it right well, I think 2 years is about right.

542 Two: Back to contour reclamation requirements should be tied to financial assistance to

small miners. Alternative financial aid programs are: (1) Federally guaranteed loans to purchase necessary equipment and (2) interest rate subsidies on capital equipment loans. Without some form of financial assistance, many small mines will suffer economic hardships as a result of back to contour reclamation.

542 Three: Bench width limitations in existing State surface mine laws and Federal agency regulations should be repealed. Failure to repeal these limitations will result in the public paying both an added cost as a result of back to contour reclamation as well as an added cost due to inefficient resource recovery.

542 Four: The success of back to contour reclamation in reducing environmental damage from surfacing mining should be carefully monitored. In particular, regulations should be flexible enough to permit alternative methods of reclamation in cases where back to contour techniques fail to significantly reduce the environmental impacts of mining.

542 Five: Surface mine reclamation requirements should include provision for full compensation of all damages to residents of coal mining nations of Western Europe have long standing policies of this type. A program of compensation is required if all external costs associated with surface mining are to be eliminated.

543 I wish to close my statement with two observations. First: It is my belief that both national environmental and energy policy require rapid passage of the Surface Mine Control and Reclamation Act of 1977. This law is needed now to provide coal mining States minimum standards of reclamation upon which to compete in the coal market.Also, the uncertainty that has surrounded the prospect of Federal surface mine reclamation requirements over the past several years has probably resulted in a significant reduction of the rate of growth of coal production. Removal of this impediment to increased coal supply is overdue.

543 Second: Back to contour reclamation represents a step in the direction of having a market price of surface mined coal which reflects the full social costs of production. It is not fair, however, to apply this type of policy to the surface mining industry in isolation. Rather, such a policy should also be applied to deep coal mining and to all domestic energy sources with which coal must compete.

543 Senator METCALF. Thank you very much. Now in talking about back to contour reclamation, are you including in that some of the statements that have been made here in the last 2 days about mountaintop removal?

543 Dr. BOHM. I was referring to essentially where you are removing from the mountain side, not mountaintop removal.

543 Senator METCALF. Do you think, if given the flexibility, and you mentioned that in one of your final conclusions, that it would be satisfactory to adopt a policy for mountaintop removal or haulback or some of those programs that have been suggested by both Governors today and by operators testimony before this committee?

543 Dr. BOHM. I am not an expert on mountaintop removal, but if it could be shown such a method was environmentally sound, I would not oppose it. I am curious as to what they are going to do with all of that dirt. Hollow fill can be just as unstable as trying to pile dirt back on the side of a mountain. I am also not exactly sure what the demand is for all the flat land that has been advocated in this part of the country, where it is coming from.

543 Senator METCALF. Having flown over this area, I suggest there is some demand for flat land for airports.

543 Dr. BOHM. What we are going to do is take away an opportunity that has been there in the past, these benches have been left there in the past. You might ask the question; why hasn't somebody put something on them, why hasn't there been significant development? There are examples of some development, but we did a short study on this and we found the amount of development that took place on existing surface mine benches took in about 2 percent of - the number of examples we came up with was 2 percent of the permits issued in Appalachia in 1974, not the number of mines which was greater than the number of permits.

543 In most of these unique uses, the airport, you hear about the schools, you hear about, took place within a small distance of interstate or large highways or population centers.

544 Now the land that is far away is very inaccessible and probably is not in very heavy demand.

544 Senator METCALF. Every year we read about some disaster in Appalachia where a town

or school or something that we built on fill washes away and many people are injured and killed,
property damaged.Wouldn't that have to be taken into consideration when we allow for this fill?

544 Dr. BOHM. Most of the disasters you refer to are a result of deep mining situations and I
think this is something that has to be taken into consideration. We have to consider these
environmental impacts of surface mining.

544 Here we are essentially talking about a bill that is going to make deep mining coal
relatively less expensive to the consumer than surface mining coal which tells me you are going
to sell more of it. Therefore, if we are going to advocate surface mining, we ought to be
concerned then with the environmental impacts of deep mining also.

544 Senator METCALF. Thank you, Dr. Bohm. You have been very helpful. I know your
statement about employment and about the impact on mining operations is going to be used and
cited frequently in response to those who say, it is going to lose jobs all over the country as a
result of passage of this legislation.

544 Dr. BOHM. Thank you, Mr. Chairman.I appreciate the opportunity to make a statement.

544 Senator METCALF. We will be in recess until 1:30 p.m.

544 [The hearing recessed at 12:45 to reconvene at 1:30 p.m.]

544 [The prepared statement of Dr. Bohm follows:]

545 ECONOMIC AND ENVIRONMENTAL IMPACTS OF BACK TO CONTOUR
RECLAMATION OF SURFACE COAL MINES IN CENTRAL APPALACHIA

545 Dr. Robert A. Bohm Director, Appalachian Resources Project Associate Professor of
Finance The University of Tennessee Knoxville, Tennessee

545 Prepared for United States Senate Committee on Interior and Insular Affairs
Subcommittee on Minerals, Materials and Fuels

545 Mr. Chairman, my name is Robert A. Bohm and I am currently director of the
Appalachian Resources Project and Associate Professor of Finance at the University of
Tennessee. During the past six years, my colleagues and I have been extensively involved in
research on (1) identifying and measuring the environmental impacts of coal mining and (2) the
economics of the coal industry. n1 All of this work has dealt directly or indirectly with probable

environmental, energy supply, and energy demand consequences of alternative reclamation strategies for surface coal mines. My purpose in testifying today is to place on the record the significant findings of this research as it relates to Senate Bill No. 7, the Surface Mine Control and Reclamation Act of 1977. 545 n1. A Systems Approach to Energy Supply: Environmental and Economic Aspects of Coal Production (formerly titled The Economics of the Private and Social Costs of Appalachian Coal Production) NSF/RANN Grant GI135137, 1972-75; International Comparisons in the Coal Industry: Environment, Health and Labor Relations, Ford Foundation Grant 740-0598, 1974-77; Economic Analysis of TVA Back-to-Contour Reclamation Experiments at Massengale Mountain, TVA Contract TV42203A, 1975-77; Environmental Aspects ofCoal Production in Appalachia, ERDA Contract (40-1) 4946, ongoing.

545 Much of the debate surrounding past attempts to enact federal surface mine reclamation has centered upon the economic impact of requiring "back-to-approximate-original contour" reclamation. Perhaps the most widely held fear has been that such a strict reclamation standard would cripple the coal industry and greatly hinder America's chances of achieving some measure of energy independence.Because of this widespread concern, the first study I wish to discuss is our analysis of the Tennessee Valley Authority's (TVA) back-to-contour national demonstration surface coal mine at Massengale Mountain, Tennessee. This project was undertaken by TVA specifically to eliminate some of the uncertainty surrounding the feasibility, cost and other economic factors of back-to-approximate-original-contour reclamation under steep slope mining conditions. Following the discussion of the Massengale study, I would like to present some of our findings on the environmental impacts of surface mining and back-to-contour reclamation. I will close by attempting to identify the policy implications of these research projects.

546 THE MASSENGALE MOUNTAIN STUDY

546 Massengale Mountain lies in the Northern Cumberland Plateau region of Campbell County, Tennessee. The topographic relief of the mountain varies from 1410 feet to 3250 feet above sea level.The slope at the mine site averaged 25 degrees, however, the variance around this average was from 21 to 36 degrees. The distance from the mine site to the tipple is approximately 10 miles.

546 The north side of Massengale was mined during 1971-73. Reclamation was conducted in accord with TVA's 1971 Surface Mining Reclamation and Conservation Requirements. The mining and reclamation activity that took place on the north side of Massengale may be termed "advanced-conventional" or simply conventional. The reclamation required leaves a residual high wall and is roughly equivalent with what would be required under the 1972 Tennessee Surface Mine Law.

546 On the south side of Massengale Mountain an "experimental" method of "back-to-contour" mining and reclamation was undertaken from 1973 to 1976. The technique employed at Massengale to achieve approximate-back-to-contour results is known as truck-haul-back. Both TVA and its contractor, the Long-Pit Mining Company, felt that this was the most feasible approach to recovering coal and reclaiming land on inaccessible steep slopes. As the name implies, using truck-haul-back, spoil that cannot be directly pushed into an available lower cut must be loaded on trucks and moved to a permanent storage site.

547 Data generated at Massengale Mountain allow direct comparison of back-to-contour reclamation with less thorough reclamation methods. Our analysis of these data has lead to the following conclusions: n2

547 n2. For a full discussion see R. A. Bohm, et al. The Economic Impact of Back-to-Contour Reclamation of Surface Coal Mines in Appalachia: The TVA Massengale Mountain Project, Final Report, (Knoxville, Tennessee, The University of Tennessee, 1976) ARP #50.

547 INCREMENTAL COST

547 THE INCREMENTAL PRODUCTION COST OF BACK-TO-CONTOUR MINING OVER CONVENTIONAL MINING IS APPROXIMATELY $2 .67/TON in 1973 DOLLARS. The range of estimates of the incremental cost computed from the Massengale data are from $2.40 to $2 .93 per ton which is between 18.0% and 22.0% of the total cost of coal per ton on the experimental side of Massengale.These incremental production costs translate into increased delivered costs to electric utilities of between $.01 and $.10 per million BUT depending on location.

547 PRODUCTION LOSS

547 WITH A SUFFICIENT INCREASE IN CAPITAL, PRODUCTION LOSSES CAN BE

AVOIDED. At Massengale the capital output ratio for back-to-contour mining was increased by 31.6% over conventional mining and as a result the actual production loss was approximately zero. However, if additional capital can not be obtained, production losses might be as high as 10.0% or 15.0%. Our analysis suggests an interregional shift of coal production as a result of back-to-contour reclamation requirements that will lead to a 4.0% - 5.0% decline in Central Appalachian surface coal production. n3 The decline will be offset, however, by a 6.0% - 7.0% increase in deep mine production.

547 n3. Central Appalachia normally is defined as southern West Virginia, western Virginia, eastern Kentucky, and northeastern Tennessee.For a fuller discussion of regional production shifts see A. M. Schlottmann and R. L. Spore, "Surface Mining Reclamation: A Regional Programming Analysis", Land Economics, 1976.

548 EQUIPMENT BOTTLENECKS

548 BACK-TO-CONTOUR RECLAMATION AS CARRIED OUT AT MASSENGALE MOUNTAIN WILL GREATLY INCREASE THE DEMAND FOR LARGE TRUCKS AND DOZERS.Wide application of the truck-haul-back technique will result in new demand for large off-the-road trucks greatly taxing existing production capacity. For example, at 1973 production levels, USBM mining district 8, which is the heart of Central Appalachia, would have required 805 trucks to perform back-to-contour reclamation by the truck-haul-back method if all surface mines over 15 degrees adopted this method. In 1975-76, the annual U.S. production of this type of truck was about one thousand units.The ability of the mining industry to obtain a sufficient number of these trucks will largely determine the extent of short-run production declines in Central Appalachia as a result of back-to-contour reclamation requirements. Although the need for additional dozers will be significant with wide adoption of truck-haul-back, recent studies suggest sufficient industry capacity to meet this demand. n4

548 n4. Project Independence Report, Appendix on Materials, Equipment and Construction, (Washington, D.C., U.S. Government Printing Office, 1974).

548 EMPLOYMENT IMPACT

548 BASED ON THE MASSENGALE EXPERIENCE, BACK TO CONTOUR RECLAMATION WILL RESULT IN INCREASED EMPLOYMENT IN COAL MINING IN CENTRAL APPALACHIA. Although our analysis predicts a decline in Central Appalachian

surface production of from 4.0% to 5.0% as a result of back-to-contour reclamation requirements, the new lower level of production will require more labor per ton of coal (e.g. truck drivers and dozer operators performing reclamation tasks). Using production coefficients from Massengale and 1973 employment data for eastern Kentucky, for example, the net effect would be a 11.9% increase in employment in surface coal mining. The enhanced position of deep mining would result in a 6.9% increase in eastern Kentucky deep-mine employment while approximately 1300 non-mining jobs would be created in supporting local industry.

549 FINANCIAL CONSTRAINTS

549 FINANCING NEW EQUIPMENT NECESSARY FOR BACK-TO-CONTOUR RECLAMATION MAY BE DIFFICULT FOR SMALL MINERS. Capital markets definitely will not be overwhelmed by the additional investment back-to-contour reclamation will require the coal industry to make. However, the cost of new equipment necessary to perform back-to-contour reclamation will be high relative to the total assets of small mines. For small operators on higher slopes in western Virginia, Tennessee, eastern Kentucky, and West Virginia, the issue is whether (1) they are willing to undertake such heavy future financial commitments and (2) financial institutions will be willing to make the required loans to small miners. The first of these matters depends on the success of the national energy policy to increase the production and use of coal. Lender resistance will also be reduced if a clear future role for coal is defined, however, it is not clear that the prospect of a large increase in demand would be sufficient in this regard.

549 MINING EFFICIENCY

549 THE TRUCK-HAUL-BACK TECHNOLOGY EMPLOYED AT MASSENGALE IS AN EFFICIENT BACK-TO-CONTOUR TECHNIQUE FOR STEEP SLOPE SURFACE COAL MINES IN CENTRAL APPALACHIA. This does not mean that truck-haul-back will be employed in all cases. However, our study found that alternative techniques, such as the Pennsylvania Block Cut method, have no clear cut economic advantage over the truck-haul-back technique for steep slope Central Appalachian mines. In addition truck-haul-back appears much better suited than alternative techniques to the geologic, geographic and access conditions encountered in this region.

550 RETAINING BENCH WIDTH LIMITATIONS IN CONJUNCTION WITH BACK TO CONTOUR RECLAMATION WILL RESULT IN INEFFICIENT RESOURCE RECOVERY

AND HIGHER COSTS/TON. The need for bench width limitations as an environmental safeguard is eliminated by back-to-contour reclamation requirements since casting spoil down slope will be prohibited. Bench width restrictions were not enforced on the back-to-contour side of Massengale. As a result, Long-Pit was able to operate at a more favorable overburden-to-coal ratio given their sale price of coal. The important and somewhat paradoxical implication of this conclusion is that back-to-contour reclamation is compatible with efficient resource recovery in coal mining.

550 BACK-TO-CONTOUR RECLAMATION AND CENTRAL APPALACHIAN SURFACE MINING

550 Central Appalahia is the location of a good proportion of the low sulfur coal available in the eastern United States, and as a result, this regionhs coal is of great importance to both national energy and environmental policy. Although the Massengale project represent but a single case study of the impact of back-to-contour reclamation, the broader economic implications of the Massengale experience are probably widely applicable to Central Appalachian steep slope surface coal mining.

550 On the whole, based on our analysis of the Massengale Project, it does not appear that the aggregate economic impact of back-to-contour reclamation requirements will be clamitous, and certainly it will not result in the ruin of the coal industry in Central Appalachia. In addition, the impact of a federal law today should be significantly less than if one were passed in the early seventies. For example, as noted earlier, the cost of back-to-contour over conventional reclamation at Massengale was between 18.0% and 22.0% of total cost. However, since 1973 state laws have become more rigid and many require back-to-contour reclamation. If reclamation required by the states today is more thorough than that required on the conventional side of Massengale, then the percentage increase in cost resulting from a federal law will be less than experienced at Massengale.

551 Analysis of the Massengale project has lead to the identification of the market for large trucks as a potential bottleneck in the successful execution of back-to-contour reclamation. Clearly, in cases where truck-haul-back is the most efficient method of back-to-contour reclamation, any difficulty in obtaining the required trucks will result in reclamation being

undertaken with a less desirable equipment configuration which will lead to higher costs or production delays and declines. Fortunately, due to repeated delays in enacting a federal surface mining reclamation law, this important market has had ample time to anticipate and adjust to increases in demand that will arise in conjunction with back-to-contour reclamation. Also, compared with two to three years ago, the pressure of competing demands for large trucks (e.g. highway construction, hydro-electric projects, copper mining) is relatively low. Finally, the truck-haul-back technique will almost certainly not be applied to 100% of all Central Appalachian surface coal mines over 15 degrees. These favorable omens, however, do not eliminate the prospect of a serious bottleneck in the market for large trucks.

551 ENVIRONMENTAL IMPACT OF BACK-TO-CONTOUR RECLAMATION

551 It must be pointed out that both the national debate over federal surface mine regulation and the Massengale Project have skirted the most significant question that should be asked about back-to-contour reclamation.This technique is intended to represent a method of both protecting the environment and simultaneously recovering valuable and needed coal. To what extent, therefore, will back-to-contour reclamation succeed in reducing the environmental damages that have been shown to result from surface mining on steep slopes? These environmental damages represent the external costs of surface coal production that historically have not been reflected in the selling price of coal. At the University of Tennessee, we have classified these external costs as tangible or intangible and as long term or short term.A tangible external cost is defined as one that is potentially measurable in real terms (i.e. dollars).

552 The principal intangible external environmental cost of surface mining, both in the long term and short term, is the aesthetic loss associated with an unreclaimed mine site. Clearly, back-to-contour reclamation can result in a significant reduction in this cost. Also, back-to-contour reclamation is likely to be effective in reducing most long term environmental impacts, particularly those resulting from water contamination by heavy metals.

552 On the other hand, back-to-contour reclamation does not appear to be particularly effective in controlling short term tangible damages of surface mining under steep slope

conditions. Short-term damages are those that occur either concurrently with mining activity or shortly thereafter. In our study of "The Economics of the Private and Social Costs of Appalachian Coal Production", sponsored by the National Science Foundation, it was discovered that many households living in close proximity to contour surface mines experienced damages to their lands, crops and property in excess of $1 500/household as a direct result of mining activity between 1967 and 1973. n5 In one steep slope watershed, Fork Mountain, Tennessee, the total household damage attributable to mining activity between 1967 and 1973 was $108,300 or about $0 .74/ton of coal mined in the watershed during that period. This type of external cost is not likely to be eliminated by back-to-contour reclamation, nor is there an established procedure for compensating those households damaged.

552 n5. See R. A. Bohm, et al. A Progress Report on NSF/RANN Funded Research Related to Environmental and Economic Aspects of Coal Production, (Knoxville, Tennessee; The University of Tennessee, 1974) ARP #29.

553 Our NSF study established that the principal causes of household damage were flooding and siltation. In a subsequent study sponsored by Energy Research and Development Administration entitled "Environmental Aspects of Coal Production in the Appalachian Region", evidence is being accumulated which clearly implies that back-to-contour reclamation will increase peak flows (flooding) and siltation over amounts experienced with conventional reclamation. n6

553 n6. See R. A. Minear, et al. Environmental Aspects of Coal Production in the Appalachian Region, Progress Report, (Knoxville, Tennessee: The University of Tennessee, 1976 and 1977) ARP #'s 44 and 51.

553 These findings suggest the need for careful study and monitoring of the degree of environmental protection afforded by back-to-contour reclamation. Also, these results imply that in cases where back-to-contour reclamation fails to adequately protect the environment that an alternative approach be permitted, or if no acceptable reclamation technique is available that mining be prohibited. Finally, our studies indicate the need for moving toward a formal procedure of compensating residents of coal mining regions for damages incurred that cannot be prevented by reclamation.

553 POLICY RECOMMENDATIONS

553 The results of the several studies reviewed in this statement lead to five specific recommendations for federal surface mine reclamation policy. These are:

553 1. FEDERAL BACK-TO-CONTOUR SURFACE MINE RECLAMATION REQUIREMENTS SHOULD BE PHASED IN OVER A TWO TO THREE YEAR PERIOD.Unless back-to-contour requirements are phased in slowly, critical equipment markets may not be able to meet new demands and short-run declines in production will be unavoidable.

554 2. BACK-TO-CONTOUR RECLAMATION REQUIREMENTS SHOULD BE TIED TO FINANCIAL ASSISTANCE TO SMALL MINERS. Alternative financial aid programs are (1) federally guaranteed loans to purchase necessary equipment and (2) interest rate subsidies on capital equipment loans. Without some form of financial assistance, many small mines will suffer economic hardships as a result of back-to-contour reclamation.

554 3. BENCH WIDTH LIMITATIONS IN EXISTING STATE SURFACE MINE LAWS AND FEDERAL AGENCY REGULATIONS SHOULD BE REPEALED. Failure to repeal these limitations will result in the public paying both an added cost as a result of back-to-contour reclamation as well as an added cost due to inefficient resource recovery.

554 4.THE SUCCESS OF BACK-TO-CONTOUR RECLAMATION IN REDUCING ENVIRONMENTAL DAMAGE FROM SURFACING MINING SHOULD BE CAREFULLY MONITORED. In particular, regulations should be flexible enough to permit alternative methods of reclamation in cases where back-to-contour techniques fail to significantly reduce the environmental impacts of mining.

554 5. SURFACE MINE RECLAMATION REQUIREMENTS SHOULD INCLUDE PROVISION FOR FULL COMPENSATION OF ALL DAMAGES TO RESIDENTS OF COAL MINING REGIONS THAT ARE ATTRIBUTABLE TO MINING ACTIVITY. The coal mining nations of Western Europe have long standing policies of this type. A program of compensation is required if all external costs associated with surface mining are to be eliminated.

554 FINAL COMMENT

554 I wish to close my statement with two observations. First, it is my belief that both national environmental and energy policy require rapid passage of the Surface Mine Control and Reclamation Act of 1977. This law is needed now to provide coal mining states minimum standards of reclamation upon which to compete in the coal market. Also, the uncertainty that has surrounded the prospect of federal surface mine reclamation requirements over the past

several years has probably resulted in a significant reduction of the rate of growth of coal production.Removal of this impediment to increased coal supply is overdue.

555 Second, back-to-contour reclamation represents a step in the direction of having a market price of surface mined coal which reflects the full social costs of production. It is not fair, however, to apply this type of policy to the surface mining industry in isolation. Rather, such a policy should also be applied to deep coal mining and to all domestic energy sources with which coal must compete.

557 AFTERNOON SESSION

557 Senator METCALF. Kilgore is certainly an outstanding senatorial name in that area, Mr. Kilgore. Are you related?

STATEMENT OF FRANK KILGORE, CO-DIRECTOR, VIRGINIA CENTERS FOR BETTER RECLAMATION, INC.

557 Mr. KILGORE. To begin with, I would like to read a little about the group I am affiliated with, the Virginia Citizens for Better Reclamation, Incorporated.

557 The Virginia Citizens for Better Reclamation, Incorporated, VCBR, is a 300 member citizens group concerned with the social, economic, and environmental effects of poorly controlled strip mining practices, primarily in southwest Virginia's coalfield section. Seventy-five percent of the membership of VCBR is made up of coalfield residents, 60 of whom have experienced some type of strip mine related damages from landslides and stream siltation caused by inadequate sediment controls to cracked home foundations, destroyed water supplies and numerous other property damages resulting from poorly controlled strip mine related blasts. In fact over 1,200 complaints were received by the State for such abuses last year alone.

557 VCBR is not an anticoal industry group, as the makeup of their membership will attest to. Several of their members are coal miners or relatives of coal miners. VCBR seeks to enhance the job availability in coal mining through the encouragement of deep mining and the improvement of labor intensive reclamation techniques. For this and other reasons, the Virginia UMWA-COMPAC, a lobbying arm for the State's union mine workers, has endorsed VCBR's efforts to improve the State's reclamation and mine safety laws.

557 I might also add that on our board of directors, we have three coal miners one of whom is a surface miner.

557 Senator METCALF. Two deep miners and one surface miner?

557 Mr. KILGORE. Yes, sir.

557 Senator METCALF. Are you a miner?

557 Mr. KILGORE. No, sir. My father is. I am not a miner, I am a student and codirector of this organization.

557 On January 10 of this year I had the pleasure of appearing before the House Interior Committee to testify as to the status of Virginia's current reclamation program. I showed that committee a series of slides which compared the various aspects of Virginia surface mining, both good and bad.I did not bring my slide program today for one simple reason: Members of this committee have probably seen and heard all the pictures and stories of massive erosion, blast damaged homes, destroyed streams, devastated roads and all the other ill effects of poorly controlled surface mining in Virginia. Most of you, I hope, see the need for a uniform and strictly enforced national reclamation program. I know that I as a representative of Virginia citizens for better reclamation have learned the hard way, that the State of Virginia is going to resist any improvement of its surface mining program.

558 The State of Virginia is resisting improvement of its program for several reasons, the foremost being that the strip mining industry in Virginia has a tremendous political and financial clout which they do not hesitate to use.For example, just before I testified before Congressman Udall's Interior Committee hearing 2 months ago, I was approached by a Virginia gubernatorial candidate who tried to get me to say certain things against Federal legislation and to mislead the committee by saying other things in behalf of Virginia's present reclamation program. This candidate for the State's highest office was accompanied by four Virginia strip mine operators and his campaign office has admitted that he has received contributions from the industry in southwest Virginia.

558 Of course he is not alone in being persuaded to look upon Virginia's current reclamation program in a favorable manner. Another gubernatorial candidate just recently helped stall and

weaken a proposed strip mine permit fee increase which would have been used to hire and train more State inspectors for the overworked division of mined land reclamation.

558 This candidate's appearance before Virginia's mining committee to testify against the increase is directly contrary to a letter he sent to Congressman Udall on January 7, 1977, in which he assured Mr. Udall that the fee increase was getting his support and that the States could manage fine without Federal laws.

558 It is hard to pinpoint the reasons behind this about-face on the part of this particular officeseeker, but some people back home feel that approximately $3 00,000 in campaign support and pledges from coal operators might have had some type of bearing on his switch of opinion. However, I decline to speculate for fear that this committee may think me to be cynical.

558 There are other hints in Virginia's political world that coal money is not being used exclusively for reclamation, job safety, and research and development. Just recently our organization had 13 of 14 proposed amendments to Virginia's stripping law defeated by the State's House Mining and Mineral Resources Committee. That same committee, however, overwhelmingly passed a resolution to memorialize Congress to leave strip mine controls in the hands of the individual States.

558 That really appeared strange to us since that's what we had been trying to get the State to do ever since we organized in April of 1976. In fact, we never even endorsed the Federal strip mine bill until last week, after we saw that the State had no intentions whatsoever of improving its reclamation program. I am sorry to say that when we appeared before the House Interior Committee and spoke of working on the State level, we were quite optimistic and obviously naive.

558 The situation in Virginia now and until Federal legislation is fully implemented can justly be described as critical. Since the State did not upgrade and more adequately finance Virginia's program this year, there will be, we feel, tremendous pressures put upon the State's reclamation agency to allow the stripping industry to get the coal out while the getting is good and cheap.

558 In other words we feel the industry will be given free license to strip as much acreage as

possible in order to obtain the highest profit margin at the least cost to the operator in terms of
reclamation and public safety, or stripping as usual in southwest Virginia, only a little more
accelerated.

559 I might add that this license to get it while you can will not be endorsed by the State's
division of mined land reclamation, but the general assembly has made that agency powerless by
undercutting its budget requests far below adequate operating levels.

559 Now that you are well versed in Virginia politics and the plight of the State's reclamation
program, I will get to the areas of steep slope mining and small coal operations, two things that
we have plenty of in southwest Virginia.

559 First of all let me say that the division of mined land reclamation has gotten their most
headaches from these very two sources. Small operators and steep slopes have a way of acting
contrary to expectations. Due to the law of gravity, one law that even Virginia coal operators
have not been able to suspend, millions of tons of sediments from orphaned, active, and so-called
reclaimed mine sites in Virginia have caused severe landslides, filled our streams causing
flooding, and consequently are threatening downstream reservoirs with premature extinction due
to the rapid buildup of sedimentation.

559 There are almost no controls in Virginia's present law to remedy this situation and even if
the much-heralded drainage control handbook is put into effect this spring, it will do little to
control sediments. In fact the regulations, patterned after West Virginia's 1971 controls, would
allow the initial strip mine cut to be dumped over the mountainside. The amount of spoil, or
loose sediments, that would be allowed to be pushed downslope on a 30-degree grade for
example would be about 33,600 pounds per linear foot.

559 Senator METCALF. If this law passes, we are not going to allow

559 Mr. KILGORE. I am talking about the department's proposed handbook. I understand
some of the Virginia operators have been telling Congress they have regulations coming up now
that will remedy this sediment problem and I picked a degreed slope to show how much, if that
regulation were to be passed, they would still allow that much sediment to be pushed off a slope
and there is more than that pushed off now.

559 Senator METCALF. Were you here this morning?

559 Mr. KILGORE. Yes, sir.

559 Senator METCALF. Did you hear Governor Carroll and Governor Rockefeller testify?

559 Mr. KILGORE. Yes, sir.

559 Senator METCALF. You heard them suggest there should not be any spoil pushed downslope at all.

559 Mr. KILGORE. That is the way we feel, our group, not the State of Virginia.

559 Senator METCALF. I understand. I just wanted to be sure we all understood what is in this bill and what Virginia would be required to do if the bill passes.

559 Mr. KILGORE. I understand that. I just want to get across, even with these new regulations if they were passed, it would still allow that much spoil over the side.

560 Senator METCALF. Virginia would not be in compliance with Federal regulations of this bill, if it passed.

560 Mr. KILGORE.It is going through the Department of Conservation.

560 Senator METCALF. Go ahead, I am sorry to interrupt.

560 Mr. KILGORE. Now that we have explored the treatment of steep slopes in Virginia, excluding the asinine argument that this land can be put to productive use after stripping, we can move on to the topic of small operators.

560 I would like to say that Dr. Bohm, who did the Massengale study, was very astute in realizing that a lot of these Massengale benches are very unstable. The high walls are so close that no one in their right mind would build any type of structure for fear the highwall would cave or the spoil bank slipping away and cracking the foundation of a building or whatever it may be; plus most of these areas are far away from transportation and sources of electricity.

560 We have about 200,000 acres now. There is not much demand. We did an aerial survey and found less than 1 percent of this land is being utilized in such a way we could say it is intensively utilized to the point of building airports, schools, hospitals. These are very rare instances of land flattened anywhere.

560 Senator METCALF. Dr. Bohm suggested perhaps some of the disasters we read about every spring resulted from failure to properly dispose of spoil from underground mines rather than from surface mining operations. Has that been your experience?

560 Mr. KILGORE. Well, no. I think he was referring probably to occasions like the Buffalo Creek disaster where slide from the deep mine is used to hold back water and it burst open.

560 Senator METCALF. Essentially a dam?

560 Mr. KILGORE. Right. It is not very good dam material. We have in one instance alone, in the city of Norton, 25 homes have been damaged. A hospital has been built on that site, on a partial piece of that strip mine and they are telling everyone this is the first hospital to be built on strip mine land. They fail to tell about the 25 homes damaged in order to strip this coal and the dust that has blown across this neighborhood for 2 years has caused severe medical problems for the residents of that area. These things are usually left out. We have a lot of problems with strip mining.

560 Senator METCALF. Now this bill, if it passes, is going to encourage deep mining too. We are going to have to have some remedy for such spoil disposal from the deep mines.

560 Mr. KILGORE. We find that as a problem and a weakness in the Federal bill as it does not address the problem of slag being dumped over the side of a mountain from a deep mine pit. This is still allowed in Virginia, this is some of the most toxic material found. This is slag from a deep mine downslope that washes into a stream just as it does from a strip mine stream also.

560 Senator METCALF. I am glad both you and Dr. Bohm addressed this problem and we will give it consideration in the markup of the legislation.Please go ahead.

560 Mr. KILGORE. Our group and various State agencies contend that many of Virginia's strip mine operations are too small to do the job right. The coal will be gotten out regardless of Federal controls or who puts up the capital to get the job done. We do not care who the operators are that do it as long as they do it right.

561 We care most about overall employment and we feel that better reclamation means more jobs, not less, and we believe that S. 7's orphan mine reclamation program will take up any

employment slack caused by Federal requirements and restrictions. There is no doubt that production will fall off during the first few months of Federal regulation implementation. Production from strip mines in Virginia, we feel, is artificially high since the true costs of the fabulous tonnage output is not being paid by the coal operators nor the present generation of coal users.

561 Small operators, of course, will need to pool their capital and hire engineers to preplan their operations, something that should have been done from the beginning of the mining industry.

561 But employment is the key word to us, for when we speak of the little operator we are usually speaking of people that have had a chance to do the job right but have, instead, opted to make a quick profit at the expense of their environment and their neighbors. We are also speaking of a few individuals who, if they cannot or will not surface mine properly, can be replaced by competent operators who will.

561 Right now Virginia has 1,849 surface miners producing roughly 40 percent of the State's coal, while 10,839 deep miners produce the remainder. We advocate the encouragement of the obviously more job-intensive deep mining method, and what must be and is stripped, we feel, can be done properly by using more employees to reclaim the land.

561 Before closing, I must state that VCBR has only conditionally endorsed the Federal strip mine bill. We feel that the present bill is weak in many aspects. The most serious drawback that we see in the bill is that the full implementation period is far longer than necessary. In 24 months, more than 50,000 acres of land could be stripped and destroyed under Virginia law.

561 I know there are interim laws that go into effect 180 days after passage, but we feel the Federal implementation may not be done soon enough.

561 The Federal bill, if it is going to be worth having, must be implemented soon after passage. We suggest a 90-day implementation period, such as was called for in the now defunct H.R. 25 bill of 1975. We cannot support a bill that will only fan the fire by giving coal operators 24 months to beat a deadline which would result in reckless and accelerated stripping to a point that there would be nothing left in Virginia to administer over if the Federal Government finally

decided to step in.

561 I know that sounds reactionary, but you have to deal with the State of Virginia to realize why we are saying this.

561 Senator METCALF. That is the reason, Mr. Kilgore, I have consistently requested the Secretary of the Interior to give us a Federal coal leasing moratorium upon passage of this bill. I know that does not meet your problem in Virginia where you have private lands or State lands, but I would hope coal operators would be as cooperative, and I think many of them will be, to participate in compliance with any legislation that is passed.

562 Mr. KILGORE. I feel coal operators in other States that have more progressive legislation and they don't have to leap so far in technology and requirements will be more cooperative. But a State like Virginia, where you start from almost base zero, plus you have a State that traditionally has sided with these people -

562 Senator METCALF. A very popular term in government these days, this zero-based budgeting. This would be zero-based enforcement.

562 Mr. KILGORE. Yes.

562 Another flaw in S. 7 is the wholly inadequate controls on the effects of strip-mine-related blasting. This is a very vital issue with our membership due to the fact that many of them have had their homes permanently damaged by blast vibrations. Some basic elements that we feel are crucial to any blasting control would be to require the Government and/or operator to conduct premining inspections of all manmade structures and water supplies within 2,500 feet of the mining area to ascertain whether damages have been sustained by such structures prior to mining, therefore protecting the operator from unfounded claims and also giving the owner a basis to prove that damage, if any, has occurred during mining activities.

562 Make public hearings mandatory when blasting is to take place within 2,500 of manmade structures and water supplies prior to the issuance of a blasting permit; have a government inspector personally witness and gage all blasts within 2,500 feet of manmade structures and water supplies; forbid surface mining and blasting within 100 feet of an adjoining propertyline without the notarized written consent of the adjacent landowners and/or dwellers, or the agency

designated to oversee such property; set up a blast victim fund from moneys collected for the orphan mine reclamation program whereby affected property owners could collect damages, both past and present, without going through a lengthy court battle.

562 We have discovered several other weaknesses in the Federal bill. We hope to have continuous input during the bill's markup so we can discuss these proposals at length. I would like to also emphasize our groups outright abolitionist's view toward the stripping of our national forests.

562 There are now several owners trying to get in national forest lands to strip national forest lands. We are 100 percent against the stripping of national forest land.

562 In closing, we would like to leave you with this thought; the coal industry will try any stalling tactic to detain and derail this legislation. We speak from experience, at least on the Virginia level. We have tried to get coal operators to sit with us to work out an improved State reclamation program.

562 In August 1976, we wrote each mining company in Virginia to extend an opportunity to do just that, yet only 1 out of 400 replied, and they are based out of State and are one of the big boys who have done a good job in Virginia.

562 The fact is that nothing will be done unless the Federal Government does it and the sooner the better. We have matured a lot since our devastating losses at the hands of State legislators. It is quite a lesson to learn, one that I sincerely hope that this committee already knows.

563 Inflexibility written into the already weak Federal bill would have to concurrently mean you would also write stricter enforcement inspectors only go to the jobsite once a month. They are not going to be able to keep up with the violations that occur and be able to remedy those violations before the environmental or social effects already occurred which would be too late.

563 The Federal bill, as I read it, is very vague on the training of the inspectors. How much load the inspector will have to bear; in Virginia each inspector has over 50 minesites under his jurisdiction. That is far too many for one inspector to inspect. I would like to see some type of ratio that an inspector have no more than 1,000 acres, no more than 10 permits, whichever comes

first, under his jurisdiction to give ample time to go on these jobs and be able to monitor them
and catch problems before they become big problems.

563 We feel any time there is flexibility written into a law - Virginia has a very flexible law
but it is not working.

563 Senator METCALF. Now you heard the testimony this morning about haulback,
mountaintop removal, and so forth. Would you support changing our rather strict and stringent
requirements for approximate original contour to accommodate those witnesses?

563 Mr. KILGORE. I did find there is good argument for leaving some at the top of the high
wall to build a rock lay diversion ditch for water. That is a very smart tactic. But if you write
into the bill such words as, insofar as feasible, or as necessary, or up to the inspector, that type of
language and don't put some kind of foot limitation on it, in Virginia the State will not enforce it.

563 Senator METCALF. If the State doesn't enforce it, the Secretary of the Interior will.

563 Mr. KILGORE. That will be over a 24-month period. We feel that would be disastrous to
wait that long. Honestly, in all frankness, Senator, I am not trying to be sensational about this.
The State will side with the operators to help skirt around any vague language in the strip mining
bill, I am scared.I think other States such as West Virginia and Kentucky probably will have
cooperation in the States. In Virginia, I think you are going to hit a knot, you are going to have
the hardest time in the State of Virginia. I hope sometime you can come down there and I will
show you firsthand, but I would be all for leaving a gap between the high wall and leave room for
a diversionary ditch as long as no spoil is allowed downslope.

563 They said the high wall itself has not caused erosion problems, but when you see a high
wall, that usually indicates the spoil has been pushed over the slope because that is where the dirt
came from. I would be apprehensive of any language that wouldn't lay out any amount of high
wall to build a ditch. It would have to be some very concrete, precise, and physically enforced
language.

563 Senator METCALF. This morning, the Governor of West Virginia - contrary to
former-Congressman Hechler, who said we should prohibit all strip mining anywhere - suggested

that new technology such as haulback would afford relief. Governor Rockefeller said he would support a bill that would allow haulback and other methodology for restoration of the approximate original contour.

564 It seems to me that yesterday and today we have had quite a bit of testimony about the importance of newer haulback methodology, mountaintop removal and so forth. It may be, and I am throwing this out to you, our restrictions for restoration to the original contour are too strict. What do you think about it?

564 Mr. KILGORE. I will have to refer to Dr. Bohm's study of Massengale Mountain and the fact even though Pennsylvania does not have as many steep slopes as Virginia, a 20-degree slope in Virginia is not less steep than a 20-percent slope in Virginia. I know we are unique in some ways, but that is not one of the points.

564 It should be done, it should not allow any spoil over the side because no one can tell me 60 inches of rainfall annually and gravity will not wash that stuff down streams. Virginia allows all of the spoil, almost, except 4 feet, to be pushed down the mountainside.

564 If 5 or 6 feet of highwall remain so you have room to build a diversionary ditch, then that would be the answer. We could see that. But again, I have got to say I think it can be done and it needs to be done. We can be flexible to a point, but if you go beyond that point, it is going to be taken advantage of severely, especially in the State of Virginia. It will be an enforcement nightmare.

564 Senator METCALF. Mr. Ilgore, since you mentioned national forests and mining in the national forests, I will take this opportunity to put in the record the question of what we should do with national forest lands, that have been acquired and purchased by the Federal Government for incorporation into the national forests, wherein the mineral rights have been reserved, as against our western situation where the national forests are created largely out of the public domain.

564 What should we do if we absolutely prohibit surface mining in the national forests? I assume Virginia's national forests are probably acquired lands rather than public domain lands.Should the Federal Government be required to pay substantial damages to these people who have reserved the mineral rights?

564 Mr. KILGORE. You could go to the original courthouse, find the assessment for the minerals, and pay the operators that assessed value which I think they may then feel is underassessed but since they are paying tax in that amount, pay them that amount. It would not cost very much at all. Minerals in Virginia are severely underassessed.

564 Also, the land, the surface itself, belongs to the public of the United States. There is no way you can strip mine without disturbing the public's surface. You can't balance the two; you either disturb the surface or you don't. You either disturb the public's surface, or you don't allow these people to get the minerals out. We have got to choose between the two and we have enough strippable reserves, especially in Virginia outside the national forests, that we should leave some of this prime watershed land, recreation land. It is the only land we have in Wise County, southwest Virginia, that people can go to for recreation.

564 It is a vital watershed area. All of the other watersheds have been destroyed. It is estimated only 5 percent of the mining is stripped in Wise County. The national forest has no bindable rules to govern strip mining. It depends on the data, the deed, the Secretary of Agriculture's rules. At that date I worked for the Forest Service 3 years and we had a real headache with that. There is nothing from Congress telling the Department of Agriculture what to do with Forest Service land.

565 Even if this bill were passed, there would be some criteria for the stripping of national forest land, but still we don't feel it should be allowed.

565 Senator METCALF. You have the reverse of the situation we have in the West. The oil interests of America, including the Rockefellers, went out and homesteaded land all over the West and acquired their subsurface rights. So Mr. Pinchot and President Theodore Roosevelt and others said, look, we are not going to give up the mineral rights to these homesteaders and they, therefore, provided that the Federal Government would retain the mineral rights.

565 So there is a whole lot of land out there where surface rights belong to individuals and mineral rights belong to the Federal Government. We are going to have to meet that problem in this legislation. But there are also areas where the Federal Government has gone in and

purchased land, acquired land to add to national forests, but has only purchased the surface
rights. There has been a reservation of the mineral rights for individuals.

565 The other side of the coin is: What do we do about that land? It has been incorporated in
the national forests. Then all at once we say: "Look Mr. X, your reservation for mineral rights is
not any good."

565 Mr. KILGORE. We have no qualms whatsoever about deep mining national forest lands.
A lot of the coal in southwest Virginia, 95 percent of it, is deep minable reserves. The other 5 or
7 percent is strippable. We are talking about a minute amount of coal in the national forests.

565 Senator METCALF. You are suggesting then we do have the power, and perhaps we do,
to say, "If you want to mine that coal you reserved, you have to mine it by deep mining operation;
you can't go in and destroy the surface."

565 Mr. KILGORE. I don't think stripping national forest lands would be compatible with the
multiple use concept, grazing, watershed, recreation, and timber resource recovery. When you
dig down and get the coal, you destroy that land's capability for decades to produce timber,
watershed, recreation, and refuges for wildlife. We are talking about land set aside specifically
for multiple uses. Why go in for one resource and destroy all of those other uses? It does not
stand up against the criteria the Forest Service set up for it.We cannot abide our national forests
being stripped when it is the only place we have left.

565 Senator METCALF.I really thank you for that. Those are some of my own ideas. The
most important aspect of the land is watersheds. If you don't have watershed protection, there is
no possibility of any multiple use. So this is a problem we are facing with this bill, a problem in
the West on one side of it; a problem in some of the eastern forests where we have acquired
surface rights but mineral rights have been retained, which is the other side of the coin.

566 I hope we will find a solution. Thank you very much, Mr. Kilgore. You have been very
helpful and we are very pleased you came here to represent your group in Virginia.

566 Mr. KILGORE. I appreciate your letting me come up here.

566 Senator METCALF. I would not like this material for the record of course. What is this -

566 Mr. KILGORE. They are in the footnotes.

566 Senator METCALF. What is "The Plow"?

566 Mr. KILGORE. It is a magazine as is "The Coalfield Progress." All of these are very easy to document if anybody wants further documentation. I don't know what else to say.

566 Senator METCALF. What is "The Coalfield Progress," is that a newspaper?

566 Mr. KILGORE. It is the largest paper in Wise County. It has been there 40 or 50 years, I believe.

566 Senator METCALF. So four of your five footnotes relate to "The Plow" and "The Coalfield Progress." Then you have a reference to a House Joint Resolution by the Virginia General Assembly.

566 Mr. KILGORE. A number of other papers have printed the stories. I did not want to list them all. They are well documented. You could call any of these papers and get the documentation. There were about six people with me when the first gubernatorial candidate I mentioned came up and tried to get me to change my testimony. We are not afraid to say it in public and back it up.

566 I was sort of astonished myself that this kind of thing is hapening in Virginia. But as I say, we have matured a lot since then.

566 Senator METCALF. $3 00,000 is a substantial campaign contribution in any area. Thank you very much, Mr. Kilgore. Is Mr. Harry Caudill here?

566 [No response.]

566 Senator METCALF. Well, we have had this witness before our committee previously; Mr. Ernest Preate, Jr. We are delighted to have you again. We have benefited from your testimony in previous sessions. We thank you for coming, please go ahead with your presentation.

STATEMENT OF ERNEST D. PREATE, JR., ATTORNEY, SECRANTON, PA.

566 Mr. PREATE. My name is Ernest Preate, Jr., and I am an attorney in Scranton, Pa. I want to thank you, Mr. Chairman and the mambers of the subcommittee, for inviting me here

today to testify on the provisions of S. 7, the Surface Mining Control and Reclamation Act of 1977.

566 During the past 7 years I have been involved in the drafting of State surface mining laws and regulations for several States. I have also represented sportsmen's organizations, a chamber of commerce, a Pennsylvania city, a civic association, private individuals and businessmen in complaints and lawsuits against proposed surface coal mining operations in Pennsylvania. I am here today as a private citizen who supports the enactment of S. 7.

566 Mr. Chairman, I think a bit of historical perspective might be appropriate at this point.I can recall testifying before committees and subcommittees of previous Congresses several years ago on the subject of a Federal surface mining law. Some of the issues then were whether or not the bill should be applicable to all minerals or just coal; should the legislation set definite minimum standards or should it merely set forth flexible general norms; and should the act be administered by the States or by a Federal agency.

567 Of course these basic conceptual problems have been resolved in the legislative process over the past 4 years. However, certain contentious problems still remain. I will focus on three major problem areas in my statement today. They are: (1) approximate original contour backfilling and elimination of highwalls, section 415(b)(3) and 415(d)(2); (2) designate areas unsuitable for surface coal mining, 422; and (3) public notice and public hearing, 413.

567 Approximate original contour backfilling and elimination of highwalls, section 415(b)(3)8 415(d)(2), and 415(d)(3); perhaps the two most common complaints against coal surface mining operators are that they, with certain exceptions, fail to backfill their mined areas and that they continue to leave highwalls standing at the end of their operations. I support the above cited provisions of S. 7 because they would, if enforced, rectify these unfortunate practices.

567 In my opinion we now have the equipment, the engineering knowhow, and the on-the-job experience to confidently establish these provisions as the law of the land. I think it is important to point out there that the provisions of S. 7 do not require backfilling to the original contours which existed before any mining, but rather, backfilling to the approximate original contour, AOC.

567 The word approximate was wisely chosen by the drafters of S. 7 because it is a reasonable and practical standard. However, I am informed that there are some who may have misunderstood this concept and placed too narrow an interpretation on it. Perhaps this is because they are confusing the definition of AOC backfilling contained in this bill with the definition of AOC backfilling contained in the laws of several States.

567 In Pennsylvania, for example, AOC backfilling is described as a straight line between the top of the highwall and the bottom of the spoil pile. This is a rigid and somewhat impractical definition. Pennsylvania administrators now in effect utilize the definition contained in S. 7 which speaks of AOC backfilling as:

567 That surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted.

567 In fact, this definition was suggested to the Interior Committee by the Pennsylvania administrators and I believe it was introduced by Senator McClure and made part of the bill during the floor debate 4 years ago.

567 Senator METCALF. That is correct.

567 Mr. PREATE. In my view, the definition of AOC backfilling in S. 7 would not preclude, for example, the establishment of necessary diversion ditches and erosion controlling configurations which complement the drainage pattern, provided that all highwalls and spoil lines are eliminated.

568 This was the expressed view, I might add, of Walter Heine, associate deputy secretary for Mines and Land Protection, Pennsylvania Department of Environmental Resources, when he testified before a House subcommittee on similar legislation on February 8, 1977.

568 On the subject of high walls, Mr. Heine had this to say, and I am going to quote him because I believe what he told Mr. Udall's subcommittee on February 8, 1977, when he testified with our Governor, is so sensible that it bears repeating. Mr. Heine said:

568 It is essential that elimination of the highwall be retained in the bills. Pennsylvania's laws required elimination of the vertical highwall since 1964, and have found that it is a fundamental ingredient in assuring a safe, stable, and attractive reclamation job. In almost all cases, vertical or near vertical highwalls will erode and/or slide thereby perpetually contributing silt to nearby streams. They present a hazard to men and animals who might encounter them unexpectedly. Finally, they are an unattractive permanent monument to man's inability to live in harmony with nature. Incidentally, a practical aspect of the value of an aesthetic reclamation job is the increased willingness of landowners to allow mining of their coal after witnessing attractive restoration on their neighbor's land. This will become an increasingly important point as we look toward these privately owned coal reserves as sources of energy.

568 Now there are some who might question whether the excellent Pennsylvania experience with approximate original contour backfilling can be applied to the steep slope mining operations in other Appalachian States where slopes over 30 degrees are mined.

568 This question was answered by Mr. Heine and Mr. William E. Guckert, the director of surface mine reclamation in Pennsylvania, when they testified before the House Subcommittee on Energy and Environment on February 8, 1977. Mr. Guckert stated that 20 to 25 percent of Pennsylvania surface mining takes place on slopes about 15 degrees and that AOC backfilling takes place on slopes even greater than 35 degrees.

568 This is done in Pennsylvania by the use of the modified block cut method which essentially consists of backfilling concurrently with mining, the spoil being handled only once and move laterally across the cut in the slope. In West Virginia and Kentucky the haulback method is used to achieve essentially the same result.

568 The Pennsylvania experience with steep slope AOC backfilling for the last 6 years is really a marvel of man's ingenuity to solve engineering and physical problems. It actually enables the small operator, under 15 men, to mine profitably because his costs are reduced with less spoil handling, and he doesn't need any large or fancy equipment to get the job done.

568 At this point, I would like to present to this committee some photographs to be entered into the record to illustrate the Pennsylvania AOC backfilling requirement on hilly terrain and on

steep slopes.

568 [The photographs referred to appear on the following pages.]

569 [See Illustration in Original]

570 [See Illustration in Original]

571 [See Illustration in Original]

572 [See Illustration in Original]

573 [See Illustration in Original]

574 This is color photograph number one showing the Bennett Coal Co., operation in Elk County, Pa., September 27, 1973. This is how long this kind of modified block operation has been going on in Pennsylvania, well over 4 years. It shows a 70 foot highwall, a 30 inch coal seam, Btu's of 13,300 and low sulfur of 2 percent.

574 The points in the photograph are numbered: number one shows a 35 degree slope ready for hydroseeding; number two shows a large sandstone placement for pit; number three shows ramping from the previous block. This is a modified block cut operation. Number four shows the drills prepared in the area for blasting. Number five, and I think this is critical, this was missed in the testimony today by several individuals. They failed to recognize they have got to have AOC backfill, you have got to have a diversion ditch at the top of the highwall. This is to prevent the water above the highwall coming down onto the newly ramped and graded area in front of the highwall. It is an important concept that has to be emphasized.

574 Number two is a modified block cut method operation. This shows a 70 foot to 125 foot high highwall. This is number one. This shows an overall picture of this mining operation. Now this is a slope of 37 degrees. You heard a lot of testimony today saying this could not be done and I submit to you, Mr. Chairman, look at these photographs and tell me this cannot be done because I don't think these photographs are lying.

574 I think it shows here various different things that are going on in this one operation. First of all, item number one shows a preact highwall before 1964 with coal stored on the bench. It shows an AOC backfilling job prior to the requirements of Pennsylvania where you had to hydroseed and save your topsoil. You can see some erosion, very little grass and some scrub growth is taking place.

574 Number three, you see an active pit at the end of the operation. The operation proceeded in this general direction.

574 Number four, you see the present contour backfilling 37 degrees, Mr. Chairman. Then you see over here an area which is sloughed off because the operator had failed.He placed the spoil on the bottom of the downslope which is, of course, not permitted - it is permitted under the present bill S. 7, but at that time in Pennsylvania they allowed that to happen.

574 Senator METCALF. It would not be permitted under S. 7.

574 Mr. PREATE. The initial cut.But at that time -

574 Senator METCALF. Will you put these out so people in the audience can see them?

574 Mr. PREATE. This is another view of the operation. It shows in item number one some old preact highwalls, 20 years old, back in the reaches of this mountain.

574 Number two, it shows contour backfilling prior to the requirements for topsoil saving and grass revegetation. You can see there has been erosion, the grass has not really taken hold and there has been scrub. That is prior to 1964.

574 Number three, you see an active pit. This is the active pit right in here. They are actually augering and this is 70 to 125 foot highwall.This is exactly what they do in West Virginia and Kentucky.

575 Number four, you see the topsoil being readied for placement on area three which would be this area of the mined area.

575 Number five, you see a slide due to improper placement of spoil on the outslope right over here. This is going to be corrected by the company.

575 Number six, you see a contour backfill on a 30 degree slope right up to the top of the highwall.

575 Number seven, you see a silt basin serving the coal storage area. There are two other photographs here.

575 Photograph number four is the Bennett operation contour backfilling of a slope.You can see the photograph there of a 35 degree slope. It shows the various preact strippings that were

affected that are being reclaimed by this operator. Bennett Coal Co., is a small operation.

575 Senator METCALF. What do you mean by small?

575 Mr. PREATE. Under 15 employees. Then I think these points here, items four, five, and six are critical to an understanding of how this operation works and why there is very little sloughing off in Pennsylvania with these AOC backfillings and steep slopes. You can see what the tractor is doing here. He is actually running the spoil up from the open pit against the highwall and he is compacting it each and every foot of the way as he does it so it is not just thrown helter-skelter into the pit. It is actually put in like you would put in a regular highway and it is compacted as they go along.

575 Consequently, at the end of the operation, you get a very solid mass of dirt at that particular point. You can see the smaller ramps being set up here in item number six. It is just as you would construct a highway, no different.

575 Item number six shows ramping spoil against the highwall and that is where compaction takes place if spoil is moved laterally back and forth across this, this way you don't have to have any spoil across the downslope and why you don't get the sloughing off you have in the haulback method and some other areas.

575 Photograph five shows a 90 to 125 foot highwall. It shows completed backfill on a 35 degree slope from the bottom of the slope to the top of the highwall; there is no 4 or 5 feet left. You don't have to do that. As a matter of fact in Pennsylvania, and I think under this particular law, the provisions of S. 7 as presently written don't prohibit the top of the highwall from being reduced so that you can get a better contour or get a better drainage pattern.

575 I think the definition of approximate original contour in this bill allows for the reduction of highwall by shaving off the top of it so the 4 or 5 feet that was spoken of here by the gentleman from Wise, and some of the people who testified before the committee today, were concerned about, I think in Kentucky or in other States, where they can allow 10 feet of the highwall to remain. You can shave that portion off, you don't have to leave that.

575 It is perfectly easy to do. They have done it in Pennsylvania and it is permitted under S. 7.

This is why I support these provisions of S. 7.

575 Now I have other black and white photos which are most recent which I would like to also submit. This is a photograph of the Bennett Coal Co. operation, a slope greater than 35 degrees.That shows you the 35 degree slope completely backfilled from the top above the highwall -

576 Senator METCALF. Would you put numbers on it; one, two or three.

576 Mr. PREATE. That would be photograph number six.

576 It shows approximate original contour backfilling. Now this is what they mean when they say approximate. If you can see the slope in the central portion of the picture, it is not precisely like the slope that is along side in the right-hand side of the picture. That is what approximate means; it doesn't mean it has to be exactly the same. It means obviously it is similar and it compliments the drainage area in patterns.

576 Here is photograph number seven, another view of that Bennett Coal Co. operation. It shows no spoil over the downslope except in the first initial cut, the first cut right there and that would be permitted by S. 7. It shows the slope completely backfilled from top to bottom, approximate original contour. I have two other pictures here, this would be picture number eight.

576 Picture eight shows the Sunbeam Coal Co. operation in Butler County in which they were stripping on a generally rolling terrain which exists, for example, in the midwest. It shows what could be done in picture number nine -

576 Senator METCALF. Picture number eight is not very appealing. Picture number nine shows what happened after.

576 Mr. PREATE. This is after backfilling, seeding. This is the kind of job being done in Pennsylvania.It is being done by Sunbeam Coal Co. I think Mr. Harker, who might have even testified down here recently - but it shows a gently rolling terrain configuring with the drainage pattern.

576 Here is another before and after presentation. This is a deep pit, an open pit coal mine by Perry Ross Coal Co. in Mercer County, Pa. You can see the water.

576 Senator METCALF. This will be number ten.

576 Mr. PREATE. This looks like a completely devastated area. It is a moonscape. Here is the picture afterwards. This will be photograph number eleven. This shows you what can be done under Pennsylvania law and under provisions of S. 7. Water impoundments are permitted, you can see how nice the operator has sloped and graded the area to allow water impoundment in there and you can see grass growing along the edges.It is returning the land to productive use.

576 The thing that is happening in Pennsylvania is that these operators are competing against one another and debating among themselves as to who is doing the better reclamation job and you can see from these three different companies that I have submitted here today, that they all can claim an excellent reclamation job and a return to original contour. This is the kind of experience that has to be brought to the attention of the Congress.

576 I was interested to note the gentleman from Wise, Virginia, also made a point of the fact that a 20 degree slope in Virginia is no different than a 20 degree slope in Pennsylvania. I want to point out the 37 degree slopes in Pennsylvania are no different than the 37 degree slopes in Virginia. A 37 degree slope is a 37 degree slope. It shows it works in not only one operation in Pennsylvania, there are dozens of these operations that have been going on just this year, not last year, but the last 5 years.

577 As a matter of fact the operation modified block cut operation was perfected by a man named Ed Meers who was a one man coal operator using 196-some equipment, not using any fancy new equipment and he did it because it was the only way he could profitably mine and stay in business.

577 I think these are important points that have to be made in the record here. I would like to present this committee with some statistics. One might inquire what effect, knowing then of the Pennsylvania experience, the stringent backfilling and clean stream requirements have had in Pennsylvania on the growth of the coal surface mining industry. I have attached, as exhibit A, a breakdown of the coal production figures for the 10 years prior to 1964, and the 10 years since 1964, 1964 being the year when my good friend, Governor William W. Scranton, had the courage and the foresight to fight for, and win, the legislative battle to enact a strong coal surface

mining law in Pennsylvania.

577 The figures show that surface mined soft coal production increased an average value of 512,000 tons per year prior to 1963, but in the 10 years since 1964, when the first act went into effect, surface mined soft coal production increased at an average value of 773,000 tons per year.

577 In fact, total surface mined soft coal production have increased approximately 65 percent during the past 10 years since the strong Pennsylvania law went into effect. Total number of employees in the soft coal industry has also risen significantly during the past 10 years.

577 Further, despite the strong regulatory program, the small operator has been able to survive and prosper. In 1964, Pennsylvania had 368 operators mining bituminous coal by surface mining. Yet today, there are 503 bituminous surface miners. Of these 503, only about half mine less than 50,000 tons of coal per year and 47 mine more than 200,000 tons per year. This has been accomplished even though no provisions in our State laws grant any special variances to small operators.

577 Senator METCALF. How many acres does it take to mine 50,000 tons?

577 Mr. PREATE. It depends on the thinckness of the coal seam.

577 Senator METCALF. I understand. Now we had a little discussion about that matter yesterday and we said 2 acres would be exempt from regulation.I suppose you could mine quite a few tons of coal on 2 acres. Would you say 50,000 tons would be a small mine operator? How would we define small operator?

577 Mr. PREATE. I think in some of the legislative history that has preceded this bill, there has been talk of under 15 employees as being a small operator. Also, another standard that has been used is if it is mined under 50,000 tons a year. The provision for a 2 acre mine in the bill, as I recall, this is going back some years, is an accommodation to a miner in one of the western States, that a small mine he was using to fuel his own home furnace.

578 Senator METCALF.I suggested a horse for that outcrop.

578 Mr. PREATE. I think if you are an ongoing operation 2 acres is supposed to accommodate somebody who has a farm and a ranch and who mines his own coal.

578 Senator METCALF. Now, my distinguished colleague from Montana has suggested 250,000 tons annual production as the upper limit for small miners.Is that too much?

578 Mr. PREATE. I think that is a fairly large sized operation when he gets up into that tonnage. As a matter of fact, we only have 47 operators mining 200,000 tons of coal or more a year. You would be exempting 80 percent of the industry if you put that figure into the bill in Pennsylvania.

578 I want to point out too in Pennsylvania, we have no variances for small operators. No such thing as a variance for a small operator. There was a statement made a few years ago by somebody who was a member of the White House to one of the committees in the House, I think it was a man named Hill if I am not mistaken, and Mr. Heine immediately wrote a letter to the committee suggesting Mr. Hill was not correct in that regard.

578 Pennsylvania has a variance procedure for noncoal operators. Pennsylvania's bill is an all surface mining law, it pertains to all minerals. So the 2,000 ton exemption in the Pennsylvania law applies to the former who has a small quarry, limestone quarry, sandstone quarry, that sort of thing. It does not apply to any anthracite or bituminous coal operations.

578 While all of this is not to say that the regulation of the industry assisted growth of production, the figures do clearly indicate that regulation allowed reasonable growth and did not devastate the industry as many predicted would happen when the strong law was being considered in 1963.

578 Therefore, I would encourage the committee to move ahead strongly and with confidence to adopt the provisions of S. 7 on AOC backfilling and highwall reduction.

578 Designating areas unsuitable for surface coal mining, section 422; I heartily endorse section 422 of S. 7 dealing with the designation of certain land areas as unsuitable for surface coal mining. However, the Department of Environmental Resources has just published proposed regulations on this subject. These proposed regulations would designate certain watershed and stream areas that would be off limits to surface coal mining. They have not yet become law in Pennsylvania.

578 I believe this provision is greatly needed. A few years ago I had occasion to represent the

city of DuBois and several sportsmens groups in the western part of Pennsylvania. They were seeking, along with the Pennsylvania Game and Fish Commission, to prevent the destruction by surface mining of a vast amount of one of the most popular deer, small game and trout fishing areas in Pennsylvania; State Game Lands 93 and its adjoining wildlife refuge.

578 Hunters and fishermen from all over Pennsylvania and several States would flock to State Game Lands 93 each year. Their license fees would help pay for its upkeep. The Game Commission clearly owned the surface but had questionable title to the subsurface coal. When the coal operator applied to the Department of Environmental Resources for a strip mining permit to mine nearly 1,000 acres of virgin land and pure cold water trout streams, the city, fearing a loss of tourist revenue, and the sportsmen fearing the loss of a paradise, fought the application. Since the Pennsylvania law did not allow for this kind of an area to be off limits to strip mining, we had to fight the application on other grounds.

579 Fortunately, we were able to show that the application contained technical defects and thus we were able to save State Game Lands Area 93 and the wildlife refuge. But areas such as this should not be left so unprotected from future assaults. These areas, bought and kept up by the public and the sportsmen should be clearly saved by planned design and not by chance.

579 Section 422 would allow for this kind of planning and you would make the sportsmen of this country very happy indeed if they could see this provision being utilized to save their game lands.

579 Public notice and public hearing, Section 413; Mr. Chairman, I strongly support the provisions of S. 7 which provides for public notice, public hearing, and citizen suits. Too often in the past, State laws on surface mining have been designed, intentionally or unintentionally, to minimize citizen inquiry or input into the permit approval process.

579 Denying to citizens a participatory role in matters which may gravely affect their fortunes or their chosen quality of life has thus reinforced the widespread impression that State enforcement agencies are sometimes protectors of the very industry they are to regulate. It is this shutting out of the public that has created the very groundswell of public opinion which has necessitated this committee and this Congress, focusing its attention on the drafting of a strong

Federal surface mining law.

579 However, I would suggest to this committee that it incorporate in section 413 a provision which is reflective of the Pennsylvania experience.In Pennsylvania, when a citizen objects to the granting of a permit, the department does not immediately schedule a public hearing. Rather, it holds an informal but public fact finding conference with the protestants.

579 Mr. Heine told the House subcommittee on February 8, 1977, that in Pennsvlvania this informal conference procedure results in 9 of 10 objections being withdrawn.This is the kind of provision you can put in this bill and cut down the notice requirements, the hearing requirements in this legislation. Try to do something through the informal fact finding procedure or conference.

579 I would strongly urge the committee to expressly exempt citizen suits under this act from the provisions of 28 U.S.C.A., sections 1331 and 1332, which require diversity of citizenship and an amount in controversy in excess of $1 0,000 in order to get into Federal Court. Otherwise, the citizen may find himself with a remedy for damages suffered but no court to take his case to.

579 If you look in that section, you will see the statute must expressly exempt suits from these diversified citizenship requirements and the $10,000 requirement to get into the system.

579 Again, I thank the committee for the invitation to appear here today. I would be pleased to try to answer any questions you may have.

579 [The prepared statement of Mr. Preate follows:]

580 STATEMENT OF ATTY. ERNEST D. PREATE, JR. OF SCRANTON, PENNSYLVANIA ON SURFACE MINING LEGISLATION BEFORE THE SUBCOMMITTE ON MINERALS, MATERIALS AND FUELS, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, UNITED STATES SENATE WASHINGTON, D.C.

580 MARCH 2, 1977

580 MR. CHAIRMAN:

580 My name is Atty. Ernest Preate, Jr. and I am an attorney in Scranton, Pennsylvania.

580 I want to thank you, Mr. Chairman, and the members of the Subcommittee for inviting me here today to testify on the provisions of S. 7, the "Surface Mining Control and Reclamation Act of 1977."

580 During the past 7 years I have been involved in the drafting of state surface mining laws and regulations for several states. I have also represented. Sportmen's Organizations, a Chamber of Commerce, a Pennsylvania City, a Civic Association, private individuals and businessmen in complaints and lawsuits against proposed surface coal mining operations in Pennsylvania. I am here today as a private citizen who supports the enactment of S. 7.

580 Mr. Chairman, I think a bit of historical perspective might be appropriate at this point. I can recall testifying before committees and subcommittees of previous Congresses several years ago on the subject of a federal surface mining law. Some of the issues then where whether or not the bill should be applicable to all minerals or just coal, should the legislation set definite, minimum standards or should it merely set forth flexible, general norms, and should the act be administered by the states or by a federal agency. Of course, these basic conceptual problems have been resolved in the legislative process over the past 4 years, However, certain contentions problems still remain. I will focus on 3 major problem areas in my statement today.

581 They are:

581 1) Approximate original contour back filling and elimination of highwalls. (section 415(b)(3), 415(d)(2).)

581 2) Designate areas unsuitable for surface coal mining (422).

581 3) Public Notice and Public Hearing (413).

581 I. Approximate original contour back filling and elimination of highwalls (section 415(b)(3), 415(d)(2), and 415(d)(3).

581 Perhaps the two most common complaints against coal surface mining operators are that they, with certain exceptions, fail to backfill their mined areas, and that they continue to leave highwalls standing at the end of their operations. I support the above cited provisions of S. 7. because they would, if enforced, rectify unfortunate practices. In my opinion, we now have the equipment, the engineering know how, and the on the job experience to confidently establish these provisions as the law of the land.

581 I think it is important to point out here that the provisions of S. 7. do not require

backfilling to the original contours which existed before any mining, but, rather backfilling to the approximate original contour AOC.

581 The word "approximate" was wisely chosen by the drafters of S. 7 because it is a reasonable and practical standard. However, I am informed that there are some who may have misunderstood this concept and placed too narrow an interpretation on it. Perhaps this is because they are confusing the definition of AOC backfilling contained in this bill with the definition of AOC backfilling contained in the laws of several states. In Pennsylvania, for example, AOC backfilling is described as a straight line between the top of the highwall and the bottom of the spoil pile. This is a rigid and somewhat impractical definition.Pennsylvania administrators now in effect utilize the definition contained in S. 7 which speaks of AOC backfilling as:

581 that surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted. . . .

582 In fact, this definition was suggested to the Interior Committee by the Pennsylvania Administrators, and, I believe it was introduced by Senator McClure and made part of the bill during the floor debate four years ago.

582 In my view the definition of A.O.C. backfilling in S. 7 would not preclude, for example, the establishment of necessary diversion ditches and erosion controlling configurations which complement the drainage pattern, provided that all highwalls and spoil piles are eliminated. This was the expressed view, I might add, of Walter Heine, Associate Deputy Secretary for Mines and Land Protection, Pennsylvania Department of Environmental Resources, when he testified before a House Subcommittee on similar legislation on February 8, 1977.

583 On the subject of highwalls, Mr. Heine had this to say and I am going to quote him because I believe what he told Mr. Udall's Subcommittee on February 8, 1977, when he testified with our Govenor, is so sensible that it bears repeating. Mr. Heine said:

583 It is essential that elimination of the highwall be retained in the bills. Pennsylvania's laws required elimination of the vertical highwall since 1964 and have found that it is a fundamental

ingredient in assuring a safe, stable and attractive reclamation job. In almost all cases, vertical or near vertical highwalls will erode and/or slide thereby perpetually contributing silt to nearby streams. They present a hazard to men and animals who might encounter them unexpectedly. Finally, they are an unattractive permanent monument to man's inability to live in harmony with nature. Incidentally, a practical aspect of the value of an aesthetic reclamation job is the increased willingness of landowners to allow mining of their coal after witnessing attractive restoration on their neighbor's land.This will become an increasingly important point as we look toward these small privately owned coal reserves as sources of energy.

583 Now, there are some who might question whether the excellent Pennsylvania experience with approximate original contour backfilling can be applied to the steep slope mining operations in other Appalachian states where slopes over 30 degrees are mined. This question was answered by Mr. Heine and Mr. William E. Guckert, the Director of Surface Mine Reclamation in Pennsylvania when they testified before the House Subcommittee on Energy and Environment on February 8, 1977. Mr. Guckert stated that 20-25% of Pennsylvania surface mining takes place on slopes above 15 degrees and that A.O.C. backfilling takes place on slopes even greater that 35 degrees. This is done in Pennsylvania by the use of the "Modified Block Cut" method which essentially consists of backfilling concurrently with mining - the spoil being handled only once and moved laterally across the cut in the slope. In West Virginia and Kentucky the "haul back" method is used to achieve essentially the same result.

584 The Pennsylvania experience with steep slope A.O.C. backfilling for the last six years is really a marvel of man's ingenuity to solve his engineering and physical problems. It actually enables the small operator (under 15 men) to mine profitably because his costs are reduced with less spoil handling, and he doesn't need any large or fancy equipment to get the job done.

584 At this point, I would like to present to this Committee some photographs to be entered into the record to illustrate the Pennsylvania A.O.C. backfilling requirement on hilly terrain and on steep slopes.

584 Knowing, then, of the Pennsylvania experience, one might inquire what effect the stringent backfilling and clean stream requirements have had in Pennsylvania on the growth of

the coal surface mining industry. I have attached as Exhibit "A" a breakdown of the coal production figures for the ten years prior to 1964 and the ten years since 1964, - 1964 being the year when my good friend Govenor William W. Scranton had the courage and the foresight to fight for the, and win the legislative battle to enact a strong coal surface mining law in Pennsylvania. The figures show that surface mined soft coal production increased an average value of 512,000 tons per year prior to 1963, but in the ten years since 1964, surface mined soft coal production increased at an average value of 773,000 tons per year. In fact, total surface mined soft coal production has increased approximately 65% during the past ten years since the strong law went into effect.Total number of employees in the soft coal industry has also risen significantly during the past ten years.

585 Further, despite the strong regulatory program, the small operator has been able to survive and prosper. In 1964 Pennsylvania had 368 operators mining bituminous coal by surface mining, yet, today there are 503 bituminous surface miners. Of these 503, about half mine less than 50,000 tons of coal per year and 47 mine more than 200,000 tons per year. This has been accomplished even though no provisions in our state laws grant any special variances to small operators.

585 While all of this is not to say that the regulation of the industry assisted growth of production, the figures do clearly indicate that regulation allowed reasonable growth and did not devastate the industry as many predicted would happen when the strong law was being considered in 1963.

585 Therefore, I would encourage the Committee to move ahead strongly and with confidence to adopt the provisions of S. 7 on A.O.C. backfilling and highwall reduction.

585 II. Designating areas unsuitable for surface coal mining. (Section 422)

585 I heartily endorse Section 422 of S. 7 dealing with the designation of certain land areas as unsuitable for surface coal mining. This major provision is presently not a part of the Pennsylvania law. However, the Department of Environmental Resources has just published proposed regulations on this subject. These proposed regulations would designate certain watershed and streams areas that would be off limits to surface coal mining.

585 I believe this provision is greatly needed. A few years ago I had occasion to represent the City of DuBois and several Sportsmen's groups in the western part of Pennsylvania. They were seeking, along with the Pennsylvania Game and Fish Commission to prevent the destruction by surface mining of a vast amount of one of the most popular deer, small game and trout fishing areas in Pennsylvania, State Game Lands 93, and its adjoining Wildlife Refuge Hunters and fishermen from all over Pennsylvania and several states would flock to State Game Lands 93 each year. Their license fees would help pay for its upkeep.The Game Commission clearly owned the surface but had questionable title to the subsurface coal. When the coal operator applied to the Department of Environmental Resources for a strip mining permit to mine nearly 1,000 acres of virgin land and pure cold water trout streams, the City, fearing a loss of tourist revenue, and the Sportsmen, fearing the loss of a paradise, fought the application. Since the Pennsylvania law did not allow for this kind of an area to be "off limits" to strip mining, we had to fight the application on other grounds. Fortunately, we were able to show that the application contained technical defects, and, thus we were able to save the Game Lands and the Wildlife Refuge.But, areas such as this should not be left so unprotected from future assaults. These areas, bought and kept up by the public and the Sportsmen should be clearly saved by planned design and not by chance. Section 422 would allow for this kind of planning, and, you would make the Sportsmen of this country very happy, indeed, if they could see this provision being utilized to save their game lands.

586 III. Public Notice and Public Hearing (Section 413)

586 Mr. Chairman, I strongly support the provisions of S. 7 which provide for public notice, public hearing and citizen suits.

586 Too often in the past state laws on surface mining have been designed, intentionally or unintentionally to minimize citizen inquiry or input: into the permit approval precess. Denying to citizens a participatory role in matters which may gravely affect their fortunes or their chosen quality of life, has, thus, re-inforced the wide-spread impression that State enforcement agencies are sometimes protectors of the very industry they are to regulate. It is this shutting out of the public that has created the very groundswell of public opinion which has necessitated this

Committee and this Congress focusing its attention on the drafting of a strong federal strip mining law.

587 However, I would suggest to this Committee that it incorporate in Section 413 a provision which is reflective of the Pennsylvania experience. In Pennsylvania when a citizen objects to the granting of a permit, the Department does not immediately schedule a public hearing. Rather, it holds an informal, but public, fact-finding conference with the protestants.

587 Mr. Heine told the House Subcommittee on February 8, 1977, that in Pennsylvania this informal conference procedure results in nine out of ten objections being withdrawn.

587 A. Citizen Suits (Section 420)

587 I would strongly urge the Committee to expressly exempt citizen suits under this Act from the provisions of 28 U.S.C.A. Section 1331 and 1332 which require diversity of citizenship and an amount in controversy in excess of $1 0,000 in order to get into Federal Court. Otherwise, the citizen may find himself with a remedy for damages suffered but no court to take his case to.

588 Again, I thank the Committee for the invitation to appear here today. I would be pleased to try to answer any questions you may have.

589

---

*6*COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES OFFICE OF MINES AND LAND PROTECTION

6 Relationship of Coal Strip Mine Production And Employes To State Reclamation Laws

Year	Strip Mine Employes Bituminous	Anthracite	Strip Mine Production million tons * Bituminous	Anthracite
1954	7,287	5,9 15	16.9	7.8

	1955	7,262	4,983	19.2	7.8
	1956	7,674	5,458	21.6	8.5
	1957	7,489	5,253	20.5	7.8
	1958	7, 177	4,863	19.5	7.0
	1959	6,734	4,194	20.5	7.2
	1960	6,533	3,804	21.0	7.1
	1961	6,682	3,958	20.8	7.2
	1962	6,601	3,455	22.2	6.9
	1963	6,198	3,686	24.2	7.5
Major Amendments went into effect	1964	5,974	3,560	24.0	7.2
	1965	5,421	2,895	23.6	5.9
	1966	5,153	2,219	24.7	5.3
	1967	4,610	2,034	21.7	4.9
	1968	4,480	1,897	20.5	4.9
	1969	4,132	2,083	21.6	4.6
	1970	4,701	2,116	24.1	4.6
	1971	5,432	2,229	26.8	4.4
Minor Amendments went into effect	1972	4,553	1,537	25.7	3.4
	1973	5,192	1,633	29.3	3.2
	1974	6,416	1,376	36.0	2.8
	1975	8,096	1,468	37.5	2.5
	1976 **	7,101	1,227	38.8	2.8

589 * Rounded to nearest 100,000 tons.

589 ** Estimated figures

589 NOTE: During the ten year period before a strong law was passed (1954-1963), surface mining production increased at an average value of 512,000 tons per year.

589 During the ten year period following passage of the strong law (1964-1975), surface mine production increased at an average value of 773,000 tons per year.

589 Walter N. Heine

589 Associate Deputy Secretary

589 Mines and Land Protection

589 February 7, 1977

590 Senator METCALF. Let me tell you about citizen suits. I am bringing suit in the Federal District Court of the District of Columbia to try to enforce the provisions of the Federal Advisory Committee Act.The other day, a three-judge court handed down a decision: I had no standing in that court. Of course, as you suggest, if we write into law, and we probably should, that citizens have standing for such, they can enforce their ideas and have an opportunity to get in court. I am certainly going to write that into the advisory committee law if I can persuade my colleagues that Senators will have standing in the future to enforce that. So I am familiar with that section.

590 I want to compliment you again for giving us your usual able and persuasive testimony. Thank you for coming down. Thank you for your help and we may call upon you for some suggestions as we write and markup this bill. I know most of my colleagues have other things to do. I am a man with one bill and that is the strip mining bill.

590 However, I do want to say one thing right now. This committee, members of this committee, can read.When testimony is submitted on the House side, whether it is bound in buff or green, we can read and understand it, and when testimony is submitted in other Congresses we also know that testimony is available and is useful.

590 I regret most of my distinguished colleagues are not here this afternoon to hear this important testimony, but I know they are going to read it, and it is going to be considered in markup of this legislation. Thank you very much for coming.

590 Is Mr. Caudill here?

590 [No response.]

590 Senator METCALF.Are the people from Birney, Mont., here? In lieu of Mr. Caudill,

would you like to come up and testify for a few minutes then?

590 Mr. NANCE. I did not come prepared.

590 Senator METCALF. The people from Birney, Mont. - and we have heard from you, as you know, in hearings in Billings and in hearings here - you were going to talk about alluvial valley floors.

590 Mr. NANCE. I won't take too much of your time. Can I just shoot it to you off the record?

590 Senator METCALF. I frankly have said that one of the worst pains in the world is an undelivered statement. Please proceed.

STATEMENT OF MARCUS L. NANCE, BIRNEY, MONT.

590 Mr. NANCE. I am Marcus L. Nance. I live in Birney, Mont., which is located in southeastern Montana, geographically it is about the center of the so-called Powder River Basin. I am a landowner, at least we have the feeling a landowner is a little bit between - like a sandwich. We have the landowners on one side and the coal companies on the other.

590 We have a problem in our area with the alluvial valley section of this bill.

590 Senator METCALF. You are not satisfied with the section as written?

590 Mr. NANCE. Let me finish. I am satisfied if it was so interpreted. I am afraid of the part in the bill where it says it adversely affects ranch operations. Now if I was to determine whether that would adversely affect my ranch, then I would be satisfied with the bill. If it is for someone else to determine whether it adversely affects my ranching operation, then it might be a different matter.

591 I do believe the ranch owner knows more about his land than anybody else in the world. As a matter of fact, I do believe this mining in our alluvial valleys will be quite opposite to the adverse effects. I think the amount of crop land and production will be increased because we have these undisturbed range lands lying adjacent to our small areas of crop land which may produce 1 ton to the acre, of hay; up to 5 tons, per acre, of hay.

591 They are rough, they are hard to irrigate and by a mining process where we could

incorporate the adjacent lands with the croplands, the undisturbed range lands with the croplands
would, in fact, be quite the opposite effect from an adverse effect. It would be quite constructive.

591 The other thing that bothers me, you are familiar with the State of Montana law, the
hydrological effect. I don't think we have the right to "X" somebody's water down stream. I
think it will be covered in your law, it is covered very thoroughly in Montana's law.

591 The only thing we hear here is that approximately 3 percent - whether this figure is
accurate or not, but from 3 to 5 percent - of the feed coal, coal owned by the landowner, only 3
percent of that would be in alluvial valleys; but practically 90 percent of that 3 percent is owned
by the private citizens of the State of Montana due to the fact that land had to be homesteaded
before 1910, actually in fact 1906, and they took the land along the streams.

591 Senator METCALF. You are referring to the Homestead Act that gave twice as much
land for grazing purposes, but reserved the mineral rights to the Federal Government.

591 Mr. NANCE. Yes, sir; that was the Act of 1910, I believe. In effect, Senator, it was
started in 1906. There was no great homesteading between 1906 and 1910 to any great degree.

591 So even though it is a small total acreage, the amount that is being taken out is 90 percent
of the feed ownership coal. Whether we have individual rights on that or not, I don't know. If
we don't disturb anybody else and we can put our land in better shape, I think we should be able
to mine it.

591 The other part is that also lies incorporated in an economical block of coal mining if you
delete a 10 million ton area of an alluvial valley where it does not disturb anybody else. It is hard
for me to believe here we talk of conversation on the one hand, and waste on another; because if
you go by that and go on downstream with the lands adjoining it, it is never economical to come
back and get it.

591 Senator METCALF. Senator Hansen has repeatedly talked about these "mushrooms" that
are going to be around in Montana and Wyoming if we prohibit coal mining under the Mansfield
amendment or under these other amendments.

591 Believe me, we have heard the argument back and forth and we are aware of that problem.

591 Mr. NANCE. I probably have not too much more to add.

591 Senator METCALF. In Montana, and in other areas of the west, these subterranean coal seams are the underground water courses. We really don't know what we are doing to underground water when we dig a trench a couple of hundred of feet deep -

591 Mr. NANCE. I beg your pardon, Senator. I don't agree with that. We have seen two coal mines above me, for example -

592 Senator METCALF. What are they?

592 Mr. NANCE. The largest coal mine in the United States as far as tonnage is concerned.

592 Senator METCALF. That was disputed several times, but it has already been asserted.You can go ahead and advertise Decker Coal if you want.

592 Mr. NANCE. I am not trying to advertise it, sir, at all. I was told it was the largest.

592 Senator METCALF.As we pointed out, every Governor comes in and says, we have the toughest law; whether it is the Governor of Tennessee, Kentucky, or Montana, everybody comes in here and says we have the largest coal mine in the United States. But they are pretty big, aren't they?

592 Mr. NANCE. I will rephrase that to say we have a very large coal mine. We have also had a coal mine south of Decker on the same stream operating since 1943. Nobody has ever seen any adverse hydrological effect from it yet during those years.

592 The fish and game in the State of Montana decided to take the water out of the Decker Mine now that they have found the quality is not being disturbed, and use it for a spawning pond. The only problem with the deal is they were not able to get enough water out of the mine in order to make a spawning pond.

592 This was absolutely contradictory to the projections when the mine started. I don't think we are going to have - I think we should be able to prove this, I don't want to dispute you, I think we will be able to prove it.

592 Senator METCALF. At Colestrip, the Montana Power Co. - the first thing they do is lead you over to the fishpond where they have a whole bunch of fish swimming around in the water which they say is not toxic. I don't know what they do to reclaim the water.

592 Mr. NANCE. I believe you told me you had one share of their stock.

592 Senator METCALF. I have 10 shares.

592 Mr. NANCE. I would much prefer if you ask me the questions. That is about my statement.

592 Senator METCALF. We are delighted to have you back here.

592 Mr. NANCE. I am pleased to be able to testify.

592 Senator METCALF. Mr. Harry Caudill is a very famous author; although he is not from Montana, we feel you have adequately taken his place.

592 Mr. NANCE. We have all of the studies. We made the Birney/Decker study 2 or 3 years ago. We had reports from them, I was questioned in the House about this study. I dispute some of the accuracy of it, it was done several years ago. They did not know where the coal was, the sociological effects of the thing, and I think we are going to have to keep up with the technology as we go along.

592 Senator METCALF. We are learning an awful lot every year and believe me, this bill, when is passes and goes into effect, will be subjected to annual oversight so we will be able to remedy or correct things as a result of additional technology.

592 Thank you very much. I am delighted to have you here. That closes the hearing today, unless Senator Hansen comes back. We will open tomorrow with Governor Judge of Montana and Governor Herschler of Wyoming. We will be in recess until 10 a.m. tomorrow in the same room. We have a long respected witness list of very distinguished people. We will recess for today.

592 [Whereupon, at 3:03 p.m., the hearing was recessed, to reconvene Thursday, March 3, 1977, at 10 a.m.]

THURSDAY, MARCH 3, 1977

593 U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES, OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Washington, D.C.

593 The subcommittee met, pursuant to notice, at 10 a.m. in room 3110, Dirksen Office Building, Hon. Lee Metcalf presiding.

593 Present: Senators Metcalf, Johnston, Bumpers, Ford, Hansen, Bartlett, and Laxalt.

593 Also present: D. Michael Harvey, chief counsel; Norm Williams, professional staff member; and Ted Orf, deputy minority counsel.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

593 Senator METCALF. The subcommittee will be in order. During the first 2 days of this hearing the distinguished Senator from Wyoming who has made such a great contribution to this legislation in the past, was in the hospital.I don't know if that was good or bad, as he did not ask any of those searching questions he usually asks. Maybe we got through the hearings a little earlier. Anyway, Cliff, we are delighted to have you back. The Hansen/Metcalf axis is operating again and we are pleased to have your distinguished Governor from Wyoming with us. I am going to ask you to introduce him.

593 Today, following consideration of the possible effects of steep slope and other requirements of S. 7 as applied to coal mine operations in the mountainous areas of Appalachian coal fields, we are turning our attention to the western and mid-western coal producing regions. S. 7, as has been stated before, is a modified version of H.R. 24, the bill vetoed by President Ford in May 1975.

593 The enormous potential of the western coal fields, and more particularly that of the Northern Great Plains, has only in recent years come under scrutiny. Billions of tons of strippable reserves, most of it in Federal ownership, have become the focus of major corporations eager to invest in the power shovels, draglines, railroads, generating plants, and in some cases, conversion facilities, needed to extract from western coal large quantities of electricity and other forms of energy, and I might add, very healthy profits.

593 Congress has become more aware of its responsibility for stewardship of Federal coal, as speculative abuses of Federal coal leases led to enactment of the Federal Coal Leasing Amendments Act in the last session.

594 Important though this new law may be for assuring the diligent development of the people's coal and a fair return to the Federal treasury and to the coal-producing States, it failed to deal with two issues which continue to plague many western States.

594 These two issues are: First, insuring stringent reclamation standards for strip mining on Federal and checkerboard coal lands, especially for protection of highly vulnerable agricultural areas in the alluvial valley floors. And second, reaching an equitable solution to the problem faced by ranchers whose land is underlaid by federally owned coal.

594 S. 7 addresses these issues by establishing stringent yet flexible minimum environmental protection performance standards, by allowing the States the option of enforcing these minimum standards on Federal lands, and by placing a ban on the surface mining of Federal coal underlying privately owned surface.

594 Today we have invited Governor Herschler of Wyoming and Governor Judge of Montana, together with several western coal producers, electric utility coal consumers, and spokesmen for ranching and farming interests to testify regarding the adequacy of S. 7 in the western context.

594 We look forward to their recommendations and suggestions.

594 Senator HANSEN. Thank you very much, Chairman Metcalf. It certainly is my pleasure to introduce the chief executive of the State of Wyoming, Governor Ed Herschler. We have just concluded a session of our legislature, and I welcome the Governor and several members of his staff as well as two members of the legislative body from Wyoming.

594 I note also your Governor is here. He too is my good friend.

594 Senator METCALF. I am going to get to introduce him.

594 Senator HANSEN. I am very pleased, Mr. Chairman, to introduce to you and to those in attendance the Governor of the State of Wyoming, the Honorable Ed Herschler.

594 Senator METCALF. Governor Herschler, we are very pleased to have you here. One of the good things about having the Governors conference annually in Washington is the opportunity it affords to have some of our Governors join us. It is with a great deal of pride that we welcome you today. We had several eastern Governors here yesterday who gave magnificent testimony, and I know you are going to represent the West with honor.

STATEMENT OF HON. ED HERSCHLER, GOVERNOR OF THE STATE OF WYOMING

594 Governor HERSCHLER. Thank you very much, Senator. Mr. Chairman, and Senator Hansen, I have a prepared statement and I believe copies have been submitted to your staff.

594 First of all, I appreciate the opportunity to address the committee on this major piece of legislation which I think has profound implications for the entire Nation's economic well-being and its freedom from reliance on foreign energy sources. In addition to those national concerns which we all share, Wyoming citizens are concerned with coal mining as the short term determinate of the economic activity and population growth that will dominate the State, and the long term determinate of whether the State is left with a scarred, unproductive landscape and shattered water resources, or with reclaimed, productive lands. A Federal strip mine bill has even greater implications for the public land States than for other States, because of the large amounts of surface and minerals which are owned by the Federal Government. A Federal strip mine bill must recognize this distinction and place Federal lands under an approved State program.

595 It has long been my position that comprehensive regulations of coal surface mining operations is essential in order to protect and preserve our environment while developing a sound energy and economic policy. This committee and the Congress has devoted a great deal of effort in developing a national strip mining bill which attempts to meet those objectives. In striving for these laudable goals, I would ask the committee to consider a number of matters which are of great concern to me and Governors of other western States.

595 By way of background, it is appropriate to review for the committee the status of State laws, particularly Wyoming's which deal with environmental protection. The U.S. Congress is not the only legislature which can respond effectively for the purpose of protecting the environment. Spurred on by the prospect of rapid economic and population growth, the Wyoming Legislature has enacted various laws to protect the environment.

595 Pursuant to the Wyoming Environmental Quality Act, the State has assumed primary jurisdiction under the Federal Water Pollution Control Act. Under this same State statute,

Wyoming has developed a State air quality implementation plan which is approved pursuant to the Clean Air Act. And Wyoming's environmental protection standards are not minimal. They are efforts required to meet Federal standards, but are standards adopted to preserve Wyoming's unique situation. For example, Wyoming's SO2 standard is 0.2 pounds per hour, a standard which is six times more stringent than the Federal standard of 1.2 pounds per hour. Wyoming's land reclamation law has developed rapidly and independently of any Federal requirements. Its primary function is not to prevent mining, but to assure that any mining operation is properly reclaimed to an equal or higher post-mining use.

595 Our State legislature has adopted a statewide land use planning law to supplement the county land use planning efforts. Finally, Wyoming adopted industrial siting legislation in 1975 which requires evaluation of the sociological, economic and environmental impacts of major energy and industrial facilities prior to commencement of construction.

595 However, before the committee concludes that the western States are attempting to preclude energy development, I will point out that since the enactment of these environmental controls, the following events have occurred: (1) 2,000 megawatts of electric-generating capacity have been approved for construction; (2) a number of coal mines with an approximate annual production rate of 35 million tons have been approved; and (3) coal production has increased from 14.8 million tons in 1973, to an estimated 35.1 million tons in 1976.

596 Wyoming presently has primary responsibility for mined land reclamation on both State and Federal lands under an agreement with the Department of the Interior. During the promulgation of Interior's 211 regulations, both the mining interests and the environmental interests were unanimous in urging that the State have the primary role. A review of the Department of the Interior's hearing record for September 23, 1976, might be helpful to the committee. My testimony at that hearing is attached.

596 This agreement is based on two premises: (1) Wyoming's standards are as stringent or more stringent than the 211 regulations promulgated by the Department of the Interior; and (2) Wyoming's manpower and procedural program are sufficient to insure full enforcement.

596 Several other States have entered into agreements to administer Federal regulations on all

lands within the State, but have failed to meet the stringency test. It should be noted that
Montana would be able to enter into an agreement similar to Wyoming's but has not done so at
this point in time.

596 Wyoming has added 11 additional professionals to its staff for the sole purpose of
implementing this agreement and since the agreement's effective date of February 1, 1977, we
have been moving forward with its implementation.

596 It seems to me both Federal strip mine bills -

596 Senator METCALF. When you refer to both bills, you are referring to H.R. 2 over in the
House as well as the Senate bill, S. 7?

596 Governor HERSCHLER. Yes, I am.

596 Both Federal bills, as they are currently drafted, may not be in the best interest of either
Western States like Wyoming or the Nation as a whole. The Federal bills may very well abandon
the expertise and experience developed by each State on a site-specific basis and substitute in
their stead an inflexible Federal program which is administratively infeasible from the State's
viewpoint, and economically disastrous from a national viewpoint.

596 Imposition of uniform national standards on an extremely diverse problem, without
providing for flexibility based on regional differences, is, in my view, undesirable. With this
cautionary comment as a preclude, I now turn to my specific concerns.

596 First: State programs with primary jurisdiction for administering the provisions of either
H.R. 2 or S. 7 will be viable in Western States only if Federal lands are also subject to those State
programs. Where ownership of a vast majority of the surface and/or the mineral estate is vested
in the Federal Government, a State program limited to only private or State lands cannot be
effective.

596 Furthermore, the interspersing of Federal lands with State and private lands would make
the program even more complex. In addition, one of the stated findings of both bills is that
"primary governmental responsibility for developing, authorizing, issuing, and enforcing
regulations for surface mining and operations subject to this Act should rest with the states,"
section 101(g).

596 This emphasis on primary State jurisdiction as the preferred method of implementing environmental protection laws is consistent with the provisions of the Clean Air Act and the Federal Water Pollution Control Act. For these reasons, I would urge the committee to adopt the provisions of S. 7, particularly 423(d), relating to State jurisdiction over Federal lands under an approved State program.

597 Pending a determination on the sufficiency of a State program, it would appear inappropriate for the Federal Government to create a large interim bureaucracy to enforce the interim provisions. Those States that have entered into full agreements with the Department of the Interior pursuant to 30 CFR 211.75, or that are otherwise qualified to make such agreements, should continue to have primary responsibility for enforcing reclamation laws, pending an administrative determination on the approvability of the State program under the Federal bills. This approach would minimize the creation of an interim Federal bureaucracy which, as we are too painfully aware, may tend to become a permanent Federal bureaucracy.

597 In this regard, section 702(d) appears to require the preparation of an environmental impact statement prior to the approval of a State program. Congress, by enacting either H.R. 2 or S. 7, would appear to have concluded that a State program meeting the requirements of either act should be approved. I fail to perceive what added benefits the EIS process will add to that determination.

597 Turning to the Abandoned Mine Reclamation Fund, I would request the committee to continue the emphasis on State responsibility by adopting the language of section 302(d) of S. 7 which allows the State to administer the fund.

597 Although I appreciate the constitutional restraint which required S. 7 to deal only with the Federal royalties, as you might expect, I endorse the 35-cent-per-ton add-on in H.R. 2 rather than the Senate version which diverts a portion of the Federal mineral royalty funds.

597 In addition, the purposes for which the funds can be used should be expanded to include noncoal surface mining operations which have been abandoned. Abandoned uranium pits from the 1950's and early 1960's are the primary problem in Wyoming and some other Western States, rather than abandoned coal mines.

597 I would like to express my concern about the Mansfield amendment, section 423(e) of S. 7.We believe this provision is undesirable because it could force mining into areas which are more difficult to reclaim.In addition, given the substantial amounts of coal which have already been leased, its importance in terms of landowner protection is likely to be minimal.

597 In the related area of landowner's consent, I would suggest that a provision in a Federal bill authorizing State landowner consent laws might be more appropriate. My State geologist is presently examining surface ownership in known leasing areas to determine the viability of the House provision. I will inform the committee of the results of his inquiry.

597 Senator METCALF. Governor, I talked to Senator Byrd, the majority leader this morning, and he said we would be unable to bring this bill up on the Senate floor until after April 28. Hopefully, we will have a markup and a bill to present before then; but between then and now, we have ample time if you can get that material within the next couple of weeks.

597 Governor HERSCHLER. I am sure we can get that information to you, Senator Metcalf.

597 Senator METCALF. Thank you very much.

597 [See March 29, 1977, letter that appears at end of Governor Herschler's testimony.]

598 Governor HERSCHLER. At this stage in the development of this legislation, the committee is no longer interested in broad, general statements but is seeking specific comments and recommendations. In order to make my final and perhaps strongest recommendation, I must, however, make a general statement.

598 The individual States must have the opportunity to administer their own reclamation program. As you probably know, I concluded several months of negotiation with the Secretary of the Interior on this very issue by entering into an agreement pursuant to 30 CFR 211.75 which allows us this opportunity. There are many who have criticized this agreement because of the possibility that a Federal bill would be passed in the near future.

598 Even in the West, there are many States that do not agree with us primarily because they want Federal dollars to administer their programs or they are unable to convince their State

legislature to enact good reclamation legislation. This coal production is taxed by the State of Wyoming and it is only proper that part of these revenues be used to finance our State reclamation program.

598 Wyoming does not require Federal dollars for this program. Although I understand the problems of these other States, I do not understand why a Federal bill cannot include provisions which allow Wyoming to administer its own program so long as a determination has been made by the Secretary of the Interior that it is at least as stringent as Federal law.

598 I am concerned that the present bills are extremely ambiguous with respect to the authority of a State if a State plan is approved. In addition, we believe that the technical provisions in both the House and Senate versions of the bill make it nearly impossible for a State to develop a meaningful and workable State program.

598 If these provisions are applied with great rigidity, the response from the States may well be similar to our response to the Safe Drinking Water Act, the Federal Government can keep the entire program. That response was the Federal Government can keep the entire program. Some of our specific areas of concern in this regard are set out in the appendix to my remarks for the committee's consideration.

598 In summary, I hope that the technical aspects of the law will allow the same type of flexibility as exists with the Clean Air Act and the Federal Water Pollution Control Act and that the relationship between the State and the Federal Government can be similar to this law as it is pursuant to the two laws I have just mentioned.

598 In closing, I would like to emphasize that the State of Wyoming does not disagree with the purpose of insuring environmental protection and prevention of abuses which have sometimes resulted from strip mining. Our hope is that the national strip mining bill will allow the necessary flexibility to accommodate the geographical, climatological, and economic differences which exist in this country and that the Congress will provide an opportunity to those States which choose to accept it to administer their own reclamation programs so long as those programs are at least as stringent as Federal law.

598 [The appendix attached to Governor Herschler's statement and the September 23, 1976,

statement appear on the following pages.]

599 APPENDIX

599 I. Section 422 of S. 7 and Section 522 of H.R. 2 Comments

599 These sections provide for studies and designation of areas unsuitable for mining on a statewide basis. To become an agreement State, the State must set up a process for such study and designation on private and State lands. However, the Federal government will set up such a process on Federal lands.

599 Such a statewide study and designation process is not logistically feasible, and would probably fail to provide the detail required to make intelligent decisions as to which lands are suitable or unsuitable for mining.

599 The Wyoming Environmental Act provides an alternative procedure of designating lands unsuitable for mining through the permitting process in that mining permits cannot be issued if the lands cannot be reclaimed. Such a decision is based on a site specific detailed study of the area requested to be mined. This study, contrary to a statewide study, can provide the detailed information required to make an intelligent decision as to whether the area should be mined. Further, the decision as to whether a particular area is suitable or unsuitable for mining will then be based on current profit margins and technology.

600 Recommendations

600 It is recommended that the wording in S. 7, 403(a)(5) be changed to include, " . . . unless State laws provide that permits to mine will not be issued where the land cannot be reclaimed . . . "

600 II. Section 405(a) and (b) of S. 7 and 505(a) and (b) of H.R. 2

600 These portions require the most "stringent" of the State or Federal laws to apply in an agreement State.

600 Wording should be added to provide that, "once the appropriate post-mining land use is determined, the fact that reclamation to such a land use is less costly to the operator than alternative land uses does not render such requirement less stringent; nor does the fact that it is more costly to the operator render it more stringent. Further, changing of land use after mining to

a more intensive agriculture and flatter contours, where it has been determined that this would
produce the most appropriate post-mining use, does not render such requirement less stringent."

601 III. Section 408(a)(8) of S. 7 and 508(a)(7) of H.R. 2 Comments

601 Provisions to maximize recovery of the mineral resource should not override requirements
for reclamation.

601 IV. Section 409(c) of S. 7 and 509(c) of H.R. 2 Comments

601 This subsection would waive a separate surety on the bond where the applicant
demonstrates a history of financial solvency and continuous operation.

601 Recommendation

601 This subsection should be deleted because: (1) The regulatory authority would have to
make an evaluation of the applicant's financial history; and (2) the reclamation aspects of the
mine may extend for greater than 40 years (despite the limitation to a five-year permit) and thus
make it impossible to predict that a company would still be solvent at the end of this time.

601 V. Section 410(b)(4) of S. 7 and 510(b) of H.R. 2 Comments

602 This subsection, specifically the earlier portion, indicates that a permit can not be
obtained to mine in areas designated unsuitable for mining. However, the last portion of the
subsection implies that mining may take place within such areas if substantial legal and financial
commitments have been made by the applicant prior to the enactment of this Act. What
constitutes substantial legal and financial commitments? Considerable surface area and mineral
properties have already been purchased or leased by mining companies for future mining. By
this subsection, a company may be able to obtain a permit to mine on designated lands if the
company purchased or leased the land prior to enactment of the Act.

602 VI. Section 415(b)(3) of S. 7 and 515(b)(3) of H.R. 2 Comments

602 This subsection, as written, would substantially relax reclamation standards to the extent
that slopes unsuitable for vegetation would be created. Also, it is not clear how adequate drainage
can be provided if the amount of overburden is insufficient to restore to the approximate original
contour. The loopholes provided in this subsection could eliminate any meaningful reclamation.

602 VII. Section 417(b) and 417(c)(1) of S. 7 and 517(b) and 417(c)(1) of H.R. 2

603 Comments

603 These sections require monthly reports from mining companies and monthly inspections by the regulatory agency with subsequent inspection reports to be written and filed in the county, gulticounty area, and state area of mining. In addition, a copy of each report must be filed with the Federal agencies overseeing the State program. This abundance of inspections and paperwork is unjustified and will only serve to divert the focus of attention from care of the land to care of the paperwork.

603 Recommendations

603 Language should be changed to require one full inspection and report by the regulatory authority every three months as was provided in the interim standards, and only one report per quarter by the mining company for each discrete mining operation . Rather than filing inspection reports in the county, it is recommended that these reports be made available for public review at the nearest area office of the regulatory agency.

603 VIII. Section 424 of S. 7 and 524 of H.R. 2

603 Comments

603 This requires any agency, unit, or instrumentality of Federal, State, or local government, including public utilities and corporations; to comply with the provisions of this Act if such party engages in surface coal mining operations.

604 Recommendations

604 This is an important and valuable provision.

604 IX. Section 501(35) of S. 7 and 701(25) of H.R. 2

604 Comments

604 The definition of "permit area" is inadequate and does not describe those lands that should be contained within the boundary of the "permit area."

604 Recommendation

604 The "permit area" should include the activities defined under "surface coal mining

operations" (Section 401(5)) and should also include surface areas overlying proposed
underground excavations.

605 STATEMENT OF GOVERNOR ED HERSCHLER OF THE STATE OF WYOMING AT THE DEPARTMENT OF THE INTERIOR PUBLIC HEARING ON PROPOSED RULE MAKING FOR ADOPTION OF WYOMING COAL RECLAMATION STANDARDS, CHEYENNE, WYOMING, SEPTEMBER 23, 1976

605 MR. CHAIRMAN, I AM APPEARING HERE TODAY TO COMMENT ON THE PROPOSED AMENDMENT TO THE REGULATIONS AT 30 CFR PART 211.

605 THE STATE OF WYOMING IS PRESENTLY ENGAGED IN LITIGATION WITH THE DEPARTMENT OF THE INTERIOR CONCERNING THESE REGULATIONS. MY APPEARANCE HERE SHOULD NOT BE CONSTRUED AS AN ACCEPTANCE OF THOSE REGULATIONS NOR AS AN ABANDONMENT BY THE STATE OF WYOMING OF 1TS POSITION IN THE PENDING LAWSUIT. HOWEVER, I MAKE THESE COMMENTS IN THE SPIRIT OF CONTINUING FEDERAL-STATE COOPERATION.

605 MY FIRST COMMENT CONCERNS THE REQUIREMENT THAT THE STATE OF WYOMING ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF THE INTERIOR PRIOR TO THE FINAL ADOPTION OF THE PROPOSED AMENDMENT. IT IS ENTIRELY INAPPROPRIATE FOR A MEMORANDUM OF UNDERSTANDING TO BE MADE A PRECONDITION TO THE FINAL ADOPTION OF THESE REGULATIONS.THE REGULATIONS ADOPTED ON MAY 17, 1976, SPECIFICALLY SEC. 211.75(A), MAKE NO REFERENCE TO A MEMORANDUM OF UNDERSTANDING AS BEING A NECESSARY INGREDIENT TO THE ADOPTION OF STATE LAW ONCE IT HAS BEEN DETERMINED THAT STATE LAW IS AS STRINGENT OR MORE STRINGENT THAN THE FEDERAL REGULATIONS. IT WOULD APPEAR THAT THE DEPARTMENT OF THE INTERIOR, IN AN EFFORT TO HINDER FEDERALSTATE COOPERATION, IS ESTABLISHING ANOTHER HURDLE TO THE ADOPTION OF SEC. 211.76.

606 SECOND, IT CONTINUES TO BE THE STATE OF WYOMING'S POSITION THAT LESSEES OF FEDERAL COAL MAY NOT MINE THAT COAL UNTIL THEY HAVE A STATE MINING PERMIT. THE PROPOSED RULES UNDER CONSIDERATION DO NOT INCORPORATE THE PORTIONS OF WYOMING STATE LAW REQUIRING A MINING PERMIT FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

606 THE PROPOSED AMENDMENT TO PART 211 SHOULD BE REVISED TO CLEARLY INDICATE THAT THE ADOPTION OF WYOMING STANDARDS AS PART OF THE 211 REGULATIONS DOES NOT ELIMINATE THE RESPONSIBILITY OF THE COAL MINER TO COMPLY WITH THE WYOMING ENVIRONMENTAL QUALITY ACT BY APPLYING FOR AND RECEIVING A STATE PERMIT TO MINE PRIOR TO COMMENCING OPERATIONS.

606 THIRD, INTERIOR PROPOSES TO ADOPT ONLY WYOMING'S PERFORMANCE STANDARDS. THUS, THE PROPOSED AMENDMENT IS DEFICIENT BECAUSE IT EXCLUDES WYOMING LAWS DEALING WITH MINING PERMITS, PERFORMANCE BONDS, BOND RELEASE, LANDS UNSUITABLE FOR SURFACE MINING, AND VARIANCE PROCEDURES.

606 AN EXAMPLE OF THE POSSIBLY DISASTROUS CONSEQUENCES OF THESE OMISSIONS IS THAT THE MINING COMPANY MAY NOT HAVE AN ADEQUATE BOND RUNNING IN FAVOR OF THE STATE TO INSURE RECLAMATION. IF THE MINING COMPANY THEN FAILS TO MEET ITS RECLAMATION OBLIGATIONS, THE STATE OF WYOMING WILL BE LEFT WITH AN UNRECLAIMED EYESORE. A

SECOND EXAMPLE IS THE OMISSION OF WYOMING LAND-OWNER CONSENT PROVISIONS. ALTHOUGH THE REGULATIONS PURPORT TO BE NEUTRAL ON THIS QUESTION, THE LANDOWNER'S CONSENT PROVISION ARE WORKABLE ONLY IN CONJUNCTION WITH THE PERMIT PROCESS, A REQUIREMENT WHICH HAS NOT BEEN INCORPORATED IN THESE REGULATIONS.THE PIECE-MEAL ADOPTION OF WYOMING LAW PROPOSED IN YOUR REGULATIONS CONSTITUTES AN ATTEMPT BY THE DEPARTMENT OF INTERIOR TO DEPRIVE WYOMING'S CITIZENS OF THE ENVIORNMENTAL SAFE GUARDS ADOPTED BY OUR STATE LEGISLATURE.

607 WYOMING CONGRESSMAN TENO RONCALIO PLACED AN ANALYSIS OF THESE DEFICIENCIES IN THE CONGRESSIONAL RECORD EARLIER THIS MONTH. A MINING RECLAMATION PROGRAM WILL BE SUCCESSFUL ONLY IF IT IS A HIGHLY SITESPECIFIC PROCESS. THE ADMINISTRATIVE PROCESS OF EXAMINING AND EVALUATING PERMIT APPLICATIONS IS THE MOST CRITICAL ELEMENT IN ARRIVING AT A WORKABLE MINING AND RECLAMATION PLAN. THE FEDERAL ADOPTION OF CERTAIN PORTIONS OF WYOMING LAW, WHICH ARGUABLY MAY BE INTERPRETED TO ELIMINATE THE REQUIREMENTS OF A PERMIT APPLICAITON AND PROCESSING BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY, WILL DEFEAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S PROGRAM OF ASSURING THE RECLAMATION OF MINED LANDS. IN THE ABSENCE OF COMPLIANCE WITH THESE STATE PROCEDURAL REQUIREMENTS, ADOPTION OF STATE PERFORMANCE STANDARDS TO BE APPLIED AS FEDERAL LAW IS AN EXERCISE IN FUTILITY. THE ONLY RESULT OF SUCH AN EXERCISE WILL BE THE ELIMINATION OF MANY OF THE SUBSTANTIVE AND ENFORCEABLE STATE LAW REQUIREMENTS WHICH PROTECT THE SURFACE LANDOWNERS AND WYOMING'S RESOURCES. REPLACING STATE ADMINISTRATION BY A FEDERAL REGULATORY PROGRAM WHICH HAS HISTORICALLY BEEN INEFFECTIVELY ADMINISTERED AND ENFORCED, IS NOT IN THE BEST INTEREST OF THE CITIZENS OF WYOMING OR THE COAL INDUSTRY WHICH IS A VITAL PART OF OUR STATE'S ECONOMY.

608 FINALLY, THE VARIANCE PROVISION OF SEC. 211.74 MUST BE RESTRUCTURED TO PROVIDE THAT NO VARIANCES FROM STATE STANDARDS WHICH ARE ADOPTED AS FEDERAL LAW MAY BE GRANTED UNDER THE FEDERAL REGULATIONS UNLESS SUCH VARIANCE REQUESTS HAVE FIRST BEEN PROCESSED THROUGH, AND APPROVED BY, THE STATE REGULATORY AUTHORITIES. FAILURE TO ADOPT THIS MODIFICATION FURTHER DEMONSTRATES THAT THE INTERIOR DEPARTMENT IS NOT APPLYING STATE RECLAMATION LAW TO FEDERAL COAL DEVELOPMENT, DESPITE CLAIMS BY THE DEPARTMENT OF THE INTERIOR TO THE CONTRARY. WE CANNOT ACCEPT THE PROCESS OF FEDERAL OFFICIALS GRANTING VARIANCES FROM STATE LAW.

608 THE STATE OF WYOMING STRONGLY OPPOSES THE INTERIOR DEPARTMENT'S ATTEMPT TO PREEMPT STATE LAW BY ADMINISTRATIVE ACTION. SUCH ACTION IS A MAJOR DEPARTURE FROM PRIOR LEGISLATIVE AND ADMINISTRATIVE PRACTICES, AND THREATENS TO IMPAIR THE EFFORTS OF THE STATE GOVERNMENTS TO PROTECT THE ENVIRONMENTAL VALUES WHICH HAVE ASSUMED INCREASING IMPORTANCE IN RECENT YEARS.

609 THE STATE OF WYOMING CONTINUES TO URGE THE DEPARTMENT OF THE INTERIOR TO ALLOW STATES WITH GENERAL REGULATORY SCHEMES WHICH PROVIDE FOR SUBSTANTIAL ENVIRONMENTAL PROTECTION TO IMPLEMENT THEIR OWN PROGRAMS IN THEIR ENTIRETY. THAT PROCEDURE WOULD BE MUCH SIMPLER AND MORE EFFECTIVE THAN THIS ATTEMPT AT IMPOSING DIFFERENT ELEMENTS FROM BOTH FEDERAL AND STATE RULES. THE FEDERAL GOVERNMENT SHOULD RETIRE FROM THE SCENE TO THE GREATEST EXTENT POSSIBLE, LEAVING LOCAL OFFICIALS PRIMARILY RESPONSIBLE.

609 THIS PREFERENCE OF THE STATE OF WYOMING REFLECTS DEEP-SEATED BELIEFS THAT PROPER ADMINISTRATION OF RECLAMATION LAWS BE BEST ACHIEVED BY THOSE CLOSEST TO THE PROBLEM. HERE IS AN OPPORTUNITY FOR THE FEDERAL GOVERNMENT TO RETRACT ITS EXPANDING BUREAUCRACY BY RECOGNIZING THAT STATE GOVERNMENTS ARE BETTER ABLE TO CONTROL THOSE EVENTS WHICH HAVE THE GREATEST IMPACT UPON LOCAL PEOPLE.

609 THANK YOU FOR YOUR CONSIDERATION OF THESE VIEWS.

610 Senator METCALF. Thank you, Governor Herschler, for your statement. My friend from Wyoming has fought just as hard as you have for States rights, if I may use that term in connection with this bill, in order to protect the interests of the State of Wyoming. I know some of the things you have stated have to be general. I have said so before and I repeat: I am not wedded to any proposition in this bill.

610 I thank you for your statement.Now I will call on my friend from Wyoming. Again, I am delighted to have you back here to help me as my good left arm.

610 Senator HANSEN. Thank you very much, Mr. Chairman. Governor, let me congratulate you and the legislature of the State of Wyoming for having accomplished a monumental task, I think, during the last several years. I think that would go back more than just since you have been in office. In all honesty I can say it has been a bipartisan effort that has succeeded in facing up realistically to the problems of surface mining and increased dependency on foreign sources of energy in the United States today.

610 I commend you and the State for all that has been done for taking the extremely responsible position you have in bringing into being those laws that were agreed jointly by you and the Secretary of the Interior as being at least as stringent and as adequate in every respect as had been proposed in Federal law. I must salute you for the effort that has been accomplished.

610 Governor HERSCHLER. Thank you.

610 Senator HANSEN. The Governor's regional energy policy office recently released a statement setting forth its position on surface mining legislation. Do you agree with that statement?

610 Governor HERSCHLER. I am basically in agreement with the position of the western Governors, but we have not officially endorsed that position. I would hope that you might read my testimony carefully to see what is our situation.

610 We feel, of course, we have adequate reclamation laws. I am very much in favor of the Federal strip mining bill, Senator; delighted, of course, that we would have the opportunity to provide the enforcement of our State laws on all lands within the State of Wyoming.

610 One of the areas I am in disagreement with the western Governors is we believe their position is the matter of the abandoned mine resolution should be removed fromt he bill. I feel it should be left in the bill. At this point I don't think we have really taken a position in Wyoming so far as the alluvial valley provision of the bill. But otherwise, we are basically in agreement.

610 Senator HANSEN. I think Senator Metcalf may want to interpose a question at this point for clarification.

610 Senator METCALF. In order to keep the record straight, I have a letter from Governor Judge transmitting to me the public policy resolution No. 76-11. Is that the one to which you referred: the resolution of the Western Governors Conference?

610 Governor HERSCHLER. It could very well be, Senator.

610 Senator METCALF. Let me put the letter and the resolution in the record at this point so we will know what we are testifying about.

610 [The letter and resolution appear on the following pages.]

611 STATE OF MONTANA, OFFICE OF THE GOVERNOR, Helena, Mont., February 25, 1977.

611 HON. LEE METCALF, U.S. Senate, Dirksen Office Building, Washington, D.C.

611 DEAR LEE: The Western Governors' Regional Energy Policy Office, comprised of the governors of Arizona, Colorado, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, is renewing its efforts to secure the establishment in Denver of a regional center of the Energy Research and Development Administration. As chairman of this group, I submit herewith a resolution urging this action.

611 The centralization of ERDA activities in Washington is a continuing frustration to people in our states who attempt to transact business with that agency. The few existing "field

operations offices" of ERDA in our states by no means substitute adequately for a regional office, since these existing offices have very narrow scopes of authority and responsibility.

611 Most of ERDA's contracts for research and development work continue to be awarded to ERDA's own laboratories and to a few large companies which have long-standing contractual relationships with ERDA and its predecessor agencies, while universities and other research institutions in our region are too often ignored.

611 We think the national good as well as the interests of our states would be served by decentralization of ERDA's Washington-based operations.

611 You are aware that our western region is being called upon to supply an increasing share of the nation's energy and that a substantial portion of energy research and development programs involve such western energy resources as coal, oil, natural gas, solar, and wind energy and geothermal energy.

611 During the previous administration, ERDA officials proposed the establishment of a regional center in Denver, but the Office of Management and Budget opposed this action. We presume this opposition by the former OMB was based on opposition to increased Federal spending, but in fact such opposition was only superficial. The fact is that the proposed ERDA center would not increase overall spending but would merely decentralize the present ERDA staff.

611 We are, of course, aware of the planning by the present administration to reorganize the Federal energy agencies into a new Department of Energy, and we commend those efforts. We recognize that any reorganization also will bear directly on the structure of the existing regional energy offices. We submit, however, that none of the existing Federal offices in the Rocky Mountain/Plains Region have the administrative or technological base required to manage regional components of ERDA's research, development, and demonstration programs. Therefore, we urge that the main thrust of the enclosed resolution be recognized as addressing the energy RD&D operations of the new Department of Energy.

611 Sincerely,

611 THOMAS L. JUDGE, Governor, State of Montana, Chairman, Western Governors'

Regional Energy Policy Office.

611 Enclosure.

611 PUBLIC POLICY RESOLUTION 76-11 - URGING ESTABLISHMENT OF AN ERDA REGIONAL CENTER IN DENVER

611 Whereas, the ten states which comprise the Western Governors' Regional Energy Policy Office (Arizona, Colorado, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming) contain a major share of the Nation's energy resources (55% of the coal, 90% of the oil shale, 95% of the uranium, 10% of oil, 9% of the natural gas, and large abundances of solar, wind, biomass, and geothermal energy); and

611 Whereas, the same ten states, their state governments, their industries, their research institutions, and their citizens are being called upon by the federal government to make these energy resources available to the Nation; and

612 Whereas, the orderly development of the Region's energy resources requires substantial planning and programming within the Region for research and development of the several energy technologies, for environmental controls, for socioeconomic assistance, and for utilization of the water resources; and

612 Whereas, the Energy Research and Development Administration has a major federal responsibility for energy policy-making, planning, and programming and for creating energy choices for the future of the Rocky Mountain/Plains Region; and

612 Whereas, the Energy Research and Development Administration has conducted an extensive evaluation of the need for a regional center in the Denver region and has determined that a Denver Regional Center is vital to the successful implementation of its energy program missions; and

612 Whereas, the Western Governors' Regional Energy Policy Office and its member states view the establishment of a Denver ERDA Regional Center as essential to an effective federal/state relationship in energy research, development, demonstration, and commercialization; Now, therefore, be it

612 Resolved , That the Western Governors' Regional Energy Policy Office calls upon the President and the Congress of the United States, the Office of Manuagement and Budget, and the

Energy Research and Development Administration to proceed with haste in creating and establishing an ERDA Regional Center in Denver; and

612 That an essential purpose of the establishment of the ERDA Regional Center be to decentralize functional operations and to transfer decision-making authority to the region; and

612 That the Denver ERDA Regional Center be granted responsibilities and authorities in programming and planning areas that relate to the interests of our states' governments, our research institutions, our industries, and our citizens, which should include but not be limited to the management of specific ERDA energy projects pertinent to our region, authority for funding research and development proposals, coordination of ERDA energy conservation and extension services, and a significant role in the planning and analysis operations of ERDA.

612 THOMAS L. JUDGE, Governor of Montana, Chariman, Western Governors' Regional Energy Policy Office.

612 Senator HANSEN. We have heard a great deal lately about agreements entered into between four Western States and the Department of the Interior regarding State enforcement of reclamation laws on Federal lands. First of all as I indicated earlier. I congratulate you on the achievement of this landmark agreement. To a State with as much Federal land as Wyoming, this is certainly an important development.

612 As I understand the various agreements, Governor, Wyoming differs from the other three in that it adopts the substantive requirements of the State's reclamation law as the Federal standard. Could you elaborate on that for the committee?

612 Governor HERSCHLER. Senator Hansen, it is my understanding there are four States in the West that have entered into the agreement with the Secretary of the Interior on the enforcement of regulation of reclamation; Wyoming, Utah, New Mexico and North Dakota, I believe. I think the difference basically between our agreements, the difference between Wyoming and the other three States is that the Secretary agreed our laws, our reclamation and environmental laws were as strict or stricter than the Federal standards under the 211 regulations; whereas the other three States agreements is that they will be afforded the opportunity to enforce the Federal reclamation laws rather than their own State standard.

612 The agreement that we entered into, briefly some of the features of it, it allows for single permit application for the State and Federal Government, it agrees to resolve the jurisdiction problems caused by the checkerboard ownership in Wyoming of Federal and State land, and Wyoming has agreed to use State revenues to pay for the enforcement and administration of the agreement.

613 As I indicated in my statement, our legislature just recently authorized putting on 11 additional professionals in our land use department and department of environmental quality to help enforce the law. Of course this may have come about as a result of a lawsuit I filed against the Secretary of the Interior on the basis we have the authority to regulate the use of our own reclamation laws.

613 We took the position at that point, Senator, that the Federal lands that were owned in Wyoming were under the sovereign jurisdiction of the State of Wyoming and the Federal Government only had a proprietary interest rather than a sovereign interest in those lands. I don't know if that had any bearing on getting the Secretary to enter into such an agreement. I like to think it did have.

613 Also, the agreement clearly reflects the joint responsibilities of State and Federal Governments in the management of the lands within the borders of the State of Wyoming. Those are the basic differences.

613 Senator HANSEN. Do you see any constitutional problems with such a concept?

613 Governor HERSCHLER. Sir, I was an awfully good lawyer before I became Governor. I quit practicing law about 2 years ago, sir. My attorney general tells me he does not see any constitutional problems.

613 Senator HANSEN. I would refer to the hearings before this committee, Mr. Chairman. When Secretary Andrus and FEA Administrator O'Leary were here, I believe they responded generally as I recall their testimony, that they saw no constitutional problems.

613 Senator METCALF. If the Senator will yield. It was in response to a question that I addressed to Secretary Andrus asking him about the constitutional provisions of the delegation of

power and he responded that in his opinion, and the opinion of the Solicitor, there were no problems with the Constitution, if the power were delegated. I completely concur, Governor.

613 We have delegated substantial powers already to the Secretary of the Interior and one of the reasons for this legislation is to clarify the delegation of such powers. But I hope we would make it very specific, that Congress can delegate this constitutional power to administer the public lands, to the respective States and that it will be very clearly defined and the constitutional question will thus be answered.

613 Senator HANSEN. One further question, Mr. Chairman. It seems to me such an agreement is highly desirable and should be commended. I for one would like to see the continuation of this concept. Governor, have you given any thought to the manner in which this agreement could be recognized in the present legislation?

613 Governor HERSCHLER. Senator, it seems to me if we are going to produce coal in Wyoming on an environmentally sound basis, I think we must continue the agreement and I would hope it would be done. I have asked my attorney general to prepare some possible draft amendments to the bill and I have those amendments with me, sir.

614 This proposed amendment would recognize the agreements and would continue to remain in force and effect so long as Wyoming upheld its end of the agreement or its bargain. I am not suggesting Wyoming should be totally exempt on this bill. I am just asking Wyoming not be penalized for having the actual responsibility it has had in the past.

614 We have, I think, a workable arrangement worked out with Interior, and I would hope we would be able to continue to do so. It is not for the purpose of exempting Wyoming from the bill, but I think this language in the proposed amendments I have with me which I have given the committee, I think they would be helpful and I would urge the committee to consider those.

614 Senator HANSEN.I have no further questions. Thank you, Governor.

614 Senator METCALF. Now we are going to call on Senator Ford.

614 Senator FORD. I am delighted to see some of my former colleagues here in the interest of this legislation in these States. Two or three things enter my mind as I listened to your testimony

and have an opportunity to hear the others and several other Governors have been here to testify
in regard to this legislation.

614 What was the date of the agreement you have instituted with the Department of the
Interior, the approximate date?

614 Governor HERSCHLER. It was approximately, Senator, about the 10th of December as I
recall, 1976.

614 Senator FORD. That was just before the administration changed?

614 Governor HERSCHLER. Yes, sir.

614 Senator FORD. You do not have another agreement with the present Secretary of the
Interior?

614 Governor HERSCHLER. No, I do not.

614 Senator FORD. Is it binding on this present administration or can they alter or change it?

614 Governor HERSCHLER. I assume it can be changed, yes, sir. As a matter of fact, after
we entered into the agreement our environmental quality laws were published in the Federal
Register along with this agreement and there were some minor changes we agreed to, to change
or alter it to some degree. I assume the Lord giveth, the Lord taketh away.

614 Senator FORD. Whatever is put on by pen can be taken off by pen. I don't know what the
Lord is going to do, but I know what the pen can do.

614 You are asking, in your testimony, to be given the authority to carry out the reclamation
program in your State as it relates to the State lands or public lands of Wyoming, or the private
lands and the Federal lands.

614 Governor HERSCHLER. Yes, sir.

614 Senator FORD. What portion of the funds or the royalties would you expect to receive?
Do you have any objection to the royalties, half of it go back to your State? You made some
reference to a 35 cent royalty. I think the House bill says 15 cents on deep mine, 35 cents on
strip mine. The Senate bill says only from Federal coal.

615 Governor HERSCHLER.Senator, I think we take the position the royalty funds, we are
getting royalties of course, Federal royalties, as I understand and I am not sure which bill, where

there is an assessment I suppose in the form of a tax that will go into a reclamation fund.

615 I think our position, Senator, is we have an excise tax on coal in Wyoming, a severance tax; much of that money is used to fund our department of environmental quality. Frankly we think perhaps that money should be used for that. We really don't have a hand out to Congress for additional money. We think we could operate our own program without Federal money.

615 Senator FORD. You do put your severance taxes, I think it is called primarily in all of the States, you do apply that severance tax to coal that is mined on Federal lands as well as private lands?

615 Governor HERSCHLER. Yes, sir.

615 Senator FORD. All of that money goes in. What is the percentage of severance tax in your State, Governor?

615 Governor HERSCHLER. Until we had this legislation, we had 4 percent on coal, uranium, tronum, and it varied on other minerals. It was 2 percent on uranium and 2 percent on bent mining.

615 Senator FORD.The 4 percent you applied to the coal, is that at the mouth of the mine, at the time it is mined, or when it is prepared to go to the retail market?

615 Governor HERSCHLER. It is based on an assessed evaluation. It is somewhat of an arbitrary figure. Evaluation is determined by our board of equilization, it is not based upon the market value or the mine mouth.

615 Senator FORD. The market value goes up or down, it does not make any difference, it is on assessed value?

615 Governor HERSCHLER. Yes. I might add our legislature just recently passed additional taxes on coal and other minerals. We have placed a 1.5 percent on those three particular minerals; coal, uranium, and tronum in which we are earmarking it for our State universities and colleges, a capital building fund.

615 There is another bill which has passed and I will be frank with you, it passed in the last wee hours of the legislature. I have not seen the bill.

615 Senator FORD. Do you have the right of veto?

615 Governor HERSCHLER. Yes, sir, I do.

615 Senator FORD. Has that time expired?

615 Governor HERSCHLER. No, sir.

615 Senator FORD. I wanted to understand what leverage you have. In the Senate bill, the royalties will apply only to Federal coal. My State, for instance, is the largest coal producing State in the Nation. There would be no royalty placed on coal mined in my State. Yet, we would be in the position to receive 50 percent of the royalty placed on coal mining in your State. You would receive, under this bill, a 50 percent that would go back automatically.

615 Do you believe your laws are as stringent as this bill?

615 Governor HERSCHLER. Yes, sir, I do.

615 Senator FORD. If you have any weaknesses in your legislation as it pertains to reclamation, what will it be to this bill?

616 Governor HERSCHLER. As far as reclamation is concerned, Senator, I am not prepared to get into the technical aspects of mining in reclamation, but I have been advised by our land division that our laws are strict or stricter in probably all aspects of it.

616 Senator FORD. That would be your recommendation, one reason of your recommendation, that in this legislation we have equal or better, that the States be equal or better than the Federal law in order for you - otherwise we would be putting a floor.

616 Governor HERSCHLER.I think that is a fair statement.

616 Senator FORD. It means you could impose more stringent regulations on your State if you so desire.

616 Governor HERSCHLER. Yes, sir.

616 Senator FORD. So we could, in essence, wind up with 50 different reclamation programs that way, couldn't we?

616 Governor HERSCHLER. I think it is possible, Senator, but the point I am trying to make, we have such diverse situations in the United States; as I understand it, the coal being mined in West Virginia and Kentucky has a different degree of slope, for example, that we do not have except in one or two areas in Wyoming.

616 Generally speaking in Wyoming, our coal lies on a very level basis. We have one area
that I think there was a specific exemption in a strip mining bill, the one area where the slope is
about 20 degrees, but most of our coal, particularly in the Powder River Basin, lays practically on
a horizontal basis. I think you have a different situation in West Virginia and in Kentucky and
obviously, regulation or laws that apply to Kentucky will not apply to Wyoming or vice-versa.

616 Senator FORD. I notice in your statement coal production has increased 300 percent.

616 Governor HERSCHLER.Yes, sir.

616 Senator FORD. That is a pretty good increase. Is there any particular reason for it?

616 Governor HERSCHLER. Yes, sir. I suppose the energy shortage. We have many mines
that have opened up. Of course particularly in the areas, the strip mining ares, it is very easy to
mine the coal. We have large areas, tremendous machines -

616 Senator FORD. There is also a difference between the Btu and the sulfur content.

616 Governor HERSCHLER. Yes, sir. Our coal has a high Btu, low sulfur content. A lot of
our coal goes to the East where it is burned because of the Btu.

616 Senator FORD. Ten million tons came up our river. I am very familiar with that.Also,
you have to burn more coal in order to get the Btu equivalent so you add sulfur into it so it
balances out with the high sulfur coal.

616 Governor HERSCHLER. Yes, sir.

616 Senator FORD. How many permits for surface mining in your State? I won't pin you
down, an approximate number.

616 Governor HERSCHLER. I am sorry, sir, I cannot give you that information.

616 I have been advised there were 45 permits either in effect or under consideration.

617 Senator FORD. What would be the average acreage that you would permit?

617 Governor HERSCHLER.It would be a relatively small area.The point is, it might be a

large area, it might be 1,000 acres, but you mine in various degrees so you are opening a pit for say 3, 4, or 5 acres, and then move into another area while they are reclaming that.

617 Senator FORD. Do you permit 1,000 acres for the performance of that permit over a period of time? You permit the 1,000 acres at one time?

617 Governor HERSCHLER. This can be done, but it is permitted on the basis it will be done in phases.

617 Senator METCALF. Will the Senator from Kentucky yield?

617 Senator FORD. Yes, sir.

617 Senator METCALF. For how long a period is the permit granted?

617 Governor HERSCHLER. We look at some of our mines, Senator, that could be in operation for 40 years.

617 Senator METCALF. I understand, but do you grant a 40-year permit or do you require the operator to come in and renew it periodically?

617 Governor HERSCHLER. We have them submit to us a mining plan for the area they want to mine. We do not set a time limit on that particular time, but they have to submit a plan as to how they are going - how long they are going to mine the claim and when they will reclaim it.

617 Senator METCALF. This bill requires that there be a permit for 5 years and that it be subject to automatic renewal after that period. We have had testimony from other States and I think when Governor Judge comes we will hear testimony that Montana requires annual renewal of permits. But you give a permit for an indefinite period so long as they are in compliance with your regulations and statutes?

617 Governor HERSCHLER. Yes, sir. And of course there are inspections at all times. If they are violating the terms of that permit, we shut them down. Up until now we have not had necessity or occasion to do that.

617 Senator FORD. You have not stopped an operation since you started to permit?

617 Governor HERSCHLER.Not as far as reclamation is concerned, I am sure there are some that have been temporarily halted because of safety precautions or something like that.

617 Senator FORD. What is the highest degree you would surface mine in Wyoming?

617 Governor HERSCHLER. I am not sure I understand you.

617 Senator FORD. We are talking about slopes and the bill refers to 20 degrees. Some in the eastern United States may go as high as a 30 degree slope. We are talking about returning it to its original contour. What is the degree of slope?

617 Governor HERSCHLER. I think we have some mining operations in the southwestern corner of our State that may have a slope of between 15 and 20 degrees.

617 Senator FORD. That would be the maximum?

617 Governor HERSCHLER. I would think so.

618 Senator FORD. How do you reclaim the land? What is your procedure? I am asking a lot of questions here, but I think I need to know because my judgment is limited to east of the Mississippi River. Is the difference in the rainfall, difference in topography, difference in soil, difference in the overburden which is very small and the seams are 150 feet wide? We are lucky to get a 50-inch seam so I am asking some questions here that will help me, I think.

618 Governor HERSCHLER. Generally, Senator, when the applicant makes a request for a permit, he will come in with a reclamation plan which is then submitted to our department and our people check this. Very often the plan does not require them to restore to the same condition. They may have some ideas they can use instead of reclaiming it say, for grazing, they may be able to reclaim it for recreation purposes, something of this kind, if it is water or whatever it may be.

618 Each plan could conceivably be different. We look at each area on a site-specific basis. This is something I think that is beneficial insofar as our State is concerned rather than having a flexible program where you say you are going to restore it to the condition it was before mining or to some superior condition.

618 We find our country is such that we are a very arid country.In many cases some of the land is in better condition after reclamation than it was prior to mining. We have planted trees or planted different types of grass, we have been able to get water on some of this land. Some of it

is very nice, it is a lot better than it was before the mining. So we go on the basis of a
site-specific evaluation.

618 Senator FORD. In the 1,000 acres you mentioned, would the whole 1,000 acres have a
plan, and in the interim if some new technologies were developed, would you allow them to
come back in and alter their permit?

618 Governor HERSCHLER.Yes, sir, and I think we have the flexibility to do that with our
reclamation laws. I might add if you get an area, for example, 1,000 acres, you probably have
State land, private land and Federal land disbursed in that particular area. So I don't know of
very many of those areas that do not have State and Federal lands.

618 Senator FORD.You are talking the same change or same reclamation in the eastern States
because in my State, for instance, and neighboring States, flat land is at a premium. A 300-acre
farm in the eastern part of Kentucky is a large, large farm and the ability - we had a statement the
other day a football field in eastern Kentucky was only 70 yards instead of 100 yards because we
couldn't find enough flat land to put a football field on. So the mountaintop removal would be
foreign to mining and reclamation in your area.

618 Governor HERSCHLER. I would say yes, sir.

618 Senator FORD. Where we remove the top of the mountain and hollow-fill the rest of the
land, I might add in most of the States doing surface mining, the largest State to my knowledge
here and you are not in that is a 360-acre average in the permitting down to Pennsylvania, I think,
was about 119 acres that would be the average, where they give 1,339 permits in a year.

618 Last year for instance their average permitting would be 119 acres whereas West Virginia
only gave 450 permits but their average acreage was 360 acres; Illinois gave only 34 surface
mining permits, their average acreage was 510, so I would suspect your permits would be -

619 If you are giving 1,000 acres at a time, then your permits would be a very small number
of permits because of the large number of acres you are allowing per permit.

619 Governor HERSCHLER.I am sorry I cannot give you specific information on that, but I
will be happy to provide it to you. I do know of one proposed mine, and I discussed it with the

operator, and it seems to me there are about 2,000 acres involved in this one particular mine
where we have a State section which would be 640, and there are some Federal lands, private
lands, and it is my recollection it was about 2,000 acres.

619 Senator FORD. Do you require a bond on the total 1,000 acres at the time they ask for the
permit?

619 Governor HERSCHLER. We require a bond based on their entire operation, yes, sir.

619 Senator FORD. What is your bonding per acre?

619 Governor HERSCHLER. The bond is established on a site-specific matter, what they feel
is necessary for the reclamation.

619 Senator FORD. What would be the minimum bond? Do you have general knowledge
there? You have a man sitting behind you slipping you some papers. I understand the position I
am putting you in, I apologize for it, but what would be the average bond per acre?

619 Governor HERSCHLER. I would assume it would at least be $2 00 per acre, I would
assume.

619 Senator FORD. In the eastern part of the United States, the operators would have a bond
and they are being required to put up cash or CD's. Are you operators in a position to put up the
funds?

619 Governor HERSCHLER. I think they have an option; they can either put up a surety bond
or they can put up cash or they can put up other forms of security.

619 Senator FORD. If they get a surety bond, they usually have to put up cash in our part of
the country and they keep that for 5 years under this legislation.

619 Governor HERSCHLER. I think they have the option and I think we have the flexibility
to provide whatever type of security that our department feels necessary.

619 Senator FORD. You could almost take all of a man's liquid in order to make a bond for
1,000 acres.

619 Governor HERSCHLER. I wish I could be more specific.

619 Senator FORD. That's fine. These are the problems we face in trying to find a balance
between the environment and the operation and we desperately need the coal.

619 Senator HANSEN. Would you yield? I think it would be fair to observe that one of the great reasons that compels Wyoming to believe it can address its own problems with greater specificity than can Federal legislation is the fact there is such a great variance in the thickness of coal deposits and the contour of land as well as many other things.

619 It would seem as though trying to make some comparisons in the number of permits, Senator, between those issued by one State and those issued by another might not be too meaningful.

620 Senator FORD. I object to that, Senator. It is meaningful. We are going to paint with a raw brush in this legislation.

620 Senator HANSEN. That is precisely why we think a State by State approach is a better approach.

620 Senator FORD. But you are going to get this bill whether you like it or not.

620 Senator HANSEN. I am afraid you are right. I am well aware of the disadvantage of being a member of the minority party.

620 Senator FORD. No, your people are for it.

620 Senator METCALF. Just a moment.

620 Senator FORD.I am the only nonlawyer at this table.

620 Senator METCALF. The only time former Governor Hansen of Wyoming and I have achieved any victories is when we have allied ourselves together on this business of States rights.

620 Senator FORD. The problem I think we are bringing out is that we have a diversity of problems here and one piece of legislation cannot solve all of the problems that are involved in surface mining operations and we have to have some flexibility in this legislation to adjust and accommodate the various regions of this country.

620 That is why I am going into so much detail with you. I apologize.

620 Senator HANSEN. I am glad you made that point. That is exactly the point I had in mind too.

620 Senator FORD. We are going to get the legislation, we are going to write it, it has to
come out of this committee in a manner acceptable to both sides, or probably make both sides
mad and be a pretty good piece of legislation.

620 Senator HANSEN. If I may observe, Mr. Chairman, I think in this morning's paper are
statements by the Governors of West Virginia and Kentucky objecting to one of the concepts that
I think has been pretty high on many peoples idea as to the basic rule of reclamation and that is
land be returned as nearly as possible to its original contour.

620 Senator METCALF. Cliff, I was here, and so was the Senator from Kentucky, and I did
not recognize the statements that were made by the Governors from that news story in the
morning paper.

620 Senator FORD. So what else is new?

620 Senator HANSEN. Thank you. You brought out a point I think is important.

620 Governor HERSCHLER. I would like to apologize to Senator Ford for not being able to
provide him with the specific information on the amounts of bonds and things.

620 Senator FORD. No apology is necessary, Governor. I am better informed on those
questions in detail. You have advised me you will get that to me in writing, I am grateful to you
for it. I am grateful for your patience, you should get the Job Award.

620 Senator METCALF. If the committee will bear with me for just a moment, in previous
testimony witnesses from Kentucky pointed out there was this long involved process wherein
they thought it would involve as much as 22.5 months to get a permit. I hope you would refer to
that gentleman assisting you behind you and ask him to prepare an analogous statement as to how
long and what process you go through to get a permit in the State of Wyoming.

621 Governor HERSCHLER.I will be very happy to provide that information, Senator.

621 [See March 29, 1977 letter that appears at end of Governor Herschler's testimony.]

621 Senator METCALF. Thank you very much. Senator Laxalt. Now Senator Laxalt is a
new member of the committee and a new member of the subcommittee. I am delighted to have
you here. The reorganization of the Senate has taken so long we have not had an opportunity to

have some of the assignments of our new members. But I am very pleased our distinguished
colleague is going to be on this committee and is going to help us with this important legislation.

621 Senator LAXALT. Thank you; Governor, with me you have a kindred soul since I was
Governor of a western State, Nevada.

621 What is the percentage of land ownership, State ownership?

621 Governor HERSCHLER. About 48 percent. I would say the mineral interests are
between 70 and 75 percent.

621 Senator LAXALT. You are in better shape than we are in Nevada. Eighty percent of our
land is in Federal ownership. If I understand your testimony, you are not saying to the Congress
that Wyoming wants to go purely alone; you recognize a fact of life that you have a lot of Federal
ground and it has to be on a partnership basis.Is that basically your position?

621 Governor HERSCHLER. Yes, sir. I think the agreements we entered into has the
Secretary of the Interior looking over our shoulder. I think it is a cooperative arrangement. We
are not attempting to go off by ourselves, no, sir. I think the Federal strip mining bill is necessary,
sir.

621 Senator LAXALT. Tell me this: you are fully into the agreement which has as a premise,
a partnership concept, does it not?

621 Governor HERSCHLER. Yes, sir.

621 Senator LAXALT. With the State having a primary responsibility in terms of the
implementation as I understand the thrust of the agreements.

621 Governor HERSCHLER. The basic nature of the agreement is that a company would
make an application for a permit to our department. We would review it and set bonds and so on
and that would be submitted to the secretary. If he agreed that we had performed everything we
were required to do, then the permit would be issued also from the department, yes, sir.

621 Senator LAXALT. This is terribly important. The basic groundwork in terms of the
evaluation would be done by the Wyoming people on the ground?

621 Governor HERSCHLER. Yes, sir.

621 Senator LAXALT. I gather from your statement there is some concern, understandable, of the effect of this legislation upon that type of agreement.

621 Governor HERSCHLER. Yes, sir. Our concern is of course we feel we are perhaps better and more capable of making a site-specific analysis of each permit.We have people who we think have the expertise to make the necessary investigations as to whether or not the permit should be issued. We think we may be in a better position to go over the matters with the operator to see if they are financially responsible, bonding procedures, and things of this kind.

622 Senator METCALF. Will the Senator from Nevada yield to me a moment? I have just been informed Governor Judge has a plane to catch. I wonder if you will step aside for a moment and we will recall you, so that I can call Governor Judge at this time.

622 Governor HERSCHLER. Yes, sir.

622 Senator METCALF. I will not be very long, but I have known Governor Judge all of his life.His father, Tom Judge, was one of my best and closest friends before his death in an accident.

622 I have followed Governor Judge's career. I could not be prouder of him than if he were my own son. He has been a legislator, a Governor. He has come up the way all of us have gone through in politics and has been a superb Governor, the best Governor in my memory and I have been a Governor-watcher for a long time.

622 I want to tell you, Tom, we are delighted to have you before the committee. I know you are very knowledgeable about the strip mining in Montana which is typical of the western operations. I welcome you and your testimony.

STATEMENT OF HON. THOMAS L. JUDGE, GOVERNOR OF THE STATE OF MONTANA

622 Governor JUDGE. Thank you very much, Senator Metcalf and members of the committee. I certainly want to express my appreciation to our now senior Senator from the State of Montana and the chairman of this subcommittee for the very generous introduction before this subcommittee.

622 I would also like to say it is reassuring to have seen four former Governors who are

members of this committee, two of which have now left the room. I served with Governor Ford and Governor Bumpers.

622 Today I am presenting testimony on behalf of 10 Western States which is the testimony that was referred to earlier. This is an organization called the Western Governors Regional Energy Policy Office which includes the States of Wyoming, Nebraska, Utah, Colorado, New Mexico, Arizona, Nevada, Montana, Idaho and North Dakota.

622 On behalf of the 10 Governors of the Western Governors Regional Energy Policy Office, I welcome this opportunity to testify on pending Federal strip mine legislation which is an issue of critical importance to our energy-rich Western States.

622 We are not strangers to this issue. On February 20, 1975, we urged the Federal Government to set broad guidelines to govern strip mining of coal. We stated that these guidelines must not preempt State legislation designed to meet individual State needs. On July 29, 1975, we urged passage of Federal strip mine legislation and reinforced our policy that State strip mine laws must apply to Federal lands. On June 8, 1975, we urged Congress to override President Ford's veto on H.R. 25.

622 When it became apparent that strip mine legislation would probably not pass the 94th Congress, we entered into extensive discussions with the Department of Interior which was drafting strip mine regulations for Federal coal. At our insistence, the Department of the Interior wrote into those regulations provisions to permit States to enforce their law on Federal land if the State law is as stringent as the regulations and to permit States to enforce the Federal regulations on Federal land where the State law is not as stringent as the regulations. To date, four of the six major Western coal States have entered into agreements with the Department of the Interior.

623 We have wrestled with this problem long and hard. Though we Governors may not all agree on the need for Federal legislation, I might insert into the record here that at the Governors conference we just concluded, the vote in support of the Federal strip mining legislation carried an overwhelming margin. To my knowledge, there were only two States that objected to that legislation; Texas and Alabama.

623 Senator METCALF. Governor Carroll gave us a report about that yesterday. It was his

committee from which that report came.

623 Governor JUDGE. We well recognize that Congress now stands on the verge of a final resolution of the issue. We hope that you will understand the importance of this issue to Western States and that the bill you send to the President will respect the place of States in a Federal system of government and will be a workable bill.

623 To accomplish these objectives, the bill must provide for State administration and enforcement of reclamation law.

623 It is imperative that States retain responsibility for administering and enforcing coal mine reclamation standards in order to adequately respond to unique conditions in each State, retain continuity in enforcement of reclamation standards, avoid creating a new Federal bureaucracy, and avoid the problems of administering two standards within the same State, for example, one for Federal land and one for other land.

623 Under current Federal regulations, States are provided the option of administering and enforcing Federal environmental protection rules on Federal lands. In addition, where a State's laws and regulations are at least as stringent as the Federal rules, the Federal Government has incorporated the State standards into the Federa regulatory scheme.

623 This optional State enforcement of Federal standards which is implemented by cooperative agreements between a State and the Department of the Interior is in force in four of the major Western coal producing States; Wyoming, Utah, New Mexico, and North Dakota. The primary thrust of these agreements is to avoid the dual regulatory system that would otherwise exist on Federal and other lands within a State. It is anticipated the agreements will provide the necessary regulatory continuity that the coal industry prefers.

623 In light of the many months of negotiations between the Western States and the Department of the Interior and the continued desire to avoid a dual system of regulation, we recommend that any final legislation provide that: cooperative agreements now in existence be permitted to continue, with necessary amendments to conform to the interim and final performance standards and that, at the request of the Governor of a State, the Secretary shall enter into a cooperative agreement with the State to provide for State administration and enforcement of the provisions of the act.

624 These cooperative agreements would include the interim and final performance standards, regardless of whether such State has a reclamation law as stringent or more stringent than such standards, provided that such State demonstrates it has or will have the capability to administer and enforce such standards.

624 Any State with an approved State program or cooperative agreement may elect to regulate surface coal mining and reclamation operations on Federal lands within the State. Such regulation shall be subject to all the provisions of the act.

624 If a State assumes exclusive jurisdiction of mine reclamation, the Federal Government, which would have to administer a reclamation program if the State did not undertake that responsibility, should, when requested by the Governor of a State, share the administrative cost with the State on all non-Federal land and pay the State for the full cost of administering reclamation standards on Federal land.

624 Specifically, we recommend that final legislation contain the language in the current version of Senate bill 7, section 505.

624 Several varied provisions of both the Senate and House bills designate specific periods for developing State and Federal programs as well as setting time schedules with which operators must comply. We recommend that the States be given the maximum time possible for implementing individual State programs and that the Department of the Interior be prevented from expanding Federal staffing to implement and administer the provisions of such an act where States are diligently attempting to develop their own programs.

624 Specifically, the final legislation must recognize that some State legislatures meet every 2 years instead of annually, including Montana and North Dakota. Thus, in those instances where a State legislature may not be able to act on their State program development for as long as 2 years and such State does not have a cooperative agreement as suggested above, the interim regulatory provisions must be permitted to continue beyond the 24-month deadline for submission of a State program.

624 This is needed so as to avoid the implementation of a Federal program and the concomitant Federal staff buildup before a State legislature can act on developing their program.

624 Through adoption of stronger reclamation standards, Western States have avoided much of the environmental damage resulting from abandoned coal mines that currently plague Eastern States. We believe that this prudent management of our coal resources should not be penalized by forcing Western States to subsidize the past mistakes made in coal mine reclamation in other parts of the country.

624 We in the West have reclamation and coal-related needs which are at least as pressing as the need for reclaiming abandoned coal mines. We need to reclaim the innumerable abandoned noncoal mines in the West. We need to meet the fiscal crises facing our communities which are experiencing the ravages of rapid coal development.

624 Therefore, we recommend that the committee strike the abandoned mine reclamation provisions from S. 7 and address in separate legislation the issues of reclamation of all abandoned mines and the impact of rapid coal development on communities.

624 I would like to deviate for a moment and say my personal view is the same as the Governor of Wyoming and I disagree with the previous paragraph and believe it should be in the legislation. I will continue on with my statement.

625 We recommend that any such legislation include a fee levied on all coal and that such fee be in addition to royalties paid on Federal coal; ensure that all revenue from such levies be returned to the State in which it was collected, and provide that priority expenditure of such money be for reclamation of abandoned coal mines, for amelioration of coal-related socioeconomic impacts and for reclamation of abandoned noncoal mines.

625 Finally, we recommend that, at the request of the Governor, the State be delegated the responsibility for operating any such abandoned mine reclamation program.

625 We believe it is imperative to protect owners of farms and ranches whose land contains Federal coal deposits from outright seizure of his land any time the Federal Government decides to lease such deposits. However, we also believe it is not in the interests of the people or of the environment of our States that there be a prohibition on the surface mining of all Federal coal under non-Federal surface ownership.

625 Such a prohibition would, in many of our States, be tantamount to halting all coal

development or causing serious adverse effects on our planning efforts. In other States, it may force coal development into less socially and environmentally desirable areas.

625 Therefore, we urge that the final legislation not include the provisions of section 423(e) of Senate bill 7.

625 Farming on irrigated and naturally subirrigated alluvial valley floors is of significant concern to western States and I support the language of section 510(b)(5) of the House bill, H.R. 2, as it appears to provide significantly greater protection for these farming operations than does the language of Senate bill 7.

625 I understand that is subject to differences of opinion.

625 To conclude my testimony, I would like to briefly alert the committee on a number of additional concerns of Western States. Further explanation of our position on these and the previously discussed issues can be found in the attached position statement.

625 Burden on small coal operators: We believe that small coal operators should be given some relief from the regulatory burdens imposed by this bill but that the cost of alleviating such burdens not be shifted to the State regulatory authority.

625 Federal mineral lease terms: We recommend that the provisions of a strip mine act and an approved State program be incorporated into any Federal lease, permit, or contract involving surface coal exploration, mining, and reclamation.

625 Frequency of mine inspections: We recognize the importance of proper and timely inspections to ensure compliance with the law. However, we believe the inspection requirements in Senate bill 7 do not allow enough flexibility to permit the efficient allocation of inspection manpower. Therefore, we recommend that mine inspections be required on an average of one per quarter rather than once per month.

625 Time for compliance with interim regulatory provisions: To ensure orderly compliance with the act, we recommend that operators be required to comply with the interim regulatory provisions within 1 year of enactment rather than the 135 days in Senate bill 7.

626 Period for permit application: We recommend you retain the current time schedule for

applications made by coal operators for mining permits pursuant to a State program.

626 Bond release conference: We recommend you adopt the language of H.R. 2 which permits an informal conference between the operator and the regulatory authority to resolve objections to the release of a bond. Such provisions would not affect a party's right to a formal hearing.

626 Need for an environmental impact statement: We believe the requirements of Senate bill 7 for an environmental impact statement prior to approval of a State program or implementation of a Federal program are not needed and should be deleted.

626 That concludes my remarks on behalf of the western Governors policy office.

626 I would like to address a specific provision which would be troublesome for Montana. Specifically, the Indian lands provision concerns the State of Montana because it could extend tribal jurisdiction beyond exterior boundaries of reservations, even regarding matters unrelated to reclamation.

626 This concern arises from the definition of Indian lands which appears to include lands held in trust for or supervised by an Indian tribe outside the exterior boundaries of Indian reservations. Montana recommends that either the definition of Indian lands be changed to describe only lands within the exterior boundaries of Federal Indian reservations, or that section 508 be amended to insure that tribal jurisdiction is not extended to lands outside of the exterior boundaries of reservations.

626 With the consent of the Chair, I would respectfully request that this testimony and attached position statement be placed in the record. I submit a written copy for that purpose.

626 Thank you for this opportunity to present Western States views on Federal strip mine legislation. We sincerely hope that you will pass a bill which recognizes the importance of the States role in reclamation and will be a workable piece of legislation.

626 [The position statement of the western Governors follows:]

626 POSITION STATEMENT OF THE WESTERN GOVERNORS' REGIONAL ENERGY POLICY OFFICE ON FEDERAL STRIP MINE LEGISLATION

626 We agree with the declaration and finding of Congress, as expressed in earlier and current

strip mine legislation that -

626 "Because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing should rest with the States" .

626 In order to accomplish this and other objectives of federal strip mine legislation we believe that any final bill should provide the following:

626 STATE ADMINISTRATION

626 It is imperative that states retain responsibility for administering and enforcing coal mine reclamation standards in order to adequately respond to unique conditions in each state, retain continuity in enforcement of reclamation standards, avoid the problems of administering two standards within the same state (i.e., one for federal land, one for other land).

627 Specifically, we recommend that any legislation provide that:

627 At the request of the Governor of a state, the Secretary shall enter into a cooperative agreement with the state to provide state administration and enforcement of the provisions of the Act, including the interim and final performance standards, regardless of whether such state has a reclamation law as stringent or more stringent than such standards, provided that such state demonstrates it has or will have the capability to administer and enforce such standards.

627 Any state with an approved program or cooperative agreement may elect to regulate surface coal mining and reclamation operations on federal lands within the state. Such regulation shall be subject to all the provisions of the Act.

627 FINANCING STATE ADMINISTRATION AND ENFORCEMENT

627 If a state assumes exclusive jurisdiction of mine reclamation, the federal government, which would have to administer a reclamation program if the state did not undertake that responsibility, should, when requested by the Governor of a state, share the administrative cost with the state on all nonfederal land and pay the state for the full cost of administering reclamation standards on federal land.

627 Specifically, we recommend that final legislation contain the language in S. 7, Section

505.

627 TIMETABLE FOR IMPLEMENTATION OF STATE AND FEDERAL PROGRAMS

627 IMETABLE FOR IMPLEMENTATION OF STATE AND FEDERAL PROGRAMS

627 Several varied provisions of both the Senate and House bills designate specific periods for developing State and Federal programs as well as setting time schedules with which operators must comply. We recommend that the States be given the maximum time possible for implementing individual State programs and that the Department of Interior be prevented from expanding federal staffing to implement and administer the provisions of such an Act where States are diligently attempting to develop their own programs. Specifically, the final legislation must recognize that some state legislature meet every two years instead of annually including Montana and North Dakota. Thus, in those instances where a state legislature may not be able to act on their State program development for as long as two years, and such State does not have a cooperative agreement as suggested above, the interim regulatory provisions must be permitted to continue beyond the 24 month deadline for submission of a State program. This is needed so as to avoid the implementation of a Federal program and the concomitant Federal staffing buildup before a state legislature can act on developing their program.

627 ABANDONED MINE RECLAMATION

627 We strongly recommend that any abondoned mine reclamation provisions not be included in federal strip mine legislation and be considered as separate legislation. The prerequisites of any such legislation on abandoned mine reclamation should include the following:

627 Revenue for an abandoned mine reclamation fund be derived from a fee on all coal and that such fee be in addition to royalties on federal coal.

627 All revenue in an abandoned mine reclamation fund be returned to the state in which it was collected.

627 Priority expenditure for such money would be (1) for reclamation of abandoned coal mines, (2) to ameliorate coal-related socio-economic impacts and (3) for reclamation of abandoned non-coal mines. Other allowable uses of such money should be as specified in H.R.
2.

627 At the request of the Governor of a state with an approved reclamation program or with a cooperative agreement with the Department of Interior, the state shall operate any abandoned mine reclamation program contained in the legislation.

627 MINING OF FEDERAL COAL UNDER NON-FEDERAL SURFACE

627 We believe there needs to be protection of surface owners whose land contains federal coal. However, we believe that the so-called "Mansfield Amendment", which prohibits surface mining of all federal coal deposits which are under surface not owned by the federal government, would be untenable to western states and in many instances be tantamount to halting coal development.

628 ALLUVIAL VALLEY FLOORS

628 We recommend that final legislation contain the alluvial valley floor provisions found in H.R. 2 rather than the provisions found in S. 7.

628 DESIGNATION OF LANDS UNSUITABLE FOR NON-COAL MINING

628 In keeping with the primary intention of Congress that this legislation be directed toward the problems associated with coal mining operations, we recommend that any final bill not contain the language of Title VI, of H.R. 2. This Title would permit the Secretary of Interior to designate certain Federal lands as unsuitable for non-coal mining. This responsibility should rest with the States, and in any case, should not be included in legislation of this nature.

628 BURDEN ON SMALL OPERATORS

628 We recognize the need for reducing the burdens certain regulatory requirements, such as hydrologic tests, place on small mine operators. We believe that these burdens should be borne by the entire coal industry and its ultimate consumers and should not be shifted to the state regulatory authority.

628 FEDERAL MINERAL LEASE TERMS

628 In lieu of the language of section 523(b) of H.R. 2 and section 423(b) of S. 7 regarding Federal mineral lease terms and conditions, we recommend that the requirements of such an Act and the Federal lands program or the approved State program, whichever is applicable, must be incorporated into any Federal mineral lease, permit, or contract involving surface coal

exploration, mining and reclamation.

628 FREQUENCIES OF MINE INSPECTIONS

628 While we well recognize the need for proper and timely inspection of mines to assure compliance with the law, we believe that strip mine legislation should not require complete inspections of every mine on an average of once per month. There needs to be flexibility in such a requirement to permit a state to allocate its manpower effectively. Some mining operations would not require a complete inspection on an average of once a month. Others may require frequent inspections for certain recurring conditions, such as stream pollution. We recommend that the final legislation require inspections no more frequently than an average of once per calendar quarter.

628 INTERIM REGULATORY PROVISIONS

628 We recommend that the language of section 502(c) of H.R. 2 stating that operators must comply with the interim regulatory provisions of the bill within one year of enactment be included in the final legislation.

628 PERIOD FOR PERMIT APPLICATION

628 We recommend the language of section 402(e) of S. 7 stating that those expecting to pursue coal mine operations after State program approval or Federal program implementation must file a permit application within 20 months of enactment be included in final legislation. Also, an Act should require that the application be processed within 6 months of State program approval and not later than 30 months from enactment.

628 BOND RELEASE PROVISIONS

628 We support the language of H.R. 2 in section 519(g) permitting the regulatory authority to establish an informal conference procedure to resolve objections to bond release in lieu of formal transcribed hearings.

628 NEPA COMPLIANCE

628 We recommend that any final legislation not contain the language of section 502(d) of S. 7 and section 702(d) of H.R. 2 which require the completion of an environmental impact statement prior to approval of a state program or commencement of a Federal program. This impact

statement requirement is not germane in light of the extensive procedures which must be
completed in a State's development and Interior's final approval of a State program. The same is
true for the development and implementation of a Federal program where a State does not submit
or is unable to obtain approval of a State program. As impact statements will be required on a
site-specific or regional basis regarding proposed federal coal lease sales, requiring an extensive
impact statement prior to program approval or implementation is unnecessary.

628 THOMAS L. JUDGE, Governor, State of Montana, Chairman, Western Governors'
Regional Energy Policy Office, Inc.

629 (The above statement was endorsed by seven or more of the member Governors as
provided in the By-Laws for the adoption of Policy Positions between meetings.)

629 Senator METCALF. Thank you very much, Governor. Now, Senator Bumpers.

629 Senator BUMPERS. Mr. Chairman, I came into the hearing after Governor Judge's
comments. I wanted to address a question to the chairman on 423(e). Has the chairman of this
subcommittee taken a public position on that? That deals with a point Governor Judge just
addressed on surface owners veto mining public lands. I was rather surprised to hear Governor
Judge take that position.

629 Senator METCALF. I have consistently supported that. That is what my friend from
Wyoming calls the "toadstool amendment," where under the Mansfield amendment we would
end up with protuberances or undeveloped islands in the coalfield. I am in favor of the
Mansfield amendment and I put it in the bill. However, I can see the handwriting on the wall.
Maybe Senator Mansfield and I are the only two that are in favor of it.

629 Senator BUMPERS. Mr. Chairman, Governor Judge, I want to say, first of all, that due to
the efforts mainly of Senator Hansen of Wyoming who is going to take the dome off this Capitol
on behalf of the Western coal-mining States if we don't watch him very carefully, he has already
taken a significant portion of it, but are you aware of the provision he got adopted last year which
gives the States 50 percent instead of the traditional 35.5 percent they have been getting? Do you
think that is adequate to take care of the impact in Montana and Wyoming?

629 I personally resisted it. Senator Hansen later handed me something to sign and said everybody was signing it, he was asking the President not to veto the bill and I didn't realize it because I was very much opposed to it.

629 But the point I am trying to make is it occurs to me Wyoming and Montana, with 50 percent of the royalities, would be loaning money to Saudi Arabia in 10 or 15 years. If I am correctly informed as to the coal reserves in those States.

629 My question is, don't you think that is a sufficient amount to cover all and any of the impact that is going to occur in the Western States?

629 Governor JUDGE. I would say so, yes, sir, Senator.

629 Senator BUMPERS. My next question is, I would like for you, if you will, to say again for me, because I did not get a chance to hear this part of your testimony, your feelings about the fees. As you know, the Senate bill only covers fees on public lands. The House bill has a fee on both strip mining and underground coal on both public and private lands. No. 1: Which of those do you agree with? Would you like me to restate the question, Tom?

630 Governor JUDGE. Are you talking about abandoned mines?

630 Senator BUMPERS. I am talking about the fee for reclamation of orphaned mines.

630 Governor JUDGE. I think that was contained in my statement, Senator.

630 Senator BUMPERS. I assume you covered it, but you must have covered it before I got here.

630 Governor JUDGE. I made reference to that. We recommend any such legislation include a fee levied on all coal and such fee be in addition to all royalities paid on Federal coal and insure all revenue from such levies be returned to the State in which it was collected and provide that priority expenditure of such money be for reclamation of abandoned coal mines for amelioration of coal-related socioeconomic impacts on all reclamation of abandoned noncoal mines. Finally, we recommend that, at the request of the Governor, the State be delegated the responsibility for operating any such abandoned mine reclamation program.

630 Senator BUMPERS. How many acres of orphaned mines do you have in Montana?

630 Governor JUDGE. I could not give you the acreage, Senator. We have seven operating strip mines in Montana disturbing, at the present time, less than 1,000 acres of surface and with a tonnage of about 25 million tons a year, or at least pretty close to that.

630 The Burlington Northern mined coal in the early days for the operation of the railroads and there were some spoils that were not covered by our reclamation law. However, they have voluntarily reseeded those lands and have reclaimed them, so I doubt there are too many acres of abandoned mines.

630 Senator METCALF. Would the Senator from Arkansas yield?

630 Senator BUMPERS. Certainly.

630 Senator METCALF. When I was a member of the Montana Legislature in 1937, I put in a bill for the reclamation of gold-dredged lands and other mining and we have several thousands of acres of such land. I think that is why the Governor is suggesting we use this abandoned mine fund not only for coal land, but for other land that has been dredged and devastated by other mining methods.

630 Senator BUMPERS. Mr. Chairman, the bill does not now provide for that, does it?

630 Senator METCALF. No.

630 Senator BUMPERS. It would cover others as well as coal land?

630 Governor JUDGE.Some of the worst devastation to land was done by dredges that dredged for coal years ago that have never come back. The bill does not provide for that, I am recommeding it.

630 Senator BUMPERS. You are familiar with that provision of the bill that says a portion of it will go back to the State and only some excess part will be placed in the fund at the disposition of the Secretary, to allocate to the various States.

631 If I were in your position or in Governor Herschler's position, I would probably feel the same way you do about it. But since I am from a State that has thousands and thousands of acres of orphaned mines, of course, I would disagree with it. I would like to see all of that land devastated in my State reclaimed as soon as possible.

631 We are not much of a coal-producing State. We were back in the 1920's when we created

all of those things. Mr. Chairman, I have no further questions. Thank you very much, Governor
Judge.

631 Senator METCALF. Senator Hansen.

631 Senator HANSEN. I think, Governor, Montana and Wyoming, and other Western States
as well, share a mutual interest in the reclamation of orphaned lands. I call attention to the fact
we have a problem, a very serious one in my opinion, in Wyoming and I am certain my Governor
would agree with me.Insofar as the need for immediate and early action is concerned, subsidence
is a critically more severe problem than is the long-range problem of trying to restore the
productivity of surface areas.

631 I say that because of lands that have been surface mined and have been left in a state of
relatively small production. But far more urgent it seems to me to be the problems we have
encountered in cities like Rock Springs where houses are witnessing foundation cracks, where
sewerlines, waterlines, gaslines, and powerlines are broken, where underground fires in
abandoned underground mines are a constant danger and hazardous to life and property as well.

631 We felt also the provision in the royalty return which made it possible to have front-end
money to address the impact, the social and economic impact that results from the removal of
large amounts of coal to be a real serious problem, one which requires early-on action. I make
this point because I think it may not always be clearly understood the problems you have faced,
and the problems Governor Herschler has faced in trying to see cities and local units of
government can provide the services and the facilities and other things we would have a right to
expect of government. Do you generally agree with that statement?

631 Governor JUDGE. I would like to say we have not experienced in Montana the problems
you have in Rock Springs to that extent. But there is no question that the possibility of rapid
influx of population into a nonexistent prarie town can create very serious socioeconomic
problems that could not be addressed by the taxing jurisdiction because the facility would not be
taxed until it is operational and the impact is immediate.

631 Yet, whatever revenue from a coal plant or a mine would not be for sometime after that,
but the need for front-end money is immediate. Yes, I certainly would agree with that, Senator.

631 Senator HANSEN. I have no further questions.

631 Senator METCALF. I understand, Governor, you have a plane to catch. I will excuse you at this time. I hope you will supply us with the information that I asked Governor Herschler to supply as to what steps you take in the State of Montana regarding the time an application for permit is applied for until it is granted, in a chart form similar to the Kentucky presentation.

632 Governor JUDGE. I will be very glad to submit that information, Senator. [Not received in time to be included in the record.]

632 I am sorry I had to interrupt Governor Herschler, I apologize.

632 Senator METCALF. Senator Laxalt was questioning Governor Herschler. However, we will call on Senator Johnston.

632 Senator JOHNSTON. I noticed in your testimony you are against the so-called Mansfield amendment. Was it your testimony you said government should not be able to totally and completely dispossess the landowner, or words to that effect? What was that phrase you used? Anyway, something to that effect.

632 Now my question is this: Suppose in those situations where the Federal Government owns the subsurface, the Federal Government owns the coal, the landowner owns the surface. We give that landowner the full value of the land which is taken from him plus give him in addition to that land which is taken from him, let him have back the land when it is reclaimed. In other words, that would be a little bonus and then give him any consequential damages for the disturbance to this land as a result of mining on this land. Do you think that would be sufficiently generous of the United States?

632 Governor HERSCHLER. It probably would be generous, Senator. The only problems we have, as many of the people who have been on these ranches and farms in my State, they just do not want to leave. There is a great affinity for the land in Wyoming as I suppose there is in every other State. One of the things that concerns me is the landowners consent could very well create problems primarily because in many of our areas, the larger companies have the coal leases and have purchased the surface and we do know in some areas, if landowner consent was just given

top priority, that there could be perhaps some manipulation to prevent mining at all.

632 Senator JOHNSTON. What I am talking about is -

632 Governor HERSCHLER. But I agree, if this is the situation, I think your proposal might be very well, Senator.

632 Senator JOHNSTON. I am saying you should not give the landowner the veto over mining on that land. You are not suggesting the landowner be given the veto, are you?

632 Governor HERSCHLER. No, I am not, Senator.

632 Senator JOHNSTON. What I am saying is, don't give him the veto; but if you are going to mine that land, give him full value plus give him back the land when it is finished plus consequential damages. That ought to satisfy the landowner.

632 Governor HERSCHLER. I think in most instances it probably would, Senator.

632 Senator JOHNSTON. By the way, what are they voluntarily paying for the surface out there?Are they paying for anything more than the actual surface?

632 Governor HERSCHLER. Yes, they are. In many instances, Senator, they are. The values and the price of land has risen dramatically in some areas. Part of the reason for that is not only are they looking for the coal itself because there are many people who own the minerals themselves, some of the larger ranchers; but many companies are buying the land and are looking for water and getting the water rights in addition to the surface so they can mine.

633 In some of the ranches that were selling for probably $1 00 an acre are probably now selling for $500, $600, or even $1,000 an acre.

633 Senator JOHNSTON. Governor, isn't Wyoming the terminus point for the proposed coal slurry pipelines?

633 Governor HERSCHLER. Yes, sir. In southeastern Wyoming - it would be the eastern central part of the State there is a company proposing a slurry pipeline to go to the State of Arkansas. Our legislature, I believe, 4 years ago or 3 years ago, authorized 20,000 feet per annum to use water out of the formation there to slurry coal in this pipeline.

633 It is my understanding there is difficulty in getting States over which the pipeline would traverse to get the right of eminent domain.

633 Senator JOHNSTON. Your State has actually looked at that plan?

633 Governer HERSCHLER. Yes sir; it was submitted some time ago. Our constitution, as I recall, requires the legislature to grant permission to take any water out of the State for any purpose, and that was granted by the legislature.

633 Senator JOHNSTON. They are going to take out 3,500 feet. That is below where the average rancher or farmer would draw his water, wouldn't it?

633 Governor HERSCHLER. We are concerned because this water would be taken from what we call the Madison formation. We do not know whether the formation has the ability to be recharged. There is a great deal of concern, I am sure many people are concerned as to what this will do to our water table in Wyoming.

633 At the present time, the United States Geological Survey is conducting tests in that particular area to see about the recharge of the aqueduct out there and we don't know what the situation is. I know it has caused great concerns to the States of Nebraska and South Dakota as to what it will do to the water table in that area. The water would be from a great depth, probably 3,000 feet, but it is an unknown formation, Senator, and there is great concern about it.

633 Senator JOHNSTON. Your State has endorsed that, does it continue to endorse it?

633 Governor HERSCHLER. The administration, prior to my administration, endorsed it. I do not endorse it, no, sir.

633 Senator JOHNSTON. Governor, there are provisions for citizen suits in this bill. Do you support those?

633 Governor HERSCHLER. I feel, Senator, the strip mining bill of course should not only be looking to the problems of any specific State, but I think we also have to look at the national interest and whether or not we can become independent energywise.

633 I really don't have an opinion on that, sir, as to whether or not this would be beneficial to the national interest.

633 Senator JOHNSTON. Governor, you had some comment on an alluvial valley floor. You do not like, as I understand it, the language of the bill with respect to alluvial valley floors, is that correct?

633 Governor HERSCHLER. I think so, yes, Senator. The language in the bill, to me, I think is a little ambiguous as to the definition of what an alluvial valley floor is and where I personally believe there should be some limitations on alluvial valleys particularly in Wyoming because of the nature of our State. It is very arid, very dry, but I think there could be a better definition of what an alluvial valley floor is.

634 Senator JOHNSTON. Do you have a suggestion for us?

634 Governor HERSCHLER. I think I do, sir. The recommendation I have, sir, is that the alluvial valley floor, the definition would mean the unconsolidated stream lay deposits extending below the water table and holding intermittent streams where water availability is sufficient for subirrigation or flood agricultural activities. I would be glad to give you this copy, sir, if it would be of any benefit to you.

634 Senator JOHNSTON. Sufficient for -

634 Governor HERSCHLER. Subirrigation or flood agricultural activities. Should I read it back to you, sir?

634 Senator JOHNSTON. I think I caught that. It is fairly similar to ours except it has slightly different language. Under our definition, we require the valley floors be significant to the practice of farming or ranching operations including potential or future farming operations or ranching operations.

634 You would permit mining in the valley floors even if they are not -

634 Governor HERSCHLER. I would say with this proposed definition where it would show the availability of water where it would show - there are some areas of course where the definition might give us some problems as it now exists in the bill.

634 I think it is rather a broad definition but it could give us problems in the future.

634 Senator JOHNSTON. We wrestled with that particular definition last time, not only in this committee but in the conference committee. It is very difficult to precisely define alluvial

valley floors.I recall under this language and similar language in the House, we had people from
Interior with big maps and there was a vast difference in opinion as to what the language did and
what it did not do.

634 If you can give us some more precise language, we would appreciate it. I think you are
going to have a hard time doing so, but I sure hope you can.

634 Governor HERSCHLER. I agree with you sir. It is a very difficult situation. I threw this
out for what it is worth, it may not be worth very much.

634 Senator HANSEN.Would you yield at that point? I could not agree more with what you
said and what our Governor said.I was talking with one of the water experts from the State of
Wyoming, Dr. Paul Reekard, and he feels a lot of work must yet be done because there is no way,
so far as he tells me, and I think his opinion is corroborated by a number of eminent geologists,
in trying to look over an area without actually going into it and to say with certainty what is going
to happen when coal is removed, when aquifers are encountered, and materials are put back in
place. I think there is not any way now that we can predict with certainty what might happen.

634 I would hope some funds might be made available to better understand what the
dimensions of the problem may be. This would be helpful in trying to bring together a body of
knowledge that will give us better answers so we might be able to predict problems in advance.

635 Senator JOHNSTON.That's all I have. Thank you, Governor.

635 Senator METCALF. Thank you very much, Governor. I am going to ask that Governor
Judge also supply us with that information. The problem with alluvial valley floors is essentially
a Wyoming and Montana and perhaps also a North Dakota and South Dakota problem.

635 Senator HANSEN. Before you leave, Governor, I was a little disturbed by one of the
questions asked by my good friend from Louisiana when he spoke about the surface-owner
consent provision. I know everyone has been concerned, particularly these days, in trying to keep
ranchers and farmers on their outfits throughout the West, especially Wyoming.

635 I think my friend from Louisiana asked the question, would you or did you support a

provision insofar as surface-owner consent goes that would give the surface owner a veto; I
believe that was essentially the way your question was.

635 Senator JOHNSTON. That is right.

635 Senator HANSEN. Your response was with some qualification you probably would not
go quite that far. I would ask first, what is the precise language or could you outline generally
what the surface owner consent protection is that is now afforded by State law?

635 Governor HERSCHLER. Senator, we have as part of our environmental quality laws a
surface owner consent law in Wyoming. Up until now we have not had any occasions, insofar as
I know, to invoke that statutory requirement. I am sorry I cannot give you the exact language of
that surface owner consent, Senator. I will be glad to send you that.

635 Senator METCALF. You can supply that for the record.

635 [See March 29, 1977 letter that appears at end of Governor Herschler's statement.]

635 Governor HERSCHLER. It provides, in effect, surface owner consent must be given, but
I believe we do recognize negotiations and perhaps arbitration in the matter. I will be very happy
to send the committee a copy of that statute.We have not had occasion to use it.

635 Senator HANSEN. I intend to offer an amendment which would provide protection to the
owner of the surface, the so-called surface owner protection amendment which would do two
things; number one, it would give the surface owner the right either to agree or to withhold his
agreement on a mining operation where the coal was federally owned and the surface was in
private ownership. The second provision would be that the surface owner would have the right to
negotiate whatever kind of an agreement he was able to enter into between the coal mining
company and himself as the owner of the surface.

635 My feeling is that kind of protection would be indicated. I think the present situation that
I understand now is in Wyoming results from the fact this is a gray area, there is no law on the
books that clearly defines one way or the other what the right of the surface owner is. Because it
is unclear present practice for most of the mining companies, is to go in and anticipate some
differences of opinion, some confrontation over the issue.

636 It is far easier and far simpler just to buy the rights of the surface owner. I submit that is not - I repeat, is not - in the best interest of the West. I think most of us would agree we would like to see family operations preserved.

636 This alternative to surface owner consent, in my mind, simply invites the surface owner to accept an offer from a coal company to sell out to them. I would ask you first, do you agree generally with that part of my statement?

636 Governor HERSCHLER. Yes, I do, Senator. As you indicated I think in many instances the surface owner realizes he does not have much of a leg to stand on when he starts negotiating for the relinquishment of the surface and I think he should be given some protection and I wish I had the answer for you, Senator.

636 But I think I could agree with your proposal, yes, sir.

636 Senator HANSEN. There is a second point that has been made that I think is valid. That is, if we were to afford the sort of surface owner protection that I have tried to describe, we would guarantee or we would move toward guaranteeing the presence of a surface owner whose long-range interests were separate and apart from those of the mining company itself and that you might expect there would be a closer follow-up, or closer monitoring, of the reclamation process all the way through.

636 In the long run you would wind up with the entity of individual ownership being kept in place and intact as compared with corporate ownership. It would seem to me those are clearly laudable objectives. I wanted to bring out these questions because I know this is an extremely difficult point. It is one that has caused an extremely great amount of controversy as you may know, Governor.

636 I suspect, Governor, you may know Friends of the Earth and the Wyoming Outdoor Council have written me endorsing my position on surface owner consent, and I will ask those letters to be included in the record, Mr. Chairman.

636 Senator METCALF. Without objection they will be included.

636 [The letters referred to by Senator Hansen follow:]

636 FRIENDS OF THE EARTH, Billings, Mont., February 19, 1977.

636 Senator CLIFF HANSEN, Senate Office Building, Washington, D.C.

636 DEAR SENATOR HANSEN: Your letter of Feb. 11 was most welcome!

636 Enclosed are copies of my letter to Peter Ward at Interior regarding surface owner consent
and a letter to our Commissioner of State Lands regarding blasting, the greatest threat to surface
owners near the mining area particularly as to water.

636 I hope that other organizations will support protection of the rights of the surface owner. I
strongly recommend strengthening of the common law trespass protection in order to allow a
nearby surface owner to stand his ground without undue disturbance, damage and irreconcilable
injury that would force a sale upon unsatisfactory terms.

636 I will try to spread the message to other groups in hopes of support. Thank you for your
concern.

636 Best wishes,

636 EDWARD M. DOBSON, Northern Great Plains Representative.

637 FRIENDS OF THE EARTH, Billings, Mont., February 19, 1977.

637 Mr. PETER WARD, Office of Legislation, Department of the Interior, Washington, D.C.

637 DEAR MR. WARD: Enclosed is correspondence regarding surface owner consent
provisions as presently appearing in H.R. 2.

637 The best example of why the present language is inequitable is the Redding Family at
Sarpy Creek, Montana.When Westmoreland Resources' representatives began pressuring local
ranchers to sell by threat of condemnation, many sold for $137 to $2 00 per acre. The Redding
family refused.Consolidation Coal began bidding for the Redding land and the price went up
around $3 ,500 per acre. Still the Reddings refused. The oldest member of the family and
president of the Reddings' little family corporation spent the last years of his life fighting against
the stripping of his land. His story is well documented and publicized, especially by the
Minneapolis Tribune.

637 But the fight simply shortened his life. The family was split over whether or not to sell.
Bud Redding turned the management of their outfit over to his son, Johnny. If Bud died and the
family corporation went into an estate, the faction of the family wanting to sell would be able to

destroy all Bud and Johnny had fought for. Johnny decided to sell to avoid the estate problem.
Less than a year later, Bud was dead.

637 Westmoreland matched Consolidation's bid. The Reddings then sold to Westmoreland
about 2,800 acres for $10 million, about $3 ,500 per acre. Payment is spread over about 35
years.Taxes take more than half. Because the family corporation was dissolved, the proceeds are
split six ways. With Johnny's share, he was unable to buy a place as good as the one he had to
sell. He has no farmland on his new ranch, but he leases back his farmland that he had to sell to
Westmoreland. It can be argued that even under the best sale price, Johnny Redding and his
family have a mixed result, at best. Other than the problems of estate, ongoing mining made life
miserable for the Reddings with blasting and other degradation. Water was affected and a well,
three miles from the mine, destroyed. Who can live with this? Early blockbusting makes it
impossible to hold on. Please don't destroy the rights of the surface rancher. Let us shore up his
rights by strengthening common law trespass and reducing blasting to two-tenths inch per second
particle velocity.

637 Best regards,

637 ED DOBSON, Northern Great Plains Representative.

637 FRIENDS OF THE EARTH, Billings, Mont., February 5, 1977.

637 LEO BERRY, Jr., Commissioner, Department of State Lands, Helena, Mont.

637 DEAR COMMISSIONER BERRY: Thank you for your response to my earlier letters
regarding blasting by Westmoreland Resources. I am encouraged to learn that blasting orders for
Westmoreland are being prepared. I do hope that they will be circulated in draft form to
residents of the Sarpy area for comment. I am concerned, also, that local residents leasing from
Westmoreland receive some assurance that they will not suffer retribution from Westmoreland
for offering their concerns.

637 In preparing blasting orders for Westmoreland and other mining operations, I recommend
to you the ongoing work of the Center for Science in the Public Interest, 1757 S Street NW,
Washington, D.C. 20036. Their preliminary findings indicate that property damage from coal
strip mine blasting reaches $2 00 million per year in eastern states alone. Furthermore, I

recommend the work of Mr. Eugene Carden, Department of Aerospace and Mechanical Engineering, Univ. of Alabama, Tuscaloosa, Alabama. Mr. Carden finds that the U.S. Bureau of Mines Bulletin 656, in recommending limitations on strip mine blasting to two inches per second particle velocity has grossly underestimated damages caused by blasting at that level. Carden calls for reduction to two-tenths inch per second particle velocity (.2 ips/pv). Friends of the Earth herewith requests that Mr. Carden's recommended limitation be adopted for Westmoreland Resources forthwith, and that other mining operations be subject to review and final determination, with public participation, of the necessity for enforcing the two-tenths ips/pv limitation statewide within six months.

638 Thank you for your continuing cooperation.

638 Most sincerely yours,

638 EDWARD M. DOBSON, Northern Great Plains Representative.

638 FRIENDS OF THE EARTH, Billings, Mont., February 5, 1977.

638 Senator CLIFF HANSEN, Senate Office Building, Washington, D.C.

638 DEAR SENATOR HANSEN: It is my understanding that you will oppose surface owner consent provisions in the strip mine bill that would limit the sale price of surface estate. I hope that you will have an opportunity to read the enclosed copies of my correspondence to staff assistants for Senator Haskell and Congressman Udall on just that issue. Friends of the Earth also opposes limitation of surface owner's sale price.

638 I look forward to your reaction to our position and to working with you and your staff on this critical issue.

638 With best regards,

638 EDWARD M. DOBSON, Northern Great Plains Representative.

638 FRIENDS OF THE EARTH, Billings, Mont., January 12, 1977.

638 Mr. TOM LAUGHLIN, Legislative Assistant to Senator Floyd Haskell, Russell Building, Washington, D.C.

638 DEAR MR. LAUGHLIN: In following our earlier conversation, here are my thoughts on surface owner consent. Requiring written consent applies only to those whose property lies

above federal coal (H.R. 2). Montana state law broadly prohibits condemnation of surface by any interest in coal, including the state's. The problem is whether to provide a disincentive to sell by severely restricting sale price of surface estate or to provide some incentive for states to follow the Montana lead. Allowing the Secretary to fix the value of surface overlying federal coal has encouraged many land owners to sell, some for high settlements, before a bill is enacted. In Montana 2,800 acres of the Redding property and smaller plots owned by Cady and John (all surface estate only) sold to Westmoreland Resources for about $3 ,500 per acre. A nearly 1.3 acre county school site sold to Westmoreland for $6 ,000. These lands are 30 miles from town but approach the value of urban commercial property. Other nearby ranchers, more anxious to sell early, received $137 to $2 00 per acre. Some sold at that price for fear of eminent domain. (Although the coal under the land in question lies outside the reservation but belongs to the Crow Tribe, the Secretary could invoke this section in his fiduciary capacity.)

638 The consent section would set an appraised value plus damages and up to $1 00 per acre bonus. This penalizes the landowner who held on hoping to prevent mining. Unfortunately, other land of equal value is not likely to be available at a figure near the appraised settlement price less taxes, as even the Reddings found out. While the consent section is designed to prevent landowner windfall, the landowner who then must choose between moving and living with the ongoing mining, blasting, and other degradation is damaged without hope of just compensation. Although the landowner is provided with a veto power, the value of the right to say "no" diminishes with the approach of the mining. Therefore, the attempt of the consent section to prevent speculation is not justified by crippling the economic position of the reluctant and threatened surface owner.There should not be disincentives to hold on to one's land, and there should be compensation for damages sustained in living near a strip mine.

639 Obviously, there are environmental benefits from restricting sale price and, thereby, profit motive, if it means the land in question may not be mined. When the land changes hands, perhaps through death of the owner, it may be stripped. The only benefit, then, was the dubious prevention of some windfall. The real problem is how to compensate a landowner suffering the impacts of nearby mining, whether or not under pressure to sell.

639 Sincerely yours,

639 EDWARD M. DOBSON, Northern Great Plains Representative.

639 FRIENDS OF THE EARTH, Billings, Mont., January 12, 1977.

639 MR. STAN SCOVILLE, Subcommittee on Energy and Environment, House Interior Committee, Longworth Building, Washington, D.C.

639 DEAR MR. SCOVILLE: Enclosed is a copy of my thoughts on surface owner consent as expressed to Tom Laughlin in Senator Haskell's office. There is one other point that needs to be raised at this time.

639 The House Interior Committee Report on last session's H.R. 9725 referred to preventing " * * * an individual owning land * * * " from reaping a windfall in the course of an " * * * energy crisis." This reference purports to justify removing the free market economic foundation of the reluctant and threatened surface owner, who is about to be surrounded by blasting and the general degradation of mining.More often than not I fear that the consent weapon will find as its target a hapless victim rather than a miserly speculator. In that sense, the consent section may become an unacceptable attack upon a last line of defense property right.

639 I hope that we can find a better solution to this problem.

639 Best regards,

639 EDWARD M. DOBSON, Northern Great Plains Representative.

639 Governor HERSCHLER. I really feel the landowner should be given some protection. On the other hand I feel perhaps in the national interest, they should not have complete veto over this thing, that sometimes the landowner is put in such an untenable position he has no other alternative but to pull up his roots and leave.

639 So I would hope there could be some protection given.

639 Senator JOHNSTON. Will the Senator yield at that point?

639 Senator HANSEN. Yes.

639 Senator JOHNSTON. Governor, the surface owner who does not own the coal, it being understood the Federal Government owns the coal, that surface owner should not be able to sell the Federal Government's coal, should he?

639 Governor HERSCHLER. I don't think so because he does not own it.But on the other hand, I know there are many people greatly disturbed about this. As Senator Hansen pointed out, they are in a position of having no bargaining power you might say.

639 If a coal company wants to come and take the Federal coal, and I think they should be given some protection in some way. I wish I had the answer for you.

639 Senator METCALF. They have bargaining power. Such persons as you and Senator Hansen come into the Senate of the United States and insist on their rights.

639 Senator HANSEN. If I could, Mr. Chairman, I would like to make an observation.

639 Senator FORD. Are you going to extend this point? We have a completely different attitude in the eastern States as it relates to land.

640 Senator HANSEN. If I could -

640 Senator FORD. Land cannot be used, and once it has been surface mined, we are discussing mountaintop removal, hollow-fill, new technologies that are available that will produce level land.

640 Level land becomes a very, very high premium in this area.When the surface owner is desirous of this type of surface mining and reclamation and it is very important to the economy of Appalachia where we can have some flat land and will develop industrial sites, sites for schools and other things, so I want us to be very careful.

640 I think the Governor is right. That some way you have to find a balance, but if you have a legal right to the minerals, that the surface owner may have been the one who sold the rights, cannot preclude that individual from coming in, in our part of the country. More satisfactory arrangements are being made by the surface owner so I would not want to get into the position of writing language in this bill that would preclude giving the man back the land better than they took it from him.

640 Senator HANSEN. I appreciate very much what you say, Wendell, and I agree with you. As a matter of fact, I don't think you and I have very much basic disagreement on the point we were making earlier. I think we come down on the same side of that. I could not agree more when you say there are different conditions. I think the point is certainly well made.

640 If a landowner, a surface owner, is given the option he may indeed say, as people do in your State and in other parts of the East, that they would like to have some more options made available to them, rather than have written into the law that you have got to put everything back precisely as you found it. I don't think that makes sense.

640 I am sorry Senator Johnston had to leave, but the point I wanted to make, Governor, I don't concede the surface owner consent I talked about is the surface owner selling the coal. I cannot think when the 1920 Mineral Leasing Act was passed, the Congress of the United States could ever have contemplated the sort of surface mining operations we witnessed and know about and experienced today, would be in practice.

640 Now I think we have got to remember when a coal company moves in on a farm or a ranch and takes 40 years to remove the coal under that surface and disturbs and reclaims a major share of that ranch, for all practical purposes, we have taken away most of the rights of ownership that were conferred by the Federal Government in the passage of that legislation.

640 Now no one said anything about going in, in a deep mining operation. We are not saying it cannot be taken out that way, but I think where we are talking about surface consent and anticipating a situation where for all practical purposes a farmer or rancher is not going to have very much about what goes on his place for a few decades, that is something else.

640 I appreciate your earlier response. I would ask, do you share that feeling at this point?

641 Governor HERSCHLER. Yes, I do, sir.

641 Senator HANSEN. I have no further questions.

641 Senator BUMPERS.Mr. Chairman, if I may pursue one matter Senator Johnston broached a moment ago dealing with this coal slurry pipeline. I only know of one proposal and that is the one from Gillette, Wyo., to Pine Bluff, Ark. Do you know of any others?

641 Governor HERSCHLER.I understand there is a proposed line, at least it is in the talking stage, Senator, from into the Pacific Northwest to Oregon, but there has not been any definite proposals made, I know, to our State other than it is in the talking stage.

641 Senator BUMPERS. I have been led, in some of my conversations with opponents of this coal slurry pipeline, that the legislature in Wyoming has specifically agreed to the Madison Basin to supply the water for such a line, is that true or not?

641 Governor HERSCHLER. Yes, sir, it is true.

641 Senator BUMPERS. Do you know, Governor, which States for example in the line I am most interested in, do you know which States have granted permission for that line?

641 Governor HERSCHLER. It is my understanding legislation has been introduced in Kansas, I believe, Nebraska, possibly Oklahoma to draft the right of eminent domain. I am not sure what the status of those bills are now in their respective legislatures, but I believe a year or 2 years ago, Kansas did not grant that right and the bill was defeated.

641 It is also my feeling it was defeated in Nebraska, but I have heard the bills have been introduced again in the legislatures that are presently in session. I don't think any action has been taken this year.

641 Senator BUMPERS. Do you know how much water it takes to supply that line?

641 Governor HERSCHLER. The original proposal was, they would not exceed 20,000 acre-feet per year. I hear recently, or I have heard recently, they would not use more than 15,000 acre-feet per year.

641 Senator BUMPERS. If there is no historical record I take it now as to how much of that basin is recharged each year.

641 Governor HERSCHLER. That is my understanding too. There has not been any information available in that particular area.

641 Senator BUMPERS. Has that basin not ever been used before for any purpose?

641 Governor HERSCHLER. Yes, there are many wells in that area. When the proposal was first made, the legislature was told the water would be brackish or saline and they did drill some test wells and they found it was good potable water. This may have some bearing upon the decision made by the legislature. They thought the water would be brackish.

641 Senator BUMPERS. Since they found out that water is potable, do you foresee that

possibility?

641 Governor HERSCHLER. There is that possibility, yes. It did not occur in this session of the legislature, however.

641 Senator BUMPERS. You are opposed to the use of the Madison Basin for this purpose, are you not?

641 Governor HERSCHLER. Yes, I am, sir.

642 Senator BUMPERS. Have you taken a leadership role in trying to torpedo what the legislature recently did?

642 Senator METCALF.Wait a minute on this torpedo business.

642 Governor HERSCHLER. I think that is a very good term, sir.

642 Senator BUMPERS. I am on Armed Services and I get my verbiage mixed up.

642 Governor HERSCHLER. My legislature is of a different political faith than I am. I have not been very successful in my torpedoing.

642 Senator BUMPERS. One of my original concerns was what we were going to do with the water in Arkansas when we got it. The people down there have told me they have solved this, that the water can be used in the plant they are presently constructing. It has stopped right now but I think they were constructing a 1,500-megawatt plant there and ultimately they say they can use the water. That takes care of at least one of my concerns.

642 Of course the other one deals purely with the economics of it and the damage that might result from the building of the line. I guess you get into tradeoffs then as to whether the environment, the damage from the building of the line is greater or lesser than the unit trains; and second, whether unit trains can actually supply the amount of coal such as that, and that plant is not all of it. Some of it will be going down to other points.

642 The question is whether or not unit trains can actually supply the quantities of coal a plant such as this will require.

642 Governor HERSCHLER. Let me say I have no objections to a slurry line to move coal provided Arkansas will supply the water. To me it is like pumping water from a desert to a swamp.

642 Senator BUMPERS. We have got it.

642 Governor HERSCHLER. I sometimes feel if we are going to build a pipeline there is a possibility you could put a pipeline alongside of it and bring your water up to us. It could be done and could be economically feasible, at least some engineers have told me that is possible, but I do know there would be extra costs to the company that intends to slurry the coal. But this is what concerns us because Wyoming is a very arid State.

642 We realize, I am sure, you have 10 times the annual rainfall in Arkansas as we have in Wyoming, we are concerned about whether the Madison Formation will be recharged, what effect it will have on the Powder River Basin, so I hope you see our concern too, sir.

642 Senator BUMPERS. I do indeed and I sympathize with it. As I say, I am trying to keep an open mind on it. It is a little difficult for me to do.

642 Governor HERSCHLER. I would hope you might side with Wyoming.

642 Senator BUMPERS. That would be very difficult to do. Let me change the subject ever so slightly. Dealing with the surface owners rights, Governor, I don't think there is anything very specific in this bill which sets the time out within which the land would be reclaimed. But it occurs to me, and let me give you a hypothetical situation, then if you care to comment on it by all means do.

642 Let's assume you have a surface owner that has 500 acres of coal or any other amount you want to conjure up, say 500 acres of coal. If this coal is going to be mined as coal is mined in my home county, it would normally take a very long time to mine that much coal. Meanwhile the surface owner is probably waiting patiently to get his land reclaimed.

643 It occurs to me the damage to the surface owner could be minimized significantly if there were a provision in the bill, and I hate to get too definitive, I guess as always we have to do that to the regulation writers or whoever passes on the permits, but I could conceive of a situation where he would be minimally damaged if on the one hand he could continue to farm or use the land that is not presently being mined, and two, if almost immediately that is practicable, after the coal is mined, that it be reclaimed so he can start getting it back into production.

643 In that way, the only damages that he would sustain, that is not the only damage but I am just saying he would be hurt less if just the area that was actually being mined was all he lost access to at any given time. Are you following me on that?

643 Governor HERSCHLER. Yes, I do. Of course in the mines in Wyoming, particularly in the Powder River basin, they have a substantial, a substantial area and, of course, as the mine progresses they open a small pit, take the coal out and then try to reclaim it and put it back into production.

643 The only problem you have, of course, is when a mine, for example, opens in a given area. They have four silos, the railroad trackage, other matters are there and you move your pits further and further away, but you still have to haul the coal to the silos, this kind of thing which takes a rather substantial area of the ranchers land.

643 So it probably would not be practical or feasible to close a 5-acre pit, for example, and reclaim it than to open another pit adjacent to it, and it probably would not allow the farmer or the rancher to continue his operation in those areas. There a lot of the land is used for grazing purposes for liverstock and, in addition, naturally there are water reservoirs and things of this kind that they use.

643 So I would not think that would be too practical, Senator.

643 Senator BUMPERS. The reason I raise the question, in my State they normally mine out a particular leasehold before they start reclaiming on very large tracts, which I understand you have a lot of in Wyoming. The timelag there could be very long.

643 Governor HERSCHLER. Yes, sir. Generally the mining plans in the areas that are being operated now, we have private, State, and Federal land interspersed in the whole area. One of our problems that we have in Wyoming, because of the weather conditions and altitude, it would take much longer to reclaim the land, not just restoring the earth, but getting it into grazing production because our rainfall is minimal and it takes quite a bit of time to get the land back, get it reseeded, and get it going so it would be productive for a rancher.

643 Senator BUMPERS. Governor, one final question. Yesterday we had the Governors of West Virginia and Kentucky testify here, and they talked a great deal about the so-called mountaintop removal method of reclamation. Is that practical in Wyoming?

644 Governor HERSCHLER. Our topography in Wyoming, particularly in the area where most of the mining is going on at the present time, would be entirely different than in Kentucky or the West Virginia situation. One area of the State where we do have similar problems because of the slope of the coal, but generally speaking our coal is pretty much on a horizontal basis.We would not have that particular problem. This is one of the reasons why I am hoping this bill will provide for enforcement of our own reclamation laws because we can look at areas on a site-specific basis.

644 I think our situation is entirely different than Kentucky and West Virginia. As a matter of fact, our situation is somewhat different than some of the other western States.

644 Senator BUMPERS. One other question on that: What are the known coal reserves in your State?

644 Governor HERSCHLER.I cannot give you the exact, or what we anticipate, Senator. But I do know at the present rate of production, last year we had about 35 million tons that we would have at least 400 years of coal.

644 Senator BUMPERS. At that rate?

644 Governor HERSCHLER. At that rate.

644 Senator BUMPERS. I am not surprised at that. I don't know what coal production was in this country last year, I would guess around 600 million tons. I would assume Wyoming contributed - that would be about 5 percent of the coal mined in this country last year.

644 Governor HERSCHLER. We expect, Senator, our production in 1973 was 14.8 million tons; in 1976, it was about 35.1, and we are anticipating at least that, by 1980, we will be mining about 100 million tons.

644 Senator BUMPERS. Where did most of that 35 million tons you mined last year go?

644 Governor HERSCHLER. Part of it went to the Midwest, I think around Chicago; some to Detroit; some to Texas and Oklahoma, I believe.

644 Senator BUMPERS.Does it all have about the same sulfur content?

644 Governor HERSCHLER. Yes, sir, most of it does.

644 Senator BUMPERS. Is it all below 1 percent?

644 Governor HERSCHLER.It is a very low sulfur content, yes. We do have a large part of our production that goes to power-generating plants in Wyoming, too.

644 Senator BUMPERS. You are not shipping any coal - maybe I did not hear you correctly awhile ago - you are not shipping any coal to the west coast?

644 Governor HERSCHLER. Very little, I believe, sir. Most of it goes to the East and South.

644 Senator BUMPERS. Is there any deep mining in Wyoming, or is it all strip mining?

644 Governor HERSCHLER. There are a few underground mines, yes, sir. Most of the mines, I don't think there are over one or two underground mines in Wyoming. Most of the mining is the strip mining. In the southwest corner of Wyoming we have some pits, they expect to, by mining the various veins in the formation, that they will have high walls of 1,000 feet when they get through.

645 Senator BUMPERS. 1,000 feet? How in the world are you going to reclaim that?

645 Governor HERSCHLER. The particular mine is grandfathered because our environmental quality laws were not enacted until after a considerable length of time after that mine was opened. So it has been grandfathered. There is another mine, an application that is pending, for a similar mine and we have not made a determination as to whether or not a permit will be granted.

645 Senator BUMPERS. You are going to have two Grand Canyons on your hands.

645 Governor HERSCHLER. Yes, we are.

645 Senator METCALF. The grandfathered mine, is that the Kenmerer mine?

645 Governor HERSCHLER. Yes, sir.

645 Senator METCALF. That was an ongoing mine.I supported that proposal to exempt an ongoing and operating mine. I take a very dim view of grandfathering a mine that has not started operations under the same provisions.

645 Governor, you have been most patient with us. You have helped every member of the

committee. You have come from the western part of the United States, you have stated many of
our positions, many of our problems. You have explained to some of our colleagues from the
Eastern States, I think very lucidly and eloquently, the problems we face in strip mining. You
have been most patient.I congratulate you. We are very pleased that you are here, and you were
most courteous to yield to the Governor of Montana. Thank you so much.

645 Governor HERSCHLER. Thank you, Senator. I hope our testimony has been of some
help.I certainly appreciate your problems.

645 Senator METCALF. It has been most helpful and we look forward to any material your
"paper flipper" can supply for us.

645 Governor HERSCHLER. I have these copies of the proposed draft.

645 Senator METCALF. They have been ordered to be incorporated in the record.

645 I have permission to sit during the Senate session today, but I think I will run along for
one more witness, or a panel, and then I propose to recess the committee for an hour. I don't
know how long this panel is going to run so I can't tell you right now about the time when you
are going to come back.

645 May we have some order in the hearing, please? May we have order in the back of the
room?

645 [Governor Herschler's draft language for agreement follows:]

645 DRAFT LANGUAGE FOR A GRANDFATHER CLAUSE FOR AGREEMENT STATES

645 (For inclusion in S. 7; this same language could be included in H.R. 2, but references
would be different.)

645 "Section - - - . Special Provisions for Certain States and Territories.

645 "(a) Any state which -

645 "(1) has, prior to the date of enactment of this act, developed a state program for the
control, regulations and reclamation of surface coal mining operations which contains
performance standards, as stringent as, or more stringent than, those performance standards set
forth at 41 F.R. 20252 (May 17, 1976), specifically 43 C.F.R. Section 3041 et seq. and 30 C.F.R.

Sections 211 et seq.,

646 "(2) has received a determination from the Department of Interior, or the Office of Surface Mining Reclamation and Enforcement, that such stringency requirements have been met and

646 "(3) demonstrates on a year-to-year basis that it is enforcing the performance standards, shall each be considered in accordance with subsection (b) for purposes of the Surface Mining Control and Reclamation Act of 1977.

646 "(b) In the case of a state which meets the requirements under subsection (a) -

646 "(1) a federal lands program shall not be established within the state,

646 "(2) the provisions of Title IV shall not be applicable to lands within such state or Federal Lands,

646 "(3) the state is authorized to and shall require surface coal mining operations on lands within such state and on Federal Lands to comply with the requirements of the state program utilizing state administrative and judicial procedures.

646 "(c) Any state which fails to enforce the performance standards and, upon notice from the Office, refuses or is unable to correct such failure within nine (9) months from such notice, shall no longer meet the requirements of subsection (a). Such a state shall thereafter be subject to all provisions of the act as if such act became effective on the last date on which the state could have corrected such failure to meet the requirements of subsection (a)."

646 [Subsequent to the hearing, the following information was submitted by Governor Herschler:]

646 WYOMING EXECUTIVE DEPARTMENT, Cheyenne, Wyo., March 28, 1977.

646 Hon. LEE METCALF, Senate Office Building, Washington, D.C.

646 DEAR SENATOR METCALF: I appreciate the opportunity to appear before your committee to discuss federal strip mining legislation. I have attempted to respond to the numerous questions asked by you and your committee.

646 I would like to clarify my position on the matter of surface owner consent. A federal strip

mining bill should provide for the protection of the rights of agricultural surface owners. This
protection should include both surface owners above existing leases as well as surface owners
above future lease blocks. I have included for your consideration a copy of W.S.
35-502.24(b)(xi). In addition, I would refer you to the response on question No. 12.

646 Attached are the questions posed by your committee along with my reply to each.

646 If there are any other matters you wish to have clarified, please feel free to contact me.

646 Yours sincerely,

646 ED HERSCHLER, Governor.

646 Enclosure.

646 RESPONSE TO THE COMMITTEE'S QUESTIONS RAISED DURING THE TESTIMONY OF GOVERNOR ED HERSCHLER OF WYOMING ON THE FEDERAL STRIP MINING BILL

646 1. How does the Wyoming Severance Tax work?What is the method of determining the
tax and valuation?

646 All minerals are valued at 100 percent of the market value at the first point of storage i.3.
tipple, silo, fin, etc.

646 This same value is used for Ad Valorem and severance tax.

646 The various severance tax rates as well as the local mill levies are applied to the value.

646 2.What is the steepest slope which Wyoming law will allow to be mined?

646 Chapter II, Section 3c. Rules and Regulations state that "Contouring of affected land to
blend in with the topography of the surrounding terrain unless so doing would create an erosion
problem or a hazard to man or beast.

646 3. What is the average size of a mine and what is the amount of land distributed at any
one time?

647 The average size of a strip coal mine is approximately five to ten acres. The amount of
land disturbed including facilities that is railroad loop, plant site may average 640 acres.

647 4. What is the average acreage covered by any single permit?

647 The average acreage covered by a permit is 8,000 acres. In Wyoming permits range in size from 34 to 37,000 acres.

647 5. How many coal mining permits (coal mine) are handled by the State of Wyoming in any given year?

647 The Land Quality Division processes approximately eight coal permits per year. Currently 19 coal mines undergo surveillance and monitoring and 12 new permits are currently being reviewed and processed.

647 6. How does Wyoming determine the amount of the reclamation bonds and what kind of bonds are required?

647 Bonds are determined on the basis of what it would cost to return the land to a use equal to or greater than the previous use and another 20 percent is added to the estimate to allow for contractors profit and contingencies. The bonds are performance bonds obtained from Surety Companies.

647 7. Please explain the state procedure for application approval.

647 A permit is required for surface mining and remains valid until the termination of all mining and reclamation operations. Application for a permit is made to the Division Administrator and must include details of the proposed operations. A fee of $100 plus $10 for each acre, not to exceed $2 ,000, must accompany the application. Any amendments to the permit application must be accompanied by a $200 fee plus $1 0 for each acre, again not to exceed $2 ,000. A reclamation plan must accompany the permit application.

647 Notification of the application must be published in the local newspaper. The operator must mail a copy of the notice immediately after first publication to all owners of surface rights within the permit area, to all owners of surface and mineral rights of adjoining lands and to any other person having valid rights which might be affected by the proposed operation. If any written objections are filed, the Environmental Quality Council, who acts as a hearing examiner for the Department, will hold public hearings on the proposed operations. An applicant who is refused a permit by the Division may petition for a hearing befor the Council. A license to mine for minerals is required for each mining permit and is valid for the duration of the mining

operations.An application for such license must be made to the Division Administrator,
accompanied by a fee.

647 The permit application must include a mining plan and a reclamation plan which are
reviewed by the staff. They evaluate the application to determine if the following elements are
included:

647 1. A detailed mining plan describing timetables and progression of mineral extraction.

647 2. A statement of the land use prior to mining and after mining.

647 3. Plans for a contour suitable for the proposed use after mining.

647 4. Existing vegetative types and revegetation plan including plant species.

647 5. Method of disposal of buildings and structures.

647 6. Detailed maps of the various reclamation activities.

647 7. Estimate of total reclamation costs.

647 8. An approximate contour map of the affected area of the reclamation.

647 9. The method of separating and caring for topsoil, subsoil and spoils.

647 10. A plan for safely disposing of acid or toxic materials.

647 11. An instrument of consent from all surface landowners.

647 12. Proposed procedures to avoid creating a public nuisance or hazard to humans,
domestic animals, wildlife, vegetation or private property.

647 13.Methods for controlling water pollution or erosion.

647 14. Source, quality and quantity of water to be used and water disposal plans.

647 15. The projected reclamation timetable.

647 The operator is required to file an annual report showing in detail the progress of mining
operations, the extent of reclamation work, a comparison of progress with the original plan, and a
revised timetable of anticipated operations for the coming year.After receipt of the annual report,
an inspection of the site must be conducted by the staff. Within 60 days, the amount of the
reclamation bond is determined to insure reclamation of affected lands during the ensuing year.

648 8. Does Wyoming have a position on the Indian lands provision contained in the Bills?

648 The State of Wyoming has no position on Indian lands within the State in the Wyoming Environmental Quality Act of 1973.

648 9. What is the acreage of abandoned mine lands in Wyoming?

648 It is estimated that abandoned or orphaned mined coal lands within the state amounts to 40,000 acres and orphaned mined uranium lands 20,000 acres.

648 10. Is there a problem with subsidence in Wyoming?

648 Subsidence occurs in two locations in Wyoming. First, under the City of Rock Springs whereupon underground mining commenced in 1863 and lasted until 1954. The U.S. Bureau of Mines is conducting a backfilling program under the City, which began in 1972. The second location of subsidence is near Acme, Wyoming in Sheridan County from old underground mines. The surface has subsequently become pockmarked due to natural sloping from below.

648 11. Can you provide alternative language on the definition of alluvial valley floors?

648 S. 7 and H.R. 2 - Definition of Alluvial Valley Floor. - "Alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

648 Wyoming Land Quality Division Recommended Definition for "Alluvial Valley Floor." - "Alluvial valley floor" means the unconsolidated stream laid deposits extending below the water table and holding perennial or intermittent streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. n1

648 n1 The word "irrigation" was erroneously omitted from the Land Quality Division recommended definition.

648 The reason for recommending the change in the "alluvial valley floor" definition was primarily administrative rather than technical. It is felt that the changes would help define the limits or boundaries of any given alluvial valley. The establishment of boundaries is extremely important to this regulatory agency since the proposed federal legislation applies different

permitting and reclamation requirements to alluvial valley floors as compared to lands outside of
alluvial valley floors.

648 The recommended changes can be divided into two parts. The first part calls for the
insertion of the words "extending below the water table" following the word deposit. These
additional words would specify that an alluvial valley floor have stream laid deposits that contain
a saturated zone (water table) and would for example exclude elevated gravel terraces that
normally do not contain a water saturated zone. If legislative history supports the position that
elevated terraces are not to be considered as alluvial valley floors then the recommended changes
would not be necessary.

648 The second part of the recommended change involves the insertion of the words
"perennial or intermittent" immediately preceding the word streams. The above wording would
prelude ephemeral streams from the alluvial valley floor definition. n2 Nearly all surface coal
mines in this state have at least one ephemeral stream crossing their permit boundary and some
mines have three or four such streams. The reasons for recommending the changes are that these
small streams do not, in general, contribute significantly to on site subirrigation or flood
irrigation agricultural activities, and the protection of water quality and down stream water rights
is already provided for under present Wyoming law.

648 n2 An ephemeral stream is one that has flow for a short period of time during spring
snowmelt or in response to major precipitation events. The water table never intersects the bed
of an ephemeral channel.

648 12. Will you provide a precise statement of the Wyoming State law provisions dealing
with surface owners' consent?

648 Wyoming Environmental Quality Act provides two categories of land-owner consent
requirements in mining permits.

648 A. If landowner qualifies as resident agricultural landowner, the permit applicant must
obtain his consent to the mining and reclamation plan and to enter and commence mining, W.S.
25-502.24(b)(xi).

648 1.Criteria for resident agricultural landowner:

648 Hold title prior to January 1, 1970.

648 Have principal place of residence on land or conduct farming or ranching operation or receive significant portion of income of such operation.

649 B. All other landowners must give consent to mining or reclamation plan prior to issuance of permit. If no consent received, the Environmental Quality Council conducts hearing and may override landowner if it finds:

649 1. That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

649 2. That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;

649 3. That the use does not substantially prohibit the operations of the surface owner;

649 4. The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

649 The Environmental Quality Council has had one permit applicant which could not receive landowner consent. In that case Kerr-McGee Coal Company was the applicant and Franklin Real Estate Co. (AEP) the landowner refusing consent. The Environmental Quality Council overruled the landowner and granted the permit. That decision has been upheld by the District Court.

649 There has been no instance where the resident agricultural landowner has withheld his consent and caused the denial of a mining permit.

649 13. What is the length of time for which a permit is granted and the monitoring and revocation procedures employed by the state?

649 Permits are granted for the life of the mine plus ten years therefore to determine if the reclamation of the affected acreage is established. Monitoring is conducted at a minimum of once each year at the time the annual report is submitted by the operator. However monitoring and surveillance is on a continuing basis and may occur from four to six times during any yearly period. Revocation procedures may consist of a (1) Notice of Violation in which the operator has 30 days to take corrective action and (2) under section 35-502.49. Violations of act; penalties:

649 (a) Any person who violates any provision of this act 35-502.1 to 35-502.56, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit, license, or variance is liable to a penalty of not to exceed $1 0,000 for each day during which violation continues, which may be recovered in a civil action, and such person may be enjoined from continuing the violation as hereinafter provided. Damages are to be assessed by the court.

649 (b) Any person who violates this act, rule, regulation, and thereby causes the death of fish, aquatic life or game or bird life is, in addition to other penalties provided by this act, liable to pay to the state, an additional sum for the reasonable value of the fish, aquatic life, game or bird life destroyed. Any monies so recovered shall be placed in the general fund of Wyoming, state treasurer's office. All actions pursuant to this article shall be brought in the county in which the violation occurred or in Laramie County by the attorney general in the name of the people of Wyoming.

649 (c) Any person who willfully or negligently violates any provision of this act or any rules, regulation, standard, permit, license, or variance or limitations adopted hereunder or who willfully violates any determination or order of the council pursuant to this act or any rule, regulation, standard, permit or limitation issued under this act shall be fined not more than $2 5,000 per day violation, or imprisoned for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this act, punishment shall be by a fine of not more than $5 0,000 per day of violation or by imprisonment of not more than two years or by both.

649 (d) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document, filed or required to be maintained under this act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this act, shall upon conviction, be fined not more than $1 0,000 or imprisoned for not more than six months, or both.

649 (e) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief

on account of injury to persons or property and to maintain any action or other appropriate
proceeding therefore. (Laws 1973, ch. 250, 1).

650 14. How much time is necessary for reclamation and what types of reclamation
procedures are required by the state?

650 Mining companies are required to restore the land to a condition equal to or greater than
its highest previous use (Rules and Regulations, Chap. II, Section 1.b.(1)). Wildlife habitat is
restored commensurate to or superior to previous conditions unless the land is to be used for
recreational or agricultural purposes which will preclude the use of the land for wildlife (Rules
and Regulations, Chap. II, Section 1.b (3)).

650 Mining companies are required to rank previous uses of lands to be mined on an
individual basis according to the overall economic or social value of the land use to the
community or area in which these lands are found (Rules and Regulations, Chap. II, Sec. 1.b.).
The Administrator of the Land Quality Division makes the final decision as to the ranking of
land uses in a particular area (Rules and Regulations, Chap. II, Sec. 1.b. (2)).

650 Most lands mined in Wyoming are rangeland, meaning that they are unfenced and support
the native plants that grow there naturally. These lands have never been plowed or seeded.
Where soil and rainfall are adequate, these lands may be reclaimed to pastures (fenced fields with
improved, highly productive grasses) or to intensive agriculture or to a variety of other higher
uses.

650 The improved grasses which are planted in pastures have high seedling vigor and will
become established in one to three years, generally. Further, areas selected for pastures are
favorable in terms of soils, slopes, and availability of water. Thus, these areas require five years
or less for adequate reclamation.

650 When mined rangeland is returned to rangeland, a longer time is required for reclamation.
Native species often do not germinate until a very favorable year occurs. Further, then seedling
vigor is low. Soils and precipitation are often limiting.Hence, five years are required if the
mining company is doing a good job. If the mining company is not doing a good job, more time
may be necessary.

650 Specific reclamation procedures required are (1) fencing to prevent grazing until reclamation is complete, (2) salvaging of all suitable topsoil, (3) burying toxic materials, (4) protection of newly seeded areas from erosion, (5) contour seeding, (6) restoration of the quality, quantity and behavior of groundwater and (7) slope reduction where soil loss may be a problem.

651 [See Illustration in Original]

STATEMENT OF ALEX RADIN, ASSOCIATE DIRECTOR, AMERICAN PUBLIC POWER ASSOCIATION

652 Mr. RADIN. My name is Alex Radin. I am Associate Director of the American Public Power Association here in Washington. I would mention that Mr. Kenneth Holum, Western Fuels Association, Incorporated; Mr. Robert D. Partridge, National Rural Electric Cooperative Association; and Mr. Edward Weinberg, counsel to Western Fuels Association are also here. I would like to make a brief opening statement.

652 NRECA, APPA, and Western Fuels Association, Incorporated, have worked together in developing a position paper with respect to S. 7 and strip mine reclamation legislation in general. We have worked hard to develop a constructive and positive approach. The paper sets out our basic views. It has been made available to the committee and has guided all of us as we have considered the proposed legislation.

652 Western Fuels is a member of both APPA and NRECA. While it is a new organization, it is actively engaged in the business of procuring coal for rural electric cooperatives and municipal utilities.

652 Because he has that background, we have suggested that Ken Holum, general manager of Western Fuels, and former Assistant Secretary of the Interior, draw on his experience to summarize our position. He will also make additional comments on behalf of Western Fuels Association, Incorporated. All of us are here to participate in the discussions and answer any questions you may wish to ask.

652 [The prepared statement of Mr. Radin follows:]

653 JOINT STATEMENT ON S. 7 TO THE SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES BY ROBERT D. PARTRIDGE GENERAL MANAGER NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION ALEX RADIN EXECUTIVE DIRECTOR AMERICAN PUBLIC POWER ASSOCIATION

653 MARCH 3, 1977

653 NRECA, APPA and Western Fuels Association, Inc., have worked together in developing a position paper with respect to S. 7 and strip mine reclamation legislation in general. We have worked hard to develop a constructive and positive approach. The paper sets out our basic views. It has been made available to the committee and has guided all of us as we have considered the proposed legislation.

653 Western Fuels is a member of both APPA and NRECA. While it is a new organization, it is actively engaged in the business of procuring coal for rural electric cooperatives and municipal utilities. Because he has that background, we have suggested that Ken Holum, General Manager of Western Fuels, draw on his experience to summarize our position. He will also make additional comments on behalf of Western Fuels Association, Inc. All of us are here to participate in the discussions and answer any questions you may wish to ask.

654 JOINT STATEMENT ON S. 7 TO THE SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES BY ROBERT D. PARTRIDGE GENERAL MANAGER NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION ALEX RADIN EXECUTIVE DIRECTOR AMERICAN PUBLIC POWER ASSOCIATION KEN HOLUM GENERAL MANAGER WESTERN FUELS ASSOCIATION, INC.

654 MARCH 3, 1977

654 Mr. Chairman. We appreciate the opportunity of presenting to you and this important subcommittee the views of organizations which represent the overwhelming majority of consumer-owned electric utilities - the rural electrics and the municipals - in the United States. Many of our members generate their own electricity or electricity for sale at wholesale to the smaller distribution cooperatives. All are frantically trying to obtain adequate supplies of fuel at prices which do not force them to charge crippling prices to the individual consumers for the electricity needed for farms, homes, agriculture-related businesses, towns and cities served by municipally owned utilities. S. 7 and its predecessors are bills we have studied for some time. Our separate organizations have worked together to develop the two-page position paper which states our general views. We support surface mine reclamation but believe the bill needs some changes and the position paper explains why.

655 My name is Ken Holum, and I am general manager of Western Fuels Association, Inc., a non-profit organization whose purpose is to supply fuel to our members, rural electric generating and transmission cooperatives and municipal power systems.

655 With me are Alex Radin, Executive Director of the American Public Power Association which represents more than 1,400 municipal and other local publicly owned utilities in 48 states, and also, Bob Partridge, Executive Vice President and General Manager of the National Rural Electric Cooperative Association, which represents more than 1,000 electric systems serving 25 million consumers in 46 states.

655 I would ask that our position paper be included in the record of the hearing. I will summarize it briefly here, then proceed with the individual testimony of Western Fuels.

655 First, we believe the regulatory scheme of administrative hearings should be kept as simple as possible, avoiding duplicate hearings and coordinating procedures prescribed by the Federal Land Policy and Management Act of 1976, the Federal Coal Leasing Amendments Act of 1975, and the law which will evolve from hearings and deliberations now under way in both the House and the Senate. We think some hearings can be consolidated or eliminated.

656 Second, regarding citizen suits, we do not guarrel with the principle that any citizen able to meet existing "standing to sue" gualifications can obtain judicial review of administrative decisions. But we believe steps should be taken to make the citizen suit process responsible and balanced.

656 Third, we agree that reasonable and fair protection should be provided for the owner of surface land over federal coal deposits, but a way must be found to give such owners reasonable protection and compensation without unduly penalizing the American consumer or denying him the use of a resource which belongs to the American people.

656 The position paper provides more details, and we are prepared to discuss its provisions as the subcommittee members may desire.

STATEMENT OF KENNETH HOLUM, GENERAL MANAGER, WESTERN FUELS ASSOCIATION, INC.

657 Mr. HOLUM. Let me say at the beginning of my remarks I am very pleased to

have the opportunity to appear with this distinguished panel this morning and I am pleased to have the opportunity to be here and hear the constructive and useful testimony of the two Governors and the useful exchange of ideas between the Governors and the members of the committee. I think it has been an extremely useful morning, I am happy to be here at the hearing.

657 I want to say too that in some ways it is like old times to sit in this chair. I sat in it on many occasions in the 1960's. I remember those occasions rather vividly today after having read in the daily press about 10 days ago certain information with respect to water resource development projects in the country. I sit here with a different responsibility this morning.

657 I have been attempting, for the last 2 1/2 years, to learn a lot and it is a long and difficult learning process about a new area of activity. On behalf of all of us, Mr. Chairman we appreciate the opportunity of presenting to you and this important subcommittee the views of organizations which represent the overwhelming majority of consumer-owned electric utilities, the rural electrics and the municipals in the United States.

657 Many of our members generate their own electricity or electricity for sale at wholesale to the smaller distribution cooperatives. All are frantically trying to obtain adequate supplies of fuel at prices which do not force them to charge crippling prices to the individual consumers for the electricity needed for farms, homes, agriculture related businesses, towns and cities served by municipally owned utilities.

657 S. 7 and its predecessors are bills that we have studied for some time. Our separate organizations have worked together to develop the two-page position paper which states our general views. We support surface mine reclamation but believe the bill needs some changes and the position paper explains why.

657 My name is Ken Holum, and I am general manager of Western Fuels Association, Incorporated, a nonprofit organization whose purpose is to supply fuel to our members, rural electric generating and transmission cooperatives and municipal power systems.

657 With me are Alex Radin, executive director of the American Public Power Association

which represents more than 1,400 municipal and other local publicly owned utilities in 48 States;
also, Bob Partridge, executive vice president and general manager of the National Rural Electric
Cooperative Association, which represents more than 1,000 electric systems serving 25 million
consumers in 46 States.

657 I would ask that our position paper be included in the record of the hearing.

657 [The panel's position paper appears on the following page.]

658 POSITION PAPER ON SURFACE MINING CONTROL AND RECLAMATION BILLS

658 (By National Rural Electric Cooperative Association, American Public Power
Association, and Western Fuels Association, Inc.)

658 To provide for the orderly development of coal by surface mining methods, the regulatory
scheme of administrative hearings in the "Surface Mining Control and Reclamation" bills (S. 7
and H.R. 2) should be kept as simple as possible while still being thorough. We are concerned
that the hearing procedures under both S. 7 and H.R. 2 are so complex and duplicative that public
confusion and delay will result. To avoid this, hearing procedures in the surface mining bill
should be changed to eliminate duplication with other laws and to combine the multiple
procedures set forth in the proposed law into one unified section.

658 With respect to other laws, we believe that some of the hearing procedures under the
Federal Land Policy and Management Act of 1976 and the Federal Coal Leasing Amendments
Act of 1975 will suffice for some of those proposed in the surface mining bills. For instance,
hearings held on the adoption of a land use plan on Federal lands could be combined with the
one, under the surface mining proposals, which calls for designating an area unsuitable for
mining and the one which deals with approval of state and/or Federal regulatory programs.
While some of these procedures were meant to cover only Federal lands, we believe that the
surface mining law should give the regulatory agency, created by S. 7 and H.R. 2, enough
discretion to allow it to work with other appropriate agencies to cover areas consisting of both
publicly and privately held lands. Another instance where S. 7 and H.R. 2 are inconsistent with
the Federal Coal Leasing Amendments Act, thereby creating procedural difficulties, is in the

requirement for mining and reclamation to begin within three years of the issuance of a permit.
Not only is this an impractical standard, but it is far more stringent than the diligent development
time limits in the Leasing Act.

658 Secondly, we suggest that within the surface mining proposals, some of the hearings be
consolidated or perhaps eliminated. Certainly, the public and mine operator would be better
served if the hearing procedure would be as close to one-stop as possible. This kind of procedure
should allow the regulatory agency to exercise its discretion in a more orderly way and eliminate
the duplication of hearing records. The reporting requirements are so broad in scope and
language that it would be desirable to deal with this extensive information in a consolidated
hearing format.

658 Another provision of the bill which we believe critical to the efficient administration of an
effective surface mining reclamation law is the one relating to citizen suits.

658 Judicial review of administrative determinations can, by law, be had by any citizen able to
meet existing "standing to sue" qualifications. We do not quarrel with the principle. However, it
is a fact that such suits may serve as a smoke screen for interests who are less concerned with
effective reclamation than they are in stifling of strip mining per se. To make the citizen suit
process responsible and balanced, we respectfully suggest that (a) the court be authorized to
award attorney fees as well as court costs (attorney fees may not now be awarded unless
specifically authorized by statute), and (b) the court be authorized to award exemplary damages
when the suit is found to be frivolous or not based upon a good faith belief that there has been a
substantial violation prompting the bringing of the action.

658 Reasonable and fair protection for the surface owner, in instances where the surface has
been separated from the mineral estate, is a matter of appropriate Congressional concern. If the
problem is to be dealt with in legislation designed to deal with reclamation, a way must be found
to give the surface owner reasonable protection or compensation without unduly penalizing the
American consumer or denying him the use of the resource that belongs to him.

658 We believe that Congress can appropriately establish guidelines and procedures for
restoring land disturbed by surface mining of coal and the protection of the environment. We

offer the suggestions outlined in the memorandum because we are convinced that legislation can be enacted to accomplish that goal without placing unreasonable burdens on the American consumer or denying him the use of an energy resource that is badly needed.

659 Mr. HOLUM. I will summarize it briefly here and then proceed with the individual testimony of Western Fuels.

659 First, we believe the regulatory scheme of administrative hearings should be kept as simple as possible, avoiding duplicate hearings and coordinating procedures prescribed by the Federal Land Policy and Management Act of 1976, the Federal Coal Leasing Amendments Act of 1975, and the law which will evolve from hearings and deliberations now under way in both the House and the Senate. We think some hearings can be consolidated or eliminated.

659 Second, regarding citizen suits, we do not quarrel with the principle that any citizen able to meet existing "standing to sue" qualifications can obtain judicial review of administrative decisions. But, we believe steps should be taken to make the citizen suit process responsible and balanced.

659 Third, we agree that reasonable and fair protection should be provided for the owner of surface land over Federal coal deposits, but a way must be found to give such owners reasonable protection and compensation without unduly penalizing the American consumer or denying him the use of a resource which belongs to the American people.

659 The position paper provides more details, and we are prepared to discuss its provisions as the subcommittee members may desire.

659 I would like to proceed to the statement of Western Fuels.

659 Western Fuels Association is a nonprofit Wyoming corporation organized for the purpose of procuring fuel required by electric generating stations built and owned by consumer-owned electric systems. I am general manager of Western Fuels Association.

659 We are less than 3 years old, but we are members of two older national organizations of consumer-owned electric utilities which are probably better known to members of this subcommittee, the National Rural Electric Cooperative Association and the American Public Power Association.

659 I have been working with the leaders of these two groups in an effort to improve the surface mining reclamation bills now being studied by the Congress and the executive heads of both organizations are with me today: Robert D. Partridge, General Manager of NRECA; and Alex Radin, General Manager of APPA. Also with us today is Edward Weinberg, a former solicitor of the Interior Department who is a legal adviser to Western Fuels.

659 The members of Western Fuels at the present time are five rural electric generation and transmission cooperatives, six municipal electric systems and one public power district. We are presently committed to supply fuel to a generating station being constructed near Wheatland, Wyo., that will serve rural electric cooperatives and municipal electric systems in eight States.

659 Our obligations to Cajun Electric Power Cooperative, Inc., headquartered at New Roads, La., involves all of the rural electric cooperatives in that State. We will supply the coal required by the Nearman Station being built by the Board of Public Utilities of Kansas City, Kans. We will deliver in excess of 10 million tons of coal in 1983 just to meet our current commitments.

659 I would like to add: At the present time we are engaged on an intensive search for coal. My responsibility may, in the organization I represent, be responsible for the fuel supply of rural electric cooperatives in New Mexico, Colorado, Montana, Wyoming, and North Dakota; all of the principal coal-producing States in the West. I can assure you the farmers and ranchers in those States - they are very much a part of my obligation as manager of Western Fuels.

660 Western Fuels, in spite of its keen interest in the legislation, did not participate actively in the debate associated with strip mine reclamation legislation in the 94th Congress. We did not participate because, in our view, the congressional work was too far advanced for our effective participation at the time that Western Fuels had become an active organization.

660 We did, however, as we had the opportunity, express ourselves by giving vigorous support to strong Federal strip mine legislation designed to achieve real environmental protection. We also have, and I reiterate it this morning, at all appropriate opportunities expressed our concern and support for legitimate protection for the private owners of surface lands over Federal coal.

660 However, we also have expressed our strong concern for the best interests of the American consumer who is the owner of the coal. Strip mine legislation should contain adequate and generous surface owner protection. The legislation, however, must not arbitrarily deny the American consumer the resource which the American public owns, and the financial burden placed upon the consumer must be carefully considered.

660 We are not here this morning to discuss in any detail the features of S. 7 or H.R. 2 that have to do with land reclamation. We are prepared to accept the judgment of the Congress on these items. If the Congress decides that the land should be restored to its approximate original contours, Western Fuels will accept that judgment.

660 I note, however, that our members, like Western Fuels' general manager, have a rural and farm background. Drawing on that background, we would consider it more appropriate to use the opportunities available when reclaiming the land which has been mined to improve its contours so as to increase its usefulness for agriculture and food production.

660 As an Assistant Secretary of the Department of the Interior during the Kennedy and Johnson administrations, I worked with Basin Electric Power Cooperative, one of our present members, in developing the plans for the Leland Olds generating station north of Bismarck, N. Dak. At that time, Basic Electric became the first electric utility in the United States, voluntarily and on its own motion, to include in its fuel supply contract a requirement that the coal supplier restore the land. I applauded that initiative in 1962. It is still a noteworthy and pioneering action.

660 I have with me today a prepared statement of Basin Electric. I would like to submit it for the record and would like to call attention particularly to the excellent language in Basin Electric's resolution with respect to land restoration. I also have with me pictures of the activities going on by the Consolidation Coal Co. the reclamation of the Glenharold Mine. It is vivid evidence that reclamation can be conducted and the land can be restored.

660 Essentially, having already noted our views on surface owner protection, I want to express Western Fuels' concern in two areas.

661 Western Fuels is a small organization with limited financial resources. If we are to exist,

we will need to have the opportunity to borrow money from commercial sources. We must be a good credit risk. It may be that the country's major oil companies and large coal companies can secure the financing that they need, even if S. 7 is adopted without change. Western Fuels has grave doubts that it will be able to do so.

661 The legislation as drafted, and as we understand its language, would mean that we would have only 3 years to begin surface mining operations after we secure a reclamation permit, and the permit would have only 5 years duration. Heavy-duty equipment, draglines, for example, which will cost as much as $25 million, cannot be ordered and delivered in 3 years.

661 We cannot place firm orders for such expensive equipment until we get the reclamation permit, and how many bankers will finance such purchases with repayment spread out over 20 to 30 years on the basis of a 5-year contract? Because we cannot draw on resources or income from other sources, Western Fuels must be able to finance, or we must fail.

661 We believe that Congress can accomplish the desired objective by granting a reclamation permit for the length of time the mine is going to be in operation while, simultaneously, providing for regular and periodic reviews of the mining company's performance with changes in permit provisions as required by the permit authority and with strict sanctions, including cancellation if the requirements of the permit are not met. We have prepared amendments to S. 7 to accomplish that objective.

661 We would urge this committee and the Congress to review again the various hearing procedures and opportunities for judicial review and administrative remedies provided in S. 7, keeping in mind that the Federal Coal Leasing Amendments Act of 1975 is now law as is the new BLM Organic Act. We welcome careful review at the administrative level.

661 We consider that opportunities for judicial review at the instance of interested citizens is clearly appropriate. We feel strongly, however, that there should be a limit to those opportunities and that the law should be drafted to make citizens' suits possible while, simultaneously, making the citizen interveners responsible.

661 We have prepared draft amendments to S. 7 to accomplish these objectives which we have submitted to the subcommittee. Basically, this work has been done by Edward Weinberg, a

former solicitor of the Department of the Interior.I would like to ask the committee to permit Mr.
Weinberg to explain, by way of illustration, some of the proposed amendments and what they
would accomplish.

661 Western Fuels believes that S. 7 can and should be written as to establish strict regulations
for environmental protection. We agree that operators who will not or who do not obey the rules
should be denied the right to mine. We believe that the amendments we propose will accomplish
that objective while permitting the operator who will protect and restore the environment to mine
the coal the Nation urgently needs. Thank you.

661 [The prepared statement of Mr. Holum and the submittal from Basin Electric Power
Cooperative follow:]

662 STATEMENT OF KENNETH HOLUM, GENERAL MANAGER WESTERN FUELS ASSOCIATION, INC. BEFORE THE SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ON S. 7

662 THE "SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977"

662 MARCH 3, 1977

662 Western Fuels Association is a non-profit Wyoming corporation organized for the purpose
of procuring fuel required by electric generating stations built and owned by consumer-owned
electric systems. I am general manager of Western Fuels Association.

662 We are less than three years old, but we are members of two older national organizations
of consumer-owned electric utilities which are probably better known to members of this
subcommittee - the National Rural Electric Cooperative Association and the American Public
Power Association. I have been working with the leaders of these two groups in an effort to
improve the surface mining reclamation bills now being studied by the Congress, and the
executive heads of both organizations are with me today: Robert D. Partridge, general manager
of NRECA, and Alex Radin, general manager of APPA. Also with us today is Edward
Weinberg, a former solicitor of the Interior Department, who is a legal adviser to Western Fuels.

663 The members of Western Fuels at the present time are five rural electric generation and
transmission cooperatives, six municipal electric systems and one public power district. We are

presently committed to supply fuel to a generating station being constructed near Wheatland, Wyoming, that will serve rural electric cooperatives and municipal electric systems in eight states. Our obligations to Cajun Electric Power Cooperative, Inc., headquartered at New Roads, Louisiana, involves all of the rural electric cooperatives in that state. We will supply the coal required by the Nearman Station being built by the Board of Public Utilities of Kansas City, Kansas. We will deliver in excess of 10 million tons of coal in 1983 just to meet our current commitments.

663 Western Fuels, in spite of its keen interest in the legislation, did not participate actively in the debate associated with strip mine reclamation legislation in the 94th Congress. We did not participate because, in our view, the Congressional work was too far advanced for our effective participation at the time that Western Fuels had become an active organization.

663 We did, however, as we had the opportunity, express ourselves by giving vigorous support to strong federal strip mine legislation designed to achieve real environmental protection. We also have, and I reiterate it this morning, at all appropriate opportunities expressed our concern and support for legitimate protection for the private owners of surface lands over federal coal. However, we also have expressed our strong concern for the best interests of the American consumer who is the owner of the coal. Strip mine legislation should contain adequate and generous surface owner protection. The legislation, however, must not arbitrarily deny the American consumer the resource which the American public owns, and the financial burden placed upon the consumer must be carefully considered.

664 We are not here this morning to discuss in any detail the features of S. 7 or H.R. 2 that have to do with land reclamation. We are prepared to accept the judgment of the Congress on these items. If the Congress decides that the land should be restored to its approximate original contours, Western Fuels will accept that judgment. I note, however, that our members, like Western Fuels' general manager, have a rural and farm background. Drawing on that background, we would consider it more appropriate to use the opportunities available when reclaiming the land which has been mined to improve its contours so as to increase its usefulness for agriculture and food production.

665 As an Assistant Secretary of the Department of the Interior during the Kennedy and the Johnson Administrations, I worked with Basin Electric Power Cooperative, one of our present members, in developing the plans for the Leland Olds generating station north of Bismarck, North Dakota. At that time, Basin Electric became the first electric utility in the United States voluntarily and on its own motion to include in its fuel supply contract a requirement that the coal supplier restore the land. I applauded that initiative in 1962. It is still a noteworthy and pioneering action. I have with me today a prepared statement of Basin Electric. I would like to submit it for the record and would like to call attention particularly to the excellent language in Basin Electric's resolution with respect to land restoration.

665 Essentially, having already noted our views on surface owner protection, I want to express Western Fuels' concern in two areas.

665 Western Fuels is a small organization with limited financial resources. If we are to exist, we will need to have the opportunity to borrow money from commercial sources. We must be a good credit risk. It may be that the country's major oil companies and large coal companies can secure the financing that they need, even if S. 7 is adopted without change. Western Fuels has grave doubts that it will be able to do so.

666 The legislation as drafted, and as we understand its language, would mean that we would have only three years to begin surface mining operations after we secure a reclamation permit, and the permit would have only five years' duration. Heavy-duty equipment - draglines, for example, which will cost as much as $2 5 million - cannot be ordered and delivered in three years. We cannot place firm orders for such expensive equipment until we get the reclamation permit, and how many bankers will finance such purchases with repayment spread out over 20 to 30 years on the basis of a five-year contract? Because we cannot draw on resources or income from other sources, Western Fuels must be able to finance, or we must fail.

666 We believe that Congress can accomplish the desired objective by granting a reclamation permit for the length of time the mine is going to be in operation while, simultaneously, providing for regular and periodic reviews of the mining company's performance with changes in permit provisions as required by the permit authority and with strict sanctions, including

cancellation if the requirements of the permit are not met. We have prepared amendments to S. 7
to accomplish that objective.

667 We would urge this committee and the Congress to review again the various hearing
procedures and opportunities for judicial review and administrative remedies provided in S. 7,
keeping in mind that the Federal Coal Leasing Amendments Act of 1975 is now law as is the
new BLM Organic Act. We welcome careful review at the administrative level. We consider
that opportunities for judicial review at the instance of interested citizens is clearly appropriate.
We feel strongly, however, that there should be a limit to those opportunities and that the law
should be drafted to make citizens' suits possible while, simultaneously, making the citizen
interveners responsible.

667 We have prepared draft amendments to S. 7 to accomplish these objectives which we have
submitted to the subcommittee. Basically, this work has been done by Edward Weinberg, a
former solicitor of the Department of the Interior. I would like to ask the committee to permit
Mr. Weinberg to explain, by way of illustration, some of the proposed amendments and what
they would accomplish.

667 Western Fuels believes that S. 7 can and should be written so as to establish strict
regulations for environmental protection. We agree that operators who will not or who do not
obey the rules should be denied the right to mine. We believe that the amendments we propose
will accomplish that objective while permitting the operator who will protect and restore the
environment to mine the coal the nation urgently needs.

668 Thank you.

669 [See Illustration in Original]

670 [See Illustration in Original]

671 [See Illustration in Original]

672 [See Illustration in Original]

673 [See Illustration in Original]

674 [See Illustration in Original]

675 [See Illustration in Original]

676 [See Illustration in Original]

677 Mr. HOLUM. I would like to ask permission from Mr. Weinberg to highlight a few of the items submitted to you.

677 Senator METCALF. Mr. Weinberg, I have been hearing you testify for about 25 years. I think the first hearing was when I was a member of the House of Representatives. You came up and testified before the Interior Committee.

677 Let me ask a couple questions of Mr. Holum first. You don't have any mining operations in Montana, but Montana has a 1 year permit. I am sorry I did not get a chance to ask some questions of Governor Judge, but he tells me that in spite of the high severance tax in Montana, the 1 year permit and so forth, that operators are lining up for Montana coal. They are standing in line to get leases on State and private coal.

677 If they can live with a 1 year permit there, why can't you live with the 5 year permit?

677 Mr. HOLUM. Senator Metcalf, I have not studied the provisions of the Montana State law with respect to reclamation permits. As I said earlier in my statement, I am feeling my way into this business. We are not operating any mines at the present time. We are approaching the point where Western Fuels will be seeking opportunities to finance in partnership with another entity a mine in Wyoming.

677 I am getting acquainted with the financial community. We will have to finance 100 percent on a debt basis. I am very concerned and extremely doubtful it would be possible for an organization such as Western Fuels to finance on the basis provided in S. 7 as it is drafted. I cannot imagine we will be able to finance if we only got permission to operate for 1 year. We think the approach we have proposed to the committee for a permit with continuing review and strict sanctions would constitute the objective the Congress wants to accomplish; in addition to having the law on your side, you will have Western Fuels bankers on your side too.

677 Senator METCALF.I don't care about the bankers, but I want Western Fuels to be able to operate and supply energy to Montana and other Western States. Mr. Holum, are you really serious in presenting this proposition, that there should be punitive damages for conservationists who bring suits?

677 Mr. HOLUM.I am going to ask Mr. Weinberg, if you would give him an opportunity to testify, to expand on our views on that subject. I think there is an urgent need in this country for ample opportunity for responsible citizen suits and we would not advocate any position that denied that opportunity.

677 But I think there is a need too, to protect the country, protect the economy against frivolous suits that are brought purely for the purpose of delaying and hamstringing the legitimate operator.

677 Senator METCALF.I hope this is not an allegation that the Friends of the Earth and the Sierra Club are bringing frivolous and nonessential suits. Mr. Weinberg.

677 Mr. WEINBERG. Senator Metcalf, thank you very much.Before I answer your specific question, I would like to say it is like old homeweek for me to be up here, not only because as you have reminded me many times I was the first witness to appear at the first hearing you chaired -

678 Senator METCALF. We are going on 26 years now.

678 Mr. WEINBERG. Right. But also in terms of strip mine legislation, it is old homeweek because I, 10 years ago, was one of the authors of the strip mine bill proposed by the Secretary of the Interior at that time and I remember going to a symposium in 1968, down in Louisville, where it was my task on that program to support the need for a Federal strip mining bill.

678 I think I was lucky to get out of the room alive. There did not seem to be much - that idea at that time did not seem to have much attraction. Either it was because I was the draftsman and was a poor draftsman, or because it was an idea whose time had not come yet. But its time has certainly come and we are not here to propose amendments to gut the bill or to detract in any way from its reclamation accomplishments.

678 Now with that foreword, I would like to address the question that you put, Senator Metcalf, do we really believe there ought to be punitive damages and suits brought by conservationists.

678 Everyone chooses his own adjectives. You mentioned the Friends of the Earth. It happens that I am a member of the Friends of the Earth.

678 Senator METCALF. I just mentioned them as an example.

STATEMENT OF EDWARD WEINBERG, COUNSEL, WESTERN FUELS ASSOCIATION, INC.

678 Mr. WEINBERG. Frivolous is not the word I would use, but in terms of the Friends of the Earth, I receive the newspaper because I am a member. I followed Dave Brower out of the Sierra Club into the Friends of the Earth. The current issue of that paper is very interesting. It relates that Friends of the Earth, among other organizations, has decided it cannot support S. 7. The reason it cannot support S. 7 is precisely the reason why we have suggested this exemplary damage provision.

678 It seems the reason that the Friends of the Earth has decided it cannot support S. 7 is that S. 7 does not call for an end to strip mining. Now that suggests, Senator, and I cast no aspersions on the good faith of the Friends of the Earth, as I say, I belong to the organization and I believe it serves a useful purpose and that is why I belong.

678 But it is one thing to have the citizens suit as a weapon to enforce a permit when a reluctant Government agency and a foot-dragging mine operator flaunt the terms of the permit.

678 It is another thing, if you have a sincere belief, that strip mining is bad per se and should not be permitted. It is unknown to the world that people bring lawsuits to extend time to carry things along to the point where sometimes they wear you out. The provision that we have proposed is a very narrowly drawn one. It simply says that if the affidavits that are required to be filed by S. 7 to support a citizen's suit, if the court determines that those affidavits were made with reckless disregard of the falsity of the facts alleged, then the court may award exemplary language and that is standard.

679 That standard is the standard the Supreme Court has laid down in the case of liable against a public figure. He cannot recover unless it is shown not only that the statement is false, but that the statement was made without any attempt at all to determine its truth or falsity.

679 In that narrow range, we think the court should have that authority along with the authority to award attorneys fees. The bill authorizes the court, in a citizens suit, to award court costs; but attorneys fees in Federal law are not a part of court costs and may not be awarded by Federal

courts unless Congress specifically provides that.

679 The conference report last year pointed to the discretionary award of court costs as one of the methods by which frivolous suits would be avoided.But I think it may have been overlooked that the court costs without attorneys fees are rather nominal and therefore, would not have that effect.

679 Senator METCALF. I am not going to comment on that. In a couple of years I may be back practicing law and trying for some attorneys fees. But I think it has been very helpful, Mr. Weinberg, for you to clarify that statement. It demonstrates, by your statement that this is a very narrow issue.

679 Mr. WEINBERG. Yes, Senator Metcalf, it is a narrow issue, but the opportunity in the hands of a determined group to slow things down are there and we think if we are prepared to defend ourselves in good faith, and to establish the other party was not, then we think some of the burden should fall on the other party.

679 I would like also to comment briefly on one of the early points that Governor Herschler made. It is not in the amendments we have filed with the committee, but Governor Herschler raised the question of whether the requirement for an impact statement, which is contained in section 502(d) at page 134, serves any useful purpose.

679 The impact statement would be required before the Secretary could approve a State plan, or before the Secretary could promulgate a Federal plan where there is no State plan, or where the Secretary promulgates a Federal enforcement program.

679 This too illustrates our concern about getting caught up in litigation. I join Governor Herschler in believing that there is no need, an impact statement in the circumstances approving a State program or approving a Federal program, or a Federal enforcement program, where the Federal Government, under the bill, would take back enforcement would serve no useful purpose except to open up another front for litigation.

679 The Secretary must hold hearings before the approves a State plan. His decision on whether or not to approve a State plan is subject too, to judicial review. If the Secretary promulgates a Federal program which anyone considers is not in accordance with the criteria in

this act, they may bring a citizen suit under section 420 and get that reviewed in court.

679 All of the elements that would have to be considered can be reviewed. But when you add an additional requirement for an impact statement in those cases, what you are doing is adding another year before this program can get underway and opening another front for litigation.

680 We want to mine coal and reclaim land and Mr. Holum is not looking for an opportunity to make me wealthy by defending needless lawsuits. We do urge the committee to take another look at the requirement for an impact statement at that point and I may suggest, if the committee concludes that provision could come out, not simply drop it, that gives rise to another lawsuit about what Congress meant.

680 I would urge that either no impact statement is required in those circumstances or that the committee report contain a strong statement to that effect.

680 Senator METCALF. That will help you in your lawsuit.

680 Mr. WEINBERG. It will help me not get into a lawsuit. I think that is the best kind of law to have.

680 Now with respect to the length of the permit, the bill provides for a continuing review and monitoring of the activities of the permittee. The bill now provides for an inspection on the average of once a month. Any activity the permittee engages in, even though it is not a violation of the act which constitutes an imminent danger to health, or wherever that terminology is, is subject to an instant stop order.

680 In those circumstances we suggest there is no need to add the burden of starting all over again with another application and another hearing because the renewal of that permit is not automatic under this bill. Far from it.

680 There is another hearing called for, the applicant must prove he has been following along since he has been monitored on the average of once every month for 5 years, it seems to us this is enough, or this simply opens up another field for more lawsuits on an issue which is really unnecessary.

680 We suggest two changes. Since we have suggested the length of the permit be

commensurate with the life of the mining operation or the life of the lease, whichever is shorter,
we suggest two things. One, the applicant be required by regulations to update his baseline
information on data which he furnished with his original application at least once every 5 years.

680 This would fulfill one of the objectives -

680 Senator HANSEN. Would you repeat that again.

680 Mr. WEINBERG. We would propose the act require the Secretary or the State regulatory
authority, whichever one is administering the plan, the regulations would require the applicant
update the information he originally furnished, at least once every 5 years. That would
accomplish, Senator Hansen, what I perceive to be one of the objectives of the 5-year permit life.

680 That is the applicant would be required to bring the latest information before the
committee.

680 The other provision we suggest is this: The bill now provides the regulatory authority may
require modifications of the permit from time to time, as conditions dictate.We would suggest
the act require the regulatory authority, at reasonable intervals, to renew the licensees operation
again to see if it should require a modification of the permit.

680 Senator METCALF. You don't mind interruption, do you?

680 Mr. WEINBERG. No.

681 Senator METCALF. Go right ahead, Senator Hansen.

681 Senator HANSEN.There are certain things that seem rather axiomatic to me, Mr.
Weinberg. One is, it certainly is in the interest of the Nation, the interest of the States, the
interest of the landowners affected, to have as few ongoing mine operations as may be required.

681 One of the things that disturbs me about the term of the permit and the fact an ongoing
mine operation must be going on, is that we would be stirring up a lot of problems if we
recognize, for instance, a coal company if it is going to enter into long-range coal contracts with
energy companies.

681 First of all, it must make certain it has got the coal. It has to have the coal. There is
nothing more expensive than something someone else owns that you have to have. I don't see

how the public interest is going to be served in the long run, nor the interest of the State nor the
interest of reclamation by making that period of time so short as to preclude the acquisition of
sufficient reserves in order that a company can go ahead.

681 I think it would be better -

681 Mr. WEINBERG. I agree with you, Senator Hansen. That is the objective of our
suggestion.We also propose the 3-year provision, the requirement you get into operation in 3
years, is woefully short. Take the case of a Federal leaseholder. To me at least there is
something of a now-you-have-it-now-you-don't; when the Secretary of the Interior awards a lease
which runs, under the law, which you just got through amending last year, for as long as coal is
produced in commercial quantities and then the same Secretary puts on another hat and says:
Now wait a minute, we are only going to let you stay in business 5 years; and where the lease,
where Congress has just got through ordaining that you get into commercial operation in 10
years, it seems to me that this bill ought to be coordinated so you have roughly the same period
of time.

681 The way we approach that, through one of our amendments, is to suggest the 3-year
provision in this bill be changed to 7 years and we arrived at the 7 years on the premise that it
would be about 3 years after the lease issuance by the time you got through the hearings and
other requirements so that the reclamation permit is actually issued.

681 Senator HANSEN. I follow you completely, but it occurs further to me when we think
about the railroad lines and/or slurry lines, all of the physical equipment that has to be put in
place, and thinking also about the public investment that has to be recovered.After all, the people
who flip the light switches are going to have to pay the bill.

681 I think it makes sense for a policy to be established that would recognize we better have a
few big ongoing operations with the cost per ton of coal, kilowatt of energy, or whatever may be
produced, amortized over fewer operations and bigger ones than to go around and achieve a
result where the leases would be restricted to a certain period of time; or the number that might
be held would be so restricted as to result in a proliferation of mining operations.

681 Now you generally share that view, do you?

682 Mr. WEINBERG. I certainly do. Which brings me, Senator Hansen, to another one of
our amendments which is designed to enhance coordination between the hearing requirements
and the determination requirements of this bill and, in the case of a Federal lease, the
requirements of the Mineral Leasing Act as amended by the Coal Leasing Act amendments
passed last year. Under those amendments, one cannot mine coal under a Federal lease unless
the area has been subjected to a land use plan.

682 That land use plan, in turn, was developed in the course of public hearings. The Secretary
must determine the method of mining that will be used under that Federal lease. He must
determine whether the coal should be strip mined, and if he determines it should be strip mined,
you are required to strip mine.

682 Now those determinations are also made after a hearing, after examination of the facts,
and it is our suggestion that where those determinations have been made, that those
determinations be effective for purposes of this act, in the case of a Federal lease, again, to avoid
duplications.

682 I would like also, if I may -

682 Senator METCALF. Would you yield a moment?

682 Mr. WEINBERG. Yes, Senator.

682 Senator METCALF. Under the bill, we give a 5-year permit with a guaranteed right of
renewal, isn't that correct?

682 Mr. WEINBERG. No, Senator Metcalf. I'm not sure it is a guarantee.

682 Senator METCALF. Any valid permit issued pursuant to this act shall carry with it a right
of successive renewal. What does that mean? That is on page 43.

682 Mr. WEINBERG. If I may, I would like to call your attention to some language on pages
58 and 59 -

682 Senator METCALF. If you are not entitled to it on pages 58 and 59, you don't get it.
What are you saying on page 58?

682 Mr. WEINBERG. Page 58 deals with renewals as well as original applications.Paragraph
2, for example, is a further requirement which is found back on page 44 which stated the

conditions that supposedly entitled the man to a renewal. I am saying there are some
inconsistencies here that at least raise in my mind ambiguities about the extent to which a
renewal is automatic.

682 Senator METCALF. I certainly agree, renewal is automatic. You have to comply with the
provisions of the act. We use this term "grandfather" rather loosely; but because you have a
permit, you have the right of successive renewal if you have complied with the law.

682 Mr. WEINBERG.What I am suggesting, page 44 is added to pages 58 and 59 with other
conditions, some of which would have been determined in the course of granting the original
permit in the first place.

682 Senator METCALF. Can I have Mr. Harvey ask you a question?

682 Mr. HARVEY. Mr. Weinberg, would I be correct in putting your proposal this way: That
the bill as written puts the burden for renewal, it is a right but subject to conditions, puts the
burden on the operator to demonstrate he has met the terms and conditions in order to get the
renewal. As I read the bill, he has the right of renewal. Under your amendment, the burden
would shift to regulatory authority to prove the operator had not complied with the permit at
these specified intervals you were mentioning as well as any other time.

683 Mr. WEINBERG. Generally, yes.

683 Senator METCALF. Mr. Weinberg, my admiration for your ability to find specific things
is unbounded.

683 Mr. WEINBERG. That exactly is the difference, is our belief, with constant monitoring
and other provisions in this act. There is no need for the operator to again assume the burden of
first persuasion, particularly in the case of a Federal lease.

683 Senator METCALF. We are losing my distinguished colleague from Wyoming, but I
think you and I can suffer through this testimony.

683 Mr. WEINBERG. Yes, we can pass this back and forth. One of the provisions that has
concerned me, in terms of fairness and due process, concerns the provisions that deal with the
hearing on the permit application, and that is sections 413 and 414.

683 As I read section 413, the hearing process is triggered only by an objector and not by the

applicant and then only if the objector asks for a hearing. It would be one thing to have such a mechanism if the bill were to provide in the absence of objections or in the absence of a request for a hearing, a permit would be granted.

683 But that is not the way the bill reads and we will not suggest it should read that way, but the way section 413 now operates, it seems to us the applicant would not receive a hearing if an objector does not request it, but the objector can file written objections. There is no requirement those objections be provided the applicant so he may even comment and, moreover, the regulatory authority is required, if I recall for 413 correctly, to advise the objector how it proposes to handle the objection and all of this before the applicant even knows whether he is going to get a permit or not.

683 Finally, if the permit is denied, then the applicant for the first time in those circumstances, is entitled to have a hearing which seems to us to come a little late in the game. At that point his responsibility is not only to carry the burden of proof which he has in any event to establish his right to a permit, but he has the added burden of trying to persuade the body which has already held he should not have a permit, that he made a mistake.

683 We think that is an unnecessarily heavy burden. I also believe the hearing in that circumstance should be an adversary proceeding and a hearing where the witnesses are subject to cross-examination and where the decision is made on the record. That type of hearing is provided elsewhere. We believe it should be provided for here.

683 We believe it is as essential to the man, to an operator, to have a due process hearing on whether he can get into the business as it is in determining he has violated his permit.

683 Senator METCALF. Mr. Harvey has reminded me that the various Governors that have testified here, and the Senators who have represented various States on the committee have suggested that we go a more informal route rather than the route of the Administrative Procedures Act.

684 Mr. WEINBERG. Senator, informality is fine, but you are dealing with the right of a man to be in business. At some point he ought to have the traditional due process rights which apply in the usual licensing situation.

684 Senator METCALF.If there is no objection, however, couldn't we make a provision for such an informal discussion and then give the man his right to have a hearing and a record and all of those necessary provisions that all of us feel are part of due process.

684 Mr. WEINBERG. Yes, sir. I don't think that would be a problem at all.

684 Another provision I would like to make a suggestion on has to do with judicial review. We believe judicial review in all cases would be better brought in the circuit court of appeals rather than starting in the district court. If the matter is of any importance at all, you go to the court of appeals anyway.

684 Senator METCALF. You and I have disagreed on that proposition more years than I can remember. I don't know why lawyers always want to have their case resolved and supported in the Supreme Court. If they lost it, they want it to have a lot of review. Circuit courts are the busiest courts in America. Most of the cases can be resolved in the district courts and district courts have a tradition of ruling on matters of law and sometimes even in an administrative hearing. The record is not a very good record, as you know.

684 Nevertheless, I would like to have a judicial review, the first one to take place just as close as we can possibly have it. I don't know whether we are going to divide the ninth circuit or not, but do you realize even after you have perfected a review of the ninth circuit out there in Montana, you have to wait 5 years in a civil case before you can get it decided?

684 Mr. WEINBERG. I know it well, Senator Metcalf. I am struggling with that problem now, but perhaps the solution is to get some more judges appointed.

684 Senator METCALF. That is what Governor Ford and I are working on before the other committee.

684 Mr. WEINBERG. If you started the district court in a review proceeding which is not a trial de novo and somebody was to take an appeal to the court of appeals, he knows he has the time to go through the district court, he also has the 5 years; so we need more judges.

684 Senator METCALF. Believe me, we are in complete accord on that.

684 Mr. WEINBERG. We have to put in a good word for our profession.

684 Senator METCALF. We have asked for 13 more new judges in the circuit and more than
100 new district judges.

684 Mr. WEINBERG. I think the ninth circuit is the most overburdened in the country now.

684 Senator METCALF. The nine and the fifth circuits are so overburdened we really have a
denial of due process.

685 Mr. WEINBERG. Speaking of due process, we feel the procedure might be modified
somewhat as in the question of whether land should be determined to be unsuitable for mining.
The only people that can get a hearing on it, as a matter of fact the only people who can get into
the proceeding under the bill as it is now drawn, are people who proposed that land be declared
unsuitable for mining.

685 If someone wants to take the opposite side, he is not even a party to the proceedings, so
we suggest there be a publication by notice and other parties be permitted to intervene as well.

685 I will not burden the record with my own comment about the Mansfield amendment. That
has been covered at considerable length already.

685 Senator METCALF. The Mansfield amendment in the bill is going to open up very
serious questions.It concerns what we are ultimately going to do with the surface owners.
Whether or not the Mansfield amendment passes and is approved, I don't know; maybe I am the
only one who is going to vote for it.

685 Mr. WEINBERG. I am sorry Senator Hansen left. As I listened, everyone is coping with
this problem. We have not suggested language because it is such a difficult problem we would
prefer to address it in give-and-take discussions.

685 Senator METCALF. Senator Hansen has done a lot of work on it. Senator Johnston was
very active, as you recall, in the conference committee. Senator Ford has brought to my attention
the fact there has been some land incorporated in the national forests where the mineral rights
were retained by individuals who deeded the land to the Government.

685 So don't worry. That will be debated considerably. I don't know what will happen.

685 Mr. WEINBERG.We think some mechanism needs to be found so that the Secretary does

not have a stranglehold on the surface owner, and the surface owner does not have a stranglehold on the Secretary. Somewhere there must be some mechanism which is fair to everybody which can be developed.

685 Senator METCALF. I think we will work out something very close to the bill that was reported in the last Congress. No members of this committee are involved, but Senator Melcher has already filed a whole raft of amendments on that same problem.

685 Mr. HOLUM. If I might say, Mr. Weinberg and I have talked about this question at length and we recognize the Members of Congress, both on the House side and the Senate side, have had the benefit of a lot of news we did not have. But it is a complicated question. We have been dealing with surface owners, as I have already said, representing the States as we do we have to be sympathetic with them.

685 We will be happy to share our views in any appropriate way. I think I have one concern about what is contained in the House bill, and it seems to me as I study that, that the final decision rests with the landowner. I think some mechanism should be developed so the final decision rests with the individual responsible for administering this resource that belongs to all of the people. I am not prepared to go beyond that this morning.

686 Senator METCALF. I want to remind you of the history of this legislation. The evolution of the control of subsurface rights was an outcome of exploitation of the homestead laws. As I have said before, such outstanding conservationists as Gifford Pinchot, Theodore Roosevelt said we just cannot permit that so we will only give them the surface rights; then we gave them 320 acres for grazing homesteads instead of 160.

686 That may have been a great conservation achievement; then all at once the Federal Government decides it is going to erase that and take the peoples' land away from them. I think there is some opportunity for compromise there which would afford protection of that surface owner.

686 Mr. WEINBERG. One final comment on that surface-owner provision. The legislative history that has been made on that provision over the last, I guess 2 or 3 years now, is to the effect that whatever in the case of a holder, what is called a right to a preference-right lease,

whatever those rights are it was not intended to extinguish them. I would hope that would also
appear somewhere in the provisions.

686 Senator METCALF. I think we can work out something without that stranglehold on the
landowner and I am sure Secretary Andrus will administer it the same as you would have
administered it under Secretary Udall.

686 Mr. WEINBERG. Those are the particular items we wanted to highlight. We have
provided the committee with a full draft of amendments covering these and other points.We
welcome the opportunity to discuss them with the committee and the staff at any convenient
time.

686 Senator METCALF.We will look to you in the drafting of this legislation for your counsel
and your guidance.

686 Now, as we stated this morning, we have Mr. Partridge. I am delighted to have you here.

686 [The full statement of Edward Weinberg, the suggested amendments, and a letter received
by Senator Metcalf subsequent to the hearings follow:]

687 STATEMENT OF EDWARD WEINBERG OF DUNCAN, BROWN, WEINBERG & PALMER, P.C. Counsel to WESTERN FUELS ASSOCIATION, INC. Before the SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

687 On. S. 7

687 March 3, 1977

687 The Amendments to S. 7 which I have prepared and which have been provided to the
Subcommittee are addressed to Title IV, which deals with control of the environmental effects of
surface mining, and the designation of lands unsuitable for strip mining, and to Title V, the
Administration and Miscellaneous provision.

687 None of the amendments weaken the bill substantively and none are intended to. The
amendments are concerned with the methodology, in other words the fine print, by which A. 7
would accomplish its purpose.

687 The purpose of those portions of H.R. 2 to which the Western Fuels amendments are
directed can be stated in a few short phrases - to require effective and thorough strip mine
reclamation and to weed out those operators who seek to evade their responsibilities.

687 The methodology of those portions of S. 7, on the other hand, results in a text of well over 100 pages.

687 The public interest will not be served if S. 7 turns out to be toothless so that its requirements can be ignored and the statute becomes dead letter, or if it becomes a bonanza for the legal profession, or if it turns out to be a gigantic labyrinth trapping operators who want to do a good job in a maze of Catch Twenty-twos.

688 We want S. 7 to work. We want to mine coal and meet our reclamation obligations, not to generate lawsuits. We want to know clearly what the rules are and what our responsibilities are. We need to know early whether we will be granted a permit as to particular lands and what particular lands will be available. And when these matters are determined, we must have reasonable stability if we are to get the job done.

688 That is why it is critically important that S. 7's fine print be carefully examined.

688 On the basis of our examination, we are convinced that S. 7 has some serious ambiguities and inconsistencies; that it has some provisions which will not work or will lead to results that are the opposite of what was intended; and that some of its provisions are downright punitive.

688 We believe that the amendments we propose will, in major respects, correct these deficiencies without sacrificing the goal of effective reclamation.

688 In the time at my disposal it is obviously impossible to go through all, or even most, of the amendments in detail. I would like to explain a few, however, which are illustrative of what we are trying to do. The complete text of all amendments is before the Subcommittee.

689 Hearings on Permit Application

689 S. 7 requires, as it should, that applications for permits be published, and that interested public agencies be notified, so that the public and the appropriate agencies may have the opportunity, if they desire, for effective participation. However, as Section 413 is now written, only public agencies and interested citizens who object to the issuance of a permit are allowed to call for a hearing before action is taken on the application. If objectors do not request a hearing,

no provision is made for the applicant himself to trigger the hearing process until and unless a permit has been denied. That seems pretty late in the game. The applicant then not only has the burden of proof of establishing that his application complies with the applicable requirements - which is as it should be - but he has a further and, I submit, an unfair burden in addition, for he must convince the permit authority, which has already denied the permit, that it made a mistake!

689 Moreover, when objections have been filed, even if there is to be a hearing because the objectors requested it, no provision is made for the objections even to be furnished to the applicant before the hearing so he can be prepared to respond.

690 But while the applicant appears to have been overlooked in this regard, not so an objector. Before any hearing, the agency must inform the objector in writing what its preliminary views are on how it will deal with the protest. The response must include the agency's preliminary proposals as to terms and conditions of the permit, the amount of the bond and the agency's answer to, and I guote, "material factual questions presented in the written objection." There then follows a provision which I do not understand - I refer to the sentence which begins in line 21 at page 64, which reads, "The regulatory authority's responsibility under this subsection shall in any event be to make publicly available its estimate as to any other conditions of mining or reclamation which may be required or contained in the preliminary proposal." The difficulty with the sentence is that the "preliminary proposals" referred to are the agency's own proposals which it disclosed to the objectors. I have gone back to the text of the conference report on the vetoed measure, and the same perplexing language appears. While I do not fully understand that sentence, the thrust of the requirement to respond to objectors is clear - an objector gets at least a preview of the agency's decision, but apparently the applicant does not unless the agency chooses to tell him.

691 Another point in connection with the hearing needs to be made. The hearing that is provided for, even the Section 414 hearing after the denial of a permit when the applicant then must overcome the initial burden of an adverse decision by the agency, is not a hearing of the kind required under the Administrative Procedure Act. There is no guaranty of the right to cross-examination; no guaranty of an impartial administrative law judge and no guaranty of a

right to have the decision made on the basis of the record, free of the influence of ex parte contacts and off-the-record information. This omission may well have been intentional, for at other places in the bill, an APA hearing is mandated - for example section 418(b) dealing with assessment of penalties against an operator, and section 425(a) where Secretarial review of certain enforcement decisions is provided for.

691 I submit that the right to an APA hearing is as imperative when the question is whether the operator will even be allowed to open a mine as it is on the question of whether he has complied with his permit.

691 I have no hesitancy in concluding that as now drafted, Section 413 and the accompanying Section 414 fall so far short of procedural fairness as to amount to a probable denial of the process.

692 The amendments we propose would assure the applicant, as well as objectors, of a right to a hearing before action is taken; it would afford the applicant an opportunity to learn of and to comment on objections prior to a hearing; it would eliminate the tilt by which the permit agency would, in effect, give the objectors an advance look at how it proposes to rule. It would apply APA protections, available to and fair to all parties, to the hearing.

692 Duplication of Hearings and Other Administrative Actions Under the Federal Coal Leasing Amendments Act of 1975.

692 We have reviewed S. 7 in the light of the recently enacted Coal Leasing Amendments Act of 1975 which became law on August 4. When the strip mine application concerns a federal coal lease subject to the Coal Leasing Amendments Act, there are duplications which, we believe, ought to be eliminated. For example, with limited exceptions, the Coal Leasing Amendments Act requires land use planning before a coal lease sale can be held. The land use plan itself must have been the subject of public hearings and the coal lease sale must be compatible with the plan. In addition, before issuing a coal lease, the Secretary must, among other matters, determine what mining methods achieve maximum economic recovery of coal in the proposed leasing area, and he may not approve a mining plan which does not achieve such maximum economic recovery and he must hold a public hearing in the area prior to a lease sale.

693 To avoid unnecessary, expensive and time consuming duplications, we propose that when hearings are held and determinations made under the provisions of the Coal Leasing Amendments Act as to such matters, such hearings and determinations should also serve as the hearings and determinations on these matters under S. 7 in the case of federal coal leases.

693 Permit Duration

693 As Mr. Holum stated, we strongly urge that Section 406 be changed so that permits will, unless earlier revoked for cause, be for the life of the mining operation (or where the land is leased, for the life of the lease) and that the three year deadline on initiation of mining operations be extended.

693 Our amendments do not mean, and this I want to emphasize, that a permittee is subject only to a one-time examination with one-shot conditions. Far from it. The permit period should be looked at in the context of other provisions of the bill.

693 The permittee will be under constant oversight. Section 417 provides for constant monitoring and reporting. It requires, moreover, that the mining operation be inspected on an irregular basis, without notice to the operator, on an average of not less than once a month. The operator is subject to an immediate shut-down when any condition or practice exists, even if not in violation, or when there is a violation, where the condition, practice or violation creates an imminent danger to the health or safety of the public or is causing, or can reasonably be expected to cause, significant environmental harm to land, air, or water resources.

694 To these requirements our amendments would add two additional requirements. One is that the applicant be required to update, as required by the regulatory authority, and at least once every five years, the base line and other data he filed as a part of his application and reclamation plan. The other is that the regulatory authority be required to review outstanding permits at reasonable intervals for the purpose of determining whether to exercise its authority to require revision or modification of permit provisions.

694 We submit, Mr. Chairman and members of the Subcommittee, that with these provisions there is no need to require, as the bill now does, that the permit holder go through yet another hearing and to prove that he has not violated either the law or his permit.The unnecessary

requirements may well make financing impossible, or at the very least add substantially to
financing costs as lenders include additional contingency allowances to protect the security of
their loans.

695 There is, by the way, an inconsistency in the permit sections which we deal with in our
amendments. Section 406(b) states flatly that permits are not transferable. Eighteen pages later,
Section 411(b) provides that a permit is transferable with the written approval of the regulatory
authority. We believe the latter provision is preferable with certain explicit requirements we
would add: One, that the regulatory authority prescribe regulations governing assignments, and
two, that the regulatory authority must find the prospective assignee to be qualified and possess
the necessary resources, including bond and insurance coverage, to carry out the requirements of
the permit.

695 Citizen Suits

695 Section 420, the citizen suit provision, is identical to the citizen suit provision included in
the conference report on the vetoed H.R. 25.

695 The conference report states (H.Rep. 94-189, at 84 and 86) that subsection 420(a) assures
that an operator could not be sued under that section if he is operating in compliance with all
regulations, rules and an approved permit, but the regulatory authority has failed properly to
implement the Act. In such cases, the intent was that the suit must be brought against the
regulatory authority.

696 Unfortunately, the text of section 420(a) falls far short of the conference report
assurance. The subsection as written appears to authorize a citizen suit not only against the
United States but against any "person", this of course includes the permit holder, where the
complaint charges a violation of the Act.

696 It has been suggested that the provision for award of court costs and for the posting of
bond, if a temporary restraining order or preliminary injunction is sought, safeguards against the
bringing of frivolous suits.

696 We have substantial doubts. First, no mention is made of awarding attorney fees,
although in subsection 420(f) dealing with citizen suits for damages on account of injury suffered

as a result of violation of a permit or order, attorney fees are expressly allowed. The law is that in the federal courts the authorization to award court costs does not authorize an award of attorney fees; they must be specifically provided for by Congress. Without attorney fees (which are, by the way, provided for in the citizen suit provisions of the Federal Water Pollution Control Act [33 U.S.C. @ 1365(d)]) court costs may well be simply nominal.

697 Whether or not a restraining order or preliminary injunction is sought, where potentially heavy financial losses are involved the mere bringing of a citizen suit may often itself serve as a de facto restraining order while the citizen's suit wends its way through a lengthy court battle.

697 Certainly not all citizen suits are frivolous, but in the hands of people who are utterly opposed to strip mining per se rather than strip mining unless under strict regulatory controls, a citizen suit becomes a handy tool with which to wear down and delay the operator in the hope that he will finally toss in the sponge. And it would be unrealistic to suppose that such things can't or won't happen. They do and they will.

697 To provide at least some substantative safeguards against frivolous litigation, we have included discretionary authority for the court to award attorney fees and, when the court finds that the suit is filed in reckless and wanton disregard of the truth or falsity of the allegations on which it is based, for the award of exemplary damages.

697 These provisions will not inhibit good faith citizen suits; they will, however, we believe, serve to make those who would bring citizen suits simply as delaying or harassing tactics ponder their actions well.

698 Another amendment we propose to Section 420 would be to eliminate its use as a substitute for participation in administrative adjudications, and judicial review thereof, dealing with determination of violations. Citizens have the right to particpate in such administrative proceeding and to such review under the judicial review provision of the bill. No purpose is served in such cases by making the citizen's suit an additional litigating tool.

698 Judicial Review

698 Section 426 provides for judicial review of administrative orders in a United States Circuit

Court of Appeals in the case of approvals or disapprovals of state programs or the promulgation
of a federal program. In all other cases of action by the Secretary, judicial review must be sought
in a federal district court.

698 We believe that in all cases of Secretarial action the forum for judicial review should be in
the United States Court of Appeals for the judicial circuit where the land involved is located and
we propose that Section 426 be amended accordingly.

698 S. 7 does not permit a retrial of the facts on judicial review. Hence, there is no need for a
trial in the district court and the requirement that appeals start in the district court simply adds an
additional tier of judicial review, since most district court decisions of any consequence will
usually be appealed to the Court of Appeals.

699 Review in the Court of Appeals rather than in the district court is the normal procedure
in the case of many federal licensing or permit acts, for example the Federal Power Act, and for
permits, performance standards and effluent limitations under the Federal Water Pollution
Control Act.

699 Surface Owner Protection

699 S. 7 would flatly prohibit strip mining of federally owned coal where the surface is not in
federal ownership. Hence, it contains no surface owner protection provision.

699 The flat ban on surface mining of federally owned coal not only denies the people of the
United States who are the owners of that coal the right to have it used to meet their energy needs,
but as to existing federal leases and prospecting permits it is confiscatory.

699 Federal coal leases in the western part of the United States were entered into and
prospecting permits were issued in full realization of the fact that the coal would have to be
mined by strip mining. As to such leases, and assuming the permits constitute a valid existing
right where coal has been discovered in commercial quantities as I am firmly convinced is the
case, section 423(c) either constitutes an unconstitutional taking without just compensation, or it
subjects the United States to the requirement that it pay just compensation. The dollar cost to the
taxpayers alone would be staggering to say nothing of the loss to the economy from the locking
up of that energy source. We urge the Committee to reconsider.

700 If the Committee is disposed to reconsider and to include a surface owner consent provision along the lines of the Conference report on H.R. 25, we would point out that in connection with the earlier strip mine legislation, it has been established as a matter of legislative history that if the holder of a prospecting permit has a property right, it is not the intention of the surface owner provision to deprive him of it. In other words, the legislative history establishes that the surface owner consent provision was not intended to void "valid existing rights," as indeed it could not constitutionally.

700 In the interest of clarity, we suggest that any surface owner consent provision be made explicitly subject to valid existing rights, whatever they may be. Such explicit reference to valid existing rights is made in Section 422(e) which prohibits surface mining in National Parks, Refuges, Wilderness and National Forest lands.

701 Beyond that, as Mr. Holum stated, we believe that this Committee will want to make sure that the surface owner consent provision, while providing adequate and generous surface owner protection, does not arbitrarily deny the American consumer the resources which the American public owns. Because of the sensitivity of this issue, as well as its complexities, we are not prepared to present specific language at this time. We would welcome the opportunity to work with Committee and the staff in exploring this issue.

701 Effect on Permittee of Transfer From State To Federal Program and From Federal to State Program

701 Where an approved state program supersedes a federal program under which permits have been issued, Section 404 provides that the state regulatory authority is to review the previously issued federal permit to determine that the requirements of the act and of the approved state program are not violated. Conversely, it is provided in that section that when a federal program superseded an approved state program, the Secretary is to review the previously issued state permit to determine that the requirements of the act are not violated.

701 Where the state determines that a previously issued federal permit was granted contrary to the requirements of the act or the approved program, the permittee is required to submit a new application and to be given a reasonable time to conform his ongoing mining and reclamation

operations. Conversely, when the Secretary, taking over from a state program, determines that a
state permit was granted contrary to the requirements of the act, a new application is required and
the permittee is to be given a reasonable time to conform ongoing surface mining and
reclamation operations to the requirements of the federal program.

702 Where a permit has been issued under an approved state program and then the federal
government assumes enforcement of that permit, a permit holder who has acted in good faith
should not be required to go through another application process simply because the federal
program has higher standards than the state program which the Secretary had approved as being
in compliance with the act. Conversely, a permit issued by the Secretary under a federal program
should not be disturbed simply because jurisdiction has been transferred to the state.

702 In each case, the permit holder should be subject to enforcement and the penalties
provided where he fails to comply with the terms of the permit, but he should not be put at risk,
after a permit has been issued and substantial investments made on the basis thereof, of being put
out of business because of a difference between federal officials and state officials over
standards, when both sets of standards comply with the act. We have proposed amendments to
Sections 404 and 421 accordingly.

703 The foregoing is not an all-inclusive catalogue of the proposed amendments. It is,
however, intended to be illustrative of some of the major problem areas which we believe need
correction if the bill is to function effectively and fairly.

704 February 28, 1977

704 ADDENDUM

704 The following changes should be made in "WESTERN FUELS, ASSOCIATION, INC.
PROPOSED REVISIONS TO H.R. 2 AND S. 7."

704 1. At page 1 under A, H.R. 2, add a new paragraph to read:

704 3.Section 503(a). At p. 50 following line 23 add a new subparagraph (7) as follows:

704 "(7) Where this Act requires a hearing to be subject to or in accordance with 5 U.S.C. @
554 when the Secretary is the regulatory authority, a state law which provides for a hearing with
comparable requirements when the state is the regulatory authority."

704 2. At page 1 under S. 7 add a new paragraph 3 to read:

704 3. Section 403(a). At p. 35 after line 20, insert a new subparagraph 7 identical with the new subparagraph set forth in 3 above under H.R. 2.

704 3. At page 1, under B, H.R. 2, paragraph 1, omit the reference to subsection (c) and change the redesignations accordingly, and at page 3 under S.7, paragraph 1, make a similar change.

704 4. At page 8, under D. H.R. 2, paragraph 1 should be revised to read:

705 "Section 507(a). At p. 60, lines 19 and 20, strike all after "fee" and insert "estimated to be allocable to each five year segment of the life of the permit to be paid over such segment.

705 At same page, under S. 7, paragraph 2, change "At p. 45, line 18, after 'the'", to read "At p. 45, line 17, after 'fee'".

705 5. At page 8, under D, H.R. 2, following paragraph 2 insert a new paragraph 3 to read:

705 3. Section 507(f). At p. 67, line 18, change "terms" to "term" and in line 19, strike "or any renewal".

705 6. At page 13 under G, H.R. 2, paragraph 1, after "75," insert "line 8 strike 'interrupt' and in".

705 7. At page 21, paragraph 7, line 3, change "witnesses" to "witness".

705 8. At page 22, paragraph 11, line 2, after "has" insert "an".

705 9. At page 25, following paragraph 5, add a new paragraph 5(a) to read:

705 "5(a)(1). Section 522(c). At p. 130, line 15 after "allegation." insert "The petitioner shall publish notice of the filing of such petition at least once a week for four consecutive weeks in a newspaper of general circulation in the vicinity of the area involved and the regulatory authority shall promptly notify any holder of or an applicant for a permit covering such lands or lands in the general vicinity thereof of the filing of the application."

706 (2). At page 130, strike the sentence beginning in line 19 and in lieu thereof insert, "Any other citizen may intervene prior to the hearing. Where the Secretary is the regulatory

authority, the hearing shall be subject to 5 U.S.C. @ 554."

706 At page 26 following paragraph 4, add a new paragraph 4(a) to read:

706 "5(a). Section 422(c). At pp. 113-114, conform the balance of subsection (c) beginning
with line 21 to the changes set out in 5(a) above under H.R. 2.

706 10. At page 34, lines 3 and 4, the section references should read "2(a) and (b)".

707 WESTERN FUELS ASSOCIATION, INC.

707 PROPOSED REVISIONS TO H.R. 2 AND S. 7

707 I. Application Procedures and Requirements

707 A. Initial Regulatory Procedures

707 H.R. 2

707 1. Section 502(f). At p. 47, after "The" in line 9, insert "Secretary shall, for the purpose
of ascertaining compliance with subsections (b) and (c) of this section, have the authority
provided for in Section 517(c) of this Title, and the"

707 2. Section 503(a). At p. 49, line 7, change "is" to "are"; in line 8 after "conducted" insert
"on lands within such state"; and in line 10, after "operations" insert "on such lands".

707 S. 7

707 1.Section 402(f). No change needed.

707 2. Section 403(a). At p. 34, line 5, change "is to "are"; in line 6 after "conducted" insert
"on lands within such state"; and in line 10, after "operations" insert "on such lands".

707 B. Federal Programs

707 H.R. 2

707 1. Section 504. At p. 54, strike subsections (c) and (d), lines 9 through 22, and
redesignate subsections (e), (f), (g) and (h) as (c), (d), (e) and (f).

708 2. Section 521(b). At p. 125, strike all beginning with line 5 through "finding" in line
10, and insert in lieu thereof:

708 "(b) Whenever on the basis of information available to him, the Secretary has reason to
believe that violations of all or any part of an approved State program result from a failure of the

State to enforce such State program or any part thereof effectively, he shall after public notice
and notice to the State, hold a hearing thereon in the State. If as a result of said hearing the
Secretary finds that there are violations and such violations result from a failure of the State to
enforce all or any part of the State program effectively, and if he further finds that the State has
not adequately demonstrated its capability and intent to enforce such State program, he shall give
public notice of such finding."

708 3. Section 521(b). At p. 125, line 13, after "enforce" insert: "in the manner provided by
this Act,".

708 4. Section 521(b). At p. 125, at end of line 16, change the period to a colon and add:

709 "Provided, That in the case of a State permittee who has met his obligations under such
permit and who did not willfully secure the issuance of such permit through fraud or collusion,
the Secretary shall give the permittee a reasonable time to conform on-going surface mining and
reclamation operations to the requirements of this Act before suspending or revoking the State
permit."

709 5. Section 504(d) [formerly 504(f)]. At p. 55, line 15, strike "but reviewable under the
approved State program," and in lieu thereof substitute:

709 "under any superseding State program: Provided, That the Federal permittee shall have
the right to apply for a State permit to supersede his Federal permit."

709 6. Section 504(d) [formerly 504(f)]. At p. 55, strike all beginning with "The State" in line
16 through line 25.

709 S. 7

709 1.Section 404. At p. 39, strike subsections (c) and (d), lines 3 through 16, and redesignate
subsections (e), (f), (g) and (h) as (c), (d), (e) and (f).

710 2. Section 421(b). At p. 108, strike all beginning with line 11 through "finding" in line
16, and insert in lieu thereof the language set forth in 2 above under H.R. 2.

710 3. Section 421(b). At p. 108, line 19, after "enforce", add same language set forth in 3
above under H.R. 2.

710 4. Section 421(b). At. p. 108, at end of line 22, change the period to a colon and add the language set forth in 4 above under H.R. 2.

710 5. Section 404(d) [formerly Section 404(f)]. At p. 40 line 9, strike "but reviewable under the approved State programs" and in lieu thereof insert same language set out in 5 above under H.R. 2.

710 6. Section 404(d) [formerly Section 404(f)].At p. 40, strike all beginning with "The State" line 10 through line 19.

710 C.Permits and Revision of Permits

710 H.R. 2

710 1. Section 506(b). At p. 58, strike all after "be" line 5 through line 13, and in lieu thereof insert: "valid for the life of the mining operation, or as to any leased coal deposits, for the life of the lease, whichever is shorter, unless the permit is earlier terminated in accordance with this Act. No permit shall be assigned except with the written approval of the regulatory authority and only to a person who is found by the regulatory authority to be qualified, in addition to possessing the necessary resources including bond and insurance coverage, to carry out the requirements imposed upon the permittee by this Act. The regulatory authority shall prescribe regulations governing the assignment of permits.Where the Secretary is the regulatory authority, such regulations shall be promulgated in accordance with the rulemaking procedures of 5 U.S.C. @ 553(b)-(e).Where the stae is the regulatory authority, such regulations shall be promulgated only after opportunity for public comments."

711 2. Section 510(b).At p. 73, line 24, after "permit" strike", revision, or renewal application."

711 3. Section 511(b). At p. 77, strike subsection (b) lines 18 through 21.

711 4. Section 506(c). At. p. 58, line 16, strike "three" and in lieu thereof insert "seven".

711 5. Section 506(c). At p. 58, line 17, change the comma to a colon, capitalize and italicize "provided", and immediately following insert: ", That the regulatory authority may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of

litigation precluding such commencement or threatening substantial economic loss to the
permittee, or by reason of conditions beyond the control and without the fault or negligence of
the permittee; Provided further, That in the case of a coal lease issued under the Federal Mineral
Leasing Act, as amended, extensions of time may not extend beyond the period allowed for
diligent development in accordance with Section 7 of that Act; Provided further,".

712 6. Section 506(c). At p. 58, line 17, capitalize "that".

712 7. Section 506(d). At pp. 58-60, strike entire subsection (d), line 22, p. 58 through line 9,
p. 60.

712 8. Section 511(b). At p. 77, line 18, add a new subsection (b) as follows:

712 "(b)(1) Not less often than once every five years, in accordance with regulations
promulgated by the regulatory authority, the holder of a permit shall update the information in his
application and reclamation plan.

713 (2) Where the regulatory authority is the Secretary, the regulations shall be promulgated
as provided in 5 U.S.C. @ 553(b)-(e). Where the regulatory authority is the state, the
regulations shall be promulgated only after publication and opportunity for comment and shall be
submitted to the Secretary for approval. State regulations shall be deemed approved if the
Secretary fails to act upon them within sixty days of receipt."

713 9. Section 511(c). At p. 77, line 22, following "authority" insert:

713 "shall at reasonable intervals review outstanding permits and".

713 S. 7

713 1.Section 406(b). At p. 43, line 1, strike all after "be" in line 1 through line 9, and in lieu
thereof insert language set out in 1 above under H.R. 2.

713 2. Section 410(b)9 At p. 58, line 5, after "permit" strike", revision, or renewal
application."

713 3. Section 411(b). At p. 61, strike subsection (b), lines 12-15.

713 4.Section 406(c).At p. 43, line 12, strike "three" and in lieu thereof insert "seven".

714 5. Section 406(c).At p. 43, line 13, after " Provided" insert language set out in 5 above

under H.R. 2.

714 6. Section 406(d). At pp. 43-45, strike entire subsection (d), line 18 p. 43 through line 7, p. 45.

714 7. Section 411(b). At p. 61, line 12, add a new subsection (b) as set out in 8 above under H.R. 2.

714 8. Section 411(c). At p. 61, line 16, following "authority" insert language set out in 9 above under H.R. 2

714 D. Application Requirements

714 H.R. 2

714 1. Section 507(a). At p. 60, line 20, after "paid over the," insert "first five years of the".

714 2. Section 507(b)(7). At p. 62, line 19, after "used" insert "to accomplish maximum practicable recovery of the coal".

714 S. 7

714 1. Section 407(a). At p. 45, lines 13-14, strike everything after "fee" through "upon" and insert: "may be less than but shall not exceed".

714 2. Section 407(a). At p. 45, line 18, after "the", insert language set out in 1 above under H.R. 2.

714 3. Section 407(b)(7).At p. 47, line 19, after "used" insert language set out in 2 above under H.R. 2.

715 E.Reclamation Plan Requirement

715 H.R. 2

715 1. Section 508(a). At p. 68, lines 7 and 8, strike "for" and all after "anticipated".In lieu of latter insert "will be mined".

715 2. Section 508(a)(7)-(9). At p. 69, strike entire subparagraphs (7) and (9) and renumber the remaining subparagraphs accordingly.

715 S. 7

715 1.Section 408(a). At p. 52, lines 15 and 16, strike "for" and all after "anticipated". In lieu of latter insert "will be mined".

715 2. Section 408(a)(7)-(9). At pp. 53 and 54, strike entire subparagraphs (7), (8) and (10) and renumber the remaining subparagraphs accordingly.

715 F. Public Notice and Public Hearings

715 H.R. 2

715 1. Section 513(a). At p. 79, strike", or revision of an existing permit," in lines 3 and 4 and "various" in line 12; in line 15 after "place," insert "of which it has knowledge,"; and in line 20 strike "have obligations to" and insert "may".

715 2. Section 513(b). At pages 80-81, strike entire subsection (b) and in lieu thereof insert a new (b) as follows: "(b) Any person with a valid legal interest and the head or other responsible officer of any Federal, State and local governmental agency or authority, shall have the right to file with the regulatory authority written objections to, and to request a hearing on, an application for a surface coal mining and reclamation permit.The objections and any objectors' request for a hearing shall be filed within thirty days after the last publication date of the notice. The applicant shall have the right to file a written reguest for a hearing within forty-five days after the last publication date. If a hearing is requested by any of the above parties, the regulatory authority shall schedule a public hearing to commence within a reasonable time (not less than thirty days from the final publication of the notice of hearing) in the locality of the proposed mining operation. Notice of the date, time and place of such hearing shall be advertised in advance of the hearing by the regulatory authority in a newspaper of general circulation in the locality at least once a week for three consecutive weeks.Such notice shall also be given by the regulatory authority to each party who filed written objections. The regulatory authority shall provide the applicant with copies of all objections and the applicant shall have thirty days thereafter to file written responses with the regulatory authority if he so desires. The objections and responses of the applicant shall (except for any information of the nature referred to in the proviso to section 508(a)(12) if the applicant so requests, and of the nature referred to in section 508[b]) shall be open to the public. The regulatory authority may arrange with the applicant upon request of any party to the administrative proceeding for access by such party to the proposed mining area for the purposes of gathering information relative to the proceeding. If all parties requesting a hearing withdraw their requests the hearing need not be held."

715 3. Section 513(c). At p. 81, at the beginning of line 19 insert: "If the regulatory authority is the Secretary, the hearing shall be held in accordance with 5 U.S.C. @ 554."

715 4. Section 513(d). At p. 81, following line 20, insert a new subsection as follows:

718 "(d) Where the lands included in an application for a permit are the subject of a Federal coal lease in connection with which hearings were held and determinations were made under Sections 2(a)(3)(A), (B) and (C) of the Mineral Lands Leasing Act, as amended, (30 U.S.C. @ 201(a)[3][A], [B] and [C]), such hearings shall be deemed as to the matters covered to satisfy the requirements of this section and such determinations shall be deemed to be a part of the record and conclusive for purposes of Section 510 and of this section.

718 5. Section 514(b). At pp 82-83, strike entire section 514(b). Redesignate subsection (c) as subsection (b).

718 S. 7

718 1. Section 413(a). At p. 62 lines 22 and 23, strike ", or revision of an existing permit," and in lines 6, 9 and 14, make the other changes set out in 1 above under H.R. 2.

718 2.Section 413(b). At pp. 63-65, strike entire subsection (b) and in lieu thereof insert a new subsection (b) as set out above in 2 under H.R. 2, changing the references "508(a)(12)" and

719 "508(b)" to "408(a)(12)" "and 408(b)".

719 3. Section 413(c). At p. 65, at the beginning of line 12 insert the language set out in 3 above under H.R. 2.

719 4. Section 413(d). At p. 65, following line 13, insert a new subsection (d) as set out in 4 above under H.R. 2.

719 5. Section 414(b). At pp. 65-66, strike entire section 414(b). Redesignate subsection (c) as subsection (b).

719 G. Permit Approval or Denial (Alluvial Valley Floors)

719 H.R. 2

719 1.Section 510(b)(5). At p. 75, line 10, strike the comma appearing after "but".

719 2. Section 510(b)(5). At p. 75, strike all after "floors" in line 12 through line 16, and in
lieu thereof insert:

719 ", or, (B) discontinue, or prevent farming on such alluvial valley floors but only on such
small acreage as to have negligible impact upon the community's agricultural production, or,".

719 3. Section 510(b)(5). At p. 75, line 17, change "(B)" to "(C)".

720 4. Section 510(b)(5). At p. 75, strike lines 19 and 20 and in lieu thereof insert: "that
supply the valley floors described in (A) or (B) above:"

720 5. Section 510(b)(5). At p. 75, line 21, strike "paragraph and insert "subparagraph".

720 - S. 7 - Section 410

720 1. Section 410(b)(5). At p. 59, strike lines 11 through 22 and insert in lieu thereof
Section

720 510(b)(5) of H.R. 2 modified in conformity with 1-5 above under H.R. 2.

720 H.Decisions of Regulatory Authority and Appeals

720 H.R. 2

720 1. Section 514(a). At p. 81, strike all after the section designation in lines 22-23 and
insert in lieu thereof "The regulatory authority shall issue and".

720 2. Section 514(a). At p. 82, strike line 4 and insert in lieu thereof "thirty days after the
record on the application is closed."

720 3. Section 514(c). At p. 83, strike entire subsection (c) lines 1 through 7, and insert in
lieu thereof a new subsection (b) as follows:

721 "(b) Any applicant, or any other party to the administrative proceeding who filed written
objections and participated in the hearing if one was held, and who is aggrieved by the decision
or by the failure of the regulatory authority to act within the time limits specified in this section
and in Section 513 of this Title shall have the right of appeal in accordance with Section 526 of
this Title."

721 S. 7

721 1. Section 414(a). At p. 65, strike all of lines 15 and 16 following the section designation
and insert in lieu thereof "The regulatory authority shall".

721 2. Section 414(a). At p. 65, strike line 21 and insert in lieu thereof "therefor, within thirty
days after the record on the application is closed."

721 3. Section 414(c). At p. 66, strike entire subsection (c) lines 19 through 25, and insert in
lieu thereof the provision set out in 3 above under H.R. 2, changing references to Sections 513
and 526 to Sections 413 and 426.

722 II. Enforcement, Administrative and Judicial Review

722 A. Inspections and Monitoring

722 H.R. 2

722 1. Section 517(g).At p. 109, line 13, strike "the above sentence" and insert in lieu thereof
"this subsection".

722 S. 7

722 1. Section 417(g). At p. 92, line 18, strike "the above sentence" and insert in lieu thereof
"this subsection".

722 B. Penalties

722 H.R. 2

722 1. Section 518(c).At p. 111, strike lines 19 and 20, and in lieu thereof insert:

722 "(c) If no petition for review is filed pursuant to Section 526(a) within sixty days from the
date of the final order or decision".

722 2. Section 518(d). At p. 112, line 3, strike "thirty-first" and insert in lieu thereof
"sixty-first".

722 3. Section 518(e). At p. 112, line 7, strike "526" and insert in lieu thereof "521".

722 4.Section 518(e). At p. 112, strike all after "in" line 9 through line 10 and insert in lieu
thereof: "in the District Court of the United States for the locality in which the surface coal
mining operation is located."

723 5. Section 518(f). At p. 112, line 15, strike "525" and insert in lieu thereof "521".

723 6. Section 518(f). At p. 112, line 20, and at p. 113, line 7, strike "704". [Note: It may be that what is intended is an order for a civil penalty under section 504.]

723 S. 7

723 1. Section 418(c). At p. 94, strike lines 23 and 24, and insert in lieu thereof:

723 "(c) If no petition for review is filed pursuant to Section 426(a) within sixty days from the date of the final order or decision".

723 2.Section 418(d). At p. 95, line 8, strike "thirty-first" and insert in lieu thereof "sixty-first"; strike "fiscal" and insert "final".

723 3. Section 418(e). At p. 95, line 11, strike "426" and insert in lieu thereof "421".

723 4. Section 418(e). At p. 95, strike all after "in", line 13 through line 14, and insert in lieu thereof the language set out in 4 above under H.R. 2.

724 5. Section 418(f). At p. 95, line 19, strike "425" and insert in lieu thereof "421".

724 6. Sections 418(f), 418(g). At p. 95, line 24, and at p. 96, line 12, strike "504". [Note: It may be that what is intended is an order for a civil penalty under section 404.]

724 C. Release of Performance Bonds or Deposits

724 H.R. 2

724 1. Section 519(f). At p. 117, in line 1 after "the" insert "responsible". At the end of line line 2, insert:

724 "which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or are authorized to develop and enforce environmental standards with respect to such operations".

724 2. Section 519(f). At p. 117, at end of line 14, add: "Whether or not an objector requests a hearing, no application shall be denied without first tendering the applicant an opportunity for hearing."

724 3. Section 519(g). At p. 117, line 15, after "prejudice" insert "to"; and after "objectors" insert "and applicant".

725 4. Section 519(g). At p. 117, line 18, strike "precedure" and insert "procedure".

725 5. Section 519(h). At p. 118, line 2, after "vicinity" insert:

725 "If the regulatory authority is the Secretary the hearing shall be subject to 5 U.S.C. @ 554."

725 S. 7

725 1. Section 419(f). At p. 100, in line 11 after "the" insert "responsible". At the end of line 12, insert language set out in 1 above under H.R. 2.

725 2. Section 419(f). At p. 100, at end of line 24, add language set out in 2 above under H.R. 2.

725 3. Section 419(g). At p. 100, preceding line 25, insert a new subection (g) and redesignate subsection (g) as subsection (h):

725 "(g) Without prejudice to the rights of the objectors and applicant or the responsibilities of the regulatory authority pursuant to this paragraph, the regulatory authority may establish an informal conference procedure to resolve such written objections in lieu of holding a formal transcribed hearing."

725 4. Section 419(h) [formerly 419(g)]. At p. 101, line 7, after "vicinity" insert language set forth in 5 above under H.R. 2.

726 D. Citizen Suits

726 H.R. 2

726 1. Section 520(a). At p. 118, strike all after "person" in line 6 through "affected" in line 7, and insert in lieu thereof "citizen".

726 2. Section 520(a). At p. 118, strike lines 9 through 19 and insert: "against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this Title or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this Title; or".

726 3. Section 520(b). At p. 119, lines 12 and 14, strike "this Act" and insert in lieu thereof

"this Title".

726 4. Section 520(b). At p. 119, line 15, strike "person" and insert "citizen".

726 5. Section 520(b). At p. 119, after line 16, insert:

726 "(C) if the alleged violation has already been adjudicated or is in the process of being adjudicated in an administrative proceeding under this Title. In such case, judicial review as set out in Section 526 shall be the exclusive remedy."

727 6. Section 520(c). At p. 120, strike all after "action" in line 3 through "thereunder" in line 4 and insert in lieu thereof "pursuant to this section".

727 7. Section 520(d). At p. 120, after "litigation" in line 12, insert", including reasonable attorney and expert witnesses fees,".

727 8. Section 520(d). At p. 20, after "appropriate." in line 13, insert:

727 "Exemplary damages may also be awarded where the court determines that the notice under oath required by subsection (b) of this section was given in wanton disregard of the truth or falsity of the allegations contained therein."

727 9. Section 520(e).At p. 120, strike "this or" in line 18. Strike all after "seek" in line 19 through line 22 and insert in lieu thereof: "relief for the matters referred to in subsection (a) of this section: Provided, however, That in no event shall actions be brought unless the notice requirements of subsection (b) of this section have been complied with."

728 10. Section 520(f). At p. 121, line 1, after "damages" strike "(including attorney)" and insert "(including reasonable attorney and expert witness)".

728 11. Section 701. At page 149, after line 18, insert:

728 "(4) "Citizen" means any person who has interest which is or may be adversely affected."
Redesignate all subsequent definitions accordingly.

728 S. 7

728 1. Section 420(a). At p. 101, strike all after "person" in line 11 through "affected" in line 12 and insert in lieu thereof "citizen.".

728 2. Section 420(a). At p. 101, strike lines 14 through 24 and insert in lieu thereof the language set out in 2 above under H.R. 2.

728 3. Section 420(b). At p. 102, lines 17 and 19, strike "this Act" and insert in lieu thereof "this Title".

728 4. Section 420(b). At p. 102, line 20, strike "person" and insert "citizen".

728 5. Section 420(b). At p. 102, after line 21, insert language set forth in 5 above under H.R. 2.

729 6. Section 420(c). At p. 103, strike all after "action" in line 8 through "thereunder" in line 9 and insert in lieu thereof "pursuant to this section".

729 7. Section 420(d). At p. 103, after "litigation" in line 17, insert the language set out in 7 above under H.R. 2.

729 8. Section 420(d). At p. 103, after "appropriate" in line 18, insert the language set out in 8 above under H.R. 2.

729 9. Section 420(d). At p. 103, strike "this or" in line 23. Strike all after "seek" in line 24 through line 3 p. 104 and insert in lieu thereof the language set out in 9 above under H.R. 2.

729 10. Section 420(f). At p. 104, lines 7 and 8, after "damages", strike "(including attorney fees)" and insert "(including reasonable attorney and expert witness fees)".

729 11. Section 501. At page 126, after line 12, insert language set out in 11 above under H.R. 2. Redesignate all subsequent definitions accordingly.

729 E. Enforcement

729 H.R. 2

729 1. Section 521(a)(1).At p. 121, line 13, after "said" insert "alleged".

730 2. Section 521(a)(4).At p. 124, strike all beginning with "Upon" in line 9 through line 12, and insert in lieu thereof: "Further proceedings in connection with such order to show cause shall be as provided in Section 525(d) of this Title."

730 3. Section 521(c). At p. 126, line 19, after "relief" insert "or a higher Federal court".

730 S. 7

730 1. Section 421(a)(1). At p. 104, at end of line 18, insert "alleged."

730 2. Section 421(a)(4). At p. 107, strike all beginning with "Upon" in line 16 through line 19 and insert in lieu thereof the language set out in 2 above under H.R. 2, substituting "425(d)" for "525(d)".

730 3.Section 421(c). At p. 109, at end of line 23, insert "or a higher Federal court".

730 F. Designating Areas Unsuitable for Surface Coal Mining

730 H.R. 2

730 1. Section 522(a)(3). At p. 128, line 3, after "systems" insert "which cannot be remedied by reclamation under a plan conforming to the requirements of this Act".

730 2. Section 522(a)(3). At p. 128, line 4, after "lands" insert ", such lands to include aquifers and aquifer recharge areas"; strike all beginning with "and" in line 7 through line 8 and in lieu thereof insert: "which cannot be remedied by reclamation under a plan conforming to the requirements of this Act; or".

731 3. Section 510(b)(4). At p. 74, line 19, place a period after "Act" and strike all after through "Act," in line 25 and in lieu thereof insert: "Where at the time of the application for a permit, an area is under study for such designation in an administrative proceeding commenced pursuant to Section 522(a) of this Title, the permit shall not be denied under this subparagraph unless the regulatory authority designates the area as unsuitable for surface coal mining pursuant to Section 522 of this Title, or"

731 4. Section 522(a)(6). At p. 129, line 15, change "September 1, 1974" to "January 1, 1977".

731 5.Section 522(c). At p. 130, strike all after "Any" in line 9 through "adversely" in line 10, and in lieu thereof insert "citizen".

731 6. Section 522(e)(2).At p. 131, strike subparagraph (2), lines 22-24, and redesignate subparagraphs (3), (4) and (5) as (2), (3) and (4).

731 S. 7

731 1. Section 422(a)(3). At p. 111, line 7, after "systems" insert language set out in 1 above under H.R. 2.

732 2. Section 522(a)(2). At p. 111, conform (C) to the modifications set out in 2 above
under H.R. 2.

732 3. Section 410(b)(4). At pp. 58-59, strike lines 25 through 6, and insert in lieu thereof the
language set out in 3 above under H.R. 2

732 4. Section 422(c). At p. 113, strike all after "Any" in line 15 through "affected" in line
16, and in lieu thereof insert "citizen".

732 5. Section 422(e)(2). At p. 115, strike subparagraph 2, lines 5-7, and redesignate
subparagraphs (3), (4) and (5) as subparagraphs (2), (3) and (4).

732 G. Review by Secretary

732 H.R. 2

732 1. Section 525(a)(1). At p. 137, line 17, strike "and" and in lieu thereof insert "or (a)".

732 2. Section 525(a)(1). At p. 137, strike all beginning with line 19 through "order," line 21,
and in lieu thereof insert "citizen".

732 3. Section 525(a)(1). At p. 138, lines 3 and 4, strike all beginning with "person" and
ending with "affected" and in lieu thereof insert "citizen"; and in line 4, strike "person" and insert
"citizen".

733 4. Section 525(a)(1). At p. 138, line 8, following "subsection" insert: "shall not be a
condition precedent to the filing of a petition for review under Section 526 of this Title and".

733 5. Section 525(b). At p. 138, line 22, following "or", insert "(a)".

733 6. Section 525(b). At p. 139, line 2, strike "a United States District" and in lieu thereof
insert "the".

733 7. Section 525(d). 7. At p. 140, line 4, following "suspended" insert "in whole or in part".

733 8. Section 525(d). At p. 140, strike line 13 and in lieu thereof insert: "If the Secretary
revokes or suspends the permit, the permittee shall, unless temporary relief is granted by the
court pursuant to subsection (c) of Section 526 of this Title, im-".

733 9. Section 525(d). At p. 140, strike line 15 and in lieu thereof insert: "area and within the

period specified by the Secretary take the reclamation action directed".

733 S. 7

733 1. Section 425(a)(1). At p. 118, line 15, strike "and" and in lieu thereof insert "or (a)".

734 2. Section 425(a)(1). At p. 118, strike all beginning with line 17 through "order" in line 19 and in lieu thereof insert "citizen".

734 3.Section 425(a)(1). At p. 119, lines 3 and 4, strike all beginning with "person" in line 2 through "affected" in line 3, and in lieu thereof insert "citizen"; and in line 3 strike "person" and insert "citizen".

734 4. Section 425(a)(1). At p. 119, line 7, after "subsection", insert language set out in 4 above under H.R. 2., substituting "426" for "526".

734 5. Section 425(b). At p. 119, line 22, following "or" insert "(a)".

734 6. Section 425(b). At p. 120, line 2, strike "a United States District" and in lieu thereof insert "the".

734 7. Section 425(d). At p. 121, line 4, following "suspended", insert "in whole or in part".

734 8.Section 425(d). At p. 121, strike line 13 and in lieu thereof insert: "tary revokes or suspends the permit the permittee shall, unless temporary relief is granted by the court pursuant to subsection (c) of Section 426 of this Title, immediately"

734 9. Section 425(d). At p. 121, strike line 15 and in lieu thereof insert: "within the period specified by the Secretary, take the reclamation action directed by the".

735 H. Judicial Review

735 H.R. 2

735 1. Section 526(a)(1). At p. 140, strike lines 22 through 25 and in lieu thereof insert:

735 "subject to judicial review only by the United States Court of Appeals for the Circuit in which the state involved is located. All other orders or decisions issued by the Secretary shall be subject to judicial review only by the United States Court of Appeals for the Circuit in which the surface coal mine operation is located. Review shall be commenced upon the filing in such court within sixty days from the date of such action of a petition by any person who participated as

provided by this Act in the administrative proceedings".

735 2. Section 526(a)(2). At p. 141, strike the first sentence of subsection (a)(2) beginning at line 9 and ending in line 14.

735 3. Section 526(a)(2). At p. 141, line 20, strike the period and add "except as provided therein."

735 4. Section 526(b). At p. 141, line 21, strike "or complaint".

736 5. Section 526(c). At p. 142, line 5, following "(c)", insert "or (d)".

736 6. Section 526(c). At p. 142, strike line 7 and in lieu thereof insert "(a)(2), (a)(3), or (a)(4)".

736 7. Section 526(d).At p. 143, line 1, following "program", insert "or pursuant to Sections 514 or 522 of this Title,"; in line 2, strike "the" and in lieu thereof insert "a"; and in line 5 strike the period and add "except as provided therein".

736 S. 7

736 1.Section 426(a)(1). At p. 121, strike lines 22 through 25 and in lieu thereof insert language set out in 1 above under H.R. 2.

736 2. Section 426(a)(2). At p. 122, strike the first sentence of subsection (a)(2) beginning at line 9.

736 3. Section 426(a)(2). At p. 122, line 20, strike the period and add "except as provided therein."

736 4. Section 426(b).At p. 122, line 21, strike "or complaint".

736 5. Section 426(c). At p. 123, line 5, following "(c)" insert "or (d)".

736 6. Section 426(a). At p. 123, strike line 7 and in lieu thereof insert language set out in 6 above under H.R. 2.

737 7. Section 426(e). At p. 124, line 1, following "program" insert:

737 "or pursuant to Sections 414 or 422 of this Title"; in line 2, strike "the" and in lieu thereof insert "a"; and in line 5 strike the period and add "except as provided therein."

738 III. Coal Exploration Permits

738 H.R. 2

738 1. Section 512. At p. 78 insert "COAL EXPLORATION PERMITS" preceding Section 512.

739 IV. Federal Lands

739 H.R. 2

739 1. Section 523(a). At p. 133, line 9 change the period to a colon and add:

739 "Provided, That the Secretary shall retain his duties under sections 2(a)(2)(B) and 2(a)(3) of the Federal Mineral Leasing Act, as amended, and shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with Section 522(b) of this Title."

739 2. Section 523(c), At p. 133, line 24, strike the period and add "pursuant to the provisions of 30 U.S.C. @ 201(b) as amended and regulations promulgated thereunder."

739 3. Section 523(c)(2)-(4).At pp. 133-135 strike subsections (c)(2) beginning at line 25, p. 133 through (c)(4) ending at line 23 p. 135 and at p. 135, line 24, redesignate subsection (c)(2) as (c)(5).

739 4. Section 523(e). At p. 136, line 19, redesignate subsection (e) as (f) and insert a new subsection (e) as follows:

739 "(e) The Secretary may enter into an agreement with any State with an approved State program under which, subject to the terms and conditions of such agreement, the State may regulate, subject to all the provisions of this Act, surface coal mining and reclamation operations on Federal lands within all or any part of the State. Notwithstanding any such agreement the Secretary shall retain his duties under sections 2(a), 2(B) and 2(a)(3) of the Federal Mineral Leasing Act, as amended, and to receive and approve mining plans under this Act, and continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with Section 522(b) of this Title."

740 5.Section 523(f) [formerly 523(e)]. At p. 136, line 19, strike "subsection (d)" and in lieu thereof insert "subsections (d) and (e),".

740 6. Section 523(f). At p. 136, line 25, redesignate the subsection as (g) and strike "a

program" and in lieu thereof insert "and promulgate regulations as provided in 5 U.S.C. @ 553(b)-(e)"; and at page 137, line 2, strike "that".

740 S. 7

740 1. Section 423(a).At p. 116, line 17, change the period to a colon and add the language set out at 1 above under H.R. 2, changing the reference to section 522(b) to 422(b).

740 2. Section 423(c). At p. 117 line 5, redesignate subsection (c) as (d) and insert a new subsection (c) identical with subsection 523(c) of H.R. 2 modified as provided in 2 above under H.R. 2.

741 3. Section 423(d). At p. 117, lines 18-21, redesignate the subsection as subsection (e) and revise it to read as in 4 above under H.R. 2, changing the reference to Section 522(b) to Section 422(b).

741 4. Section 423(e).At p. 117, strike subsection (e). In lieu thereof insert a new subsection (f) identical with redesignated subsection (f) of H.R. 2 as revised in 5 above under H.R. 2.

741 5.Section 423(g). At page 117, following new subsection (f), add a new subsection (g) identical with redesignated subsection (g) of H.R. 2 as revised in 6 above under H.R. 2.

742 V. Surface Owner Protection

742 H.R. 2

742 1.Section 714(a). At p. 170, line 23, after "shall" insert", subject to valid existing rights,".

742 2. Section 714(o). At p. 177, line 2, change "1976" in each instance to "1978" and in line 7, change "1975" to "1977".

742 S. 7

742 1.Section 512. At p. 144, insert a new Section 512 "Surface Owner Protection" identical with Section 714 of H.R. 2 modified as provided above under H.R. 2, and renumber present Sections 512, 513 and 514 as 513, 514 and 515.

743 VI. Environmental Protection Performance Standards

743 H.R. 2

743 1.Section 515. At p. 83, at the end of line 14, change the period to a comma and insert
"after notice and opportunity for public comment. Where the Secretary is the regulatory
authority such regulations shall be promulgated as provided in 5 U.S.C. @ 553(b)-(e)."

743 S. 7

743 1. Section 415. At p. 67, at end of line 7, insert same language as set out in 1 above under
H.R. 2.

744
Law Offices Duncan, Brown, Weinberg & Palmer
March 17, 1977
Honorable Lee Metcalf, Chairman
Subcommittee on Public Lands and Resources
Senate Committee on Energy and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510
Dear Senator Metcalf:

744 In the course of my testimony on March 3 on S. 7, the Strip Mine Bill, I stated that as a
member of Friends of The Earth I received the newspaper and that Friends of the Earth opposed
S. 7 (and H.R. 2) because these bills did not end strip mining. In order that the record may be
clear, I take this opportunity to submit to you the article upon which my statement is based. It is
from "Friends of the Earth's Not Man Apart" (the society's official publication), Mid-February
issue. The article is entitled "Strip Mine Bill: The 1977 Models" by Ed Dobson.

744 The following issue, the March, 1977 issue, contains a followup article, a copy of which I
also enclose.The latter is a part of Jeffrey Knight's column entitled "Congress in Action."

744 As you can see, each of the articles concludes with a recommendation that members of the
society write Congress in support of the position of COALition, urging the enactment of a strip
mine bill that will phase out strip mining.

744 Mr. Dobson's article in the mid-February issue states that "The regulatory language of both
H.R. 2 and S. 7 came under fire at a meeting of the COALition January 8-10. In a unanimous
voice vote the COALition endorsed introduction of a bill that will include provisions phasing out
strip mining altogether. Argument centered around a defensible timetable and incentives for
deep mining, such as safety improvements."

745 Mr. Knight's article refers only to H.R. 2. He describes it as "the exact twin of the final weak version arrived at last year. . . . It is the result of three years of weakening efforts by the coal industry. " I am sure you will be as surprised as I that H.R. 2 (and s. 7 which is in nearly all respects identical) is considered weak on strip mining. Mr. Knight goes on to refer to the January meeting of COALition and the unanimous vote to work for a bill that would phase out strip mining altogether.

745 I believe on the basis of the foregoing that the point I was trying to make at the hearing is completely documented. Litigation brought by organizations who are opposed to strip mining under any circumstances suggests the need for some reasonable safeguards in the citizen suit provision.

745 By my remarks I intended no aspersion upon Friends of the Earth, of which I have been a member almost from the time it was founded by Dave Brower. The society is obviously entitled to express its opinion. It is out of the competition of ideas and the choices they afford that public policy emerges. I am prompted to write this letter only because I understand that in the afternoon session some question arose as to the society's position. If there has been a change in that position it has not been communicated to me as a member.

745 I respectfully request that this letter be made a part of the record.

745 With kindest regards.

745 Sincerely yours,

745 Edward Weinberg of DUNCAN, BROWN, WEINBERG & PALMER, P.C.

745 EW: vcr

746 FRIENDS OF THE EARTH'S NOT MAN APART March 1977 issue Page 10

746 Friends of the Earth March 1977

746 House Interior

746 Organizes Itself

746 In late January, the House Interior Committee organized itself into subcommittees, with a resulting set-up that will be very beneficial to environmentalist concems.

746 Topping the list is the Subcommittee on Energy and the Environment, which will be

chaired by Morris Udail (D-Ariz.), who is also the full committee Chairman. This subcommittee
mittee will have jurisdiction over the Nuclear Regulatory Commission and other nuclear
regulation and safety matters, as well as general energy policy issues in the Interior Department.
It will also have jurisdiction over the strip mine bill.

746 The new Subcommittee on National Parks and Temitories will be chaired by
Representative Phil Burton (D-Calif.). This is a fine choice and should result in good legislation
coming out of that subcommitte. Mr. Burton, like Mr. Udall, has long been a strong and
effective advocate of environmental values.

746 The Subcommittee on Public Lands will be chaired by Representative Teno Roncalio
(D-Wyo.), another fine choice. This subcommittee will have jurisdiction over all BLM lands
except those in Alaska and will have authority over oil and gas matters on federal land.

746 The Subcommittee on Oversight and Alaskan Lands will be chaired by Representative
John Seiberling (D-Ohio), without a doubt the staunchest defender of the environment on Capitol
Hill. This subcommittee will have authority over the Alaska public interest lands and over
Indian affairs; it will also have oversight over the entire range of the Interior Department
functions.

746 (An oversight committee has no legislative authority but does have authority to investigate
any matter within its jurisdiction. It can hold hearings and investigate any of Interior's activities
and can then suggest legislation to the full committee. This is, incidentally, a function that all
committees have but that few actually exercise unless a specific subcommittee is set up to do so.)

746 The Subcommittee on Water Resources will be chaired by Representative Lloyd Meeds
(D-Wash.); Mr. Meeds is another fine friend of the environment and won a close election in
November partly due to the strong support of the League of Conservation Voters. His
Subcommittee will have jurisdiction over the Bureau of Reclamation and water development
projects.

746 Finally, the Subcommittee on Mines and Mining will be chaired by Representative
Abraham Kazen (D-Tex.). This Subcommittee will have jurisdiction over hard-rock mining and

the reform of the 1867 Mining Act.

746 Strip Mine Legislation

746 On The Move

746 The Interior Committee held its first hearings on strip mine legislation in February and plans to move speedily on the bill. The main vehicle seems to be H.R. 2, introduced by Mr. Udall on the first day of the Congress. H.R. 2 is the exact twin of the final weak version arrived at last year, when supporters of the bill were trying to develop a veto-proof bill. It is the result of three years of weakening efforts by the coal industry.

746 Environmentalists have been disappointed that the Interior Committee will not try to use a stronger bill as its markup vehicle. In January, environmentalists and strip mine activists from around the country met at the annual meeting of the COALition against Strip Mining in Washington and unanimously voted to work for a bill that would eventually phase out strip mining altogether and impose strict regulations in the interim. FOE and others are now writing a bill and searching for a sponsor.

746 Among the provisions which many environmentalists feel are minimum requirements for a tough bill are: a ban on mountain-top mining; no mining within the boundaries of national forests or on national grasslands (or on other national parks, wildemesses, etc.); no mining on alluvial valley floors or at the head of canyons and hollows; no mining on slopes greater than 12 degrees; strict enforcement of regulations, with an expanded citizens' role in such enforcement; effective reclamation of abandoned lands; tough penalities for those miners that fail to comply with the law.

746 What You Can Do: Write your Representative, and urge her/him to vote for a phase-out bill with the minimal regulatory requirements briefly outlined above.

747 FRIENDS OF THE EARTH"S NOT MAN APART

747 Mid-February 1977 issue

747 Strip Mine Bill:

747 The 1977 Models

747 ED DOBSON

747 It has been six years since Congressman Ken Hechler introduced a bill to abolish stripmining coal, shocking a reluctant Congress into consideration of the latest in a series of regulatory bills. The tirst bill to regulate strip mining was drafted by Congressman Everett Dirksen back in 1941. The issue of strip mining has confronted us for 36 years, and neither side has backed down. Nor do either look likely to.

747 Two new bills are in the 1977 hopper. The last much compromised and finally, vetoed Melcher bill has been teintroduced as H.R. 2, by Congressman Mo Udall of Arizona. Senator Lee Metcalf of Montana has introduced S. 7. The major difference is that S. 7 would prohibit strip-mining of federal coal under private surface, while H.R. 2 would give the surface owner a vcto over strip-mining. If a landowne wishes to sell, however, the govemment steps in and tells him how much he can sell for. The price is the appraised value plus $1 00 per acre bonus plus damages. In many cases, this price is-far below the market price. The provision, by stopping windfall profits for the surface owner, would discourage speculative trading in coal lands.

747 The bill applies only to landowners who live on lands which contain coal owned by the federal government. H.R. 2 would not affect a property owner of private coal; he can sell his coal to anyone for any price. In some states, lahd overlying coal can be condemned for its mineral rights. Montana, however, has a good law: it prohibits condemnation of surface by any owner of coal, including the state. (Montana copper law, however, is harsh. If you own the copper you are permitted to condemn the surface.)

747 The dilemma is whether to provide a disincentive to sell severely restricting the sale price of surface estate or making ownership of un strip-mined land more economically attractive. This would be done by selectively lowering federal taxes for residents of states that did not permit condemnation. (There is, however, a legal question whether such deliberately inequitable tax rates are constitutional, no matter what their purpose.) The prospect of allowing the Secretary of Interior to fix the value, based on three appraisals, of surface overlying federal coal has encouraged many landowners to sell - some for high prices - before a bill is enacted.In Montana, 2,800 acres of the Fedding propery and smaller plots owned by Cady and John (all surfaces estates only) were soid to Westmoreland Resources for about $3 ,500 per acre. An adjacent

1.3-acre county school property was sold to Westmoreland for $6 ,000. These lands are 30 miles
from town, but their prices approach the prices of urban commercial property. Which, in a sense,
it is. Other nearby ranchers, more anxious to sell early, received $137 to $200 per acre.

747 Some people were driven to sell at low prices because they feared that with the coming of
the mines, the land would be worthless anyway, and they wanted to make sure that they were
paid something for losing their land.

747 The consent section would set an appraised value plus damages and a bonus up to $1 00
per acre. This penalizes the landowner who held on in hope of preventing mining, since other
land of equal value is not likely to be available at a figure near the settlement price., less as much
as 40 percent sales tax, as the Reddings found out. While the consent section is designed to
prevent landowners' windfall profits, the landowner who must choose between moving and living
with ongoing mining, blasting, and other degradation is damaged without hope of
jusstcompensation. Although the landowner is provided with a veto power, the value of the right
to say "no" diminishes with the approach of the mining. Therefore, the attempt of the consent
section to prevent speculation does not justify crippling the economic position of the reluctant
and threatened surface owner. There should not be disincentives to hold on to one's land, and
there should be compensation for damages sustained in living near a strip mine. Some
strengthening of the common-law trespass protection would help.

747 There would be obvious environmental benefits from restricting sale price (and, thereby,
profit motive) if it means the land may not be mined. When the land changes hands, perhaps
through death of the owner, it may eventually be stripped. The only benetit, then, would have
been the dubious prevention of some windfall profit. Too often the victim of this consent
weapon is going to be a hapless innocent rather than some miserly speculator. Senator Metcalf
would solve the environmental problems by simply outlawing strip mining of federal coal under
private surface on the argument tnat strip mining was not contemplated in the homestead days.
Environmentalists should support that argument very clearly, for it would place the emphasis on
developing our largest fossil resource, deep-minaole coal, and improving safety standards
(following the lead of US Steel Company). The argument agamst Metcalf is that this approach

prevents the development of economical mining units, and this is true because of the
checkerboard federalrailroad coal ownership pattem. But it is Mid-February 1977 equally true
that the railroads no longer provide much of a public service and should be divested of their coal
holdings anyway. Passage of the Metcalf language would be a step in that direction.

747 The regulatory language of both H.R. 2 and S. 7 came under fire at a meeting of the
COALition January 8-10. In a unanimous voice vote the COALition endorsed introduction of a
bill that will include provisions phasing out stripmining altogether. Argument centered around a
defensible timetable and incentives for deep mining, such as safety improvements.

747 What You Can Do: Support The COALittion endorsement of a bill that will phase out
strip-mining over a reasonable period of time. Letters to your Congressperson and Senators will
be of great help. Send copies to Jelf Knight, FOE, 620 C Strcet SE. Washington, DC 20003.
Beyond supporting the phasing out of strip-mining over a reasonable period of time, support a
ban on strip-mining of federal coal under private suriace in the mieim, the Mctcalf (S. 7)
solution.

STATEMENT OF ROBERT D. PARTRIDGE, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

748 Senator METCALF. Are you ready to answer the question I suggested I would
propound to you: How many Btuhs make a kilowatt?

748 Mr. PARTRIDGE. Mr. Chairman, I understand, if we had perfect efficiency we could do
it with about 3,300. That, of course, is not obtainable. It takes about that much -

748 Senator METCALF. We have had considerable testimony here about Kentucky coal
which is relatively low sulfur, high Btu. There is a difference between Kentucky coal and
western coal, but I don't think the difference is as great as implied in some of the testimony.

748 Somewhere along the line, what is the Btu of western coal as against eastern coal? Can
you answer that?

748 Mr. PARTRIDGE. I can't answer at the moment. We will be glad to supply it for the
record.

748 Mr. HOLUM. I don't know, Senator Metcalf, what you mean; average Btu content. The
Btu content of the lignite in North Dakota and some of that in eastern Montana is down to 6,500,
7,000 Btu's to the pound and coal we talk about generally in the Powder River Basin runs 8,810
Btu's to the pound.

748 Senator METCALF. I am under the impression western coal has about two-thirds of the
Btu. That is not too great a variance. We have been led to believe, in the course of this hearing,
that Kentucky coal has low sulfur, high Btu, but it is not as great a difference as has been
indicated. Anyway, go ahead.

748 Rm. PARTRIDGE. We will be glad to supply that information the best we can get it. I
think we have some pretty good figures on it.

748 I believe high-grade Kentucky coal runs on about the order of 11,000 or thereabouts; but
we will be glad to supply figures on this.

748 Senator METCALF. Thank you very much.

748 [Subsequent to the hearing, Mr. Partridge supplied the following information:]

748 NRECA, Washington, D.C., March 23, 1977.

748 Hon. LEE METCALF, Chairman, Subcommittee on Public Lands and Resources, Senate
Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

748 DEAR SENATOR METCALF: In response to your question which you asked during
hearings on S. 7 on February 24, 1977 about the heat content of Kentucky coal, I have found the
following information:

748 1. Coal from eastern Kentucky has an average Btu content of about 13,500 to 14.000 and
an average sulfur content of 1%.

748 2. Coal from western Kentucky has an average Btu content of 12,500 and an average
sulfur content of 3%.

748 I hope you find this information useful.

748 Sincerely,

748 ROBERT D. PARTRIDGE, Executive Vice President and General Manager .

748 Senator METCALF. Now you have a prepared statement here. Are you going to read it?

748 Mr. PARTRIDGE. No, Mr. Chairman. Alex Radin gave the statement for NRECA and APPA and I would ask simply that the statement be inserted into the record.

749 Senator METCALF. I know of no group with whom I have worked more closely than this group of consumers and suppliers of electricity. I know of no individuals I respect more highly than this group, even though I have been somewhat facetious, Mr. Weinberg, in our longtime relationship. It appears you have been more persuasive than I and you have wom more battles from your position down there than I have from up here.

749 I am convinced, as the hearing has developed, that some of our procedures are too cumbersome, as outlined in this bill. I am convinced we have to make some modifications of the legislation. Believe me, I appreciate your appearance here.

749 I rode back on the airplane with Jim Grahl the other day and he said he could not live with some of the bill's provisions at Basin Electric Cooperative. You know I always cite Basin Electric as one of the outstanding models for conservation as well as consumer-owned utilities. So I am very pleased to have you here, all of you, and I assure you my staff is going to work with you to try to get us a bill that you can live with.

749 Mr. RADIN. Senator, we appreciate that. May I say the feeling is mutual.

749 Mr. HOLUM. I just want to say we appreciate the time you have given us, the attention you have given, and we doubly appreciate the kind words.

749 Senator METCALF. We will be in recess until 2:30 p.m.

749 AFTERNOON SESSION

749 Senator METCALF. We will resume. The first witness is Mr. W. P. Schmechel from the Western Energy Co. Mr. Schmechel, we are delighted to have you before the committee. I have your statement and your opinions.

STATEMENT OF W. P. SCHMECHEL, PRESIDENT AND CHIEF OPERATING OFFICER, WESTERN ENERGY COMPANY OF MONTANA

749 Mr. SCHMECHEL. Thank you, Senator. My name is Paul Schmechel. I am president and chief operating officer of Western Energy Co., a wholly owned subsidiary of the Montana Power Co., with headquarters in Butte, Mont.

749 Western Energy Co. is engaged in the development and mining of coal in Montana, Wyoming, and Texas, and is producing coal at its surface mine at Colstrip, Mont., for sale to Montana Power, Puget Sound Power and Light Co. and midwest utilities as fuel for electric generating plants, and to small industrial plants.

749 I appreciate very much the opportunity to appear before your committee on the important subject of S. 7, the Surface Mining Control and Reclamation Act of 1977.

749 Mr. Chairman, you and your colleagues who have sponsored this legislation are to be complimented on introducing a bill that is materially shorter than the companion legislation now under consideration in the House of Representatives.

750 Senator METCALF. That is not a very good comment, just because the bill is shorter - anyway, go ahead. I don't know what will emanate from this bill.

750 Mr. SCHMECHEL. This bill affords the individual States the clear right to assume regulation of surface coal mining and reclamation operations on all lands including Federal lands within a State. We endorse this concept. It is our belief that administration of these activities at the State level will be more responsive to the conditions and needs of an area and will avoid unnecessary and wasteful duplication in those States having effective surface mined land reclamation programs.

750 We know the intention of this committee is to produce sound legislation which assures protection of the Nation's environment without unduly restricting energy options important to America's economic well-being. There are some provisions in the bill, however, that could unduly restrict the production of coal from large deposits where reclamation of surface mined lands is entirely possible.

750 Western Energy Co., therefore, respectfully requests consideration of the following alterations to S. 7 in the interest of making it a more workable instrument in terms of administration, equity, and reducing the undesired impacts it otherwise could have on the Nation's coal production.

750 Section 407(b)(11) requires the applicant for a surface coal mining and reclamation permit to submit a determination of the hydrologic consequences of the mining and reclamation operations, both on and off the mine site.

750 We submit that an applicant may not be able to determine in advance all of the hydrologic consequences. Determinations based on existing mining operations in the general area may be sufficient. Moreover, the applicant may not have access to offsite lands in every case and could be denied the ability to fulfill the requirements of this section. Accordingly, we suggest that section 407(b)(11), line 4, page 48, be amended to read as follows:

750 "(11) a determination of the probably hydrologic consequences . . . "

750 Section 408(a)(8) requires that each reclamation plan submitted as part of a permit application shall include a statement of the consideration which has been given to insuring the maximum practicable recovery of the mineral resource.

750 We have a concern over how the word "practicable" may be interpreted. Practicable means capable of being put into practice or accomplished.

750 Senator METCALF. Is that Mr. Webster's definition?

750 Mr. SCHMECHEL. Yes, that is Webster's definition.

750 In many cases an operator may be capable of mining the mineral resources, but it may not be marketable either because of the cost of production or quality. Therefore, we suggest that section 408(a)(8), line 6, page 54, be amended to read:

750 "Insuring the maximum practicable recovery of the mineral resource, consistent with its marketability."

750 Senator METCALF. I am sure you are aware that my son is a member of the Montana Legislature and he has introduced a bill that would provide you have to mine the second seam or the third seam if it is feasible. I am going to have a look at this to see whether this is consistent with his recommendations out there is Montana.

751 Mr. SCHMECHEL. Inded, Senator, that bill has been killed in Montana.

751 Senator METCALF. Then maybe we better pass something around here.

751 Mr. SCHMECHEL. It was killed, Senator, because it would not have been a workable arrangement with the language that had been proposed. Let me suggest the amendment under section 501, which I would recommend, would read:

751 "Marketability of the mineral resource means that the coal to be recovered is economically
feasible to mine and is fit for sale in the usual course of trade."

751 Those are the words of the present Montana law.

751 Section 408(a)(13) requires a detailed description of the measures to be taken during the
mining and reclamation processes to assure the protection of the quantity and quality of surface
and ground water system, both on and offsite, from adverse effects of the mining and reclamation
processes.

751 In the Western States, surface coal mining may interrupt or diminish surface and ground
water systems but this impact would be of short duration; for example, during the mining period
or until recovery of or saturation of the backfill material occurs.

751 In the meantime, alternative sources of water would have to be furnished pursuant to
section 415(b)(10)(E). After backfilling and rehabilitation, there is no reason the ground water
levels should not recover. With care for water quality problems, no long-term impact on the
vicinity should be experienced. Therefore, we suggest that section 408(a)(13), line 2, page 55, be
amended by striking out the words, "Assure the protection of," and have it read:

751 "Protect to the extent reasonably practicable (A) the quantity and quality."

751 Section 410(b)(5) requires the regulatory authority to find in writing that the proposed
surface coal mining operations, if located west of the 100th meridian west longitude, would not
have a substantial adverse effect on alluvial valley floors.

751 We assume that one of the intentions of this section is to allow a temporary interruption of
farming or ranching operations in alluvial valleys where such valleys are of minor consequence
and can be restored. In this regard, we concur with the comments of Dr. S. L. Groff, director and
State geologist, Montana Bureau of Mines and Geology, in his letter dated February 8, 1977,
addressed to the chairman, as follows:

751 The point to be made here is that there are many bench areas underlain by old, Pleistocene,
river gravels, and there are literally hundreds of small narrow stream vallevs that are dry except
in the spring and after heavy rains. Such small intermittent flow stream or alluvial stream valleys

might well be removed in the mining process and restored thereafter. It would probably be much more economical to do this than to redirect and move the machinery around these areas. This matter is well worth considering, as in this period of energy problems, coal production in a well planned and uniform operation is of vital necessity. It would be difficult or impossible under the existing definition to plan a uniform mining program in a unit mining area if such area were crossed by several small, essentially dry stream valleys.

752 Accordingly, we suggest that section 410(b)(5), line 13, page 59, be amended to read:
"Would not have a substantial, permanent adverse effect."

752 Senator METCALF. Mr. Schmechel, I am not going to interrogate you on this, but I suggest when you say alluvial valleys or such valleys of minor consequence, it is a self-serving statement and will be taken into consideration.

752 Mr. SCHMECHEL. I will be thinking about your comment here as we approach the end of my testimony, Senator.

752 Section 415(b)(1) sets a minimum requirement for the operation that surface coal mining will be conducted to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface mining can be minimized.

752 We suggest section 415(b)(1), line 13, page 67, be amended to read: "Solid fuel resource being recovered, consistent with its marketability, so that reaffecting the," and continuing.

752 Section 415(b)(3) requires the operation, as a minimum to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated.

752 The term "Highwalls eliminated" is unclear. In the process of surface coal mining in flat or gently rolling terrain, a series of cuts are made much like a giant single bottom plow would make in a field, leaving an intermediate highwall after each cut. Only the last cut would result in a permanent highwall if left unrestored. We assume the legislation intends to prevent leaving that final highwall.

752 Further, because surface coal mining is usually conducted from a line along the outcrop where coal is found under the shallowed cover, and proceeds into deeper cover with each

successive cut, it is extremely difficult in those cases to regrade the final highwall to an approximate original contour.

752 Montana law has recognized this situation by allowing for regrading of the final highwall to a slope not to exceed 20 degrees from the horizontal. Therefore, we recommend that section 415(b)(3), line 8, page 68, be amended to read: "Of the land with all spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act) and final highwalls reduced to a slope not greater than 20 degrees from the horizontal."

752 Senator METCALF.I don't want to argue with you, but we have statements from Kentucky and others that they can live with regrading to 15 and 14 degrees to the highways. Can you live with that?

752 Mr. SCHMECHEL. It probably could be lived with. I don't know that it is entirely necessary. We have not had any great problem with the 20-degree slope requirement in Montana.

752 Senator METCALF. You can revegetate a 20-degree slope?

752 Mr. SCHMECHEL. Yes, sir, and we have done so.

752 Senator METCALF. Farm machinery and so forth can go over that?

752 Mr. SCHMECHEL. I don't want to make the statement that farm machinery can traverse that, Senator, for a grain drill or a seed drill. We know construction machinery can negotiate successfully, then it can be aerially seeded.

753 Section 417(e) specifies that each inspector upon detection of each violation shall forthwith inform the operator in writing and shall report in writing any such violation to the regulatory authority.

753 We believe that due process requires the inspector to point out to the operator the nature and location of the violation before the inspector leaves the mine. It has been our experience in several cases that the site of the alleged violation and conditions may have been disturbed or consumed by the ongoing operations before the operator has received notice. The end result is so often a controversy.

753 To avoid the problem, we suggest amending section 417(e), line 5, page 92, to read: "Act, shall point out to the operator the specific nature and location of such violation before leaving the operation and shall forthwith inform the operator in writing," and continuing on from there.

753 Section 422(a)(3)(A), (B) and (C) refer to areas unsuitable for surface coal mining.The terms are too vague to be meaningful. A subjective determination by a regulatory official could rule out mining in almost any part of the country under these provisions. Without any standards under the law, coal operators and mineral owners would thus be at the mercy of interpretations by the administrator or any litigant deemed interested. Specific guidelines and definitions must be provided to avoid uncertainty.

753 Section 423(e) specifies that in cases where the United States is not the surface owner of land overlying Federal coal deposits, such deposits are withdrawn from all forms of surface and open pit mining operations. Senator, I won't go through a discussion of this. It has been adequately covered this morning. We understand the sentiments of the committee and the concerns others have expressed.

753 Senator METCALF. My own purpose is to provide for a coal reserve. This the Mansfield amendment would accomplish: It would be the way to provide for a coal reserve. When Secretary Andrus came before the committee, he said that there are substantial coal-bearing lands which we could set aside as coal reserves.

753 At least the consideration of the Mansfield amendment will bring up this whole problem of surface-owner consent and that is going to be widely debated.

753 Mr. SCHMECHEL. Senator, our concern is in the areas where the lands are checkerboarded with coal veins and it would render, in many, many cases, the area unmineable. It simply would be unfeasible.

753 Senator METCALF. Senator Mansfield suggested we leave "toadstools" around. Anyway, let's skip the Mansfield amendment. I think it has been debated up and down and back and forth.

753 Mr. SCHMECHEL. All right. Rather than burden this proceeding with a discussion of it, we will simply leave it rest and suffice to say it will take out of production, or remove from the

prospect of production, enormous quantities of coal.

753 Senator METCALF. You are against it?

753 Mr. SCHMECHEL. I am against it. I would ask my presentation be included in the record at these hearings and on behalf of Western Energy Co. and for myself, I would like to express to you and to the members of the committee our appreciation for allowing us to testify here today and the courtesies that have been extended. Thank you very much.

754 Section 423(e) would foreclose the recovery of literally hundreds of millions of tons of coal which otherwise could be produced in areas where reclamation is entirely possible. Because of the dominant position of the Federal Government in coal holdings in the West, it is essential that these deposits remain available for development.

754 Federal coal deposits not only are vast but are checkerboarded between private and State leases to the extent that, without the availability of U.S. coal leases, it may not be feasible in many areas to mine the remaining interspersed non-Federal coal. It would simply not be possible to develop a logical mining unit if all Federal coal over which the surface is in private ownership were excluded from production.

754 In the specific case of Western Energy Co., Federal coal deposits at Colstrip, Mont., which would be precluded from production by section 423(e) account for an estimated 370 million tons of coal out of a total of 830 million tons, or nearly 45 percent of the reserves in our mining area. The number becomes even larger when non-Federal coal lands which would become isolated and infeasible to mine are taken into account.

754 Without the Federal coal deposits, we could not meet contract commitments entered into years ago to supply coal to electric-generating stations in Montana, Minnesota, and Wisconsin and numerous small industrial plants in the Midwest.

754 I need not remind this committee that these are generating stations and industrial plants which are not burdening the diminishing domestic supplies of oil and natural gas. These customers should be encouraged and not placed in a position of uncertainty regarding their fuel supplies. The situation I have outlined here is duplicated in many other areas of the West.

754 For the benefit of those who would advocate underground mining of the Federal coal

deposits subject to section 423(e), it is important to point out that surface mining is the only feasible method of recovering the coal, in many cases, because the overlying shallow sediments are not structurally competent to provide a roof for largescale underground mining operations.

754 We are well aware of the time and attention this committee and the conference committee devoted to the issue of surface-owner consent during the last Congress, and we are aware of the fact that the language contained in the earlier legislation was hammered out with the greatest difficulty to satisfy two divergent positions which we might state simplistically as follows.

754 One: Certain members of the committee were concerned lest any farmer or rancher be forced to have his farm or ranch disturbed by surface mining simply because the Federal Government two or three generations ago withheld the rights to the minerals beneath the surface he owns.

754 Two: The concern of other members that the surface landowner might be in a position to hold the minerals, the property of all Americans, in hostage until he got some exorbitant sum in exchange for disturbing the surface.

755 Our long experience indicates that both positions are founded largely upon theoretical misapprehensions. Practice, at least in Montana, finds very few surface landowners who are adamantly and unyieldingly opposed to having the land mined and very few whose demands for the economic loss and disturbance such mining causes are exorbitant.

755 We have been able to work with and reach agreement with a number of surface owners where Federal coal underlay their lands and we do not view their payments as exorbitant. We have seldom met a surface landowner who was unalterably opposed to mining. Indeed, as our record of successful reclamation has developed over the past 7 years, the apprehensions and fears of ranchers and farmers have diminished measurably.

755 Under current practice in Montana, at least, there is virtually no way that we can enter upon the land of a man who adamantly refused to consider any mining operation. Therefore, as we see it, the provision to withdraw large areas from surface coal mining does not protect any significant number of people who seek or need such protection.

755 Instead, it reduces the options otherwise available to a certain class of surface owner to sell or lease his land for surface mining purposes even if he wants to.

755 The only real problem that needs to be addressed is that of the third-party speculator who, in the past, signed surface mining leases with landowners for a few dollars per acre or a tiny fraction of a future royalty. These speculators then offered the leases to legitimate mining operators at a very large profit. If there need be any legislative action in this area, we believe that this is the problem the Congress should address.

755 Senator METCALF. One of the most important mining areas in the United States, and as you have pointed out, you are feeding electricity to the Puget Sound and the Midwest utilities. Several members of this committee have been out to the area and are knowledgeable regarding some of the mining activities, so we are not uninformed about your operations.

755 I am delighted to have you testify and I hope we can come out with a bill that you can live with. I am delighted to have my friend and colleague from Wyoming who is against the Mansfield amendment. He skipped all of the testimony, but on the Mansfield amendment, he saw the handwriting on the wall.

755 Mr. SCHMECHEL. I can return to it, if you like.

755 Senator METCALF. Oh, no. I think both of us have debated it back and forth sufficiently. Do you have any questions?

755 Senator HANSEN. No questions.

755 [The prepared statement of Mr. Schmechel and a subsequent letter follow:]

756 STATEMENT OF W. P. SCHMECHEL, PRESIDENT & CHIEF OPERATING OFFICER, WESTERN ENERGY COMPANY

756 SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS Washington, D.C., March 3, 1977

756 Mr. Chairman, Members of the Committee:

756 My name is W. P. Schmechel. I am president and chief operating officer of Western Energy Company, a wholly-owned subsidiary of The Montana Power Company, with headquarters in Butte, Montana. Western Energy Company is engaged in the development and mining of coal in Montana, Wyoming and Texas, and is producing coal at its surface mine at

Colstrip, Montana for sale to Montana Power, Puget Sound Power and Light Company and
midwest utilities as fuel for electric generating plants and to small industrial plants.

756 I appreciate very much the opportunity to appear before your committee on the important
subject of S. 7, the Surface Mining Control and Reclamation Act of 1977.

756 Mr. Chairman, you and your colleagues who have sponsored this legislation are to be
complimented on introducing a bill that is materially shorter than the companion legislation now
under consideration in the House of Representatives. This bill affords the individual states the
clear right to assume regulation of surface coal mining and reclamation operations on all lands
including Federal lands within a state. We endorse this concept. It is our belief that
administration of these activities at the state level will be more responsive to the conditions and
needs of an area and will avoid unnecessary and wasteful duplication in those states having
effective surface mined land reclamation programs.

757 We know the intention of this Committee is to produce sound legislation which assures
protection of the nation's environment without unduly restricting energy options important to
America's economic well being. There are some provisions in the bill, however, that could
unduly restrict the production of coal from large deposits where reclamation of surface mined
lands is entirely possible.

757 Westen Energy Company, therefore, respectfully requests consideration of the following
alterations to S. 7 in the interest of making it a more workable instrument in terms of
administration, equity and reducing the undesired impacts it otherwise could have on the nation's
coal production:

757 Sec. 407(b)(11) requires the applicant for a surface coal mining and reclamation permit to
submit a determination of the hydrologic consequences of the mining and reclamation operations,
both on and off the mine site.

757 We submit that an applicant may not be able to determine in advance all of the hydrologic
consequences. Determinations based on existing mining operations in the general area may be
sufficient. Moreover, the applicant may not have access to off-site lands in every case and could
be denied the ability to fulfill the requirements of this section. Accordingly, we suggest that Sec.

407(b)(11), line 4, page 48, be changed to read as follows:

758 "(11) a determination of the probable hydrologic consequences . . . "

758 Sec. 408(a)(8) requires that each reclamation plan submitted as part of a permit application shall include a statement of the consideration which has been given to insuring the maximum practicable recovery of the mineral resource.

758 We have a concern over how the word "practicable" may be interpreted. Practicable means capable of being put into practice or accomplished. In many cases an operator may be capable of mining the mineral resource but it may not be marketable either because of the cost of production or quality. Therefore, we suggest that Sec. 408(a)(8), line 6, page 54, be amended to read:

758 "insuring the maximum practicable recovery of the mineral resource, consistent with its marketability ":

758 This amendment will require a definition under Sec. 501, as follows:

758 Marketability of the mineral resource means that the coal to be recovered is economically feasible to mine and is fit for sale in the usual course of trade.

759 Sec. 408(a)(13) requires a detailed description of the measures to be taken during the mining and reclamation processes to assure the protection of the quantity and quality of surface and ground water systems, both on-and off-site, from adverse effects of the mining and reclamation processes.

759 In the western states surface coal mining may interrupt or diminish surface and ground water systems but this impact would be of short duration; i.e., during the mining period or until recovery of or saturation of the backfill material occurs. In the meantime alternative sources of water would have to be furnished pursuant to Sec. 415(b)(10)(E). After backfilling and rehabilitation, there is no reason the ground water levels should not recover. With care for water quality problems, no long-term impact on the vicinity should be experienced. Therefore, we suggest that Sec. 408(a)(13), line 2, page 55 be amended to read:

759 "protect to the extent reasonably practicable (A) the quantity and quality. . . . "

759 Sec. 410(b)(5) requires the regulatory authority to find in writing that the proposed surface

coal mining operations, if located west of the one hundredth meridian west longitude, would not
have a substantial adverse effect on alluvial valley floors.

760 We assume that one of the intentions of this section is to allow a temporary interruption
of farming or ranching operations in alluvial valleys where such valleys are of minor
consequence and can be restored. In this regard we concur with the comments of Dr. S. L. Groff,
Director and State Geologist, Montana Bureau of Mines and Geology, in his letter dated February
8, 1977, addressed to the Chairman, as follows:

760 "The point to be made here is that there are many bench areas underlain by old
(Pleistocene) river gravels, and there are literally hundreds of small narrow stream valleys that
are dry except in the spring and after heavy rains. Such small intermittent-flow stream or alluvial
stream valleys might well be removed in the mining process and restored thereafter. It would
probably be much more economical to do this than to redirect and move the machinery around
these areas. This matter is well worth considering, as in this period of energy problems, coal
production in a wellplanned and uniform operation is of vital necessity. It would be difficult or
impossible under the existing definition to plan a uniform mining program in a unit mining area
if such area were crossed by several small, essentially dry stream valleys."

760 Accordingly, we suggest that Sec. 410(b)(5), line 13, page 59 be amended to read:

760 "would not have a substantial, permanent adverse effect . . . "

760 Sec. 415(b)(1) sets a minimum requirement for the operation that surface coal mining will
be conducted to maximize the utilization and conservation of the solid fuel resource being
recovered so that reaffecting the land in the future through surface mining can be minimized.

761 We suggest Sec. 415(b)(1), line 13, page 67 be amended to read:

761 "solid fuel resource being recovered, consistent with its marketability , so that reaffecting
the . . . "

761 Sec. 415(b)(3) requires the operation, as a minimum to restore the approximate original
contour of the land with all highwalls, spoil piles and depressions eliminated.

761 The term "highwalls eliminated" is unclear. In the process of surface coal mining in flat

or gently rolling terrain a series of cuts are made much like a giant singlebottom plow would make in a field, leaving an intermediate highwall after each cut. Only the last cut would result in a permanent highwall if left unrestored. We assume the legislation intends to prevent leaving that final highwall. Further, because surface coal mining is usually conducted from a line along the outcrop where coal is found under the shallowest cover, and proceeds into deeper cover with each successive cut, it is extremely difficult in those cases to regrade the final highwall to an approximate original contour. Montana law has recognized this situation by allowing for regrading of the final highwall to a slope not to exceed 20 degrees from the horizontal.
Therefore, we recommend that Sec. 415(b)(3), line 8, page 68, be amended to read:

761 "of the land with all spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act) and final highwalls reduced to a slope not greater than twenty (20) degrees from the horizontal:"

762 Sec. 417(e) specifies that each inspector upon detection of each violation shall forthwith inform the operator in writing and shall report in writing any such violation to the regulatory authority.

762 We believe that due process requires the inspector to point out to the operator the nature and location of the violation before the inspector leaves the mine. It has been our experience in several cases that the site of the alleged violation and conditions may have been disturbed or consumed by the on-going operations before the operator has received notice. The end result is often a controversy.

762 To avoid the problem we suggest amending Sec. 417(e), line 5, page 92 to read:

762 "Act, shall point out to the operator the specific nature and location of such violation before leaving the operation and shall forthwith inform the operator in writing. . . . "

762 Sec. 422(a)(3)(A), (B) and (C) refer to areas unsuitable for surface coal mining.

762 The terms are too vague to be meaningful. A subjective determination by a regulatory

official could rule out mining in almost any part of the country under these provisions. Without any standards under the law, coal operators and mineral owners would thus be at the mercy of interpretations by the administrator or any litigant deemed interested.Specific guidelines and definitions must be provided to avoid uncertainty.

763 Sec. 423(e) specifies that in cases where the United States is not the surface owner of land overlying Federal coal deposits, such deposits are withdrawn from all forms of surface and open pit mining operations.

763 This section would foreclose the recovery of literally hundreds of millions of tons of coal which otherwise could be produced in areas where reclamation is entirely possible. Because of the dominant position of the Federal government in coal holdings in the West, it is essential that these deposits remain available for development. Federal coal deposits not only are vast but are checkerboarded between private and state leases to the extent that, without the availability of U.S. coal leases, it may not be feasible in many areas to mine the remaining interspersed non-Federal coal.It would simply not be possible to develop a logical mining unit if all Federal coal over which the surface is in private ownership were excluded from production.

763 In the specific case of Western Energy Company, Federal coal deposits at Colstrip, Montana which would be precluded from production by Section 423(e) account for an estimated 370,000,000 tons of coal out of a total of 830,000,000 tons, or nearly 45% of the reserves in our mining area. The number becomes even larger when non-Federal coal lands which would become isolated and infeasible to mine are taken into account.

764 Without the Federal coal deposits we could not meet contract commitments entered into years ago to supply coal to electric generating stations in Montana, Minnesota and Wisconsin and numerous small industrial plants in the midwest. I need not remind this Committee that these are generating stations and industrial plants which are not burdening the diminishing domestic supplies of of oil and natural gas. These customers should be encouraged and not placed in a position of uncertainty regarding their fuel supplies.

764 The situation I have outlined here is duplicated in many other areas of the West.

764 For the benefit of those who would advocate underground mining of the Federal coal deposits subject to Section 423(e) it is important to point out that surface mining is the only feasible method of recovering the coal in many cases because the overlying shallow sediments are not structurally competent to provide a roof for large scale underground mining operations.

764 We are well aware of the time and attention this committee and the conference committee devoted to the issue of surface owner consent during the last Congress, and we are aware of the fact that the language contained in the earlier legislation was hammered out with the greatest difficulty to satisfy two divergent positions which we might state simplistically as follows: (1) certain members of the Committee were concerned lest any farmer or rancher be forced to have his farm or ranch disturbed by surface mining simply because the federal government two or three generations ago withheld the rights to the minerals beneath the surface he owns; and (2) the concern of other members that the surface land owner might be in a position to hold the minerals, the property of all Americans, in hostage until he got some exorbitant sum in exchange for disturbing the surface.

765 Our long experience indicates that both positions are founded largely upon theoretical misapprehensions. Practice, at least in Montana, finds very few surface land owners who are adamantly and unyieldingly opposed to having the land mined and very few whose demands for the economic loss and disturbance such mining causes are exorbitant. We have been able to work with and reach agreement with a number of surface owners where federal coal underlay their lands and we do not view their payments as exorbitant. We have seldom met a surface land owner who was unalterably opposed to mining. Indeed, as our record of successful reclamation has developed over the past seven years the apprehensions and fears of ranchers and farmers have diminished measurably.

765 Under current practice in Montana, at least, there is virtually no way that we can enter upon the land of a man who adamantly refuses to consider any mining operation. Therefore, as we see it, the provision to withdraw large areas from surface coal mining does not protect any significant number of people who seek or need such protection.Instead, it reduces the options otherwise available to a certain class of surface owner to sell or lease his land for surface coal

mining purposes even if he wants to.

766 The only real problem that needs to be addressed is that of the third party speculator who in the past signed surface mining leases with land owners for a few dollars per acre or a tiny fraction of a future royalty. These speculators then offered the leases to legitimate mining operators at a very large profit. If there need be any legislative action in this area, we believe that this is the problem the Congress should address.

766 I would ask that my presentation be included in the record of these hearings. On behalf of Western Energy Company and for myself, I would like to express to the Chairman and the members of the Committee our appreciation for allowing us to testify here today and for the courtesy that has been extended.

766 Thank you.

767

WESTERN ENERGY COMPANY
GENERAL OFFICES: 40 EAST BROADWAY, BUTTE, MONTANA 59701.
March 9, 1977
The Honorable Lee Metcalf
Chairman, Subcommittee on Minerals, Materials and Fuels
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510
Dear Senator Metcalf:

767 I appreciated the interest you evidenced during my testimony on S. 7 and feel that additional information should be offered on your question concerning recovery of the entire resource under Section 408(a)(8).

767 At Colstrip we are mining the Rosebud seam which is approximately 25 feet thick and under 30 to 150 feet of cover. Underlying the Rosebud seam is another coal bed called the McKay seam.It is approximately 8 feet thick and is found from 10 to over 100 feet below the Rosebud seam.

767 The Rosebud seam coal has excellent properties for burning; the sulfur content is about 8/10 of one percent. The McKay seam, however, has a sulfur content of 1.3 percent and other undesirable characteristics which make it unusable within today's environmental and economic constraints. The marketability amendment I suggested would simply take notice of the fact that McKay coal and perhaps other coals in other areas are impractical to recover because of quality.

My amendment is based upon Montana's surface mining law which is recognized to be among
the most strict in the nation.

767 When we applied for our state mining permit, acknowledging that we would not recover
the McKay coal because it was not marketable, the state required us to make every effort to find a
market. We did so, exhausting the possibilities for sale of the coal. Our efforts are continuing.
The state then conducted its own survey and reached the same conclusion. I would expect a
federal regulatory agency to follow similar procedures.

768 If language such as I suggested is not included in the final version of S. 7, we would be
faced with the choice of (1) abandoning all of our mining at Colstrip because the McKay seam
universally underlays the Rosebud seam, or (2) mining the McKay seam and stockpiling it
somewhere. The second alternative is completely unthinkable because of the massive amount of
land that would be occupied by such a stockpile and the highly undesirable environmental
consequences.

768 Although research and development is now underway to remove sulfur before coal is
burned, it has not yet been developed to a point that would make McKay coal marketable.

768 Please call me or our Washington representative, Gil Lekander at 296-3060, if there are
any other questions we may answer for you.

768 Sincerely,

768 W. P. Schmechel

768 President and Chief Operating Officer

768 WPS/1h

768 cc: Dale Bumpers

768 Clifford P. Hansen

768 Wendell H. Ford

768 J. Bennett Johnston, Jr.

768 Dewey F. Bartlett

768 Pete V. Domenici

768 Paul Laxalt

768 Gil LeKander

769 Senator METCALF. Thank you very much. Our next witness is Mr. Wallace McRae and Ms. Helen Waller of the Northern Plains Resource Council.

769 We are delighted to have you before the committee. Are you going to lead off, Mr. McRae?

769 Mr. McRAE. Yes.

STATEMENTS OF WALLACE McRAE AND HELEN WALLER, NORTHERN PLAINS RESOURCE COUNCIL

769 Chairman Metcalf, Senator Hansen, my name is Wallace McRae. I am past chairman and on the board of directors of the Northern Plains Resource Council, an agriculturally oriented citizens organization that is concerned by the rapid industrialization of the northern Great Plains region due to mining.

769 Also with me today is Helen Waller, president of the McCone Agricultural Protection Organization, MAPO, an affiliate of NPRC.

769 My family and I own and operate the Rocker Six Cattle Co., a ranch near Colstrip, Mont. My address is Forsyth, Mont.

769 Both of my grandfathers came to the region of Montana where I live shortly after the Battle of the Little Bighorn. In fact, General Custer and his command traveled through what is now my ranch 2 days before his defeat on the hills overlooking the Little Horn River. My family has run cattle, sheep, and horses for nearly a century between the Rosebud and Tongue River, and in this amount of time should have established the fact that we have been, and are, ranchers.

769 I am constantly characterized not as a rancher, however, but as a rabid environmentalist and as a provincial obstructionist by the consortium of despoilers and degradationists because I resist the physical, social, political, and economic destruction of my agricultural community.

769 I am sure that the well-organized and well-financed proponents of massive coal development will continue to contend, as they have in the past, that massive coal development in the West is not only inevitable, but desirable, and that any constraints on stripping the West are folly. I am not convinced that some coal development should not take place in the West. I am

convinced, however, that any future development must be done in an atmosphere of responsibility and restraint, and must be done with the idea in mind to eliminate, or at least attempt to alleviate, the long-term aspects of coal development.

769 Hopefully, the energy conglomerates, the Congress, and the administration can see that there are inherent responsibilities in coal development. I have no real problem with this or the last administration's commitment to some increased coal development. The irresponsibility exhibited by the past administration in twice vetoing mitigating legislation was, however, reprehensible.

769 John D. Rockefeller, Jr., once said: "I believe that every right implies a responsibility; every opportunity, an obligation; every possession, a duty."

769 Congress has a responsibility, an obligation, and a duty to enact, and the President to sign, legislation to balance the right, opportunity, and possession exhibited by the commitment to coal development. The people, the States, and your own consciences expect and, not unreasonably, demand it.

770 Reclamation legislation must be entered into with a degree of reality. The passage of a piece of legislation is no panacea and does not guarantee that the intent of the legislation will become a reality. Where reclamation has been unsuccessful, the theoretical solution is best illustrated by a quote heard during a tour of strip mined land near my hometown of Colstrip. A reclamation expert, in answer to a question about reclamation being possible, replied: "Of course we can reclaim mined land, we just don't know how to do it yet."

770 There is a dangerous premise here that has been assumed by many well-intentioned people. This assumed premise says:

770 Mined land can be reclaimed. Reclaimed land is basically comprised of two elements; spoil material and money. If reclamation is proving unsuccessful, then the basic elements have not been combined in the proper proportion. More money should be added.

770 This example is an oversimplification of the emerging science of reclamation research. Reclamation research is a new form of alchemy. Although oldtime alchemists abandoned the idea of turning base metals into gold, the present-day reclamation alchemists are now faced with transforming money and spoil material into diverse vegetative forage.

770 The saddest aspect of all of this is that the reclaimers and researchers, and the general public, desperately want to believe the new alchemic theory because it rationalizes the advisability of strip mining. All of this rationalization is irrational, however. To quote a cowboy friend of mine: "You just can't make chicken salad out of chicken droppings."

770 Despite personal reservations about the probability of successful reclamation, the idea and substance the proposed legislation is an example of an idea whose time has come. The rhetoric of the energy companies and their political, private, and executive branch panderers has been judged and found wanting.

770 A Federal reclamation law will not eliminate thousands of jobs. It will not cause a decrease in coal production. Finally, a Federal reclamation law is not the height of irresponsibility but is, in fact, the epitome of responsibility.

770 Victor Hugo said: "No army can withstand the strength of an idea whose time has come." I am sure that the coal development "Army of Avarice" will continue to contend that this legislation is unnecessary, too restrictive, and irresponsible. But they know, you Senators know, and the current President knows, that this is indeed an idea whose time has come.

770 Since the generals in the "Army of Avarice" accept that a Federal act is going to pass Congress and be made into law, what will they do? Obviously they will attempt to weaken the legislation. Rather than frontally attack the idea whose time has come, they will shift to guerrilla raids on the strategic strengths of the legislation. They will attack the alluvial valley floors fortress. They will carry the battle to the national forests and they will assault the surface-owner-protection. provision.

771 They will enlist credible mercenaries and soldiers of fortune for their cause and all of these will be, as Mark Antony said of Brutus' small army, honorable men. They will cajole, threaten, and intimidate as they march under the bloody banner of greed. Energy self-sufficiency? Energy crisis? Energy independence? These are merely passwords, touchstones, and shibboleths for the foot soldiers. The creed is greed.

771 I am concerned by the prospect of guerrilla raids on those portions of the bill that are

imperative for the possible continued agricultural productivity in the coal regions of the west.

771 The provision protecting alluvial valley floors is of primary importance. The key to a viable economic livestock unit in the Great Plains, as elsewhere, is balance. This balance is between seasonal grazing and a feed base used for the production of winter feed when the grass is snowed under. The winter feed base in the west lies nearly exclusively on the valley floors. Nowhere in the west is the potential for downstream and other offsite damages as critical as on valley floors.

771 The physical and chemical alteration to water by mining is well documented and well known. What is less well recognized is that mining in a valley floor necessitates the construction of a transportation corridor, usually a railroad, which will also be located on the valley floor. Coal seams in the plains region lie relatively level and are close enough to the surface to be strip mined only as the watershed contour bisects the coal seam. It is foolish to allow mining to occur on a few miles of river bottom land when perhaps hundreds of miles of that bottom land will be impacted by offsite damage due to mining and railroad construction.

771 In Montana, only 3 percent of the strippable coal lies under alluvial valley floors. It is obvious that the other 97 percent is in areas that are not as dangerous or damaging to mine. I cannot emphasize too strongly that alluvial valley floors have to be protected from mining. To not protect these vital areas would be a tragedy. One more note; the Montana legislature recently killed a bill prohibiting the mining of alluvial valley floors. The primary reason the bill was killed was because the coal company lobbyists argued convincingly that the prohibition was unnecessary because it was included in Federal legislation.

771 Now, we can expect that the Washington lobbyists, representing the same industrial interests, will argue that since the States have killed similar legislation, that is not deemed important in our individual States. They are wrong, of course; but the guerrilla warfare continues.

771 The national forests must be protected. These national resource areas are used by agricultural entities primarily for summer grazing. The agricultural use of these lands is compatible with, and perhaps enhances, the multiple use concept of public lands. Strip mining,

on the other hand, is not compatible nor complementary to the multiple use concept.

771 Since these public lands are used primarily for summer grazing we must also consider the value of reclaimed land for the summer grazing of liverstock. The plant most successfully grown on mined land is crested wheatgrass; this is in the west, I might put a qualifier on that. Crested wheatgrass is an easily established, hardy, drought resistant, nourishing grass, but its palatability and nourishment decreases rapidly as it begins to dry and its value is nearly zero throughout the summer, fall, and winter.

772 Therefore, the plants used most successfully in reclamation to date in the west is practically useless in the summer which is the highest season of use on the national forests. We must also consider that reclaimed vegetation, or any vegetation, is worthless without water for livestock. Since the coal in most cases is the near surface aquifer, the public lands could be renedered useless by mining if the water in, on and under, these lands is eliminated. Much of the national forests are on higher elevations in the west and thereby serve as aquifer recharge areas. The mining of the forest lands could render much of the surrounding land worthless if the ground water is degraded, reduced, or eliminated.

772 The surface owner must be protected.

772 Senator METCALF. The Friends of the Earth, despite what was said in this morning's testimony, to the effect that they are opposed to this legislation, beyond supporting the phasing out of strip mining over a reasonable period of time, does in fact support a ban on strip mining of Federal coal under private surface in the interim. Friends of the Earth supports the Metcalf S. 7 solution, which is the Mansfield amendment. So in spite of the fact we have a whole lot of opposition, we have some support, Cliff, for that proposition.

772 Mr. McRAE. My Mansfield amendment language is very short; maybe I can run through that.

772 I applaud Senator Metcalf for the inclusion of ex-Senator Mike Mansfield's language in this bill. We surface owners in the west as elsewhere are constantly faced with condemnation under the right of eminent domain for coal related railroads, transmission lines, highways, and other so-called public uses. It is refreshing to see that the U.S. Congress has finally instituted a

philosophy and a commitment that recognizes and guarantees our property rights. Much of the time we feel that our property rights are valid and safe only until some other public or quasi-public or large private entity desires our property for a higher use.

772 The consensus appears to be that massive coal development is inevitable, and as I have mentioned before, that reclamation is achievable. The first may be true, but we should not enter into coal development without the firm understanding that it is a temporary emergency measure. We have raced to the brink of disaster through our dependence on oil, and now the philosophy prevails that we can switch fuels in midstream and continue on as before.

772 Every realist must admit that our present course in energy development and energy use is insane if we continue on our wasteful way. There is no such thing as a free lunch. Oil has become a narcotic. We are hooked. But rather than shake the habit, we are inclined, as are most addicts, to shift from something soft, oil; to something harder, coal; in our addition. If we are addicted to oil and are going to begin mainlining coal, then the consensus of massive coal development, however foolish, destructive, and insane is inevitable.

773 As for the reclaimability of the land, I ask you not to assume that the passage of a reclamation act will guarantee reclamation. I have briefly mentioned my fears about ground water. These fears are genuine and no mining engineer or hydrologist has shown me that they have successfully restored or re-established aquifers at least equal in quality and quantity to those existing before mining. Further, I have seen no reclamation that, frankly, doesn't frighten me. Well intentioned energy companies and individuals will honestly argue that mined land has been reclaimed to a more productive state than existed prior to mining. I will concede that there are site-specific areas where reclamation is a visual aesthetic, and photographic success, however. Further, the presence of visual successes in reclamation jeopardizes, rather than enhances, the possibility of agriculturally successful reclamation.

773 In my area, mined land formerly in crops and put back to crops in research conducted by the Montana Agricultural Experiment Station has been a crashing failure. This is extremely significant. If the same species, despite excellent moisture and optimum fertilization is unsuccessful, there is something else involved. It is the soil. The ground. The land. The

Montana Agricultural Experiment Station also compared weight gains of cattle grazing on
fertilized, revegetated land that had been deferred from grazing with gains of cattle grazing on
native range last summer. Although the results have not yet been published, I understand that the
cattle on native range significantly outgained the cattle grazing on revegetated mined land.

773 Again, there is an important factor missing in the soil. The ground. The land. That factor
is basic agricultural productivity and no reclamation efforts to date can prove that land once strip
mined in my area can be returned to the agricultural state that existed prior to mining.

773 In conclusion, I urge you to pass the bill under consideration. I implore you not to weaken
any provision in the act. Those protecting alluvial floors, the surface owner over Federal coal,
and the national forests are especially important to agriculture in the west. The passage of a
Federal reclamation act is an idea whose time has come.

773 Senator METCALF. Senator Hansen, do you wish to interrogate the witness or shall we
hear from Ms. Waller?

773 Senator HANSEN. That will be fine.

773 Ms. WALLER. Senator, I have not prepared written testimony. If I had, it would have
fallen along the line as Wally's and I do not have a prepared written statement.

773 Senator METCALF. Senator Hansen, do you have any questions?

773 Senator HANSEN. I would ask Mr. McRae and Ms. Waller this question. I propose to
offer an amendment addressing the issue of surface owner consent and protection. Very simply,
it would be my idea to have the Federal Government recognize by law the right of the surface
owner to give consent to the mining of federally owned coal under his land if he chose to, or to
be able to deny that privilege to the Federal Government. Of course, through the Government, to
an operator.

773 Second, I would not impose any restrictions or conditions at all upon what the surface
owner might be entitled to reach by agreement or by negotiation with a mine operator. Do I
make those two points clear?

774 Mr. MCRAE. Yes, sir.

774 Ms. WALLER. Yes, sir.

774 Senator HANSEN. What is the position of the Northern Plains Resource Council on that point I have just spelled out?

774 Mr. MCRAE. Senator Hansen, I think I am probably going to have to give you my own opinion. I think probably in the membership of the Northern Plains Resource Council there is no consensus, I think there is a diversion of opinion. I can give you my opinion.

774 Senator HANSEN. I would appreciate having it.

774 Mr. MCRAE. I would accept what I consider a backup position that you are talking about.

774 Senator HANSEN. A backup position?

774 Mr. MCRAE. From the Mansfield amendment.I am not at all satisfied with the language in the House bill. I don't think the Federal Government or the Secretary should get involved in negotiations. I can't see that it would do anything other than make an agent out of it between the energy company and the surface owner. Maybe I should not be condemning the House bill here, it may not be the forum to do that.

774 Senator METCALF. No, no, we will eventually go into conference with the House and I wish you would discuss both the House bill and the conference bill that emanated from the last Congress.

774 Mr. MCRAE. I hate to abandon Mike Mansfield's language but it is apparent to me with the comments, the testimony, the feeling heard this morning that this is not going to emerge in the legislation.

774 I also hope the House language does not emerge in the legislation as put out and I am much more in favor of the language you are talking about, Senator Hansen, than I am the House bill or perhaps the Mansfield amendment.

774 Senator HANSEN. Thank you. Would you care to comment?

774 Ms. WALLER. Senator Hansen, I too was opposed to the language in the House bill and I would favor an amendment as you have suggested.

774 Mr. MCRAE. I think the surface owner and the perspective leasee of that coal is in a

much better position to appraise value than some three-man arbitration board. The fellow that
has that land - probably my ranch has about 30 percent of strippable coal reserves under it. I own
a little of it, but most of it is held by the Federal Government. I don't think any three appraisers,
no matter how qualified, really know the value, the long term value.

774 If it takes some 50 years to mine that coal, I don't think anybody can build in the
appreciation of land value factor into that and have me go on and operate the ranch around a coal
mine. I am totally opposed to the language in the House bill.

774 Senator METCALF. Senator Melcher has introduced several amendments to this bill.
Are you familiar with those amendments? Do you know what they are?

774 Mr. MCRAE. No, I have not seen them. I did visit briefly with Senator Melcher today, it
was very brief and we did not get into even a conversation about what his language has said.

775 Senator METCALF. As far as I am concerned, it sets up a reserve we could always go
into later to recover the coal that belongs to the people of the United States and meanwhile we
would not interrupt the ranching operations of the ranchers.

775 Of course there are going to be some problems getting that concept adopted.

775 Mr. MCRAE. Senator, I can assure you if I have the right of surface owner consent, until
I am so impacted by construction people, power plants, and railroads, and industrial reservoirs
and highways, and four-wheel drive people, and snowmobilers, and until I finally give up and go
somewhere else, you will have a reserve on the Rocker Six Cattle Co. as long as I am there.

775 Senator METCALF. Thank you very much for a significant contribution to this
discussion and this hearing.

775 Our next witness is Mr. R. Masterson of Galesburg, Illinois, who is accompanied by Mr.
Roger C. Seiboldt. We are pleased to have you both here.

775 All of us on the committee realize, and this is why we are very pleased to have you here
today. A couple of years ago, Dr. Curry of Montana alarmed us when he said it is impossible to
take the topsoil off of Montana strip mined areas and save it and restore it to its original
productivity for 1,000 years.

775 At the same time, he told us, you have an entirely different situation in what used to be the rain forest of Illinois and Ohio where you can store and set aside the overburden and you can put it back and have prime agricultural lands again. We are very pleased to have someone from Illinois testifying today.

STATEMENT OF R. MASTERSON, KNOX COUNTY ZONING ADMINISTRATOR; ACCOMPANIED BY ROGER C. SEIBOLDT, KNOX COUNTY, ILL.

775 Mr. MASTERSON. I am sorry to have to contradict you, perhaps, on that.

775 We do have a prepared statement today. It is in two parts; a written statement and also a slide presentation. In addition, we would like to enter into the record an album of photographs that were taken February 20, 1977, which I believe will give an appreciation of the type of land we are discussing in our presentation today.

775 I am Robert L. Masterson. I reside in Galesburg, Ill. I have been employed by the county of Knox since early 1967 as zoning administrator, plat officer and de facto director of planning. I appear here today on behalf of, and with the authority of, the County Board of Knox County, Ill., which is the governing board of the county.

775 The county board expresses its appreciation to you, Mr. Chairman, and the subcommittee for this opportunity to present a statement of its concern for and support of the strip mining legislation presently being considered by both the U.S. Senate, S. 7, and the House of Representatives, H.R. 2.

775 The county board wishes to make clear that its primary concern is to protect and preserve the prime agricultural land of Knox County and to assure a continued, healthy agricultural economy for the county. My appearance here today is not intended as an indictment by the county board against any particular coal company or the industry in general. On the other hand, the board does not wish to minimize the serious and, it feels, fatal effects that continued strip mining will have, not only on Knox County, but on a good segment of Illinois and the agricultural heartland of the country, the midwest.

776 My presentation will consist of a prepared statement and a slide presentation. I would like to present our statement completely and then follow with the slide presentation.

776 It appears to the county board and others in Illinois who have followed the history of efforts to pass Federal strip mine legislation, that most of the concern and attention has been directed toward the adverse effects of surface mining on areas in the eastern States, Appalachian States and the far west with little or no attention to the midwestern States where the major strippable bituminous coal reserves are located under some of the most fertile agriculturally productive and irreplaceable farmland in the country; indeed, in the world. Without minimizing the devastating effects of strip mining in these other parts of the country, the board wishes to call attention to the impact that strip mining is having and will continue to have in Illinois and Knox County.

776 Illinois contains some of the richest agricultural land in the world with some 29.1 million acres, or 82 percent, of its total land surface devoted to farming. In 1975, over 22.8 million acres, 78 percent of all farmland in Illinois, were in crop production, while 3.3 million acres, approximately 10 percent, were devoted to pastures for livestock production. Between 1970 and 1975, cropland harvested in Illinois increased from 20.1 million acres to 22.8 million acres.

776 In spite of the tremendous increases in cropland harvested in Illinois, the State has been losing farmland at an alarming rate of 80,000 to 100,000 acres per year to other uses. This apparent contradiction is explained, in part, in the USDA publication, "Farmland: Will There Be Enough?" as being attributable to the evolving free market policy of the U.S. Department of Agriculture which has resulted in abandonment of the food reserves system, the end of the Federal crop acreage set-aside program, and a tough international commodity transactions stance.

776 It is also partially the result of expanded irrigation, clearing of marginal lands and development of dry land farming techniques.

776 In past years it has been possible to offset production losses due to a reduction in the agricultural land base by increased yields from less land using more and improved fertilizers, herbicides, pesticides and improved farming techniques and management.

776 However, the energy crisis and resulting fertilizer and fuel shortages will continue to hamper, if not prevent, the farmer from consistently producing more on less land. Also,

regulations on the use of some agricultural chemicals will contribute to this slowdown.

776 In addition to its vast riches in prime farmland, Illinois is also endowed with the greatest amount of bituminous coal reserves of any State in the Nation. The Illinois State Geological Survey estimates these reserves to be 161.6 billion tons which underlie 65 percent of the State. Ninety-seven billion tons were contained in seams of at least 42 inches thick. In 1975, Illinois ranked fourth among all major coal producing States in the Nation.

777 Of the estimated coal reserves in Illinois, only 12.1 percent or 19.5 billion tons is strip mineable; the remainder of the 161 billion tons is recoverable only by the deep mining method.

777 Prime agricultural land, as used in this presentation, is the highest quality or most productive land in terms of specific crops of significant economic value raised in Illinois. The major cash grain crops in Illinois are corn, soybeans, wheat, and oats. Prime agricultural land, therefore, is the land which produces the greatest yields of these four cash grain crops.

777 The productivity of Illinois soils for these four crops has been studied for many years in Illinois and a soil productivity index has been developed to measure the relative response to management and facilitate comparisons between groups of crops and soil productivity. In here we explain the productivity indexes, how they would yield in corn.

777 The development of the productivity index, to determine quality of soil, is the work of Dr. J. B. Fehrenbacher, professor pedology; B. W. Ray, associate professor of pedology; and T. S. Harris, research assistant; all in the Department of Agronomy, University of Illinois, Urbana; and E. E. Voss, Soil Conservation Service State soil scientist for Illinois.

777 Productivity indexes for a high level of management, plus corn yields, were used to further define three grades of prime farmland in Illinois: Grade A, excellent; grade B, very good; and grade C, good. The productivity indexes and corn yields for the three grades, based on recently revised values in 1976, are: Grade A, productivity index, 141 to 160, corn yield an acre 140 to 161; grade B productivity index 126 to 140, corn yield an acre 123 to 139; grade C productivity index 106 to 125, corn yield an acre 101 to 122. The source was the Soil Association of Knox County, Ill., J. B. Fehrenbacher; and corrected printer's galley proofs,

February, 1977.

777 I would like to say this doesn't really deny the use of the minerals under the soil. If you may, it may be considered as a reserve or a delay in the development of certain coal resources under the prime agricultural lands. This does not take all lands in Illinois out of coal production.

777 Senator METCALF. You suggested my statement was wrong when I said you had this tremendously fertile overburden that could be set aside and then put back as a result of reclamation and land restoration. Why is it wrong?

777 Mr. MASTERSON. The way this is presently practiced, the topsoil under present reclamation in Illinois is stripped -

777 Senator METCALF. The topsoil is taken off; that is the overburden.

777 Mr. MASTERSON. Not the overburden, the topsoil; the top 18 inches or surface soil or the humus material is separated, stockpiled for eventual replacement after the ground has been regraded. Overburden, as you are aware, can go down to the top of the coal.

778 Under Illinois' present reclamation act, this is segregated and there is some doubt now because of the micro-organisms in the soil, they feel may be destroyed when this is stockpiled 60 or 70 feet or so. I believe the stockpile is now practically 20 or 30 feet high. The stockpiles can last for a year or better before it is replaced on the graded land.

778 Senator METCALF. Maybe several years, is that correct?

778 Mr. MASTERSON. That is possible. They do not have to replace it until 11 months following the fiscal year in which they have completed a particular area.

778 Senator METCALF. That is your Illinois law?

778 Mr. MASTERSON. That is correct, sir. This topsoil, the way it is stockpiled, water does not penetrate it, it runs off and it is compacted because of the heavy equipment that placed it there. So there is a big question at this point whether replacing that topsoil after having been stockpiled for a length of time is really going to have the same value, the same micro-organisms, the same mineral content and so forth.

778 In other words, the value of that soil before is not the same as it is after or vice versa, so that is a very big question. Our own director of the Department of Mines and Minerals in

Illinois, Russell Dawe, had stated no one knows at this point whether these lands can be
reclaimed to their former productivity. Quite frankly, in our area of the State and a good part of
the midwest the prime agricultural land has been the economic base of this area for over 150
years. Many of these farms have been in production that long.

778 Senator METCALF. What would you suggest? That we prohibit strip mining in
agricultural areas?

778 Mr. MASTERSON. That is one of our recommendations; that the prime agricultural
lands be placed off limits to strip mining until the reclamation of those lands can be guaranteed
that it can be put back into production - not necessarily 100 percent - but a high percentage of
productivity after mining as existed prior to mining.

778 Senator METCALF. I am certainly not as familiar as you are with the fertility of Illinois
and Ohio soil. It is some of the finest farming land in the world, but as you pointed out, we have
an awful lot of coal there we can mine and we must surface mine much of it. Does that meet
with most of the desires of the people of Illinois and Ohio, that we not strip mine this?

778 Mr. MASTERSON. Sir, I cannot speak, I am not authorized to speak for most of the
people of Ohio or even Illinois. We are here representing our county which maybe unfortunately
has a higher percentage of coal under its surface than maybe many counties and even the State.
We are talking about 61 percent of our land area.

778 Senator METCALF. What is the depth of the coal seam?

778 Mr. MASTERSON. It can vary from 26 feet to 100 feet. Right now it is in an area that is
60 to 80 feet in depth, that is the overburden. The seam itself is maybe 42 inches thick. It
amounts to 39 to 400 tons per acre. I would say the average overburden would be 40 to 60 feet in
the area in which they are now.

779 Senator HANSEN. A typical coal seam would be 42 inches in thickness, you say?

779 Mr. MASTERSON. That is the average thickness in the county.

779 Senator METCALF. How far would you have to go down to get to that seam?

779 Mr. MASTERSON. Between 40 and 60 feet, probably around 50 feet would be the

average. The soil of course that is being disturbed and put back - it is put back in a very loose form, there is no effort to segregate out the various strata. We have, in addition to having a very rich topsoil, which can go down to 18 inches or better, we also have a loose material that provides a substantial root structure for the crop, the main crop being corn and the corn crop root goes down about 6 feet.

779 The soil has high moisture retention which makes it possible to grow a very ideal crop. We have never had a drought to the effect -

779 Senator METCALF. Stick around awhile.

779 Mr. MASTERSON. We have water imported from the Mississippi River, but it has never been that serious. We have never had a completed crop failure, a drought, or a washout. We have been particularly fortunate in Illinois, the Knox County area. It is our main agricultural staple in the area.

779 If you will permit me, Mr. Chairman, I will end this with the conclusion and recommendations and we would like to show a few slides to give the committee an appreciation of what we are talking about.

779 Senator METCALF. I have been very pleased that the distinguished Senator from Wyoming, who has made as great an input into this bill as anybody, has come out of the hospital this morning and has participated in long hearings today. I would like to have people who are following you, and you, Mr. Masterson, summarize your statements, so we can let him go home to do some recuperating. I think he has participated above and beyond the call of duty. I will be delighted to have your slides now. Your statement can go in the record. I think we understand the problems.

779 Do you have any special summarizing statement you can make, Mr. Seiboldt? I have exhausted my voice box.

779 Mr. MASTERSON. We have a prepared statement for Mr. Seiboldt and we would like that to be included in the record.

779 Senator METCALF. We have made such an order for all of the statements to be included in the record. Let's look at your slides and go on to the next witness.

779 [Slide presentation.]

779 Mr. MASTERSON. Mr. Chairman, this is a shot of central Knox County.

779 Senator METCALF. Are these pictures you have presented in this booklet?

779 [The pictures supplied by Mr. Masterson follow:]

780 PHOTOGRAPHS OF KNOX COUNTY, ILLINOIS SOILS, MINING OPERATIONS AND RECLAMATION PRESENTED TO THE SUBCOMMITTEE ON MINERALS, MATERIALS & FUELS of the ENERGY AND NATURAL RESOURCE COMMITTEE of the UNITED STATES SENATE

780 March 3, 1977 by THE KNOX COUNTY BOARD

781 [See Illustration in Original]

782 [See Illustration in Original]

783 [See Illustration in Original]

784 [See Illustration in Original]

785 [See Illustration in Original]

786 [See Illustration in Original]

787 [See Illustration in Original]

788 [See Illustration in Original]

789 [See Illustration in Original]

790 Mr. MASTERSON. No, these are additional slides. These are shots of various times of the year prior to planting during the regular growing season and will show the land, the stripping process, and the reclamation that has occurred in Knox County in the past 2 years.

790 The first slide is a slide showing the type of land in Knox County. To the center of the slide you will see an active strip mining operation. Aside from that, the rest of the land is all cropland, primarily corn and soybean land.

790 Slide 2: This was taken during the growing season in July 1976. Most of this land is in corn, some soybean. I might add 80 percent of our land in 1975 was in crop production which is a fair utilization of the agricultural potential of the county.

790 Senator METCALF. You don't have a high wall problem there?

790 Mr. MASTERSON. Yes, we do.

790 Senator METCALF. Where?

790 Mr. MASTERSON. All over.

790 Slide 3: This is the soil, the humus material that runs down to 18 inches or better and it is almost as dark as the coal underneath it.

790 Slide 4: This is a shot showing how well the crop does grow in that area. This is typical production.

790 Mr. SEIBOLDT. I would like to interject. Mr. Chairman, if I could. Mining has occurred to the immediate north of this cornfield and is presently occurring on the west side of it. This picture was taken back in, maybe, 1974.

790 Mr. MASTERSON. Slide 5: This is a field of soybeans. Again, it is a typical annual occurrence.

790 Slide 6: This is an active mining operation. This was taken in June or July 1975. The area to the left has been stripped of the surface soil and stockpiled. The land to the right side of the slide is the spoil material and the land in the background, the intent here is to show the type of land contrast and what land they are into.

790 Mr. SEIBOLDT. Correction; that was July 1976, this last summer when that shot was taken.

790 Mr. MASTERSON. Slide 7: This shows the current stripping operation. It shows the amount of black humus material on the surface which in this case is probably down 13 inches to 20 inches. It shows 18 inches has been removed and there is still additional black surface soil.

790 Senator METCALF. That trench, is that the removal of the overburden?

790 Mr. MASTERSON. Yes, sir, it is.

790 Senator METCALF. Are you going to mine coal from that trench?

790 Mr. MASTERSON. Yes, that shovel is riding on the seam.

790 Now this slide is to show you how the - no effort is made here to segregate out the various types of material. We have shale, loess, and other types of material indiscriminately.

790 Senator METCALF. If that is restored, that will be level and they will put 14 inches of topsoil back on?

790 Mr. MASTERSON. That is correct. State law requires they replace 8 inches if they had
that to start with and not more than 18 inches with a subsurface soil of a specified texture, rock,
size, and content, and so forth.

791 Mr. SEIBOLDT. Mr. Chairman, you can view that in the album we presented you.
Those are much more recent photographs than what the slides are.

791 Senator METCALF. But you get bulldozers in there and then you move the topsoil that
you have set aside in your spoil area, is that correct?

791 Mr. MASTERSON. That is correct. This slide shows an operation in 1974. It shows the
preliminary grading, it is not completed on this tract. This field for 2 years now has been in a
wheat crop. None of the land has yet been put back or is capable of handling the type of corn
production or soybean production that was normal to the area prior to strip mining.

791 The high wall is along the right side of the impoundment area. That remains today as an
impoundment area. It is along a township area and some of the problems they have had is the
sloughing off, and in some cases, ruining a township road.

791 This slide is a shot of the current processing plant operation. This is a slurry pond or area.
To the back, just above center a little to the left, is a gob pile. Under Illinois law, the gob pile is
required to be covered under 4 feet.

791 Senator HANSEN. What was the term you used?

791 Mr. MASTERSON. Gob pile.

791 Mr. SEIBOLDT. The coal they are extracting from our area has a mud seam in the middle
of them, so when they take the coal out, they have to wash the gob out and the fine stuff that goes
out with water is the slurry they describe here.

791 Mr. MASTERSON. The problem we have with slurry, it is not covered and it eventually
dries up the water, evaporates, and leaves a very fine tailing which becomes windborne at various
times and does blow across the countryside and does cause problems.

791 This slide is showing an area that was strip mined and reclaimed. I am not talking about
that in the foreground, but in the back, that was reclaimed. Under the first State reclamation act,
it required there be a strike off as a minimum of the spoils to an 18-foot width, supposedly to

allow farm equipment and other machinery to operate on that type of land. That is what we referred to as some of our manufactured pastures.It is a very poor, substandard-type pasture and it

does not grow a crop.

791 We have over 12,000 acres of this type of land in the county and all of it was highly productive and highly fertile land prior to the strip mining operation.I think, in fairness to the operators now, the present law has only been in effect for a little over 1 year and the real end results of the reclamation program cannot be determined and our Department of Mines refuses to even comment on it, which I don't blame them.

791 Slide; We have an excess of 8,000 acres of this type of spoil bank in the county. Again this was prior to 1962 prelaw land when the first State act was adopted or passed. This land, the only thing it is good for will be pastureland and again, very substandard. It is used for various other uses including illegal landfills, recreational areas. There are some ponds back in this, despoils that are very good fishing. Other than that they cannot even be used, in many cases, even for organized recreation, or residential development, or any other type of recognized use.

792 In this slide, what we intended to show here was the effect of strip mining on our tax base. The land in the foreground off to the bottom right is land that was strip mined and after it was strip mined, it was separated off from the original tract. The assessed evaluation of the land dropped considerably. It was a point we wanted to make, that strip mining, even though the land is reclaimed to that condition which is not very good, the land eventually does become revalued for taxation purposes and does show a tremendous drop in assessed evaluations and dollars returned per acre. I might point out for the chairman and Senator Hansen, that assessed value of lands that were stripped dropped minus 4.8 percent as compared to unstripped land which increased over a 3-year period by 43.8 percent. This was a period from 1940 to 1971.

792 Tax dollars per acre on stripped land increased by 3.3 percent and unstripped land increased 69 percent. We have been told on a regular basis, the mines do not require or do not request reevaluation of the lands after stripping. It allows them to remain on the books as they were prior to stripping. The problem we do have is when the county reassesses its lands

periodically, they have to recognize those lands no longer have the productivity that they had prior to stripping. When you assess your lands in rural areas on productivity, you can't do but other than drop the assessed value - evaluation, and consequently the burden is placed, the additional burden, is placed on the unstripped lands.

792 The county is proposing now to reevaluate lands in 1978 or 1979. We are advised by our supervisor of assessments that productivity again will be a major factor in setting evaluation. So spoil land stripped since 1969 will be lower.

792 Senator METCALF. Do you have any State law requiring a certain percentage of coal to be paid into the general fund, something of that sort?

792 Mr. MASTERSON. There is a State law that provides 1 percent of the tax can be claimed by the county. That is a State tax that is paid on the coal can be claimed by the county to go into its general fund. The problem we are faced with, most of our coal is shipped out State and there is not State tax paid on it, just a sales tax. We do not have a local mineral tax.

792 Senator METCALF. You don't have a severance tax?

792 Mr. SEIBOLDT. The State legislature is considering writing a bill at this time but nothing has come out as to amount or anything of that nature.

792 Mr. MASTERSON. Part of the problem with severance tax, Mr. Chairman, if it is applied during stripping or prior to stripping, it has to be removed once the coal is removed. If it is applied, the coal companies have said it would have to ask for an adjustment on assessed evaluation of land values so it is a trade-off situation.

792 That concludes our presentation.

792 Senator METCALF. Thank you very much, I certainly appreciate it. I am very sorry that all of us are wearied by a long, drawn-out hearing. It has been most important to have someone from Illinois or the central United States come in here and tell us what the impact of strip mining is in that area; not that we haven't had previous testimony in other hearings.

793 Mr. SEIBOLDT. Mr. Chairman, if I could make one comment as a farmer from this area. The council supervisor and representatives on the county board from that particular district

of the county - in Illinois' agricultural production, they have been the leading State in the Nation
as far as providing export commodities which are - our feed grains have played a great part as far
as the balance of payments and our energy situation with oil.

793 We want to point out, if we continue to allow these prime agricultural lands of the
midwest to be altered or destroyed, in effect, their potential capability to the production of food
and fiber of this nation is curtailed. We could put ourselves in a serious position in the future.

793 Senator METCALF. Thank you both, thank you very much.

793 [The prepared statements of Mr. Masterson and Mr. Seiboldt follow:]

794 Statement of Robert L. Masterson, Knox County Zoning Administrator on behalf of and
with theauthority of the COUNTY BOARD, KNOX COUNTY, ILLINIOS before the
SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS of the ENERGY AND
NATURAL RESOURCE COMMITTEE of THE UNITED STATES SENATE

794 March 3, 1977

795 I am Robert L. Masterson. I reside in Galesburg, Illinois. I have been employed by the
County of Knox since early 1967 as Zoning administrator, plat officer and de facto director of
planning. I appear here today on behalf of, and with the authority of, the County Board of Knox
County, Illinois. The County Board expresses its appreciation to you, Mr. Chairman, and the sub
committee for this opportunity to present a statement of its concern for and support of the strip
mining legislation presently being considered by both the U.S. Senate (S 7) and the House of
Representatives (HR 2).

795 The County Board wishes to make clear that its primary concern is to protect and preserve
the prime agricultural land of Knox County and to assure a continued, healthy agricultural
economy for the county. My appearance here today is not intended as an indictment, by the
County Board, against any particular coal company or the industry in general. On the other hand,
the Board does not wish to minimize the serious and, it feels, fatal effects that continued strip
mining will have, not only on Knox County but, on a good segment of Illinois and the
agricultural heartland of the country - the Midwest.

795 My presentation will consist of a prepared statement and a slide presentation. I would like
to present our statement completely and then follow with the slide presentation.

795 It appears to the County Board and others in Illinois, who have followed the history of efforts to pass federal strip mine legislation, that most of the concern and attention has been directed toward the adverse effects of surface mining on areas in the eastern states, appalachian states, and the far west with little, or no, attention to the midwestern states where the major strippable bituminous coal reserves are located under some of the most fertile, agriculturally productive and irreplacable farmland in the country, indeed in the world. Without minimizing the devastating effects of strip mining in these other parts of the country, the Board wishes to call attention to the impact that strip mining is having, and will continue to have, in Illinois and Knox County.

795 ILLINOIS

795 Illinois contains some of the richest agricultural land in the world, with some 29,100,000 acres, or 82% of its total land surface, devoted to farming. In 1975 over 22.8 million acres, 78% of all farmland in Illinois, were in crop production, while 3.3 million acres, approximately 10%, were devoted to pasture for livestock production. Between 1970 and 1975, cropland harvested in Illinois increased from 20.1 million acres to 22.8 million acres.

796 In spite of the tremendous increases in crop land harvested in Illinois, the state has been losing farmland at an alarming rate of 80,000 to 100,000 acres per year year to other uses. This apparent contradiction is explained, in part, in the U.S.D.A. publication, "Farmland: Will There Be Enough?", as being attributable to the evolving "free market policy" of the U.S. Department of Agriculture which has resulted in abandonment of the food reserves system, the end of the federal crop acreage set-aside program, and a tough international commodity transactions stance. It is also partially the result of expanded irrigation, clearing of marginal lands and development of dry land farming techniques.

796 In past years it has been possible to offset production losses, due to a reduction in the agricultural land base, by increased yields from less land using more and improved fertilizers, herbicides, pesticides and improved farming techniques and management. However, the energy crisis and resulting fertilizer and fuel shortages will continue to hamper, if not prevent, the farmer from consistently producing more on less land. Also, regulations on the use of some agricultural

chemicals will contribute to this slowdown.

796 COAL RESERVES:

796 In addition to its vast riches in prime farmland, Illinois is also endowed with the greatest amount of bituminous coal reserve of any state in the nation. The Illinois State Geological Survey estimates these reserves to be 161.6 billion tons which underlie 65% of the state. Ninety-seven billion tons are contained in seams of at least 42 inches thick. In 1975, Illinois ranked fourth among all major coal producing states in the nation.

796 Of the estimated coal reserves in Illinois, only 12.1%, or 19.5 billion tons, is strip mineable; the remainder of the 161 billion tons is recoverable only by the deep mining method.

796 PRIME AGRICULTURAL LAND:

796 Prime agricultural land, as used in this presentation, is the highest quality or most productive land in terms of specific crops of significant economic value raised in Illinois. The major cash grain crops in Illinois are corn, soybeans, wheat and oats. Prime agricultural land, therefore, is the land which produces the greatest yields of these four cash grain crops.

797 The productivity of Illinois soils for these four crops has been studied for many years in Illinois and a soil productivity index has been developed to measure the relative response to management and facilitate comparisons between groups of crops and soil productivity.

797 The development of the productivity index, to determine quality of soil, is the work of Dr. J. B. Fehrenbacher, professor of Pedology; B. W. Ray, associate professor of Pedology; and T. S. Harris, research assistant; all in the Department of Agronomy, University of Illinois, Urbana; and E. E. Voss, Soil Conservation Service state soil scientist for Illinois.

797 Productivity indexes for a high level of management, plus corn yields, were used to further define three grades of prime farm land in Illinois: Grade A, excellent; Grade B, very good; and Grade C. good. The productivity indexes and corn yields for the three grades, based on recently revised values (1976), are:

Productivity indexes (P.I.) Corn yield bu/acre

Grade A	141-160	140-161
Grade B	126-140	123-139
Grade C	106-125	101-122

797 (Source: Soil Association of Knox County, Illinois, J. B. Fehrenbacher, et al; Corrected Printer's Galley proofs, February 1977.)

797 KNOX COUNTY, ILLINOIS

797 LOCATION AND AREA:

797 Knox County is one of the 51 counties in Illinois underlain with strippable coal reserves.It is a grain and livestock producing county of 720 square miles, more or less, or 461,216 acres, located in west-central Illinois midway between the Mississippi and Illinois Rivers. It is equidistant from Chicago and St. Louis.

797 THE SOILS:

797 Knox County soils are some of the most agriculturally productive soils in Illinois and the world, containing soil characteristics which, when combined with the very favorable climatic conditions of the area, provide for the most ideal farming and crop producing situation.

797 Based on a general soils survey of Knox County, conducted by Dr. J. B. Fehrenbacher et al during 1975 and completed in early 1976, 71.3 per cent or 324,664 acres, of Knox County's soils was determined to be prime agricultural soil with 190,736 acres, 41.4% of the county and 58.7% of the prime agricultural land, classified as grade "A" or excellent; 129,939 acres, 28% of the county and 40.0% of the prime land, classified as grade "B" or very good; and the remaining prime land, 3992 acres, graded as "C", good.

798 The Soil Conservation Service, U.S.D.A., classifies 360,711 acres, or 78%, of Knox County soils as being in capability classes I, II E, III W and III E.

798 The main factors affecting the quality of the present Knox County soils are: soil parent materials, climate, native vegetation, topography, drainage and soil development time span.

798 PARENT MATERIALS

798 The most extensive and desirable parent material in the County is loess, a silty soil parent

material found extensively on the nearly level (0 to 2 per cent slopes) uneroded uplands with thicknesses varying from 7 feet in the southern part of the County to 12 or 15 feet in the northern part. This loess was deposited during the Wisconsinan glacial stage and is considered to have formed over approximately 11,000 to 12,000 years.

798 Alluvium deposited on stream flood plains in Knox County is also an important soil parent material which has generally developed into agriculturally productive soils.

798 The major soil associations developed from these parent materials and which make up about 70% of the county soils are:

798 3A. Ipava-Sable Association, distributed throughout the county and comprising 19% of the county land surface. This association is found on the uplands on slopes of 0-2 per cent. They are dark-colored soils developed from the silty (loess) parent material under tall prairie grasses with poor to somewhat poor drainage. However, almost all these soils have been tiled to aid drainage.

798 This soil association is used predominately for intensive corn and soybean production and the soils are well suited for this row crop use. It is graded "A" with a high management productivity index of 141 to 160 and a corn yield, under a high level of management, of between 109 and 158 bushels, and an average soybean yield of 50 bushels per acre.

798 3B. Ipava-Tama Soil Association, comprises 22% of the total county area. The soils in this association were developed from the silty (loess) parent material and consist of dark-colored soils developed under tall prairie grasses. These soils are found on slopes of between 2 and 5 per cent along the drainage divides. They occur commonly on shoulder slopes, upper side-slopes and narrow ridge tops around the edges of extensive upland flats.

799 Again, these soils are well suited for intensive row crop, corn and soybean, production if properly managed. They are rated as excellent for row crop production with a productivity index of 141-160 and average corn yields of between 140 and 161 bushels per acre and soybean yields of between 36 to 49 bushels per acre.

799 3C. Tama-Elkhart-Downs Soil Association of soils is commonly found on sloping areas of the uplands on slopes ranging from 5 to 10 per cent and are distributed throughout the county.

This soils association constitutes about 7% of the total county land area. This association consists of soil developed under grass and exhibits a moderately dark color. They, again, are formed from the silty (loess) parent material and are well to moderately well drained.

799 The soils in this association are best suited for row crop production (corn and soybeans mainly) on a rotation basis.Erosion is the most important hazard on these lands and close-growing crops are recommended, along with terracing and conservation tillage, to check erosion.

799 This soils association is graded "B", very good, and has a P.I. of between 126 and 140 and a corn yield of 123 to 139 bushels per acre and a soybean yield of 31 to 38 bushels per acre.

799 26 AB. Keomah-Clinton-Clarksdale Association soils are found on nearly level to gently sloping ridgetops of 0 to 5 per cent slopes and make up 12% of the county soils. They are characteristically light to moderately dark soils developed under forest or mixed forest-grass vegetation.Drainage is from poor to good. The soils in this association developed in loess deposits of more than five feet thick and occur widely throughout the county.

799 The soils in this association are used intensively for cultivated crops such as corn and soybeans. Small grain and hay pastures are also found in this association. This soil association is graded "B", very good, with a P.I. of 123-139, a corn yield of up to 139 bushels per acre and a soybean yield of up to 42 bushels per acre.

799 40 B. St. Charles-Batavia Association, 40 C. St. Charles-Camden Association and 43 B. Worthen-Littleton-Raddle Association are all prime lands graded "B", "C" and "A" respectively and comprising 0.6, 0.5 and 0.4 per cent, respectively, of the total county land area and are of such small area that a detailed discussion is omitted here.

800 69 A. Lawson-Huntsville-Orion Association soils occur on the flood plain areas of Knox County and comprise about 9 per cent of the total county area. These soils have slopes of between 0 and 2 per cent. They have surface soils which are dark grayish-brown or black silt loam and range in thickness from 20 to 40 inches. These soils are very productive and have been intensively cropped to corn and soybeans. These soils are graded "B", very good, with a P.I. of

126-140 and corn yields of between 123 and 139 bushels per acre and soybean yields of between
40 and 46 bushels per acre.

800 Climate:

800 Climate is a very critical factor in original development of the soils in Knox County since
it controlled the moisture and temperature conditions of the soil and the native vegetation which
grew on the land during the soil development. It is concluded by Dr. J. B. Fehrenbacher et al,
("Soil Associations of Knox County, Illinois," corrected galley proof, 1977) that the climatic
conditions existing at the time of the last glaciation, "except for a warmer and drier period some
4,000 to 6,000 years ago," were the same as those which now prevail. The current mean annual
temperature of Knox County is 51 degrees F., with cold winters and hot summers. Precipitation
averages about 34 inches per year and there is a growing season of approximately 175 days, all
favorable and vital to a viable and highly productive agricultural area. Knox County has never
experienced a complete crop failure due to drought or wash out.

800 Native Vegetation:

800 Fifty-seven per cent of the county was in prairie grasses while 33 per cent was forest
vegetation during the soil formulation period. Soils developed under the prairie grasses have
thick, dark-colored surfaces while the forest developed soils have dark or moderately dark
surface soils of 4 to 5 inches thick.

800 Soil Texture and Moisture Availability:

800 Soil texture is an important factor in the productive capacity of soil.Texture is the relative
proportion of sand, silt and clay in the soil, both surface and subsurface layers.Texture will
determine a soil's ability to retain moisture for crop production and depth permissable for root
penetration of crops.

800 Knox County soils are mostly silt loam surfaces and silty clay loam subsoils. On surfaces
which are moderately to severely eroded, the surface silt loams have disappeared, exposing the
subsurface silty clay loams.

800 Silt loams are easy to work and have good moisture retention capacity but are erosive and
subject to frost heave and crusting. Most of the silty clay loam subsoils have good structural

development, retain moisture and allow good root penetration for row crops grown in the county.

801 Strip mining in Knox County, as elsewhere, has completely disturbed these soil relationships and according to Dr. Fehrenbacher et al, strip mined land, approximately 21,000 acres in Knox County, "represents areas of extreme variability in materials and slopes where the natural soil has been greatly disturbed." These materials are composed of layers or random mixtures of loess, glacial till, and bedrock (mainly shale) with slopes ranging from very steep to very gently rolling on the more recently mined areas. Rock content on these spoiled and "reclaimed" areas ranges in size, depth and amount from area to area and makes cultivation difficult to impossible in most spoiled areas of the county.

801 Value of Crop Production:

801 Illinois Cooperative Crop Reporting Service, 1976 Annual Summary, reports that in 1975, Illinois ranked second of states in the nation in agricultural cash receipts for crops, and seventh for livestock with $3.5 billion and $1 .9 billion respectively, and fourth in the nation for total agricultural cash receipts - $5.4 billion.

801 The Galesburg Register Mail on July 21, 1976 quoted John E. Corbally, President of the University of Illinois, as saying that Illinois led the United States in agricultural exports in 1975 which amounted to $1 .67 billion. The state ranked first in soybean exports with $699 million, second in corn with $7 23 million and second in meat products exported, $28.6 million.

801 Illinois Cooperative Crop Reporting Service, 1976 Annual Summary, reports that Knox County produced, in 1975, 20,965,000 bushels of corn on 165,000 acres with a farm production value of $5 2.6 million, and 2,660,900 bushels of soybeans on 65,000 acres with a farm production value of $1 2.5 million. Wheat and oats took up a combined 16,000 acres with a farm production value of $1.48 million, a grand total of the four major cash crops of $66 6.55 million. This represented an increase of $6 .56 million over 1974. Total acreage in the four crops amounted to 391,000 acres, 84% of the total county land area and a rather high utilization of the agricultural productivity of the county. All factors being favorable, this experience can be duplicated on an annual basis.

802 STRIPPABLE COAL RESERVES IN KNOX COUNTY

802 Strippable Coal Reserves

802 One of the major threats to the continued productivity of the Knox County soils and a healthy agricultural economy locally is the result of another abundant and valuable resource - coal.

802 Knox County, according to the Illinois State Geological Survey, Circular 348, 1963, Class I coal reserves (reasonably accurate) amount to 1.25 billion tons and when Class II (based on projection of geologic information) coal reserves are added, an estimated 1.58 billion tons of strippable coal underlie Knox County soils.

802 284,646 acres, or 61.0%, of Knox County is underlain with strippable coal, (figure 1), the vast majority of which, obviously, is under the most productive agricultural soils of the county.

802 As of February 1977, County records (Recorder of Deeds and Supervisor of Assessments) show approximately 39,000 acres owned or controlled by coal companies in Knox County. Of this total, however, approximately 21,000 acres have already been strip mined at least once (a second vein of coal exists under much previously stripped land). Most of the remaining 18,000 acres are located in three of the most productive townships in the county: Victoria, Copley and Sparta. Land purchases continue and the county is presently being surveyed by a second major coal producer with hopes of opening mines.

802 RECLAMATION

802 History

802 In Knox County generally, reclamation has been directly tied to what the law required.In many cases it may be questioned whether the final results met the legal requirements.

802 The first state land reclamation act in Illinois was adopted in 1962 and since then there have been two major revisions, the Surface Mined Land Conservation and Reclamation Act of 1971 and the 1975 comprehensive amendments to the 1971 Act.

802 Prior to 1961, 12,110 acres of agricultural land were strip mined in Knox County with almost all being left in spoil banks and no concerted effort to put this land to any productive use.

Of course, during these earlier years, little concern was expressed by the public, and the full impact of strip mining on the land was not realized. The full impact is not yet understood, generally. Much of this land (8,063 acres) was and is utilized for pasture, possibly because it is only traversable by livestock and considered substandard at best. 1,151 acres is put to no observable use; organized recreation utilizes 1,066 acres of stripped land and 192 acres of strip mine created water areas. Agricultural uses, aside from pasture, were observed on 375 acres, 352 in hay and 23 in tilled crops. The remainder was used for a variety of other uses such as an airport, 20 acres; water consumption, 576 acres; public highways, 33 acres, to name a few.

803 Under the 1968 amendments to the Surface Mined Land Reclamation Act, most land was reclaimed to "strike-off" pasture. This involved striking off, or grading, the spoil peaks to an 18 foot width to allow easy movement of farm machinery and other necessary equipment. The Act also established seeding requirements. The Act also allowed graded pasture, land graded to gently rolling topography and seeded to pasture. The easiest and least costly method of "strike-off" was the predominant reclamation. Again, this pasture was decidedly substandard and the land nowhere approached pre-mining productivity.

803 The most severe reclamation standards were incorporated into the 1971 Surface Mined Land Conservation and Reclamation Act by comprehensive amendment in 1975.These standards allow the Director of Mines and Minerals, under rule 1104 of the Act, to require row crop reclamation if he should decide that the land affected (stripped) is: (1) capable of being reclaimed for row crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining, and (2) when the Director determines that the optimum future use of the land is for row crop agricultural purposes. Row crop reclamation under the act involves grading to a topography comparable to pre-stripping, replacement, up to 18 inches if available, of the original surface soil and providing four feet of suitable root medium subsoil with prescribed texture. This row crop provision is currently being applied in Knox County with the first such "top soil" replacement now taking place.

803 In spite of these seemingly strict and severe requirements of grading and soil replacement, no one is able to guarantee that the end product will be a soil capable of the pre-mining

productivity or, for that matter, if it will be productive at all or for how long. The Director of the Illinois Department of Mines and Minerals, Russell Dawe, who is responsible for administering and enforcing the reclamation regulations, admits that "it is not known if lands can be restored to their original productivity . . . " n1.

803 n1. Letter from Russell Dawe to Mike Schechtman, Illinois South Project, April 19, 1976.

804 Knox County's legal efforts:

804 Knox County has, on two separate occasions, attempted, under the zoning powers granted by the state legislature, to regulate locally the strip mining of prime agricultural lands and the subsequent reclamation of those lands. Both attempts were frustrated by the Illinois Supreme Court, once in 1954 and again in 1974.

804 In the 1954 case, Knox County attempted to ban strip mining on certain areas of the county. The Supreme Court eventually ruled against the county noting, however, that the county could under certain circumstances (not elaborated) possibly ban strip mining.

804 The 1974 Supreme Court ruling against the county resulted from the county's efforts, again under its zoning regulations (a new zoning resolution was adopted in 1967), to establish minimum reclamation conditions in the granting of a "Conditional Use Permit" to strip mine. The Court ruled that the county had no authority to set reclamation standards because the Illinois Surface Mined Land Conservation and Reclamation Act pre-empted County Zoning.

804 The county is again in court over whether or not it can, again under zoning, attach any conditions to strip mining. The current case involves conditions set on use of blasting and the filing of impact statements with the county covering the effects of mining and blasting on the hydrology of the surrounding and adjoining properties. While this case is pending, the operator has secured a court injunction keeping the county from enforcing its regulations and allowing strip mining as usual. How soon this case will be settled is no longer a matter of urgency for the operator with a mining permit good until June of 1979.

804 Every effort by the county to locally regulate mining and reclamation and to protect its soils has been successfully frustrated legally.

804 Knox County has also been very active on the state legislative level to effect amendments to the reclamation act to tighten up the reclamation standards.

804 ASSESSED VALUE AND TAXES

804 Another critical area of concern to the County Board is the effects of strip mining on assessed valuation of affected land. The industry has been quick to assure the county, and critics, that they have not sought an adjustment in the assessed valuation of these stripped lands for taxing purposes, nor do they intend to do so. They further point out that the property remains on the tax books at the same assessed value as prior to being stripped. Both contentions are true, to a point. The coal companies do not request an adjustment and the assessed value for taxing is not reduced on the land at that point. All improvements present on the land are removed during stripping and this does lower the assessed value.

805 The Knox County Zoning Department conducted a study of the effects on assessed valuation and tax dollars returned per acre on stripped and unstripped land in four townships which have experienced extensive strip mining. The study covered a period from 1940 to 1971 and included a random selection of sites, both stripped and unstripped. An effort was made to compare lands of comparable soil conditions prior to stripping and which were in close proximity to each other. All values were adjusted to 1940 dollars to offset the effects of inflation.

805 The four townships included Salem (6,762 acres stripped), Maquon (1,865 acres stripped), Victoria (5,528 acres stripped) and Copley (3,459 acres stripped). There were 53 stripped and 92 unstripped parcels analyzed.

805 The countywide average of per cent of change of equalized n1 assessed value per acre and tax dollars per acre for the 31 year period were:

	Stripped land	Unstripped land	Difference
Assessed Value (equalized)	-4.8%	+43.8%	48.6%
Tax dollars per acre	+3.3%	+69.0%	65.7%

805 In discussing the results with the County Supervisor of Assessments, it was learned that the County, in 1958 and 1959, had a general re-evaluation of all lands in the county. Lands affected by strip mining, particularly spoil banks, were drastically reduced since the original productivity of the land, the basis of farm land assessed valuation, no longer existed. So, even though the land owner may not request an adjustment, the threat of lower assessed values and tax dollars per acre on stripped land is ever present and real. The county is currently considering another general re-evaluation of assessments in 1978 or 1979, and, according to the Supervisor of Assessments, productivity of the soil will again be a basis for establishing assessed values on rural farm land, with a resulting lowering of assessed values on lands strip mined since the last general re-evaluation.

805 n1. Equalized assessed value is determined by the County Board of Tax Adjustment and is the figure used to determine taxes.

806 SUMMARY AND CONCLUSION

806 Illinois and Knox County are blest with some of the richest, most fertile and irreplaceable agricultural soils in the world, with over 71% of Knox County's soils rated prime. These soils, which have developed over a period of 12,000 years, are vital to the agricultural economy of Knox County, Illinois and our country. The prime agricultural lands of this area have been farmed for over 150 years and will continue to be if properly conserved and protected. We do not have land reserves.

806 Strippable coal reserves underlie approximately 61% of Knox County and threaten to destroy upwards of 284,000 acres of its farmland.Past reclamation practices have not returned stripped land to its pre-mined productivity, and no one knows whether or not surface mined land can ever be fully restored to pre-mining agricultural productivity.

806 Since property assessed valuation for taxing purposes is based on soil productivity in the rural areas, loss of soil productivity eventually results in loss of valuation, placing an increased burden on those lands undisturbed.

806 With only 12 per cent of Illinois' abundant coal reserves strip mineable; with an ever increasing demand for energy, both coal and food, through out the world; and with both

resources, coal and soil, being irreplaceable, they should be developed with prudence with the
soil being our real long-term energy resource.

806 In conclusion, the Knox County Board expresses its support, generally, for the proposed
"Surface Mining Control and Reclamation Act of 1977" and wishes to offer the following
considerations for possible amendments to H.R. 2 and S 7:

806 1.That all prime agricultural land be placed off limits to strip mining until the reclamation
of prime agricultural lands can fully restore them to pre-mining productive capability.

806 2. That Section 506(H.R. 2) and 406(S 7) "Permits" provide that the applicant prove that
no prime agricultural land is included within an area to be strip mined.

806 3. That Section 513(H.R. 2) and 413(S 7) "Public Notice and Public Hearings" be
amended to provide local governments between forty-five (45) and sixty (60) days to respond to
the official notification of the regulatory agency of an application for surface mining. Many
County Boards only meet once a month and it is possible that the thirty days, as proposed in the
present bill, could fall between meetings.

806 4. That Section 522(H.R. 2) and 422(S 7) be amended to automatically designate all
prime agricultural land as unsuitable for surface mining. Prime agricultural land shall be defined
or determined by the State Department of Agriculture and the United States Department of
Agriculture, Soil Conservation Service. "Valid existing right" should be defined and limited.
Ownership of the land should not be sufficient to establish a "vested" right to surface mine.

807 5. That definition 17, "person", in Section 701 (H.R. 2) and Section 501 (S 7) be
expanded to include "appropriate local units of government."

807 In closing, the County Board calls attention to an apt inscription on the former Agronomy
building on the campus of the University of Illinois, Urbana, Illinois:

807 "THE WEALTH OF ILLINOIS IS IN ITS SOIL - ITS

807 STRENGTH LIES IN ITS INTELLIGENT DEVELOPMENT."

808 [See Illustration in Original]

809 STATEMENT OF ROGER C. SEIBOLDT, KNOX COUNTY FARMER COPLEY TOWNSHIP SUPERVISOR KNOX COUNTY BOARD MEMBER before the
SUBCOMMITTEE ON MINERALS, MATERIALS & FUELS of the ENERGY AND

NATURAL RESOURCE COMMITTEE of the UNITED STATES SENATE

809 March 3, 1977

810 My name is Roger Seiboldt. I'm from Victoria, Illinois. I am a Knox County farmer and Supervisor of Copley Township. I am also a member of the Knox County Board from District 4.

810 I farm 640 acres of some of the best soils in the world. My farm also supports a livestock operation. My family has farmed some of this land for over a century. We are bordered on two sides by stripped disturbed coal lands.

810 At our last monthly meeting, the Knox County Board voted overwhelmingly to send Mr. Robert Masterson, our County Zoning Administrator and County Planner, and me to Washington to testify as to the conditions in Knox County and in Illinois, pertaining to the extraction of coal by strip mining. Copley Township consists of 23,000 acres of which 7,000 acres or more is controlled by the Mining industry. The Illinois State Geological Survey shows all of this township underlain with strippable coal reserves. from my own standpoint as Supervisor of Copley Township, I ask what is the future of a township or a county supported by an agricultural economy if the high productivity of its Prime Agricultural land is altered or destroyed?

810 Concerning the rest of Illinois, the disappearance of farmland productivity calls for the review of the need to protect our agricultural land from the strip mine process.

810 According to the Illinois State Geological Survey, Illinois contains approximately 160 billion tons of coal reserves of which 88% can only be extracted by deep mining methods. When Illinois prime agricultural land is lost, we do not have land reserves to replace this prime land. If strip mining is prohibited on agricultural land, our state's immense coal reserves present a more than adequate alternate supply to meet increased demands for coal. Why strip 51 or 52 countries for only 12% of the states coal?

811 Let me ask you this question: Who owns the land? The land belongs to the people - a little of it to those dead - some to those living - but most of it to those yet to be born. Qho will preserve the land? Certainly not the dead - not those yet to be born - the living, you and I, have

the responsibility to use the land in a manner to preserve it so that the renewable resources of our agricultural production will be guaranteed for the generation yet unborn.

811 In closing, I would like to extend, once again, our invitation to this Committee to come to Illinois to tour Knox County and view the prime agricultural land affected by the process of Strip Mining.

812 Senator METCALF. Our next witness is Mr. Jack Ratchye.

812 I am pleased to have you here. I am sorry we have worn out most of the members of our committee. I know Senator Hansen is coming back. However, would you summarize your statement?

812 I know you are talking about many of the things the committee will consider and I know you are a very knowledgeable witness. Please go ahead.

812 Mr. RATCHYE.Thank you, Mr. Chairman. I will be happy to summarize and I shall.I have a written statement that I submitted to the subcommittee and I understand it will be made a part of the record and all of the points brought out in it will be in the record.

812 Senator METCALF. Every statement will be incorporated in the record as if it were read. That is the order and that is a previous order and we will continue that.

812 Mr. RATCHYE. Thank you.

STATEMENT OF JACK RATCHYE, DIRECTOR, WYOMING MINING ASSOCIATION AND MONTANA COAL COUNCIL

812 My name is Jack Ratchye. I am appearing before you today in my capacity as a director of the Wyoming Mining Association and also as a director and president of the Montana Coal Council to represent the coal mining industry in both Wyoming and Montana.

812 The Wyoming Mining Association is a trade association of 55 mining companies and 170 companies that serve the Equality State's mining industry. Minerals represented by the membership are bentonite, coal, iron ore, trona and uranium. The State's coal mines produced over 35 million tons in 1976, and projections for the future indicate that 140 million tons in 1985 is not out of the question.

812 The Montana Coal Council is a trade association that is limited to coal mining companies,

reserve holders who have an ambition to mine coal, various associate members, and customer members. Production in 1976, in Montana, was 27 million tons and over 49 million tons are projected for 1985.

812 The coal mining industries in these two states operate in what is one of the world's largest energy reserves and represent a significant fraction of the Nation's capability to gain energy independence. However, there are serious uncertainties that give coal miners in Wyoming, Montana, and other States cause to question whether that goal will ever be reached.

812 I would like to say I endorse what Governor Herschler stated this morning in regard to the so-called Herschler-Kleppe agreement, and we are in total accord with his statements on States rights.

812 Senator METCALF. I thought he made a most persuasive statement. We are delighted to have had him here as a witness.

812 Mr. RATCHYE. We agree, we like that arrangement with Wyoming's environmental quality act because it works. I will press on here. I have several points. I would like maybe to summarize them with a single sentence.

812 Point No. 1 is on the abandoned mine reclamation fund and we propose several amendments to this section regarding the use of the funds which would be derived from royalties. These amendments are in the written statement.

813 Senator METCALF. You have submitted proposed language?

813 Mr. RATCHYE. Yes.

813 Senator METCALF. That is very good, that is most helpful. When we take up the actual writing of the bill, we have your proposed language.

813 Mr. RATCHYE. We would be happy to assist in any way we could in the future.

813 Our second point regarding section 402, initial regulatory procedures; section 402(f)(2) appears to afford an opportunity for any person, both to cause an inspection of a surface mine, and to participate in the inspection. Without appearing to be paranoid, we suggest that this provision is ready-made for mischief and harassment by any person, regardless of his motive, or

lack thereof. Therefore, we propose to eliminate the potential for this abuse by striking the last
sentence in this section.

813 The third point with regard to section 406; permits. We request that the provision
containing the 5-year limitation for the permit life be amended to provide for a permit term equal
to mine life or life of the logical mining unit which is consistent with present Federal regulations.

813 Senator METCALF. You represent Montana. You are living with the 1-year permit.

813 Mr. RATCHYE. That is right, and it is difficult.

813 Senator METCALF. You have the Decker Coal Co. Some people say it is not the largest
coal company, but believe me, that huge shovel out there is quite a monumental achievement.
They are able to finance that in the State of Montana with a 1-year permit.

813 Mr. RATCHYE. That was a gamble, Mr. Chairman, and it certainly is not being written
off over 1 year. It is being written off over its useful life.

813 Senator METCALF. Both Senator Hansen and I have been at the Decker Coal, we are
tremendously impressed by that mining operation.As we have been to Colstrip, and up in North
Dakota, and so forth, but they live with a 1-year permit.

813 Mr. RATCHYE. I know that. Let me set the record straight with regard to what is the
largest coal mine in the world. Decker is, or was, in 1975, and also in 1976, I am sure it is a
short life distinction, but it is true.

813 Senator METCALF.I am not going to question that except it is just like the Governors
come in and say our State has the most stringent regulations. There are a dozen States that
suggest that.

813 Somebody came in here and testified that Decker was only the sixth largest or something,
but it is so impressive to me, I feel it is a tremendous operation. I only wanted to point out they
are living under the Montana law.

813 Mr. RATCHYE. Yes, sir.

813 With regard to that again, let me say, there could be many ways to measure a mine; in
terms of annual production, Decker is the largest but it is indeed small with a minimal

environmental impact on Montana.

813 Senator METCALF. That is good.

814 Mr. RATCHYE. We think so. We are living with the annual permit, but there is a bill in the Montana legislature to go to a 5-year permit and I am happy to say it has passed the house and I think it has been sent over to the senate.

814 Senator METCALF. You and Mr. Schmechel are giving me the latest information from the Montana Legislature.

814 Mr. RATCHYE. Section 406(d)(1), we feel another requirement for public hearing is unnecessary and should be eliminated.

814 Section 407 with regard to application requirements, we request 407(b)(11) be amended to provide for an estimation rather than a determination of the hydrologic consequences of the mining and reclamation operation.

814 Senator HANSEN. If I could interrupt there a moment, Mr. Ratchye. Let me observe, if I understand Paul Rechard correctly, of the University of Wyoming, and he has served in the State government as well, I gather what he has been saying to us accords with your feeling that there really isn't anyway to make a flatout prediction as to what the hydrologic consequences of strip mining in an area will be. I think, as a water expert, he recognizes there is just no one who can say - I gather you want some qualifying language in there so as to hold you to the best possible determination that might be made, but spare you the requirement you have to say categorically it will be thus and thus. Is that correct?

814 Mr. RATCHYE. In advance, yes, sir. We agree with Mr. Rechard; he is an expert. He says the ground water will approach the premining condition after mining and reclamation have passed.

814 Section 407(b)(11) on accumulative impacts, Federal agencies have assumed the responsibility for assuming the accumulative impacts of mining operations and this is appropriately the responsibility of the State regulatory authority.

814 Section 410, permit approval or denial, we recommend section 410 be stricken from the bill. Section 410(b)(5) with regard to alluvial valley floors, the rigid and prohibitory approach of

section 410(b)(5) and 415(b)(10)(F) completely fails to recognize, under site-specific circumstances, it is possible to mine alluvial valley floors and still retain the hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country.

814 Furthermore, the legislatures of Montana and Wyoming have defeated bills which would have prohibited surface coal mine operations in alluvial valleys in those States. These States recognize that it is in the alluvial valleys in the arid and semiarid west that reclamation is most easily accomplished because of the presence of the two essentials, topsoil and water. Both of these States now have mine and reclamation laws which allow a site-specific determination of whether to allow mining in an alluvial valley.

814 We urge section 410(b)(5) be stricken from the bill or amended so as to allow, on a site-specific basis, within the purview of the State control, the consideration of whether or not mining should take place on an alluvial valley floor.

814 If section 410(b)(5) is not stricken, it should at least be amended to contain a clause providing that the provisions of this section would not apply to those surface coal mining operations wherein significant financial investments or legal obligations have been entered into prior to the date of enactment of the bill.

815 Section 414, decisions of regulatory authority and appeals, time limitations for permit issuance; section 414 appears to have no defined time limits within which a permit would be granted.We request that specific time limitations for permit issuance and and permit review be inserted into the bill so that, as a minimum, a permit could be issued after the concluding phase of the environmental impact statement analysis.

815 Section 415, environmental protection performance standards; section 415(b)(3), approximate original contour. We recommend modification of this provision to allow site-specific determination as to the final contour by the State agency.

815 Section 415(b)(12), activities near underground mines; section 415(b)(12) specifies that surface coal mining activities would not be allowed within 500 feet from active or abandoned underground mines. We would recommend that the bill state that whichever type of mining, surface or underground, occurred in the area first would have a priority right to continue mining

according to their plan of operations. The later operation would come under the provisions of
this act.

815 Section 415(b)(2), responsibility for successful revegetation; since we have accomplished
successful revegetation within a 5-year period, we suggest that section 415(b)(20) be amended to
provide for an operators assumption of responsibility and liability for successful revegetation for
a period of 5 years in areas with less than 26 inches of annual average precipitation in lieu of the
10 years provided for in the bill.

815 Section 422, designating areas unsuitable for surface coal mining: section 422(a)(3),
criteria for designation; we request that section 422(a)(3) be rewritten so as to clearly define
those reasons why lands would be declared unsuitable for surface coal mining.

815 Section 422(a)(6), grandfather clause; we also request that section 422(a)(6) be modified
so that the requirements of the section will not apply where significant legal and financial
commitments have been made prior to the date of enactment of the bill.

815 Section 423, Federal lands; section 423(e), withdrawal of Federal coal from mining, we
feel surface mineowners don't need any protection. We would like to show you one that has been
hurt, just show us one.

815 Senator METCALF. An awful lot of mining companies bought in and purchased the
surface in order that they could come in and say, we own the surface, we don't need any
protection; but there are a lot of surface owners, such as the witnesses that proceeded you, and
they say, believe me, we need protection we don't want our land mined. There are some in
Montana and some in Wyoming.

815 Mr. RATCHYE. I agree with what Mr. McRae said.I think it ought to be a free market
and negotiation between the coal company and the landowner.

815 Senator METCALF. I know of no one who has a more eloquent advocate than you have
for surface-owner consent in Senator Hansen. He is already prepared to argue that entire
question.

815 Mr. RATCHYE. With regard to State and Federal regulations, we approve of the
provisions of 423(d) whereby the State may elect to regulate surface coal mining and reclamation

operations on Federal lands within the State, but request that this section be amended to specifically allow State approval of all mine and reclamation plans on a site-specific basis.

816 Section 101(e) states that the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this act should rest with the States. We feel the responsibility has been appropriately placed with the States.

816 In conclusion, let me share with you a passage from a book written in a completely different time and place. It is from "De Re Metallica," written in Latin by Georgius Agricola, a German scholar who, in the vogue of the day's learned men, had taken a Latin name. He wrote it in 1556, and it was translated by Herbert Hoover and his wife, Lou Henry Hoover. The passage is as follows:

816 It is not my intention to detract anything from the dignity of agriculture, and that the profits of mining are less stable, I will always and readily admit, for the veins do in time cease to yield metals, whereas the fields bring forth fruits every year.

816 Now I come to those critics who say that mining is not useful to the rest of mankind because forsooth, gems metals, and other mineral products are worthless in themselves.

816 First, they make use of this argument "the earth does not conceal and remove from our eyes those things which are useful and necessary to mankind, but on the contrary, like a beneficent and kindly mother she yields in large abundance from her bounty and brings into the light of day the herbs, vegetables, grains, and fruits, and the trees.

816 "The minerals on the other hand she buries far beneath in the depth of the ground; therefore, they should not be sought." The more I commend the singular honest, innocence, and goodness of such men, the more anxious shall I be to remove utterly and eradicate all error from their minds and to reveal the sound view, which is that the metals are most useful to mankind.

816 In the first place then, those who speak ill of the metals and refuse to make use of them, do not see that they accuse and condemn as wicked the Creator Himself, when they assert that He fashioned some things vainly and without good cause, and thus they regard Him as the author of

evils, which opinion is certainly not worthy of pious and sensible men.

816 In the next place, the earth does not conceal metals in her depths because she does not wish that men should dig them out, but because provident and sagacious nature has appointed for each thing its place.

816 I think this passage is a little meaty extraction.

816 I hope you agree with my assessment of the meaning, that you have to mine the coal where the coal is, and again, I cannot forget for every ton of coal produced from the Western States, American labor is paid to mine and move it, American industry is paid to furnish the machinery, American stockholders are paid to provide capital, American schoolteachers, policemen, and others are supported through taxes on the coal, a royalty is paid to the owner of the mineral who, in the case of Federal coal, is the American taxpayer; and at least two barrels of OPEC oil are not purchased with American dollars.

816 It is absolutely imperative that any bill you pass to regulate surface mining does not, in fact, throttle the industry to a standstill. The bill must represent a new attitude on the part of Congress and serve the Nation's best interests by implementing and encouraging the mining of domestic coal.

816 I have furnished your subcommittee with written copies of my comments in behalf of the Wyoming Mining Association and the Montana Coal Council. Thank you for the opportunity to appear before you today.

817 Senator METCALF.Thank you very much for your statement. You are addressing two Senators who are really concerned with surface mining in the area you represent.

817 Senator Hansen?

817 Senator HANSEN. Thank you very much, Mr. Ratchye, for your detailed and perceptive analysis of the bill together with the recommendations that you have presented to us.

817 Let me ask you, I think you were present, I am sure you were, when I had asked other witnesses what their reactions would be to a proposal I intend to offer to the committee on the surface-owner consent. Would you care to give me your reaction to that sort of an amendment?

An amendment which you would reserve to the surface owner the right to agree to a mining operation or to withhold his consent on the one hand; and secondly, the further provision, and I think you may have commented on the second one, that there be no guidelines, there be no parameters, or limits, or restrictions on the sort of an agreement, or contractual arrangement that might be worked out between the surface owner and the coal mine operator.

817 Mr. RATCHYE. I would be happy to comment.My comment would be, I like that. I think that would be good for the industry. I think it would put those negotiations in a free marketplace situation. I am confident the coal would be mined and the surface owner's interest would be protected.

817 Senator HANSEN. Would you look upon such a provision, as my amendment suggests, as tending to deny or having any serious or significant impact on the availability of coal as energy resource in this country?

817 Mr. RATCHYE. I do not think it would be a hindrance. I think, philosophically, I am opposed to giving the surface owner veto power because he has no proprietary interest in the coal and doing so would take away the property right of the American people.

817 The reason I say I endorse or count this proposal, so it would place those proposals in a free market position.It would enable the coal to be mined and the surface owner's interest would be protected and certainly the coal company would not pay more than they felt they could pay. I think that would be a good solution.

817 Senator HANSEN. Thank you very much, Mr. Ratchye.

817 Senator METCALF. Thank you very much, Mr. Ratchye, for your careful analysis of the various provisions of the bill and your suggestions as to amendments. They will be considered at the time of the markup. I know the staff will make comments on these various efforts when these are called up for our attention.

817 This is the kind of testimony that we welcome. Someone comes in and suggests; they are not opposed, they are not essentially objecting to the whole principle, but they would like to have some modifications and outline such modifications.

817 As one who understands the problems we have in Montana and Wyoming, I am delighted

to have your testimony. I am sorry you are at the tail-end of a long hearing and more Senators
are not here from areas that are not so representative of States that Senator Hansen and I
represent.

817 [The prepared statement of Mr. Ratchye follows:]

818 Statement by J. F. Ratchye Wyoming Mining Association and Montana Coal Council
Before the Subcommittee on Minerals, Materials and Fuels of the Senate Committee on Energy
and Natural Resources On S. 7, Surface Mining Control and Reclamation Act of 1977

818 Washington, D.C.

818 March 3, 1977

819 Mr. Chairman, Gentlemen:

819 Good morning. My name is J. F. Ratchye. I am appearing before you today in my
capacity as a Director of the Wyoming Mining Association and also as a Director and President
of the Montana Coal Council to represent the coal mining industry in both Wyoming and
Montana.

819 The Wyoming Mining Association is a trade association of 55 mining companies and 170
companies that serve the Equality State's mining industry. Minerals represented by the
membership are bentonite, coal, iron ore, trona and uranium. The state's coal mines produced
nearly 28,000,000 tons in 1976 and projections for the future indicate that 140,000,000 tons in
1985 is not out of the question.

819 The Montana Coal Council is a trade association that is limited to coal mining companies,
reserve holders who have an ambition to mine coal, various associate members and customer
members. Production in 1976 in Montana was 27,000,000 tons and over 49,000,000 tons are
projected for 1985.

819 The coal mining industries in these two states operate in what is one of the world's largest
energy reserves and represent a significant fraction of the nation's capability to gain energy
independence. However, there are serious uncertainties that give coal miners in Wyoming,
Montana and other states cause to question whether that goal will ever be reached.

820 One of those uncertainties is the status of mine reclamation legislation. In spite of those uncertainties, coal is being mined and mined lands are being reclaimed in many states under regulations supervised by the individual states, and newly developed federal regulations.

820 At the same time as you are deliberating on S. 7, the House of Representatives is considering a bill, H.R. 2, both proposed as the Surface Mining Control and Reclamation Act of 1977. Coal miners are concerned about what Congress is going to do.Some provisions of both H.R. 2 and S. 7 appear to have been plagiarized from environmental tracts without any objections from the authors. There are so many prohibitions, reservations, and catches written into the bills, that the industry will probably never be able to ship the coal that ought to be replacing OPEC oil today.

820 In Wyoming and Montana, the coal industry is pressing forward with production from an increasing number of mines, construction of still more mines and compliance with mined land reclamation statutes. In Wyoming, the Department of Environmental Quality administers the state's Environmental Quality Act statewide, regardless of the ownership of the coal or surface under the so-called Herschler-Kleppe Agreement. In support of this system, the recently adjourned legislature resolved "that the Congress of the United States resist imposition of federal legislation or regulations which purport to grant the state enforcement authority but in effect mandate federal control of the mining of coal within the borders of the State of Wyoming." The Wyoming Mining Association heartily endorses this concept and the Legislature's Resolution. It works!

821 Further north, Montana's budding coal industry mines and reclaims under a law that many, including the state's present Administration, refer to as "the toughest strip mine reclamation law in the nation." Montana's law, and regulations written pursuant to it, have empowered the Department of State Lands to force mining companies to modify their mining plans and bypass areas that the Department has determined, following a site specific investigation, to be "special, exceptional, critical or unique." The Montana Coal Council is of the opinion that Montana's Strip and Underground Coal Mine Reclamation Law is more than adequate to enable the state's coal industry to mine coal, and simultaneously, protect the state's

environment.

821 In both of these northern plains states, the industry is mining coal and reclaiming mined lands under existing state laws and regulations and federal regulations. It seems to those of us who mine coal and reclaim under these conditions that the imposition of another layer of bureaucrats on the industry is not necessary. Furthermore, it will result in further cost for the American consumer and delay in replacing OPEC oil with our own coal.

821 However, enough people have stated that a mine reclamation bill will pass and be signed into law by the President that the effort must be made to influence you to consider some amendments to S. 7. Accordingly, there follows a number of comments on specific parts of the bill.

821 1. Section 301. ABANDONED MINE RECLAMATION FUND. SOURCE AND OBJECTIVE OF FUND

821 We recognize that, unlike H.R. 2, the House version of the Surface Mining Control and Reclamation Act, Section 301 does not impose a separate and additional reclamation fee of 35c per ton of coal produced by surface coal mining, but that amounts in the fund will be derived in part by an allocation of 35c per ton of coal from the royalties received by the federal government on federal coal produced by surface mining. The western states, such as Montana and Wyoming, during recent years have passed strong and effective laws to provide for reclamation of lands disturbed by surface coal mining.

822 In current mining operations within the States of Wyoming and Montana the full cost of reclaiming disturbed lands is being accrued. Mining companies will and must continue to accrue costs for current, as well as future, reclamation operations.

822 The proposed reclamation fund under S. 7 has objectives other than reclamation fo "orphaned lands." These other objectives are the protection of health and safety, the protection, construction or enhancement of public facilities, and the improvement of lands and water to a condition useful in the economic and social development of the area.

822 We propose the following amendments to this section:

822 (a) That the deposit to the reclamation fund come solely from the federal government's share of the royalty.

822 (b) That where the federal government's share of the royalty is less than 35c per ton (this would occur where the federal royalty does not go to 12 1/2% of the selling price until the federal lease is renewed), that its entire portion of the royalty be placed in the reclamation fund.

823 (c) That a separate fund be created for each state within which coal mining takes place and federal royalties are received.

823 (d) That one-half of the fund be allocated to the reclamation of "orphaned lands" existing within the state, with the balance to be used in the state for capital improvements as determined by the state legislature, without any time limitation.

823 (e) That after the "orphaned lands" within said state have been reclaimed, that one-half of the reclamation fund then be made available for orphaned land reclamation in other states.

823 (f) That after "orphaned lands" in the other states have been reclaimed, that the reclamation fund for the particular state be made totally available for capital improvement projects within said state.

823 2. Section 402. INITIAL REGULATORY PROCEDURES.

823 Section 402(f)(2) appears to afford an apportunity for any person, both to cause an inspection of a surface mine, and to participate in the inspection. Without appearing to be paranoid, we suggest that this provision is ready-made for mischief and harassement by any person, whatever his motive, or lack thereof. Therefore, we propose to eliminate the potential for this abuse by striking the last sentence in this section.

823 3.Section 406. PERMITS.

823 (a) Section 406(b) - Term of Permits

823 The limitation contained in Section 406(b) of the term of a permit to a period not to exceed five years is unreasonable, given the length of time required to study the project prior to issuance of a permit. The environmental impact statement which is prepared to analyze the impact of a proposed mine must discuss the mine plan over the life of the planned operations, including mining and subsequent reclamation, which in most cases will be longer than five years.
We request that the provision containing the five-year limitation for the permit life be amended

to provide for a permit term equal to "mine life" or "life of the logical mining unit" which is
consistent with present federal regulations.

824 (b) Section 406(d)(1) - Public Hearings on Permit Renewal

824 The requirement in Section 406(d)(1) that, prior to permit r renewal, public hearings be
held on the status of the existing permit is unnecessarily burdensome. During the initial term of
the permit, the appropriate regulatory authority will require the mine operator to satisfactorily
comply with the terms and conditions of the existing permit and will make certain that the
present surface coal mining and reclamation operation is in full compliance with the
environmental protection standards contained in S. 7. The requirement for another public
hearing is unnecessary and should be eliminated.

824 4. Section 407. APPLICATION REQUIREMENTS.

824 (a) Section 407(b)(11) - Hydrologic Consequences

824 Section 407(b)(11) requires all operators, as part of the permit application, to make a
determination of the hydrologic consequences of the mining and reclamation operations, both on
and off the mine site. Additionally, the applicant must collect and provide in the application
sufficient data for the mine site and surrounding areas so that an assessment can be made of the
probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area,
and particularly upon water availability.

825 We submit that these requirements are extremely onerous and subject the mine operator
to a burden which could take years to overcome since it will not be possible to collect the data in
a relatively short period of time, if at all. It is also impossible for the applicant to make a
determination in advance of all the hydrologic consequences requested by this section, and any
information provided would represent an "estimation" of the hydrologic consequences, rather
than a "determination." Accordingly, we request that Section 407(b)(11) be amended to provide
for an estimation of the hydrologic consequences of the mining and reclamation operations.

825 (b) Section 407(b)(11) - Cumulative Impacts

825 Since Section 407(b)(11) requires an operator to collect and provide sufficient data so that
an assessment can be made of the probable cumulative impacts of all anticipated mining in the

area, both on and off the mine site. The drafters of this legislation have assumed that the applicant has the legal right and the capability to enter other property to collect sufficient data necessary to study the hydrology of the entire region. Unless the current legislation specifically gives operators the legal rights to enter upon property which the operator does not own, it may be impossible for the operator to supply the requested data. Furthermore, this section forces a liability upon the applicant with regard to cumulative impacts on areas not necessarily related to his mining operation since the provisions of the bill require a determination of the probable cumulative impacts of all anticipated mining. On-going regional environmental impact studies should suffice to make a determination of what those probable cumulative impacts might be. Federal and state agencies have assumed the responsibility for analyzing the cumulative impacts of mining operations by virtue of the fact that federal and state laws have been passed requiring environmental impact statements covering activities such as the application for and the granting of a strip mine permit, and this is appropriately the responsibility of the federal and state regulatory authorities.

826 5. Section 410. PERMIT APPROVAL OR DENIAL.

826 (a) Section 410(b)(4) - Areas Under Study

826 Section 410(b)(4) specifies that a permit may not be approved if the area proposed to be mined is under study for designation as unsuitable for surface coal mining pursuant to Section 422 of S. 7. We contend that the phraseology of S. 7 is such that endless litigation regarding suitability would be the result. Such vague and subjective standards could apply to essentially any area of the United States. Ongoing mining and reclamation practices are scientific procedures, the results of which are continuously monitored and incorporated into the plan of operation. We submit, therefore, that Section 410(b)(4) be stricken from the bill.

826 (b) Section 410(b)(5) - Alluvial Valley Floors

826 The provisions of Section 410(b)(5) require that no permit be approved unless the applicant affirmatively demonstrates that "the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would not have a substantial adverse affect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in

the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible." In analyzing the prohibitions of this section, it is important to also consider Section 415(b)(10)(F) which requires surface coal mining operations, in meeting certain applicable performance standards of the bill, to "preserve throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semi-arid areas of the country." The prohibition on mining on an alluvial valley floor is clear. The statutes use of ambiguous and imprecise language, such as "significant," "substantial," and "potential," will make it impossible for a coal mine operator to affirmatively demonstrate that his surface coal mining operation will not violate the standards set forth in Section 410(b)(5). The rigid and prohibitory approach of Section 410(b)(5) and Section 415(b)(10)(F) to surface coal mining in alluvial valley floors completely fails to recognize that under site specific circumstances it is possible to mine alluvial valley floors and still be able to assure the maintenance of the hydrologic functions of the area and restore the area to its original condition.

827 Additionally, federal and state environmental protection acts have made the federal and state governments responsible for making determinations of the types of impacts required by Section 410(b)(5). It is our position that by reason of both the placement of EIS responsibility and the lack of clear understanding of what the terms "alluvial valley," "hydrologic consequences," and "cumulative impacts," mean, no mining company should be required to determine or even guess at those impacts.

828 In the past three weeks, the States of Wyoming and Montana have overwhelmingly defeated bills in respective state legislatures which would have prohibited surface coal mine operations in alluvial valleys in those states. These states recognize that it is in the alluvial valleys in the arid and semi-arid west that reclamation is most easily accomplished because of the presence of the two essentials, topsoil and water. Both of these states now have mine and reclamation laws which allow a site specific determination of whether to allow mining in an alluvial valley.

828 At the time when the west was settled, under the various Homestead Acts, those areas which are now called alluvial valleys were settled first, and the homesteaders owned the coal. Under Section 410(b)(5), almost all fee coal in these alluvial valleys would be prohibited from mine development. With passage of S. 7 the owners of that fee coal could have taken from them property rights without due process and without compensation.

828 We urge that Section 410(b)(5) be stricken from the bill or amended so as to allow, on a site specific basis, within the purview of the state control, the consideration of whether or not mining should take place on an alluvial valley. Since the use of the word "preserving" in Section 415(b)(10)(F) can very easily be interpreted as an absolute prohibition on mining in alluvial valley floors, we recommend that this section be amended to provide for the "return during or after mining and/or reclamation the essential hydrologic functions of alluvial valley floors in the arid and semi-arid areas of the country."

829 If Section 410(b)(5) is not stricken, it should at least be amended to contain a clause providing that the provisions of this section would not apply to those surface coal mining operations wherein significant financial investments or legal obligations have been entered into prior to the date of enactment of the bill.

829 6. Section 414. DECISIONS OF REGULATORY AUTHORITY AND APPEALS.

829 Time Limitations for Permit Issuance

829 Section 414 appears to have no defined time limits within which a permit would be granted. We request that specific time limitations for permit issuance and permit review be inserted into the bill so that, as a minimum, a permit could be issued after the concluding phase of the environmental impact statement analysis.

829 7. Section 415. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS.

829 (a) Section 415(b)(3) - Approximate Original Contour

829 Section 415(b)(3) specifies that any permit issued under the Act meet all applicable performance standards which would include the requirement to bring the post mined surface to the approximate original contour of the land with all highwalls, spoil piles and depressions

eliminated. The inflexible approach provided by the provisions of Section 415(b)(3) fails to
recognize that restoring the land to the approximate original contour may not necessarily result in
the restoration of the land to its best use. We recommend modification of this provision to allow
site specific determination as to the final contour by the state agency.

829 (b) Section 415(b)(12) - Activities Near Underground Mines

829 Section 415(b)(12) specifies that surface coal mining activities would not be allowed
within 500 feet from active or abandoned underground mines. We would recommend that the
bill state that whichever type of mining, surface or underground, occurred in the area first would
have a priority right to continue mining according to their plan of operations. The later operation
would come under the provisions of this Act.

830 (c) Section 415(b)(2) - Responsibility for Successful Revegation

830 Since we have accomplished successful revegetation within a five-year period, we suggest
that Section 415(b)(20) be amended to provide for an operators assumption of responsibility and
liability for successful revegetation for a period of five years in areas with less than 26 inches of
annual average precipitation in lieu of the ten years provided for in the bill.

830 8. Section 422. DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING.

830 (a) Section 422(a)(3) - Criteria for Designation

830 We submit that the criteria used to describe areas unsuitable for surface coal mining are
extremely ambiguous, and could rule out mining in almost any part of the country. Because of
the lack of clarity in Section 422(a)(3), it is our judgment that continuous delay of permit
issuance could occur by critical commentary from any one of a number of sources, official and
unofficial. We request that Section 422(a)(3) be rewritten so as to clearly define those reasons
why lands would be declared unsuitable for surface coal mining.

830 (b) Section 422(a)(6) - Grandfather Clause

830 We also request that Section 422(a)(6) be modified so that the requirements of the section
will not apply where significant legal and financial commitments have been made prior to the
date of enactment of the bill.

831 9. Section 423. FEDERAL LANDS.

831 Section 423(e) - Withdrawal of Federal Coal From Mining

831 Section 423(e) provides that all federal coal underlying lands with respect to which the United States is not the surface owner are withdrawn from all forms of surface mining operations and open-pit mining. This provision has been commonly referred to as the Mansfield amendment to S. 425 of the 93rd Congress. This provision is extremely unfair both to western land owners and to operators who have purchased or want to purchase mining rights from the federal government.

831 It is true that this provision does not effect the right to mine coal from the affected lands by using underground mining techniques. However, it is important for the committee to note that much of the coal in these lands can only be mined by surface mining methods.This is due to the thickness of the coal seams, and the thinness of the overburden material. Consequently, underground mining of the coal deposits is not feasible.

831 Many mining companies have entered into legal commitments and agreements on the basis of what they believe to be their right to mine strippable coal pursuant to their federal coal leases. Such agreements include contracts for the sale of coal to large utility customers for use as fuel in electric generating facilities and, additionally, include contracts for the purchase of mining equipment costing millions of dollars. The effect of this provision would be the confiscation of strippable coal deposits granted to companies under federal coal leases, and would thus make performance of their coal supply contracts impossible. It is possible they could incur substantial financial liabilities as a result of not being able to perform their contracts.

832 Under the various homestead acts where the surface lands subject to the Mansfield amendment were transferred into private ownership with the coal deposits being reserved to the United States, recognition was given to the possibility of damage to the surface estate by those acquiring coal deposits from the United States and, therefore, these laws required the coal mining companies to obtain the surface owners consent to mine and additionally required the payment of damages. Section 423(e) takes away from the surface owner a very valuable right, the right to give consent. Additionally, if the surface estate has been acquired by the coal mining company,

this provision would still prohibit the mining of the coal. It is important for the committee to understand that the property rights of the surface owner and the property rights of the coal lessee would be taken away by Section 423(e) without due process of law, and without provision for just compensation.

832 The reasons cited in support of Section 423(e) are that this section will protect the ranchers and farmers without giving them control over public resources. Experience in the States of Wyoming and Montana demonstrates that surface owners need no protection. Ranchers and farmers have been able to negotiate terms in the free market place advantageous to them. The interests and rights of these surface owners should not be restricted should they desire to have the coal underlying their surface mined.

832 Lastly, the committee should recognize that this provision is highly detrimental to the public, since low sulphur western coal would be denied to the public. This coal can and should play an important part in ending our energy shortage. In view of the checkerboard pattern of ownership in the States of Wyoming and Montana, this section makes impossible any orderly and economic recovery of the nation's coal resources.A coal company simply will not be able to develop a logical mining unit if all federal coal over which the surface is in private ownership is excluded from mining. We submit, therefore, that Section 423(e) be deleted from the bill.

833 10.STATE VERSUS FEDERAL REGULATION

833 We have dealt with, and are continuing to deal with all of the alleged problems S. 7 purports to address, including reclamation, alluvial valley mining, hydrology, surface owner consent and other considerations. We approve of the provisions of Section 423(d) whereby the state may elect to regulate surface coal mining and reclamation operations on federal lands within the state, but request that this section be amended to specifically allow state approval of all mine and reclamation plans on a site specific basis. Section 101(e) states that the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the states. We feel the responsibility has been appropriately placed with the states.

833 In conclusion, let me share with you a passage from a book written in a completely

different time and place. It is from "De Re Metallica" written in Latin by Georgius Agricola, a German scholar, who, in the vogue of the day's learned men, had taken a Latin name. He wrote it in 1556 and it was translated by Herbert Hoover and his wife, Lou Henry Hoover. The passage is as follows:

834 "It is not my intention to detract anything from the dignity of agriculture, and that the profits of mining are less stable I will always and readily admit, for the veins do in time cease to yield metals, whereas the fields bring forth fruits every year.

834 "Now I come to those critics who say that mining is not useful to the rest of mankind because forsooth, gems, metals, and other mineral products are worthless in themselves.

834 "First, they make use of this argument: 'The earth does not conceal and remove from our eyes those things which are useful and necessary to mankind, but on the contrary, like a beneficent and kindly mother she yields in large abundance from her bounty and brings into the light of day the herbs, vegetables, grains, and fruits, and the trees. The minerals on the other hand she buries far beneath in the depth of the ground; therefore, they should not be sought.' The more I commend the singular honesty, innocence, and goodness of such men, the more anxious shall I be to remove utterly and eradicate all error from their minds and to reveal the sound view, which is that the metals are most useful to mankind.

834 "In the first place then, those who speak ill of the metals and refuse to make use of them, do not see that they accuse and condemn as wicked the Creator Himself, when they assert that He fashioned some things vainly and without good cause, and thus they regard Him as the Author of evils, which opinion is certainly not worthy of pious and sensible men.

834 "In the next place, the earth does not conceal metals in her depths because she does not wish that men should dig them out, but because provident and sagacious Nature has appointed for each thing its place."

834 The meaning for us today in our deliberations regarding the nation's energy problems, is that we must dig the coal from where it is and the sooner the better. I can't forget, and the Senate should not, that for every ton of coal we produce from the western states, American labor is paid to mine and move it, American industry is paid to furnish the machinery, American stockholders

are paid to provide capital, American school teachers, policemen and others are supported
through taxes on the coal, a royalty is paid to the owner of the mineral, who, in the case of federal
coal, is the American taxpayer, and at least two barrels of OPEC oil are not purchased with
American dollars. It is absolutely imperative that any bill you pass to regulate surface mining
does not, in fact, throttle the industry to a standstill. The bill must represent a new attitude on the
part of Congress and serve the nation's best interests by implementing and encouraging the
mining of domestic coal.

835 I have furnished your subcommittee with written copies of my comments in behalf of the
Wyoming Mining Association and the Montana Coal Council.

835 Thank you for the opportunity to appear before you today.

836 Senator METCALF. Now we will have Mr. Gerald Moravek.

STATEMENT OF GERALD MORAVEK, POWDER RIVER BASIC RESOURCE COUNCIL

836 Mr. MORAVEK. Gentlemen, it is an honor to appear before you. I will summarize very quickly.

836 Senator METCALF. This is the witness we have been looking for since we started that
hearing 3 days ago.

836 Mr. MORAVEK. Thank you.

836 Senator METCALF. You are the last witness, but the last is the best.

836 Mr. MORAVEK. I hope so. Unfortunately, the gentleman from Illinois had to catch an
airplane so I acquiesced in dropping back to the last.I hope I can maintain your statement, sir.

836 I reside 10 miles north of Sheridan, Wyo., on the Decker Highway, just a little bit north of
one of the mines that Mr. Ratchye represents, and a little south of another one.

836 Senator METCALF. Anybody that lives that close to Sheridan, especially north of
Sheridan, is kind of in the Billings area.

836 Mr. MORAVEK. That may be, yes, sir.

836 In our statement, the first thing we would like to say is the Powder River Basin Resource
Council represents about 550 ranchers and farmers of the area and we are concerned with

preserving an agricultural way of life, at the same time accepting development as is required in the national interest. We feel it is very essential that we have a strong Federal bill. We have had the opportunity to review both H.R. 2 and S. 7. We find some differences, we believe both bills are going to be marked up and the resulting bill will be a compromised one, but a bill is necessary.

836 Wyoming has some good reclamation laws. They have good laws governing the applications for the bill and the operations of the mines. However, we find variances between the States. We feel that without a firm foundation of a Federal bill, that the interest in mining, which is backed with vast financial resources and personnel, will be able to lobby successfully especially at the lower levels of Government to gain their ends which are, in our minds, relatively short range at the expense of the people.

836 I would like to touch, for just a moment, on the Mansfield amendment. We basically favor the Mansfield amendment with some additions and modifications. First, we feel the Secretary should have the leeway to offer additional lands for leasing where they will make an economic mining package and a complete prohibition, as stated in the amendment, would deny them this opportunity. It would also be very burdensome on the mining industry.

836 Second, in favoring the Mansfield amendment, we feel we are also assisting the deep mining industry. Now, only 3 to 10 percent of our coal is strip mineable. However, the vast financial resources of the mining industry are moving to this area because of the case of mining.

836 We don't want to put ourselves in the position, as we have before, of exploiting a single resource and wind up in the same position we are now with the oil industry. Rather, we favor shutting off some of it, retaining a viable industry which will continue to carry us not only through the crisis period, but a period beyond.

837 Now tied in with this is surface owner consent. Looking at H.R. 2, I believe it is section 423, but at any rate, there are some sections of the House bill which we take exception to. We agree very much with Senator Hansen, that the surface owner and the coal company should be allowed to dicker and arrive at the market price of the property.

837 This should not be done by a fellow with shoelace holes in his lower quarters, that comes

west to determine what the price is.This should be a direct consummation between the industry
and the surface owner.

837 I would like to drop from there to alluvial valleys. Governor Herschler, this morning,
stated he felt the definition might be too broad and he offered to the committee a new definition.
Our definition is slightly different from his, but also it is a very restrictive definition. We feel
alluvial valley designation should then be, that area along a streambed where gravity flow
irrigation may be practiced. We also feel the undeveloped rangeland portion should be protected.

837 Now the rangeland portion of these valleys is carrying the same aquifers as the top surface
which may be put into hay, which may be put into higher agricultural uses. But the water flows
are still there. We believe the undeveloped rangeland portions of this narrow area which only
comprises 3 percent of our coal reserves in the States of Wyoming should be protected.

837 Senator METCALF. We had, yesterday, some testimony from a Montana man who said
the aquifers that were cut by operations such as Decker had, and he mentioned Decker, were not
very important; that after they filled them in, they could be restored. Has that been your
experience?

837 Mr. MORAVEK. I would like to relate, at the expense of a little time, some personal
experiences I have had.

837 Senator METCALF. This was the man from Birney.

837 Mr. MORAVEK. I have on my place five wells; it is a little place, 140 acres. Two of
those wells are dug wells, they only go down 10, 15, 20 feet. Three of the wells are drilled down
below the coal seams. I find this: One of those wells was put in about 1970, it was excavated
with a backhoe.

837 Senator METCALF. One of the deep wells?

837 Mr. MORAVEK. A shallow well.It was only about 100 feet away from the river.
Excavation was by backhoe, they put in a concrete gathering tank, pumped the water from this
tank up to the corrals. This was about 1970.

837 About 2 years ago, that well went dry; yet it was only 100 feet from the river. We went in

and, I am a beginner, we did the same thing. We excavated, recovered the tank, we only had to
move it 30 feet. But by moving it 30 feet, we regained a water flow of 80 gallons per minute;
from a zero flow to 80 gallons a minute by moving it into undisturbed soil.

837 Now had we driven a well, or drilled a well, we probably would not have experienced this
situation, but the thing was dug out with a backhoe similar to a scoop and it was dumped back in
and nature sealed off that well in a short period of time.

838 Now when you reach out and you mine the coal with a shovel, you reach out and pull
through, you disrupt everything that is in there. If you put it back by truck, if you put it back by
carryall, you have got all of the wheeled traffic compacting that material that you put back and
you are effectively building a dam underneath the surface of the ground.

838 If you put it back with the dragline or with the shovel, as we saw demonstrated a few
moments ago in the pictures from Illinois, then you have not consolidated it; it is still loose. The
water flows will take years to regain their previous strata. This has been my personal experience,
sir.

838 Two of the wells produce water unpalatable to livestock. They are shallow wells.The
water is so full of mineral content, the cattle will not even drink it, and if you force them to drink
it they will get sick.

838 Senator METCALF. As the Governor of Wyoming said to the Governor of Montana, it is
a long time between drinks for those cattle then.

838 Mr. MORAVEK. What is there, you have a mixture of good water and bad water; and
you can definitely degrade the entire thing.

838 Now, going on, sir. It was mentioned a moment ago about the grandfather clause in the
bill. The coal lands of the west have historically been an area of investment and speculation. If
we allow the terminology, substantial financial investment, to cover either the acquisition of the
surface or the leasing of the mineral rights, you have effectively grandfathered many of the mines
proposed or which may be proposed in the future.

838 We feel this is not feasible in this area and that those two terms "substantial financial
investment" should be precluded from grandfathering future permit applications. Otherwise,
your bill is effectively gutted -

838 Senator METCALF. Suppose it is an onging kind such as the Kemmerer Mine in Wyoming, should that be grandfathered?

838 Mr. MORAVEK. I think they should have a reasonable time to maintain the standards required under the bill.

838 Senator METCALF. Suppose it is not operating? They come in and tell us; look, we have invested substantial funds for exploration. But they have not started any mining activity. Should that be grandfathered?

838 Mr. MORAVEK. We don't believe so, sir.

838 Senator METCALF. Neither do I.

838 Mr. MORAVEK. One final point, sir. State control; we concur with the passing of the Federal regulatory powers over Federal lands to the States. There is a problem here: there in the interim period we believe any State, which has a present agreement should carry on and should go ahead and do the supervision rather than create a second lever of supervisors at the Federal level merely because there is insufficient time for the passage of the bill. If they are doing it today, let them go ahead.

839 However, since we came into this, since we are in measure doing the Federal Government's job, there should be compensation for this. In the bill it specifies a certain percentage would be granted to the States; 80 percent the first year; 60 percent in the second year; and in decreasing amounts.

839 We feel this payment should be made to the States for assuming the Federal responsibility on a permanent basis. We further feel, to finance this, and I might say here I am an 1890 Democrat, much more conservative than either party of today and I believe in pay-as-you-go, so we would propose an across-the-board tax -

839 Senator METCALF. You are for zero-based financing?

839 Mr. MORAVEK. Yes, sir.

839 We would propose an across-the-board tax to compensate the States for doing this particular job. I have got a few slides, I would just like to take a moment to show you gentlemen and I will talk just a little bit about them.

839 The first slide shows graphically our concept of an alluvial valley that needs protection.
Here is a picture of the Powder River Basin comprising Sheridan, Johnson, and Campbell
Counties in northern Wyoming; just north of it is Montana.

839 Now this slide, or this map the slide was taken from, was prepared by the University of
Wyoming soil scientists and our definition of the alluvial valleys that need protection is shown
on this particular slide in the dark brownish orange color. Immediately adjacent to the flowing
stream, less than 3 percent of the strippable coal is in these areas.

839 Now there is something like 9 billion tons of coal under lease. We don't feel the
protection of 3 percent of these lands is going to hurt. In fact, we feel it is necessary. These
alluvial valleys, irrigated portions, in my part of the country you can produce 4 to 5 tons of hay
on irrigated bottomland.

839 Senator METCALF. What is the blue on that map?

839 Mr. MORAVEK. I can't say, sir, but I would say it was rolling grasslands. This is a soil
map and it spells out the area by soil.

839 Senator METCALF. What is the yellow?

839 Mr. MORAVEK. It is a different soil base, sir.

839 Now just driving through the area -

839 Senator METCALF. But the brown is the coal land in the alluvial valley floor?

839 Mr. MORAVEK. No, sir, not the coal land, but the valley floor. There is no distinction
here for coal on the map, this is merely surface soil types.

839 But the thin brown line lying immediately along the valley, along the river streams, is
what we consider to be the alluvial; that part of an area which can be gravity-flow irrigated, flood
irrigated, right along there. We are not talking about sprinklers, we are not talking about
anything else. We are not talking about alluvial valleys being from the top of the Rocky
Mountains to the top of the Allegheny Mountains. Some people like to say it is all alluvial
valley.

839 We think we have pulled it down to a logical, meaningful unit.

839 Slide 2: This is a shot of the Big Horn coal mine. It has been in operation for 20 years.

This shot is several years old. My boundary fence is just about up in here. I am roughly 2 1/2 miles away from the pit area.

840 Now contrast the difference in the depth of the coal seam here with what you say in Illinois. They are working here on an approximate 60-foot vein, the bottom vein, and taking it out.There is a relatively small - I've been in the area 5 years and I don't think they are spread over half a section, but from this mine they produce 1 million-plus tons a year and have for several years. All of this soil down in here has to be replaced.

840 Slide 3: Here is a method of operation. The coal seam, the equipment that is used to clear away the overburden and will replace the soil. A very rapid demonstration of our western operations as opposed to those in the east or the central areas.

840 Slide 4: This is a shot of my place. The road comes down and here is the river. Here is the alluvial valley we are talking about. About 400 yards from the river to the first bench. Some places it spreads out about 1 mile or 1 1/2 miles. In many other places, it is much more restrictive; mine is not. This is the area we think needs protection. That is the one that carries the definite aquifers that flows throughout the whole region and supplies the region.

840 Slide 5: Another shot of valley line across the river and then you get up definitely into the bench area where the overburden is deeper and thicker. It costs more, but in terms of long-term productivity, safety of the entire area, we think it is worth it.

840 Senator METCALF. What do you plant on that?

840 Mr. MORAVEK. Mine is all hay, sir. I plant only enough small grains to give me a crop rotation on down the creek -

840 Senator METCALF. Alfalfa?

840 Mr. MORAVEK. Alfalfa grass mix. I am a beginner. I left farming back before World War II and when I came back to it, it was straight alfalfa. I started having blow problems with my cows, so I put in a little grass.On down the creek you have got corn and potatoes.

840 Back to my area. Slide 6: Again you notice the house built in 1897 of stone which sustains blasting damage from a mine blasting 2 1/2 miles away.

840 Senator METCALF. It is a good thing it's stone.

840 Mr. MORAVEK. Yes, sir.

840 I show this again for objectivity. Down on this flat in front of the house there is 26 acres;
2 years ago I was able to run three animal units for 6 months on that 26 acres of irrigated pasture.
This shows how productive it is.

840 Slide 7: This is a shot of a proposed minesite. The irrigated valley land, the bench, and
last year it was in potatoes and the owner produced approximately 400 bushels of potatoes per
acre off that land.

840 Slide 8: Another shot, the same potato field showing the valley floor and the uplands.

840 Slide 9: Now we come into an area which I want to talk about, too; unimproved
rangelands. These trees down in here are very important to us as a wintering area for our cattle.
They get storm protection. That is where we feed. There is a lot we cannot put hay on, it is too
small, too narrow, whatever, but they are still important, they are still carrying the same
underground streams but the surface areas where you have got hay, or potatoes, or whatever,
carry it.

841 Slide 10: Another shot depicting the difference between the bottom and the higher
elevatins.

841 Slide 11: More of the same. We are in an area of 10 to 14 inches of rainfall a year and this
is one of our problems when we talk about reclamation. We can reestablish vegetation with
irrigation, with fertilizer; I grew up in the thirties and I saw many, many fence lines that were
covered by tumbleweeds and blowing sand. I hate to go back to those eras.I saw lands plowed up
to produce wheat and as soon as the price of wheat got up to $1 a bushel and it has taken 20 years
to reclaim that surface when they only went down 6 inches with the plow.

841 We are planning on going down 200 feet, taking out 50 or 60 feet, bringing it back.
Reclamation? Maybe.

841 Slide 12: Potential three-animal units for the summer range grazed on irrigated land as
opposed to 40 to 80 acres up here for those same three animals.

841 Slide 13: The balance of these are productivity pictures.

841 Slide: This is a slide taken a number of years ago. It shows the scope of the operation.
They are doing everything possible they can to reclaim this area, only time will determine the
success of it.

841 Slide: This is, I believe, the Wyodak mine in Gillette, a relatively restricted mine in scope
except, as Wally McRae mentioned a while ago, when you tie in the impact of the rail lines, the
supporting areas, you do not disturb just maybe a section, but it may stretch for many, many
miles.

841 Slide: This one, I cannot pin it down. It is out in that area, but it shows an area which was
mined some time ago which, as you can see, there has been very little effort for reclamation.

841 As the Governor mentioned this morning, many of the problems in the West are not
specifically tied in with the coal mining industry, but the leavings have been the leavings of other
extraction industries which should be considered for reclamation and rebuilding.

841 Thank you. Are there any questions?

841 [The prepared statement of Mr. Moravek follows:]

841 STATEMENT OF GERALD W. MORAVEK, POWDER RIVER BASIN RESOURCE COUNCIL

841 Gentlemen, it is a distinct honor to appear before you and to present testimony in support
of strong federal legislation governing strip mining.

841 I am Gerald W. Moravek.I reside 10 miles north of Sheridan, Wyoming and four miles
south of the Montana border on a small ranch which I purchased five years ago upon retirement
from the Army with the grade of Lt. Colonel. I am appearing here today as a concerned private
citizen and as a spokesman for the Powder River Basin Resource Council, an organization of 550
ranchers, farmers and others who are concerned with the protection of the agricultural
environment in eastern Wyoming while properly utilizing our resources to meet national needs of
both today and tomorrow.

841 Coal and many of the other minerals which may be extracted by surface mining techniques
are no longer a local or regional asset but instead, because of the worldwide energy situation,
have become a national resource. The current climate of energy uncertainty has created a

situation where certain forces have and are moving rapidly to "get it while the gettin's good."
They are backed by vast financial and personnel resources and will brook no interference nor
opposition to this short range desire. Their clever paid advertisements in the national news
media and lobbying efforts at all levels of government are designed to create an atmosphere of
fear of future energy deprivation among the general public, and to gain widespread acceptance
and minimum regulation of their operations. On the 12th of January, 1977, before the
Committee on Interior and Insular Affairs, United States House of Representatives, a Mr. Ian
MacGregor testified as follows: "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 practices 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. Don't
judge the industry by the past, judge us by the present. Come out and see what we are doing."
(Page 9, MacGregor testimony)

842 Gentlemen, I have no personal quarrel with Mr. MacGregor nor his testimony as chief
executive officer of AMAX Mining, however his testimony was presented on behalf of the
American Mining Congress which, along with the National Coal Association, speaks for the vast
majority of coal producers. In this regard, I must now relate to you my personal experiences in
relation to a mine proposed in 1975 by Peter Kiewit Sons' which also operates the Decker Coal
Company and is half owner of the world's largest coal strip mine, and which is a member of the
American Mining Congress for which Mr. MacGregor spoke.

842 I do not own the mineral rights of my place. The mineral rights 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 gor, develop and remove the minerals, specifying that the surface owner
will receive reasonable compensation for the necessary surface disruption." In 1973 the trust
contract with Peter Kiewit & Sons 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 acquifers of the valley floor.
Further, the company proposed moving the coal by 40 ton truck loads at the rate of each 1 1/2
minutes 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. This presented a safety hazard for my family
and neighbors while at the same time requiring the public to maintain and finance the
reconstruction of the road. On the basis of these beliefs, I, in conjunction with the Powder River
Council, filed a protest 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, called merely to establish the
legal guidelines, 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 Doc Inc. were involved, would be searched out and would eventually be named in the
complaint.

842 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 fact that the key member of the Board of Trustees of the Whitney

Trust, and who voted for filing of the law suit against us is closely allied with the mining company involved is probably merely coincidental.The Powder River Council, because it is an incorporated, nonprofit organization, continued on with the protest. After numerous revisions of the mining plan over a period of three months, the Mining Company finally withdrew its application pending their development of the necessary data to satisfy Wyoming laws. This action essentially proved the validity of our original protest.

843 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.

843 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.

843 While these general remarks of mine underscore the need for strong federal strip mine legislation, the Powder River Council is also aware that major differences exist between S. 7 and H.R. 2, and that eventually the Congress is going to decide on specific provisions to curb the excesses of surface mining, ensure reclamation and protect the natural and human environment. With this in mind, I now turn to some of the specific provisions of S. 7.

843 Perhaps the most controversial difference between the two bills is section 423 (e) of S. 7, the Mansfield amendment, which prohibits surface mining where the federal mineral holding is divided from the surface estate. When we first realized that this section was again being included in a national strip mine bill our first reaction was that we could not support it for fear of being labeled as extermists, and that it did not matter anyway since there was little likelihood of the

provision being included in the final bill given its previous rejection by House-Senate conference committees. In the last two weeks, however, as we began preparing for this testimony, we again reviewed the language, reviewed also our positions on other federal issues, with the result being that the Powder River Basin Resource Council would now like to go on the record as being strongly in support of the Mansfield concept provided that a certain degree of flexibility is also written into the provision. This flexibility should include subsections that allow the development of existing lease tracts where they comply with the provisions of this bill and give the Secretary of Interior the leeway to offer tracts for lease where it is necessary for the orderly development of existing surface mining operations. Where the Mansfield amendment should apply is to all new leasing efforts being carried on by the Department of Interior, and it should apply, as we see it, for two very definite reasons.

843 One, the West already has enormous tracts of federal coal leased to private mining companies, sufficient tonnages, we think, that no new leasing is needed to supply national coal demands in the near-term future, Figures which we and others have developed show that 805,000 acres of federal coal have been leased, included some 242,000 acres of committed coal in the Powder River Basin alone. Underlying these thousands of acres, most of which have private surface over them, are some 16 billion tons of federal coal.

843 In Campbell County on existing leases which were approved by Interior in the '60's, 9 strip mines already have permits, large operations which are causing enormous impacts on the city of Gillette, the county government and surrounding counties. In 1970, Gillette had 7,000 people, today it has an estimated 15,000, and a recent study for the county planning office indicates 37,000 to 54,000 people by the year 1990. Crime has risen dramatically, social services are totally overloaded, schools are overcrowded, and these pressures are mounting daily. The situation has gotten so out of hand in Gillette, that sociologists commonly use the term "Gillette syndrome" to describe impacted boomtowns throughout the West.

843 Yet despite these tremendous excesses, and despite a potential for having upwards of 200 million tons annually produced off of existing federal leases in Campbell county, what is the Bureau of Land Managemnt planning to do - lease more federal coal in the summer of 1978.

Under the Energy Minerals Activity Recommendation System (EMARS) 579,351 acres of Wyoming were nominated by the coal corporations as tracts they wanted to lease, including an additional 249,454 acres in the eastern Powder River Basin.

844 Gentlemen, federal leasing in the West must be considered, I think, as a key component of a national Energy Policy. How wise is it to consume millions of gallons of diesel fuel to ship coal to the Ohio River Valley on the edge of the Appalachian coal fields when deep miners in Appalachian are out of work and the economy of that region is one of the most depressed in the nation. How wise is it to inflict the West with a boom-bust situation by opening many mines now, and then have them close down at roughly the same period of time, twenty years to thirty years down the road.The Mansfield amendment, as we see it, can speak directly to this question by limiting western coal production at least until a review of the consequences is initiated and completed.If Western strippable coal reserves are then determined to be needed as a matter of national survival, we would be the first to support a review by the Congress of the provision.Certainly with billions of tons of federal, state and private coal under lease that day is many years away.

844 The second reason we support Section 423(e) is the implicit encouragement it offers the deep mining industry. While certainly some deep mining will go on regardless of what the federal strip mine bill says, the bulk of investment dollars are now heading for the strip mines of the West. All of us recognize that strippable coal is a limited resource, about 3% of the national coal reserve, and that some day we will run out of it. It would be a thoughtless repetition of history to duplicate the process of the last 40 years where this country became dependent on natural gas and petroleum only to run out of these fuels while we have the very clear alternative to maintain a diversified, healthy coal industry today. The industry likes western strippable coal reserves for a variety of reasons, and it is certainly a cheap source of fuel, but inevitably we will run out only to face the prospects of higher fuel costs - just as we are doing today with petroleum.
We think that it makes far more sense to blend our strippable and deep minable reserves now in order to better cushion ourselves for the day when all cheap fuel is exhausted.

844 For these reasons, the Powder River Council supports in modified form section 423(e). I

would add, however, that if 423(e) is not acceptable to both Houses of Congress, then we fully support the inclusion of strong surface owner consent provisions in the final bill.

844 As I mentioned previously, I had a little trouble last summer when I protested a valley floor mine. In the West, as most of you know, valley floors 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 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% 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.

844 In stating the need for protection of alluvial valleys I would also go into another part of the bill now before this Committee, which deals with designation of lands unsuitable for mining. Section 410(b)(4) of the Act will allow the commencement of mining on designated areas 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 areas 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 Congress has not made the greatest possible effort to enact this law.

845 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.

845 In this regard, we feel that at a very minimum, the language of HR 2 should be included in the final bill, given its protection of aquifer recharge areas as well as the actual groundwater flows of the agricultural valley floors.

845 Another area that is of great concern to the Council is state control of reclamation and enforcement programs within the framework of a federal strip mine law. We cannot emphasize strongly enough our support of sec. 423(d) of S. 7 being included in the final bill.This provision clearly allows the states to administer programs for all lands, including areas of federal coal where the states have a program approved by the Secretary of Interior. This will eliminate needless and expensive duplication of effort by competing governmental agencies while also maximizing local expertise in states as disparate as West Virginia and Wyoming. We would also recommend to this Committee that a new subsection be placed in the bill which allows the states holding a memorandum of understanding with the Department of Interior to administer reclamation efforts during the interim period between passage of this bill and the final approval of state programs under 423(d). With the existing language state reclamation agencies would exist in limbo during this period, turning over their duties to the federal reclamation agency only to receive them back again when the Secretary gives his nod of assent. No one, the public, the industry, or state and federal governments would be served by such a scheme. We also support having states administer abandoned mine land programs.

845 Finally, we feel that the financing of state programs, which is provided for in Sec. 505 of S. 7 should be amended to provide for permanent funding of reclamation programs, funds which

we feel would best come from an across the board tax on strip mined coal. In this area, we
believe that the House bill also provides for the fairest method of gaining monies for abandoned
mine land reclamation by instituting the same kind of tax (Sec. 401(d) of HR. 2 and Sec. 301(d)
of S. 7).

845 This concludes my oral comments, although I am submitting to the committee our
thoughts on some of the technical provisions in S. 7.

845 POWDER RIVER BASIN RESOURCE COUNCIL, Sheridan, Wyo., March 3, 1977.

845 ASSORTED TECHNICAL COMMENTS ON S. 7

845 SECTION 406(d)

845 We support review of the mining permit every five years, but feel hearings need only be
held when requested by citizens or other governmental agencies.

845 SECTION 407(b)

845 We feel surface and mineral owners up to one mile from the permit area should be listed.
Recent hydrologic studies (Hadley & Keefer, U.S. Geological Survey Circular 743) indicate
groundwater problems may occur within this area. Landowners up to one mile from the permit
area should be notified prior to the permitting of any mining operations.

845 SECTION 409(c)

845 We feel that bonding should be required regardless of fiscal solvency. Over a 25 year mine
life times can change.

846 SECTION 415(b)

846 We feel this wording should be greatly clarified. Highwall and spoil pile variances are not
allowed under the Wyoming Environmental Quality Act, nor, we feel, are they within the intent
of the federal strip mine bill.

846 SECTION 417(c)

846 We feel monthly inspections may be excessive. We support quarterly inspections where
the operator has demonstrated good faith in complying with state and federal law.

846 SECTION 419(f)

846 We feel the Committee's intent should be clearly stated prior to the use of the phrase

"valid legal interest". Would, for instance, the Powder River Basin Resource Council have
standing with this language.

846 TRI-COUNTY PLANNING OFFICE, Newcastle, Wyo., February 21, 1977.

846 CECIL ANDRUS, Secretary of the Interior, U.S. Department of the Interior, Washington,
D.C.

846 DEAR MR. SECRETARY: The Tri-County Planning Office is staff to the Northeast
Wyoming Three County Joint Powers Board, a cooperative effort of the Boards of County
Commissioners of Crook, Weston and Niobrara Counties, Wyoming. The office provides
technical planning support to the Counties and their incorporated communities. At its regular
monthly meeting on February 3, 1977, the Board directed me to express to you their concerns
about the Bureau of Land Management's Casper District's recent activities concerning coal
leasing and natural resource planning in Campbell County and Northern Converse County.

846 The enclosed brochure indicates, in general, what BLM is doing. The meetings that we
attended February 1 and 2 were part of their management framework plan (MFP) for Campbell
and Converse Counties. BLM has also requested proposed coal development plans from industry
for nominated lease tracts by March 1.All of this is to lead into a revision of the Eastern Powder
River Coal Basin Environmental Impact Statement, which in turn leads to the Department of the
Interior's new coal leasing program.

846 Our primary concerns are:

846 (1) There appears to be no justification for additional coal leasing in the Powder River
Basin where [*] 242,000 acres are already committed. This already existing commitment
translates to 19 mines, or between 190-285 million tons per year (10-15 million tons per mine).

846 (2) BLM is operating under severe time constraints to meet schedules set by the past
Secretary of the Interior. The deadline for revision to the Eastern Powder River Coal Basin EIS
is summer 1978. Revising the EIS is dependent upon completion of their MFP. The timeframe
precludes developing adequate data to properly evaluate potential impacts of additional coal
development.

846 Additional concerns are:

846 (1) BLM begins the update of their MFP for this area assuming that the data upon which their 1974 MFP was based is adequate. In public hearings (meetings?) in 1974, BLM indicated that the data was not adequate in all cases and that they would not use the insufficient data for decisions. Unfortunately, at present and under the timeframe of the EMARS process, there will not be adequate time to make the necessary corrections, despite some updating of the lands and mineral portions of the MFP that BLM has already done. BLM also admits weakness in the areas of ground water acquifers and socio-economic impacts.

846 (2) BLM ignores completely "spillover" impacts, particularly social and economic, into counties adjacent to Campbell County to the east or west. Studies we have had done indicate a 20 to 25% spillover of new mine employees, U.S.G.S. in considering the Peabody Coal Company's Rochelle mine assumes one-third of the employees will reside in Weston County, and Kerr-McGee indicates that one-half of its present work force at the Jacobs mine in Campbell County resides in Newcastle, commuting over the incomplete Clareton Highway. Kerr-McGee anticipates that this will increase to 75% when the Clareton Highway between Newcastle and Reno Junction is completed and when trailer spaces become available in Newcastle. (Kerr-McGee is in the early stages of developing a 100 unit mobile home park in Newcastle.) BLM's reports and graphics do not even indicate the existence of the counties adjacent to the study area to the east or the existence of the Clareton road.

847 (3) When questioned about their socio-economic data, BLM indicated that this will be provided, or that weaknesses will be corrected through a contract with a consulting firm in Boston. That contract is with Harbridge House, Inc. and is only to develop Social-Economic Profile to comply with BLM Manual 1606. It is not oriented toward addressing impact and spillover questions. Also, it will not be available until after [*] March 21, 1977, when the MFP decisions are made.

847 (4) At the meetings in Gillette and Douglas BLM asked the public - "How much growth do you want?" The public had little or no data upon which to begin answering such a question. I have appended a conceptual outline of how one might approach that question.

847 Assuming that Wyoming Coal is necessary to national energy self-sufficiency and will be

exploited, the major problem becomes one of controlling the exploitation. To this end, it seems reasonable to require BLM to take the time and use the resources necessary to develop the best possible data for decision making.

847 Therefore, we would like to see the timeframe for BLM's planning, environmental analysis and coal leasing recommendations extended, providing BLM with the opportunity for full consideration of the consequences of additional leasing, particularly the socio-economic effects. This is, as you are well aware, a long-term commitment of resources, both human and natural, and should be given the most careful analysis.

847 For additional background I have enclosed material from the Powder River Basin Resource Council, my planner's impressions of the BLM meeting in Douglas, and a brief report she has developed concerning housing needs in Newcastle, Weston County resulting from energy related growth.

847 Many thanks for your time. If we can provide further information, we'll be more than happy to do so.

847 Respectfully yours,

847 RICHARD C. WINTER, Planning Director.

847 Senator METCALF. Thank you very much, Mr. Moravek, for your presentation. Thank you for coming.

847 When this hearing opened and Governor Andrus testified, we did not have permanent assignments to this committee and the Republicans and the Democrats drew lots and were arbitrarily assigned to the committee and Senator Hatch of Utah was not a member of the committee when Governor Andrus testified.

847 But he raised some questions about a report by the ICF and I wrote a letter to the ICF and asked about that report. But Senator Hatch is not satisfied with the response that he received. I don't know when I can get a hearing room and get assigned a room for hearing. But I have promised Senator Hatch sometime between now and April 28, and hopefully this bill will get on the floor. I will, late in the afternoon or early in the morning, if necessary, get the ICF out. I will do that and then an announcement of the hearing will take place.

847 We have had four Governors testify in this hearing in the last 3 days. Governor Schapp of Pennsylvania, this afternoon, asked to be permitted to testify and I had to turn his application down because the hearings have been long and arduous. I suggested he file a statement about the Pennsylvania experience, especially on highwalls and on that problem which was taken up in the testimony of Governors in the Eastern States.Governor Schapp will file a statement and it will certainly will be as carefully considered as the other testimony from the Governors.

848 I want to especially thank Senator Ford and, today, Senator Hansen, who just came out of the hospital and participated in a very long hearing. These hearings have gone on all day for 3 days. This is the only time I could wrest hearing time from Senator Jackson. But I think we have made an excellent record, we have covered almost all of the States. We have had four Governors, we have had testimony from every geographical region, and I believe we are going to be prepared to mark up a better bill than we had sent to the President before.

848 I want to thank all of the members of the committee who have participated in these rather lengthy hearings. I want to thank the witnesses who have been so patient to sit around and listen all day, almost, to wait to be called. I also want to thank my staff for a superb briefing and I hope out of this will emanate some legislation that all of us can live with and support.

848 The hearing will be closed now, subject to Senator Hatch's special hearing and subject to the call of the Chair.

848 [Whereupon, at 5:04 p.m., the hearing was adjourned, subject to the call of the Chair.]

U.S. SENATE, COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C., March 10, 1977.

851 Hon. TED STEVENS, Russell Senate Office Building, Washington, D.C.

851 DEAR SENATOR STEVENS: Thank you for your 7 March letter containing the two amendments which you have proposed to S. 7.

851 I can assure you that the Committee will consider the first amendment dealing with the Alaskan surface coal mine study (formerly Section 708 of H.R. 25, 94th Congress).

851 The second amendment is identical to Section 513 of S. 7 and thus I do not believe it is necessary.

851 I appreciate your interest very much.

851 Very truly yours,

851 LEE METCALF, Chairman, Subcommittee on Public Lands and Resources.man, Subcommittee on Public Lands and Resources.

U.S. SENATE, COMMITTEE ON COMMERCE, Washington, D.C., March 7, 1977.

851 Hon. LEE METCALF, Chairman, Subcommittee on Public Lands and Resources, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

851 DEAR LEE: This letter is to notify you that I have introduced two amendments to S. 7, the Surface Mining Control and Reclamation Act of 1977. These amendments are the same amendments which were introduced by me last year and were contained in the version of the act which was passed by Congress.

851 One amendment provides for a study of surface coal mining conditions in the State of Alaska and authorizes the Secretary to suspend the applicability of provisions of the Surface Mining Control and Reclamation Act pending the completion of the study. The other amendment reaffirms the rights of owners of coal in Alaska to conduct or authorize surface coal mining operations on lands which have been conveyed out of Federal ownership to the State of Alaska or to Native corporations pursuant to the Alaska Native Claims Settlement Act.

851 For your convenience, a copy of these amendments is enclosed. Thank you for your attention in this matter.

851 With best wishes, Cordially, TED STEVENS, U.S. Senator.

851 Enclosure.

851 Sec. 708. (a) The Secretary is directed to contract with the National Academy of Sciences-National Academy of Engineering for an in-depth study of surface coal mining conditions in the State of Alaska in order to determine which, if any, of the provisions of this Act should be modified with respect to surface coal mining operations in Alaska.

851 (b) The Secretary shall report on the findings of the study to the President and Congress no later than two years after the date of enactment of this Act.

851 (c) The Secretary shall include in his report a draft of legislation to implement any changes recommended to this Act.

851 (d) Until one year after the Secretary has made this report to the President and Congress, or three years after the date of enactment of this Act, whichever comes first, the Secretary is authorized to suspend the applicability of any provision of this Act, or any regulation issued pursuant thereto, to any surface coal mining operation in Alaska from which coal has been mined during the year preceding enactment of this Act if he determines that it is necessary to insure the continued operation of such surface coal mining operation. The Secretary may exercise his suspension authority only after he has (1) published a notice of proposed suspension in the Federal Register and in a newspaper of general circulation in the area of Alaska in which the affected surface coal mining operation is located, and (2) held a public hearing on the proposed suspension in Alaska.

851 (e) There is hereby authorized to be appropriated for the purpose of this section $2 50,000.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
March 7, 1977
Dear Senator Metcalf:

852 We appreciate this opportunity to respond to questions raised in your letter of February 9, 1977, about a draft report prepared by our contractor, ICF Inc., entitled "Energy and Economic Impacts of H.R. 13950." The Council on Environmental Quality has long been concerned with the environmental impacts of strip mining and has consistently supported strong federal standards in this area.

852 Legislation similar to Senate Bill 7 has been opposed in the past by those who believed that it would drastically reduce the nation's coal production and coal reserves, and lead to serious unemployment in the mining industry. Others questioned that view.

852 In order to try to lay such controversy to rest, the Council, together with the

Environmental Protection Agency, hired ICF, Inc. to develop independent assessments of the energy and economic impacts of H.R. 13950, the bill that failed to gain enactment in the 94th Congress. Copies of ICF's draft final report have been provided to the Committee and its staff.

852 During the recent hearing on S. 7 held by the Subcommittee on Minerals, Materials and Fuels, Senator Hatch raised questions regarding differences between the draft report dated January 24 and the draft report dated February 1, 1977.

852 As is common practice on contractor reports, throughout the course of this study ICF solicited comments from the contracting agencies, other federal agencies, and other persons with expertise on the subject matter. CEQ and EPA, as the contracting agencies, have a special responsibility to insure that work performed under contract is complete and well done. The January 24 draft was distributed for the purpose of soliciting comments from interested federal agencies. ICF made the final judgment whether to accept or reject specific comments, suggestions, or recommendations for change made by CEQ, EPA, and other federal agencies.

853 We believe that the February 1 draft is an improvement over the earlier draft. None of the major conclusions of the report changed between drafts. The February 1 report remains a draft report and work on it continues; ICF welcomes any additional comments that will improve the final report.

853 For your further information, we are attaching a memorandum to us from ICF explaining the changes made between the January 24 and February 1 drafts.

853 Sincerely,

853 John Busterud

853 Chairman

853 Honorable Lee Metcalf

853 United States Senate

853 Washington, D.C. 20510

853 Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
MAR. 11, 1977

Dear Mr. Chairman:

854 Thank you for your letter of February 9, 1977, concerning the ICF, Incorporated study entitled "Energy and Economic Impacts of H.R. 13950." Let me assure you at the outset that EPA in no way altered the contents of this study. EPA and other Federal agencies commonly review draft reports and offer comments upon them. However, judgments as to whether refinements should be made rest solely with the contractor.

854 The draft report, dated January 24, 1977, was released by the contractor to several agencies for comments.These agencies included EPA, the Council on Environmental Quality (CEQ), Department of the Interior (DOI), Federal Energy Administration (FEA), Department of Agriculture (USDA), Tennessee Valley Authority (TVA), and Office of Management and Budget (OMB). On January 27, 1977, a meeting was held at CEQ to receive comments from the agencies. After listening to suggestions from the professionals gathered in the room, EPA, CEQ and OMB met with ICF to discuss how the comments received could be addressed before releasing a draft report (outside of the Administration). It was ICF and not the agencies, however, which modified the report based on their own best analytical judgment. ICF then made the changes and released the February 1, 1977 draft report. This review procedure is standard with EPA reports. A discussion of the specific changes made between the January 24, 1977, and February 1, 1977 draft reports are best addressed by the contractor. I have enclosed a copy of a memorandum dated February 10, 1977, from C. Hoff Stauffer, Jr., Chairman of the Board of ICF, to Barry Flamm, CEQ Project Officer and James Speyer, EPA Project Officer, which provides a detailed summary of the changes made and the reasons why they were made.

855 I hope we have fully responded to your questions and have cleared up any allegations concerning the report. If you have any further questions please do not hesitate to contact me.

855 Sincerely yours,

855 Administrator (Douglas M. Costle)

855 Honorable Lee Metcalf

855 Chairman, Subcommittee on Minerals, Materials and Fuels

855 Committee on Interior and Insular Affairs

855 United States Senate

855 Washington, D.C. 20510

855 Enclosure

ICF INCORPORATED 1990 M Street Northwest Sude 400 Washington DC 20036 (202) 785.3440

856 February 10, 1977

856 MEMORANDUM

856 To: Barry R. Flamm (CEQ) James Speyer (EPA)

856 FROM: C. Hoff Stauffer, Jr. Daniel E. Klein

856 SUBJECT: "Energy and Economic Impacts of H.R. 13950"

856 It has come to our attention that questions have been raised regarding modifications to our report between the Draft Final Report released on February 1, 1977, and the interagency review version of January 24, 1977. Some of the differences have been noted during both the Senate hearings on S.7 (February 7, 1977) and the House hearings on H.R. 2 (February 8, 1977). On these occasions an inference was made that such changes could have been due to political considerations rather than analytical judgments. In this memorandum we would like to fully resolve any confusion which may had arisen.

856 We wish to strongly emphasize that in no instance in our Draft Final Report (or in any preliminary drafts and/or memoranda) was any compromise made to the analytical integrity in order to effect findings which would appear politically desirable. The Draft Final Report of February 1 represents our very best analytical judgments at that point in time, just as any earlier drafts and/or memoranda represented our best judgments at earlier points in time. Hence, changes over time represent what we consider to be improvements in methodology, data, and/or assumptions, and in no way represent analytical compromises made for political convenience.

856 Throughout our study we have fully documented the data and assumptions underlying the impact estimates.Thus, any changes in impact estimates can be related directly to changes in underlying assumptions, where such changes are based upon what we consider to be analytically sound judgments and are fully documented. Any textual changes relate directly to efforts to (a)

improve clarity, (b) improve readability, or (c) impart a more neutral tone to the document, since our study does not represent an advocacy document but rather an analysis.

856 The following sections will expand upon these points and detail the changes in particular impact estimates which have been noted in previous discussions. The first section will be a general discussion of ICF's approach in developing a Draft Final Report. This is followed by a detailed explanation of changes found between the interagency review version of January 24, 1977 and the Draft Final Report released on February 1, 1977.

857 GENERAL COMMENTS

857 Since ICF began its analysis of H.R. 13950, our approach has been one which has stressed cooperation with numerous and diverse interest groups, both in and out of government. This analysis has proven to be quite complex; since our own resources are limited, we have welcomed valid inputs from all who were willing to contribute. The primary vehicle for the solicitation of advice has been the use of draft reports and memoranda. These reflected our best judgments and knowledge at the time. By virtue of the extensive cooperation and thoughtful comments we received from others, we were often able to make what we considered analytical improvements in subsequent drafts. In those instances where we felt that the review comments did not contribute to the substance and/or appeared to be political at the expense of the analytical integrity, such comments were rejected.

857 In keeping with this approach, we prepared preliminary copies dated January 24, 1977 for the purpose of interagency review. This was done for the purpose of allowing several agencies (CEQ, EPA, FEA, BOM, DOI, OMB, TVA) to review and comment prior to the release of our Draft Final Report of February 1, 1977. It was never intended that the interagency review version of January 24 be the version submitted as our Draft Final Report under the terms of our contract. In fact, we at ICF were making several minor changes concurrent with the interagency review. Due to the high level of cooperation from these agencies, we were able to make what we consider to be analytically sound modifications and editorial improvements. Any suggestions which would have compromised the analytical integrity to achieve politically desirable findings were rejected, as were any other suggestions we judged to be unsound.

857 Accordingly, the Draft Final Report which we sulmitted on February 1, 1977 represents our best analytical judgments at this time. Still, we must note that it is a draft report, and is subject to further modification as additional reviewer comments are received. As stated in the Preface to the report,

857 "This draft is being distributed for purposes of review and comment. Further work is being conducted. Refinements are underway. Constructive comments are welcomed."

857 CHANGES IN TEXT

857 Some questions have arisen regarding textual changes which have occurred between vorsions leading up to the Draft Final Report of February 1, 1977. The concern was that these changes were made in an effort to distort or canceal substantive points developed in earlier versions. These concerns are unfounded.

857 Before describing the changes, it is useful to note types of changes which were not made. No changes were made which would distort or conceal substantive points. No omissions of previously-analyzed issues were made. No changes were made which would impart a partisan tone (either for or

858 The text changes which have been made in the Draft Final Report can be categorized in three basic types:

858 (1) Readability. Several minor changes were made throughout the report to rephrase sentences and paragraphs in an effort to improve readability and facilitate understanding of some of the more difficult points.

858 (2) Clarity. Several additions were made in the Draft Final Report to expand upon the assumptions, methodologies, and findings. Most of these additions were made in response to questions raised during the review process, and include footnotes, supplementary descriptors, and additional caveats where necessary.

858 (3) Tone. Throughout this study we have attempted to present an impartial and factual analysis. This is in keeping with our instructions to develop impact estimates and not an advocacy document. We have refrained from expressing judgments as to the merits of the legislation or to what preferred legislation might read, and have limited our analysis to the

impacts of H.R. 13950 as reported August 31, 1976. Although we have tried to present our analysis in neutral terms, we have been made aware of several instances in which the phrasing could possibly suggest a bias either for or against the bill. To avoid the appearance of having taken any advocacy position, alternative wordings were sought which would not suggest a bias while still retaining the substantive value. We did not make such tonal changes when the result would have been a diminuation of the analytical finding.

858 Examples of such text changes which are particularly noteworthy are the first two major conclusions in the Executive Summary of the Draft Final Report. These paragraphs do not add any new material to the section, but seek to highlight the major conclusions which follow. In the interagency review version of January 24, these two paragraphs were combined. While the first part (relating to impacts which were not great) remained the same, the second part (relating to non-cost impacts and varying interpretations) was made less specific in the Draft Final Report. During the interagency review, it was suggested that this paragraph was combining general findings with specific points, and that insufficient detail had yet been presented which would make these specific points meaningful. Further, it was suggested that the original wording implied that these were the only impacts, where in fact there were several more. In response to what we considered to be valid criticism, we reworded this to read as two general conclusions. We note that all of the specific issues raised are still raised in detail in the Summary, and all are analyzed in full in the body of the report.

859 ALLUVIAL VALLEY FLOORS - HIGH PRODUCTION IMPACT SCENARIO

859 Between the interagency review version of January 24 and the February 1 Draft Final Report, the assumptions used to develop the high production impact scenario for alluvial valley floors were modified. Whereas in the interagency review version the assumption was made that any lease area containing alluvial valley floors would be impacted, the Draft Final Report took account of the fact that not all of these sites would be impacted under a reasonable high impact scenario. The effect of this change in assumptions was to reduce the high production impact estimates to approximately one-half of those estimated in the interagency review version.

859 The assumptions used in developing these estimates are fully documented in the analysis,

and are summarized in the Executive Summary. The scenario specification used in the
interagency review version of January 24 is as follows

859 [*] 860 [*] 861 [*$

862 In estimating production impacts due to the alluvial valley floor provisions, the term
"production impact" should not be equated with the term "production losses." As clearly noted in
the summary tables:

859 "Production impacts, as used here, do not necessarily mean production losses; delays
and/or mining plan revisions are alternative impacts."

859 The term "worst-case production impact" was changed to "high production impact" in the
Draft Final Report of February 1, 1977. This change was made for two reasons.First, it was
claimed by some that "worst-case" implied that we opposed such an outcome, whereas others
might see such an outcome as desirable. In keeping with an apolitical approach, this term was
changed to a more neutral "high production impact." Second, a worst-case estimate calls for the
most extreme case imaginable; in this case, the joint probability of every mine having alluvial
valley floors within the lease area being impacted. The joint probability of such an event is
extremely small. A high impact estimate, on the other hand, need not include the most extreme
case imaginable, but can be tempered with judgment concerning the low probability that every
mine having alluvial valley floors within the lease area might be impacted. This judgment is
clearly stated in our report.

859 The change in assumptions made in the Draft Final Report was based upon our
professional judgment that our original assumptions were overly strict. Through discussions
generated during the interagency review process, coupled with a re-examination of the interviews
with the western mine operators (fully documented in Appendix F), we concluded that alternative
assumptions were necessary in order to ensure that the analysis presented our best analytical
judgments at that point in time.

859 The February 1, 1977 report is still a draft report. All assumptions have been documented.
Reviewer comments are still welcome.Should new evidence be presented which convinces us
that further modifications are warranted, further modifications will be made and the assumptions
clearly documented.

859 Due to the substantial uncertainties associated with estimating these impacts, we believe (as clearly stated in our report) that no undue emphasis should be attached to any specific number or set of numbers. In the case of the alluvial valley floor provisions, the point being made was that there is a wide range of potential impacts (associated with both data uncertainty and varying interpretations of the language of the bill) ranging from zero to some very large numbers. We note that this point did not change at all between the interagency review version of January 24 and the Draft Final Report of February 1, 1977.

863 SURFACE OWNER PROVISIONS - RESERVE BASE IMPACTS

863 Between the interagency review version of January 24 and the February 1 Draft Final Report, the assumptions used to develop the reserve base impacts of the surface owner protection provisions were changed. The methodology used to develop these estimates is the same in both versions - beginning with estimates of the quantity of federal strippable coal beneath non-federal surface, adjustments are made to account for (1) the percent of this land owned by a qualified surface owner, (2) the percent of qualified surface owners who might be unwilling to consent to having the coal reserves leased, and (3) the nearby reserves which would be excluded. The changes in impacts relate directly to changes in these adjustment factors, and in total reduce the impacts by about one-half.

863 The description of the methodology is identical in both the interagency review version of January 24 and the Draft Final Report of February 1, and reads

863 [*]

864 In the interagency review version of January 24, the reserve base impacts were developed as follows (page V-10):

	Scenario		
	Low Impact	Moderate Impact	High Impact
Federal coal beneath non-federal surface (million tons)	9,126	12,120	13,071
x Qualified surface owner (%)	33	50	67
x Percent unwilling			

to allow leasing	25	50	75
+ Nearby reserves effectively excluded (%)	10	20	30
- Reserves impacted (million tons, rounded)	800	3,600	8,500

In the Draft Final Report of February 1, 1977, the reserve base impacts were developed as follows (page V-11):

	Scenario		
	Low Impact	Moderate Impact	High Impact
Federal coal beneath non-federal surface (million tons)	9,126	12,120	13,071
x Qualified surface owner (%)	25	35	50
x Percent unwilling to allow leasing	15	30	50
+ Nearby reserves effectively excluded (%)	10	20	30
= Reserves impacted (million tons, rounded)	400	1,500	4,200

865 The following points are worthy of note:

865 In both versions the estimates of federal strippable coal beneath non-federal surface are the same. Reserve base impact estimates differ only because of changes in the subjective estimates of (1) the percent of this land owned by qualified surface owners, and (2) the percent of qualified surface owners who might be unwilling to consent to having the coal reserves leased.

865 The factors which changed were and still are subjective estimates, based upon a paucity of meaningful data. Our subjective estimates were revised based upon reviewer comments relating to the success that energy companies have been having in acquiring surface rights in the West. These comments led us to believe that our earlier estimates had been too high.

865 The February 1, 1977 report is still a draft report. All assumptions have been documented. Reviewer comments are still welcome. Should new evidence be presented which convinces us that further modifications are warranted, further modifications will be made and the assumptions clearly documented.

865 We are uneasy about these estimates because there are very few data upon which assumptions can be based. We considered making no estimates at all, but judged this would not be a positive contribution toward helping others understand the potential impacts of the bill. Hence, we decided to estimate a range of potential impacts, making clear our methodology and assumptions. This gives the reader the opportunity to test the effects of alternative assumptions on the estimates.

STATEMENT FOR THE COMMITTEE ON ENERGY AND NATURAL RESOURCES U.S. SENATE BY GOVERNOR MILTON J. SHAPP STATE OF PENNSYLVANIA

MARCH 16, 1977

867 I became involved in the issue of Federal strip mine control legislation over four years ago when your Committee staffers and interested environmentalists inquired about the relevance of the Pennsylvania surface mine regulation experience to the drafting of nation-wide criteria and requirements in a Federal bill.

867 Presumably, our program was chosen because, at the time, many felt that we had a law and enforcement program that surpassed most, if not all, other states' programs in effectiveness.

867 Four years later we are here to reiterate some of the salient features of our program and its relationship to the pending Federal legislation.

867 Pennsylvania's Program

867 The Pennsylvania surface mine regulation program has evolved through the years beginning with the first law in 1941. The last of 27 amendments were incorporated in 1973.

867 The most significant strengthening occurred in 1963. This was an amendment which outlawed retention of the vertical highwall. Subsequent significant changes in the law required saving and replacement of topsoil, setting the surety bond rate at "cost to reclaim" levels and strengthened the health and safety authority.

867 Other program actions encouraged by our Clean Streams Law included minimization of spoil on the downslope to control erosion and sedimentation and efforts to restrict mining on certain critical watersheds.

868 Effectively, therefore, the proposed Federal bills contain many of the features of our law and program.

868 Percent of Steep Slope Mining in Pennsylvania

868 Testimony for the state of Kentucky before the Energy and Natural Resources Committee necessitates correction in the hearing record at this time. The quoted figure that as of March 1973, 99 percent of the strippable reserves of Pennsylvania were to be found under slopes measuring less than 15 degrees is not correct.

868 In a survey conducted by the state of Pennsylvania in the fall of 1973 of 600 active operations, 25 percent were found to be operating on slopes of less than 20 degrees, 58 percent were operating on slopes from 12-20 degrees, and 17 percent were operating on slopes greater than 20 degrees. Pennsylvania's strippable reserves, according to our state geologist, would not be situated under slopes which vary significantly from present surface mining operations. In fact, if any generalization is applicable, it would be that future surface mining will probably be conducted on the steeper slopes of the state since the "easy" mining logically has been undertaken first.

868 It seems that the most important facts to be extracted from the Pennsylvania experience pertain less to the specific number or percent of operations on steep slopes than to the ability of both large and small surface mine operations to eliminate highwalls on steep slopes. And while it may be correct to point out that Pennsylvania does not have as many steep slopes as some other Appalachian states, the relevant fact to consider in analyzing the Pennsylvania experience is that elimination of highwalls has been achievable at a profit to small operators on slopes just as steep as those in other Appalachian states. In Elk County, for example, highwall elimination has been conducted profitably by small operators on slopes measured at 37 degrees. This fact was reported by a recent field inspection team sent to Pennsylvania by the House Interior and Insular Affairs Committee. In Pennsylvania such steep slope mining is occurring at a profit to small operators with only two bulldozers and one front-end loader.

869 Approximate Original Contour

869 We prefer the definition of "approximate original contour" (AOC) in HR 2, although the

simple deletion of the reference to "depressions" in Sec. 501(23) of S. 7 would bring the two definitions into conformity with one another.

869 The central point for consideration of the Senate Energy and Natural Resources Committee is that the requirement for backfilling to "approximate original contour" (AOC) is appropriate and necessary although misunderstood by many. This is because old definitions of AOC contained in many state laws are incorrectly envisioned in the context of the proposed bills. "Approximate original contour" (AOC) is defined in HR 2 as:

870 " . . . that surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends onto and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted . . . "

870 This is quite different than the common definition which describes straight lines between the top of the highwall and the bottom of the spoil pile.

870 It is our understanding from discussions with the House and Senate Committee staffs and by reviewing the Committee report that the AOC requirement would not preclude, for example, the establishment of necessary diversion ditches, access roads and erosion controlling configurations which complement the drainage pattern (including terracing) provided that all highwalls and spoil piles are eliminated.

870 The state of Kentucky has told this Committee that "newly graded long steep slopes are highly vulnerable to erosion and the steeper and longer the slope, the greater the vulnerability." It is our understanding of the definition of "approximate original contour" and the legislative history of this term that the requirement to eliminate all highwalls and spoil piles will not result in the long steep slopes described in the state of Kentucky's testimony. This is because the definition of "approximate original contour" and provisions found elsewhere in the legislation allow for the retention of access roads and do not in any way prohibit or discourage regrading the surface configuration to allow for construction of drainage diversion ditches or terracing. All of these methods of regrading to achieve "approximate original contour" while eliminating all highwalls, are permissable and achievable under the definition of "approximate originial contour" in HR 2.

871 It is our understanding that operators who reaffect old pre-act cuts and spoil piles could reclaim to a "rolling terrace" configuration which is a stable, attractive profile without highwalls and which restores the original drainage patterns. We certainly would not want to discourage remining old areas by requiring all of the spoil down the slope from the pre-act mining to be returned to the mine cut. (About 3,000 acres are restored in Pennsylvania annually in this manner.)

871 It is essential that elimination of the highwall be retained in the bills. Pennsylvania's laws have required elimination of the vertical highwall since 1964 and we have found that it is a fundamental ingredient in assuring a safe, stable and attractive reclamation job.

871 Furthermore, we have found administratively that it is efficient to require complete rather than partial elimination of highwalls. In almost all cases, vertical or near vertical highwalls will erode and/or slide, thereby perpetually contributing silt to nearby streams. They present a hazard to men and animals who might encounter them unexpectedly. Finally, they are an unattractive permanent monument to man's inability to live in harmony with nature. (Incidentally, a practical aspect of the value of an aesthetic reclamation job is the increased willingness of landowners to allow mining of their coal after witnessing attractive restoration on their neighbor's land. This will become an increasingly important point as we look toward these small privately owned coal reserves as sources of energy.)

872 Effects of Regulation

872 We have attempted to ascertain what effect the stringent requirements enforced in Pennsylvania since 1964 have had on the growth of the coal surface mining industry. Surface mining coal production for the ten years since 1964 grew at a faster rate than the ten years prior to 1964 (see attachment). We are certainly not suggesting that regulation of the industry assisted growth of production, but the figures clearly indicate that regulation has allowed reasonable growth and did not devastate the industry as many directly predicted would happen as our law was being considered in 1963. Despite our strong regulatory program, the small operator has been able to survive and prosper. Of our 545 or so operators, half mine less than 50,000 tons of

coal per year. Only 47 operators mine more than 200,000 tons per year. This has been
accomplished even though no provisions in our laws grant any special variances to small
operators.

873 I might add that the surface coal mining industry in Pennsylvania has, in general, become
responsible and conscientious. Operators often debate among themselves about the superiority of
their reclamation jobs as well as their ability to out-produce each other. This spirit has eased our
regulation burden and has contributed to the health and stability of the industry.

873 Minimum National Standards

873 We made it clear to the bills' authors from the outset that differences in terrain, geology,
weather, etc. among the states would require very careful framing of minimum technical
standards if they were to be applied to all operations. We believe that both pending bills (HR 2
and S. 7) have successfully identified those standards that are common and critical to all surface
mine operators and have included appropriate flexibility where it is warranted.

873 It is clear that the proposed environmental protection performance standards in both bills
introduce no new concepts that are not already required in most state laws and regulations.
These include: (1) restoring the mining areas to support pre-mining uses, (2) preserving topsoil,
(3) protection against water pollution and erosion, (4) revegetation, (5) prudent use of explosives,
(6) contemporaneous reclamation, and (7) stabilization of waste piles.

873 Appropriate recognition is given to vital regional differences. For example, where the
ratio of coal to overburden thickness is large (notably) in Western surface mining), the operator is
logically not expected to fill his excavation by creating a hole elsewhere. On the other hand, the
bills recognize the importance of protecting alluvial valley floors in our relatively dry western
states by disallowing mining of those alluvial valley floors which are vital to farming activities.

COMMONWEALTH of VIRGINIA
Office of the Governor
Richmond 23219
March 16, 1977
The Honorable Henry M. Jackson
Chairman
Senate Committee on Energy and Natural Resources
Room 3106, Dirksen Building

Washington, D.C. 20510
Dear Mr. Chairman:

875 I have followed with interest the development of the legislative proposals relating to coal surface mining which are embodied in H.R. 2 and S. 7.

875 These bills have been carefully reviewed by appropriate agencies of the Commonwealth of Virginia. It is our opinion that this legislation should be rejected and that the states should be allowed to continue to regulate coal surface mining in a manner best suited to their individual conditions and needs.

875 However, if you conclude that some form of federal legislation should be enacted, we respectfully suggest that it be tempered in order to lessen the negative impact on an essential industry. Suggested amendments to H.R. 2 are enclosed for review by you and the members of your Committee. Detailed amendments to S. 7 have not been prepared as the major provisions of concern to Virginia are contained in both bills.

875 Also enclosed are two statements summarizing the impact of H.R. 2 on Virginia's surface mining industry. These are entitled "Production and Employment Impact of H.R. 2 on Virginia" and "Impact of Returning To Approximate Original Contour on Steep Slopes of Virginia." These statements generally apply with equal force to the provisions of S. 7.

876 The Honorable Henry M. Jackson

876 March 16, 1977

876 Page Two

876 We shall be glad to furnish any additional information you may require in evaluating these suggestions.

876 Sincerely yours,

876 Earl J. Shiflet

876 EJS: jt

876 Enclosures: 4 sets

876 cc: The Honorable Harry F. Byrd, Jr.

876 The Honorable William L. Scott

876 Members, Senate Committee on Energy and Natural Resources (letter only)

877 Commonwealth of Virginia

877 March 15, 1977

877 Production and Employment Impact of HR 2 on Virginia

877 The estimates of the adverse impact on production and employment that HR 2 will have in Virginia is reflected in the analysis of various state agencies utilizing data generated from in-house studies and from reviews of available literature.

877 Factors that will influence the estimates of the impact of HR 2 will be interpretations of specific sections of the legislation by the regulatory authority or judicial branch. A low range of estimates will be given that will reflect a less restrictive interpretation. A high range of estimates will be given to indicate the consequences of a strict intrepretion of the bill with strong enforcement action by both the administrative and judicial branch.

*2*Impact	
1. Loss of Coal production (in millions of tons)	7-11.5
2. Job Losses- (assumes 0.8 additional non-mining jobs lost per mining job loss)	
Direct job losses	1,140-2,400
Indirect job losses	912-1,920
Total	2,052-4,320
3. Fee for reclamation per year:	
Strip	$2.66 Million
Deep	3.36 Million
Total Fund	$6.02 Million

877 Also, additional costs will stem from public notices, suits and other provisions of HR 2.

877 Assumptions

877 The small surface mines of Virginia produce the majority of the surface mine coal. These small mines cannot comply with the provisions of HR 2 relating to bonding and permit

application requirements. Specifically, the requirement for collection of extensive hydrologic data, for preparing detailed underground maps, for strata cross sections and various other environmental requirements are beyond the capability of the small operator.

877 The steep slope requirements could not be met by at least 75% of the operators in southwest Virginia because of the lack of necessary equipment, undercapitalization and the thin seams of coal currently being mined. The siltation structures required by the legislation would result in a loss in production because of operator's inability to construct the necessary diversion ditches and sediment ponds in the steep slope regions of Virginia.

878 The estimates of loss which could result are from 50% to 85% of the current production of the surface coal in Virginia.

879 Commonwealth of Virginia

879 March 15, 1977

879 Impact of returning to Approximate Original Contour in Steep Slopes * in Virginia

879 * Greater than 20 degrees.

879 HR 2, Section 515(b)(3) requires that "all surface coal mining operations backfill, compact, . . . and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated . . . " Section 515(d)(1) also states that in steep-slope coal surface mining no spoil material can "be placed on the downslope below the bench or mining cut, except that where necessary spoil or spoil material from the initial block or short linear cut . . . can be placed downslop. . . . "

879 An analysis by U.S. Geological Survey indicates that 95 percent of Virginia's strippable coal reserves are located in areas with slopes greater than 20 degrees.In 1976, the average degree of slope being surface mined in Virginia was 25 degrees. The following table is a summary of the surrounding states including Virginia, showing the percentage of the strippable reserves that would be affected by Section 515(d)(1).

---

*2*Table 1#

State	Percent of Reserves Affected
1. Kentucky-East	75%

West	0%
2. Ohio	1%
3. Pennsylvania	6%
4. Tennessee	40%
5. Virginia	95%
6. West Virginia	43%

879 #Source: Data from "Slope Angle Distribution of Coal Beds with Strippable Reserves" by K. J. England, U.S.G.S.

879 Mathtech and Ford, Bacon and Davis Utah, Inc. in the report, Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III Eastern U.S. prepared for the Department of Interior, Bureau of Mines, in 1976 divided the overall area into three regions as follows:

879 1. Northern Appalachia: eastern Ohio, western Pennsylvania, northern West Virginia and Maryland;

879 2. Central Appalachia: southern West Virginia, southwestern Virginia, east Kentucky and northern Tennesse;

880 3. Southern Appalachia: central and southern Tennessee and northern and central Alabama.

880 Members of the House Committee on Interior and Insular Affairs suggest that the impact of Federal legislation will be similar for all Eastern States. However, Mathtech's description of the general topography of the entire area would not support this conclusion:

880 "Topography in the Appalachian Coal Region ranges from gently rolling in central Alabama and northeastern Ohio to mountainous in southern West Virginia, southwestern Virginia, and east Kentucky. As a general rule, the steepest slopes and greatest relief occur in Central Appalachia, which is mountainous, followed by Northern Appalachia, best described as rolling-to-hilly, and Southern Appalachia, where gently rolling terrain predominates. Topographic relief for the region ranges from 2,500 feet in southwestern Virginia to 300 feet in parts of Ohio and Alabama.

880 Qualitatively speaking, most mining in Central Appalachia takes place on steep slopes,

defined here as natural ground slope angles greater than 17 degrees. Natural ground slope angles as high as 35 degrees were observed at some active mines in southern West Virginia. Slope angles in Northern Appalachian are more gradual, with angles of 10-18 degrees being the rule at active mines visited during the field survey. It should be noted here that there are some very steep slope areas in the Northern Appalachia coal region, but available data suggests that most of the surface mining activity takes place in rolling and hilly terrain. Topography at mines visited in south-central Tennessee and central Alabama is best described as gently rolling, with natural ground slope angles less than ten degrees being the general rule."

880 The latest published information regarding the price for strip and auger mined coal for these States is set forth in the following table:

*2*Table 2#

State	Average value in dollars/per ton FOB Mines
1. Kentucky-East	$15.46
West	12.00
2. Ohio	13.43
3. Pennsylvania	19.21
4.Tennessee	17.63
5. Virginia	20.70
6. West Virginia	17.75

881 #Source: Data From "Coal-Bituminous and Lignite in 1975." Division of Fuels Data and Division of Coal, U.S. Department of Interior, February 10, 1977.

881 To determine the increased mining cost as a result of the requirement to return to approximate original contour and the provision which allows no spoil to be placed downslope is a difficult process in view of the complex combination of physical, economic and management characteristics affecting various operations.However, it has been estimated that the increased cost for backfilling without completely eliminating the highwall in contour mining versus area mining is as follows:

*2*Table 3#

Description	Total increase in Reclamation Cost Per Ton
Contour/backfill	$2.70-4.74
Area	$1.02-2.34

#Source: Data from Bureau of Mines Information Circular, IC 8695.

---

881 The difference in reclamation cost between area and contour mining methods is the result of being able to use large-scale overburden handling equipment in conjunction with the efficiencies of being able to place overburden in the previously mined cut in area mining operations. Another factor which influences the cost of coal production in Virginia is that in 1976 there were only two mines that produced more than 250,000 tons.According to the U.S. Bureau of Mines, mining operations of less than 500,000 tons per year have an increase in cost of $0 .42 per ton more than those operations mining more than 500,000 tons a year.

881 A report entitled "Energy and Economic Impact of HR 13950," dated February 1, 1977 was prepared for the Council of Environmental Quality and Environmental Protection Agency by IFC Incorporated. This report discusses surface mining cost as follows: "In Appalachia, cost increases are generally between $0.50 and $2 .00 per ton except in Alabama and Virginia where costs for some mine types could increase by over $4 .00 per ton." One of the assumptions upon which the above conclusion is drawn by ICF is that equipment performance standards for operational efficency in past studies * are incorrect. Therefore, ICF utilized field experience which was utilized in the Oak Ridge Study. If more realistic performance standards reflecting actual field experience as contained in the Oak Ridge study were factored into the ICF study, the increase in cost to return to approximate original contour would be greater than $5 .00 per ton for all surface mine operations in Virginia on slopes greater than 20 degrees. Also, the increase of $5 .00 ton does Other assumptions in the ICF study indicate a possible understated increase of costs associated with the Federal legislative proposals.

881 * "Costs of Coal Surface Mining and Reclamation in Appalachia," E. A. Nephew and R. L. Spore, Oak Ridge Laboratory, January 1976. NTIS No. ORNL-NSF-EP-86.

882 Conclusion

882 An analysis of the impact of returning to the approximate original contour in steep slope regions in Virginia would indicate that the increase in production cost per ton of coal will be significant. With 95% of Virginia's strippable reserves in slopes greater than 20 degrees, the provisions of HR 2 could increase the production cost of a ton of coal in Virginia by more than $5 .10 per ton. This conclusion is based on the provisions in HR 2 not generating permit delays through additional hearings etc; the operator not having to operate under different economic and environmental requirements than these currently imposed except for the provision to return to the approximate original contour, but not completely eliminating the highwall. If the highwall must be completely covered, this increase in cost will be higher.

882 The approximate original contour requirement and the provision not to allow spoil downslope will impose a financial burden on Virginia's coal surface mine operators which they cannot meet. The requirement to cover the highwall completely is physically impossible and in fact, environmentally unsound in many instances. These provisions will require additional off-road haul vechicles and long-term capital investment, neither of which are currently available. The small mines in Virginia average less than 60 acres and produce less than 50,000 tons per year. Because of the lack of long-term contracts and available reserves, investment institutions will not make the long-term financial obligations necessary to purchase the equipment. As a result, a majority of operators will probably discontinue to mine coal because most cannot meet the additional capital costs and other front-end expenses, and therefore, will be out of business.

882 Another aspect of the impact of HR 2 is that more than 50 percent of Virginia's coal, both deep and surface mined, is utilized by electric utilities because Virginia's surface mined coal is low sulfur steam coal. The impact of HR 2 will make this coal economically and physically impossible to produce.

American Farm Bureau Federation
February 28, 1977
Honorable Henry M. Jackson, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510
Dear Mr. Chairman:

883 The American Farm Bureau Federation, representing over 2.6 million Farm Bureau
member families in 49 states and Puerto Rico, wishes to take this opportunity to advise you of its
views on the regulation of strip mining. We understand that hearings will be held soon on S. 7,
the "Surface Mining Control and Reclamation Act of 1977," and would like to have these
comments entered into the official hearing record.

883 At the annual meeting of the AFBF, held in Honolulu, Hawaii, in January, 1977, the
official voting delegates of the member State Farm Bureaus adopted the following policy
statement:

883 "Many states contain lands whose surface and mineral rights are owned separately.

883 "We support legislation to deal with this problem in the following manner:

883 "(1) Allow our nation to use our abundant supply of coal to achieve energy independence
as soon as practical.

883 "(2) Require the reclamation of all mined lands, including disrupted underground and
surface water.

883 "(3) Treat surface owners fairly by requiring landowner consent in coal
company-landowner negotiations.

883 "(4) Encourage states to develop their own reclamation standards, which could exceed
federal standards in order to protect the local environment."

883 We believe that coal mining can be consistent with the wise use of agricultural land and
other natural resources. We also believe that environmental standards should be realistic and
practical.

883 We urge your support of the principles set forth in the above statement.

883 Sincerely,

883 John C. Datt, Director

883 Washington Office

UNIVERSITY OF MISSOURI-ROLLA
February 28, 1977
The Honorable Lee Metcalf

Chairman, Subcommittee on Minerals, Materials & Fuels
Senate Committee on Interior and Insular Affairs
The United State Senate
Washington, D.C. 20510
Dear Senator Metcalf:

884 As indicated, the enclosed statement is submitted on behalf of the members of the Committee on Mineral Resources of the National Association of State Universities and Land Grant Colleges, who respectfully urge that your Committee on Public Lands and Resources give favorable consideration to the adoption of provisions in S.7 for the establishment of State Mining and Mineral Resource and Research Institutes.

884 Members of the Committee on Mineral Resources are aware that such provisions are contained in S.302, the "Coal Research Laboratory, Mineral Institute, and Energy Research Fellowship Act," and the members of the Committee commend you and your colleagues for addressing these needs. However, on the judgment of the members of the Committee on Mineral Resources the enactment of the Surface Mining Control and Reclamation Act of 1977 will have an unfavorable impact upon costs and production of our mineral resources, unless a broad research and development effort can be initiated concurrently with the development of regulations for the control of surface mining and reclamation. It would, therefore, seem most desirable and appropriate that Title III be deleted from S.302 and added to S.7.

884 Sincerely yours,

884 T. J. Planje, Dean

884 School of Mines & Metallurgy

884 TJP:mg

884 Enclosure

885 Statement to The Subcommittee on Public Lands and Resources of the Committee on Interior and Insular Affairs from the Committee on Mineral Resources of the National Association of State Universities and Land Grant Colleges

885 Mr. Chairman and members of the Committee on Mineral Resources representing those institutions within the some 100 members of the National Association of State Universities and Land Grant Colleges which offer mining and mineral engineering and science programs. The

members of the Committee on Mineral Resources would like to urge that the provisions for State Mining and Mineral Resources and Research Institutes, as contained in Title III of H.R.2, be incorporated in S.7.

885 Testimony offered in hearings to date relative to the Surface Mining Control and Reclamation Act of 1977 by representatives of the mining industry, public utilities, and interested and concerned citizens have established that a wide range of problems prevail in the country, as a result of surface mining practices. The nature and scope of these problems vary from region to region, depending upon the specific mineral being mined, the topography of the area, the geologic nature and thickness of the ores burden, thickness of the deposit, and problems encountered in the removal, intermediate placement and replacement of overburden during the course of the mining process. It is evident in much of this testimony that new technologies are needed to contact surface mining and reclamation in an efficient and economical manner, as well as one which will have a minimum impact upon the environment.

885 The regional variations of the problems and technological solutions have long suggested to many the need for regional or state mining research institutes, funded and administered in a manner parallel to the agricultural experiment stations and cooperative extension programs administerd by the Department of Agricultural for over one hundred years, the research and development activities of which are largely responsible for this nation's continuing good fortune in fulfilling its food and fiber needs, as well as that of millions abroad, even during periods of unfavorable climatic conditions. These university based programs have provided the agriculture industry, government, and the universities a continuing supply of the educated and skilled personnel required to man all phases of research, development, production, processing, and management of our food and fiber supply.

886 In contrast the mining and mineral engineering education, research and development programs in the universities of this country are not only few in number but are poorly housed, staffed, and equipped. The plight of the all too few such remaining programs was well documented in the study made some eight years ago by the National Academies of Science and Engineering, as set forth in the report, Mineral Science and Technology: Needs, Challenges, and

Opportunities, dated 1969. One following statement from this report accurately assessed the situation at that time:

886 "The state of mineral technology in the United States is wretched. In universities, where the formal training of mineral scientists and engineering occurs and where a sound base of active research should be underway, the picture is indeed dismal. As an example, only 17 departments of mining engineering remain out of 26 accredited departments existing in 1962."

886 For the twenty year period prior to this report and the eight years since universities have received support from the NSF, NASA, AEC, DOD, NIH, and other agencies to promote the education of scientists and engineers and pursue research and development in fields that served to accelerate the consumption of our energy and mineral resources. In the same time period there was no support for the disciplines concerned with assessment and development of these resources, including mining, petroleum, and natural gas engineering, mineral beneficiation, extractive metallurgy, ceramics, fuel science and mineral economics. The lack of support for these disciplines accounts not only for the dismal lack of a sound base for research and development in these fields but the abandonment of educational programs in them by many universities in this country, as the above cited NAS and NAE report noted.

886 The results, as measured in terms of the number of degrees awarded in the energy and mineral engineering fields over the past some twenty years, are depicted in Attachment I. The importance of these trends in productivity of graduates in these disciplines has been demonstrated in several instances in the recent past as a consequence of announced national goal for doubling our annual coal production by 1985. This has been documented in several reports of which an article in the April 19, 1975 issue of Science is but an example and in which it is stated:

887 "In some areas, the shortages of manpower are painfully obvious. Last year only about 200 mining engineers were graduated in the entire country, and one coal company tried to hire 60 of them."

887 The coal company in this instance is one that produces about 11% of the nation's annual tonnage. If the other coal producers had a proportionate need to increase their mining

engineering staffs, the total national need would have been approximately 550, which from interview schedules and job offers on all campuses offering mining engineering degrees was a reasonable estimate that year. This level of demand appears to be continuing, and from Attachment I it is evident that the supply of mining engineers is still falling far short of this demand.

887 Coal production for 1975 totaled 654,648 tons and increased to 671,200 in 1976, or only a 2.5% increase during a year of mounting energy problems and less than half the annual growth rate required for double production by 1985. The enactment of S.7 will impose upon the mining industry, employing surface mining methods, a significant increase in the overall engineering activity required to recover a unit quantity of mineral resource. This increased level of engineering activity will require the industry to expand significantly its engineering manpower. Furthermore, it has been the experience of the industry operating surface mines in states which have adopted similar reclamation requirements in the past few years that the reclamation costs are averaging some $4 ,000 per acre, adding significantly to the market price of the recovered mineral product. If the impact of reclamation costs upon our economy is to be lessened, a new reclamation technology must be developed, and this engineering activity will further heighten the demand for engineering manpower by the mining industry, as well as the mining equipment industry. If this industry is required to divert engineering effort from its mining operations to reclamation programs, a loss in coal production would have to be anticipated at a time of mounting energy problems in the country.

887 Because of the coal industry's demand for mining engineers over the last three years and the industry's recruiting practices, the metallic and non-metallic mining industries have been unable to compete for mining engineering graduates. The impact of this legislation upon the production of these mineral commodities, as mined by stripping methods, will be even greater.

887 An often overlooked dimension of our mining and mineral engineering manpower problem is that the majority, almost seventy percent, of the practicing engineers in these professions received their education in the period prior to 1950 and will be leaving the work force in the next fifteen years. To provide experienced personnel for the industry the

replacements for these members of the professions should be in the educational "pipeline" at this time. This need was not recognized in a recent study by the National Planning Association in which it was estimated that by 1980 1400 mining engineering graduates would be needed per year and by 1985 this need would be upward to 2200 per year.

888 As mentioned above the universities in this country offering mining and mineral engineering education are struggling to accomodate present enrollments. Faculties are small and all are competing intensely for an inadequate supply of qualified individuals. Last year there were thirty-eight known faculty openings in mining engineering and only eight doctoral candidates were awarded degrees during that year. The supply is not expected to increase in a job market where bachelor's degree candidates receive salary offers equal to or higher than prevailing salaries for assistant professors. As mentioned before, mining and mineral engineering education has been neglected for the past two decades, and the existing schools and departments find themselves with inadequate and outdated physical facilities and equipment at a time when all institutions of higher education are being forced to reduce expenditures because of steady-state total enrollments and mounting costs. Inasmuch as all the existing schools and departments of mining and mineral engineering education are operating at or very near the limits of their enrollment capacities in terms of faculties and facilities for education and research, the projected requirements for graduates cannot be met without significant financial assistance from sources other than their parent institutions.

888 Members of the Committee on Mineral Resources have long supported legislation for the establishment of state Mining and Mineral Resources and Research Institutes, starting with S.635 as introduced in the 92nd Congress and during the past three Congressional Sessions during which the provisions for these Institutes were embodied in the past surface mining reclamation bills. Because of the critical need for research and development and technical manpower arising out of the surface mining control and reclamations provisions of S.7, we feel it is imperative and most appropriate that this legislation also authorize the establishment of the State Mining and Mineral Resources Institutes. Representatives of or the full Committee on Mineral Resources of the National Association of State Universities and Land Grant Colleges would welcome the

opportunity to meet with the Committee on Public Lands and Resources to provide such
additional information as the Committee might desire relative to the needs for the establishment
of a national base for mining and mineral research and development and manpower training.

889 For the Committee

889 T. J. Planje

889 Chairman

890 BACCALAUREATE DEGREES AWARDED IN MINERAL SCIENCE & ENGINEERING, 1956-76

890 Prepared by the Mineral Resources Committee of the National Association of State
Universities and Land Grant Colleges

890 (Data for the years 1957 through 1966 are from the 1969 NAS-NAE Report, "Mineral
Science & Technology")

Year	Total	(1) Min Engr	(2) Petr Engr	(3) Geol Engr	(4) Cer Engr	(5) Met Engr	(6) Mat Engr & Sci
1956-57	1813	213	650	227	128	577	
1957-58	1982	240	688	225	159	670	
1958-59	211 4	239	731	243	177	724	
1959-60	1902	242	597	212	169	682	
1960-61	1724	220	455	162	167	720	
1961-62	1480	193	323	136	149	679	
1962-63	1391	180	228	88	174	721	
1963-64	1267	144	158	74	205	686	
1964-65	1436	146	174	70	195 *	851 *	*
1965-66	1351	138	133	117	182 *	781 *	*
1966-67	1148	112	147	51	182	442	214
1967-68	1202	95	182	35	228	451	211
1968-69	1401	137	234	50	252	488	250
1969-70	1499	124	271	65	244	512	296
1970-71	1435	136	297	73	237	450	255
1971-72	1334	139	310	48	258	340	251
1972-73	1349	159	301	68	274	321	237
1973-74	1283	210	314	56	226	238	257
1974-75	1351	304 **	426	78	189	174 ***	180
1975-76	1363	299 **	429	73	172	209 ***	181
1976-77	1573	432	472	85	189	235 ***	160
1977-78	1743	480	619	74	201	245	124

890 * Included in data reported for Ceramic and Metallurgical Engineering for these two years.

890 ** From reports of the Bureau of Mines.

890 *** Excludes Physical Metallurgy.

891

14
GRADUATE DEGREES AWARDED IN MINERAL SCIENCE & ENGINEERING, 1967-76

Year	Total	(1) Min Engr MS	(1) Min Engr PhD	(2) Petr Engr MS	(2) Petr Engr PhD	(3) Geol Engr MS	(3) Geol Engr PhD	(4) Cer Engr MS	(4) Cer Engr PhD	(5) Met Engr MS	(5) Met Engr PhD	(6) Mat'l Engr MS	(6) Mat'l Engr PhD
1966-67	754	21	4	51	8	10	0	82	65	239	89	94	91
1967-68	812	29	6	60	17	9	2	94	65	256	99	89	86
1968-69	874	24	7	87	20	10	2	80	74	253	119	110	88
1969-70	820	35	7	65	15	10	3	91	81	224	113	132	95
1970-71	955	19	10	70	21	10	2	84	74	255	131	172	109
19 71-72	953	20	15	71	17	15	9	108	55	242	124	165	117
1972-73	983	25	17	92	16	16	8	76	52	234	118	184	147
1973-74	895	32	7	66	18	9	6	80	50	214	107	187	123
1974-75	*	49	7	79	15	12	7	74	43	207	91	*	*
1975-76	*	79	8	*	*	*	*	*	*	67	44	*	*

[See Table in Original]

891 * Data not available. le.

Chamberlaine & Flowers INC.
128 South Second Street
Clarksburg, West Virginia 26301
304/623-3721
March 3, 1977

Charles E. Compton, President
Grafton Coal Company, Inc.
P.O. Box 1836
Clarkburg, WV 26301
Re: Reclamation Bond Requirements Federal Surface Mining Act
Dear Jim:

892 There are several sections of the above-mentioned proposed act dealing with Reclamation Bond Requirements that are very disturbing and if retained in the final passage of the act could very well eliminate a large segment of operators from qualifying for bond through corporate sureties.

892 Section 509(a) requires at least two estimates on reclamation bonds which could lead to absurd, punitive and arbutrary bond requirements totally out-of-line with the actual, realistic and knowledgeable bond requirements established under present W.Va. statute. There is great evidence that not only is the current statute fundamentally sound in that the current bond penalties more than adequately cover reclamation costs. The West Virginia Statute also embraces a volunteer tax on the operator that has funded the reclamation of over 26,000 previously disturbed acres.

892 The number of surety companies who are a market for reclamation bonds are limited. The adequacy of the current West Virginia bond requirements have lent stability to gauging the operators bonding needs. The retention of Section 509(a) would eliminate stability by taking known factors and replacing the known factors with at least two independent estimates. If you had a tract of 100 acres which was going to be totally disturbed, current statute requires a $100,000 bond at a cost of $1 250 per annum. An estimate from an earth moving contractor could conceivably estimate a limit of $4 ,500,000 based purely on earth moving contracting costs. If the operator was financially able to carry a $4 ,500,000 bond and a surety company willing to underwrite the bond the cost per annum would now be $56 6,250. based upon current per acre bond penalty and per thousand bond cost factors.

892 The bond premium alone in the $4 ,500,000 estimate represents 56% of the total penalty under present W.Va. statute.

893 The section of the proposed act dealing with the release of performance bonds poses another problem from a corporate surety standpoint. The current West Virginia statute dealing

with the release of performance bonds permits a continuous bonding capacity wherein continuous
backfilling, regrading and drainage control, properly approved attains substantial release of
reclamation bond, thus replenishing the operators bonding capacity, thus permitting him to obtain
new bonds on new acreage. The proposed legislation not only encumbers the corporate surety
from properly gauging the operators needs by doing away with adequate known bond penalty
requirements, it further encumbers the corporate surety by making release of bonds so long term,
tedious and cumbersome that it would underwrite only one bond and for up to five years write
but one bond, not wanting to accumulate additional bond liability until the original bond is fully
released. Timely release of backfilling, regrading and drainage control are not visualized under
the proposed legislation as is realized under current West Virginia statute.

893 In summary, from a corporate surety standpoint, if the two sections referred to in the
foregoing are kept in the legislation as written, it is our opinion that surface mining operators
current utilizing corporate sureties for achieving their bond requirements would find virtually no
market for their bonds. Since a large percentage of surface mining operators do utilize corporate
sureties rather than cash deposits, etc. to satisfy reclamation bond requirements, it follows that
this large percentage of operators would find their operations severally curtailed or non existent,
not having sufficient cash to deposit to make bond.

893 Corporate sureties prefer to see a surface mining operators cash within the operators
working capital rather than lying fallow, so to speak, in the vaults of a regulatory agency. The
provisions of the proposed act are punitive to the operator by structuring the legislation,
particularly the two sections referred to, in such a manner that most operators will be denied
access to corporate sureties, since no corporate surety will underwrite bonds wherein there are
too many uncertainties and arbitrary conditions. Without corporate surety the large percentage of
good, sound, law-abiding operators are restricted to a very, very limited existence or would be
non-existent.

893 Respectfully, Earl N. Flowers

893 ENF/ff

894 Proposed Watershed Improvement Variance

894 Sec. 415(c)

894 When the applicant meets the requirements of paragraphs (3) & (4) of this subsection, a variance from the requirement to restore to approximate original contour set forth in subsection 415(b)(3) or 415(d) of this section may be granted for the surface mining of coal where the mining and reclamation method will improve the watershed control of the area affected and will make the affected mining area capable of supporting postmining uses in accord with the requirements of this subsection; provided the vertical high wall is eliminated.

894 (3) In cases where an industrial, commercial (including commercial agriculture), residential or public facility (including recreational facilities) development is proposed for the postmining use of the affected land, the regulatory authority may grant a variance for a surface mining operation of the nature described in subsection (c)(2) where -

894 (A) after consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining uses;

894 (b) the equal or better economic or public use can be obtained only if one or more exceptions to the requirements of section 415(b)(3) are granted;

895 (C) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be -

895 (i) compatible with adjacent land uses;

895 (ii) obtainable according to data regarding expected need and market;

895 (iii) assured of investment in necessary public facilities;

895 (iv) supported by commitments from public agencies where appropriate;

895 (v) practicable with respect to private financial capability for completion of the proposed development;

895 (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

895 (vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

895 (D) the proposed use would be consistent with adjacent land uses, and existing State and
local land use plans and programs;

895 (E) the regulatory authority provides the governing body of the unit of general-purpose
government in which the land is located and any State or Federal agency which the regulatory
agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not
more than sixty days to review and comment on the proposed use;

896 (F) in the newspaper advertisements of the proposed application, it must be noted in bold
print that a variance from "approximate original contour" was being requested.

896 (G) a public hearing is held in the locality of the proposed surface coal mining operation
prior to the grant of any permit including a variance; and

896 (H) all other requirements of this Act will be met.

896 4 (A) the reclaimed area is stable

896 (B) no damage will be done to natural watercourses;

896 (C) all other requirements of this act are met

897 [See Illustration in Original]

El Paso company
G. SCOTT CUMING SENIOR VICE PRESIDENT AND GENERAL COUNSEL
March 2, 1977
Honorable Lee Metcalf
Chairman, Subcommittee on Minerals, Materials and Fuels
Committee on Energy and Natural Resources
Room 3106, Dirksen Senate Office Building
Washington, D.C. 20510
Mr. Chairman:
RE: S. 7 - Surface Mining Control and Reclamation Act of 1977

898 In connection with the United States Senate Subcommittee on Minerals, Materials and
Fuels consideration of S. 7, "Surface Mining Control and Reclamation Act of 1977," I have
enclosed the Comments of The El Paso Company ("El Paso") concerning this proposed
legislation. El Paso respectfully requests that these comments be made a part of the record of the
Subcommittee's hearing on S. 7.

898 Although many of the provisions contained in S. 7 have already been implemented by the

Department of the Interior, El Paso recognizes that there still may be a need for a federal surface mining reclamation statute in order to provide maximum protection to the environment. However, careful analysis of the provisions contained in S.7 reveal that some of the provisions are quite burdensome and in some instances unduly burdensome. The enclosed comments address these burdensome provisions and also provide suggested revisions to other provisions.

898 Of utmost concern to El Paso is @ 423(e), the so-called "Mansfield Amendment," which would require the Secretary of the Interior to withdraw from leasing federal coal deposits if the surface is privately owned. Because of the numerous provisions of S. 7 which will assure reclamation of the surface of the land and the protection of the environment, and because of the vast quantity of much needed energy that this provision would preclude from development, El Paso believes this provision should be deleted in its entirety.

898 The enclosed comments also address other provisions of concern to El Paso: limiting the term of a mining permit to five years; lands which may be designated unsuitable for mining and what constitute legal and financial commitments; potential delays in issuing coal leases desired by Indian tribes on Indian lands; delegation of authority between the federal and state governments concerning federal coal; the possibility of needing a state permit after a federal permit has already been issued pursuant to the Act; commencing mining operations within three years of the permit issuance; requiring the elimination of all highwalls, spoil piles, and depressions; potential due process infirmities in connection with the proposed mining permit application and public hearing procedures; the potential for protracted judicial review; and deterring frivolous suits brought to delay coal surface mining projects.

899 Finally, the enclosed comments include a section concerning minor revisions suggested to provide clarification of certain provisions and/or to correct certain minor inconsistencies.

899 Should the Subcommittee or its Staff desire further information or have any questions it is thought we might be helpful in resolving, please let us know.

899 Respectfully submitted,

899 GSC: sb

899 Enclosure

900 COMMENTS OF THE EL PASO COMPANY SUBMITTED TO SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

900 TUESDAY, MARCH 1, 1977

900 Mr. Chairman and Members of the Subcommittee:

900 The El Paso Company ("El Paso") welcomes this opportunity to comment upon S. 7, entitled "The Surface Mining Control and Reclamation Act of 1977." El Paso, through its corporate affiliates, holds or is in the process of securing federal coal leases that will involve surface mining on federal lands, private lands and Indian lands, as well as underground mining on federal and state lands. El Paso recognizes the need for Congress to make a final determination in relation to coal surface mining operations so that El Paso and the numerous other companies can proceed with proposed coal mining operations in order to supply the Country with this much needed, abundant fuel. El Paso also recognizes that many of the requirements contained in S. 7 may be justified in order to give maximum attention to the environment. However, after carefully reviewing and analyzing the provisions contained in S. 7, certain of the provisions appear to be quite burdensome and in some instances unduly burdensome. The remainder of this submittal addresses these burdensome provisions, suggests some clarifying language in certain areas, and notes some apparent inconsistencies.

900 Surface Owner Protection

900 The provision which concerns El Paso the most is Section 423(e) (pp. 117-118). As proposed, this subsection would require the Secretary of the Interior ("Secretary") to withdraw federal coal deposits from all forms of surface mining operations and open pit mining if the United States does not own the surface over these coal deposits. Because of the numerous provisions of S. 7 which will assure the reclamation of the surface of the land and the protection of the environment, and because of the vast quantity of much needed energy that subsection (e) of Section 423 will preclude from development, El Paso strongly urges the Subcommittee to delete subsection (e) in its entirety.

901 As an example of the adverse energy impact that subsection (e) would have, if enacted as

proposed, this subsection would effectively prohibit the development of El Paso's proposed coal mining operation in the State of Wyoming which has been the subject of a still unissued preference right coal lease application filed in 1970 since 94.7% of the surface over the strippable federal coal reserves is privately owned. This surface mining prohibition would remove approximately 190 million tons of coal from development even though the majority surface owner, and several other surface owners, have previously consented to surface mining. The seriousness of the potential problem is exacerbated by the fact that a coal-fired electric generating plant currently being constructed in Wyoming will be dependent on El Paso's proposed mining operation for a substantial portion of its coal supply commencing in 1982.

901 In order to secure a preference right coal lease, a prospective lessee must demonstrate that commercial quantities of coal exist in an area previously unclassified as such by the United States Geological Survey. The prospective lessee, at his expense, adds coal to the national inventory. Subsection (e) is therefore particularly unfair as it affects preference right leases. Accordingly, should this Subcommittee feel it necessary to include some form of surface owner protection, other than the numerous environmental protection provisions, El Paso respectfully suggests that the Subcommittee expressly exclude from the surface owner consent requirements those federal coal deposits under privately owned surfaces which are subject to preference right coal leases or applications.

902 Permits and Revisions of Permits

902 As proposed, coal mining permits for surface mining operations would have to be obtained from the appropriate regulatory authority, and Section 406(b) would limit these permits to a term not to exceed five years. Although the permit would carry the right of successive renewal, the renewal would not be automatic and the renewal period could not exceed the initial permit period. El Paso believes that this five-year limitation could impair a coal developer's ability to secure necessary financing, since lenders would be reluctant to invest large sums if the life of the project were uncertain. Since S. 7 contains numerous provisions requiring ongoing inspections and monitoring to assure the continued enforcement of all environmental protection provisions, and since S. 7 requires the cessation of certain surface mining operations should the

need arise, El Paso urges that the bill be altered to provide for a mining permit to be issued for the life of the operation. Specifically, El Paso suggests that the following revisions be made:

903 1. Section 406(b). At p. 43, line 1, strike all after "be" in line 1 and through "transferable" in line 2, and in lieu thereof insert:

903 "valid for the life of the mining operation, or as to any leased coal deposits, for the life of the lease, whichever is shorter, unless the permit is earlier terminated in accordance with this Act."

903 2. Section 406(d) (pertaining to permit renewals). At pp. 43-45, strike (subsection) in its entirety, starting on line 18 p. 43 and ending on line 7 p. 45.

903 In order to make the remainder of the S. 7 provisions consistent with this proposal, the following revisions also should be made:

903 1. Section 407(a) (application requirements). At p. 45, lines 17 and 18, after "paid over the" insert "estimated to be allocable to each five year segment of the life of the permit to be paid over such segment."

903 2. Section 410(b) (permit approval). At p. 58, line 5, after "permit" strike", revision, or renewal" and in lieu thereof insert "or revision".

903 3. Section 411(c) (permit revision). At p. 61, line 16, following "authority" insert "shall at reasonable intervals review outstanding permits and".

904 Designating Lands Unsuitable for Mining

904 Section 422 would require Interior and the states desiring to assume regulatory authority to provide a planning process for designating lands as unsuitable for mining. Subsections (a)(3)(B) and (a)(3)(C) would require that if the mining operations could affect lands that were fragile or affect renewable resource lands in a fashion which could result in substantial loss or reduction in long-range productivity of water supply or of food or fiber products, these areas would have to be designated unsuitable. These provisions are overly broad, as they could be construed to include all lands in the Western United States. Since the purpose of a reclamation plan is to ensure that the land is returned to its pre-mining use, El Paso suggests that the following revisions be made:

904 1. Section 422(a)(3)(B). At p. 111, line 9, after "systems" insert "which cannot be remedied by reclamation under a plan conforming to the requirements of this Act".

904 2. Section 422(a)(3)(C). At p. 111, line 10, after "lands" insert", such lands to include aquifers and aquifer recharge areas,"; after "products," in line 13, strike the remainder of line 7 and all of line 14, and in lieu thereof insert "which cannot be remedied by reclamation under a plan conforming to the requirements of this Act; or".

904 As proposed in Section 422(a)(6) (p. 112), Section 422 would not apply to lands on which surface mining activities are being conducted on the date of enactment, lands issued a permit pursuant to the Act, or where substantial legal and financial commitments in such operations were in existence prior to January 1, 1977. To make this subsection consistent with El Paso's proposed changes, it is suggested that the "January 1, 1977" date be changed to read "the date of enactment of this Act". In addition, the phrase "substantial legal and financial commitments" should be defined in either Section 422(a)(6) or Section 501 (which contains the definitions of terms and phrases used in S. 7).

905 Indian Lands

905 Although the proposed Act would not apply specifically to Indian lands, Section 508 directs the Secretary to study the question of regulating surface mining on Indian lands in order to achieve the purposes of the Act while recognizing the special jurisdictional status of these lands and requires some mandatory actions. Within 135 days of enactment, all surface coal mining operations on Indian lands would have to comply with the seven specified environmental protection standards and the Secretary would have to incorporate these seven standards into any existing and new leases. Likewise, within 30 months of enactment, the Secretary would be required to incorporate into existing and new leases requirements as stringent as those in the proposed legislation pertaining to applications, reclamation plans, performance standards, bonds, and inspections and monitoring. Any changes in the terms and conditions of existing leases mandated by Section 508 would require the approval of the Secretary. Such approval conceivably could constitute major federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. If the lease has already been subject to examination

in an environmental impact statement ("EIS"), if a proposed mining and reclamation plan for
surface mining the coal thereon has also been the subject of an EIS, El Paso believes that the
preparation of an additional EIS to cover these changes, already basically required by existing
Interior regulations, would be meaningless and would only serve to further impede developing
coal resources. Therefore, El Paso suggests the following addition:

906 1. Section 508(f). At p. 141, at the end of line 4, change the period to a colon and add
the following:

906 "Provided, That if the coal lease requiring changes has already been the subject of an
environmental impact statement, if the mining and reclamation plan for the proposed coal surface
mining operation thereon also has been the subject of an environmental impact statement, the
Secretarial approval of these changes shall not constitute major federal action within the meaning
of Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

907 In addition, although Section 508 implies that the Secretary could continue to approve
coal leases on Indian lands while the required study is being prepared, without further
clarification, it is possible that the section could be construed to require that issuing coal leases
on Indian lands be delayed until the study is completed, the necessary legislation implementing
the recommendations of the study is enacted, and the program for Indian lands is implemented.
In order to avert any potential confusion on this point and to facilitate initiating coal mining
operations on Indian lands when desired by the Indian Tribe, El Paso suggests the following
insertion:

907 Section 508(b). At p. 140, at the end of line 5, insert the following:

907 "The preparation of this study shall in no event preclude the Secretary from approving any
coal leases on Indian lands prior to the completion of the study."

907 Federal Lands

907 Besides containing the previously discussed private surface owner provision, Section 423
allows Interior and states to enter into agreements defining areas of responsibility for
implementing and enforcing the provisions contained in S. 7. In order to ensure Interior meets its

obligations under the Mineral Leasing Act of 1920 and to reflect Interior's Cooperative
Agreements recently proposed and entered into with various states, El Paso offers several
clarifying reisions:

908 1. Section 423(a). At p. 116, line 17, change the period to a colon and add:

908 "Provided, That the Secretary shall retain his duties under sections 2(a)(2)(B) and 2(a)(3)
of the Mineral Leasing Act of 1920, as amended, and shall continue to be responsible for
designation of Federal lands as unsuitable for mining in accordance with Section 422(b) of this
Act."

908 2. Section 423(c). At p. 117, starting at line 5 and ending at line 17, strike subsection (c)
as written and in lieu thereof insert a new subsection (c) as follows:

908 "(c) The Secretary may enter into an agreement with any State with an approved State
program under which, subject to the terms and conditions of such agreement, the State may
regulate, subject to all the provisions of this Act, surface coal mining and reclamation opeations
on Federal lands within all or any part of the State. Notwithstanding any such agreement, the
Secretary shall retain his duties under sections 2(a), 2(B) and 2(a)(3) of the Mineral Leasing Act
of 1920, as amended, and continue to be responsible for designation of Federal lands as
unsuitable for mining in accordance with Section 422(b) of this Act."

909 Federal Programs

909 Section 404(f) would allow the state regulatory authority to review a permit issued
pursuant to a federal program should the state subsequently obtain approval of a state program.
If the state regulatory authority determines that the permit does not meet the requirements of the
state program, the permittee would have to submit a new permit application and would be given
a reasonable time to conform his operations to the state program requirements. Since presumably
the permit issued under the federal program would meet the requirements of the Act, the
permittee should not face the possibility of having to obtain another permit because the state did
not submit an appropriate state program within the statutory period. Therefore, El Paso suggests
the following revision:

909 Section 422(f). At p. 40, line 9, after "valid" strike the remainder of the section and in lieu

thereof substitute:

909 "under any superseding State program; Provided, That the Federal permittee shall have the right to apply for a State permit to supersede his Federal permit. Should the State program contain additional requirements not contained in the Federal program, the permittee will be provided a reasonable time to conform ongoing surface mining and reclamation operations to the additional state requirements."

910 In order to make the enforcement provisions relating to the Secretary enforcing permit conditions, should the state fail to do so under a state program, consistent with the preceding recommendation, El Paso proposes that the following changes be made to Section 421(b):

910 1. Section 421(b). At p. 108, strike all beginning with line 11 through "finding" in line 16, and in lieu thereof insert:

910 "(b) Whenever on the basis of information available to him, the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively, he shall after public notice and notice to the State, hold a hearing thereon in the State. If as a result of said hearing the Secretary finds that there are violations and such violations result from a failure of the State to enforce all or any part of the State program effectively, and if he further finds that the State has not adequately demonstrated its capability and intent to enforce such State program, he shall give public notice of such finding."

911 2. Section 421(b).At p. 108, line 19, after "enforce" insert "in the manner provided by this Act,".

911 3. Section 421(b). At p. 108, at the end of line 22, change the period to a colon and add:

911 "Provided, That in the case of a State permittee who has met his obligations under such permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Secretary shall give the permittee a reasonable time to conform on-going surface mining and reclamation operations to the requirements of this Act before suspending or revoking the State permit."

911 Commencing Mining Operations

911 As proposed, Section 406(c) would require coal surface mining and reclamation operations to commence within three years of the permit issuance. Combined with the Coal Leasing Amendments Act of 1975 requiring that a mining and reclamation plan be submitted for approval within three years of lease issuance, a total of six years is all that is available to bring a mine into production. El Paso believes that this sixyear period is too restrictive since in many instances it takes approximately ten years to commence a large-scale coal surface mining operation. Consequently, El Paso urges that the following changes be made to this section:

912 1. Section 406(c). At p. 43, line 12, strike "three" and in lieu thereof substitute "seven".

912 2. Section 406(c). At p. 43, line 13, after "Provided" insert:

912 ", That the regulatory authority may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or by reason of a potentially substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee; Provided further, That in the case of a coal lease issued under the Federal Mineral Leasing Act, as amended, extensions of time may not extend beyond the period allowed for diligent development in accordance with Section 7 of that Act; Provided further,".

913 Environmental Protection Performance Standards

913 Section 415(b)(3) requires that all highwalls, spoil piles and depressions be eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise provided in the Act. Although some allowances are made for leaving some depressions in specified instances and although normal reclamation activities include these items to a great degree, El Paso believes that the regulatory authority approving the reclamation plan should be provided some discretionary power in enforcing this particular standard, especially with respect to areas used for haul roads and the final cut.

913 Mining Permit Application Public Hearing

913 Section 413 requires a public hearing on an applicant's mining permit application should a person with a valid interest file objections and request such a hearing. As proposed, Section

413(b) requires the regulatory authority to respond to the written objections at least ten days prior to the hearing. Although this response would have to include the regulatory authority's preliminary permit terms and conditions and would, therefore, appear to have a direct bearing on the applicant, the proposed provision does not provide for the applicant to receive a copy of the written objections, for the regulatory authority to consult with the applicant concerning the written objections, for the applicant to submit proposed responses to the written objections, or for the applicant to receive a copy of the regulatory authority's written response to the objections. Without such requirements, this procedure would institute an ex parte system excluding the permit applicant, which could deny the permit applicant due process of law. In order to remedy this situation, El Paso suggests that Section 413(b) be revised as follows:

914 Section 413(b). At pp. 63-65, commencing on line 20 p. 63 and ending on line 4 p. 65, strike entire subsection (b) and in lieu thereof insert a new subsection (b) as follows:

914 "(b) Any person with a valid legal interest and the head or other responsible officer of any Federal, State and local governmental agency or authority, shall have the right to file with the regulatory authority written objections to, and to request a hearing on, an application for a surface coal mining and reclamation permit. The objections and any objectors' request for a hearing shall be filed within thirty days after the last publication date of the notice.If a hearing is requested by any of the above parties, the regulatory authority shall schedule a public hearing to commence within a reasonable time (not less than sixty days from the final publication of the notice of hearing) in the locality of the proposed mining operation. Notice of the date, time and place of such hearing shall be advertised in advance of the hearing by the regulatory authority in a newspaper of general circulation in the locality at least once a week for three consecutive weeks. Such notice shall also be given by the regulatory authority to each party who filed written objections. The regulatory authority shall provide the applicant with copies of all objections and the applicant shall have thirty days thereafter to file written responses with the regulatory authority if he so desires. The objections and responses of the applicant shall (except for any information of the nature referred to in the proviso to section 408(a)(12) if the applicant so requests, and of the nature referred to in section 408[b]) shall be open to the public.After

consulting with the applicant and not less than ten days prior to any proposed hearing, the regulatory authority shall respond in writing to the written objections. A copy of this response shall be sent to the applicant. Such response shall include the regulatory authority's preliminary proposals as to the terms and conditions, preliminary estimate of the amount of the bond to be required for the area in question, and answers to material factual questions presented in the written objections. The regulatory authority's responsibility under this subsection shall in any event be to make publicly available after consultation with the applicant its estimate as to any conditions of mining or reclamation which may be required or contained in the preliminary proposal. If all parties requesting a hearing withdraw their requests, the hearing need not be held."

916 Besides this proposed revision, in order to reduce the number of potential public hearings, especially if a public hearing has already been held in connection with the area for which a mining permit is sought, El Paso suggests the following addition:

916 Section 413(d). At p. 65, following line 13, insert a new subsection (d) as follows:

916 "(d) Where the lands included in an application for a permit are the subject of a Federal coal lease in connection with which hearings were held and determinations were made under Sections 2(a)(3)(A), (B) and (C) of the Mineral Lands Leasing Act, as amended, (30 U.S.C.@ 201(a)[3][A], [B] and [C], such hearings shall be deemed as to the matters covered to satisfy the requirements of this section and such determinations shall be deemed to be a part of the record and conclusive for purposes of Section 410 and of this section."

917 In addition, El Paso suggests that the following minor revisions be made:

917 1. Section 413(a). At p. 62, line 22, after "or" insert "substantial".

917 2. Section 413(a). At p. 63, line 6, strike "various".

917 3. Section 413(a). At p. 63, line 9, after "place", insert "of which it has knowledge,".

917 4. Section 413(a). At p. 63, line 14, strike "have obligation to" and in lieu thereof insert "may".

917 Judicial Review

917 Section 426 allows judicial review of state program approvals or disapprovals only in the "appropriate United States Court of Appeals", but does not provide any guidance concerning what constitutes "appropriate". Section 426(a)(2) allows all orders and decisions issued by the Secretary to be subject to judicial review in the United States district court for the locality in which the coal surface mining operation is located. In order to reduce the potential length of the judicial review process and to provide for review of these orders and decisions in a manner consistent with judicial review of other federal agency decisions, El Paso proposes that the judicial review of these orders and decisions also be in the United States Court of Appeals for the state in which the operation is located. In support of these proposals, El Paso offers the following revisions:

918 1. Section 426(a)(1). At p. 121, strike lines 22 through 25 and in lieu thereof insert: "subject to judicial review only by the United States Court of Appeals for the Circuit in which the state involved is located. All other orders or decisions issued by the Secretary shall be subject to judicial review only by the United States Court of Appeals for the Circuit in which the surface coal mine operation is located. Review shall be commenced upon the filing in such court within sixty days from the date of such action of a petition by any person who participated as provided by this Act in the administrative proceedings".

919 2.Section 426(a)(2). At p. 122, strike the first sentence of subsection (a)(2) beginning at line 9 and ending at line 14.

919 In order to make Section 414, entitled "Decisions of Regulatory Authority and Appeals", consistent with the foregoing suggested revisions, El Paso proposes the following change:

919 Section 414(c). At p. 66, beginning at line 19 and ending at line 25, strike entire subsection (c) as proposed and in lieu thereof substitute the following subsection (c):

919 "(c) Any applicant, or any other party to the administrative proceeding who filed written objections and participated in the hearing if one was held, and who is aggrieved by the decision or by the failure of the regulatory authority to act within the time limits specified in this section and in Section 413 of this Act, shall have the right of appeal in accordance with Section 426 of

this Act."

919 In addition, El Paso offers the following minor revisions to Section 426:

919 1. Section 426(a)(2). At p. 122, line 20, strike the period and add "except as provided therein."

920 2. Section 426(b). At p. 122, line 21, strike "or complaint".

920 3. Section 426(c). At p. 123, line 5, following "(c)" insert "or (d)".

920 4. Section 426(c). At p. 123, line 7, strike "or (a)(3)" and in lieu thereof insert", (a)(3), or (a)(4)".

920 5. Section 426(e). At p. 124, line 1, following "program" insert "or pursuant to Sections 414 or 422 of this Title".

920 6. Section 426(e). At p. 124, line 2, strike "the" and in lieu thereof insert "a".

920 7. Section 426(e). At p. 124, line 5, strike the period and add "except as provided therein."

920 Citizen Suits

920 As proposed, Section 420 would allow citizen suits, similar in concept to the citizen suit provision contained in the Clean Air Act. El Paso is concerned with the possibility of frivolous suits being filed merely to delay a proposed mining project. While Section 420 would contain some deterrents to a person filing a frivolous suit, El Paso feels these provisions could be strengthened and, therefore, offers the following proposed changes:

920 1. Section 420(c)(1). At p. 103, strike all after "action" in line 8 through "thereunder" in line 9 and in lieu thereof insert "pursuant to this section".

921 2. Section 420(d).At p. 103, line 17, after "litigation" insert", including reasonable attorney and expert witness fees,".

921 3. Section 420(d). At p. 103, line 18, after "appropriate." insert:

921 "Exemplary damages may also be awarded where the court determines that the notice under oath required by subsection (b) of this section was given in wanton disregard of the truth or falsity of the allegations contained therein."

921 4. Section 420(e). At p. 103, line 23, strike "this or".

921 5. Section 420(e). At pp. 103-104, strike all after "seek" in line 24 p. 103, through line 3 p. 104, and in lieu thereof insert:

921 "relief for the matters referred to in subsection (a) of this section: Provided, however, That in no event shall actions be brought unless the notice requirements of subsection (b) of this section have been complied with."

922 6. Section 420(f). At p. 104, lines 7 and 8, after "damages" strike "(including attorney fees)" and insert "(including reasonable attorney and expert witness fees)".

922 Miscellaneous Comments

922 El Paso offers the following minor revisions not previously noted to provide clarification to certain provisions and/or to correct certain minor inconsistencies.

922 1. Section 403(a) (state programs). At p. 34, line 5, change "is" to "are"; in line 6, after "conducted" insert "on lands within such state,"; and in line 8, after "operations" insert "on such lands".

922 2. Section 407(a) (application requirements). At p. 45, lines 13 and 14, strike everything after "fee" in line 13 through "upon" in line 14 and insert "may be less than but shall not exceed".

922 3.Section 408(a) (reclamation plan requirements). At p. 52, strike all of lines 15 and 16 and in lieu thereof insert "which it is anticipated will be mined."

922 4. Section 414(a) (decisions of regulatory authority and appeals). At p. 65, strike line 21 and in lieu thereof insert "therefor, within thirty days after the record on the application is closed."

923 5. Section 417(g) (inspections and monitoring). At p. 92, line 18, strike "the above sentence" and in lieu thereof insert "this subsection".

923 6. Section 418(c) (penalties). At p. 94, line 23, strike "complaint" and in lieu thereof insert "petition".

923 7. Section 418(d). At p. 95, line 8, strike "fiscal" and in lieu thereof insert "final".

923 8. Section 418(e). At p. 95, line 11, strike "426" and in lieu thereof insert "421."

923 9. Section 418(e). At p. 95, lines 13 and 14, strike all after "in" in line 13 through line 14,
and in lieu thereof insert:

923 "in the District Court of the United States for the locality in which the surface coal mining
operation is located."

923 10. Section 418(f). At p. 95, line 17, strike "425" and in lieu thereof insert "421."

923 11. Sections 418(f) and 418(g). At p. 95, line 24, and at p. 96, line 12, strike "504" and in
lieu thereof insert appropriate section.

923 12. Section 419(f) (release of bonds). At p. 100, line 11, after "the" insert "responsible."

923 13. Section 419(f). At p. 100, at the end of line 12 insert the following:

924 "which has jurisdiction by law or special expertise with respect to any environmental,
social, or economic impact involved in the operation, or are authorized to develop and enforce
environmental standards with respect to such operations."

924 14. Section 419(g). At p. 100, preceeding line 25, insert a new subsection (g) and
redesignate existing subsection (g) as subsection (h):

924 "(g) Without prejudice to the rights of the objectors and applicant or the responsibilities of
the regulatory authority pursuant to this paragraph, the regulatory authority may establish an
informal conference procedure to resolve such written objections in lieu of holding a formal
transcribed hearing."

924 15. Section 421(a)(1) (enforcement). At p. 104, at the end of line 18, insert "alleged".

924 16. Section 421(a)(4). At p. 107, strike all beginning with "Upon" in line 16 through line
19 and in lieu thereof insert:

925 "Further proceedings in connection with such order to show cause shall be as provided
in Section 525(d) of this Title."

925 17. Section 421(c). At p. 109, at the end of line 23, insert", or a higher Federal court,".

925 18. Section 425(a)(1) (review by Secretary). At p. 118, line 15, strike "and" and in lieu
thereof insert "or (a)."

925 19.Section 425(b). At p. 119, line 22, following "or" insert "(a)".

925 20. Section 425(b). At p. 120, line 2, strike "a United States District" and in lieu thereof insert "the".

925 21. Section 425(d). At p. 121, line 4, following "suspended" insert "in whole or in part".

925 22. Section 425(d). At p. 121, strike all of line 13 and in lieu thereof insert:

925 "tary revokes or suspends the permit the permittee shall, unless temporary relief is granted by the court pursuant to subsection (c) of Section 426 of this Title, immediately"

925 23. Section 425(d). At p. 121, strike all of line 15 and in lieu thereof insert "within the period specified by the Secretary, take the reclamation action directed by the".

926 This concludes the comments El Paso has in regard to the proposed Surface Mining Control and Reclamation Act of 1977. I wish to thank the Subcommittee for the opportunity to comment and hope these comments will provide further insights and useful thoughts in this very important area.

926 Respectfully submitted,

926 THE EL PASO COMPANY

Grafton Coal Company

927
The Honorable Lee Metcalf
March 9, 1977
Chairman
Subcommittee on Public Lands and Resources
Senate Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510
Dear Senator Metcalf:

927 S. A. Hall, Jr., farmer and supervisor of the West Fork Soil Conservation District, which has over 5,000 co-op land owners in Lewis County, West Virginia; Ralph McDonald, Vice President and Geologist, Mower Lumber Company, Elkins, West Virginia; and I had the opportunity to meet with Norman Williams of your staff concerning S. 7. At the end of the meeting, Mr. Williams requested that we submit to you a formal statement for the record, which

is enclosed.

927 We are concerned that in certain cases, if reclamation is performed so that "approximate original contour" is achieved, then valuable potential agricultural land will be lost. We feel that this loss is unnecessary and undesirable.

927 We propose that the state regulatory authority be allowed to grant a legitimate and desirable variance from "approximate original contour" if the reclamation plan improves the watershed of the proposed mined area. We have at the request of Mr. Williams enclosed proposed language for a variance for the bill.

927 We wish to thank you for allowing us to spend a fruitful morning last week with Norman Williams, who was most helpful with his suggestions and comments.

927 Sincerely yours,

928 STATEMENT OF C. E. COMPTON, PRESIDENT GRAFTON COAL COMPANY, BRIDGEPORT, WEST VIRGINIA FOR THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE RE: S. 7. A BILL WITH RESPECT TO THE REGULATION OF SURFACE MINING OPERATIONS

928 S. A. HALL, JR., FARMER AND SUPERVISOR OF WEST FORK SOIL CONSERVATION DISTRICT, LEWIS COUNTY, WEST VIRGINIA, WHICH HAS OVER 5,000 MEMBERS, CONCURS ON THE FOLLOWING STATEMENT. RALPH MCDONALD, VICE PRESIDENT AND GEOLOGIST, THE MOWER LUMBER COMPANY, ELKINS, WEST VIRGINIA, CONCURS ON THE FOLLOWING STATEMENT.

929 I AM C. E. "JIM" COMPTON OF BRIDGEPORT, WEST VIRGINIA, AND I AM GRATEFUL TO PRESENT THE VIEWS OF GRAFTON COAL COMPANY, OF WHICH I AM PRESIDENT, TO YOU. MY COMPANY IS RELATIVELY SMALL BY INDUSTRY STANDARDS, AND AS A SMALL PRODUCER, WE ARE OFTEN THE MOST SEVERELY AFFECTED BY ANY NEW REGULATION.

929 I HAVE BEEN IN THE SURFACE MINING OF COAL FOR OVER THIRTYFIVE YEARS AND HAVE ALWAYS EMPHASIZED ENVIRONMENTALLY SOUND SURFACE MINING METHODS. I AM ALSO A MEMBER OF THE RECLAMATION BOARD OF REVIEW FOR THE STATE OF WEST VIRGINIA.

929 I HAVE SUPPORTED FEDERAL LEGISLATION FOR THE REGULATION OF SURFACE MINING OF COAL FOR MANY YEARS.WITHOUT FEDERAL STANDARDS, UNCERTAINTY ON THE FUTURE OF THE SURFACE MINING OF COAL HAS BEEN CREATED, AND IT HAS BEEN VERY DIFFICULT FOR US IN THE INDUSTRY TO PROPERLY PLAN FOR THE FUTURE OF OUR BUSINESS.

929 IF COAL IS GOING TO PLAY A MORE IMPORTANT ROLE IN OUR NATIONAL ENERGY NEEDS, THEN IT IS NOW MORE NECESSARY THAN EVER FOR THE CONGRESS TO PASS A REASONABLE COAL SURFACE MINE BILL. THE LEGISLATION MUST PROTECT THE ENVIRONMENT, CONSISTENT WITH OUR NATION'S ENERGY NEEDS, BY SETTING REASONABLE STANDARDS FOR THE SURFACE MINING OF COAL. I SINCERELY HOPE THAT THE PRESIDENT WILL SPEEDILY SIGN SUCH A BILL.

929 I HAVE EXAMINED BOTH HR 2 AND S 7. IN SOME AREAS THERE SEEMS TO BE ROUGH SPOTS WHICH WOULD UNDULY PENALIZE THE SMALL OPERATOR.

929 IN THE INTEREST OF BREVITY, I WISH TO SAY THAT I SUPPORT THE VIEWS OF THE WEST VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION, AND THE GOVERNOR OF WEST VIRGINIA, JOHN D. ROCKEFELLER, IV, CONCERNING PERFORMANCE BOND STANDARDS, PERMITS AND PROCEDURES FOR PUBLIC HEARINGS. ENCLOSED IS A LETTER FROM OUR INSURANCE AGENT CONCERNING THE RECLAMATION BOND REQUIREMENTS. (SEE TAB A)

930 MY OTHER MAJOR CONCERN WITH THE PROPOSED BILLS CONCERNS THE AREA OF ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS. THE CONGRESS HAS WORKED DILIGENTLY FOR THE LAST SIX YEARS TO DEVELOP STANDARDS WHICH PROTECT ADEQUATELY THE ENVIRONMENT, WHILE RECOGNIZING THE DIFFERENT MINING TECHNOLOGIES NEEDED DUE TO THE DIFFERENCES IN TERRAIN BETWEEN EASTERN AND WESTERN COAL.

930 WE HAVE ALSO LISTENED TO TESTIMONY FROM FARMERS FROM THE MIDWEST WHO ARE VERY CONCERNED THAT THEIR FARMLANDS NOT BE DISTURBED SO THAT THE LAND IS IMPAIRED IN THE FUTURE FROM PRODUCING NEEDED FOODS. IN NORTH CENTRAL WEST VIRGINIA, OUR NEEDS ARE SLIGHTLY DIFFERENT. IF RECLAMATION MUST BE DONE SO THAT "APPROXIMATE ORIGINAL CONTOUR" IS ACHIEVED, THEN VALUABLE POTENTIAL AGRICULTURAL LAND WILL BE LOST.

930 THEREFORE, I PROPOSE THAT AN AMENDMENT BE ADOPTED WHICH RECOGNIZES THAT IN CERTAIN INSTANCES, RECLAMATION CAN IMPROVE THE LAND EVEN IF THE RECLAMATION DOES NOT RESTORE THE MINED LAND TO "APPROXIMATE ORIGINAL CONTOUR." IF THE RECLAMATION IMPROVES THE WATERSHED OF THE LAND, THEN THE REGULATORY AGENCY MAY ALLOW A VARIANCE FROM "APPROXIMATE ORIGINAL CONTOUR," PROVIDED THAT THE HIGHWALL BE ELIMINATED. THE ENCLOSED DIAGRAM (TAB B) INDICATES A PROPOSED ENVIRONMENTALLY SOUND METHOD, THE SO-CALLED GEORGIA V-DITCH, WHICH MAY FIND ACCEPTANCE IN SPECIFIC CASES.

930 AS WITH ANY VARIANCE, AN UNSCRUPULOUS COAL OPERATOR MAY USE THE VARIANCE AS A MECHANISM TO ESCAPE THE EXPENSE OF PROPERLY RECLAIMING THE LAND. THEREFORE, WE PROPOSE SAFEGUARDS TO PREVENT SUCH ABUSE. THESE SAFEGUARDS, AMONG OTHERS, SHOULD INCLUDE THAT APPROPRIATE STATE AND LOCAL AGENCIES COMMENT TO THE SURFACE MINING REGULATORY AUTHORITY ON THE DESIRABILITY AND FEASIBILITY OF THE PROPOSED VARIANCE. FURTHERMORE, IN THE NEWSPAPER ADVERTISEMENT OF THE PERMIT APPLICATION, IN BOLD PRINT, IT SHOULD BE NOTED THAT A VARIANCE FROM "APPROXIMATE ORIGINAL CONTOUR" WAS BEING REQUESTED. PROPOSED LANGUAGE FOR THE VARIANCE IS ENCLOSED IN TAB C.

931 IF A FAIR VARIANCE PROCEDURE IS ESTABLISHED AND IF THE OTHER ROUGH SPOTS WHICH WE MENTIONED ARE SMOOTHED OUT IN THE FINAL LEGISLATION, THEN THE U.S. CONGRESS WILL HAVE ACHIEVED A GOOD LAW WHICH BALANCES THE ENVIRONMENTAL SAFEGUARDS WITH OUR NATION'S GOAL TO INCREASE COAL PRODUCTION TO SATISFY OUR ENERGY NEEDS.

LEAGUE OF WOMEN VOTERS OF OHIO

932 65 SOUTH FOURTH STREET

932 COLUMBUS, OHIO 43215

932 614/469-1505

932 STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF OHIO TO SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS U.S. SENATE ENERGY & NATURAL RESOURCES COMMITTEE

932 SUBMITTED MARCH 3, 1977

932 THE LEAGUE OF WOMEN VOTERS OF OHIO WORKED DILIGENTLY FOR THE PASSAGE OF STATE STRIP MINING AND RECLAMATION LEGISLATION IN 1972. WE HAVE FOLLOWED THAT UP BY MONITORING THE ACTIVITIES OF THE OHIO DEPARTMENT OF NATURAL RESOURCES IN CARRYING OUT THE LAW AND BY LOBBYING AGAINST THE EFFORTS THAT HAVE BEEN MADE YEARLY BY THE COAL MINING INDUSTRY TO WEAKEN OHIO'S LAW. WE HAVE VISITED MINING AREAS WITH OPERATORS OF A LARGE MINING COMPANY AND WITH INSPECTORS FOR THE DEPARTMENT OF NATURAL RESOURCES SO WE HAVE HEARD BOTH SIDES OF THE STORY. OHIO'S LAW, WHILE BETTER THAN THAT OF SOME OTHER STATES, IS LOOSELY WRITTEN AND VERY MUCH DEPENDENT UPON THE PREVAILING POLITICAL CLIMATE FOR ENFORCEMENT.

932 YOU HAVE ASKED US TO PROVIDE INFORMATION REGARDING THE STEEP-SLOPE PROVISIONS OF S. 7 AS APPLIED TO STRIP MINING IN OHIO. OHIO LAW HAS NO PROHIBITION AGAINST STEEP-SLOPE MINING, AND MINING IS OCCURRING IN OHIO ON SLOPES AS STEEP AS 27-2M DEGREES. EXPERIENCE IN OHIO SHOWS THAT SUCCESSFUL MINING AND RECLAMATION OF THESE SLOPES IS VERY COSTLY AND REQUIRES CERTAIN KINDS OF EQUIPMENT AND GREAT SKILL ON THE PART OF OPERATORS. MOST COMPANIES HAVE NOT DONE A GOOD JOB UNLESS THEY HAVE BEEN CLOSELY WATCHED. THIS REQUIRES FREQUENT INSPECTION. OHIO PRESENTLY HAS ONLY 19 INSPECTORS, DOWN FROM 22. FIVE OF THOSE INSPECTORS WERE HIRED WITH CETA FUNDS. THE LEAGUE FAVORS PROHIBITION OF MINING ON SLOPES OVER 20 DEGREES FOR THE ABOVE REASONS.

932 OHIO HAS BEEN CONSTRAINED IN ENFORCING THE LAW FOR SEVERAL REASONS. THERE HAVE NOT BEEN ADEQUATE NUMBERS OF ENFORCEMENT PERSONNEL OR ATTORNEYS TO INSPECT, GATHER EVIDENCE AND PROSECUTE VIOLATORS. THEY HAVE HAD TO CHOOSE WHICH VIOLATORS TO PROSECUTE AND HAVE NOT SUCCESSFULLY PROSECUTED THE LARGE MINING COMPANIES. THE OHIO LAW REQUIRES THAT A CASE BE HEARD IN THE COUNTY IN WHICH THE VIOLATION OCCURS. IT IS NOT UNCOMMON IN OHIO THAT COUNTY POLITICS HAVE AN INFLUENCE ON COURT ACTIONS.

932 COUNTY COURTS SOMETIMES REFUSE TO CONVICT OR LEVY ONLY SMALL FINES. IN THE RECENT PAST THE DEPARTMENT OF NATURAL RESOURCES WAS UNSUCCESSFUL IN PROSECUTING TWO MAJOR COAL COMPANIES ON CHARGES INVOLVING LANDSLIDES AND SEDIMENTATION BECAUSE THE JUDGES RULED THAT THOSE TERMS WERE CONSTITUTIONALLY VAGUE. IN A CASE INVOLVING PEABODY COAL, THE FINDING WAS THAT THERE WAS NO DEFINITION IN THE LAW OF "LANDSLIDE" AND THAT THE WORD IN AND OF ITSELF WAS NOT SPECIFIC. IN A CASE AGAINST CONSOLIDATED COAL COMPANY A HARRISON COUNTY JUDGE RULED THAT "SUBSTANTIAL DEPOSITION OF SEDIMENT" WAS TOO VAGUE. SECTIONS 415(B)(7) AND (10)(B) OF S. 7 WILL HELP OVERCOME THOSE DEFICIENCIES IN OHIO'S LAW.

932 THE PENALTY SECTION OF OHIO'S LAW PROVIDES THAT SUBSEQUENT

OFFENSES CAN BE FINED INCREASING AMOUNTS AND CAN RESULT IN IMPRISONMENT. ON THE THIRD OFFENSE IT PROVIDES THAT THE COURT SHALL REVOKE THE LICENSE AND THAT NO LICENSE CAN BE ISSUED FOR FIVE YEARS. IN PRACTICE THE COURTS HAVE BEEN EXTREMELY RELUCTANT TO PUT ANYONE OUT OF BUSINESS AND SOME BELIEVE THIS PROVISION HAS MADE IT DIFFICULT TO GET CONVICTIONS IN OHIO FOR SUBSEQUENT OFFENSES. IF THE AGENCY HAD THE POWER TO DENY A LICENSE FOR REPEATED VIOLATIONS THAT WOULD BE ANOTHER MECHANISM FOR DEALING WITH REPEATED VIOLATORS. SECTION 410(C) OF S. 7 GIVES THE AGENCY THE POWER TO DENY A PERMIT IF THE APPLICANT IS CURRENTLY IN VIOLATION OF THIS ACT, BUT DOES NOT SPEAK TO HOW REPEATED VIOLATORS WOULD BE HANDLED.

933 STATEMENT TO SUBCOMMITTEE ON MINERALS, MATERIALS & FUELS U.S. SENATE ENERGY & NATURAL RESOURCES COMMITTEE 3/3/77

933 OHIO LAW DOES NOT PROVIDE FOR THE DEPARTMENT OF NATURAL RESOURCES TO ISSUE CEASE AND DESIST ORDERS. IT HAS OFTEN BEEN VERY DIFFICULT FOR THE DEPARTMENT TO GET INJUNCTIONS FOR DANGEROUS VIOLATIONS OF THE LAW. WHEN INJUNCTIONS ARE GRANTED, THEY ARE OFTEN NOT GRANTED IN SPEEDY FASHION. THE POWER TO STOP OPERATIONS IS VIEWED BY ENFORCEMENT PERSONNEL IN OHIO AS VERY IMPORTANT BECAUSE IF COMPANIES HAVE TO CLOSE DOWN, EVEN FOR A FEW HOURS, THEY ARE MUCH MORE SENSITIVE TO SEEING THAT VIOLATIONS DO NOT OCCUR. THE PROVISIONS OF SECTION 521(3) OF S. 7 ALLOW THE SECRETARY TO ORDER CESSATION OF THE OPERATION UNTIL THE VIOLATION HAS CEASED, ALTHOUGH ONLY AFTER A PERIOD OF TEN DAYS IF THE STATE HAS FAILED TO ACT.

933 THE LEAGUE BELIEVES THAT THE PROSPECT OF FEDERAL ENFORCEMENT AND CITIZEN SUITS WOULD DO MUCH TO IMPROVE THE ENFORCEMENT PICTURE IN OHIO. IT IS REALLY UNFAIR TO THE COMPANIES THAT ARE DOING A RESPONSIBLE JOB OF RECLAMATION WHEN OTHER COMPANIES ARE ALLOWED TO GET AWAY WITH BREAKING THE LAW.

933 WE WOULD LIKE TO ADDRESS SEVERAL OTHER AREAS OF S. 7 AS THEY WOULD APPLY TO OHIO.

933 DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING, SECTION 422.

933 THE OHIO LEAGUE STRONGLY SUPPORTS THIS SECTION BECAUSE THERE ARE NO SIMILAR PROVISIONS IN OHIO LAW. AREAS OF OHIO HAVE BEEN MINED THAT SHOULD NEVER HAVE BEEN MINED. FOR EXAMPLE, THERE IS AN AREA IN GUERNSEY COUNTY WHERE COAL WAS STRIP MINED. A GEOLOGICAL FAULT THERE HAS RESULTED IN CONTINUOUS MINE DRAINAGE INTO PIEDMONT LAKE. THE WATER QUALITY IN THAT LAKE HAS SERIOUSLY DETERIORATED TO THE POINT WHERE IT IS DOUBTFUL WHETHER IT WILL EVER BE USABLE AS A SOURCE OF WATER SUPPLY. THERE IS AN AREA OF VIRGIN WOODS IN BELMONT COUNTY, DYSART WOODS, ADMINISTERED BY OHIO UNIVERSITY, WHICH IS NOT BEING MINED BY MUTUAL AGREEMENT WITH LOCAL MINE OPERATORS. BUT THERE IS NOTHING IN OHIO LAW THAT WOULD PREVENT IT FROM BEING MINED.

933 USE OF SEVERANCE TAX MONIES TO RECLAIM ORPHANED LANDS.

933 ESTIMATES VARY, BUT THERE ARE IN EXCESS OF 200,000 ACRES OF LAND IN OHIO THAT NEED RECLAIMING. SEVENTY-FIVE PERCENT OF THE STATE'S SEVERANCE TAX OF 4c A TON NOW GOES INTO A FUND FOR RECLAIMING THOSE LANDS. OHIO'S SEVERANCE TAX ALONE WILL NOT BE ENOUGH TO DO THE

WORK OF RESTORING THIS LAND AND ALLEVIATING ACID MINE DRAINAGE AND OTHER RELATED PROBLEMS. THE OHIO LEAGUE SUPPORTS THE PROVISIONS FOR THE SEVERANCE TAX IN S. 7 THAT WOULD HELP THE STATE IN THIS RECLAMATION WORK.

933 EFFECTS OF REGULATION ON THE MINING INDUSTRY.

933 OHIO'S STRIP MINING LAW WAS PASSED OVER THE VIGOROUS OBJECTION OF COAL INDUSTRY REPRESENTATIVES WHO CLAIMED THAT THE LAW WOULD PUT THEM OUT OF BUSINESS. OHIO'S COAL OPERATORS HAVE MAINTAINED THEIR POSITION AS MAJOR SUPPLIERS. THERE ARE MORE STRIP MINES IN OHIO THAN EVER BEFORE, ACCORDING TO MINING INDUSTRY FIGURES. PASSAGE OF FEDERAL STRIP MINING LEGISLATION WILL BENEFIT OHIO BY PUTTING MORE STATES ON AN EQUAL COST FOOTING IN TERMS OF MINING COSTS. WE BELIEVE THAT CLAIMS OF GREATLY REDUCED COAL PRODUCTION AND SUBSTANTIALLY HIGHER COAL BILLS BECAUSE OF RECLAMATION REQUIREMENTS HAVE BEEN GROSSLY EXAGGERATED. WE RECOGNIZE THAT THE COST OF RECLAMATION REQUIRED BY THE STATE'S LAWS HAS BEEN A SMALL FACTOR IN THE INCREASED COST PER TON OF COAL, BUT IT HAS BEEN A MINOR PART OF THE OVERALL INCREASE IN COAL PRICES WE HAVE SEEN OVER THE LAST FEW YEARS.

934 STATEMENT TO SBUCOMMITTEE ON MINERALS, MATERIALS & FUELS U.S. SENATE ENERGY & NATURAL RESOURCES COMMITTEE 3/3/77

934 EMPLOYMENT

934 STRIP MINING REGULATION HAS ACTUALLY GENERATED NEW JOBS IN RECLAMATION IN OHIO.DURING THE PERIOD OF APRIL 1974 - APRIL 1975 - WHEN THE COUNTRY WAS IN A RECESSION, THE OHIO STATE UNIVERSITY CENTER FOR BUSINESS AND ECONOMIC RESEARCH FIGURES SHOWED THAT THE MINING INDUSTRY WAS THE ONLY GROWTH AREA IN OHIO'S EMPLOYMENT STATISTICS. THE OHIO BUREAU OF EMPLOYMENT STATISTICS GIVES THE FOLLOWING FIGURES FOR EMPLOYMENT IN COAL MINING:

934 1972 - 11,296

934 1973 - 11,104

934 1974 - 12,518

934 1975 - 15,570

934 1976 - 16,900

934 PREVIOUS FEDERAL STRIP MINING BILLS HAVE OFFERED UNEMPLOYMENT BENEFITS TO THOSE WHO LOSE THEIR JOBS DUE TO STRIP MINING REGULATIONS. THE OHIO LEAGUE BELIEVES THAT THESE PROVISIONS OUGHT TO BE REINSTATED IN THE BILL ALONG WITH THE PROVISION FOR RETRAINING THOSE PEOPLE DISPLACED FROM THEIR JOBS IN STRIP MINING.

934 WE THANK YOU FOR THIS OPPORTUNITY TO SUBMIT OUR VIEWS ON THE EFFECT OF S. 7 ON STRIP MINING IN OHIO. WE HOPE YOU WILL GIVE CONSIDERATION TO THE POINTS WE HAVE RAISED.

NATIONAL COUNCIL OF COAL LESSORS, INC. 1130 SEVENTEENTH STREET. N.W. - ROOM 230 WASHINGTON. D.C. 20036 (202) 293-1610

935 Statement of National Council of Coal Lessors, Inc., to the Committee on Interior and Insular Affairs of the United States Senate concerning strip mining control Bill S. 7.

935 The National Council of Coal Lessors is composed of more than 90 individuals and companies who own coal properties which they lease to others for development. Quite naturally, the Council is very interested in the provisions of S. 7 because in its opinion some of these provisions will adversely affect the recovery of coal from the leased premises.

935 Surface mining as we know it today consists of strip mining and auger mining, or strip mining and deep punch mining, either one operating by itself or in conjunction with the other. Basically it is carried out in one of two topographic conditions; flat land mining or hillside mining. In the Appalachian area of Western Virginia, Southern West Virginia and Eastern Kentucky, surface mining is all of the hillside type. This statement will be confined to that hillside mining which is commonly known as contour surface mining because it follows the horizontal contour of a coal seam around the hillside.

935 Strip mining is the removal of the strata overlying a coal seam from the point of outcropping back to an economic limit of high wall height by means of earth moving equipment; that is bulldozers and power shovels. When this phase has been completed and all the coal that can be removed by stripping is removed, the coal is then exposed in vertical section at the base of that high wall and further production is then obtained by literally boring the coal out by a coal auger of slightly less diameter than the coal seam thickness much the same as a bit and brace bores holes in wood. These holes are drilled horizontally into the exposed coal seam to the point where the coal has previously been removed by conventional deep or underground mining process or entries are driven from the outside underground into the coal deposits and the coal is brought to the stripped area and then transported to loading facilities. The latter is called deep punch mining.

936 The backfill requirements of S. 7 would effectively prohibit and render impossible either auger or deep punch mining and would therefore cause the loss of a great quantity of good coal that could otherwise be removed.

936 In mountainous areas coal seams lie in the hill much the same as flat layers of icing in a layer cake. In the conventional deep or underground mining process the interior of that coal layer is mined to within about 100 to 300 feet of the point of outcrop, that is where the coal layer meets the surface on the side of a hill. The strata over this outer ring of coal is either a shale or sandstone rock and is of a softer nature than that strata overlying the coal further under the mountain due to being closer to the actions of weather and ground water. This coal because of its softer roof condition, is hazardous to mine. Consequently the advent of contour surface mining by strip and auger methods has permitted additional recovery of this mineral by machinery without exposure of mine workers to the hazardous roof. The safety feature of surface mining with its extremely low accident rate must be recognized.

937 Surface mined coal is not always as good quality as underground mined coal because of its nearness to exposure to the elements of weather and water, consequently it generally commands a lesser price than coal that is deep mined in the underground mining process. Therefore, a good part of this surface mined coal is being shipped to steam plants for power plant fuel on the basis of its BTU content which is its heat producing value. As such, however, surface mined coal has substantially contributed to establishing the coal industries most growing market-steam coal.

937 Surface mining in the Appalachian area began in the early 1940's by strip mining of the coal outcrops and auger and punch type mining began in the latter 1940's. This mining has progressed through many steps from an uncontrolled status at its beginning down to the present status of operations under adequate surface mining laws. For example, surface mining in the state of West Virginia is now being conducted under regulations administered by both the State Department of Mines and Department of Natural Resources. This present law is a result of a cooperative effort on the part of Industry and State Government as it was drafted by a committee consisting of representatives of the Department of Mines, Department of Natural Resources, large mineral landowners and reputable surface mining companies. It is being well administered and is considered satisfactory by all concerned. The law in substance provides for supervision of reclamation of surface mined areas by the Department of Natural Resources which is adequately

staffed for that purpose with actual mining and safety provisions administered by the Department of Mines which is also adequately staffed.

938 It must be recognized too that the surface potential of these hillside areas is at a minimum before strip mining. The land is too steep for agricultural purposes and in most cases, timber has been removed through a series of cuttings to a point where remaining trees are of noncommercial size and type or are too diseased or fire scarred to be of any value. Many of the areas which have been clear cut of merchantable timber have been overgrown with briers and other brush which retard growth of trees. This lack of adequate tree growth permits rapid run off of water during heavy rains. Strip mined areas that have been properly reclaimed and stablized tend to retard this rapid run off thereby lessening the erosive power of that water.

939 Research in reclamation techniques is continuing. An example of this is the present study of vines and other growth to camouflage the exposed portion of strip mined high walls.

939 It is true that there is some unsightliness during the actual surface mining process just as there is unsightliness in construction of new highways, manufacturing plants and things of that nature, all of which are representative of progress and improved technology. The temporary unsightliness is later corrected by reclamation of lands and the end result is a betterment to that part of the country. In contour surface mining a valuable mineral has been recovered. Improved roads remain as all weather access to backwoods areas that had previously been inaccessible by any type of vehicle other than a Jeep. These roads are invaluable as fire trails and the surface mined areas have many times proved their worth as fire breaks in stopping the spread of forest fires.

939 As mentioned earlier, properly reclaimed contour surface mined areas will retard rather than accelerate rapid run off of water during heavy rains.

939 Surface mined areas with proper reclamation and stablized and camauflaged high walls can add to rather than detract from the tourist potential of mountainous areas. The regraded and revegetated portion of the strip mine contour will provide level sites for cabins in mountains where level land is almost nonexistent. It is no wonder than that most Appalachian surface

landowners would prefer the level areas following surface mining which could also be utilized
for grazing, tree growing and orchards, barnsites and possibly industrial sites.

940 It is sincerely hoped that this Committee will give serious consideration to modifying the
provisions of S. 7 as they pertain to backfill requirements in order that access may be provided
for later auger or dep punch mining.

STATEMENT BY TEXACO INC. PERTAINING TO S. 7 SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 TO THE SENATE ENERGY AND NATURAL RESOURCE COMMITTEE SUBCOMMITTEE ON MINERALS

WASHINGTON, D.C.

MARCH 4, 1977

942 COMMENTS BY TEXACO INC. PERTAINING TO SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 - S. 7

942 Texaco respectfully submits this statement in regard to the proposed bill S. 7, the Surface
Mining Control and Reclamation Act of 1977. For future energy developments in the United
States it is generally recognized that coal is the major energy source that will be used as the
reserves of petroleum and natural gas decline. The utilization of this great natural resource must
be under circumstances that bring the greatest good to all. A proper balance must be struck
between our energy needs, the economic aspects of furnishing this energy to our citizens, and the
environmental protection which must be provided to our lands and to the health and well being of
our people.

942 The proper legislation, in our belief, has already been provided by the coal producing
states. In recent years the states have recognized the necessity for strict mining and reclamation
laws to protect their environment. As a result, current mining is being conducted under rules and
regulations which are bringing about effective reclamation. Federal coal lands are mined under
strict controls provided by the Department of Interior. The Department has recognized that a
growing list of states have such effective laws that the Department has signed agreements with a
number of them, notably Wyoming, New Mexico, Utah, and North Dakota. These agreements
rely on the states to administer mining and reclamation permits, enforcement, and bonding.

943 It is our opinion that use of state legislation is the more effective way to control strip

mining because each state can take account of its own particular conditions of climate, terrain, land use and other needs.

943 Many who urge a Federal strip mining bill do so because they have overlooked the stringent state laws that are now being effectively enforced and the resultant reclamation now being successfully accomplished. Further, they fear that coal strip mining will reduce the ability to grow the food necessary for this country and for populations in other parts of the world. An examination of the facts should allay such fears and demonstrate that coal mining, and energy development in general, are vitally needed by agriculture.

943 It is not widely recognized, but it has been definitely established, that in the United States and other countries where high yields of foods are obtained, fossil energy plays a major part in that productivity. It is an astounding fact * that 10 units of fossil energy are required to put one unit of food energy on the table. In other words, it requires 10 calories of fossil energy for such items as operation of farm machinery, pumping of irrigation water, manufacture and use of fertilizer, transportation and distribution of food to enable the citizen to eat one calorie of food energy at the dinner table. While agricultural energy is small compared to that now used for heating, manufacturing and transportation, it continues to grow as more and more food is required to feed a hungry world.

943 * Steinhard and Steinhard, "Food Uses in the United States Food System", Science, Vol. 184, pages 307-322, 1974; and

943 Heichel, "Energy Needs and Food Yields", Technology Review, Massachusetts Institute of Technology, Vol. 76, No. 8, July, 1974.

944 Another factor in this fear of mining versus agriculture is the misapprehension of how much land will be withdrawn from farming or ranching. In actuality, surface mining will have a very minimal effect. This is clearly borne out by the Northern Great Plains Resources Program ** conducted in cooperation with federal, state, regional, local and private organizations in the states of Nebraska, North and South Dakota, Montana, and Wyoming.

944 ** Northern Great Plains Resources Program, Denver Federal Center, Denver, Colorado 80225, "Effects of Coal Development in the Northern Great Plains, a Review of Major Issues and Consequences of Different Rates of Development", April, 1975, pages 139-147.

944 In the study, three Coal Development Profiles (CDP-I, II, and III) are considered. I is for low development, II is intermediate (or most probable) and III is high (or the greatest possible development). On page 142 it shows that the amount of land displaced relative to 91 million acres of agricultural land in the region is: CDP-I, 0.04 percent; CDP-II, 0.14 percent; and CDP-III, 0.34 percent. These miniscule land removals are, however, based on prompt reclamation and return to agricultural uses. Loss in wheat production, the principal crop in the study area, is only 0.22 percent for CDP-II and only 0.45 percent for CDP-III. On page 144 the report brings out that animal units (cow and calf) displaced by mining by the greatest possible development in the year 2000 is only 0.19 percent.

945 When consideration is given to the extremely small effect on agriculture, and the benefits to the local, regional, state, and national interests, of the energy produced, it is clearly apparent that properly conducted mining is a far superior use of the land. This is especially true since, as reclamation goes forward as governed by state rules and regulations, the lands are restored to equal or greater agricultural utilization for the future.

945 In view of the above, Texaco respectfully suggests that a federal bill such as S.7 is no longer needed and urges that such federal legislation be dropped.

945 If the Congress decides, after considering all aspects of the situation, that a Federal strip mining bill is necessary, then Texaco would urge modification of the provisions of S.7 which pertain to mining in alluvial valleys in the west.

945 We are fully in accord with the need to protect agricultural lands and especially the water quality of flowing streams and aquifers which may be used for irrigation purposes. With proper engineering planning and operation, it is certainly possible to mine in alluvial valleys while protecting the downstream water use and to reclaim the mined area so that it can be returned to its previous or higher use. Effective protection of this kind is provided by the bill's reclamation requirements.

946 The language of the bill, particularly Section 410(b)(5) appears to be absolutist in nature and prohibits mining in alluvial valleys, with certain fringe exceptions. This eliminates, in an unwarranted manner, the mining of many millions of tons of low sulfur coal which are needed to

supply energy for the citizens of the United States. This provision is made presumably in the interest of food production. However, as previously shown, general strip mining in the Northern Great Plains has a negligible effect on reducing agricultural production. If the alluvial valley areas containing coal are withdrawn for a period of time, this will have a minimal effect on the agricultural productivity of the region. The economic value of the energy extracted before the lands are returned to equal or higher agricultural use will be many fold more than the temporarily displaced value of the agriculture. Since the land will be restored and the water quality for downstream users will be protected, it is clear that mining is the best use of the land and that the citizens of the region, the state and the country as a whole will be benefited.

947 Other sections of S. 7 relating to alluvial valleys, or hydrology, namely 410(b)(3) and 415(b)(10)(F) also tend to be absolutist in preventing mining of such valleys. We feel that such outright prohibition should be altered and mining of alluvial valleys be allowed, but only under the strictest conditions. We suggest that the language used in the Senate version of H.R. 25, dated March 20, 1975, be used. The wording of that bill, Sec. 510(b)(3) and Sec. 515(b)(10)(F), used the phrase "to the maximum extent possible, using the best available technology . . . " This modification gives effective control but at the same time allows proper mining in alluvial valleys.

947 Section 427 effectively prohibits the method of open pit mining. This method is highly practical and safe and often is the only way in which thick, pitching seams or multiple seams can be mined. Also in specific circumstances, it permits reclamation which is superior to other mining operations. Therefore, the bill should be modified to permit open pit mining.

947 Finally, we believe that Subsection 423(e), the so-called "Mansfield amendment" should be withdrawn. This provides that Federal leases, where the United States does not own the surface, cannot be mined. This would take out of production may millions of tons of coal already committed and many more millions of tons of inplace reserves for which development is already underway. This would needlessly withdraw public energy resources from beneficial use and would consequently lessen greatly the effectiveness of the Federal coal leasing program. We do

not propose alternate language but do strongly recommend that the provision be changed.

948 In summary, in view of the significant amounts of coal at stake, the current language of the above referenced provisions is not in the best interests of the people of the Western states, nor of the country as a whole. Therefore, we strongly urge that the Mansfield Amendment be removed and that the language of those sections dealing with alluvial valleys and open pit mining be modified so as to read as follows:

948 Rewording of S.7, page 58 410(b)(3)

948 The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in 407(b) has been made and the proposed operation thereof has been designed to prevent to the maximum extent possible, using the best available technology, significant irreparable offsite damage to hydrologic balance;

948 Rewording of S.7, page 59 410(b)(5)

948 Sec. 410(b)

948 No permit, revision, or renewal application shall be approved unless the application demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant that -

948 (5) the proposed surface mining operations, if located west of the one hundredth meridian west longitude, would, to the maximum extent possible, using the best available technology -

948 (A) not have a substantial adverse effect, except temporarily during the period of mining, on croplands or haylands overlying alluvial valley floors where such cropland or haylands are significant to the practice of farming or ranching operations, such valleys being restored in accordance with Sec. 415(b)(2)

948 (B) not adversely affect the quantity or quality of water in surface or underground water systems in the valley floors downstream from the mining area.

949 Rewording of S.7, page 73 415(b)(10)(F)

949 preserving to the maximum extent possible, using the best available technology,

throughout the mining and reclamation process the essential hydrologic function of alluvial valley floors in the arid and semi-arid areas of the country;

949 Sec. 427 The regulatory authority is authorized to and shall issue separate regulations for those special bituminous coal surface mines located west of the one hundredth meridian west longitude which meet any of the following criteria:

949 (New Subsection) the excavation of the specific initial pit area is small compared to the total area to be mined, the overburden from the pit extension is used to fill the initial pit, and it can be demonstrated that the open pit reclamation will be superior to reclamation from any other mining method.

950 In summary, Texaco respectfully suggests that this proposed legislation is not needed since States have demonstrated effective legislation.

Statement of Harris Arthur Before the Senate Energy and Natural Resources Committee On S. 7, "Surface Mining Control And Reclamation Act of 1977"

March 3, 1977

951 Mr. Chairman and Members of the Committee:

951 I want to thank you for providing me this opportunity to testify before you on this issue which is of such importance to my People.

951 My name is Harris Arthur, and I am from the Burnham area of the Navajo Nation, the site of existing coal strip mining and proposed strip mining to supply coal to as many as seven coal gasification plants to be located at the mine site. Since each plant would require more than 8 million tons of coal, an amount equal to the output of the existing mine, that region of the Navajo Nation may become the largest source of strip mined coal in the United States. That is why I have asked to come before you this morning. My People are very concerned that the provisions of S. 7 do not address the existing and potential problems that coal development of this scale represents.

952 I am the Executive Director of the Shiprock Research Center, an independent research group which evolved out of the concerns of the Burnham Chapter People for the impacts upon them if the coal beneath their lands is stripped for the gasification plants. The Research Center is currently assessing those probable impacts on the social, cultural and economic lifestyle of the

Navajo People in the development area in Northwestern New Mexico. I know of no similar attempt, such as this, to determine attitudes toward energy development from the local Navajo perspective.

952 It is not as if the People are closing the doors on energy development on their lands. We have already given tremendous amounts of our oil, gas, coal and water resources to the Nation. That has provided us with royalties but it has also meant destruction of our lands in some cases. The land is all that we have and it must be protected at all costs. Our immediate returns for developing our resources are worthless if our culture and land are destroyed in the process. When the Nation debates an energy policy we want to be considered in the discussions because we have ownership of tremendous amounts of coal and uranium, among other valuable resources. When you debate a strip mining bill, we want to be heard because it is our land that is being strip mined. An integral part of a National Energy Policy must include stringent legislation regulating the abuses of coal strip mining so that the land will be protected for the future benefits of my People. I want to see this Congress adopt legislation designed to achieve this.

953 Our Tribal leadership is being pressured into making hasty decisions on leasing our land for strip mining, uranium exploration and power plant construction. Our water rights are being threatened by some of these proposals and without water, our land can never become agriculturally productive again. We are told that such energy developments will create jobs which will solve our high unemployment rates. I am the first to acknowledge the need for jobs for my People. I do not need to be reminded of this by coal and gas company executives.

953 My People live with an annual per capita income of$9 00; unemployment rates as high as 60%; and an average education level of the fifth grade. I know what we need and it does not include sacrificing our identity as a socio-political unit to powerful energy interests. Sacrificing that which makes us Navajo or Indian People for short term economic benefits can only lead to futher dependency for future generations of my People. Navajos, at the grass roots level, have consistently rejected this almost unanimously by their opposition to such proposals as large scale coal and uranium development on their lands.

953 This pressure to develop all our resources has resulted in the leasing of 107,719 acres of coal lands in the Navajo Nation and an additional 40,000 acres which we share jointly with the Hopi Nation.These lands are now being, or will be, stripped without Federal or tribal regulations. These lands have been strip mined since 1962 and, to this day, not one acre is classified as reclaimed by any regulatory authority.

954 This lack of Federal or tribal authority makes our land and our People fair game for large, non-indian energy interests who promise immediate employment and nominal royalties to our leaders. Our Tribal Council has yet to enact any legislation to regulate strip mining and reclamation operations and that responsibility is prosently being administered by officials of the New Mexico state government.

954 However, there is now, in the hands of Tribal officials and attorneys, proposed surface mining control regulations which, for various reasons, have not been enacted. I am told these regulations are as stringent, or moreso, as those you are considering in HR 2. Unfortunately their proposal remains on the shelf because of conflicts in the law which are not resolved. There seems to be an apparant legal conflict between the law as set forth in the Indian Civil Rights Act of 1968, which limits penalties for violation of Tribal laws, and the desire of the Navajo Tribal Council to impose penalties for violations of their own strip mining law. Therefore, if Tribal authorities promulgate regulations pursuent to their strip mining law and those regulations call for penalties beyond the limits set forth in the Indian Civil Rights Act, the enforcement of those penalties resulting from citation of violation is in question.

955 I want to emphasize that further delays in enacting stringent Federal strip mining standards can only hurt the Navajo People and cause more of our land to be destroyed for generations and perhaps, centuries. The time has long since past, when we have to study the problems associated with regulating strip mining on our lands. We need protection from these abuses, not more white papers to tell us what the answers are. A comprehensive Indian Lands Program, such as that introduced and adopted by the House of Representatives in a previous attempt to pass this legislation, is what we are seeking from the 95th Congress.

955 In addition, I urge that such program provide us with all of the protection, assistance and

benefits that states are accorded in S. 7 The language of the Indian Lands study can only serve to
undermine the absolute power that the Indian Tribes now enjoy in enacting any regulatory
legislation of their own. To "allow Indian Tribes to elect to assume full regulatory authority over
the administration and enforcement of regulation of surface mining of coal on Indian lands",
implies that Indian Nations now do not have, and never had, the power to regulate strip mining.
This legislation, as I read it, would preempt this power the Tribes now enjoy.

955 I urge you to adopt a comprehensive Indian lands program so that my People will be
assured of adequate protection of their lands until such time as they can enact, promulgate and
enforce their own regulations designed to protect their lands and their heritage from the wanton
destruction of unregulated strip mining.

956 In closing, I want to thank you again for this opportunity to share my concerns with you.
Indian people will share their resource wealth with America, but the mining of that wealth can no
longer be tolerated if it is done the same as it was in the past. We are a land-based people, and
we must protect our land if we are to survive as Indian People.

STATEMENT OF T. L. AUSTIN, JR. HEARING ON SENATE BILL 7
COMMITTEE ON ENERGY AND NATURAL RESOURCES

957 My name is T. L. Austin, Jr., chief executive officer of Texas Utilities Company,
which serves approximately four million people in a 75,000 square mile area in north central and
east Texas.

957 Since the middle of the 1960's, our company has engaged in a rapid and expanding
conversion from natural gas as a boiler fuel to the use of lignite coal. At the end of 1976, over
31% of our generation was by the use of coal. In 1977, we will be mining in excess of 15 million
tons for the use of power generation to serve our customers. Since the first shovel began
operating on lands in Texas, our company has engaged in a voluntary and constructive
reclamation program everywhere that we have operated. We will continue to do so in our future
operations. The reclamation conducted by our company has been cited by many environmental
organizations, such as the Sierra Club, as an outstanding example of land reclamation.

957 Our company is engaged in the expanding use of this fuel to lessen the demand on oil and

natural gas. Therefore, coal is essential to our future plans in the production of electricity to serve our customers; not only for its availability, but also for its economy which will result in reasonable electric bills to our customers.

958 No responsible corporation would dare violate and misuse land in today's environmental atmosphere. Our policy has been voluntary, was established long before environmental laws became a fad, and is as I have mentioned before, outstanding.

958 Gentlemen, let's look at where we stand today as far as energy is concerned. At the end of 1976, we found our nation dependent on foreign oil with 43% of oil consumed in this country coming from foreign sources. We are not only subject to the whims of a few people politically, we will also become indebted to them every day we use foreign oil, thereby jeopardizing our balance of payments.

958 The nuclear alternative is bogged down in over-regulation requiring extensive licensing and public involvement to the point that it takes over ten years from the time of commitment before the unit is finally producing energy. This is an example of where over-regulation and public involvement has made the nuclear alternative one that not only frustrates those of us who are responsible for carrying out energy deliveries, but also to the consumer who could be enjoying cheaper electric bills through the use of this alternative.

958 We have seen well-intended, idealistic environmental legislation seriously, and I mean seriously, impede our progress to the point that it not only increases cost to the consumer, but it also taxes all of our abilities to comply with the bureaucracy managing the legislation. Obtaining the tremendous capital that must be raised to implement these regulations poses serious problems in an inflationary economic climate.

959 There have been some encouraging statements made that a national energy policy is in the making. We in the industry have been advocating this for years and welcome it. HOWEVER, in the absence of a national energy policy, we have seen irresponsible legislation such as this continually crop up, continually delaying our ability to make use of our best natural resource and to get on with the job of supplying this country with its needed energy.

959 Gentlemen, we are not running out of energy. We are running out of guts; guts to come to

grips with a national energy policy. A national energy policy which would have all legislation, particularly environmental, being brought together and, when acting in concert, bringing about a major thrust in getting the job done. In addition, we have got to see federal agencies working in close coordination to insure that their activities, including rules and regulations, permit procedures closely coordinated and avoid one agency working at cross purposes with another. It is incredible to see the results of independently operating federal agencies. Each totally disregarding the big picture and instead fostering their own agency above the national interest.

960 We believe that the country is FED UP with people who continuously support this type of legislation which will prevent us from maintaining our standard of living and from extending a better standard of living to the many poor people of this country. We believe that the country is asking the question, WHO IS IN CHARGE HERE? When we advocate on one hand the development of alternative fuel sources, on the other hand we see legislation like this impede our progress. It is a poor state of affairs when the top agencies of our federal government are working at cross purposes in meeting this crisis.

960 Those of us in the electric utility industry, responsible to millions of people for an adequate supply of electricity, recognize the tremendous burden of responsibility we have in our day to day operations, in raising huge amounts of capital in the market places to build the plants, mine the coal, and distribute power. Then we see legislation such as S. 7 crop up in front of us which, when added to other constraints, make us doubt whether the job can be done. I for one refuse to be the scapegoat when the lights go out in the 1980's, when the factories come to a halt, and when this country is thrown into a state of deep economic depression.

960 My colleagues and I know where the fault will be. It will not be with the industry that has made an outstanding record for itself or with the employees performing a professional job everyday in delivering electricity to homes and factories.

961 We know where the fault will be - RIGHT HERE. It will be with this type of legislation that prevents us from fulfilling our responsibilities. We often ask ourselves - Is there a conspiracy to make this country energy deficient? More and more each day we begin to conclude that there could very well be one.

961 You have developed a highly complex mechanism for putting the regulatory program envisioned by the bill into operation. It is estimated that it would be between two-and-a-half to three years before the program would even be ready. This would leave a cloud of uncertainty over the entire coal producing system. Gentlemen, we can't wait that long. Our coal production has lagged for the past five years because of the uncertainties of pending legislation such as this.

961 Let me take you step by step over the requirements that must be satisfied by the mining operator and ask you to place yourselves in my position in overseeing such requirements.

961 (1) Secure Operating Permits - In general, within six months following the establishment of federal and state programs, operating permits must be issued from the new authority to all operators.

961 Permits are good for only five years.

962 Right to successive renewal exists but there must be a public hearing before renewal. The right to successive renewal does not apply to geographic extensions of the mining area.

962 (2) Submit Mining and Engineering Plans - As part of the operating permit acquisition process, all mining plans, engineering equipment to be used, and engineering techniques must be submitted for review and public inspection.

962 What this provision tells me is that even with the best engineers I have been able to assemble to operate our mines, that the general public can come in and dispute whether we should have bought this type of shovel or the other. You are also saying to my engineers with proven records that some bureaucrat in a back office here in Washington can decide whether their plans can be implemented. By doing so, you have shifted the responsibility from me and my staff to a federal agency and public advocates accountable to no one. It would be hard for me to believe that the American people want this to happen, especially when we have demonstrated to them through our own actions that we can reclaim the land in a very creditable and meanignful way.

962 (3) Submit Reclamation Plans - All reclamation plans must be submitted for review and approval and open for citizen inspection and review.

962 Reclaiming land is a very scientific and developing technology. We are finding ways every day that we can reclaim the land in such a way that it supports the ecosystem in a more meaningful way than the original concept. We can envision hard and fast regulations so stringent that this experimentation and development for improving the land will be seriously affected.

963 (4) Positive Demonstration Requirement - Operators must positively demonstrate they will be performing all of the things they have agreed to perform.

963 A public hearing must be held.

963 This provision is looked upon by us and others as a policing action on the part of the agency, clearly indicating a "Big Brother" approach from the Washington scene. What you are saying to each operator is that you don't believe them.

963 (5) Citizen Suits - Citizen suits can be brought at any time during the licensing and approval procedures as well as during day-to-day operations.

963 Our industry, above all others, recognizes the need for public involvement in our operation. The public hearings that we participate in around this country are numerous. We are a regulated industry. Providing for an openness about our operations, not incurred by any other business, we are accustomed to responding to the public. We want them involved, because with their understanding we feel we can accomplish our objectives.

963 But this provision of the proposed legislation does not provide for orderly public involvement. Rather, it sets up a machinery whereby any self-interested individual who is accountable to no one, not even the national interest, could conceivably enter a suit against us on any given day, halting our operations. This is incredible - since we have complied with the laws, given thorough public hearings, committed our stockholders', as well as our customers', financial interests to projects - to have the law provide for anyone, and I mean anyone, gentlemen, to bring our operations to a complete halt.

964 In summary, gentlemen:

964 (1) The energy problems we face are not getting better, they are getting worse for lack of a national energy policy which would have all governmental agencies working together in close concert with industry to get the job done.

964 (2) The proposed federal legislation is not needed. The states have addressed themselves to this problem adequately and are accomplishing the environmental goals pertinent to each particular state. In addition, corporations, such as the one I represent, voluntarily go beyond those requirements in saving the land.

964 (3) The proposed federal legislation would impede coal production and slow us down to a standstill. The step by step procedure that I have outlined shows the numerous ways that you are shifting the responsibility from the operator to the bureaucracy and certain individuals. What you are saying, in essence, is that the bureaucracy knows our business better than we do and that the certain individuals and their lawyers who are accountable to no one, including the national interest, can make judgments about our business.

965 (4) The consequences of your action, if this legislation is passed, would contribute to a loss of jobs, a decline in our energy output, possible further dependence on foreign oil - creating an imbalance of payments, and the unwillingness of investors to supply the capital needed for the development of our mining operations.

965 (5) The social impact of an energy deficient country is serious. Without the energy to supply our industry, where will the jobs come from? Social unrest is tantamount to no jobs.

965 Gentlemen, let me ask that you place yourselves in my position. Would you then be seeking this legislation?Would you wish to implement the provisions of this act? Would you want to go to stockholders and ask for money to be committed to a project when so many uncertainties exist? Would you want to provide leadership to responsible, knowledgeable engineers when they know that all of their work must be approved by back-room bureaucrats and irresponsible lawyers?Would you wish to be in my position to explain why electric bills are continuously going higher because of additional cost incurred by such legislation? Would you like to be in my position, to be frustrated daily when you see federal agencies working at cross purposes in getting the job done?

965 Gentlemen, that is the position that you place me and others in when you propose such legislation.

966 I urge you to visit the reclamation that is going on in Texas.I urge you to spend some

time with me or others in the industry studying the effects of such a bill. I am sure that once you
have done this, you will not only be better informed, but will also eliminate Senate Bill 7.

STATEMENT OF BURTON BREWSTER, MARK NANCE, JACK KNOBLCOH, DR. ART HAYES, ALL RANCHERS IN THE ASHLAND-BIRNEY AREA OF ROSEBUD COUNTY, MONTANA AND DAN HINNALAND AND PETE JENSEN, BOTH RANCHERS FROM MCCONE COUNTY, MONTANA

SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS Washington, D.C., February 28, 1977

967 Mr. Chairman, Members of the Committee:

967 Collectively, we the above named ranchers have prepared the following statement to
express to this Committee, our views with regard to S. 7, a Bill to regulate surface and mining
operations, and the acquisition and reclamation of abandoned mines. In addition, we have each
prepared our own testimony stating our individual views. We appreciate the opportunity to come
to the nation's capitol to appear before your committee.

967 Area Location

967 We represent two distinct areas of Montana. The Ashland-Birney-Tongue River area of
Montana is primarily grazing country for cowcalf operations augmented with haylands along the
Tongue River. Less than one third of the potentially irrigable land along the Tongue River is
now used for hayland production. The terrain is rough and barren in much of the nearby areas
extending up from the Tongue River valley. The Tongue River separates our ranches from the
Northern Cheyenne Indian Reservation on the west and the Custer National Forest lies on the
east side of our ranches. The level and flow of the Tongue River is regulated by the Tongue
River Dam, some 30 miles to the south. The irrigation of the hayland is accomplished by diking
or gavity flow ditches. Most of our families have been in the area since the 1880's.

968 The McCone County area is in the northeast portion of Montana where extensive dryland
farming is practiced. Many of the area residents diversify their operations to include both
farming and livestock. Little or no irrigation is done in the area of the lignite coal deposits of
McCone County even though both coal deposits are identified by streams - Weldon-Timber
Creek on the western side of the county and the Redwater River on the eastern side of the county.

During most years, both streams will dry up. The two coal deposits are approximately 25 miles apart.

968 1. Mining should not be prohibited in alluvial valleys.

968 A decision to prohibit mining in alluvial valleys would be abitrary and unwise. Coal is one of the only known abundant energy alternatives to this country's growing energy problems. The prohibition of mining in alluvial valleys without sufficient cause would be a step backwards in attempting to solve our energy dilemma.

968 Reclamation potential in alluvial valleys is in fact more probable because of the top soil conditions and availability of nearby water. Proper reclamation and engineering plans will increase the productive capacity of agricultural lands in each of our counties. Land leveling and irrigation development is not economical for us today because of the depressed agricultural prices.

968 The decision to prohibit mining in alluvial valleys is potentially unconstitutional. Most of our private (fee) coal interests lie in the valley floors adjacent to the streams because they were the areas first settled. The prohibition of mining in alluvial valleys would be a taking without compensation absent substantiating evidence that reclamation could not be accomplished in these areas. Further, such a prohibition would deny the exercise of individual property rights. During economic or agricultural slumps, development of resources has kept many farms and ranches, both large and small, operating.

969 The three state area of the Powder River Basin - Montana, North Dakota and Wyoming - have determined that a prohibition of mining in alluvial valleys is not needed. The state of Montana does not want an alluvial valley prohibition in its reclamation law. Both attempts to enact prohibitions of mining in alluvial valleys have failed in Montana. Just last week, the Senate Natural Resource Committee voted 7-1 to kill the Governor's bill to add alluvial valley language to Montana's strip mine and reclamation act. The Committee felt that the selective denial provisions of the act were sufficient to protect critical, unique, fragile or special areas. Wyoming, during its present legislative session, also killed the attempt to add alluvial valley mining prohibitions to its reclamation law. North Dakota has never attempted to prohibit mining in alluvial valleys.

969 The prohibition of mining in alluvial valleys would preclude the creation and development of logical mining units. In order for a logical mining unit to occur, the diverse ownership of the surface and coal interests (federal, state, Burlington Northern, and private) must be consolidated over sufficient economic, contiguous coal tonnages to justify a mining operation. The decision not to lease federal coal under private surface, which S. 7 provides for, coupled with the prohibition of mining in alluvial valleys would further preclude the formation of contiguous, economic coal tonnages to justify a mining operation.

970 2. The Mansfield amendment is unworkable.

970 A combination of factors should be considered in addressing the inadequacies of Section 423(e). The enclosed memorandum points out a number of areas that should be given close attention during the deliberations with regard to the Mansfield amendment. The memorandum was prepared by the Minneapolis, Minnesota law firm of Dorsey, Windhorst, Hannaford, Whitney & Halladay.

970 3. Other problem areas.

970 The Bill is enacted would create another federal bureasuracy causing intergovernmental friction. It has long been the attitude of Montana that it would control its own strip mining and reclamation. This is best evidenced by the application and enforcement of one of the nation's toughest strip mine laws. To date, the law has been working nicely without federal intervention. With the passage of the federal law, the risk exists that existing state programs will have to be discarded at the expense of lost coal production and undue delays because of long re-adjustment period to federal standards.

970 The reclamation fee for abandoned spoils is discriminatory. Because of past mining practices, coal mined in Montana is subject to additional taxation to reclaim the orphan spoils of other states. This potentially affects the marketability of Montana coal which is already subject to the highest severance tax in the nation. Although it may be too early to conclude what effect the thirty percent severance tax has had on the marketability of Montana coal, there have been no new coal contracts signed for Montana coal since its passage in 1975.

971 The bill is vague and ambiguous . Terms will have to be defined in detail in order to

adequately implement the provisions of this bill. No doubt, court determinations will be necessary in many cases thus further hindering production and causing unnecessary delays.

971 The bill will cause needless delays and added expense to future and existing operations . Section 420 of the act allows for citizens suits by any person having an interest which is or may be adversely affected. Delays caused by such actions are best evidenced by the legal delays over the construction of Colstrip 3 and 4, even after board approval.

971 Conclusion:

971 We have come here today in support of strong strip mine controls and reclamation standards. We recognize that the nation and the West need strong standards. We also feel fortunate that our state, Montana, has passed one of the nation's most stringent strip mine laws, and it is working.

971 We urge this Committee and both houses of Congress to give careful consideration to the areas of concern we have enumerated here. If the land is incapable of being reclaimed it should not be mined. However, if the productivity of our ranches or farms can be improved through reclamation efforts and planning, then mining should be allowed. These determinations can only be done on a case by case basis because what is good for reclamation in McCone County may not work in Rosebud County and vice versa. We are confident, that in McCone County and Rosebud County where our lands are situated, that reclamation will indeed make them more productive for this generation and future generations. We in Montana feel strongly about individual property rights. We wish to preserve them, not have them legislated away. Thank you for the opportunity to appear here today. We request that our testimony appear in the record.

972 Respectfully submitted,

972 Marcus L. Nance

972 Dr. Arthur Hayes

972 Jack Knobloch

972 Burton Brewster

972 Daniel S. Hinnaland

972 Soren P. Jensen, Jr.

973 MEMORANDUM

973 Re: Surface Mining Control and Reclamation Act of 1977, S.7 Comments on Section 423(e)

973 Section 423(e) of the Bill reads as follows:

973 "All coal deposits, title to which is in the United States, in lands with respect to which the United States is not the surface owner thereof are hereby withdrawn from all forms of surface mining operations and open pit mining, except surface operations incident to an underground coal mine."

973 One of the purposes of the Bill stated in Section 102 is to assure that the coal supply essential to the nation's energy requirements and to its economic and social well-being is provided, and strike a balance between protection of the environment and agricultural productivity and the nation's need for coal as an essential source of energy. Enactment of Section 423(e) would prohibit the surface mining of vast amounts of federally owned coal deposits, and would be likely to effectively prohibit the surface mining of vast amounts of non-federally owned coal deposits. In large areas of Montana and Wyoming, coal deposits are owned in a checker-board pattern by the federal government and private owners, including Burlington Northern. In addition, state governments are likely to own two sections in each township. In many instances, the private owners and the state governments have leased their coal rights to coal companies, but the federally owned deposits are unleased. Fee ownership of the coal has been severed from fee ownership of the surface, and in many areas nearly all of the surface is owned in fee by farmers, ranchers or other persons or entities.

973 Each square in the checker board is one section, and unless several squares can be assembled to make up an economically viable mining unit, it is unlikely that the non-federal coal can be mined on a basis that would be economically feasible in today's market. Much of the coal may lie under 200 feet or more of overburden, and since side walls are required in a surface mining operation, the actual coal that could be mined if the operator were confined to a one section area would be substantially less than all the coal under that section. Such a checker-board pattern of mining would seem to be highly undesirable. The capital costs of

opening a new surface mine are likely to approach one hundred million dollars, and any operator must be assured of a sufficiently large available deposit for mining before it will be willing to proceed to open a mine.

974 The apparent intent of Section 423(e) may be to assure that the rights of surface land owners and other persons with a legal interest in the land are fully protected from surface mining operations, which is also one of the purposes set forth in Section 102. It is our understanding that in Montana and Wyoming the right of a surface owner vis-a-vis an owner of coal wishing to surface mine the coal is not legally clear, and may depend upon the terms of the original grant of surface rights and the reservation of coal rights, whether by the federal government, the Burlington Northern, or other persons. It is likely, however, that the surface owner is entitled to some damages for use of his surface in connection with surface mining. It could also be argued that a surface owner should have an absolute right to prohibit surface mining on his land, although traditionally, the owner of the mineral interest has had a right to mine the mineral, perhaps subject to an obligation to compensate the surface owner for his losses.

974 It is our opinion that Section 423(e), by flatly withdrawing all federally owned coal deposits from surface mining in those areas where the surface is not federally owned, will (i) deny the nation the benefits of using the coal from these deposits, as well as privately owned contiguous deposits, which we believe constitute a very substantial portion of all coal deposits in Montana and Wyoming, and (ii) do this arbitrarily without consideration of whether or not the surface owner is willing to consent to the surface mining operation. Assume, for example, that a coal company owns all of the surface on the attached drawing, and has leased all of the non-federally owned coal deposits, but has determined that it cannot economically mine the coal unless it obtains leases of the federally owned deposits. If the federally-owned coal is unavailable for leasing because of Section 423(e), no portion of this coal deposit will be mined. This situation would prevail regardless of the ability of the coal company to meet stringent environmental controls, reclamation requirements, the proximity of transportation, and the existence of other factors favoring the mining of this coal deposit. Another example is the case where the surface is owned by a rancher who is willing to consent to surface mining if he is paid

agreed upon per acre damages. A coal company that owns the non-federal coal deposits in the area has determined that the damage payments required by the rancher are reasonable and is willing to pay them. The rancher is not being "protected" by Section 423(e) under these circumstances, but the nation is being deprived of the availability of the coal in that area.

975 In fact, we believe in many areas of Montana and Wyoming, coal companies have acquired privately owned coal and surface rights in expectation that federally owned coal would be made available for mining at some price. We further believe these coal companies have anticipated the nation's energy requirements by these activities and would be in a position today to supply a substantially greater amount of coal but for the moratorium on leasing of federally owned coal and the uncertainty regarding a national energy policy.

976 If the purpose of Section 423(e) is to protect the surface owner, this could be accomplished by requiring surface owner consent before surface mining occurs. The decision whether a particular federal coal deposit should be leased should be made on the basis of environmental, coal quality, proximity to transportation, social development, and similar factors, and it would seem unwise for the nation to arbitrarily limit the mining of a vast amount of its coal deposits on the basis proposed in Section 423(e).

976 Dorsey, Windhorst, Hannaford, Whitney & Halladay

976 Minneapolis, Minnesota

976 February 24, 1977

977 [See Illustration in Original]

STATEMENT OF BURTON B. BREWSTER QUARTER CIRCLE U RANCH CO.,
BIRNEY, MONTANA SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
Washington, D.C., February 28, 1977

978 Mr. Chairman, Members of the Committee:

978 I appear before you in opposition to some of the provisions of House Bill H.R. 2. My opposition is based on the following facts. The part alluding to alluvial valley floors, 510(5)(A), should be eliminated from the bill because such areas are easier to reclaim than less productive sites, and the loss of production during mining would be on a small acreage and only temporary.

978 There is a large variation in the types of land and soils that may be strip mined. For instance, one may be stripping some of the most productive irrigated bottoms, alluvial valleys, or stripping some of the most fragile, steep and unproductive hillsides. I feel there is a direct correlation between the reclamation that can be done on the more productive sites as compared to the less productive sites. I am talking about the tools we have to work with, not the mechanical tools but the material tools, principally soils and moisture, the tools that make a plant grow. On these more productive sites one is talking about several feet of good sandy loam soil near water, while on the least productive sites one is working with only a few inches of poor quality top soil far from water. With the laws we now have governing strip mining and the amount of money being spent on reclamation one is talking about hundreds of dollars per acre. It is my feeling that the acreages of these more productive lands, alluvial valleys, can be increased after mining by leveling off some of the higher ridges that are not now irrigable by present gravity systems. This would tend to increase production rather than decrease it as many are contending. Furthermore, the areas of strippable coal in the larger valleys are very limited due to stream erosion of the coal seams.

979 Probably more significant, gentlemen, is the difficulty in defining an alluvial valley in a manner that will avoid delays, stoppages, law suits and harrassment in general. Irrigation can mean anything from a modern sprinkler system to old ditches built 60 years ago in order to prove-up on a desert claim and never used. Hay meadows may be claimed where a stock yard still stands, built 50 years ago but no hay has been cut since those early homestead days. Finally, to deny one from mining coal on his deeded alluvial valley is discriminatory and a denial of one's individual rights.

979 Referring to that portion of the bill regarding surface owner's consent over government owned coal, I have been concerned with the press coverage indicating that Congress is only concerned with the surface owner's consent to deny mining. What about the surface owner's consent to mine coal? It should be a two-way street. I am a strong believer in one's individual rights. Because of the checkerboard pattern of coal ownership and land ownership, I firmly believe that federal leases should be granted and coal should be mined where the surface owners

want development.Any payment the surface owners can negotiate with a coal company for
disturbing their land should be legal and not legislated. That should be his individual right.

980 Likewise, leases should not be granted for coal development on surface owner's land that
do not want development, unless or until such a time as the coal development becomes a
"necessary public use ".

980 Thank you for the opportunity to appear here today.

980 Respectfully submitted by, Burton B. Brewster

STATEMENT OF JACK KNOBLOCH KNOBLOCH RANCH, BIRNEY,
MONTANA SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS Washington,
D.C., February 28, 1977

981 Mr. Chairman, Members of the Committee:

981 I am concerned about the proposed strip mining regulations where they pertain to alluvial
deposits and the surface owner problem.

981 Our ranch is a family ranch. A portion of the present ranch unit was homesteaded by my
father and his mother and brothers in the early 1900's. The present ranch unit is now operated
and worked by my wife and me.

981 A mine is planned at the present time that will involve a substantial amount of our deeded
surface.

981 I have tried to determine how the regulations concerning the alluvial valleys will effect my
ranch unit. My first problem is the many ways that the regulations can be interpreted.

981 When mining takes place, my goal as a surface owner is to have the best reclamation
possible. If the opportunity is there to improve the ranch unit and to increase total production,
we should take advantage of it. The exclusion of the alluvial deposits in areas where reclamation
can be accomplished will cause a more piecemeal mining operation. This will result in a less
efficient use of our coal resources. Due to a more broken mining pattern, it will be very difficult
to reclaim the mined land so it will be compatible with the unmined surface. This could result in
something less than the best reclamation. As a surface owner and user, I believe we must protect
our right to insure the best possible reclamation.

982 To accomplish our goal of the best mining and reclamation, we need the type of regulations that will allow us to use a mining and reclamation plan suited to each individual area. Decisions to prohibit areas to be mined should be done on a case by case basis with landowner guidance.

982 In regard to the surface owner problem, I believe that in every strip mining operation, the surface must be disturbed. When we as surface owners contribute the use of our surface to a mining operation, we have the right to the maximum return possible for the use of that surface. Based on the goal of each surface owner, this return may be in several different forms. It could be an outright sale of the surface, a lease, or, in some cases, a more productive ranch unit through proper reclamation, or a combination of these and other forms of compensation.

982 The proposed regulations for the surface owner protection will take away our right to realize the maximum return and production from our land.In some cases, it may not cover the actual loss of production that the mining operation may cause to the ranch or farm unit.

982 Thank you for the opportunity to appear here today.

982 Respectfully submitted by, Jack Knobloch

STATEMENT OF DR. ARTHUR F. HAYES PRESIDENT, BROWN CATTLE CO., BIRNEY, MONTANA SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS Washington, D.C., February 28, 1977

983 Mr. Chairman, Members of the Committee:

983 I am Arthur F. Hayes, a veterinarian, President of the Brown Cattle Co., of Birney, Montana. I would like to make the following remarks concerning the strippable coal reserves on our ranch.

983 The Brown Cattle Co. was established in the open range days in 1886. It now consists of 9,160 acres of deeded land, 5,102 acres of leased BLM land and 621 acres of leased state land. We irrigate 428 acres with ditches. We have another 50 acres that flood irrigate under the right set of circumstances. Another asset is the Custer National Forest permit to graze 409 head of cattle for seven months of the year. We also have some non-producing mineral interests which include about three thousand acres of fee coal.It is because of this fee coal that I would like to address the alluvial valley portion of H.R. 2.

983 As owner and operator of this ranch, I believe that I am in a better position to make a judgment concerning the effects a proper mining plan would have on my ranch operation.

983 I prefer a positive approach that would lead to the development of our deeded fee coal which is E.P.A. compliance coal. This coal, if mined in the proper manner, would form a logical mining unit. Such a mining unit on my ranch would include federal coal under federal surface, federal coal under private surface and state surface, state coal under state surface, and our fee coal under our surface. I believe that the Knobloch seams which lie within 150 feet of the surface should be mined. After proper reclamation, as prescribed by Montana law, considered to be the most stringent in the country, on our ranch alone, the irrigated acres would be increased from 400 to 1,200, perhaps more.

984 If the Mansfield amendment in S.7 is adhered to, such proper unitization would be impossible.

984 The 40 year old history of the Big Horn Coal Mine, in the alluvial valley of the Tongue River and the 6 year history of the Decker Coal mine, lead me to believe that the hydrological question can be handled and the integrity of the river and quality of the water can be maintained. My opinion is substantiated by Wayne A. Van Voast in Bulletin 93 entitled, "Hydrologic Effects of Strip Coal Mining in Southeastern Montana Emphasis: One Year of Mining Near Decker", dated June, 1974, and Bulletin 96 entitled, "Hydrogeologic Aspects of Existing and Proposed Strip Coal Mines Near Decker, Southeastern Montana", dated December, 1975.

984 In the BLM "Birney-Decker Study", the coal I refer to was listed as "marginal reserves". However, the Bureau of Mines of the State of Montana clearly states that the high BTU quality and low sulphur content of this coal, makes it very valuable. Extensive exploration work done within the last two years on our ranch confirm this appraisal.

984 It is my contention that this area can be mined in an orderly fashion as transportation becomes available. I believe that the contention of mining the outer fringe area on the high divide first, as advocated by the BLM, is wrong. Such an approach would lead to the loss of this valuable resource in the valley and the economic strangulation of our ranches.

985 Again, I say that proper mining in our valley will eventually result in increased agricultural production by the incorporation of the sage brush flats and bench lands along with the unimproved valley floor. Over a period of time systematic mining and proper reclamation will result in agricultural units of high productivity.

985 Thank you for the opportunity to appear here today.

985 Respectfully submitted by,

985 Dr. Arthur F. Hayes

STATEMENT OF DAN HINNALAND HINNALAND RANCH, BROCKWAY, MONTANA SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS Washington, D.C., February 28, 1977

986 Mr. Chairman, Members of the Committee:

986 My name is Dan Hinnaland and I own a ranch near Brockway, Montana, in McCone County. My father who came from Norway started the place in the early 1900's primarily as a sheep ranch. The nature of the operation has changed substantially over the years. Today, I own nearly 30,000 acres of deeded surface and lease nearly that much additional surface from the BLM, the Burlington Northern railroad, and the state of Montana. I, along with my wife, two of my sons, and occasional hired help operate the ranch. The operation is diversified to include cattle, sheep and crops - primarily wheat. The northern border of the ranch borders the Dreyer ranch where plans have been announced by the Burlington Northern to construct a coal conversion plant for fertilizer and synthetic fuels. Fort Peck Reservoir is less than fifteen miles from my ranch. The coal underlying my ranch is owned primarily by the federal government, the Burlington Northern and the state of Montana. I own approximately 400 acres of fee coal.

986 I am here today not in opposition to S.7, but rather to voice my concerns about two specific sections, 410(5) and 423(e). I believe the alluvial valley sections of the bill is wrong. Many of the acres on my ranch have dry streambeds except for occasional spring runoffs. Areas fed by this runoff are for the most part barren and unproductive. I believe that through proper planning and reclamation that the productivity of the land and adjoining areas can be improved. The proximity of the Fort Peck Reservoir opens up the alternative of irrigation that would also benefit the entire area. To use that water today is not economical from an agricultural standpoint.

Because of the overall rough terrain and the diverse mineral ownership, it simply would not make sense to prohibit mining in the alluvial valleys of my ranch. Also, prohibiting mining in the alluvial valleys, the coal resource would be wasted because isolated deposits would not be economical to mine at a later date.

987 With reapect to Section 423(e), I believe that the enactment of this section would preclude any chance of logical mining in McCone County. With the checkerboard ownership of coal divided nearly equally between the federal government and the Burlington Northern railroad, it would mean that only railroad coal could be mined leaving isolated coal belonging to the nation in the ground. In a time when energy problems are crucial in our country, it makes no sense to compound the problem.Not only would the mining be more expensive, but the reclamation would be piecemeal. Further, if we as landowners are going to be disturbed by mining, it should be a one time disturbance.

987 Again, I believe that coal mining and reclamation will improve the productivity of the area. This will best be accomplished by cooperation among the different owners of the mineral and surface estates. Prohibition of mining in alluvial valleys that are relatively non-productive and exempting leasing of federal minerals under private surface do little in achieving wise, logical planning to help solve our nations growing energy problems.

987 Thank you for the opportunity to appear here today.

987 Respectfully submitted by,

987 Daniel E. Hinnaland

STATEMENT OF SOREN P. JENSEN, JR. PRESIDENT, COTTONWOOD RANCH, INC., MCCONE COUNTY, MONTANA SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS Washington, D.C., February 28, 1977

990 Circle, Montana

990 February 24, 1977

990 I have preferred to live and farm in eastern Montana almost all my life and plan to continue. My father and uncle came to this country from Denmark in 1910. He homesteaded on our land in 1913 and lived out his life here. At this time, my brothers and I have control of 16,000 deeded acres of land which we farm and ranch. Economically, this operation is difficult

in recent years and we feel coal is the resource that will make it possible for us to stay and for our children to find jobs.

990 I feel we should have the right to decide whether coal should be mined under our land. I should be able to price my own land. If coal is to be mined, the federal coal should also be leased, or the result is a checkerboard area unfair to many. The surface owner should have compensation and a share in the mined coal as well as have protection. After all, his business is being disrupted, delayed, and in some cases, terminated until the land can be reclaimed. We know that reclamation in some areas has been proved good. Montana has been conscious of the importance of this.

990 Energy has never been more important to our country than now - can we selfishly expect other states to provide the needs for us? I believe in a trade-off to other states for what they have given us. We like our country the way it is, but feel with good laws, we can share with others, and not be the losers.

990 We do appreciate good laws, and commend you for your efforts.

990 Yours truly,

990 Soren P. Jensen

LAW OFFICES
COOK, HENDERSON & SAXBE, P.C.
TENTH FLOOR
1776 K STREET, N.W.
WASHINGTON, D.C. 20006
March 8, 1977
Honorable Lee Metcalf
United States Senate
Washington, D.C. 20510
Dear Senator:

991 Pursuant to our conversation setting forth the problems this office has relative to Section 422(e)(2) and our strong desire to advise you of the litigious nature of the present language, we wish to set forth our argument relative to the present wording, the untenable position that it puts our client in vis-a-vis the United States Government, and the suggested language to correct the inadequate wording presently included in the introduced bill.

991 ARGUMENT

991 Section 422 of S. 7, the Surface Mining Control and Reclamation Act of 1977, designates

areas, including national forests, that would, by virtue of enactment, become unsuitable for surface coal mining operations. In recognition of possible legal problems and of other injustices or inequities that may result from this new federal designations of unsuitability, Section 422 itself, through subsection 422(e)(2), makes the federal ban on surface coal mining operations on national forests conditional, that is, the federal prohibition is operative to the extent that valid existing rights at time of enactment are not disturbed. The present Congressional language that would preserve and otherwise avoid disturbing existing rights to conduct surface mining on national forests is identical to statutory language in the 94th Congress. The original meaning, scope, and intentions expressed in Section 422(e)'s language of condition is helpful to understand these features of legislative proposals in the 95th.

991 The Senate report in the 94th Congress expressly provided some illumination of the legislative intentions underlying the incorporation of language conditioning the new federal prohibition. These legislative intentions, as disclosed by the Senate report, S.Rep. No. 28, of the 94th Congress, were two-fold: (1) to permit the statutory language, "valid existing rights", to be given content or definition by "previous state court interpretation of valid existing rights" (p. 220), interpretations that Congress "in no way intended to affect or abrogate"; and (2) to allocate the burden of proof with respect to claims of valid existing rights under State law when the federal legislation took effect. The Senate report language in the 94th Congress addressing this second legislative objective is complex, viz., "The party claiming such rights must show usage or custom at the time and place where the contract is to be executed and must show that such rights were contemplated by the parties. The phrase 'subject to valid existing rights' is thus in no way intended to open up national forest lands to strip mining where previous legal precedents have prohibited stripping".

992 The legislative objectives intended by inclusion of the statutory phrase, "subject to valid existing rights" and by incorporating State law to give meaning and content are commendable and ought to be continued but clarified. Clarification and, thus, furtherance of what the Congress intends should take into account the realities of the time span between when a claimant of existing rights contends that the right was created or brought into existence. Acknowledgment of

these realities would prevent the opportunity for a party to show usage or custom from becoming
an impossibility or mere illusion, results that the Congress clearly does not intend to bring about.
Moreover, added clarification and efficacy is attainable by reference to past situations or events
to which the federal government itself was a party making necessarily, therefore, what was
contemplated by it at such time a mandatory element of the burden of proof of a claimant to
existing rights alleged to have flowed from such situations or events. In addition to the propriety
of statutory language in present federal legislation touching upon what the federal government
itself contemplated in relevant past transactions, an obvious Congressional purpose to avoid
costly litigation will also be furthered.

993 Concerns in this area are not merely hypothetical. For example, 40 years ago, in 1937,
the Stearns Coal and Lumber Company of Kentucky, sold land to the United States for inclusion
in a national forest but reserved mineral rights for itself in the deed of conveyance to which the
United States was a party. What was contemplated by both parties to this deed; i.e., Stearns and
the United States and what Kentucky law is now and was back in 1937; are important questions
for Stearns Coal and Lumber if it becomes necessary to determine what its statutory "valid
existing rights" are, for example, in a dispute in the future over its right to mine the minerals the
ownership of which Stearns reserved for itself in the deed of conveyance to the United States.
This brief discussion also serves to point out both a latent ambiguity in the statutory language and
a latent unfairness in the allocation of the burden of proof if the United States were to object to
Stearns' mining on the national forest conveyed by Stearns to the United States in 1937.

993 First the ambiguity. If "valid existing rights" exist for Stearns by virtue of the deed to
which the United States was the grantee and other party, does the legislation intend to disrupt the
alienability by sale, assignment, gift, inheritance, of this reserved property right of Stearns
requiring a valuation of the property right thus taken? The answer to this question clearly seems
to be in the negative and the language and legislative history should reflect this.

993 Second, possible unfairness should be avoided. For example, if Stearns were to seek to
mine or otherwise make effective its reserved mineral rights on the national lands that it once

owned; and, if the United States were to object to such operations by Stearns or its successors;
would it be fair and just to require Stearns to prove what the United States contemplated in 1937
when the United States objects in 1977? The latent ambiguity can be avoided; the latent
unfairness in allocations of burdens of proof can be precluded; and both the original and present
Congressional intentions underlying the statutory language, "Subject to valid existing rights" be
both protected as well as promoted; by amending subsection 422(e)(2).

994 SUGGESTED LANGUAGE

994 "On any Federal lands within the boundaries of any national forest except surface
operations and impacts incident to an underground coal mine; provided that mineral rights
reserved in deeds of conveyance to the United States of lands now within such boundaries may
be made effective by mining thereof by the grantor or its heirs or assigns; and provided further,
that in any dispute involving the federal government as a grantee, the federal government shall
have the burden of establishing the basis of its objections in the light of State law and State
custom and usage prevailing at the time of the conveyance."

994 It is our feeling that this does no more than correct a latent ambiguity in the present
language and preserves legal established rights heretofore established between grantor and the
United States of America.

994 You will also find enclosed herewith all of the language of the deed of conveyance
between the Stearns Coal Company and the United States setting forth the respective legal
obligations of the parties entered into in December 1937.

994 Lee, I would request that this communication, along with the enclosed deed (less the
description) be placed in the Committee record. I would further appreciate your serious
consideration of the suggested language during the course of Committee discussion and mark-up.

994 Very truly yours,

994 Marlow W. Cook

994 Enclosure

995 THIS DEED, made and entered into this the 18th day of December 1937, by and between

THE STEARNS COAL AND LUMBER COMPANY, a corporation, created and existing under
and by virtue of the laws of the State of Michigan, with its principal office at Ludington,
Michigan, party of the first part, and THE UNITED STATES OF AMERICA, party of the second
part.

995 WITNESSETH:

995 That for and in consideration of the sum of ONE HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED AND 84/100 ($1 33,500.84) DOLLARS, cash in hand paid, the
receipt of which is hereby acknowledged, the party of the first part has BARGAINED AND
SOLD and does hereby SELL AND CONVEY, subject to the exceptions and reservations
hereinafter set out, unto the party of the second part, and its assigns forever, the following
described thirty-five (35) tracts of land, aggregating 46,842.4 acres more or less, lying and being
in McCreary and Wayne Counties, Kentucky, of which approximately 454.3 acres lie in Wayne
County and approximately 46, 388.1 acres lie in McCreary County, be the same more or less.

995 All bearings in these descriptions are turned from the true meridian and all distances are
expressed in chains.

995 TRACT NO. 1874

995 All that certain tract or parcel of land lying and being in McCreary and Wayne Counties,
Kentucky, situated west and southwest of Stearns, adjacent to Barthell, Camargo, Worley,
Yamacraw, Oz, Whiteoak Junction, Cooperative, Shoopman Gregory and Bell Farm Post
Offices, on the waters of South Fork of Cumberland River; Bear, Roaring Paunch, Devils, Rock,
Wolf, Alum creeks, and Absolom Branch; and Langford Fork, Lonesome Creek, Steele Hollow,
and Dobbs Hollow, of Little South Fork, tributaries of South Fork of Cumberland River and
more particularly described as follows:

995 BEGINNING at corner 1, which is corner 1 of Stearns Coal & Lumber Co. tract 1874-III,
corner 1 of Stearns Coal & Lumber Co. tract 1874-IV, Common to Stearns Coal & Lumber Co.
parcel, a set stone marked "No. 52-265 MLS 1858" (Kentucky-Tennessee State Line monument
No. 52 set by commissioners appointed in 1857) in Kentucky-Tonnessee State Line, on top first
main ridge east of Rock Creek, about 1 chain west of Old Jamestown Road. Set F.S. standard

concrete post marked 4080 alongside. Scribed black pine and black oak BTWDI which bear S.
370 E. 0.11 chain distant and N. 50 degrees W., 0.33 chain distant, respectively.

996 Thence with line 3-1 of said tract 1874-IV, reversed, with said State Line (as apparently
surveyed by said Commissioners):

996 N. 88 degrees 08' W., at 44.45 chains crossing Rock Creek, at 50.00 chains crossing
Stearns Coal & Lumber Co. Railroad, at 126.60, 135.90, 142.40 and 143.50 chains crossing
roads, in all 159.65 chains, crossing several cliffs and drains, to corner 2, which is corner 3 of
said tract 1874-IV, common to W. C. Bell parcel, a point alongside large sandstone boulder at
base of low cliff at the intersection of said state line with a line of the G. C. Vickory 100 acre
patent No. 65109 dated Dec. 28, 1892. Set a stone; cut two (2) crosses (x) on face of said cliff as
bearing objects and scribed wahoo bea ring tree BTW4-30.

996 Thence with said Bell parcel;

996 N. 55 degrees 15' W., 29.57 chains, leaving said State Line, to corner 3, which is corner 1
of the W. C. Bell and Wendell Burnett, Alice Bell & Nimrod Burnett Exeeption No. 1, common
to said Bell parcel, a point with painted witnesses southeast of Parker Mountain-Bell Farm Road,
about 1.5 chains east of a drain. Set a stone; scribed hickory and white oak bearing trees BT19-7.

997 Pages 7 thru 179 cover legal descriptions of the conveyed tracts.

998

Waddle, O.H. by exc.	Feb. 11, 1920	10-241
Waddle, Wm. et ux.	Oct. 30, 1916	5-285
Waters, Frank et ux.	May 17, 1915	4-28
Waters, Cal. et ux.	Feb. 27, 1920	9-342
Waters, Peter et ux.	June 24, 1927	18-614
Watson, Mrs. Ale	Mar. 18, 1937	30-50
West, Amanda	July 5, 1924	23-87
Winchester, Wm. et al.	Mar. 15, 1919	7-624
Winchester, Wm. et al.	Dec. 1, 1916	5-318
Winchester, Wm. et al.	Dec. 1, 1916	5-320
Winchester, Wm. et al.	Dec. 1, 1916	5-326
Winchester, Frank	Dec. 5, 1917	6-411

998 There is EXCEPTED, however, the right of user in the public as to such roads over and across said lands as are now located on the grounds and designated on the Grant Map of the United States of America.

998 There is, also, EXCEPTED, and not hereby conveyed, all minerals, coal and gas the title to which is now outstanding of record in third parties.

998 RESERVING, however, from the operation of this conveyance, unto the party of the first part, its successors or assigns, the unrestricted use and control for all legal purposes until same are abandoned or surrendered by vendor, or its assigns, of approximately forty (40) acres, as designated and shown by dash lines on the Grant Map of the United States of America, at the mouth of each of the following mines: #1, #4, #11, #15 and #16, Cooperative, Fidelity and Grassy Fork. These reserved areas include mine openings, tipples, trucks, bridges, su-station and shops.

998 There is also, RESERVED, easements or rights-of-way now existing or defined for all telephone lines, pipe lines, electric transmission lines and the Stearns Coal and Lumber Company logging railroad until the same are abandoned by vendor or its assigns.

998 There is, also, RESERVED, the right to the use of all existing or necessary rights-of-way over the land conveyed herein for the removal of timber hereinafter reserved, and the right to use existing rights-of-way, and other rights-of-way as approved by the Forest Office, over the land herein conveyed for the removal of any timber now or hereafter owned by the Stearns Coal and Lumber Company.

998 There is, also, RESERVED, to January 1, 1941, timber of all kinds, diameter ten (10) inches and up breast high on the watershed of Watt, Dolen, Dry, Puncheon, Elder, Troublesome, Alum, Peach Orchard, Rogers Hollow, Jones Hollow, Fish Trap Branch and Wolf Creek, the same to be cut in accordance with the following rules and regulations of the Secretary of Agriculture covering cutting and removal of reserved timber, viz:

998 1. No unnecessary damage shall be done to any small growth or to trees left standing either in cutting or in the location of mill sites, railroads, logging roads, chutes, landings, or camps.

998 2. All engines and locomotives not burning oil for fuel used in logging or hauling logs on this tract shall be equipped with spark arresters and ash pens that are satisfactory to the forest officer in charge.

999 3. Trees of size smaller that the diameter limit specified may be out in connection with regular logging operations and used for ties on the logging railroads operated under this agreement and for the construction and maintenance of telephone lines, roads, sideways, flumes slides and camp buildings, so far as round material may be necessary in connection with the economical conduct of logging operations. Such material shall as far as possible be assured from trees subject to injury in connection with logging or the construction of logging roads and railroads. No material under the specified diameter limit shall be cut or removed for such purposes where unmerchantable material above said diameter limit is available and can be used.

999 Any material cut or removed except in accordance with these rules and regulations shall be paid for by the vendor at double its value where found, such valuation to be determined by the forest officer in charge.

999 4. All logging railroad bridges and logging road bridges built and used by the owner of the reserved timber shall become the property of the United States at the termination of the reserved timber rights. All camp buildings and other logging improvements which shall not be removed within one year from the expiration of the reserved timber rights shall then become the property of the United States.

999 5. While carrying on logging operations the owner of the reserved timber and all his employees, contractors, and their employees at work on the tract shall without any charge or expense to the United States do all in their power to prevent and suppress forest fires upon threatening their logging operations or the lands upon which the standing timber reserved under this agreement remains uncut. The owner of the reserved timber shall place himself and all his employees at the disposal of the forest officer in charge for the purpose of fighting forest fires on the lands conveyed by him to the United States, with the understanding that if the fire does not threaten his logging operations or the timber owned by him, he shall be paid for the service so rendered at the rate or rates to be determined by the forest officer in charge, which rate or rates

shall correspond to the rate or rates of pay prevailing in the locality for service of a similar character at the time the services are rendered, provided that if the owner of the reserved timber, his employees, contractors or their employees are responsible for the origin of the fire. Then he shall not be paid for services so rendered.

1000 6. The owner of the reserved timber shall clear and dispose of the brush and tops on a strip of land extending a distance of fifty feet on each side of all railroads, logging railroads, branches, spurs and switches owned and operated by him, so far as such lie within this tract, said work to be subject to the approval of the forest officer in charge.

1000 7. The cutting of such logging unit or watershed shall be continuous when once started and as soon as it is cut over it shall be surrendered to the United States and shall not again be cut over, but this clause is not intended to prevent the cutting of such timber spring or summer cut to be peeled or winter cut to prevent bluing before or after general logging but the different cuttings must follow each other without interruption until the cutting of a unit and shall proceed down in order to reduce the danger from fire and damage to the young growth, but right of way shall be allowed across surrendered land on areas so long as needed in order to remove timber and products from other units not yet released. Provided: that the conditions of this paragraph are not to be constructed as stopping the vendor or others from carrying on separate and distinct stave timber and saw timber operations, without regard to the interval between such operations.

1000 8. No monument or witness tree shall be destroyed. There is, also, RESERVED, all metaliferous minerals, coal, oil, gas and limestone in, upon and under the above described tracts of land, in perpetuity; PROVIDED, however, that all operations for mining and removing same shall be done and carried on in accordance with the following rules and regulations prescribed by the Secretary of Agriculture, viz:

1000 1. Every person claiming the right to prospect for minerals, oil, or gas, or the products thereof, or to mine, drill, develop or operate in or upon lands acquired by the United States under the provisions of the Act of March 1, 1911 (36 Stat., 961), with a reservation to the grantor of mineral, oil, or gas rights, must, on demand, exhibit to the Forest Officer in charge, satisfactory written evidence of right or authority from, through, or under the said grantor. Mining,

prospecting or searching for minerals, oil or gas, except by those producing such evidence of right or authority, is forbidden.

1000 2. In prospecting for, and in mining and removing minerals, oil, or gas, and in manufacturing the products thereof, only so much of the surface shall be occupied, used or disturbed as is reasonable and, according to recognized good practice, necessary for the purpose.

1000 3. In underground operations all reasonable and usual provision shall be made for the support of the surface, and to that end the tunnels, shafts, and other workings shall at all reasonable times be open to inspection and examination by the Forest officers and mining experts or inspectors of the United States.

1001 4. All minera or mining operators shall make provision to the satisfaction of the Forest officer in charge for preventing the obstruction, pollution, or deterioration of streams, lakes, ponds, or springs, by tailings, dumpago, or otherwise, or the excape of any harmful or deleterious material or substance from their mines or works; and in the drilling for oil and gas, as well as in the pumping, piping, manufacturing, or operation of oil and gas wells, or plants for the production of same, the operators shall make provisions by ditches, pipes, pumps or other approved practical methods to prevent the spread or flow of oil, salt water, or other deleterious matter over the surface of the land, or into streams, lakes, ponds, or springs.

1001 5. The method commonly known as "hydraulic mining" is positively prohibited.

1001 6. Payment at the usual rates charged in the locality for sales of National Forest timber, and timber products of the same kind or species, shall be made to the United States for all timber, undergrowth or young growth, cut, destroyed, or damaged in prospecting, mining, drilling or removing minerals, oil, or gas, or in manufacturing products therefrom, and in the location and construction of buildings or works of any kind for use in connection therewith. All slash resulting from such cutting or destruction shall be disposed of as directed by the Forest officer when inflammable in his judgment. No timber, undergrowth, or reproduction shall be unnecessarily cut, destroyed, or damaged.

1001 7. No timber shall be cut or used for or in connection with any of the foregoing uses or

purposes except with the permission of the proper officer first obtained and upon payment therefor at the price or prices fixed for timber of similar kinds, at the usual rates as specified in above paragraph 6.

1001 8. Buildings, camps, roads, bridges and other structures or improvements necessary in carrying on mining, oil, or gas operations shall be located as approved by the Forest officer in charge, except as to the location of oil or gas derricks, rigs, boilers and tanks, which are to be located, however, according to recognized good practice. When a building, camp or other structure is removed from one location to another, all debris resulting from such removal shall be burned or otherwise disposed of as directed by the Forest officer in charge.

1002 9. All buildings, camps, and other structures shall be removed within six months after the completion of mining, oil, or gas operations, or the commercial exhaustion of the aforesaid minerals, oil, or gas; and all buildings, other structures, materials, tools, and equipment not removed from the land of the United States within six months after the aforesaid completion of mining or gas operations, or the commercial exhaustion of the aforesaid minerals, oil, or gas shall become the property of the United States.

1002 10. All Destructible refuse, waste material and other degris caused by the mining, the oil or the gas operations hereunder which interfere with the administration of the Forest or endangers forest growth, shall within six months after the completion of said operations, or the commercial exhaustion of the aforesaid minerals, oil, or gas, be disposed of as directed by the Forest officer in charge.

1002 11. While operations are in progress, the operators, contractors, subcontractors, and employees of contractors and subcontractors at work on the National Forest shall use due diligence in the prevention and suppression of all fires, shall be available for service in the extinguishment and suppression of all fires within that particular locality, and shall be held responsible for any fires of which they are directly or indirectly the cause.

1002 However, the United States of America is to have the right of quarrying limestone, free of charge, for its own use, except from the present, rock quarry, at White Oak Junction, which is a strip of land one hundred (100) feet wide adjoining and running with the Southern boundary of

the Cooperative Spur of the Kentucky and Tennessee Railway right-of-way line from bridge #12
to the Cooperative switch.

1002 Together with all and singular the hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

1002 It is understood and agreed that the party of the first part herein will pay when due, all
taxes assessed against the horeinabove described property as of July 1, 1937, which becomes due
and payable during the year 1938, and all taxes for all previous years.

1003 TO HAVE AND TO HOLD the said premises as herein described, with its
appurtonances, subject to the exceptions and reservations hereinbefore set forth, unto the said
party of the second part and its assigns forever, and the party of the first part hereby releases unto
the party of the second part, all its right, tit title and interest in and to said property, including all
exemptions allowed by law; and hereby covenants to and with the party of the second part, and
its assigns, that it, the said party of the first part, is lawfully seized in fee simple of said property,
and has good and perfect right to sell and convey the same as herein done, and that the title
thereto is clear, perfect and unencumbered, and that it will warrant generally the said title.

1003 IN TESTIMONY WHEREOF, the party of the first part has caused its corporate name to
be hereunto subscribed by R. L. Stearns, Jr., its Vice-President, the President being out of the
State of Kentucky, and its corporate seal hereto affixed by J. E. Butler, its Secretary, this the day
and year first above written.

1003 STEARNS COAL AND LUMBER COMPANY Attest: J. E. Butler (SEAL) By R. L. Stearns, Jr. Vice-President. STATE OF KENTUCKY COUNTY OF McCREARY SCT:

1003 I, F. R. Lear, Notary Public, within and for the County and State aforesaid, whose
commission as such expires on the 16th day of April, 1939, do hereby certify that the foregoing
instrument of writing, being a deed from THE STEARNS COAL AND LUMBER COMPANY,
to THE UNITED STATES OF AMERICA, was produced to me in my said County and State,
and acknowledged before me by THE STEARNS COAL AND LUMBER COMPANY, a
corporation, by R. L. STEARNS, JR., its Vice-President, and J. E. Butler its Secretary, to be the
act and deed of said corporation, and their act and deed as its respective corporate officers.

1003 Witness my hand and seal of office this the 18th day of December, 1937.

1003 (N.P.F.R. Lear, Notary Public McCreary Seal) County, Kentucky.

1003 My Commission Expires April 16, 1939.

A. CHANDLER MORTIMER
ENVIRONMENTAL PLANNING CONSULTANT
24 DECATUR ROAD, HAVERTOWN, PA. 19083
March 15, 1977
Senator Lee Metcalf
Committee on Energy and Natural Resources
3106 Dirksen Building
Washington, DC 20510
Dear Senator Metcalf:

1004 I have been requested by the elected officials of the Village and Township of Catlin, Illinois, to send the enclosed document for inclusion in the record of hearings of the Senate Committee on Energy and Natural Resources on Senate Bill S. 7.

1004 You will please note that the enclosed document is a copy of prepared testimony for H.R. 2, and that there are some minor differences between S. 7 and H.R. 2. Therefore, although the thrust of the testimony is the same in both cases, some changes in citations are appropriate for S. 7.

1004 On page 6 of the enclosed document Section 522(a)(3) of H.R. 2 corresponds with Section 422(a)(3) of S. 7.

1004 Also on page 6, reference is directed to Section 501 of S. 7, which corresponds with Section 701 of H.R. 2.

1004 On page 7, the reference to H.R. 2's Section 510(b)(4) applies to Section 422(b)(4) of S. 7. Similarly, reference to H.R. 2 Section 522(a)(6) corresponds to Section 422(a)(6) of S. 7, except that this testimony supports the language of the H.R. 2 Section 522(a)(6) as distinguished from the S. 7 422(a)(6) as better fulfilling the purposes of Title I of both bills.

1004 On page 8, referencesto Sections 503 and 504 of H.R. 2 apply equally to Sections 403 and 404 of S. 7.

1004 I thank you, on behalf of the Village and Township of Catlin for including these materials in the Committee record.

1004 Very truly yours,

1004 A. Chandler Mortimer Consultant to the Village and Township of Catlin

1004 ACM/ph

1004 Enclosure

STATEMENT OF TERRY DOLAN, MAYOR OF CATLIN, ILLINOIS on behalf of and with the authority of The Village Council of the Village of Catlin, Illinois and JOHN DICKSON, SUPERVISOR OF CATLIN TOWNSHIP, ILLINOIS and GEORGE KINDER, CHAIRMAN OF THE ZONING BOARD OF APPEALS OF CATLIN TOWNSHIP, ILLINOIS on behalf of and with the authority of The Board of Auditors of the Township of Catlin, Illinois before the SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT OF THE INTERIOR AND INSULAR AFFAIRS COMMITTEE UNITED STATES HOUSE OF REPRESENTATIVES

March 4, 1977

1006 This statement is submitted on behalf, and with the authority, of the Village Council of the Village of Catlin, Illinois, and the Board of Auditors of Catlin Township, Illinois, by Terry Dolan, Mayor of the Village of Catlin, and John Dickson, Township Supervisor, and George Kinder, Chairman of the Zoning Board of Appeals, of Catlin Township.

1006 We believe that federal regulation of strip mining is necessary and desirable and therefore we endorse the principles and procedures that are contained in H.R.2.

1006 We do have, however, some suggestions for specific amendments to the bill which in our view will make the legislation more effective in achiving the Statement of Policy, Title I of the bill, and we have incorporated these suggestions in the concluding portion of this statement.

1006 Among the most important provisions in H.R. 2 are those which protect highly productive agricultural lands from surface mining. Catlin Township is not presently the scene of any strip mining activity, but the countryside around it in Vermilion County still bears the scars of old strip mines. Now one of the nation's larger coal companies has announced plans to strip mine approximately 6000 acres in Catlin Township, much of it consisting of some of the world's most productive cropland. Catlin is not unique. We believe that its present circumstances provide a compelling example that demonstrates the need for federal legislation.

1007 Much of the land in Catlin Township is part of the Drummer-Flanagan soil association

(See Attachment A, a soils map of the area). Of the 380 soil series in Illinois only four others have soybean yields as high as Flanagan and Drummer soils. The six soils cover only slightly more than fifteen percent of the state. Vermilion County is able to make a significant contribution to food production. Nearly thirty-five percent of its land area contains Drummer-Flanagan soils. Soybean yields for Flanagan and Drummer soils are fifty-five percent higher than the average soybean yields in Illinois.

1007 As for corn yields, only two of the 380 soils have productivity levels as great as that of Flanagan soils. Those three soils account for only 7.5 percent of the total land area in Illinois and only one of the three occurs in Vermilion County. Corn yields, under high level of management, from Flanagan soils (141 bushels per acre) and from Drummer soils (134 bushels per acre) are fifty-eight percent higher than average yields in Illinois (87 bushels per acre). (See Attachments D and E for additional details and the sources of this information. Attachments F and G are U.S. Soil Conservation Service interpretations for these soils.)

1007 The proposed mining plan in Catlin Township is shown (Attachment B), along with attachment C, the current land ownership map. A comparison of the mining plan and Attachment A, the soils map reveals that several thousand acres of this land is in Drummer and Flanagan soils. If strip mining takes place, these highly productive soils will be disturbed. For the Catlin community the question is whether the original productivity of this land can be restored after the strip mining takes place.

1008 The simple fact of the matter is that no one knows whether reclamation can actually restore prime farm land to original yield levels. To date prime farmland has never been restored to levels that approach original yields and productivity. Russell Dawe, former Director of the Illinois Department of Mines, conceded recently "it is not known if lands can be restored to their original productivity." (Correspondence from Russell Dawe to Illinois South Project, April 19, 1976.)

1008 Not only is it not now impossible to predict what portion of row crop yields could ever be restored, but the mining and reclamation methods which would optimize restoration are still to be developed.

1008 On this crucial question, technological information is simply non-existent. The only field experiment which has been initiated on fertile soils is in western Illinois. Fred Caspall of Western Illinois University has directed this project since its inception in the spring of 1976. In several respects, the project design is too limited to be taken as a reasonable measure of potential row crop yield restoration. For one thing, this experiment covers an extremely limited area. Also, excessive amounts of fertilizer may have been applied. And, we wish to emphasize, it is impossible to judge any experiment of this nature on one year's yields alone. Certainly a period of between 5 and 15 years must be allowed to pass before any firm conclusions can be drawn. And, finally, many issues including the quantity of prime farmland which can be reclaimed at all, and the effects on neighboring prime farmland are not addressed in this experiment.

1009 Nevertheless, the experiment is located on Muscatine soil, a soil with approximately the same yields as the Flanagan soil in Vermilion County. The only reclamation figures which exist are those for the first growing season. These yields offer little comfort to anyone who may hope that a reasonable percentage of original yields can be restored. Compared with test plots that were left undisturbed, corn yields were only about 33% and soybean yields about 55%. (Galesburg, Illinois Register-Mail, December 13, 1976.) These yields were achieved with the replacement, in increments, of 6 to 48 inches of original topsoil.

1009 The restoration of prime farmland, or for that matter any land, is not as simple as a comparison of pre-mining and post-mining yields might indicate. Consideration of yields alone does not account, for example, for climatic variations nor does it necessarily take into consideration energy subsidies such as extra fertilization and irrigation which would not have been necessary if mining had never taken place.

1010 In an effort to provide solid information on the techniques of reclaiming row crop land and the results of such reclamation, the University of Illinois is about to commence a five-year field experiment on fertile row crop lands in Illinois. This project, to be begun in the spring of 1977, is funded by the U.S. Environmental Protection Agency and several mining companies. The stated objectives of this study, implicitly if not explicitly, illustrate the dearth of present knowledge. In addition to the fundamental question of comparative yields of reclaimed lands,

this study will address specifically the following issues which are inadequately understood at the present time: changes in groundwater characteristics and levels, drainage regimes, water retention characteristics of original and replaced soils, erosion hazards, subsidence and uneven settling of mined lands, and the effect of stockpiling and storing of topsoil on the fertility and structure of the replaced materials.The study will also evaluate the effect of various mining and reclamation techniques on these fundamental natural conditions.

1010 In summary, the feasibility of restoring a signifcant fraction of the productivity of prime farmlands is unknown at this time. There is no evidence of such lands being reclaimed or restored to significant yields or productivity. Restoration has never been achieved and it will be several years before it is known whether restoration is in fact possible.

1011 The view that the land should not be mined if it cannot be restored to its original productivity through reclamation is subscribed to by many individuals and organizations with disparate interests. Mr. John Paul of AMAX Coal Company and the National Coal Association admitted as much before this Subcommittee on February 25, 1977, (p. 16) when he said:

1011 "We subscribe to the concept of proper reclamation requirements and that areas which cannot be reclaimed should not be mined."

1011 We regard the provisions of H.R. 2 that deal with the designation of lands that are not suitable for strip mining as among the most important in the proposed Act. It is in these sections that we believe the bill needs some modifications. We have several specific suggestions.

1011 First, our most productive agricultural lands should be preserved for raising crops and protected from strip mining. To this end Section 522(a)(3) should be amended so as to provide for the designation of prime agricultural lands as not suitable for surface coal mining operations. Prime agricultural land is land that has the capability of, or is used for, the production of food and fiber with a favorable cost-return ratio. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when managed according to modern farming methods. We suggest that in Section 701 of the bill "prime agricultural land," be defined as having the following minimum characteristics:

1012 1. Adequate moisture supply (suggested: monthly supply at least equal to potential evapotranspiration during the growing season in eight of ten years)

1012 2. desirable soil temperature (suggested: mean annual temperature of 32 degrees F. or greater, and mean summer temperature of 47 degrees F. or greater, at a depth of 20 inches)

1012 3. a growing season of sufficient length to produce a commercial crop

1012 4. acceptable water table (suggested: a water table that can be maintained below 1.5 feet during the growing season)

1012 5. appropriate levels of pH and conductivity (suggested: pH between 4.5 and 8.4)

1012 6. limited damage by flooding (suggested: crop damage limited to no more than two years in five)

1012 7. low coarse fragment content (suggested: less than 10% coarse fragments - greater than three inches - in the surface layer)

1012 8. low erodability (suggested: a product of K [erodability factor] x percent of slope of less than 1.5)

1012 9. a contiguous area of sufficient size to allow economical operations (suggested: 160 acres)

1012 10. permeability (suggested: at least 0.02 inches per hour within 20 inches of the surface)

1012 Second, Section 510(b)(4) and Section 522(a)(6) may be interpreted as conflicting on the question of whether substantial legal and financial commitments in relation to a permit as opposed to actual mining operations will insulate land from designation as unsuitable for mining. We suggest that Section 510(b)(4) of H.R. 2 be revised to read as follows:

1013 (4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 522 of this Act or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 522(a)(4)(D) or section 522(c) (unless in such an area as to which an administrative proceeding has commenced pursuant to section 522(a)(4)(D) of this Act, the operator making the permit

application demonstrates that by reason of the provisions of section 522(a)(6) the remaining provisions of section 522 are not applicable to the operation for which he is applying for a permit;)

1013 Third, the procedures for securing the designation of lands as unsuitable for surface mining do not become effective until after a state program is certified under Section 503 or a federal program is imposed under Section 504. In the case of the implementation of a federal program under Section 504, as much as 42 months could elapse before any petitions to designate land as unsuitable for mining could be filed. We believe that such delay could operate to frustrate the operation of one of the most important provisions of the legislation. There should be a method of making a preliminary administrative determination of lands that are unsuitable for mining. We believe that prime farmland should be designated on a preliminary basis by the U.S. Soil Conservation Service in cooperation with state soil agencies, based upon existing soils data. Such preliminary designation should be made within six months of the effective date of the Act and a moratorium should be imposed on mining such lands until 180 days after a state or federal program becomes effective or the preliminary determination is rescinded in an appeal under Section 522(c) of the bill.

1014 Our nation needs both its energy resources and its food production resources. The recovery of sources of energy should not interfere with the production of food, even temporarily, unless it is plainly necessary. No such necessity presently exists. In Illinois, for example, the recoverable reserves of coal that can be deep mined are approximately nine times the reserves that are recoverable only, by strip mining. * Even if all of the coal that can be recovered by strip mining underlies prime farmland, which it does not, we believe that it should be the policy of this country to protect its agricultural land from the catastrophic disruption inherent in strip mining until the day arrives, if it ever does, when such coal reserves must be recovered.

1014 * Illinois Geological Survey, report in progress, as supplied by Jack Simon, Urbana, Illinois, March, 1977

1014 We have only recently come to understand that we live in a fragile environment that is easily damaged, sometimes beyond restoration or reclamation.The late Arnold Toynbee, speaking

of the biosphere, which he called the "film of dry land, water, and air enveloping the globe of our planet earth", said

1015 It is the sole present habitat - and, as far as we can foresee today, also the sole habitat that will ever be accessible - for all the species of living beings, including mankind, that are known to us.

1015 The biosphere is rigidly limited in its volume, and therefore contains only a limited stock of those resources on which the various species of living beings have to draw in order to maintain themselves. Some of these resources are renewable; others are irreplaceable. Any species that overdraws on its renewable resources or exhausts its irreplaceable resources condemns itself to extinction. *

1015 * Toynbee, Arnold, Mankind and Mother Earth, Oxford University Press, 1976, page 5

1015 At this time, no one can say with reasonable assurance that our most productive agricultural land is a renewable resource that can be restored after strip mining. It may well be irreplaceable. For this reason, we support H.R. 2 because it will provide protection for our resources of prime agricultural land.

1016 [See Illustration in Original]

1017 [See Illustration in Original]

1018 [See Illustration in Original]

1019

---

5 Soybean Yields: The Most Productive Illinois Soils

Rank in 380 Soils	Soil Type	Yield, bu./a. high-level management n1	Acreage, as % Illinois n2	Acreage, as % of Vermilic County n2
1	Flanagan	47	3.307	8.63
2	Ipava	47	1.808	
3	Drummer	46	6.059	26.68
4	Muscatine	46	2.439	
5	Sable	46	1.057	
6	Lisbon	46	0.351	1.58
total:			15.021%	36.89%

_
__

[See Table in Original]

1019 n1 Productivity of Illinois Soils, University of Illinois at Urbana-Champaign College of
Agriculture Cooperative Extension Service, Circular 1016. (1970)

1019 n2 Soil Type Acreages for Illinois, University of Illinois at Urbana-Champaign College
of Agriculture, Agricultural Experiment Station, Bulletin 735. (1969)

1020

_
__

*5*Corn Yields:
The Most
Productive
Illinois Soils

Rank in 380 Soils	Soil Type	Yield, bu./a. high-level management n1	Acreage, as % of Illinois n2	Acreage, as % of Vermilion County n2
1	Muscatine	145	2.439	
2	Ipava	142	1.808	
3	Flanagan	141	3.307	8.63
total:			7.554%	8.63%

_
__

[See Table in Original]

1020 n1 Productivity of Illinois Soils, University of Illinois at Urbana-Champaign College of
Agriculture, Cooperative Extension Service, Circular 1016. (1970)

1020 n2 Soil Type Acreages for Illinois, University of Illinois at Urbana-Champaign College
of Agriculture, Agricultural Experiment Station, Bulletin 735. (1969)

1021 [See Table in Original]

1022 [See Table in Original]

1023 [See Table in Original]

1024 [See Table in Original]

STATEMENT BY TOM DUNCAN PRESIDENT KENTUCKY COAL
ASSOCIATION LEXINGTON, KENTUCKY submitted to the COMMITTEE ON ENERGY
AND NATURAL RESOURCES with respect to S. 7 THE PROPOSED "SURFACE MINING
CONTROL AND RECLAMATION ACT OF 1977" UNITED STATES SENATE Washington,

D.C.

March 10, 1977

1026 Mr. Chairman and Members of the Committee:

1026 The Kentucky Coal Association membership includes both surface and underground coal operators in both the Eastern and Western Kentucky coalfields.

1026 We appreciate the opportunity to present this statement as the Committee considers S. 7.

1026 You have been and will be presented with strongly conflicting views on the bill and on the need for federal legislation to regulate surface mining. We will limit ourselves to those aspects of the bill that strike especially harshly at the Kentucky coal industry and on which we have a firm base of knowledge and experience, plus some parts of the bill that cause us deep concern because of vagueness, procedural questions, and the like.

1026 But first, we would point out a major underlying flaw in the concept of S. 7: It attempts to dictate mining practices rather than to set real environmental goals. If this philosophy had been followed rigidly by the regulatory agency in Kentucky, the industry would not have been allowed to develop the mountaintop removal method of mining which permits almost complete recovery of the coal and has resulted in some of the best reclamation, leaving the mined and reclaimed area in a much more useful condition than it was before mining began. It should be a fully authorized method, encouraged rather than permitted only under highly prejudicial variance provisions.

1027 In this connection, we would urge the Committee to seek the opinion of landowners, particularly those in the steeper slopes of Eastern Kentucky, where level or gently rolling land is at a premium - and is almost non-existant above the flood-plain. It may be difficult for some to believe, but level land in a mountain business center such as Pikeville can rival land in Washington, D.C., in value. But the fact is that it is at such a premium that the federal government is spending millions of dollars to support a project to cut through a mountain and reroute a river and railroad in Pikeville.

1027 We might add that the "highwalls" from this project are truly awesome, as are ones along many miles of federal highways in the mountains. But they are essential to improvements for the

people in the area and are not considered eyesores by those enjoying these improvements.

1027 Benches left from contour mining on steep slopes also provide level, stable land above the flood-plain, land that is much more useful than the original mountainside.

1027 And both these benches and the areas reclaimed by the mountaintop removal and hollow fill method provide a key element that usually would not be economically feasible without the recovery of coal - access. The haul roads built to transport the coal represent a major expense, but they offer good access to the reclaimed areas after mining is completed.

1027 Certainly, not all these areas have been put to their highest use. It may be years before some are developed to their full potential. But the fact remains that may are being put to higher uses, and the potential of almost all of them is much greater than is that of steep, inaccessible slopes.Again, we urge that you make an extensive study of the views of landowners, who in Kentucky often do not own the coal beneath the surface. Ask them how they would prefer their land be reclaimed. Their views should carry as much weight as those of the owners of land overlying federal coal.

1028 If the goal is equal or higher use of land after mining, it is completely illogical to return the steep slopes of Eastern Kentucky to their approximate original contour. In most cases their only product is low grade timber, and even that is inaccessible.

1028 Perhaps even more pertinent to the avowed purpose of S. 7 is that both the mountaintop removal method of mining and only reducing, rather than eliminating, highwalls on steep slopes are sound environmentally.In both cases, of course, the key factor is the proper placement, stabilization and revegetation of the disturbed material, which actually should be determined on a site specific basis. But that is exactly what the bill would prohibit with its requirement that steep slopes be restored to their approximate original contour. This can only lead to increased erosion, siltation and mineralization of streams. The justification can only be on the grounds of esthetics, and even that justification is questionable at best in light of the facts pointed out by the Division of Reclamation of the Kentucky Department for Natural Resources and Environmental Protection.

1028 Incidentally, the Kentucky Coal Association agrees with the basic position taken by the Commonwealth on mountaintop removal and return to approximate original contour. We differ on some specifics and feel the Commonwealth has not followed the facts to their logical conclusion. For example, if slopes above 20 degrees are indeed a special problem requiring extreme measures for reclamation, it seems highly illogical to require that disturbed material be placed again so as to create such slopes. In any event, the statements on behalf of the Commonwealth merit your careful study. We have had examples of bad mining practices and reclamation in Kentucky in the past, but we have learned from experience, research and innovation. It would be irresponsibly shortsighted to fail to use this knowledge on a subject so critical to the nation's energy situation and absolutely vital to Kentucky's economy.

1029 We have intentionally refrained from invoking the spectre of bankrupt coal operators, unemployed miners and general economic depression in an area whose sole major industry is coal. But even if one accepts the studies cited by advocates of S. 7 (and we would welcome the opportunity to debate the reasons we definitely do not), it is apparent that Kentucky will bear a major share of the burden of closedowns and severe disruptions of the industry because of our combination of huge reserves on steep slopes and a tremendous number of small and medium sized operators.

1029 Our numerous smaller underground operators also will be especially hard hit by the bill's provision for covering all surface activities connected with underground mining. While it will be physically impossible in any event for increased underground production to make up the overall loss in surface production under S. 7 in the foreseeable future, it will be just as impossible for Kentucky even to maintain its present underground production if the provisions of S. 7 are applied as rigidly as other sections of the bill would indicate.

1030 Kentucky will have special problems with the permitting process because of its tremendous number of small underground mines. Many now have extreme difficulty in coping with the various requirements for paper work, although they are capable of running a safe, environmentally sound and productive operation. For development of a large underground mine the lead time now is several years.Under S. 7, the time for development could be drawn out

drastically, and the inability to make even a reasonable estimate of the possible delays would certainly deter many companies from making a commitment of the large amount of capital required for such a project.

1030 The fact is that the nature of underground mining is so different from that of surface mining that it should be addressed separately, if at all, in federal legislation. Already overlapping, and often contradictory, regulations and standards in many instances cause more confusion than substantive inprovement. Another layer of regulation tacked on inappropriately to legislation dealing with another set of problems, which we believe already are too complex to be addressed properly in a single bill, will simply compound the confusion.

1030 We would cite two special problems for Kentucky - the prohibition against placing material on the outslope and the requirement to restore steep slopes to approximate original contour would place impossible deterrants on developing many potential underground mines. They must have level working areas near the mine mouth for equipment and facilities. Often the only way to obtain this space is to cut into the mountainside - and extend the bench with fill material on the outslope. Obviously the operator must stabilize the fill material for it to be useful. Once it is stabilized it would be foolhardy to require that, when operations cease, the material be disturbed again and placed so as to recreate a steep slope subject to severe erosion.

1031 All this may bring the response that mining simply should be done somewhere else. But the fact is that coal must be mined where it is or not mined at all. If the aim is to hold environmental damage to a minimum and have the land left in a useful condition, we have no quarrel. But if that is the aim, we refer you again to our arguments on mountaintop removal and benches. And if the aim is simply to place added burdens and restrictions on coal operators, especially those in the steep slopes of Eastern Kentucky, we must say that the opportunity of mining "somewhere else" offers precious little comfort for those whose livelihoods are involved. In that connection, we would cite the fact that the requirement for return to approximate original contour applies only to so-called steep slopes - the very terrain where the practice is most harmful environmentally and least defensible on the basis of post-mining land use.

1031 On the procedural questions, the concept of land-use planning embodied in S. 7 is perhaps potentially the most dangerous element. Without debating the merits of land-use planning in general, we would point out that this particular effort would be directed specifically at determining only which areas would be "unsuitable" for coal mining - for a variety of vaguely stated reasons. No other development would be so restricted, only coal mining, which obviously must be done where the coal is. Even more to the point is the fact that the entire permitting process contemplated by S. 7 is aimed at forcing the applicant to demonstrate in almost unbelievable detail that he can and indeed will reclaim the land. But under S. 7, even if he could demonstrate this, he could be denied that opportunity on grounds that the area involved has already been declared "unsuitable" for mining on the basis of standards that may have no logical connection with the developing technology of mining and reclamation.

1032 Indeed, a Kentucky operator ultimately could be put in the position of not being able to obtain a permit until the area has been designated as not "unsuitable" - the very thing the permitting process is supposed to accomplish.

1032 The time implications of this designating process, various other procedures required and the threat of endless hearings, reviews and frivolous litigation probably are extremely significant in causing widely divergent predictions of the impact of the bill, It is one thing to calculate the cost of moving a cubic yard of material a given distance, although variables even in that can be amazingly complex. But it is an entirely different matter to estimate even roughly the potential cost of being unable to predict with any certainty whether a permit can be obtained in six months, a year or two years - and thus when the men, machines, transportation facilities and the like should be in place.

1033 In Kentucky, the question of availability of hydrologists, geologists, soil scientists, etc., will make it impossible to set timetables on the completion of applications. The requirements for hydrological data alone will be beyond the capability of many operators - and far beyond the need of the regulatory agency. The Commonwealth recognizes that it, too, will find it difficult, at best, to obtain the professional and technical personnel required.

1033 If the Commonwealth is unable to obtain enough hydrologists, for example, and they are

unavailable to operators too, the permitting process obviously will be disrupted and in many cases stopped.But the fact is that the availability of water is not a problem in Kentucky. (In this connection, it should be noted that the five-year period for revegetation far exceeds the need in Kentucky, largely because of ample rainfall.) The question in Kentucky is one of water quality, already covered by other laws, regulations and agencies.

1033 Inordinate delays are the only predictable outcome of S. 7. As we read the bill (and we admit there seem to be as many interpretations to various parts as there are readers - and perhaps even those who haven't read it), there is no time limit set for action on an application for a permit unless there is a protest. That, plus the various studies required and the landuse designation process mentioned above, would leave the applicant in limbo. While some operators already in the industry, perhaps even a few smaller ones, may be able to cope with the process (or at least will be forced to try by sheer necessity for economic survival), the only real incentive for anyone to enter the ndustry would be greatly inflated coal prices. That unfortunate development could easily occur under S. 7.

1034 We have seen all too recently what shortages can do to prices. And, while the Kentucky Coal Association believes the best interest of the industry and the nation would be served by a stable market producing a reasonable profit over the long term, it is not difficult to understand the thinking of an operator, fearing he will be legislated or regulated out of business, whose main interest is a quick return. But even those operators with the resources to deal with the requirements of the bill and continue operating over the long term must in simple prudence build into their cost calculations ample provision for the delays and uncertainties found throughout the bill.

1034 If it is countered that regulations to be issued in connection with the bill will correct these problems, we would answer that harsh experience has taught us that the direct opposite is much more likely. But even if the intent is to clear up such matters through regulations, would it not be much better, surely safer, to state procedural guidelines clearly and specifically in the bill itself? A baffling contradiction is that the bill is rigid in matters dealing with mining and reclamation, where developing technology and vastly differing conditions from site to site dictate

flexibility, and yet it is often vague or contradictory in dealing with procedural matters, where the standards should be clear and precise. It is this type of thing which makes S. 7 a bill to prohibit mining, at least in many areas, rather than to regulate mining.

1035 Although we have dwelt mainly on the situation in Eastern Kentucky, because the bill's approach to steep slopes makes its potential impact much more traumatic there, especially in view of the number of small and medium sized operations, the procedures and studies required will be just as burdensome in Western Kentucky. And in Western Kentucky, where the coal's sulfur content is high, production has been decreasing steadily even without S. 7. The response, again, may be that the coal should be mined "somewhere else." But the fact is that we have in place the structure, the manpower, skills and machinery, to produce a vast amount of energy critical to the nation's economy - with no way to move that capability "somewhere else" at a whim.

1035 Kentucky produces more than one-fifth of the nation's coal, although production dropped to approximately 140,000,000 tons last year from more than 144,000,000 tons in 1975. We are capable of producing much more. Given the right governmental and market climate, we can expand production steadily and strongly for many, many years to come. And we can do it in an environmentally responsible manner, leaving the land in a more useful condition than before mining. But many of our operators will be unable to cope with provisions of S. 7 that actually are peripheral to that goal. Their production, which represents a great portion of the entire coal industry's surge capacity, will be sorely missed, particularly in times of an unexpected increase in demand, such as came during the OPEC oil embargo.

1035 The temptation may be to say that other states will make up for Kentucky's production loss. That, of course, is little consolation to us. And we would doubt the validity anyway. Although many points in S. 7 seem aimed punitively at Kentucky, it obviously will have detrimental effects elsewhere. We have not discussed the problems and conditions outside the Commonwealth because there are others much more knowledgeable on those matters. On the other hand, we feel secure in saying that we in Kentucky know much more about our problems and conditions than do others who would take a brief look, or none at all, then prescribe a

cure-all. They and those who would impose burdens on Kentucky's coal industry in an effort to gain a competitive advantage would do this nation, as well as us, a great disservice.

1036 We again urge the Committee to give careful consideration to testimony on behalf of the Commonwealth of Kentucky, although we do not agree with it in all details. We endorse the basic position of the National Coal Association and the American Mining Congress. Members of the Board of Directors of the Kentucky Coal Association and other executives of member companies also have testified. We respectfully request that their testimony be given careful study.

1036 The Kentucky Coal Association appreciates the opportunity to submit this statement. We and our members stand ready to assist the Committee in obtaining further information, and we invite you to visit Kentucky with enough time to get a full understanding of the situation.

TESTIMONY OF J. DAVITT MCATEER AND L. THOMAS GALLOWAY
COUNSEL FOR THE COUNCIL OF THE SOUTHERN MOUNTAINS, INC. BEFORE THE SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS COMMITTEE ON ENERGY AND NATURAL RESOURCES U.S. SENATE ON S. 7

L. Thomas Galloway

J. Davitt McAteer

Center for Law and Social Policy

1751 N Street, N.W.

Washington, D.C. 20036

(202) 872-0670

1038 Mr. Chairman, Members of the Subcommittee: My name is L. Thomas Galloway. With me is J. Davitt McAteer.We are testifying today on behalf of the Council of the Southern Mountains, Inc. ("Council"), an Appalachian-based, communityoriented, non-profit organization. The Council has been deeply involved in the issues surrounding strip-mining in Central Appalachia, and its membership includes numerous individuals who are directly affected by the strip-mining in the region.

1038 The Council also has been involved in the efforts to improve health and safety conditions in Central Appalachian mines through strict enforcement of the 1969 Federal Coal Mine Health

and Safety Act, 30 U.S.C. @ 801 et seq. * The Council believes that this dual perspective, and its expertise in the enforcement problems of the Mine Safety Act, can offer insights into the enforcement machinery of S. 7.

1038 * The Council, through its Mine Health and Safety Committee and staff, receives complaints from miners on health and safety conditions in the largely unorganized Central Appalachian mines, and attempts to resolve the health and safety problems as part of a continuing effort to improve conditions in the Central Appalachian mines. The Council is now in the process of becoming a "representative of miners" in selected non-union mines in Appalachia. As a representative, under the Federal Coal Mine Health and Safety Act of 1969 ("Act"), the Council will have the power to perform several specific safety-related functions on behalf of the miners. In the course of its efforts on behalf of unorganized miners in Central Appalachia, the Council has developed considerable expertise on the Federal Coal Mine Health and Safety Act of 1969.

1039 Mr. McAteer and I are attorneys at the Center for Law and Social Policy, a Washington-based public interest law firm which provides legal services to persons and organizations otherwise unrepresented. The Center has a Mine Safety Project to provide legal resources where necessary to bring about improved enforcement of the Mine Safety Act and improved protection under the Act for miners and others threatened by unsafe mining practices.

1039 Our testimony will focus on only two areas of S. 7: enforcement of S. 7 and citizens' participation in enforcement.

1039 As this Committee is aware, the enforcement mechanisms in S. 7 and its predecessor legislation were modeled on the Mine Safety Act. This is apparent both from a reading of S. 7 enforcement provisions and from the legislative history of predecessor bills. In its report on a predecessor bill, the Senate Interior Committee noted:

1039 Generally the enforcement provisions of this bill have been modeled after the similar provisions of the Federal Coal Mine Health and Safety Act of 1969. Where the enforcement provisions of this bill depart of [sic] the 1969 Health and Safety Law, they do so to accommodate the fact that this bill encourages the states to retain or develop regulatory authority over surface

coal mining and reclamation operations, and seeks to protect the environment and the public
health and safety as opposed to the protection afforded the coal miner on coal mine property by
the Coal Mine Health and Safety Act. *

1039 * S.Rep.No. 28, 94th Cong., 1st Sess. at 180 (1975).

1040 While, as Mr. Ruppe noted, there are some differences in the enforcement provisions of
the proposed surface mining control and reclamation act and those contained in S. 7, their
language and structure are substantially the same. We believe S. 7 can be made more effective if
we apply what has been learned about the effectiveness and problems of the enforcement
provisions of the Mine Safety Act. * Additionally, we believe that in certain instances the
enforcement sanctions of the Mine Safety Act must be altered to take into account the differences
in protecting miners and protecting those affected by the mining activity.

1040 * "These requirements are of equal importance to the provisions of the bill regarding
mining and reclamation performance standards since experience with state surface mining
reclamation laws has amply demonstrated that the most effective reclamation occurs when sound
performance standards go hand in hand with strong, equitable enforcement mechanisms."
S.Rep.No. 28 supra at 179-80.

1040 We wish also to testify on citizen participation in the enforcement of S. 7. We note with
approval that S. 7 contains provisions for citizens' suits, citizen access to the permit approval or
denial procedure, and citizen access to judicial review of administrative actions. Such provisions
will prove very helpful to those who are affected by the surface effects of coal mining
operations.However, we believe there are some gaps in the citizen access procedure. Our view is
that there should be some mechanism to insure citizen participation at every important point in
the administrative and judicial process, and that to insure meaningful participation it will be
necessary to reimburse citizens for their participation in appropriate cases.

1041 In our testimony today, I will review similarities in the enforcement procedures between
S. 7 and the Mine Safety Act in several major areas. Mr. McAteer will examine the citizen
participation aspects of S. 7. He will discuss the need for persons to participate in proceedings,
particular points in the administration and enforcement of S. 7, and suggest changes in the bill.

1042 I. ENFORCEMENT TOOLS IN S. 7

1042 There are two major enforcement mechanisms in S. 7: the citation provisions in Section 421, and the civil and criminal penalties in Section 418. We shall deal with each in turn.

1042 A. Citations in Section 421

1042 The citation authority granted federal inspectors in Section 421 of S. 7 appears to be modeled on the @ 104 citation authority contained in the Mine Safety Act. This, we believe, is a basically sound idea, since @ 104 of the Mine Safety Act established a balanced and graduated enforcement scheme.

1042 Section 104(a) of the Mine Safety Act provides for closure of a mine (or the affected portion) whenever an imminent danger exists. S. 7 includes the same authority in @ 421(a)(2), and defines the concept of imminent danger in an almost identical manner. S. 7 also provides for closure wherever conditions or practices cause or can reasonably be expected to cause "significant, imminent environemntal harm to land, air, or water resources." *

1042 * Most of our testimony concerns dangers to health and safety rather than damage to the environment. In most instances, however, the sanctions in @ 421 would be equally applicable whether the harm was to persons or property, or whether it was to the environment, for example, civil penalty sanctions. In a few instances, such as imminent danger, the sanction would cover only danger to health and safety. In most instances, it will be readily apparent whether the sanction should apply to both types of harm.

1042 S. 7 further provides for closure of the mine (or the affected portion) if the operator does not correct a violation within the time prescribed by the inspector. This provision parallels @ 104(b) of the Mine Safety Act.

1043 Finally, S. 7 provides for suspension or revocation of a mining permit following a hearing in which it is found that the operator has unwarrantably failed to comply with the Act on an unspecified number of occasions. This provision roughly parallels @ 104(c) of the Act.

1043 The basic sanction scheme in S. 7 is sound; however, we believe certain changes would streamline enforcement and make the sanctions more effective enforcement tools.

1043 For purposes of clarity, we shall deal in turn with the three major types of citation authority in S. 7.

1043 Imminent Danger

1043 As we have already noted, federal inspectors under both the Mine Safety Act and S. 7 may close a mine or a portion thereof whenever they believe an imminent danger exists.

1043 The imminent danger order is the most important safety enforcement provision in either the Mine Safety Act or S. 7. It constitutes the first line of defense against danger and possible injury and death. Unfortunately, major problems and confusion have developed in the use of the order under the Mine Safety Act, and we believe the order must be modified to provide adequate protection in the situations in which it will be used should S. 7 become law.

1044 1. Both S. 7 and the Mine Safety Act provide for immediate cessation of mining activity whenever an inspector determines that an imminent danger exists. The cessation of mining activity, plus the withdrwal of miners required by @ 104(a) of the Mine Safety Act, is normally adequate to protect the miner from the feared harm, since the miner is simply withdrawn from the danger until it is corrected. Unfortunately, the problem is not so simple where the dangerous condition imperils non-miners, as in the case of surface mining.

1044 Consider, for example, persons living below an unstable spoil bank or waste impoundment.Let us assume that the instability of the impoundment or bank rises to the level needed to trigger an imminent danger order; and an inspector issues such an order stopping mining activities until the danger is corrected. What of the people living below the imminently dangerous condition? Presumably, although this is not required currently as it should be, the inspector would notify the persons affected by the imminent danger. Of course, the inspector does not now have, nor should he have, power under S. 7 to order these people from their homes.
* Given this fact and the fact that some individuals will undoubtedly refuse to leave their homes and the area of danger, there is a need for abatement as quickly as possible.And even if people remove themselves from their homes, there should be an obligation to abate the condition as quickly as possible.

1044 * There will also be a problem in physically notifying all persons who might be endangered by an unstable waste impoundment. It would take considerable time and difficult judgment in some circumstances on whom to notify.

1045 However, as currently drafted, the imminent danger order in S. 7 does not provide for the imposition of affirmative obligations on the operator to abate the condition causing the danger, much less in the quickest way physically possible. Under the present order, all that is required is that mining stop until the condition is abated. This followed the Mine Safety Act and indeed makes some, though not much, sense when the danger arises from an underground problem, since the men are simply removed from the area of danger in the mine. However, where the danger is one that is not removed by stopping mining activities, failing to impose a duty on the operator to correct the condition as soon as possible makes no sense at all.

1045 For example, there may be a condition that could be corrected in a number of ways. It is possible, if not probable, that the quickest way to abate the condition would also be the most expensive, that is, production would be stopped to get more personnel to abate the condition. Under the present scheme, an operator could disregard the quickest approach, and adopt another less expensive approach that took longer. This should not be allowed. An imminent danger should be corrected as soon as possible even if it disrupts production, and the Secretary should have the power to order this done. Also, under S. 7 as now drafted, an operator could simply not correct the imminent danger. There will be situations in which the area affected by the imminent danger order will no longer be involved in active mining. If this is the case, closure of the area would not affect production.

1046 Now, it might be said that this interpretation is so obvious that any court would read such a requirement into the imminent danger order. Unfortunately, such is not the case. In 1975, in Eastern Associated Coal Corporation, 4 IBMA 1, the Board of Mine Operations Appeals, the final voice of the Secretary in mine safety matters, ruled that an imminent danger order may not impose affirmative duties on a coal operator. In other words, under the imminent danger provision the Mining Enforcement and Safety Administration could close a mine because of imminent danger and keep it closed until the danger was corrected. However, it could not

require the operator to correct the condition by forcing the operator to take certain measures. The case involved an unstable waste impoundment which the company conceded was an imminent danger. The Board had jurisdiction because the unstable dam endangered miners as well as persons living below the dam.

1047 The inadequacy of an imminent danger order that does not allow the inspector to force corrections of the danger is patent.

1047 There are other problems with the imminent danger order that result from the different purpose it will serve under S. 7 to protect citizens. Let us assume again that a person lives under an unstable spoil bank or waste impoundment that creates an imminent danger. Let us further assume that the inspector informs these persons of the danger to their lives from an unsafe mining condition and that it will take three days to correct it.

1047 These people are then faced with a choice. They can leave their homes and protect themselves or they can stay in their houses and take the risk that the harm will not occur before the condition can be corrected. Presumably, Congress desires that the people will choose to leave and protect their lives. But if they leave, they will almost certainly incur expenses which they may or may not have the resources to meet. Many of the people who live in the hollows of Appalachia are poor, and they do not have the readily available resources to pull up stakes and spend an indeterminate period of time away from home. And, even if they did have adequate resources, there is no rational reason for them to bear the costs incurred because of an unsafe mining condition over which they have no control. Consequently, some provision should be made to compensate those people for the expenses they incur as a result of protecting themselves from dangers caused by unsafe mining conditions from which they receive no observable benefit. It is obviously not adequate that they can sue after the fact; they need the money immediately and unless the feared harm occurs the amount of money involved would be too small for a U.S. District Court lawsuit. Nonetheless, the sum will be large for many strained budgets.

1048 We therefore propose that any time an inspector determines that an imminent danger exists that threatens people other than miners, the inspector inform these people of the danger and the expected time it will take to correct the danger. At the same time he should inform them

that, should they decide to live elsewhere during the time it takes to correct the unsafe condition,
the government will advance them funds to cover the fair value of the cost of living away from
home for the requisite period.

1048 The government should then assess the coal operator the amount it expended to cover
said expenses. The assessment will be added to the proposed civil penalty if one is made, or, if
not, in a separate assessment. If the operator contests the issuance of the imminent danger order
and prevails, the expenses assessed against the operator shall be dropped.

1048 2. Another possible problem with the imminent danger order is the level of harm
necessary before an order can be issued. As discussed before, the imminent danger order in S. 7
is defined in the same manner as in the Mine Safety Act. An imminent danger exists whenever
"the existence of any condition or practice, or any violation of a permit or other requirement of
this Act, in a surface coal mining and reclamation operation, which conditions, practice, or
violation could reasonably be expected to cause substantial physical harm to persons outside the
permit area before such condition, practice, or violation can be abated." Given the similarity of
the two definitions, and the obvious fact that the S. 7 definition is drawn from the Mine Safety
Act, it is reasonable to assume that the Mine Safety Act interpretations of imminent danger will
be carried over into S. 7.This would be nothing less than a disaster.

1049 The Board of Mine Operations Appeals in interpreting the Mine Safety Act has required
an incredibly high level of harm before an imminent danger order can be issued. The Board has
ruled that the occurrence of an accident in the time needed to correct the dangerous condition or
practice must be at least just as probable as not before an inspector may issue an inninent danger
order. *

1049 * Freeman Coal Mining Co., 2 IBMA 197, 212 (1973). See also Rochester and
Pittsburgh Coal Company, 5 IBMA 51 (1975). Federal Courts have ruled on the correct
interpretation of "imminent danger, yet confusion still persists. In Eastern Associated Coal Co.
v. Interior Board of Mine Operations Appeals , 491 F.2d 277 (4th Cir. 1974), the 4th Circuit
adopted the following definition:

1049 "[an] imminent danger exists when the condition or practice observed could reasonably

be expected to cause death or serious physical harm to a miner if normal mining operations were
permitted to proceed in the area before the dangerous condition is eliminated.

1049 The Eastern Court thus did not use the 50 percent risk threshold requirement, although
the case was decided after the Board adopted the threshold test in Freeman, supra.

1049 Freeman was appealed to the Seventh Circuit Court of Appeals, where the Court
incorporated the threshold requirement, finding that

1049 A reading of the entire section, in light of the Act's humane purpose, makes clear that the
Board has correctly construed "imminent danger as being a situation in which a reasonable man
would estimate that, if normal operations designed to extract coal in the disputed area should
proceed, it is at least just as probable as not that the feared accident or disaster would occur
before elimination of the danger." 504 F.2d 741, 745 (7th Cir. 1974).

1049 The Court indicated that it upheld the Board test because it resulted in expanded
coverage and therefore was consistent with "the Act's humane purpose."

1049 Then, in Old Ben Coal Co. v. Interior Bd. of Min Op app., 523 F.2d 25 (7th Cir. 1975)
the same court upheld a Board decision in which both the Eastern and Freeman tests were
applied.The Court adopted neither explictly, yet stated:

1049 " . . . the inspector in this case could reasonably conclude that there was a reasonable
expectancy that an inadvertent ignition could have occurred before the accumulations could have
been abated . . . "

1049 seemingly applying the Eastern test.

1049 Thus, the state of the law in Federal court is confused. The Board, however, has clearly
adopted the 50 percent risk of death or injury threshold. Rochester & Pittsburgh Coal Co., supra.

1049 The Council argued this issue in Pittsburgh & Midway Coal Co . v. MESA, IBMA
76-57, on March 24, 1976 (decision pending).

1050 Thus, the Board requires that the risk of death or serious injury before abatement must
be at least 50 per cent, or one in two, before a @ 104(a) order may issue.

1051 This test is incredibly strict. It is incongruous indeed that a person is denied the

protection of withdrawal under a federal safety and health statute when he or she faces a 40%
danger of serious bodily harm or death before abatement is possible, when the danger has been
noted by a federal inspector standing on the scheme. The "at least as probable as not" standard
exposes persons to a level of risk of serious injury or death that should be unacceptable to a
civilized society.

1051 This argument applies with equal force to persons outside the permit area who are
endangered by the mining activity. The person living under an unstable spoil bank should not
have to risk a one in two chance that the bank will break loose and engulf the person's home.

1051 We suggest the follwing test to determine whether a given condition or practice creates a
reasonable expectation of death or serious injury:

1051 A reasonable expectation of death or serious injury before abatement exists if a rational
person, subjected to the same conditions or practices giving rise to the peril, would not expose
himself or herself to the danger during the time necessary for abatement.

1051 3.There are other, less major problems with the imminent danger provision. First, it
should be made clear in the legislative history, if not S. 7 itself, what is meant by "significant,
imminent environmental harm to land, air, or water resources" and how the level of harm
compares to that of imminent danger. * We recognize that it is difficult to give precise meanings
to broad, regulatory phrases. But the effort should be made to at least define the phrase. If the
Mine Safety Act teaches anything, it is not to leave the scope of crucial enforcement tools to
administrative discretion. To do so is to ask that the standard be interpreted narrowly and in
many cases, illogically.

1051 * The 1975 Senate Interior Committee Report provides some guidance:

1051 " . . . [There] is no definition in the bill for the phrase 'significant, imminent
environmental harm to land, air, or water resources.' This phrase may be undefinable in the
abstract, although relatively easy to identify in the concrete; however it is crucial to point out that
not only must the environmental harm be imminent but it must also be significant .Since surface
coal mining operations by their very nature cause some degree of environmental harm to land,
air, or water resources, even when in full compliance with standards such as are contained in this

bill, the immediate cessation order based on significant, imminent environmental harm must not be invoked where only permissive, controlled or temporary environmental harm is occurring."
S.Rep. No. 28 supra at 181.

1051 However, there is still significant ambiguity.What is meant by temporary? What kind of environmental harm is significant? The importance of these questions lies in the fact that the closure authority granted the Secretary in @ 421(a)(2) rests on imminent danger or significant environmental harm. While we are not in a position to state authoritatively what the environmental standard should be, we strongly recommend that the definition be set out with greater precision and certain guidelines established.

1053 A similar problem is found in the concept of "imminent threat" contained in @ 420, providing for citizens' suits. As we read @ 420, a citizen can bring a citizen's suit without the sixty day delay if the citizen believes an imminent threat exists. Is this the same level of feared harm as the imminent danger and imminent environmental harm standards contained in @ 420(a)(2)? This ambiguity should be clarified.

1053 Finally, @ 421(a)(1) requires the Secretary to order a federal inspection if he has reason to believe that a person is in violation of a standard, and the state regulatory commission fails to act within 10 days. This 10 day period should be abolished in cases where there is an allegation of imminent danger or imminent harm to the environment in order to allow immediate federal inspection if the state refuses to issue an order to correct the alleged danger.

1053 Section 421(a)(3) Notice of Violation - Everyday Violations

1053 Section 421(a)(3) provides that the Secretary shall issue a Notice of Violation to an operator whenever he finds the permittee in violation of any requirement of the Act which does not create an imminent danger or an imminent environmental harm. When the Notice is issued, a reasonable time for abatement is set (but not more than ninety days). If the violation is not abated within the time set, the Secretary must order mining activities or the relevant portion thereof stopped until the violation is abated.

1054 Section 421(a)(3) parallels @ 104(b) of the Mine Safety Act which establishes basically the same scheme. Section 104(b) has been the workhorse of the mine safety enforcement scheme

- over 400,000 Notices of Vioations have been issued since the Act went into effect in 1970.
Section 421(a)(3) can be expected to play the same role for S. 7.

1054 We have one very significant problem with @ 421(a)(3) and it arises from the different functions a closure order performs under the Mine Safety Act and what it will perform under S. 7. Under both provisions, whenever a violation is not corrected within the time set for abatement and there is no reason to extend the time for abatement, the affected area of the mine is closed.
Now this works in most cases in the Mine Safety Act because either an active area of the mine or a machine is involved; therefore shutting the machine down or withdrawing the men from a working area usually results in quick compliance.

1054 The situation however will be different, at least in many instances, under S. 7. It may be that the violation concerns a failure to comply with a particular environmental standard in an area where no mining is going on. Thus, closing the affected area is not an appropriate remedy.
Indeed, in certain instances the operator might be happy to see a particular reclamation effort "closed down."

1055 We suggest therefore that inspectors be granted the authority to impose affirmative obligations on an operator to correct such conditions. The inspector would have the authority under such an order to require men removed from production if that were necessary to abate the violation.If the operator knowingly failed to obey the written @ 421(a)(3) order, including the affirmative obligation decided upon by the inspector, he should be subject to both individual civil and criminal penalties. In addition, as discussed later, there should be an additional penalty charged for each day the operator fails to abate the violation that resulted in the closure order.

1055 Unwarranted Failure.S. 7, @ 421(a)(4); Mine Safety Act, @ 104(c)

1055 Section 421(a)(4) establishes a system for dealing with recalcitrant operators - those who unwarrantably fail to comply with the requirements of the Act. * Under @ 421(a)(4) whenever the Secretary determines that there has been "a pattern of violations" and the violations were caused by the "unwarranted failure of the permittee to comply with any requirements of the Act," the Secretary shall issue a show cause order why the permit should not be suspended or revoked.
If the permittee cannot show cause, the permit is then suspended or revoked as circumstances

warrant.

1055 * The Senate Interior Committee emphasized the importance of this subsection by noting: "The Committee also expects that the Secretary will give highest priority to administrative reivew of section 521(a)(4) show cause orders." S.Rep. No. 28 supra at 183.

1056 The provision is roughly similar to @ 104(c) of the Mine Safety Act which establishes a scheme aimed at the unwarrantable failure of an operator to comply with the mandatory health and safety standards of the Act.

1056 There are a number of weaknesses in @ 421(a)(4) as currently drafted: (1) there is no summary closure upon repeated findings of unwarranted failure as @ 104(c) of the Mine Safety Act provides; (2) there is no explanation or definition as to what constitutes a pattern of violations, thereby invoking the sanction; and (3) the penalty will come after literally years if the operator wishes to contest it.

1056 To cure these difficulties, @ 421(a)(4) should be amended to provide for the issuance of Notices of Violations upon the finding of two unwarrantable failure violations. Just as with a Notice of Violation under @ 421(a)(3), there would be a reasonable time set for abatement. The only difference would be that these Notices would contain an additional finding that the violations were caused by the unwarrantable failure of the operator to comply with the Act.

1056 If a third finding of unwarrantable failure was made within a reasonable period (ninety days in the Mine Safety Act), instead of issuing a Notice of Violation the inspector would issue a a summary closure order which would remain in effect until the condition was corrected. The operators' exposure to summary closure would continue for a set period of time, say six months.

1057 We believe that the above-described summary closure system, actually a simplified version of what now exists in the Mine Safety Act, should be coupled with an order to show cause why an operator's permit should not be suspended or revoked if a pattern of such violations occurs.

1057 We also suggest that if an operator receives five Notices and/or Orders in which it is found that he unwarrantably failed to comply with the Act, the Secretary be compelled to issue an

order to show cause why his permit should not be suspended for at least five days or revoked. A new order to show cause should be issued each time an operator accrues five additional unwarrantable failure violations.

1057 The above system is a substantial improvement over @ 421(a)(4) as presently drafted.One, it sets up a graduated, workable scheme aimed at the recalcitrant operator; two, it provides a degree of certainty as to how it will operate, and thus lessens the possibility of arbitrary and/or lax enforcement; and three, it provides immediate action against the operator but at the same time does not deny due process. *

1057 * A major problem with @ 421(a)(4) as drafted is that there is no sanction, that is, suspension or revocation, for the repeated violator until after hearings and appeals, a process that can take years. While this is necessary as a constitutional matter because of the sanction involved, it is not a deterrent at all for operators who may not even be in existence when the string of appeals is exhausted. And even for those operators who are still operating, a suspension that can be fought for years is not, standing alone, enough of a deterrent to prevent the unscrupulous operator from violating the Act and getting what coal he can.

1058 There is substantial precedent for such a procedure in the Mine Safety Act. While the @ 104(c) order has had its problems, because of poor drafting and crabbed interpretations by the Board of Mine Operations Appeals, the potential of such a sanction as an effective deterrent is good, and it should be utilized in S. 7.

1058 Other Closure Authority

1058 There is other closure authority now being considered for the Mine Safety Act which is relevant to S. 7, namely, the civil penalty closure order. The Senate Committee on Labor and Public Welfare reported out last fall a bill which included a civil penalty closure order, a device which combines the best features of a civil penalty and a closure order. Under this proposal, whenever an inspector finds an imminent danger he would close cown the mine or the affected area until the danger was abated, as usual. However, if the imminent danger was caused by the gross negligence of the operator, the inspector would include this finding in his order. Then the operator would be assessed, not a monetary penalty, but closure for a period of from one to thirty

working days. The operator could, of course, contest the proposed order and the mine would not
be closed until all appeals were exhausted. Miners would be paid for the period the mine was
down.

1059 The civil penalty closure order is a tough sanction, but it is invoked only where an
operator, through gross negligence, endangers the miners, or in the case of S. 7, the persons
around the mining activity. It should be included in S. 7. *

1059 * There may be overlap between the suspension provisions of @ 421(a)(4) and the civil
penalty closure order.

1059 Finally, provision should be made to ensure that the miners are paid whenever a mine is
shut down by a closure order, as they are whenever a closure order is issued under @ 104(a) of
the Mine Safety Act, or when a permit is suspended.

1059 B. Civil Penalty Program

1059 Section 418 of S. 7, which provides civil penalties for violations of the requirements set
forth in the bill, is modeled on the civil penalty provisions of @ 109 of the Mine Safety Act. **

1059 ** S.7, in contrast with the Mine Safety Act, provides that each day of continuing
violation may be deemed a separate violation. This is an improvement over the Mine Safety Act,
and it should be retained.

1060 Section 109 requires a civil penalty of up to $1 0,000 for each violation of health and
safety standards established by the Act. In determining the amount of the penalty, the Secretary
is directed to consider the appropriateness of the penalty to the size of the business, whether the
operator was negligent, the effect of the penalty on the operator's ability to continue in business,
the gravity of the violation, and the demonstrated good faith of the operator in achieving rapid
compliance after being notified of the violation. The @ 109 civil penalty can be assessed only
after the operator has been given an opportunity for a hearing and after written findings of fact
have been made. Section 109 provides a civil penalty of and criminal penalties for knowing or
willful violations of the standards. It provides civil and criminal penalties for violation by a
corporate officer of a standard or knowing refusal to comply with an order. It also contains
penalties for anyone who knowingly supplies false information pursuant to the Act.

1060 Section 418 is basically the same except that the penalty is discretionary and the maximum penalty is $5,000 for each violation rather than $1 0,000. The penalty is to be determined by consideration of the operator's previous violations, the appropriateness of the penalty to the size of the permittee's business, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee in achieving rapid compliance after notification of violation.The penalty is to be assessed only after an opportunity for a public hearing and written findings of fact.

1061 If the experience of the civil penalty program under the Mine Safety Act is any indication of the future of civil penalties under S. 7 - and there is every reason to believe that it is - @ 418 as presently drafted will not achieve its purpose of deterrence.

1061 The civil penalty program under the Mine Safety Act has been a failure. The reasons for this failure are many, and the lessons to be learned from the failure just as numerous. We will deal only with the major shortcomings of the program in this presentation.

1061 The purpose of a civil penalty under S. 7 as with the Mine Safety Act is to induce those officials responsible for the operation of a mine to comply with the substantive standards established by the statutory scheme. As the Senate Labor and Public Welfare Committee has stated:

1061 To be successful in this objective a penalty should be of an amount which is sufficient to make it more economical for an operator to comply with the [Mine Safety] Act's requirements than it is to pay the penalty assessed and continue to operate while not in compliance. *

1061 * S.Rep. No. 1198, 94th Cong., 2d Sess. at 23(1976).

1062 Almost everyone; Congress, Labor, GAO, and the Executive Branch itself agree that the civil penalties in the Mine Safety Act have been assessed and collected at far too low levels and have been at best questionable deterrents.

1062 The Senate Labor Committee has characterized the civil penalty program under the Mine Safety Act as "too low." * The GAO, in a December, 1975 study, concluded:

1062 Civil penalties are assessed by the Federal Government to help insure that coal mine

operators comply with existing health and safety standards. As we have found several times in
the past, Interior's procedures in assessing and collecting penalties needed to be improved
because:

1062 . . . - Penalties paid were much lower than the amounts originally assessed and were a
questionable deterrent to noncompliance. **

1062 In addition to the low level of the civil penalties in the Mine Safety Act, there have been
long delays in collecting the fines assessed. The Labor Committee concluded in August, 1976
that the Interior Department has been "sorely deficient" in collecting penalties.

1062 * Id.

1062 ** Report to the Congress. General Accounting Office, "Improvements Still Needed in
Coal Mine Dust Sampling Program and Penalty Assessments and Collecting." In August, 1974,
MESA revised its penalty assessment procedure. The new procedure has resulted in still lower
penalties, as the GAO Report noted:

1062 We question whether the August 1974 procedures providing for more consistent
assessments because the Office of Assessment has been reorganized, will attain these results
because of the subjectivity involved in determining the gravity of the violation.In addition, we
question whether the amounts of the fines, which will be less because the penalty assessed will
be based on a smaller penalty amount which was the result of reductions made at the Office of
the Solicitor and Office of Hearings and Appeals during the interim procedures, will further deter
noncompliance.

1063 Other major problems with the civil penalty program include arbitrariness and
inconsistency in assessments, and compromises by Interior lawyers and assessment officers at far
too low levels, among others.

1063 The above highlights provide but a glimpse into the dismal history of the civil penalty
program of the Mine Safety Act. But it should be enough to show that transplanting the system
unchanged into S. 7 will almost surely result in a dismal "mess", to borrow the term used by a
past MESA Administrator in describing the program.

1063 We do not profess to have the answer to all the problems of the civil penalty program;

but we do believe that enough has been learned to solve at least some of the more glaring problems. We respectfully suggest that any civil penalty program in S. 7 that does not address the problems of delay and low levels of penalties is destined to repeat the fiascos of the mine safety civil penalty program.

1063 We suggest the following changes in S. 7's civil penalty program * to meet these problems:

1063 1. There should be a mechanism to deal with repeated violators of the Act. As with any major regulatory effort, and as the Mine Safety Act vividly reflects, there will be a certain number of operators who casually disregard the requirements of federal legislation, depending on low penalties and infrequent inspections to get by and make money. There should be a specific provision to handle such violators. The regular civil penalty program in the Mine Safety Act has proven woefully inadequate in raising penalties for the repeated violator, as the Senate Labor Committee has recently noted, S.Rep. No. 94-118 at pp. 23-35.

1063 * For the Committee's information, the changes suggested below are being considered by the Labor Committee for amending the Mine Safety Act.

1064 Consider the Scotia Coal Mine, for example, whose management blatantly ignored safety regulations with the result that two methane gas explosions occurred, killing 26men.

1064 Methane gas was present at Scotia. The concentration of this colorless, tasteless, ordorless and highly volatile (in certain concentrations) gas can be controlled through adequate mine ventilation. Post-explosion investigation into the history of the enforcement of the Act at Scotia has revealed repeated violations of ventilation regulations. From January 3, 1974 until the date of the explosion (a period of a little over a year) inspectors had discovered 62 violations of

the ventilation standards at the mine. As incredible as it may seem the amounts assessed and collected for these recurring violations actually decreased as the number of violations increased.

1065 According to United Mine Workers' calculations, the violations which Scotia had settled with MESA had an average cost of $1 21.35 each. Considering the size of Scotia's parent company, Blue Diamond Coal Co., and the fact that it marketed more than $3 0 million worth of

coal a year, the penalty assessments represented a cost of less than two cents per ton. This amount is easily absorbed during production and is viewed as a "cost of doing business."

1065 Low assessments and even lower collections have proven to be the norm for repeated violators. Scotia is the rule, not the exception.

1065 The extremely low level of the current penalties (the average assessment per violation is now around $9 0, * and even that amount is further reduced by settlement negotiations) serves to assure the coal operators that they may freely violate the Act and standards as long as they are willing to pay a negligible "tax" upon their unsafe method of operation. As the Senate Labor Committee concluded:

1066 [Mine] operators still find it cheaper to pay minimal civil penalties than to make the capital investments necessary to adequately abate unsafe or unhealthy conditions; and there is still no means by which the government can bring habitual and chronic violators of the law into compliance. *

1066 * Between 1970 and August of 1976 approximately $6 6 million in civil penalties have been assessed against coal operators. $6 0 million of these fines have been disposed of (settled) for $25.5 million, a recovery rate of only 41 percent.

1066 * S.Rep. No. 1198, supra, at 26.

1066 One of two approaches may be taken to correct the problem. Either there must be specific guidance given to the Secretary to increase penalties substantially through reliance on the "History of Previous Violations" criteria, or there must be a separate subsection developed to deal with repeated violators.

1066 The Senate Labor Committee had this in mind, and appears to have adopted the first approach when it concluded:

1066 In evaluating the history of the operator's violations in assessing penalties, it is the intent of the Committee that repeated violations of the same standard, particularly within a matter of a few inspections, should result in the substantial increase in the amount of the penalty to be assessed. Seven or eight violations of the same standard within a period of only a few months should result, under the statutory criteria, in an assessment of a penalty several times greater than

the penalty assessed for the first such violation. ** While we agree with this basic approach, we
believe that strong legislative history is not enough. A provision for handling repeated violators
should be written into the Act itself.

1066 ** Id.

1067 We believe a separate subsection should be developed to require a penalty to be added
to the regular civil penalty whenever an operator violates the Act a certain number of times
within a given time period. * This penalty would be added to each new violation until the
operator's rate of violation falls below the national average rate of violation for six months. This
additional penalty could not be compromised by the Secretary. We suggest $7 50 as a minimum
additional penalty. The Secretary should be given the discretion to increase the add-on penalty if
circumstances warrant.

1067 * If the Committee is fearful that an operator could cross the threshold of higher liability
with relatively non-serious violations, the add-on provision could be limited to violations of
major provisions in S. 7 such as @ 415(b)(3)(5), (10), (13), and (d). If this were done, the total
number of violations to trigger the add-on penalty should be lowered, and the minimum add-on
penalty raised.

1067 3.The civil penalties should be made madatory as they are in the Mine Safety Act.The
Senate Labor Committee recently specifically rejected the idea that civil penalties should be
discretionary, and indeed expanded the concept of mandatory penalties to non-coal mining
activities:

1068 The Committee specifically rejects the suggestion that the imposition of civil penalties
be discretionary rather than mandatory. A cursory glance at the relative improvements in rates of
fatal and serious non-fatal occurrences in the coal industry (where civil penalties have been
mandatory since 1970) versus the non-coal segment of the industry (where there currently is no
provision for civil penalties, mandatory or permissive) (See Table 1, supra) suggests clearly that
even if the civil penalty system under the Coal Act has not been totally effective in
implementation, the presence of the civil penalty sanction has resulted in substantial
improvements which are not noted in the non-coal segment of the industry under the Metal Act.

1068 The Committee notes that although standards have been applicable to operations in the non-coal segment of the industry under the Metal Act for a number of years, there has been no imposition of civil penalties for violation of these standards under the Act. This absence of a civil penalty sanction may have had the effect of not sufficiently encouraging non-coal operators to bring their operations into compliance with these already existing standards. Since S. 1302 would make the imposition of a civil penalty mandatory for such violations, the Committee is aware that this may have the effect of penalizing operators who are making a good faith effort now to bring their operations into compliance.Accordingly, the Committee suggests that in assessing civil penalties for the first citations of violations by non-coal operators after the effective date of this Act, the Secretary note that previously there may have been minimal statutory compulsion for operators to comply, and consider especially, the good faith of the operator in trying to bring his operation into compliance with the provisions. *

1068 * S.Rep. No. 1198, supra, at 26.

1069 4. A major problem under the Mine Safety Act has been the operator who refuses to pay at all, or only pays a part of the civil penalty he is assessed. The Mine Safety Act provides for a civil action by the Attorney General to collect the assessed penalty, but the Justice Department has somewhat understandably assigned a very low priority to the collection of such penalties. Even if collecting was given a high priority, the procedure is still a cumbersome and unworkable one. Thus many operators have ignored the whole process of civil penalties assessment completely, and mined their coal and left before the civil penalties assessed against them made their tortuous way from the inspection to the assessment office, to the Hearings Division of OHA, to the Justice Department, to the U.S. Attorney's Office, to the Court. This process can and does take years. Indeed, the backlog in the U.S. District Courts in the coalfields is in the thousands. It would be hard to imagine a more unworkable system, or one better suited to delay and foot-dragging. It allows small operators to totally ignore the system, and large operators to compromise at 20-30 cents on the dollar, since the government cannot possibly try all these cases. The companies know this and thus can reduce pealties enormously.

1070 While this rickety system is improved somewhat by doing away with de novo District Court review of civil penalties, many major roadblocks and delays remain in the civil penalty system under S. 7. Consequently, for the S. 7 civil penalty system to work, a mechanism must be developed to remove the incentive for delay that is built into the present system.

1070 We propose pre-payment of civil penalties - that is, that an operator be required to pay an assessed civil penalty within thirty days after its assessment, whether or not he wishes to contest the penalty.Failure to pay the penalty would result in a waiver of all legal rights to contest either the violation or the amount of the penalty. If the operator contested the violation and prevailed, he would receive his money back with interest. This procedure is being proposed for the Mine Safety Act. It raises no due process issues, since if an operator prevails in his challenge, he receives his property, that is the money, back with interest.

1070 5. We agree with the Committee's decision to delete one of the six factors to be considered in assessing the penalty, namely, the effect on ability of the operator to continue in business. S. 1302, which would have amended the Mine Safety Act, and which was reported out of Committee in August, 1976, but died in the waning moments of the 93rd Congress, deleted this requirement. The Committee Report adequately sets out the reasons for this change:

1071 "S. 1302 - Changes in the Civil Penalty Assessment System.

1071 Section 111(k) of S. 1302 reduces the number of criteria upon which the amount of a penalty is to be based from the six in the existing Coal Act to four, to wit: gravity of violation, good faith of the person charged, the history of violations of the operator, and the appropriateness of the penalty to the size of the business involved. It is the intention of the Committee that, by thus reducing the criteria to be judged, the Commission, in assessing penalties, will pay more credence to the criteria remaining. *

1071 * S.Rep. No. 1198, supra, at 26. S. 1302 deleted not only the effect of the operator's ability to stay in business but also negligence as a criterion. We believe this deletion to be harmful. However, we believe that another factor, good faith in abating the violation, could be dropped without any harm. The operator should not be able to lower his fine by doing what he is required to do anyway.

1071 6. The "knowing or willful" standard for individual civil penalties in Section 418(f) should be changed to include gross negligence. As a practical matter, it is very difficult under the Mine Safety Act to show that anyone above a section foreman knowingly violated a standard. A foreman may be ordered to mine coal by a superior who does not know or care what health or safety standards may be violated in the process. Similar situations may easily arise under a surface mining control and reclamation act. It is therefore important that the standard incorporate recklessness or gross negligence.

1071 7. There should be an additional penalty of up to $1 ,000 per day for each day beyond the abatement period in which the operator fails to abate a violation under @ 421(a)(3). The Senate Labor Committee prposed such a change in the Mine Safety Act in August:

1072 Section 111(b) provides an additional penalty of up to $1 ,000 per day for each day beyond the abatement period in which the operator fails to abate a violation noted in a citation issued under Section 105. Both Section 106(b) and Section 111(b) contain a provision under which operators may obtain relief from the requirement that abatement be immediately completed by seeking suspension of the abatement requirement from the Commission. Under the bill, the operator is obligated to immediately commence abatement, and the abatement period starts to run with the issuance of the citation and abatement requirement. Where the operator can demonstrate to the Commission that the application of the abatement requirement will subject him to irreparable loss or damage, and the Commission so finds, the Commission may suspend the further running of the abatement period. It should be noted that neither the expressed intention of the operator to request review of a citation or abatement period, nor the actual submission of a request for such review, shall suspend the abatement responsibilities of the new operator.Only a specific order by the Commission can serve to suspend the abatement requirement. Where the Commission makes such a finding, the abatement period may not end until the final order of the Commission in the action to review the citation and abatement requirement. Where the Commission does not make an initial determination that the abatement period should be suspended, the abatement requirement continues to run.

1072 The review procedure is designed to give operators relief from abatement requirements which will result in irreparable harm to them, and it is for this reason that provision is made for expedited procedures to enable the suspension of the abatement requirement only in those cases where the Commission can preliminarily find the likelihood of such irreparable harm or loss. (The Commission is authorized, under Section 106(d), to establish expedited procedures for such cases.)

1072 To further protect miners, it is noted that should the Commission issue such a preliminary order "suspending" the abatement period, and the situation subject to the notice develops to a situation of imminent danger pending the Commission's final review of the matter, the imminent danger closure order provision of @ 108(a) is available to the Secretary as a means of protecting miners from such danger while the Commission considers the matter. S.Rep. No. 1198, supra, at 27.

1073 C. Inspections

1073 Section 417(c) of S. 7 requires inspections to occur on an irregular basis averaging at least one inspection per month for each operation covered by a permit. Although the bill commendably recognizes the importance of frequent inspections, its failure to define "inspection" wil almost inevitably cause difficulties.

1073 What constitutes an "inspection" which would satisfy the statutory requirement of one inspection a month? Does this mean any visit no matter how short or limited in scope, to a mine by an inspector, say to abate a violation or order, which might take 30 minutes? Does it mean a complete inspection of the entire mine, in the sense that the inspector or a group of inspectors have made an adequate examination to determine whether all the substantive requirements of the Act are being met?

1073 There is obviously a vast difference in terms of manpower required, and the thoroughness of the examination in the two possible definitions of inspections.

1073 We suggest that the Mine Safety Act approach be adopted, namely that S. 7 require a particular number of complete inspections; we suggest further that the term "complete inspection" be defined in the bill itself to avoid almost certain controversy and litigation over the

issue.

1074 We do not possess the expertise to propose either a particular number of complete inspections (perhaps one a month is fine), nor are we competent to define a complete inspection in any way that will provide inspectors with a solid, working guide. Another possible problem in the inspection area concerns the issuance of citations. We believe that the issuance of citations under @ 421 is mandatory, that is, whenever an inspector determines certain conditions exist that constitute a violation, he must issue a citation. The language of @ 421 certainly supports this construction. However, we are concerned about the language in the Senate Interior Committee report on S. 7 in the 94th Congress:

1074 The imminent danger or environmental harm closure provision is so critical that it is the only place in the bill where the federal inspector is required to act even if the inspection is being made for the purposes of monitoring a State regulatory authority's performance. *

1074 * S.Rep. No. 28, supra, at 181.

1074 Perhaps we misread the thrust of this comment; however, we believe that whatever the purpose of an inspector's visit to a mine, if he even by chance observes a violation, must issue a citation. He does not have an obligation to inspect the whole mine on every inspection, and, indeed, this would be impossible. However, he must issue the appropriate citation, whether it be Notice or Order, if he sees conditions which violate the requirements of the Act. The Mine Safety Act works this way, and so should S. 7.

1075 A second problem with the inspection authority of S. 7. is that it does not adequately protect inspectors from abuse. Harassment of inspectors has been a major problem in the mine safety enforcement effort. For example, in 1976, 88 federal inspectors sent a petition to Robert Barrett, the head of the Mining Enforcement and Safety Administration, asking him to provide them protection against operator harassment. The inspectors were subjected to verbal abuse, threats on their lives, gunfire, and tire-slashing. In other cases, operators simply ran the inspectors off the mine property.

1075 The Mine Safety Act has a civil provision (Section 108) which is copied in S. 7, aimed at preventing this sort of interference with inspectors. But it has proven almost totally ineffective.

Since many of the operators will be the same under S. 7 enforcement, as under enforcement of the Mine Safety Act, stronger legislation is needed. Legislation was introduced (S. 3070, H.R. 12682, 93rd Cong.) to protect inspectors. Such a provision should be added to S. 7.

1075 The inspectors have a tough job. They are entitled to adequate protection from abuse.

1076 II. PUBLIC PARTICIPATION

1076 A fundamental tenet of democratic government and of the American political system is that there should be substantial and effective public participation at all stages of the policy formulation process. *

1076 * Public Participation in the Policy Formulation Process, Frank, Richard A.; Onek, Joseph N.; and Steinberg, James B. A study prepared for use by the Advisory Committee on National Growth Policy Processes, Washington, D.C., Oct. 1976, p. 1.

1076 The bill under discussion here today is committed to implementing this concept. This Committee in its 1975 report on the bill stated:

1076 The committee believes that citizen suits can play an important role in assuring that regulatory agencies and surface operators comply with the requirements of the Act and approved regulatory programs.The possibility of a citizen suit should help to keep program administrators 'on their toes.' **

1076 ** S.Rep. No. 402, 93d Cong., 1st Sess. at 71 (1973); S.Rep. No. 28, supra, at 218.

1076 The House Interior Committee concurs:

1076 The success or failure of a national coal surface mining regulation program will depend to a significant extent, on the role played by citizens in the regulatory process. The State or Department of Interior can employ only so many inspectors, only a limited number of inspections can be made on a regular basis and only a limited amount of information can be required in a permit or bond release application or elicited at a hearing. Moreover, a number of decisions to be made by the regulatory authority in the designation and variance processes under the Act are contingent on the outcome of land use issues which require an analysis of various local and regional considerations. While citizen participation is not, and cannot be, a substitute for

governmental authority, citizen involvement in all phases of the regulatory scheme will help insure that the decisions and actions of the regulatory authority are grounded upon complete and full information.

1077 More recently, the concept has received from the newly appointed Secretary of the Interior. Cecil D. Andrus testifying before this Committee, reaffirmed his support of the legislation and pointed to citizen participation as one of its most fundamental components. He stated "that citizens will have meaningful opportunities to participate in the implementation of the law - through availability of information hearings and opportunities for citizen suits."

1077 It is particularly appropriate that citizens have the right of public participation in this bill because of the nature of surface mining. The protection of our land is of concern to all; it has been and continues to be one of the single largest questions facing all Americans in this decade and in future decades. All citizens are the affected tuents of S. 7, and all citizens must be given the broadest possible rights to participate in every way in the law protecting our land. These rights are so critical and important that they override any questions concerning cost or delay which are sometimes raised in discussions of public participation, questions rejected by the Senate Committee on the Judiciary. *

1078 * The charge of additional delay in administrative decisionmaking is raised whenever a new forum or a new possibility for citizens' involvement is made available. See, Office of Communications of United Church of Christ v. F.C.C., 359 F.2d 994 (D.C.Cir. 1966). The Senate Report on the "Public Participation in Government Proceedings Act of 1976", in rejecting this argument, noted:

1078 Much of the testimony at the hearings on S.2715 was directed to this issue, with many witnesses expressing their belief that it was a spurious contention.

1078 Those who charge that public participants delay proceedings often misperceive the realities of the administrative process. Delays result when one party wants to prevent an agency from reaching a decision likely to be adverse to its interests. It is not especially difficult to delay a proceeding for an inordinate amount of time on procedural grounds alone, depending on the resources available to the person seeking to delay. Public participants, almost always lacking

such resources, are unable to withstand protracted delay over procedural issues; they are especially anxious to reach the merits. The process was aptly described by . . . Consumer Product Safety Commissioner Pittle:

1078 "I seriously doubt that participation by these groups would cause delay, and certainly not in the area of health and safety. Most consumer organizations and individual consumers are not trying to hold back or slow down the regulations that increase health and safety in the marketplace. They are trying to speed it up. And so their involvement would be to push the agencies to move faster. They would not stand there and try to hold them up."

1078 . . . Increased public acceptance of agency decisions and the resulting decrease in the likelihood of appeals to the courts could effectively decrease the length of many proceedings. If so, aside from its benefits to citizens, this legislation would do much to speed up final resolution of issues emerging from the administrative process.

1078 S.Rep. No. 863, 94th Cong., 2d Sess., at 10-13 (1976).

1078 The cost of such a compensation program cannot be stated with any certainty. Congress apparently has considered this question before: under the "Magnuson-Moss Product Warranty and F.T.C. Improvement Act of 1975", the F.T.C. cannot allocate more than $1,000,000 per year to compensate public participants in its proceedings (15 U.S.C. @ 57a(h)(3)(1975); and the "Public Participation in Federal Agency Proceedings Act of 1977" would appropriate $10,000,000 per year for public participation in all agencies' proceedings (S. 270, 95th Cong., 1st Sess., Section 5(a)). Thus, "[the] sums involved (in providing financial assistance to public participants) are relatively modest; the potential benefits are sizable." Forging America's Future (Report of the Advisory Committee on National Growth Policy Processes to the National Commission on Supplies and Shortages) (1977) at 57.

1079 There remains little question as to the need for citizen involvement in all phases of the Act's implementation. As the Committee recognized, this participation is crucial to the success or failure of the law.

1079 In an effort to obtain clarity and efficient successful participation we propose the following modifications and amendments to S. 7.

1079 A. Informal Review

1079 The bill should be amended to enable the Secretary to establish by regulation procedures for informal review of any refusal by the Secretary to issue a citation with respect to any violation or order with respect to imminent danger or any failure by inspectors to make proper or adequate inspections and should furnish the interested party requesting such review a written statement of the reasons for the Secretary's final disposition of the case. This provision is now in the Occupational Safety and Health Act of 1970, and has been included in the Federal Mine Health and Safety bill currently pending before the Senate Labor Committee. * It would afford the opportunity for interested parties to review enforcement of surface mines which affect their lives and their environment. If the Act is to provide "active citizen participation" as it purports to do, it must allow citizens the right to review the failure of inspectors to issue notices or orders or complete proper inspections. ** The need for this is most obvious in the case of a person or family who is endangered by an allegedly unsafe mining activity. Such a person should have the right to contest the judgment of a lone inspector. This informal procedure will permit an efficient, direct, and speedy resolution of the issues, and at the same time, ensure that the lives and property of people are adequately protected. Further, it will lend credibility to enforcement activities.

1080 * Section 8(f)(2) of the Occupational Safety & Health Act states as follows:

1080 Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

1080 ** The inspection section of S. 425, a predecessor bill, contained the following:

1080 Any records, reports or information obtained under this section by the regulatory authority which are not within the exceptions of the Freedom of Information Act (5 U.S.C. @ 552) shall be available to the public.

1081 B. Civil Penalty Process

1081 We believe that citizens should be allowed and encouraged to participate in the civil penalty process. As we have noted in earlier testimony, the civil penalty provisions of the Mine Safety Act have been a failure. An effective method of improving the performance of this program would be the inclusion of citizen participation.

1081 One of the major reasons for the failure of the program and the low penalties has been the lack of access of interested persons, including miners, in the civil penalty process. * Company lawyers intimidating, influencing, and cajoling government employees in private, without any possibility of public exposure or public pressure, have caused the massive sell-outs on amounts of fines and penalties which has resulted in destruction of the intended deterrent effect of the program.

1081 * Under the implementing regulations of the Mine Safety Act, the miner, or his representative, has no right to participate in civil penalty proceedings. See 43 C.F.R. @ 4.507.

1081 Moreover, there can be no serious argument that a citizen who is affected by an unsafe mining condition or practice should have a right to participate in the civil penalty proceedings.The interest of that person in the outcome is direct; if future violations are not deterred, this person may well pay with his life or property.

1081 Finally, the citizen participation will hopefully serve to increase the operators' reluctance to violate the provisions of the law because of the public exposure.

1082 C. Setting The Amount of Bond

1082 Sections 419(f) and (g) contain provisions for citizen participation in the bond release procedure. We initially believed there should be similar procedures for citizen participation in setting the bond level in @ 409. On reflection, however, we believe that citizens' interests could best be protected by establishing a minimum per-acre bond level. We note that @ 409(b) requires a minimum bond of $1 0,000, and requires that the bond be set at a level sufficient to

assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture. However, depending on a number of factors, the actual level at which bond is set may be substantially lower.A per-acre minimum bond of $1 ,000 seems reasonable to us in light of current reclamation costs throughout the country, although a figure somewhat higher may be appropriate. If the Committee does not adopt this proposal, we suggest that citizen access procedures similar to those available for bond release be incorporated into the bond provisions of @ 409.

1082 D. Omit "Under Oath" Requirement For Citizen Suits

1082 Section 420(b)(1)(A) and (2) requires a person, before filing a citizens suit, to give notice under oath of his intention to bring a civil action. While notice is required in the citizen suit provision of the Clean Air Act amendments of 1970, 42 U.S.C. @ 1857h-2(1970), the Federal Water Pollution Control Act, 33 U.S.C. @ 1365 (Supp. II, 1972), and the Toxic Substances Control Act, 15 U.S.C. @ 2619, none of these acts requires that the notice be under oath. A predecessor to this bill, S. 425 (93d Cong., 1st Sess.), did not contain the oath requirement. There is no experience under any of these statutes which indicates that unsworn notices are a burden on the regulator. Nor is there any reason to suspect that unsworn notices under S. 7 will create problems of abuse. Factually unfounded or frivolous citizens suits have not been a substantial problem, nor should they be expected to be under S. 7.

1083 E. Citizen Suit Exemption

1083 Section 420 as presently drafted does not grant U.S. District Courts jurisdiction over actions without regard to amount in controversy or citizenship of the parties. This provision is contained in the citizen suit provisions of the Clean Air Act (Section 12(a) of P.L. 91-604, 42 U.S.C. @ 1857h-2), the Federal Water Pollution Control Act (Sec. 505(a) of P.L. 92-500, 33 U.S.C. @ 1365), and the Toxic Substance Conrol Act (Sec. 20 of P.L. 94-469, 15 U.S.C. @ 2619). Moreover, it was previously in S. 7's predecessor H.R. 11500. * It is our position that such a deletion severely restricts the viability of the citizen suits provisions. It must be reinserted if citizen suits are to be an effective enforcement tool. Moreover, there is no reason why citizen suits should be more restricted under S. 7 than they are under other federal legislation.

1083 * Section 223(a) of H.R. 11500 stated as follows:

1083 The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such or to order the regulatory authority to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under this Act.

1083 The relevant portions of the citizen suit provisions of the Clean Air Act, FWPCA and TSCA are set out below.

1083 Clean Air Act:

1083 @ 1857h - 2. Citizen suits - Establishment of right to bring suit

1083 (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf -

1083 (1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

1083 (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

1083 The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

1085 FWPCA:

1085 CITIZEN SUITS

1085 "Sec. 505. (a) Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf -

1085 "(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this Act or (B) an

order issued by the Administrator or a State with respect to such a standard or limitation, or

1085 "(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

1085 The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 309(d) of this Act. 33 U.S.C. @ 1365(a) (1976).

1085 TSCA:

1085 SEC. 20.CITIZENS" CIVIL ACTIONS.

1085 (a) In General - Except as provided in subsection (b), any person may commence a civil action -

1085 (1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who alleged to be in violation of this Act or any rule promulgated under section 4, 5, or 6 or order issued under section 5 to restrain such violation, or

1085 (2) against the Administrator to compel the Administrator to perform any act or duty under this Act which is not discretionary.

1086 Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district. (15 U.S.C. @ 2619(a) (Supp. IV 1976)

1086 The citizens of the coal fields should have the rights which the fellow citizens enjoy under the above-quoted statutes and which are necessary to make citizens suits a meaningful enforcement remedy. 15 U.S.C. @ 2619(a) (Supp. IV 1976)

1086 F. Legal Access Standards

1086 The Committee has developed a variety of standards which deal with the question of legal access to administrative and court proceedings. The following chart outlines the standards which deal with access in several different types of administrative and judicial proceedings that arise under S. 7.

1087

---

*2*Availability And Standards of Access For Administrative And Judicial Procedures Under S. 7

Administrative Proceeding	Access Standard
permit approval/denial and level of bond @ 413(b)	"valid legal interest
informal review of inspection civil penalty @ 418	
bond release @ 419(f)	"valid legal interest"
Judicial Proceedings	
judicial review by Secretary @ 425(a)(1)	"interest which is or may be adversely affected"
citizen suit @ 420(a)	"interest which is or may be adversely affected"
damage suit @ 420(f)	"injured in any manner through the failure of the operator to comply with any rule, regulation, permit or order" under the Act.
judicial review of state or federal program @ 426(a)(1)	"any person who participated in administrative proceedings and who is aggrieved"
judicial review of all other orders or decisions @ 426(a)(2)	

1088 Clearly S. 7 contains a variety of standards which may or may not require different levels of interest for participation or intervention. There is no reason to have different standards of access in the various administrative proceedings.Therefore we suggest that a single test be adopted for all participation in agency proceedings.

1088 We urge that this Committee adopt the standard enunciated by the Senate Judiciary Committee in S.Rep. 94-863 which allows all persons who may be interested in or affected by an agency proceeding to participate in the proceeding. This test was adopted by the Committee in recognition of the trend in the law to allow all persons who may be interested in or affected by an agency proceeding to participate in that proceeding.Thus, we urge that any person who may be interested in or affected by an agency action be allowed to participate in all proceedings including: (1) Permit approval/denial; (2) Level of bond (@ 413(b)); (3) Informal review of inspections; (4) Civil penalty proceedings (@ 418); (5) Bond release (@ 419(f)); (6) Review by the Secretary of Orders and Notices (@ 425(a)(1)); and (7) Review by the Secretary of the state plan.

1089 In terms of citizen initiation of administrative action, that is, under @ 25(a)(1), we believe the Committee's access standard "interest which is or may be adversely affected" to be well-reasoned.

1089 In terms of citizen initiation of court action, in citizens suits, damage actions, or review of agency action, we believe the access standards to be adequate.

1089 There can be little doubt that the citizen access standards described above are in line with both past Congressional policy and federal court decisions. Both have encouraged expansion of the right of citizen participation in agency decision-making practices. This Committee in discussing participation in 1973 and 1975 endorsed this principle:

1089 Suits may be brought by "any person having an interest which is or may be adversely affected." The Committee intends that this includes persons who meet the requirements for standing to sue set out by the Supreme Court in Sierra Club v. Morton (405 U.S. 727 (1972). *

1089 * S.Rep.No. 28, supra at 20; S.Rep.No. 402, supra at 217.

1089 The inability of an agency to represent, on its own initiative, the interests of the general public has led to expansion of the classes of groups and individuals that could, as a matter of right, participate in agency proceedings and subsequent court challenges.

1089 In the leading case in this area Judge (now Chief Justice) Burger stated:

1090 The theory that the Commission can always effectively represent listener interests in a renewal proceeding without the aid and participation of legitimate listener representatives fulfilling the role of private attorneys general is one of those assumptions we collectively try to work with so long as they are reasonably adequate. When it becomes clear, as it does to us now, that it is no longer a valid assumption which stands up under the realities of actual experience, neither we nor the Commission can continue to rely on it. *

1090 * Office of Communication of United Church of Christ v. FCC, 359 F.2d 994, 1003 (D.C.Cir. 1966).

1090 The courts' response to inadequate representation of public interest in agency proceedings was to expand significantly the right of interested persons to participate in those proceedings and to obtain court review of various agency decisions and rulings. **

1090 ** See especially, Note, "Selection of Administrative Intervenors: A Reappraisal of the Standing Dilemma," 42 Geo.Wash.L.Rev. 991 (1974).

1090 The relaxation can be analyzed as having occurred in the following stages:

1090 1. Abandonment of the "Legal Right Doctrine": Traditional test for standing to sue based on violation by agency of a legal right. Tennessee Electric Power Co. v. TVA, 306 U.S. 118 (1939), FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1940), changed to inquiry as to whether the interest sought to be protected is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970).

1090 2. Emergence of the "Private Attorney General" Theory: FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1940); Scripps-Howard Radio, Inc. v. FCC, 316 U.S. 4 (1942)

(private litigants can have standing as representatives of the public interest); Associated Industries of New York State v. Ickes, 134 F.2d 694, 704 (2d Cir. 1942) vacated as moot. 320 U.S. 707 (1943) (Congress has authority to confer on any non-official person or group the right to bring suit in the public interest to challenge government action provided a statutory basis for the action exists). But see Sierra Club v. Morton, 405 U.S. 727 (1972).

1090 3. Recognition of Non-Economic Interests: Economic injury not an indispensable element of standing: Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir. 1965) cert. denied sub nom. Consolidated Edison C. v. Scenic Hudson Preservation Conference, 384 U.S. 941 (1966); Citizen Committee for Hudson Valley v. Volpe, 425 F.2d 97 (2d Cir. 1970) cert. denied 400 U.S. 949 (1970); Review League v. Boyd, 270 F.Supp. 650 (S.D.N.Y. 1967); Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C.Cir. 1966).

1090 4. Statutory Aid to Standing: Statutory authorization necessary for standing to assert public interest; such may stem from an agency's organic statute or, in the absence of a specific agency statute conferring standing, it may originate from Section 10 of the Administrative Procedure Act (5 U.S.C. 702):

1090 "A person suffering legal wrong because of agency action, or adversely affected by agency action within the meaning of a relevant statue, is entitled to judicial review thereof".

1090 5. "Injury in Fact": Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 152-153 (1970), construed the test of section 10 of the Administrative Procedure Act to be.

1090 (a) [Whether] the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise; and

1090 (b) [Whether] the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.

1090 Numerous subsequent cases have found the "injury in fact" test to be determinative. See National Welfare Rights Organization v. Finch, 429 F.2d 725 (D.C.Cir. 1970); Barlow v. Collins,

397 U.S. 159 (1970); Sierra Club v. Hickel, 433 F.2d 24 (9th Cir. 1970), affirmed, 405 U.S.
1972, Sierra Club v. Morton 405 U.S. 727 (1972). But see U.S. v. Students Challenging
Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973), Hearings on S. 796 before the
Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S.
Senate 94th Congress, 2d Sess. (1976) (see testimony of Antonin Scalia Assistant Attorney
General, Office of Legal Counsel, Department of Justice; compare testimony of Ralph Nader).

1090 See generally, Comment, "Public Participation in Federal Administrative Proceedings."
120 U. of Pa.L.Rev. 702 (1972).

1091 G. Compensation For Citizen Participation

1091 1. Award of fees from the operator.

1091 Persons whose life or property is directly affected by an operator's stip mining activities,
and who exercise their right to institute and to prosecute administrative and judicial proceedings
against such operator, should be awarded reasonable attorneys' fees and costs against such
operator if they prevail on the merits of their case. Over 50 federal statutes already authorize
such awards against the entity violating federal law. * These statutes properly recognize that
aggrieved persons should not bear the costs of vindicating rights afforded them by Congress.
Rather, the person or entity violating the law should bear the burden of costs and attorneys' fees.
This fee-shifting places the financial burden where it should be, and encourages private
enforcement of federal regulatory statutes, thereby increasing the statutes' overall effectiveness.

1091 * See Appendix for a list of these statutes.

1093 S. 7 clearly recognizes the necessity for private enforcement by providing attorneys'
fees to persons who seek damages for injury to their property by an operator (@ 420(f)). *

1093 * S. 7 explicitly recognizes the adverse effect of strip mining on the persons and property
near their operations. (Section 101 (c) contains a Congressional finding that many surface
mining operations cause erosion and landslides, contribute to floods, pollute water, destroy fish
and wildlife habitat, damage the property of citizens.)

1093 An earlier version of this bill contained a provision that the court in a citizen suit may

award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever appropriate (S. 223(d), H.R. 11500, 93d Cong., 2d Sess. (1974). See also H.R.Rep. 1072, 93d Cong., 2d Sess. at 143-4 (1974). We believe that provision should be reinserted into S. 7. It already exists in the citizen suit provisions of the Clean Air Act Amendments of 1970 (42 U.S.C. @ 1857h-2 (1970)) the Water Pollution Control Amendments of 1972 (33 U.S.C. @ 1365 (Supp. II 1972)), the Noise Control Act of 1972 (42 U.S.C. @ 4911(d) (Supp. II 1972)), and the Marine Ocean Dumping Act of 1972 (33 U.S.C. @ 1415(g) (Supp. II 1972)). The absence of such a provision in a federal surface mining reclamation and control act would suggest a significant failure of concern by Congress for private enforcement of the Act.

1093 We further suggest that the Secretary be empowered to award reasonable attorneys fees and costs against the operator in administrative proceedings under S. 7 where the operator has violated the law, and a person or his representative who is directly affected by the mining activity of the operator made a substantial contribution to the outcome of the proceeding in the opinion of the Secretary. *

1093 * Reasonable attorneys' fees and costs also should be awarded to the person or his representative for judicial proceedings, reviewing agency determinations, under the same standards as awards in the administrative proceedings themselves.

1094 Let us take, for example, a person who lives near the bottom of an unstable spoil bank, and let us assume that the operator has allegedly violated the law and been closed down, and is now trying in an administrative proceeding to have the closure order lifted. Or conversely, let us assume that the inspector terminated the order and the person or his representative sought review under @ 425(a)(1) to have the order reimposed. The person below the spoil bank in the proceeding should be allowed to participate, and should be reimbursed for the costs of his participation if he prevails. This indeed is a most basic example of where private enforcement is desirable, i.e., where a person's most vital interests are affected by agency action.

1095 2. Award of compensation to citizen groups for participation in agency proceedings.

1095 In addition to, and totally apart from, the award of attorneys' fees and costs against the

operators as discussed above, we ask that S. 7 be amended to provide for the award of compensation to citizens and citizens groups, along the lines of what is known as the Kennedy-Mathias bill, S. 270 (95th Cong., 1st Sess.). Under our proposal, S. 7 would be amended to authorize the Secretary to award reasonable attorneys' and expert witness fees, and other reasonable costs of participation to persons the Secretary deems capable of making substantial contributions to a fair resolution of the issues involved in agency proceedings, but who are financially unable to sustain the costs of such participation. Further, the bill should authorize federal courts to make discretionary awards of reasonable attorneys' fees and costs in court proceedings under the same standards as the award for participation in agency proceedings.

1095 S. 7 has as one of its major goals active citizen participation. It provides considerable citizen access to agency proceedings; however these rights are likely to be meaningless unless citizens and their representatives have the financial ability to participate in those proceedings.

1096 As a practical matter, systematic advocacy of diverse points of view in agency decision-making in general, and S. 7 in particular, is likely to occur only if financial barriers reduced to actively encourage participation by those who are likely to contribute to a fuller, fairer, and more balanced record. Citizens groups generally operate under strict financial constraints, and have little or no funding available for participation in administrative proceedings. Many such groups operate with volunteer labor and little or no legal asistance. Others possess some legal capability but little or no in-house scientific expertise.Even larger organizations are unable to afford participation in most of the agency proceedings which affect the interests of their memberships or constituencies. Despite their limited monetary and manpower resources, however, many of these groups represent memberships or constituencies of substantial size. *

1096 * This point was driven home in a Senate Report on public participation in government proceedings:

1096 The Subcommittee on Administrative Practice and Procedure heard testimony from a number of groups and lawyers involved in attempting to inject greater public participating in

agency decisionmaking. These witnesses made clear the inability of public groups to participate
fully and effectively without support from the agency. As Senator Kennedy summarized
testimony of some of the witnesses from the first day of hearings:

1096 Last week the subcommittee heard from a number of grassroots citizens organizations
who made it painfully clear why this legislation is needed. One of them, an environmental action
group in western Michigan, had to abandon its efforts to force the Atomic Energy Commission to
adopt stricter procedures for the distribution of highly radioactive plutonium to private industry.
The agency kept the group tied up in litigation for almost 7 years, bouncing the issue back and
forth between the courts and the Agency, until finally the group ran out of money and had to give
up.

1096 Another group had tried to fight the siting of a powerplant which they felt would have
dangerous environmental consequences. It cost them over $5 5,000 to beat the utility at the State
level, but the group had no money left to continue the fight when the utility brought the matter to
the Federal Power Commission.

1096 A women's rights organization testified on its efforts to raise issues of sex discrimination
in the awarding of Government contracts and licenses, most of which had to be dropped simply
because the group could not afford the enormously high costs involved.

1096 Few private citizens or groups can afford the costs of participating in agency
proceedings. Even the larger, more established consumer groups are severely limited as to the
kinds of proceedings they can afford to enter. Consumers Union, for example, an organization
with a long history of successfully representing consumer interests before the Government,
indicated last week that even they cannot afford to get involved in most of the issues they are
concerned about: energy, consumer credit, product safety standards.

1096 Many of the unfortunate situations described to us in the hearing last week could well
have been avoided with enactment of S. 2715.This was demonstrated by the testimony of a
citizens group which has just received the first award of fees for participating in a rulemaking
proceeding before the Federal Trade Commission. Without this money, made available under a
law applying only to the FTC, the group could not have stood alone, as it did, against the

opposing efforts of many industry groups. It is precisely this opportunity that S. 2715 would extend to those wishing to participate in other agencies of the Government in other types of proceedings. The benefits of this approach are now abundantly clear.

1096 Numerous other examples involving both agency proceedings and actions for judicial review, where persons who did manage to afford the high costs of participation successfully served the public interest or where persons who could not afford to participation might have assisted the agency or benefited the public in funds for attorneys' and experts' fees had been available are contained in the hearing record.

1096 S.Rep. No. 94-863 at 6-7.

1097 The Kennedy-Mathias mechanism for compensating public participation has already been adopted in a number of requlatory situations at both the state and federal levels. For example,

1097 The Regional Rail Reorganization Act of 1973 created an Office of Public Counsel within the Interstate Commerce Commission with the authority to retain outside counsel to represent communities threatened with loss of rail service. The Magnuson-Moss Federal Trade Commission Improvement Act of 1975 authorized the FTC to provide compensation to citizens for participation in rulemaking proceedings.And, just 4 months ago, Congress authorized the Environmental Protection Agency to award fees in proceedings conducted under the Toxic Substance Control Act.

1098 Remarks of Sen. Kennedy, Cong.Rec. (January 14, 1977). In addition, the Comptroller General has found that agencies already have the power to promulgate compensation systems of their own. Several agencies have already begun or completed the necessary procedures to promulgate such rules. However, the most efficient method to means of achieving this goal would be the adoption of the relevant parts of S. 270, the Kennedy-Mathias bill, in S. 7.

1098 S. 270 provides for the authorization by agencies of reasonable attorneys' fees, fees and costs of experts, and other costs of participation incurred by eligible persons in any agency proceeding as does S. 270. However, a person is eligible to receive funds only if he satisfies several criteria, including (1) a lack of economic interest of the person in the outcome, (2) a lack

of sufficient resources, and (3) the interest he represents, must contribute or be reasonably expected to contribute substantially to a fair determination of the proceeding. The bill would also authorize prepayment of costs of participation under certain narrowly defined circumstances.We suggest that the provisions be made applicable to all administrative proceedings under S. 7.

1099 The Kennedy-Mathias bill would also authorize any party or party intervenor in a civil action or other judicial proceeding to recover reasonable attorneys' fees, fees and costs of experts, and other reasonable costs of litigation under certain circumstances. The party or party intervenor must show that the court afforded him the relief he sought in substantial measure, that the action served an important public purpose, that the economic interest of the person was relatively small, that his financial resources are insufficient, and that the costs sought are reasonable under prevailing market rates. We suggest that these provisions be made applicable to all judicial proceedings under S. 7.

1099 In short, as Senator Kennedy has observed, "citizen participation is a necessity in almost all federal agencies, since their jurisdiction and duties are so vast. As long as citizens are not afforded counsel fees for bringing to the attention of administrative agencies an independent viewpoint, there is bound to be little public participation." * S. 7 should be amended to reflect this judgment.

1099 * Remarks of Sen. Kennedy, Cong.Rec. (January 14, 1977).

1100 CONCLUSION

1100 We believe that the basic decision to utilize the enforcement scheme of the Federal Coal Mine Health and Safety Act in S. 7 to provide for citizen participation is sound. However, for the reasons stated in this testimony, we believe that substantial revisions in the enforcement mechanism are necessary to ensure that there are effective, efficient sanctions for violations, and that compensation mechanisms must be placed in S. 7 to give citizens a practical means of access to any decision that might affect their interest.

1100 We thank the Committee for the opportunity to present our views on the enforcement and public participation aspects of S. 7.

1101 APPENDIX A

1101 ATTORNEY FEE STATUTES

1101 Federal Contested Election Act 2 U.S.C. @ 396

1101 Frecdom of Information Act 5 U.S.C. @ 552(a)(4)(E)

1101 Privacy Act 5 U.S.C. @ 552a(g)(3)(B)

1101 Government Organization and Employees 5 U.S.C. @ 8127

1101 Packers and Stockyards Act 7 U.S.C. @ 210(f)

1101 Perishable Agricultural Commodities Act 7 U.S.C. @ 499(g)(b)(c)

1101 Agriculture Unfair Trade Practices 7 U.S.C. @ 2305(c)

1101 Plant Variety 7 U.S.C. @ 2565

1101 Bankruptcy Act 11 U.S.C. @@ 104(a)(1) 109 205(c)(12) 641 642 643 644

1101 Federal Credit Union Act 12 U.S.C. @ 1786(o)

1101 Bank Holding Co. Act 12 U.S.C. @ 1975

1101 Clayton Act 15 U.S.C. @ 15

1101 Unfair Competition Act 15 U.S.C. @ 72

1101 Securities Act of 1933 15 U.S.C. @ 77(k)(e)

1101 Trust Indenture Act 15 U.S.C. @@ 77 ooo(e) 77 [*] (a)

1101 Securities Exchange Act of 1934 15 U.S.C. @@ 78(i)(e) 78(r)(a)

1101 Jewelers Hall-Mark Act 15 U.S.C. @ 298(b)

1101 Trademark Act 15 U.S.C. @ 1117

1101 Traffic and Motor Vehicle Safety Act 15 U.S.C. @ 1400(b)

1101 Truth-in-Lending Act 15 U.S.C. @ 1640(a)

1101 Fair Credit Reporting Act 15 U.S.C. @ 1681(n), (o)

1101 Motor Vehicle Information and Coat Savings Act 15 U.S.C. @@ 1918(a) 1989(a)

1101 Conaumcr Product Safety Act 15 U.S.C. @ 2072, 2073

1101 Federal Trade Commission Improvements Act 15 U.S.C. @ 2310(d)(2)

1101 Copyright Act 17 U.S.C. @@ 1 116

1101 Organized Crime Control Act of 1970 18 U.S.C. @ 1964(c)

1101 Education Amendments of 1972 20 U.S.C. @ 1617

1101 Mexican American Treaty Act of 1950 22 U.S.C. @ 277 d-21

1101 International Claims Settlement Act 22 U.S.C. @ 1623(f)

1101 Federal Tort Claims Act 28 U.S.C. @ 2678

1101 Norris-LaGuardia Act 29 U.S.C. @ 107(e)

1101 Fair Labor Standards Act 29 U.S.C. @ 216(b)

1101 Welfare & Pensions Plan Disclosure Act 29 U.S.C. @ 308(c)

1101 Labor Management Reporting & Disclosure Act 29 U.S.C. @@ 431(c) 501(b)

1101 Coal Mine Safety Act 30 U.S.C. @@ 829 938

1101 Longshoremen's and Harbor Workers' Compensation Act 33 U.S.C. @ 928

1101 Water Polltuion Prevention and Control Act 33 U.S.C. @@ 1365(d) 1367(c)

1101 Ocean Dumping Act 33 U.S.C. @ 1415(g)(4)

1101 Deepwater Ports Act 15 U.S.C. @ 1515(d)

1101 Patent Infringement 35 U.S.C. @ 285

1101 Servicemen's Group Life Insurance Act 38 U.S.C. @ 784(g)

1101 Servicemen's Readjuatment Act 38 U.S.C. @ 1822(b)

1102 Veterans' Benefits Act 38 U.S.C. @ 3404(c)

1102 Safe Drinking Water Act 42 U.S.C. @ 300j-8d

1102 Social Security Act Amendments of 1965 42 U.S.C. @ 406(b)

1102 Clean Air Act Amendments of 1970 42 U.S.C. @ 1857h-2

1102 Civil Rights Act of 1964, Title II 42 U.S.C. @ 2000a-3

1102 Civil Rights Act of 1964, Title VII 42 U.S.C. @ 2000e-5(k)

1102 Fair Housing Act of 1968 42 U.S.C. @ 3612(c)

1102 Noice Control Act of 1972 42 U.S.C. @ 4911(d)

1102 Railway Labor Act 45 U.S.C. @ 153(p)

1102 Merchant Marine Act of 1936 46 U.S.C.@ 1227

1102 Communications Act of 1934 47 U.S.C. @@ 206 407

1102 Interstate Commerce Act 49 U.S.C. @@ 8 15(9) 16(2) 20(12) 94 908(b)(e) 1017(b)(2)

1102 Trading With Enemy Act 50 U.S.C.App. @ 20

1102 Housing and Rent Act 50 U.S.C.App. @ 1895(a)(b)

1102 Japanese-American Evacuation Claims Act of 1948 50 U.S.C.App. @ 1985

1102 Defense Production Act 50 U.S.C.@ 2109(c)

1102 This list does not include the Civil Rights Attorneys Fee Award Act of 1976, P.L. 94-559, or @ 110(b) of the Federal Coal mine Health and Safety Act of 1969.

1102 Source: Hearings on S. 2715, Public Participation in Federal Agency

1102 Proceedings, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, 94th Cong., 2nd Sess., at 325-328.

Statement of Robert J. Mullins Legislative Assistant National Farmers Union on S. 7 "Surface Mining Control and Reclamation Act of 1977" to Minerals, Materials and Fuels Subcommittee Committee on Energy and Natural Resources United States Senate

March 3, 1977

1103 I am Robert J. Mullins, Legislative Assistant for the National Farmers Union, 1012 - 14th Street, N.W., Washington, D.C.

1103 As an organization of family farmers and ranchers the National Farmers Union has long been active in support of legislation promoting soil and water conservation programs and projects. Family farmers and ranchers have taken great care over the years to protect the land and water resources of this nation. As a result of this stewardship the land has returned, to the farmer and consumer of this country, an abundance of high quality food and fiber products. It is imperative to the economic well-being of producers and consumers that such conservation practices be continued. This is a major reason that the National Farmers Union supports the "Surface Mining Control and Reclamation Act of 1977".

1103 We are pleased to note that both Secretary of the Interior Andrus and the President's chief energy advisor, James Schlesinger, have both voiced strong Administration support for surface mining regulation.

1103 Farmers Union members meeting in New Orleans last March adopted the position that "a strong federal statute on strip mining is needed so that any land stripped to recover underground resources must be returned to its original classification or higher so that the land can be put back into production. We favor requiring the posting of bonds or percentage value severance tax as measures to insure enforcement."

1104 The members further stated that, "any land not fully restorable to its original agricultural use should be banned to strip mining. All land already subjected to strip mining must be restored to its original use."

1104 Furthermore, Farmers Union recommends that the following provisions be included in any surface mining legislation:

1104 1) Land and water resources must be protected from destruction or damage by surface mining operations;

1104 2) The concept of total resource recovery be required in all mining operations. This means that land would only be disturbed once and reclamation would be permanent;

1104 3) Strip mining should be forbidden in alluvial valley floors; and

1104 4) Individual written consent must be secured from surface owners where the Federal Government owns the mineral rights prior to any lease of such lands for strip mining.

1104 Farmers Union finds that S. 7 meets most of our minimum criteria for surface mining regulation.

1104 Although as a Nation we are faced with the challenge of increasing our self-reliance on domestic sources of energy to warm our houses, run our industry and produce our food, we must also be cognizant of our responsibility to protect our land and water resources and our agricultural production capability. We must strike a balance, or perhaps more correctly, establish national priorities, over the use of our land.

1104 As is pointed out in this legislation, through these hearings and in many reports and studies, we have vast resources of coal in this country. Farmers Union believes that there is absolutely no need to strip mine good agricultural land needed to produce food for our people.

We feel that we must be selective as to where we allow surface mining activity. It is our belief that Section 422 of the Act provides adequate safeguards for the protection of agricultural lands and natural water systems.

1104 We support Title III, the "Abandoned Mine Reclamation" provisions which provides for reclamation of previously mined lands that have been left in a state which endangers or contributes to erosion and water pollution. The provisions calling for reclamation of rural lands could result in a return to productive use many acres of land not now suitable for agricultural or forestry production. In a period when we are losing millions of acres of farmland each year such reclaimed land could provide a possibly needed reserve. On public lands, reclamation projects could be carried out with the assistance of public service employment programs, such as the Farmers Union Green Thumb Program, to provide recreational areas, parks or nature preserves.

1105 In regard to surface mining activity in alluvial valley floors, Farmers Union recommends that all such activity be prohibited. We find the language in S. 7 to be particularly vague on this subject. The language as currently written would most likely be the subject of lengthy and costly litigation. As an absolute minimum, we prefer the language in H.R. 2 Section 510(5) dealing with certain restrictions on mining activities in alluvial valley floors.

1105 We feel surface owner protection is vital to the rights and economic livelihood of farmers and ranchers, particularly in our Western lands. In the event that surface mining is allowed on lands where the ownership of the mineral rights is vested in the federal government and surface rights to an individual party, we support the requirement that individual written consent be obtained from the surface owner prior to any lease of such lands for strip mining. Furthermore, in the event of mining on such land, the surface owner should be compensated during the mining and reclamation period. This is only fair and reasonable since the income producing ability of the land is destroyed during the mining period.

1105 Although there is a substantial amount of coal that can be recovered through the relatively less costly and expedient method of surface mining, the bulk of our national coal reserves must be recovered through the use of underground mining technology.

1105 We would support legislation to provide for research and demonstration projects on alternative coal mining technologies and would urge that such projects be adequately funded to expedite the expansion of underground mining as opposed to surface mining.

1105 Stringent controls upon the effects of strip mining operations must be enacted at this time. Even though we are in the midst of an "energy crisis" the Congress must not abdicate its responsibility and capitulate to the demands that environmental considerations, agricultural and recreational uses of land must be subordinated to the exploitation of the same land for surface mining in the name of "energy independence".

1105 Surface mining, in our opinion, is a short-term approach to a long-range problem.

1105 It is imperative that, as a first step in trying to solve our continuing "energy crisis", we develop a comprehensive coordinated national energy policy.

1105 National Farmers Union recommends that:

1105 "Elements of a rational energy policy include: (1) Thorough research into the causes and remedies of the current crisis; (2) reducing control of giant corporations of the sources, production, and distribution of energy; (3) equitable distribution and efficient development of energy to assure adequate production of food and fiber; (4) pricing policy which will prevent economic hardship; (5) balancing energy needs with the necessity to maintain a safe and ever-renewing environment; and (6) a massive program to develop renewable sources of energy to reduce our dependence on fossil fuels, including economic assistance for family farmers and ranchers to make agriculture more self-sufficient through increased application of alternative forms of energy."

March 2, 1977

STATEMENT OF B. B. PARKER, PRESIDENT, DUKE POWER COMPANY, CHARLOTTE, NORTH CAROLINA BEFORE THE PUBLIC LANDS AND RESOURCES SUBCOMMITTEE OF THE INTERIOR AND INSULAR AFFAIRS COMMITTEE UNITED STATES SENATE ON S. 7

1107 INTRODUCTION: I am B. B. Parker, President of Duke Power Company, Charlotte, North Carolina. I appreciate your giving me this opportunity to present the position of my company on what we consider critical legislation. S. 7 which you have before you will, in our opinion, have a profound effect upon the energy production of this country, and particularly

the Carolinas, at a time when energy is perhaps the highest priority issue facing our nation.

1107 DUKE'S SERVICE AREA:

1107 Duke Power is the nation's sixth largest electric utility. We provide electricity to 1,150,000 retail customers in the 20,000 square mile Piedmont Area of North and South Carolina which has a population of approximately 3.9 million people. In addition Duke Power sells wholesale to 38 other incorporated municipalities and to a number of rural electric cooperatives and private companies. In 1976, 70.6% of Duke's generation was fueled by coal, 25.5% by nuclear power and 3.9% utilized water power. Parenthetically, the economy of our area has been one of the hardest hit in the nation by the current gas shortage.

1108 IMPORTANCE OF COAL: If this country has any thoughts of achieving close to independence in energy supply, and we are committed to that goal, it will have to come through conservation and the increased use of nuclear and coal.In the case of coal, we must develop our coal in all regions of the United States. This will require vastly increased production by both surface and undergound methods. About one-third of our proven reserves can be surface mined, the only practical way to extract most of this reserve.

1108 Presently 55% of the total nation's coal production is by surface mining, and the electric utilities' coal supply is 65% surface produced.

1108 PIONEERING ACHIEVEMENTS: Duke Power has had a long-term commitment to energy efficiency and environmental protection. Our coal-fired generating system has for many years been one of the most efficient in the nation, ranking in the top six for the past 18 years. According to industry statistics compiled by the Federal Power Commission, the company ranked first in 1970 and 1971 and second in 1972 and 1973 in terms of the efficiency of its fossil-fuel generating system. Preliminary data indicates that the company ranked first in 1974 and 1975 in terms of such efficiency.

1108 Fifteen years ago, Duke pioneered with stringent insulation requirements for customers to be eligible for the all-electric rate. As a forerunner of today's across-the-board spectrum of environmental protection and enhancement, Duke established its full-time environmental department in 1923 and an extensive soil conservation and reforestation program in 1939.

1109 NO NEED FOR S. 7: We at Duke Power do not quarrel with the goal which S. 7 seeks to achieve, that of good restoration of land disturbed by surface mining. We believe in that concept and fully support it. Nevertheless, we oppose S. 7 for two reasons. First, we feel it is unnecessary legislation. Second, we are quite certain that S. 7 will severely curtail our supply of coal - coal upon which the 3.9 million people we serve rely on for electricity.

1109 DUKE'S COAL AREA: Duek Power draws all of its coal from an area comprised of southern West Virginia, eastern Kentucky, and western Virginia. This area is generally called Central Appalachia and this includes most of Mine Districts 7 and 8. In 1976, we burned 14.1 million tons of this Appalachian coal making us one of the nation's largest coal-burning utilities. In 1976, 44% of our coal supply was produced from surface mines in Central Appalachia, practically all of which was in terrain with 20 degrees or greater slopes.

1109 At the request of Senator Henry M. Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, the Council on Environmental Quality submitted a report in March, 1973 entitled "COAL SURFACE MINING AND RECLAMATION, an Environmental and Economic Assessment of Alternatives," Serial No. 93-8(92-43). On page 53 the report focuses on surface mining and surface mining reserves in Central Appalachia which is the area from which Duke Power Company receives all of its coal.

1110 At the time of the CEQ Report, 87.5% of all coal surface mined in Central Appalachia came from mining on slopes of 20 degrees or greater. The report further indicated that 62.5% of the total strippable reserves in Central Appalachia underlay slopes of 20 degrees or greater. These reserves amounted to some 1.9 billion tons of coal.

1110 It should be noted that in this era of ever increasing restrictions relating to air quality, Central Appalachian coal is badly needed to maintain air quality. The CEQ Report at page 54 stated:

1110 "The coal produced by both surface and underground methods in the central Appalachia region - which could be most highly impacted by a slope angle prohibition - has the lowest sulfur content of any coal in the Appalachian and central U.S. regions. * * * Low sulfur fuel is already in high demand for use in steam electric plants to meet national sulfur oxides air quality

standards."

1110 It therefore appears that to the degree that the rigid provisions of Section 415(d) of S. 7 with respect to mining on slopes of 20 degrees or greater makes such mining unfeasible, a very significant portion of badly needed and high quality energy resources for the nation will be lost. This is of great concern to our company, dependent as we are upon surface-mined Appalachia coal.

1111 STATE RECLAMATION LAWS: The states of West Virginia, Kentucky and Virginia from which we obtain our coal all have state reclamation laws and they are being enforced. Excellent reclamation is being accomplished under the individual state laws. In addition, all of these states have strengthened, and we would expect them to continue to strengthen, their reclamation requirements.

1111 Conditions vary greatly throughout the nation as to soil composition, topography, climate, and vegetation. It is our very strong opinion that these variances, combined with the present good reclamation and continual strengthening of reclamation laws, dictate that this is today an area in which Federal legislation is not needed and will not work.

1111 We further feel that the proposed legislation will unduly restrict, and as a result, curtail recovery of a badly needed quality energy resource at a time when we are urgently seeking further energy for the nation. As indicated, the states which are our coal sources, are requiring excellent restoration of mined areas. But they do not set the blanket, rigid restrictions contained in Section 415(d) of S. 7. They do not because we believe they had the wisdom to realize that coal production, vital to their states and the nation, would be greatly reduced by imposition of these measures. While sound reclamation can be achieved, the practical aspects of mining on Appalachian slopes are such that it is simply not feasible to achieve approximate original contour with no exposure of any high walls which is mandated by S. 7.

1112 DUKE CONTRACTS: Recognizing the long-term need for environmentally acceptable coal and to obtain a reliable supply, Duke began in the late 1960's to commit to long-term contracts and its own production in order to obtain a supply of low sulfur Central Appalachian coal. Presently, Duke has long-term commitments for 13.4 million tons of this coal annually.

Based on the present State Implementation Plans, the sulfur content of this coal is low enough to meet air requirements for our existing stations.

1112 In 1976, 41% of the coal produced under these commitments was by surface methods. A larger portion is scheduled to be surface mined in the future. We have polled our suppliers, asking them to analyze how the provisions of S. 7 would impact on their ability to meet their commitments in the future. Their general response indicates to us that it will be impossible for them to maintain delivery under our contracts in view of the stringent reclamation requirements of Section 415(d).

1112 It must be kept in mind that if this legislation effectively prohibits the mining of much of the coal reserves on Appalachian slopes of 20 degrees or greater, and all of our evidence indicates that it will, the Congress will have committed this very valuable, low sulfur source of coal to nonproduction forever. This is because these reserves, located as they are, cannot, for the most part, be mined by deep methods. It seems to us incredible that this be done at the very time our nation is experiencing a severe energy crisis.

1113 IMPACT ON SMALL PRODUCER: Much of the coal produced by surface mining in Central Appalachia is produced by relatively small, independent coal operators. We understand that the TVA Massengale Mountain Project Final Report concerning the Economic Impact of Back to Contour Reclamation of Surface Coal Mines in Appalachia will be brought to your attention. We have reviewed this report. There is little doubt from the report and from our own data that the small, independent operator will be eliminated by back-to-approximate-original-contour requirements.

1113 The massive equipment required will mean huge needs for additional capital which it is unlikely can be obtained, since most independent operators work small areas of reserves. A small operator may have as little as $1 -million invested in mining equipment. It will be impossible for him to finance the large trucks, at $2 30,000 each, necessary to do the hauling required by Section 415(d).

1114 There is little doubt that S. 7 will doom most independent operators in Central Appalachia. Recovery of coal under such restrictions, if it can be done at all, will have to be by the large energy companies which can muster the required capital for the necessary massive

equipment. This is paradoxical when in this time of energy crisis we should be encouraging every possible small energy recovery venture.

1114 Also, as pointed out in the Massengale Report, it will for some time be impossible for the nation to produce the trucking capacity which S. 7 will necessitate, even if capital were available to mine operators.

1114 IMPACT AND ALTERNATIVE ENERGY SOURCES: Because of our great dependence upon Central Appalachian coal, the people of the Piedmont Carolins may be more critically affected by S. 7 than any other populated area in the country. Our Fuel Department has done what we consider an outstanding job over the years in keeping us adequately supplied with coal. They tell me that they simply do not believe that coal will be available from alternate sources to replace the coal which we have counted on from our long-term commitments and which they are sure will be lost by the enactment of S. 7.

1114 Coal from Central Appalachia is geographically closest to our service area and thereby, utilizes the least amount of transport fuel to reach our system. Movement into the mid-western area or northern West Virginia would result not only in much higher transportation costs, but also in the utilization of additional transport fuel which is oil, the principal energy source for which we are trying to reduce consumption. This also would mean our moving into high sulfur coal, with the consequence of our not being able to meet our state's air quality requirements. Moving to the Great Plains or Rocky Mountain area for coal would require transporting a product possibly 2,300 miles, utilizing 10% of the energy being transported in transport fuel, again oil. Compounding this is the fact that the lower BTU coals would reduce our generating capabilities and efficiencies.

1115 All of this additional transportation would require substantial expansion of the nation's railway rolling stock. The equipment is certainly not available today and will not be for the foreseeable future. Also, implicit in the idea that we could move to other areas for our coal supply is the assumption that after the enactment of S. 7, sufficient coal to meet the country's needs will be mined in those areas. This is, to say the least, highly doubtful.

1115 Further aggravating our ability to meet our customers' needs are the delays in obtaining

licensing for our nuclear stations. Our earlier projections indicated that with our nuclear program, we could hold somewhere around a 14-million ton per year coal burn for a number of years in the future. However, if the long delays in licensing our nuclear projects continue, our coal requirements will certain greatly increase.

1116 COST: We have not attempted to spell out for you the added cost of coal which the provisions of S. 7 would impose. We understand that you will have various testimony on this subject. We would only caution you that our experience has been that cost associated with legislation such as proposed by S. 7 invariably far exceeds the high end of the scale presented by academic studies.

1116 To understand our reluctance to accept statements that S. 7 will not significantly affect cost or production, one has only to remember the enactment of the Mine Health and Safety Act of 1969. Testimony then was that neither cost nor production would be changed greatly by that legislation. But between 1969 and 1976, we have seen our average coal prices go from $4.25 to $22.58 per ton and, during the same period, have seen underground coal productivity drop from about 16 tons to 8 tons per man day. Certainly the Mine Safety Act was not totally responsible for these dramatic shifts, but there is little doubt that it made a major contribution.

1116 Cost, of course, is of great concern to us. Our customers, as well as electric users everywhere, are complaining strongly about the increased cost of electricity these past few years. Fuel is our single largest expense, in 1976 being over four times the total salaries and wages of our electric operating employees. Consequently, increased cost of fuel greatly affects our customers, and this we deplore. However, it is the sheer availability of fuel, which translates into our ability to supply our customers, that prompts our submission of this statement to the Committee.

1117 CONCLUSION: We oppose S. 7 because we think that it is unnecessary and that it delves into an area that is being and will be properly taken care of by state legislation. We are also quite certain that it will severely restrict our essential coal supply which is vital to the lives and jobs of almost 4 million Carolinians.

1117 We recognize there have been past abuses of surface mining. This is regrettable, and we

strongly support governmentenforced, sound reclamation practices. However, in our view S. 7 proposes not sound, but prohibitive, reclamation.

1117 On Sunday, February 20, Senator Jackson in a televised news press meeting, referred to the fact that the Congress was going to have to mandate the conversion of gas and oil facilities to coal. This cannot be if we are to make surface mining either technically or economically unfeasible. It is an accepted fact that coal must play an important role in our nation's future energy supply. This being so, instead of enacting a bill which will effectively prevent the recovery of large coal reserves, we believe that the Congress should enact legislation which will encourage coal production by all methods.

1118 If a surface mining and reclamation act must be enacted, we urge that the provisions of Section 415(d) relating to approximate original contour and no high wall be eliminated and that there be substituted a requirement that the land must be restored to a condition that is as useful or more useful than that which existed prior to mining.

1118 Again, we thank you for affording us the opportunity to present these views to the Committee.

TESTIMONY ON BILL S7 by Harry Tauber The Detroit Edison Company

1119 My name is Harry Tauber, Assistant Vice President and Manager-Fuel Purchasing for The Detroit Edison Company, an electric power utility serving 7600 square miles located in Southeastern Michigan which has a population of approximately 4.8 million persons. I was formerly Assistant Vice President and Manager-Engineering and Construction and am pleased to submit this testimony on behalf of Detroit Edison.

1119 Electric utilities have had available to them only three realistic fossil fuel options for meeting the stringent power plant air quality standards that have been imposed. The first has been to switch from noncompliance coal to oil or gas. The second has been to use low-sulfur coals exclusively or blended with high-sulfur coals. The third has been to use stack gas cleanup systems.

1119 As a result of recent developments, the use of gas and light oil as boiler fuels for the generation of electricity can only be a temporary solution to the long-term problems of air quality

compliance. In the long term, those fuels should mainly be reserved for higher order uses such as transportation, domestic heating, critical industrial processes, petrochemical feedstocks and other speciality uses. On the other hand, residual oils, for which there are few alterntive uses, should be used as boiler fuels for generating electric power when they are available.

1119 Because of the virtual impossibility of converting many older existing generating facilities to compliance coals, utilities were forced to convert such plants to oil and gas to meet air quality regulations. New facilities, however, can usually be designed to use compliance coals and, in those cases, oil and gas should not be considered unless residual oil is available.

1120 We have determined that the use of stack gas cleanup is not yet a viable alternative based on the studies we have made of our prototype stack gas cleanup system installed at our St. Clair Power Plant. Stack gas cleanup throwaway systems result in a large environmental intrusion and high cost while recycling systems result in lowered plant availability and very high costs to employ a technology that we do not believe is adequately proven. Both systems are energy inefficient.

1120 Detroit Edison's main approach, therefore, has been to use low-sulfur coals as a means of meeting long-term air quality regulations. Our consultant's analysis of the availability of low sulfur eastern coal reserves indicates that they may be used as part of the long-term strategy for meeting air quality regulations, but only on a very limited basis. Detroit Edison has, therefore, turned to the west and is now transporting low-sulfur surface mined western coals some 1700 miles to Detroit Edison facilities to be used alone or in conjunction with low-and high-sulfur eastern coal. Our investment to generate electricity using western coal will exceed $1 billion.

1120 Should new surface mining legislation prevent the mining of the large reserves of western coal or make them so costly as to unduely burden electric power customers, the other alternatives described earlier for meeting air quality regulations would be brought into play to the detriment of a rational national energy policy. The energy supply-environmental issue would remain unresolved if this valuable source of low-sulfur fuel were removed from the options available to electric power companies to meet their responsibilities.

1121 Detroit Edison, therefore, recommends that surface mining legislation be considered only in the context of the total energy supply-environmental picture and that the regulations regarding surface mining be sufficiently nonrestrictive so as to allow the use of surface mined western low-sulfur coal across the United States. The legislation must also allow the ready use of surface mined eastern coals, both high and low sulfur, since surface mining often is the only reasonable way of mining these coals.

1121 There are further reasons for providing legislation that will allow the ready expansion of coal supplies using surface mining techniques in addition to the need for meeting air quality regulations. Even if this nation had set a course for maximum expansion of nuclear power, which it has not, and if a large scale effort were in place for energy conservation, which it is not, we would still look to oil and coal for meeting the nation's new energy requirements. Gas must be reserved for special uses.

1121 Solar power, tidal power, wind power, synthetic fuel production, and the like in the quantities needed will not be significant until the end of this century and beyond. It will, therefore, probably be necessary to double the supply rate of coal by the late eighties over what it has been for the last 30 years or place tremendous pressure on precious oil to supply the energy gap. Surface mining must remain a viable and economic method for producing the coal necessary to meet expanded requirements. In the absence of an expanding domestic coal supply we would become even more dependent upon foreign oil supplies, a dependency already proven unsatisfactory.

1122 It would be inconsistent to impose upon electric utilities, expanded load requirements and environmental regulations that must be met while effectively removing from consideration one of the most sensible solutions of the problem by imposing surface mining legislation of a kind that might make it virtually impossible for utilities to reasonably utilize this plentiful resource without causing an unnecessarily severe burden on their customers. The need for surface mining legislation to protect the environment is clear in order to assure that the countryside is neither scarred nor croded and, therefore, unusable. But, it is also clear that such legislation must consider the need to provide for this nation an adequate, reasonably priced, environmentally acceptable energy supply.

STATEMENT OF CHARLES TRIMBLE FOR THE NATIONAL CONGRESS OF AMERICAN INDIANS, INC., THE CROW TRIBE OF THE CROW RESERVATION, MONTANA, THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, NORTH DAKOTA, AND THE ARAPAHOE TRIBE OF THE WIND RIVER RESERVATION, WYOMING

1123 March 3, 1977

1123 Mr. Chairman:

1123 I am Charles Trimble, and I am Executive Director of the National Congress of American Indians, Inc. I am making this statement this morning on behalf of NCAI, the Crow Tribe of the Crow Reservation, Montana, the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, and the Arapahoe Tribe of the Wind River Reservation, Wyoming. These three tribes have significant coal deposits within their reservations.

1123 We are deeply concerned about Title III of S. 7, the "Surface Mining Control and Reclamation Act of 1977" as it appears to affect surface mining on Indian reservations. Section 301 would establish an "Abandoned Mine Reclamation Fund (hereafter "fund")" through several revenue sources, including a 35 cents per ton reclamation fee on surface-mined "federal coal" (hereafter "reclamation fee"). The Act nowhere defines "federal coal," but references in @ 301(d) to collections for the fund from any Indian reservation appear to include, within the meaning of "federal coal," any coal mined on Indian lands.

1124 Section 301(d) provides that 50 per cent of the funds collected annually from, among other places, Indian reservations, shall be expended on that reservation by the Secretary of the Interior or a state regulatory authority, pursuant to an approved state abandoned mine reclamation program, after considering recommendations of the head of the governing body of the tribe with jurisdiction over the reservation. Apparently such expenditure is not mandatory, however, for @ 301(d) goes on to provide that if such funds are not expended within three years after being paid into the fund, they shall become available for expenditure "in any area." The balance of the annual collections is in any case available at the discretion of the Secretary for expenditure "in any area" to meet the purposes of Title III.

1124 We have two objections. The first is constitutional. While legal title to Indian coal is held by the United States, equitable or beneficial title is held by the Indians, and this title is "as

sacred as the fee simple." United States, ex rel. Hualapai Indians v. Santa Fe Pac.R.Co., 314 U.S. 339, 345 (1941). Section 301, by imposing the reclamation tax or surcharge on Indian coal, while not imposing it on private coal, violates the equal protection of the law provisions of the Constitution of the United States, and this violation is not overcome merely because the tax or surcharge revenues may be expended on lands within the taxed reservation.

1125 Our second objection is based on the results of the inequality imposed by Section 301, and shows why the inequality is not permitted under the Constitution. If coal mined on an Indian reservation is subjected to the reclamation fee, Indian tribes with coal resources will be placed in a serious, and probably ruinous, competitive disadvantage vis-a-vis owners of coal on state and private lands. That this same disadvantage may also apply with either the same or probably less force for coal mined on federal land hardly improves the Indian economic prospects. Given the option of contracting or leasing coal on state or private land where no reclamation fee applies and contracting or leasing to develop coal on federal or Indian lands where the fee would apply, no rational coal operator would choose the latter.

1125 In recent years congressional and federal policy has been to recognize the fiduciary obligation of the United States to the Indian tribes and peoples of this country, and also it has become federal policy to promote self-determination and self-government of native Americans. Indian Self-Determination Act of 1975, 25 U.S.C. @ 450 et seq. Section 301 of S. 7 runs contrary to those policies and we assume was included in S. 7 without full realization of its impact on the development of tribal resources in a highly competitive field, and without focusing on its policy implications. Once the meaning of this section is perceived it becomes obvious that an unwarranted economic cost is placed upon Indian coal interests to the clear benefit of their state and private competitors.

1126 We also perceive that the disadvantage to Indians is imposed by @ 301 despite the proviso in @ 423(a):

1126 "That except as provided in section 508 the provisions of this Act shall not be applicable to Indian lands [defined by @ 501(9) to include all lands within the exterior boundaries of any federal Indian reservation]."

1126 The competitive disadvantage is not the only disadvantage inherent in @ 301. Assuming that the reclamation fee were to apply to Indian coal, there is little likelihood that any Secretary of the Interior could, even if so inclined, spend 50 per cent of the annual reclamation fund collections on Indian reservations. The primary objective of the fund is to reclaim areas that have been left inadequately reclaimed as a result of surface mining operations that occurred before enactment of this proposed legislation. See @@ 302 and 303. Surface mining which occurs following enactment would come within the requirements of the Act that place strict reclamation provisions on those who mine it, e.g., @@ 408 and 409. The reclamation fund is evidently not available for land that will be mined after passage of the Act. Little, if any, of the land of our tribes has at this time been surface mined, so that they would never receive any funding from the reclamation fund which the fee on their coal would nourish.

1127 Indian coal represents a considerable source of greater income, more jobs, and improved standards of living for Indian people. To place development of Indian coal at an economic disadvantage is to keep the Indian people at an economic disadvantage.

1127 NCAI and tribes joining in this statement urge that Indian coal be clearly excluded from @ 301 and Title III generally, so as not to subject it to the unwarranted application of a reclamation fee.

1127 In order to make this change in the Act, we are suggesting an amendment which is attached to this statement.

1127 Thank you, Mr. Chairman.

1128 SUGGESTED AMENDMENT

1128 1. Amend Section 301(b)(3) to read:

1128 "(3) 35 cents per ton of coal from the royalties on Federal coal produced by surface mining and 15 cents per ton of coal from the royalties on Federal coal produced by underground mining: Provided, that this fee shall not be collected from coal mined on Indian lands."

1128 2. Amend Section 301(d) by:

1128 a. Deleting "or Indian reservation" from line 5, page 14.

1128 b. Deleting "or Indian reservation" from lines 5-6, page 14.

1128 c. Deleting "or the head of the governing body of that tribe having jurisdiction over that reservation, as the case may be" from lines 10-12, page 14.

STATEMENT CONCERNING FEDERAL STRIP MINE REGULATIONS

Statement to the Senate Interior and Insular Affairs Committee, The Honorable Henry M. Jackson, Chairman

March 2, 1977

Prepared by: Margaret Workman and Members of the Richmond District Better Citizens Club, Raleigh County, West Virginia

1130 Chairman Jackson, Honorable Senator Metcalf and All Other Senators of the Interior and Insular Affairs Committee.

1130 It is a great honor for me to have been invited to testify on steep slope surface mining.

1130 It is also with deep regret that I cannot attend your hearing.However, our community organization and I have drafted a statement.

1130 We have been a watch dog of steep slope surface mining in our area for a number of years. The damage that is done can never be repaired.

1130 There are areas in Appalachia (West Virginia) that are impossible to reclaim either by natural growth or by technological activity thereby causing stream pollution, landslides, accumulation of stagnant water, flooding, the destruction of land for agricultural purposes, the destruction of aesthetic values, the destruction of recreational areas, thereby destroying or impairing the health and property rights of others. Blasting on these sites cause property damage - broken windows, cracked foundations, cracked farm ponds, cracked wells (causing much needed water for the survival of animals and man to seep out leaving them dry). Blasting also disturbs the elderly, blasts so hard they shake people's homes and the earth. The water table of the world is dropping. When the earth is disturbed, it causes water impounded in the earth to seep out, dropping our water table even lower. Man can do with energy from other sources, but can man do without water?

1130 It has been our experience that strip operators are irresponsible about covering the shale

and debris and rock with top soil. Therefore, good vegetation can never be had. Also, West Virginia law allows an operator 12 months after completion of mining to reclaim the land. Nine times out of ten the disturbed land is never reclaimed, seeded or planted with trees. There are sites in our area unreclaimed for over five years that will never be able to grow grass or trees until covered by top soil. The uncovered land is sliding and causing a lot of water drainage. There is no way they can control the earth, keep it from sliding down hill, filling up ponds, creeks, breaking down the timber with shifting dirt, rocks and debris; rocks and dirt rolling and sliding out of the bonded area on to private property.

1130 Some say West Virginia has a good law. And that the states should have there own law and that we do not need a federal law - BUT we say to you today a federal law is needed if it will be enforced. A law is no good without enforcement. I have included a few newspaper clippings of how West Virginia law is upheld. This is just one case. We must praise Mr. Basil Sweeney, a State DNR inspector, for speaking out and trying to do the people of our great state a good job. But without the backing of our local District Attorney, it can never happen.

1131 Operators should have to reclaim, replant as they disturb the earth. If operators do not uphold the law, they should have large enough fines imposed upon them to hurt. A small fine makes no difference to a company. The law should be enforced, and the fines paid.

1131 We live on a high plateau - companies want to strip below and around us.It would be like peeling an apple around the middle and us on top. There are thousands of acres of farm land on top. Land that has been in some families as far back as nine generations. Coal companies own land completely around us. If they are allowed to strip beneath us, our water will be gone in a matter of a few years depriving people of their livelihood.

1131 We, the Richmond District Better Citizens Club of Raleigh County, West Virginia support your Federal Bill to Control Surface Mining.

1131 Margaret Workman

1131 Written by Margaret Workman, Recording Secretary, as told to by the Members of the Richmond District Better Citizens Club.

1132 [See Illustration in Original]

1133 [See Illustration in Original]

1134 Strip Mine Firm May Not Pay Fine

1134 By FRANK P. JARRELL Staff Writer

1134 A strip mining compnay, fined in a magistrate's court for violations, has not yet paid its $3 ,000 fine.It probably never will, in spite of a statement by Raleigh County Prosecutor Thomas Canterbury that the dismissal of charges against the company in the Raleigh County Intermediate Court "was all a mistake."

1134 On Jan. 28, the Post-Herald published statements by Basil Sweeney, a strip mine inspector for the Department of Natural Resources, concerning the case against C & T Construction Company.

1134 Sweeney said the company, owned by Willis Crews and Darrell Todd, was first cited for stripping beyond bonded geographical limits. Then, Sweeney said, the operators were twice cited for stripping without a permit.

1134 During June 1976, the case was tried by then) Justice of the Peace Joe Rodriguez.The defendants were convicted and fined $1 ,000 per each charge. However, the fines were not paid. The case was appealed to the Raleigh County Circuit Court.

1134 A time-lapse followed. During that time, Sweeney said, the Raleigh County prosecutor's office told him that the file on the case had been lost. Later, Sweeney said, he was told that the file had been found and the case would be pursued.

1134 However, Sweeney said he heard a different story from one of the defendants. "Twice, on Nov. 9, 1976 and Jan. 4, 1977, Crews called me and said Raleigh County Prosecuter Thomas Canterbury had told him that there were no charges pending against him in Raleigh County," Sweeney said. "I called Canterbury and he denied ever speaking with Crews on the matter.

1134 Sweeney said Crews called again on Jan. 11. "He said he was enroute to Rodriguez's office to take care of the case. About an hour later, Rodriguez called me. He said that he had received

1135 DNR Fines May Never Be Paid a court order from Intermediate Judge Kermit Locke dismissing all three charges and returning them to the lower court where the defendants were to

pay only the court costs $30 0).

1135 On Jan. 27, Canterbury said the defendants were to pay the total fine, not just the cost.
"It was some sort of mistake if Rodriguez received an order concerning just the costs. That's not
the case. The matter was remanded to the court of origin where the defendants were to pay the
total fine," he said.

1135 Wednesday, Magistrate Rodriguez said, "The fines have not been paid yet. I understand
that the prosecuter's office is trying to work the thing out with the defendants."

1135 Wednesday, Canterbury was not available for comment.

1135 The order received by Rodriguez in January concerning the State of West Virginia vs.
Willis Crews reads: ORDER. This day came the defendant by counsel and the State by its
attorney whereabout counsel moved the Court that the above styled case be remanded to the
Justice of the Peace Court.

1135 "And, there being no objection on the part of the State, said motion is granted and this
case is hereby emanded to the Court of its origin, there to be dismissed upon payments of the
costs herein incurred."

1135 The order was signed by Judge Kermit A. Locke of the Intermediate Division of the
Raleigh County Circuit Court. Canterbury's initials are also on the order. Concerning the case,
an area attorney said, "Ordinarily, after a trial in a justice of the peace court, if the defendant
appeals the case, a trial de novo (new trial) is held in the circuit court. When the case is
remanded to the JP court, it's for further disposition. However, I've never seen an order like this."

1135 The attorney said, "This order was apparently meant to be ambiguous. It doesn't appear
as if some mistake has been made. Dismissal means to do away with the case and remove it
from the court docket." Concerning whether the defendants, in this order, are to pay just court
costs ($3 0) or the total fine, the attorney said, "A word doesn't mean anything other than its
definition. Costs would mean court costs, not fines."

1135 Would the prosecutor have the authority to demand that the defendants pay the fines
regardless of the court order? The attorney said, "Canterbury doesn't have the authority to

require a fine if the case has been dismissed.The case seems to be over, and defendants can't be
tried twice on the same charges."

1135 A representative of the West Virginia Attorney General's office was asked for opinion.
He said, "The whole thing doesn't make sense.Apparently, the defendants are just going to pay
the costs rather than the $3 ,000 fine. I really don't understand what happened unless the state
(represented by the prosecutor) just decided to drop the case."

1135 An area law enforcement officer seemed to sum up the feelings of those critical of the
prosecutor's actions concerning the case. "This is nothing different from the way things normally
go on in the courthouse. I'd bet that if someone spent some time going through the records up
there, they'd learn lots of interesting things. You'd be surprised how many cases, over the years,
have disappeared between original courts and the circuit court," he said.

1136 IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA
INTERMEDIATE DIVISION

1136 STATE OF WEST VIRGINIA -VS- WILLIS CREW

1136 ORDER

1136 This day came the defendant by counsel and the State by its attorney whereabout counsel
moved the Court that the above styled case be remanded to the Justice of the Peace Court.

1136 And, there being no objection on the part of the State, said motion is granted and this
case is hereby remanded to the Court of its origin, there to be dismissed upon payments of the
costs herein incurred.

1136 ORDER:

1136 ENTER:

1136 Prepared by Norman Knapp

1136 Attorney for Plaintiff

1136 Approved by:

1136 Attorney for State.

1136 Court Order Said 'Mistake'

1136 This document, received by Magistrate Joe Rodriguez on Jan. 11, has been termed "a

mistake" by Raleigh County Prosecuting Attorney Thomas Canterbury. Originally, according to
Basil Sweeney, a strip mine site inspector, defendants in a strip mine infraction case were only
assessed $3 0 in costs and the case dismissed in the circuit court after they appealed a conviction
and $3 ,000 fine by Rodriguez. The order contains Locke's signature and Canterbury's initials.
See "DNR" on Page 1. (Post-Herald Linephoto)

UNITED STATES INDUSTRIAL COUNCIL

FIGHTING FOR FREE ENTERPRISE SINCE 1933

1137
March 1, 1977
Mr. Norm Williams [*] Senate Energy and Natural Resources Committee
3106 Dirksen Senate Office Building
Washington, D.C. 20510
Dear Mr. William:

1137 The United States Industrial Council respectfully submits the enclosed statement (five
copies) on S. 7 to provide for the cooperation between the Secretary of the Interior and the States
with respect to the requlation of surface mining operations, and requests that it be made a part of
the record of the Senate Energy and Natural Resources Committee's public hearings on this bill.

1137 If you have any questions about this statement, please call me at 833-3018.

1137 Thank you.

1137 Since yours,

1137 T. J. Hamilton

1137 Washington Representative

1137 Enclosures

1138 STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL ON S. 7, A BILL PROVIDING FOR FEDERAL REGULATION OF SURFACE MINING

1138 The United States Industrial Council, an organization dedicated to preservation of private
enterprise and stopping the intrusion of the federal government into every aspect of daily lives, is
seriously concerned over proposed surface mining legislation, as represented in S. 7.

1138 Having just experienced the worst winter in 177 years and an energy shortage
unprecedented in the United States, it seems almost inconceivable that Congress should be

considering legislation which would aggravate the energy problem. Yet that is exactly what the bill under consideration would do.

1138 No one questions that in the surface mining of coal every effort should be made to prevent the ugly disfigurement of the landscape, creation of wasteland and problems of erosion left by improper mining procedures. In recent years, as all of us have become aware of the importance of protecting our environment, mining compnies have recognized the problems created by some earlier practices and have taken steps to correct them. Today, land where surface mining has occurred is being restored and replanted so that in many instances its appearance and usefulness is better than before the mining took place.

1138 But reliance for use of proper surface mining practices is not just left to the mining industry. In every major coal producing area, state regulations cover surface mining and reclamation procedures. Thirty-eight states have surface mining laws and during the past three years, 29 of these states have strengthened their laws.Thus problems in surface mining regulation are being handled by the states. This is as it should be, because conditions differ among the various states and the states are much better able to deal with their own particular situations than the federal government.

1139 Enactment of federal surface mining legislation would be one more unnecessary and unwarranted federal usurpation of state authority. It would be another step in expanding the power of centralized government and the federal bureaucracy, and erosion of the state-federal relationship established by the Constitution.

1139 The proposed legislation would not simply supplement state surface mining regulatory programs but would virtually wipe out those programs and replace them with new federal regulations and an OSHA-type enforcement mechanism. The states would be made to enforce federal surface mining regulations, subject to supervision by the federal bureaucracy. Present reclamation practices, regardless of their effectiveness, would not be permitted if they did not conform with the terms of the proposed bill.

1139 S. 7 would be a back-door approach to the establishment of land use programs which have been rejected on a national basis by the Congress and on a state basis by a number of state

governments. The bill would force states to set up a "land use process" equivalent to a land use program in order to be allowed to regulate surface mining within their borders.

1140 At a time when every feasible step should be taken to expand our domestic sources of energy, the proposed surface mining legislation would result in lost coal production. It would hit hardest at small operators who produce annually some 99 million tons of coal or 28% of all surface mining production. Many, perhaps most, of these operators would not be able to comply with the law. This is due to a large extent to the vague, complicated and sometimes contradictory language of the surface mining bill. Small surface mine operators would be left confused and uncertain as how to proceed, with the likelihood of litigation to clarify the law going on for years.

1140 The reclamation standards set by S. 7 are unrealistic in that they do not recognize the marked differences in soil types in different areas. In some instances the requirement that surface-mined land be restored to its approximate original contour may be reasonable and appropriate. In other instances, another type reclamation could leave the land with better erosion and sedimentation control than the original contour.

1140 The bill contains a prohibition against surface mining in "alluvial valley floors" that is so worded that it would stop such mining in a large portion of the Western area. This is the area that produces a large percentage of the low-sulphur coal that is so urgently needed to replace critically short natural gas and expensive imported oil in power plants and industrial plants.

1140 The bill would effectively stop the digging of any new open pit mines. In some instances the nature of the coal seams is such that the open pit mining method is the only feasible way of obtaining the coal. In our current energy emergency, we cannot afford to sacrifice this source of fuel.

1141 At a time when increased energy costs are creating a serious problem for many consumers and adversely affecting the national economy, S. 7 would add millions of dollars to those costs. In addition to the increased expense to which mining companies would be put to meet the bill's requirements, there would be added a reclamation fee or tax of 35c per ton on surface mined coal and 15c per ton on coal mined underground, or 10 percent of the value of the

coal at the mine. These increased costs would, of course, have to be passed on to consumers of coal.

1141 The present Administration has emphasized its determination to reduce the size and cost of the federal government and the federal bureaucracy. The United States Industrial Council strongly endorses that objective. Since S. 7 would expand, rather than reduce, the size of the federal government and federal bureaucracy, as well as aggravate our serious energy problems, we urge that this legislation be rejected.

Public Senvice Commission
State of Nonth Dakota
Capitol Building
Bismanck, Nonth Dakota 58505
March 14, 1977
Chairman
Senate Natural Resources Committee
Senate Conference Room
United States Senate
Washington, DC 20515
Dear Chairman:

1142 I urge passage of a national strip-mining law.

1142 The energy crisis will be with us for the foreseeable future. Our land must be protected to prevent degredation of this vital natural resource. A surface mining law will require restoration of our soils.

1142 North Dakota has regulated surface mining since 1969. Our law is administered by the Public Service Commission and was amended in 1971, 1973, and 1975. Currently, several strenghtening amendments should pass the North Dakota Legislature. We have made great progress in North Dakota.

1142 I believe a national surface mining law is needed to establish minimum standards for all states who have mining operations to follow. If the law is not perfect, it can be amended and improved.

1142 I believe that if individual state laws adequately protect the public interest, states should be allowed to regulate surface mining.

1142 Thank you for your consideration.

1142 Warmest regards,

1142 Bruce Hagen

1142 Commissioner

1142 BH: rm

First State Bank of Wise
P.O. BOX 1349 WISE, VIRGINIA 24293 PHONE 703/328-8031
March 7, 1977
Senator Lee Metcalf
U.S. Senate Office Building
Washington, D.C. 20515
Dear Senator Metcalf:

1143 Our area bankers requested and were denied an opportunity to appear before the Senate Subcommittee considering Senate Bill S. 7 (The Surface Mining Control and Reclamation Act of 1977). As a weak alternative, we have submitted abbreviated, general written testimony to Mr. Norman Williams of the Committee Staff, requesting that our written testimony be inserted into the official record of the hearings on S. 7. We hope it will be read with an open mind.

1143 We vigorously protest the disallowance of an opportunity to appear and fully explain the potential catastrophic effects banks will suffer should implementation of S. 7 in its current form become a reality. Further, we hereby request that this protest of the denial of our rights be made a part of the official record.

1143 Thanking you in advance for your consideration, I remain

1143 Sincerely yours,

1143 Daniel W. Gregory

1143 Vice President

1143 DWG: mm

1143 cc: Members, Senate Committee on Energy and Natural Resources

1143 Senator Harry F. Byrd, Jr.

1143 Senator William L. Scott

1143 Representative William C. Wampler

1143 Virginia Bankers Association

1143 CERTIFIED MAIL

1144 March 1, 1977

1144 Mr. Chairman, Members of the Committee:

1144 May I express my sincere appreciation for the opportunity to appear before you today.

1144 I am Daniel W. Gregory, Vice President of the First State Bank of Wise, located in the far Southwestern Virginia County and Town of Wise.

1144 I represent the Board of Directors and the Chief Executive officer of the First State Bank of Wise and the majority of the banking institutions in Lee and Wise Counties Virginia.Our position on S. 7 in its current form is supported by our larger banking correspondents in Virginia and our neighboring states, particularly those in a position to lose hundreds of thousands of dollars in outstanding loans as a result of the impending decline of our surface mining industry. In fact, I have not talked to a single financial institution or banking association representative that does not fear the adverse economic impact of S. 7.

1144 The economic health of the coal mining industry directly affects the economies of our Southwestern Virginia Counties. Any adversity falling upon that industry is felt sharply here, across Virginia and int neighboring states. When a legislative proposal as far reaching as S. 7 is presented, it is incumbent upon us as bankers to make an objective assessment of its probable economic impact upon our banks and the respective communities they serve. That assessment was made independently by our area banks utilizing their knowledge of the mining industry gained over the past several years and their insight into communities they serve, giving due consideration to the requirements of S. 7. Their conclusions are outlined briefly below and very frankly, they are frightening.

1145 Approximately 95% of our recoverable surface coal reserves lie in areas having surface slope angles greater than 20 degrees. Thus the majority of our surface mine operators will be required to meet that part of S. 7 relating to steep-slope surface mining in addition to the other standards imposed. It is our opinion as area bankers that the costs of additional equipment to handle spoil placement, of providing for high-wall and bench covering and of securing the necessary engineering and geological services would be more than the smaller operators could bear. This is even more evident when the extensive data collection, surveying, bonding, public hearing delays and other permitting plans and requirements are considered. It must be

remembered that our surface mine operators are at this time only beginning to recover from a recessionary lack of market demand and extremely low prices during 1975 and 1976. This adverse market condition was immediately followed by sub-zero weather conditions in early 1977 that completely precluded production.

1145 We conservatively estimate that from 80 to 95% of the surface coal mines in Southwest Virginia will be forced to close if S. 7 becomes law in its present form. The majority of our surface mines are small operations producing on the average, 25-35 thousand tons per annum, employing an average of 5 - 7 production workers and 2 3 office workers per mine.

1145 If only 80% of our surface mines close, the minimum annual loss of high quality strip and auger coal from Southwestern Virginia would be over 9,800,000 tons. Valued at a conservative $1 2.00 per ton the annual revenue lost to our area and to the Commonwealth of Virginia would be $117,600,000.00.

1146 We expect over 2,000 surface mine production and clerical jobs to be lost and the resulting decline in annual payrolls to exceed $3 ,,0000000.00. I wish to stress that neither the unemployment figure nor the payroll dollar loss includes another 5,000-6,000 persons in this area employed in providing goods and services directly to the mining industry.

1146 There is no doubt that the expected losses of revenue, jobs and payroll dollars, or even half those amounts would result in economic caos in Southwest Virginia and its neighboring states. It would surely turn the clock back twenty-five years bring us again to the brink of economic disaster experienced in the late 1940's and early 1950's. Please remember that the production and sale of coal was and still is the most important factor in the economic health of our area.

1146 Area banks and their correspondents have in good faith made substantial investments in the future of the surface mining industry. We have financed much of the equipment used for extraction, for transportation and for processing of coal. We have extended loans to individuals directly and indirectly employed by the surface mining industry, those loans being for the most part to purchase homes, automobiles, furniture and other needs. We have participated out large commercial mining loans to our Virginia and Tennessee correspondent banks; still other large

banks have purchased substantial amounts of mortgage paper from area banks and have
otherwise assisted in serving the needs of our people.

1146 The expected closure of the majority of our surface mines after enactment of S. 7 will
have a devastating impact upon our banking system. In addition to a heavy run-off of deposits
from all sources it is expected that a substantial number of individuals and organizations will be
unable to repay their borrowings after the effects of increased unemployment and area revenue
loss are felt. If the results of the previous months establish any sort of guideline, the banks face a
major catastrophe.

1147 Upon debtor default with no hope for future repayment, the lending banks will have no
alternative to securing all supporting collateral and disposing of it at less than average market
conditions. Substantial loan losses are inevitable under these circumstances.

1147 Of course, some banks will be unable to meet this sudden and unusual economic strain
caused by S. 7, and will be forced to look to the Federal Deposit Insurance Corporation to absorb
the excess losses. Those area banks that may remain would take many years to recover, if ever.

1147 In fact, our outside auditors have now requested a statement on the probable effects of S.
7 to go in our annual report to the stockholders.

1147 In addition to debtor default, we are concerned that S. 7 is unclear with respect to
"un-reclaimed" or "abandoned" surface mines. We understand the definition of "un-reclaimed"
or "abandoned" to include any mine that has not had a high-wall removed or has benches
remaining. Our banks hold first mortgages on several such properties on which homes, business
structures and other improvements have been located. Reclaiming of such properties by the
regulatory authorities and the subsequent filing of liens for reclamation expenses would seriously
and unjustly deteriorate the collateral position of our banks and of our correspondents purchasing
our mortgage paper.

1147 Federal Deposit Insurance Corporation examining personnel have stated that our largest
probable loss would in fact be in residential properties.

1147 In the short time allotted I have presented a rather bleak economic picture for our area

and State if S.7 is implemented, but we truly believe it to be most accurate. We know that we do
and must have environmental protection, but that must be balanced with economic protection as
well. With the jobs and lives of thousands of Virginians at stake in this legislation, we implore
you to restudy this bill giving due consideration to the human rights of our people to be employed
in an area of their choosing and to our economic health. We would seriously urge you to give
consideration to amendments that would compensate our operators, our communities and our
banks for losses suffered as a result of enactment of S. 7. Whatever amendments are needed to
allow us to survive should be seriously considered.

1148 We are not the economic moguls or powerful and reactionary corporate interest as has
been suggested. Rather we are simply common people trying to make a decent living for
ourselves and our children, and to provide those children with a better standard of living than
most of us had.Most of our operators are local people having their life savings tied up in their
mines and equipment; if S. 7 is enacted it will all be lost.

1148 We have recently learned in a most dramatic way the adverse effect upon our
communities of stopping the surface mining industry for one month. We simply cannot survive
this on a permanent basis.

1148 Thank you for your time and should you have any questions I would be most happy to
entertain them.

NATIONAL CATHOLIC RURAL LIFE CONFERENCE
3801 GRAND AVENUE DES MOINES, IOWA 50312
TELEPHONE 515-274-1581
March 9, 1977
The Honorable Lee Metcalf, Chairman
Subcommittee on Minerals, Material and Fuels
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510
Dear Senator Metcalf,

1149 Because of the broad range of opinions heard during your recent hearings on proposed
strip mining legislation, the National Catholic Rural Life Conference offers the following
comments upon the critical need for controls on surface mining for coal. We base our comments
upon policy statements issued by our board of directors on Strip Mining in 1972 and Energy in
1976.

1149 We believe that legislation which would require the complete reclamation of strip mined lands would prevent the continued despoiling of millions of acres of land and the consequent threat to vital water supplies and to the people in many rural communities.

1149 The destruction of land and damage to other vital resources necessary to human life cannot be justified by our need for strip mining of coal as an energy source. Most U.S. coal reserves are located in deep deposits which could be extracted with minimal risk to human life and with little waste or damage to the earth's surface if proper techniques of deep mining were applied.

1149 However we believe there are serious problems with extensive coal use even as a short term energy source and for that reason we favor a federal commitment to private and public research which will develop coal conversion technologies that will not deplete water, land, and mineral resources which justly belong to future generations. It is therefore urgent that the United States develop energy sources that are safe, renewable and accessible to all peoples and that we restrain the development of energy sources that are finite, exploitative of national resources, unsafe, and/or in violation of the human rights of people.

1149 While the U.S. needs to support careful development of our diminishing resources of fossil fuels, major emphasis should be given to IMMEDIATE development of (1) massive conservation throughout all sectors of the economy and (2) national commitment to solar technology and its many derivatives with concentrated efforts on solar cell technology, direct use of solar heat and wind, and various types of bioconversion, and other sources such as geothermal energy.

1150 Responsible development of coal is possible and desirable but must rest on strong protections for the safety of coal miners and for the preservation of land, water and other resources being disrupted by current mining techniques. We urge you to enact legislation which sets strict standards in these areas, which prohibits surface mining in areas were complete reclamation is impossible, and which provides incentives for the safe development of our deep coal reserves.

1150 We request that this letter and the enclosed policy statements be included in the record of hearings on proposed surface mining legislation.

1150 Sincerely Yours, Rev. John J. McRaith

1150 Executive Director

1150 JJM:lm

1150 Encs.

1151 Obligation to Share

1151 But each person is a member of society and therefore belongs to the entire community of people . . . We who have succeeded as heirs to generations gone by and who have reaped the fruits of the toil of our contemporaries are under obligations to all people. For this reason we have no right to put aside all concern for those through whom the human family will be enlarged after we have filled the span of our own life. The mutual bond of all humankind, which is a reality, not only confers benefits upon us but also imposes obligations. A Call to Action: Pope Paul VI.

1151 All creatures depend on you to feed them throughout the year; you provide the food they eat. With generous hand you satisfy their hunger. You give breath, fresh life begins. You keep renewing the world! Psalm 104

1151 Christian Responsibility

1151 If one of the brothers or sisters is in need of clothes and has not enough food to live on, and one of you says to them, "I wish you well; keep yourself warm and eat plenty," without giving them these bare necessities of life, then what good is that? Faith is like that: if good works do not go with it, it is quite dead." James 2: 14-16

1151 I, Yahweh, have called you to serve the cause of right; I have taken you by the hand and formed you; I have appointed you as a covenant of the people and light of the nations, to open the eyes of the blind, to free captives from prison, and those who live in darkness. Isaiah 42:6-7

1151 National Catholic Rural Life Conference 3801 Grand Avenue Des Moines, lowa 50312

1151 Those who are already rich are bound to accept a less material way of life, with less waste, in order to avoid the destruction of the heritage which they are obliged by absolute justice to share with all other members of the human race. Justice in the World: Synod of Bishops.

1152 Policy Statement on Energy

1152 Human life is a gift from God whose loving care and concern is extended to all His creation from all time past and for all time to come. Because food, fibre and sheiter are basic necessities to human life and are directly dependent upon energy for their production, all peoples, both present and future generations, have a right to the energy necessary for a manner of living befitting human dignity. Likewise all peoples have a responsibility to be good stewards of the earth's energy sources so that these will continue to be an extension of God's loving care for His family.

1152 The National Catholic Rural Life Conference advocates immediate action toward national and global policies to develop energy sources that are safe, renewable and accessible to all peoples and to restrain the development of energy sources that are finite, exploitative of our national resources, unsafe, and/or in violation of the human rights of people.

1152 Energy Trends and Current Needs In Energy Development:

1152 The rapidly diminishing supply of the world's fossil fuel resources and the growing worldwide demand for energy are forcing a reconsideration of current energy policies. While new technologies may eventually release us from our dependence on those diminishing resources, we must make careful choices now to use those remaining resources which can be obtained with the least environmental change, the greatest net energy yield, and technologies which offer the most potential for conversion to renewable sources as they become available.

1152 Coal

1152 For example, while coal is our most abundant fossil fuel, its mining and use has many adverse environmental and social impacts which are matters of justice for present and future generations. Most U.S. coal reserves are located in deep deposits which could be extracted safely and with little waste or damage to the surface if proper techniques of deep mining are applied. Current policies, however, encourage surface mining which can yield only a minimal percentage of those deposits while damanging vast areas of land, threatening vital water supplies, and disrupting life in many rural communities. Such policies must be reversed.

1152 Extensive use of coal even as a short term energy source presents a problem of serious atmospheric pollution and the possibility of climate change. To partially solve these problems several methods of coal conversion to gas and oil have been developed as well as technologies to remove sulfur from coal. Present methods of coal gasification and liquifaction are costly both in terms of energy efficiency and in the water required by the process. Oil extracted from shale has also been developed as an energy source but it, too, brings serious problems of resource damange.To supplement our remaining reserves of gas and oil, we favor further private and public research to develop conversion technologies that will not deplete water, land, and mineral resources which justly belong to future generations.

1152 Nuclear

1152 The alternative of increasing our dependence on nuclear technology, both fission and fusion, poses many serious questions regarding economic viability and the health, safety, and civil liberties of people. Unsolved problems in nuclear technology revolve around the highly radioactive, toxic, and long-lived nature of nuclear fuels and wastes. Our knowledge of the effects of radiation on life at the molecular level of cancer and mutation causing mechanisms and other biological processes is still far from complete. Further problem areas include 1) safety and efficiency in the construction and operation of reactors, 2) insufficient uranium, reserves necessitating plutonium separation plants and the development of controversial fast breeder technology, 3) transporting and keeping reserve nuclear fuel as well as storage of radioactive wastes from spent fuel so that leakage, geological disturbance and human tampering are impossible, and 4) theft of nuclear materials, weapons proliferation, and the possibility of nuclear terrorism. Clearly there are serious moral implications in all these areas.

1153 The foregoing questions regarding nuclear technology must be approached from a global perspective. The potential of nuclear power to meet energy needs must be weighed against the threats to human safety and world stability inherent in widespread dependence on a complex nuclear system. Further progress toward the solution of persistent problems must be achieved before greater dependence on nuclear power is permitted to develop. For this reason, we call for a phase out of nuclear development as we phase in the use of other fuels, and for

stricter controls on the international movement of nuclear materials and technology.

1153 Solar

1153 The inevitable consumption of non-renewable energy resources demands a shift toward renewable sources and energy conservation.The potential of solar energy in its various forms such as direct use of solar heat, photovoltaic conversion, heat conversion to electric energy, biomass production and conversion, ocean thermal gradients, and windpower is promising as a safe and renewable resource with low social and environmental costs. However, solar energy research has lagged far behind other energy development. Only a small increase in the scale of solar technology and adoption is presently needed to make solar power competitive in most low temperature heating applications. The economics of other applications could be expected to become competitive in the very near future under an adequate program to stimulate technological development and demonstration projects. A national commitment is urgently needed to solar energy technology and its many derivatives with concentrated efforts on solar cell technology, direct use of solar heat and wind, and various types of bioconversion.

1153 Geothermal

1153 Geothermal energy sources also are potential supplements and will be available as long as the earth's heat lasts. Although deposits of geothermal energy presently used as hot steam are limited in extent, most geothermal energy is stored in a huge reservoir of hot dry rock below the earth's crust. Since geothermal energy has the potential of low environmental cost and long duration, we strongly recommend research into the utilization of geothermal hot dry rock and hot water.

1153 Energy Conservation:

1153 Energy conservation is a moral imperative. The maldistribution of energy in the world is the cause of much oppression and social disruption. Major sectors of our economy have been developed around abundant and cheap energy, causing substantial energy waste. In order to fulfill our Christian obligation to work for justice, we must be willing to make changes in our affluent lifestyle so that others may live with a level of human dignity.

1153 A strong national program of energy conservation built upon incentives to encourage the

most efficient use of energy with regulations to curtail waste must be implemented throughout all sectors of our economy. Such a conservation program should insure that the greatest efficiency and least waste is built into manufactured products such as vehicles, machinery, construction materials, appliances and clothing. Likewise food production and processing, construction, architecture, public transportation, utilities, recreation and other services should be required to adopt ecologically sound and less energy consuming techniques.

1153 Resource recovery of such materials as paper, metal, glass, and organic waste should be universally adopted so recycling becomes part of the nation's lifestyle. Through research and education, agricultural methods which rely on energy intensive chemical fertilizers, pesticides, and high technology should be carefully evaluated and reduced wherever possible. Farmers should investigate and adopt wherever possible less energy intensive techniques. Organic or biological methods including land application of composted farm and other wastes as well as sludge from municipal treatment plants, the use of solar driers for grain, solar heating for homes and other buildings, and methane generation plants are examples of appropriate technologies that are more energy efficient.

1154 Stewardship:

1154 The goal of all energy policy in justice must be to assure all members of present and future generations of an adequate and secure supply of energy. While such a goal cannot be achieved by any one or grouping of measures, the statement of the goal itself suggests certain general directions for future policy.

1154 Initially, it brings into question the current centralization of decision making over energy resource development. The ownership by a few companies of alternative energy sources and the vertical integration of fuel processing and distribution has put the protection of energy profitability ahead of providing for human need or stewarding finite resources. No one company or corporation should have control of multiple sources of energy. The consequences of such centralization should be fully studied and remedial action taken by appropriate regulatory authorities.

1154 In particular, the flow of capital into the development of various energy technologies

must be reexamined. The need to secure a return on past investments tends to slow future investments into alternative techniques. To the extent that the private market must finance energy development, incentives must exist to attract investment capital into renewable and safe technologies. In part, this means requiring that the environmental, resource depletion, and security costs of current technologies be reflected in the prices of the energy produced. The surplus revenues generated by such a pricing structure must be used to assist those least able to bear higher energy prices and to further the development of renewable energy sources. In addition, utility rate structures should be reformed to encourage conservation by large users while alleviating the high energy costs being borne by residential, farm and small business consumers.

1154 The goal of energy security also suggests the need for a dispersion of energy production. Many of the renewable energy technologies are highly efficient when utilized in smaller, dispersed units rather than a few large units feeding into complex distribution systems. Such dispersion reduces the consequences of power plant failure and facilitates local control over the costs and quality of energy production.

1154 Finally, energy security depends upon diversity of supply. Many of our current energy problems are the result of an overdependence on one or two energy sources. The development of a variety of energy sources, each contributing toward meeting total energy requirements, can alleviate the consequences of technological breakdown or resource exhaustion by any one.

1154 The Citizen and The Church:

1154 The Christian is not a mere passive participant but must take an active part in promoting and extending God's loving care and concern through the right ordering of the world in which we live. The National Catholic Rural Life Conference advocates citizen involvement and responsible participation in energy policy formation. For its part, the Church is obliged to develop a moral consciousness through example, education, liturgy, and study. A morally aware Christian community, acting privately and through the agencies of government, can help to shape energy policies which will assure the protection of human life and provide for justice in the distribution of the gifts of God's creation.

1155 NATIONAL CATHOLIC RURAL LIFE CONFERENCE - POLICY RESOLUTION

- 6/21/72

1155 STRIP MINING

1155 We have been witnessing in recent years a widespread increase in the use of strip mining technology for obtaining coal and other minerals. The despoiling of millions of acres of our land raises serious and urgent questions about the utilization of this technology in the obtaining of these resources. Although strip mining is used to obtain a variety of minerals and resources, we call attention in particular to its growing utilization in the mining of coal.

1155 The question which must be answered is whether or not this destruction of productive land and endangering of human life is justified by our need for this energy resource. With a six to one ratio of deep mine reserves to strippable reserves, we think that it clearly is not. A reversion to a dependency on deep mined coal would not jeopardize our current electric generating capacity and would be an incentive to research other sources of power for electricity production. This research into alternative energy sources should be accelerated in any case because of the pollution and waste involved in coal power generation.

1155 We do not feel that further regulation of strip mining is a solution to the problem.Throughout Appalachia current regulations on contour stripping have proven unenforceable. The continuing displacement of homes and jeopardizing of human life testify to the failure of this enforcement.

1155 The perpetuation of strip mining has also contributed to the dangers of deep mining.The competition with strip mined coal has forced deep mining companies to adopt dangerous economies in their operations. Responsible coal producers, however, have demonstrated that coal can be deep mined economically and safely.

1155 Although our country is blessed with vast coal reserves, it is not too soon to begin adopting other means of energy production.The destruction which has been done to the beautiful hills of Appalachia, to valuable farm land in the mid-West and to sacred Indian land in the Southwest cannot be justified on the basis of current demand for electricity. We have not begun to exploit the potential of solar and geothermal energy, the energy of the sea or nuclear energy.

1155 We urge the Congress, therefore, to enact an immediate ban on contour stripping of coal and a phaseout of area stripping.We further urge renewed support for research and development into alternative non-polluting sources of energy.

1155 We call upon coal companies to act responsibly in providing for the safety of coal miners and the communities in which they operate. We insist that these companies have a responsibility to reclaim the land from which they have derived profits through strip mining and that the government has a duty to see that they fulfill this responsibility.

1155 Although we condemn the use of stripping for obtaining coal, we further condemn it as a technique of obtaining other minerals and resources. We pledge to join our efforts with those groups and individuals who are attempting, either locally or nationally, to protect themselves, their communities and their environment from the consequences of this process.

CORPORATION
RESOURCE RECOVERY AND RECLAMATION, INC.
1221 SO. CLARKSON ST., SUITE 410, DENVER, CO. 80210
(303) 778.8780
March 4, 1977
The Honorable Henry Jackson
The United States Senate
Washington, D.C. 20510
Dear Senator Jackson:

1156 RE: Mining in Alluvial Valley Floors and Environmental Quality

1156 I am submitting the following statement because of my concern for the potential promulgation of environmental legislation within the context of S.B. 7 and/or H.B. 2, which may be overly restrictive and not entirely cognizant of information with which I am familiar. I have enclosed a copy of my curriculum vitae so you may evaluate the basis of my expertise in this matter.

1156 As an ecologist formerly at VTN Corporation, and now at 3R Corporation, I have participated in an apparently unique sequence of events which have led to my present position on the above-referenced subject. This experience includes expert testimony on the Conrock Co. Lake-Park Proposal in the Oxnard floodplain in Ventura County, California and preparation of Peter Kiewit Sons' Company's (PKS) Environmental Assessment of the Decker Coal Company mine in the Tongue River Basin, Montana, both in 1973. Consequently, I am familiar with an

excellent alluvial valley floor mine plan (i.e., Conrocks' Lake-Park Proposal) and the history and current status of environmental information in the Tongue River Basin. Further, the issue of mining in alluvial valley floors appears to be derived most recently from the activities in areas such as the Tongue River Basin.

1156 Various forms of alluvial floor mining have been, and continue to be, widespread in the United States and the world. This is due to the simple fact that mineral resources must be mined where they are. They cannot be mined where they don't exist. Significant quantities of coal underlie the Tongue River drainage in Wyoming and Montana. In fact, there are reported commercial quantities of coal beneath the Tongue River Reservoir in Montana which are apparently lost unless the reservoir is drained. I believe it is incumbent upon the agencies with jurisdiction over this issue to avoid real or potential losses of valuable natural resources.

1157 I have briefly reviewed the Whitney mine permit application in Wyoming and the environmental baseline data provided. Further, the available environmental information in the Northern Powder River Basin (including the Tongue River Drainage) is very extensive as a result of the activities of a great number of industrial interests and federal, state and local agency activities. Both states of Wyoming and Montana can easily document this data base for your consideration (e.g., see Science 194: 578, 1976). I believe that a careful review of this data, together with a reappraisal of the Lake-Park proposal, will reveal that the apparent conflict between alluvial valley floor mining and environmental quality is, in reality, only an illusion.

1157 I urge that any reference to alluvial valley mining be deleted from the proposed law.

1157 Sincerely,

1157 John G. Hemington, Ph.D.

1157 JGH:smk

1157 Enclosure

STEARNS COAL AND LUMBER COMPANY
STEARNS, KENTUCKY 42647
February 25, 1977
The Honorable Henry M. Jackson
Chairman, Committee for Energy and Natural Resources
United States Senate

Rocm 3016, New Senate Office Building
Washington, D.C. 20510
In Re: S. 7 - "Surface Mining Control and Reclamation Act of 1977" - Sections 422(e) and
422(e)(2)
Dear Mr. Chairman:

1158 Due to what we consider may be a unique situation for Stearns Coal and Lumber Company, Inc. ("Stearns") explained in detail below, we are very much concerned about the unintentional vagueness and possibly litigious nature of certain provisions of Sections 422(e) and 422(e)(2) of S. 7, "Surface Mining Control and Reclamation Act of 1977." We are very much concerned about the following underscored language of Section 422(e)(2) of S. 7:

1158 "(e) Subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this act shall be permitted -

1158 "(2) on any Federal lands within the boundaries of any national forest except surface operations and impacts incident to an underground coal mine;"

1158 In 1937 Stearns Coal and Lumber Company, by deed of conveyance, sold to the United States the surface rights to approximately 47,000 acres of Stearns' property for $2 .85 an acre for inclusion in what was then known as the Cumberland National Forest, which is now known as the Daniel Boone National Forest. A copy of the pertinent portions of the said deed of conveyance is attached hereto and made a part hereof as Exhibit A, and we have eliminated only the numerous pages describing the particular real estate conveyed.

1159 In said deed of conveyance, Stearns Coal and Lumber Company expressly retained and reserved unto itself:

1159 " . . . all metaliferous minerals, coal, oil, gas and limestone in, upon and under the above described tracts of land, in perpetuity;"

1159 The reservation of subsurface mineral rights was subject only to certain then existing rules and regulations of the Secretary of Agriculture which were specifically set forth in the deed of conveyance (Exhibit A).

1159 As noted, our company, through its deed of conveyance of approximately 47,000 acres, significantly contributed to the establishment of the now named Daniel Boone National Forest.

Stearns clearly understood that it would retain its mineral rights, including coal, and that Stearns would be able to recover those mineral reserves by both surface and deep mining methods. Stearns' rights were subject only to the restrictions contained in the deed of conveyance. The United States Government paid only for the surface rights; and Stearns has consistently relied on the good faith and credit of the United States Government as to its ownership of mineral rights, and its rights to recover same.

1159 We consider the above quoted language of Section 422(e)(2) of S. 7 to be ambiguous, vague and perhaps litigious in its application to our unique situation. We request that consideration be given to amending Section 422(e)(2) of S. 7, or otherwise providing clarification, through a "grandfather clause" or otherwise, which will alleviate what we believe to be an unintended and perhaps discriminatory result. We are hopeful that there is no present intent to confiscate our retained and reserved mineral rights without just compensation, and we request that the above-referred-to statutory language be clarified to exempt or grandfather our present pre-existing rights to the coal and other minerals in question.

1159 Accordingly, we suggest that Section 422(e) be rewritten to provide as follows:

1159 "(e) Except for privately owned mineral rights reserved in deeds of conveyance to the United States, or other valid existing rights, no surface coal mining operations except those which exist on the date of enactment of this act shall be permitted -

1160 "(2) on any Federal lands within the boundaries of any national forest except surface operations and impacts incident to an underground coal mine, and except as may be reasonable and proper to effectuate surface recovery of privately owned mineral rights reserved in deeds of conveyance to the United States."

1160 We further request that this letter be made a part of the Committee records of the hearings relating to S. 7.

1160 We would be delighted to furnish such other information as you may deem appropriate, either orally or in writing, in connection with the foregoing matter.

1160 Respectfully submitted,

1160 Robert E. Gable

1160 Chairman of the Board and

1160 President

1160 REG/lh

1160 Enclosure

1161

Waters, Frank et ux.	May 17, 1915	4-28
Waters, Cal. et ux.	Feb. 27, 1920	9-342
Waters, Poter et ux.	June 24, 1927	18-614
Watson, Mrs. Ale	Mar. 18, 1937	30-50
West, Amanda	July 5, 1924	23-87
Winchester, Wm. et al.	Mar. 15, 1919	7-624
Winchester, Wm. et al.	Dec. 1, 1916	5-318
Winchester, Wm. et al.	Dec. 1, 1916	5-320
Winchester, Wm. et al.	Dec. 1, 1916	5-326
Winchester, Frank	Dec. 5, 1917	6-411

1161 There is EXCEPTED, however, the right of user in the public as to such roads over and across said lands as are now located on the grounds and designated on the Grant Map of the United States of America.

1161 There is, also, EXCEPTED, and not hereby conveyed, all minorals, coal and gas the title to which is now outstanding of record in third partios.

1161 RESLRVING, however, from the operation of this convoyance, unto the party of the first part, its succossors or assigns, the unrostricted use and control for all logal purposes until same are abandoned or surrondored by vondor, or its assigns, of [*] forty (40) acres, as designated and drown by dash lines on the Grant Map of the United States of America, at the mouth of oach of the following minos: #1, #4,#11,#15 and #16, Cooperative, Fidolity and Grassy Fork. These resorved areas include mine openings, tipples, tracks, bridges, sub-station and shops.

1162 There is also, RESERVED, easements or rights-of-way now existing or defined for all telephone lines, pipe lines, electric transmission lines and the Stearns Coal and Lumber Company logging railroad until the same are abandoned by vendor or its assigns.

1162 There is, also, RESERVED, the right to the use of all existing or necessary rights-of-way over the land conveyed herein for the removal of timber hereinafter reserved, and the right to use existing rights-of-way, and other rights-of-way as approved by the Forest Officer, over the land herein conveyed for the removal of any timber now or hereafter owned by the Stoarns Coal and Lumber Company.

1162 There is, also, RESERVED, to January 1, 1941, timber of all kinds, diameter ten (10) inches and up breast high on the watershed of Watt, Dolen, Dry, Puncheon, Elder, Troublsome, Alum, Peach Orchard, Rogers Hollow, Jones Hollow, Fish Trap Branch and Wolf Crook, the same to be cut in accordance with the following rules and regulations of the Secretary of Agriculture covering cutting and removal of reserved timber, viz:

1163 1. No unnecessary damage shall be done to any small growth or to trees left standing oither in cutting or in the location of mill sites, railroads, logging roads, chutes, landings, or camps.

1163 2. All onginos and locomotives not burning oil for fuel used in logging or hauling logs on this tract shall be equipped with spark arrestors and ash pens that are satisfactory to the forest officer in charge.

1163 3. Trees of sise smaller that the diameter limit specified may be cut in connection with regular logging operations and used for ties on the logging railroads operated under this agreement and for the construction and maintenance of telephone lines, roads, sideways, flumes slides and camp buildings, so far as round material may be necessary in connection with the oconomical conduct of logging operations. Such material shall as far as possible be assured from trees subject to injury in connection with logging or the construction of logging roads and railroads. No material under the specified diameter limit shall be cut or removed for such purposes where unmerchantable material above said diameter limit is available and can be used.

1163 Any material out or removed except in accordance with these rules and regulations shall be paid for by the vendor at double its value where found, such valuation to be determined by the forest officer in change.

1163 4. All logging railroad bridges and logging road bridges built and used by the owner of

the rosorved tiber shall become the property of the United States at the tormination of the
reserved timber rights. All camp buildings and other logging improvements which shall not be
removed within one year from the expiration of the reserved timber rights shall then become the
property of the United States.

1163 5. While carrying on logging operations the owner of the reserved timber and all his
employees, contractors, and their employees at work on the tract shall without any charge or
expense to the United States do all in their power to prevent and suppress forest firos upon
threasoning their logging operations or the lands upon which the standing timber resorved under
this agreemont remains uncut. The ownor of the reserved timber shall place himself and all his
employees at the disposal of the foreat officer in charge for the purpose of fighting forest fires on
the lands conveyed by him to the United States, with the understanding that if the fire does not
threaten his logging operations or the timber owned by him, he shall be paid for the service so
rendered at the rate or rates to be determined by the forest officer in charge, which rate or ratos
shall correspond to the rate or ratos of pay prevailing in the locality for service of a similar
charactor at the time the services are rendered, provided that if the owner of the reserved timber,
his employees, contractors or their employees are responsible for the origin of the fire. Then he
shall not be paid for services so rendered.

1164 6. The owner of the reserved timber shall clear and dispose of the brush and tops on a
strip of land extonding a distance of fifty feet on each side of all railroads, logging railroads,
branches, spurs and switches owned and operated by him, so far as such lie within this tract, said
work to be subject to the approval of the forest officer in charge.

1164 7. The cutting of such logging unit or watershed shall be continuous when once started
and as soon as it is cut over it shall be surrondered to the United States and shall not again be cut
over, but this clause is not intended to prevent the cutting of such timber spring or summer cut to
be poelod or winter cut to prevont bluing before or after general logging but the different cuttings
must follow each other without interruption until the cutting of a unit and shall proceed down in
order to reduce the danger from fire and damage to the young growth, but right of way shall be
allowed across surrendered land on areas so long as needed in order to remove timber and

products from other units not yet reloased. Provided: that the conditions of this paragraph are not
to be constructed as stopping the vendor or others from carrying on separato and distinct stave
timber and saw timber operations, without regard to the interval between such operations.

1164 8. No monument or witness tree shall be destroyed.

1164 There is, also, RESERVED, all motaliforous minerals, coal, oil, gas and limostone in,
upon and under the above described tracts of land, in perpetuity; PROVIDED, however, that all
operations for mining and removing same shall be done and carried on in accordance with the
following rules and regulations prescribed by the Secretary of Agriculturo, viz:

1165 1. Every person claiming the right to prospect for minorals, oil, or gas, or the products
thereof, or to mine, drill, develop or operate in or upon lands acquired by the United States under
the provisions of the Act of March 1, 1911 (36 Stat., 961), with a reservation to the grantor of
mineral, oil, or gas rights, must, on demand, exhibit to the Forest Officer in charge, satisfactory
written evidence of right or authority from, through, or under the said grantor. Mining,
prospecting or searching for minerals, oil or gas, except by those producing such evidence of
right or authority, is forbidden.

1165 2. In prospecting for, and in mining and removing minorals, oil, or gas, and in
manufacturing the products thereof, only so much of the surface shall be occupied, used or
disturbed as is reasonable and, according to recognized good practice, necessary for the purpose.

1165 3. In underground operations all reasonable and usual provision shall be made for the
support of the surface, and to that end the tunnels, shafts, and other worlsings shall at all
reasonable times be open to inspection and examination by the Forest officers and mining experts
or inspectors of the United States.

1165 4. All miners or mining operators shall make provision to the satisfaction of the Forest
officer in charge for proventing the obstruction, pollution, or dotcrioration of streams, lakes,
ponds, or springs, by tailings, dumpage, or otherwiso, or the oscape of any barmful or deleterious
material or substance from their mines or works; and in the drilling for oil and gas, as well as in
the pumping, piping, manufacturing, or operation of oil and gas wells, or plants for the

production of same, the operators shall make provisions by ditches, pipes, pumps or other
approved practical mothods to prevent the sproad or flow of oil, salt water, or other deleterious
matter over the surface of the land, or into streams, lakos, ponds, or springs.

1166 5. The methed commonly known as "hydranlio mining" is positively prohibited.

1166 6. Payment at the usual rates charged in the locality for salos of National Forest timber,
and timber products of the same kind or species, shall be made to the United States for all timber,
undergrowth or young growth, cut, destroyed, or damaged in prospecting, mining, drilling, or
removing minerals, oil, or gas, or in manufacturing products therefrom, and in the location and
construction of buildings or works of any kind for use in connection therewith. All slash resulting
from such cutting or destruction shall be disposed of as directed by the Forest officer when
inflammable in his judgment. No timber, undergrowth, or reproduction shall be unnecessarily
cut, dostroyed, or damaged.

1166 7. No timber shall be cut or used for or in connection with any of the foregoing uses or
purposes except with the permission of the proper officer first obtained and upon payment
therefor at the price or prices fixed for timber of similar kinds, at the usual rates as specified in
above paragraph 6.

1166 8. Buildings, camps, roads, bridges and other structures or improvements necessary in
carrying on mining, oil, or gas operations shall be located as approved by the Forest officer in
charge, except as to the location of oil or gas derricks, rigs, boilers and tanks, which are to be
located, however, according to recognized good practice. When a building, camp or other
structure is removed from one location to another, all debris resulting from such removal shall be
burned or otherwise disposed of as directed by the Forest officer in charge.

1166 9. All buildings, camps, and other structures shall be removed within six months after
the completion of mining, oil, or gas operations, or the commorcial exhaustion of the aforesaid
minorals, oil, or gas; and all buildings, other structures, materials, tools, and equipment not
removed from the land of the United States within six months after the aforesaid completion of
mining or gas operations, or the commercial exhaustion of the aforesaid minorals, oil, or gas
shall become the property of the United States.

1167 10. All Destructible refuse, waste material and other debria caused by the mining, the oil or the gas operations herounder which interfere with the administration of the Forest or ondangers forest growth, shall within sir months after the completion of said operations, or the commercial exhaustion of the aforesaid minerals, oil, or gas, be diaposed of as directed by the forest officer in charge.

1167 11. While operations are in progress, the operators, contractors, subcontractors, and employees of contractors and subcontractors at work on the National Forest shall use due diligence in the provention and suppression of all fires, shall be available for service in the extinguishment and suppression of all fires within that particular locality, and shall be held responsible for any fires of which they are directly or indirectly the cause.

1167 However, the United States of America is to have the right of quarrying limestone, free of charge, for its own use, except from the present rock quarry, at White Oak Junction, which is a strip of land one hundred (100) foot wide adjoining and running with the Southern boundary of the Cooperative Spur of the Kentucky and Tonnessee Railway right-of-way line from bridge #12 to the Cooperative switch.

1167 Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise apportaining.

1167 It is understood and agreed that the party of the first part herein will pay when due, all texes assessed against the hereinabove described property as of July 1, 1937, which becomes due and payable during the year 1938, and all taxes for all previous yours.

1168 TO HAVE AND TO HOLD the said promises as herein described, with its appurtenances, subject to the exceptions and reservations hereinbefore not forth, unto the said party of the second part and its assigns forever, and the party of the first part hereby releases unto the party of the second part, all its right, title and interest in and to said property, including all exemptions allowed by law; and hereby covenants to and with the party of the second part, and its assigns, that it, the said party of the first part, is lawfully seized in fee simple of said property, and has good and perfect right to sell and convey the same as herein done, and that the title thereto is clear, perfect and unencumbered, and that it will warrant generally the said title.

1168 IN TESTIMONY WHEREOF, the party of the first part has caused its corporate name to be hereunto subscribed by R. L. Stearns, Jr., its Vico-Prosident, the President being out of the State of Kentucky, and its corporate seal hereto affixed by J. E. Butlor, its Secretary, this the day and year first above written.

1168 STEARNS COAL AND LUMBER COMPANY

1168 Attest

1168 BY Vice-President

Southern California Edison Company
1801 KSTREET, N.W., SUITE 1041
WASHINGTON, D.C. 20006
March 29, 1977
Senator Lee Metcalf, Chairman
Subcommittee on Public Lands and Resources
Committee on Energy and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510
Dear Mr. Chairman:

1169 On behalf of Southern California Edison Company (Edison), we hereby submit our comments and suggested amendments to S. 7, the Surface Mining Control and Reclamation Act of 1977.

1169 Edison is one of the major utilities servicing the western portion of the United States. Power demand for this area has expanded significantly during the last two decades, and it is anticipated that this general expansion will continue with the projected population growth to 32 million by 1980. To meet this everexpanding demand for more power, with the shrinking availability of natural gas and the tenuous supply of residual fuel oil, an increased dependence on domestic coal will be required. Power generated in the Southwest from coal is expected to grow from a current figure of 22% to 32% by 1990. This represents an additional capacity of 24 million kilowatts.

1169 To meet the service demands of its customers, Edison has become intimately involved in the exploration and development of coal for power generation in the West. Edison currently has coal dedicated to its use in the Black Mesa Mine operated by the Peabody Coal Company and, in calendar year 1976, utilized more than 4.5 million tons of such coal producing approximately 8.5 billion kilowatt hours of electric energy at the Mohave Generating Station.

1169 Coal utilization in the Western United States is only a recent development and is slowly beginning to play an increasing role in meeting energy needs in this portion of the country. Therefore, Edison foresees that in the near future, because of environmental and air quality restrictions, Western coal may principally be utilized only in the generation of electricity and the production of clean synthetic fuels. Thus, the majority of coal exploration and mining activities may be exclusively associated with these activities.

1169 Engineering economics generally require that a coal gasification plant, an electric power plant, and associated equipment have a design life of approximately 30 years. To justify construction of such a facility, coal supplies capable of meeting the power plant demand must be acquired and reserved for its design life. However,

1170 Senator Lee Metcalf

1170 March 29, 1977

1170 Page 2

1170 provisions of Section 406 of the subject legislation limits the term of coal mining permits to successive five-year periods. In Edison's opinion, such regulatory posture will discourage the current desireability of meeting future electric energy demands through the utilization of coal because of the limited supply commitments available under Section 406 and may thus foster increased dependence on foreign oil. Edison therefore believes that every reasonable effort should be made to put Western coal reserves to work.

1170 To accomplish this goal, and to encourage the use of coal in generating electric energy, Edison respectfully suggests that the term of mining permits, associated with proposed dedicated coal reserves, should be extended for the design life of the Project (i.e., power plant or coal gasification plant). Incorporation of this exception to the term of mining permits will generally provide the necessary assurance that adequate coal reserves will be available during plant operation. In the alternative where such extended permit periods may create potential land use or environmental problems, at a minimum, a finite period of an initial term of 20 years with ten-year successive renewals could be a workable solution.

1170 In 1976 alone, Edison, and ultimately its customers, saved $19 90 million by using coal

rather than an equivalent amount of fuel oil. Thus, every reasonable means should, in Edison's opinion, be left open to assure a continuation of coal utilization. However, Section 402 of the subject legislation places a 135-day time limit to comply with applicable regulations. The Black Mesa Mine may not be able to comply within this time restraint. Edison believes that supply of reasonably priced energy to the public better serves national interests than would requiring Western coal production facilities to shutdown in order to comply with mining regulations. Edison respectfully suggests that all interests can best be served if Section 402 is amended to allow 12 months for compliance.

1170 We further respectfully suggest that continuous mining operations should be encouraged through an expeditious procedure for timely approval of revised mining plans. Such procedure should authorize government inspectors to grant approval of proposed mining plan revisions provided that such revisions are not of a significant nature. A significant revision may be defined as any alteration that will modify the basic parameters under which the mining permit was issued.

1170 We appreciate this opportunity to present our views and respectfully request that this letter be made a part of the hearing record.

1170 Very truly yours,

1170 AMN: mb

STATEMENT OF THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION
IN OPPOSITION TO PROPOSED FEDERAL REGULATION OF SURFACE COAL MINING
AS SET FORTH IN S 7

1171 INTRODUCTION: The South Carolina Public Service Commission (the Commission) appreciates the opportunity to express its views in opposition to a proposed scheme of federal regulation of surface coal mining, particularly as is set forth in S 7, currently before this Committee. The Commission respectfully asserts that federal regulation of surface coal mining is unnecessary and unwarranted in view of existing state legislation and the current critical shortage of natural resources available for practical and efficient supply of the nation's energy needs. More importantly, the Commission respectfully asserts that the proposed scheme of federal regulation is improvident, impractical and contrary to the interests of the public.

1171 THE COMMISSION'S INTEREST: The South Carolina Public Service Commission is an agency of the government of the State of South Carolina, established by the South Carolina Constitution and obtaining its authority from appropriate statutory sections of the Code of Laws of the State of South Carolina. As part of these statutory duties and obligations, the Commission is charged with the regulation of certain defined public utilities as to rates and service. Of specific concern here, the Commission is charged, under Title 24 of the Code of Laws of South Carolina, with the regulation of electrical utilities operating within the State of South Carolina. Three major utilities, under the jurisdiction of this Commission, provide this service in South Carolina: Duke Power Company, South Carolina Electric and Gas Company and Carolina Power and Light Company. These companies provide the majority of electric power to the people of the State of South Carolina.

1172 A significant amount of coal, approximately 55%, is used by these companies in the generation process of electric energy. Of this portion, a substantial amount is comprised of coal derived from surface mining, i.e. that which would be directly affected by the provisions of this legislation. n1 This Commission is vitally concerned with the impact of this legislation upon the ultimate consumers residing in this State, both from a cost standpoint, as well as from a supply standpoint. n2 We, as members of this Commission, have borne witness to the effect upon South Carolinians of increased regulation upon alternate sources of energy, particularly natural gas; our experience in that area has prompted this statement to ensure that our views are known.

1172 n1 Duke Power Co., the nation's 6th largest utility, burned 44% of its total coal needs by way of surface mined coal in 1976. (SEE also attached Exhibit 1)

1172 n2 All these utilities have fuel adjustment clauses which pass the majority of increased fuel costs through directly to their subscribers.

1172 LACK OF NEED FOR FEDERAL REGULATION: The Sponsors of this legislation assert that its purposes are, essentially, to protect the environment from the adverse impacts of surface mining by effective control of surface mining operations. n3 This Commission endorses and supports these objectives as they are obviously necessary and essential to protect the interests of the public. However, we strongly object to the assumption by the authors of this legislation

that the states have abandoned or neglected these objectives. n4

1172 n3 S. 7, @ 102, pp. 6-7.

1172 n4 There is no finding to this effect in S. 7, @ 101, pp. 4-5, nor could there properly be so.

1173 The mechanism for implementation of the foregoing objectives already exists by virtue of a multitude of laws promulgated at the state level to control surface mining and/or to foster land reclamation. n5 Further, we submit that this mechanism is operative and effective and meeting these objectives and that this federal legislation is superflous, although ostensibly, it will not supersede any existing or future state legislation insofar as these laws are consistent with the provisions of S. 7. n6 We respectfully submit that federal legislation will effectively remove control of this important issue from the legislatures of the states where a citizen's position is more readily conveyed to an elected representative and where greater concern is focused on the particular terrain characteristics of a given area within a state's borders. The important questions that are addressed by this legislation are not best determined by a rigid, cumbersome set of directions promulgated at the federal level.

1173 n5 South Carolina, though not a coal mining state, has passed comprehensive legislation for the protection of the surrounding environment and for reclamation of the area of land affected by mining. See South Carolina Mining Act, Chapter 5 of Section 63 of the Code of Laws of South Carolina. Many other states have passed similar types of legislation.

1173 n6 S. 7, @ 405(a), p. 41.

1174 In addition to the foregoing regulatory considerations, two practical considerations must be considered - supply and cost.

1174 THE EFFECT ON SOUTH CAROLINA'S ELECTRIC CONSUMERS - SUPPLY AND COST:

1174 The majority of this country's coal is now procured through surface mining, a method which provides for safer working conditions, affords a more complete recovery of deposits vis a vis underground mining and is generally cheaper in terms of cost per unit production. Almost all of the coal used by the three major electric utilities in this state comes from Central Appalachia (roughly the area comprised of southern West Virginia, eastern Kentucky, western Virginia), a

substantial portion of which is produced from surface mines. n7 This geographic area is of most concern to us as we view the effects on this area for our supply, but also in view of the fact that almost all of the surface mining in Central Appalachia is conducted in terrain with 20 degrees or greater slopes, which appears to be the real problem areas sought to be addressed by this legislation. If this source is removed, it must be made up elsewhere, a matter which is not addressed in this legislation and a frightening dilemma for which we see no feasible solution.

1174 n7 For example, Duke Power Co., estimates that approximately 45% of their 1976 coal supply was derived from surface mining in Central Appalachia.

1175 We have seen the supply of natural gas for generation purposes become a thing of the past by virtue of curtailment plans and federal energy policy. We are seeing the feasibility of nuclear generation diminish as a result of the regulatory lag in the certification process and the uncertainty of some long term contracts for future uranium supply. We have seen the utility of heavy distillates atrophy as a result of world market conditions. Now, we see this federal legislation chisel away at coal, this nation's last feasible fuel available for immediate use, in spite of repeated declarations by the new administration that there will be a major emphasis on coal in any future national energy policy. n8 This position, and that of S 7, seem incongruous at a time when a unified policy is so absolutely essential.

1175 n8 As recently as March 18, 1977, President Carter stated his energy policy would emphasize coal development and energy conservation.(In an address in Charleston, West Virginia)

1175 But of a more readily identifiable nature are the elements of cost that are associated with this legislation. As we read the legislation, there will be costs in addition to those that will result from diminished supply that will only add to the already spiraling costs of coal. n9 This will most likely cause the loss of many small producers as a result of the costs of permitting and other requirements under S 7. Should some of these producers decide to meet these costs, it appears that much of the area in Central Appalachia would be unsuitable for surface mining at any cost since most all of the deposits that contain low-sulphur, surface-mineable coal, are fuel in terrain of 20 degrees or greater slope. If this legislation is enacted, then additional costs will result as:

1176 1) new supplies are transported, at higher transportation costs, from other regions suitable under S 7;

1176 2) new capital improvements are made to air pollution facilities on generating plants to handle the higher sulphur content coal procured from regions either suitable under S 7, or mined sub surface . . . n10

1176 3) opportunity costs involved in investment in additional rolling stock to facilitate increased transportation demands.

1176 n9 Duke Power Company's average coal price went from $4 .25 in 1969 to $2 2.58 per ton in 1976. Again, these costs are directly flowed through by virtue of the fuel adjustment clauses.

1176 n10 In addition to higher sulphur content, it is also important to consider btu content of most alternate coals. It is also important to note that these capital costs are entered as assets for ratemaking purposes when in reality they are not "productive assets".

1176 We, in South Carolina, are fortunate in that there is a good supply of environmentally acceptable low sulphur coal located reasonably to our generation facilities. This has helped offset the higher costs associated with providing service in our predominatly rural state. The costs associated with this scheme of regulation simply outweigh the benefits sought to be achieved under this legislation. This point is especially acute when the "benefits" have been established by a body that is removed from and unfamiliar with the environmental needs and requirements of the particular region affected. We invite members of this Committee to visit the Central Appalachia region, as two of our Commissioners have done, to determine whether present legislation is inadequate and, more importantly, whether present conditions, and not past abuses, warrant the imposition of this legislation at such a tremendous direct and indirect expense to our ratepaying consumers.

1177 CONCLUSION: We have attempted to set forth some fundamental and important considerations in the foregoing analysis as we view this legislation affecting our state. Present state legislation not only affords an adequate mechanism for enforcing the objectives of S 7, but is actually affording adequate protection from the adverse environmental impacts of surface

mining. We have attempted to demonstrate that the effect of this legislation would be one of diminishing the last feasible supply of fuel for generation purposes.We have attempted to show how this legislation would translate into increased costs in the generation process of electricity from a broad standpoint. Additionally, we have attempted to exhibit some of the costs that would ultimately be imposed on South Carolina's ratepayers should the present version of S 7 be adopted, particularly with the 20 degrees restriction in the bill. Hopefully, the Committee will consider this composite of factors and incorporate them into its report, which we are confident will accord with the views outlined herein. However, should the Committee decide to report out this legislation, we would strenuously request that the 20 degrees terrain criteria be thoroughly reconsidered in light of the unusual difficulty that that particular element would place on the Southeast region of the country, particularly the State of South Carolina.

1178 We recognize the difficult problems that face this Committee and we empathize with you. We ask that you remember that your decision on this matter will force more decisions down the line of a more direct financial nature by this and other utility commissions as the true costs of this legislation become known.

1178 ATTEST:

1178 J. HENRY STUCKEY COMMISSIONER-6TH DISTRICT

1178 For the South Carolina Public Service Commission

1179

---

*4*KWH GENERATION IN S.C.

Company Name	(Millions KWH Coal)	(Millions KWH Total)	% Coal
SCE&G	5,841.7	10,293.8	56.8
Duke	23,691.	46,285.3	49.0
CP&L	16,529.9	24,942.9	66.3
TOTAL JURISDICTION	45,062.6	81,522.2	

STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL ON S. 7, A BILL PROVIDING FOR FEDERAL REGULATION OF SURFACE MINING

1180 The United States Industrial Council, an organization dedicated to preservation of private enterprise and stopping the intrusion of the federal government into every aspect of daily lives, is seriously concerned over proposed surface mining legislation, as represented in S. 7.

1180 Having just experienced the worst winter in 177 years and an energy shortage unprecedented in the United States, it seems almost inconceivable that Congress should be considering legislation which would aggravate the energy problem. Yet that is exactly what the bill under consideration would do.

1180 No one questions that in the surface mining of coal every effort should be made to prevent the ugly disfigurement of the landscape, creation of wasteland and problems of erosion left by improper mining procedures. In recent years, as all of us have become aware of the importance of protecting our environment, mining companies have recognized the problems created by some earlier practices and have taken steps to correct them. Today, land where surface mining has occurred is being restored and replanted so that in many instances its appearance and usefulness is better than before the mining took place.

1180 But reliance for use of proper surface mining practices is not just left to the mining industry. In every major coal producing area, state regulations cover surface mining and reclamation procedures. Thirty-eight states have surface mining laws and during the past three years, 29 of these states have strengthened their laws. Thus problems in surface mining regulation are being handled by the states. This is as it should be, because conditions differ among the various states and the states are much better able to deal with their own particular situations than the federal government.

1181 Enactment of federal surface mining legislation would be one more unnecessary and unwarranted federal usurpation of state authority. It would be another step in expanding the power of centralized government and the federal bureaucracy, and erosion of the state-federal relationship established by the Constitution.

1181 The proposed legislation would not simply supplement state surface mining regulatory programs but would virtually wipe out those programs and replace them with new federal

regulations and an OSHA-type enforcement mechanism. The states would be made to enforce federal surface mining regulations, subject to supervision by the federal bureaucracy. Present reclamation practices, regardless of their effectiveness, would not be permitted if they did not conform with the terms of the proposed bill.

1181 S. 7 would be a back-door approach to the establishment of land use programs which have been rejected on a national basis by the Congress and on a state basis by a number of state governments. The bill would force states to set up a "land use process" equivalent to a land use program in order to be allowed to regulate surface mining within their borders.

1182 At a time when every feasible step should be taken to expand our domestic sources of energy, the proposed surface mining legislation would result in lost coal production. It would hit hardest at small operators who produce annually some 99 million tons of coal or 28% of all surface mining production. Many, perhaps most, of these operators would not be able to comply with the law. This is due to a large extent to the vague, complicated and sometimes contradictory language of the surface mining bill. Small surface mine operators would be left confused and uncertain as how to proceed, with the likelihood of litigation to clarify the law going on for years.

1182 The reclamation standards set by S. 7 are unrealistic in that they do not recognize the marked differences in soil types in different areas. In some instances the requirement that surface-mined land be restored to its approximate original contour may be reasonable and appropriate. In other instances, another type reclamation could leave the land with better erosion and sedimentation control than the original contour.

1182 The bill contains a prohibition against surface mining in "alluvial valley floors" that is so worded that it would stop such mining in a large portion of the Western area. This is the area that produces a large percentage of the low-sulphur coal that is so urgently needed to replace critically short natural gas and expensive imported oil in power plants and industrial plants.

1182 The bill would effectively stop the digging of any new open pit mines. In some instances the nature of the coal seams is such that the open pit mining method is the only feasible way of

obtaining the coal. In our current energy emergency, we cannot afford to sacrifice this source of fuel.

1183 At a time when increased energy costs are creating a serious problem for many consumers and adversely affecting the national economy, S. 7 would add millions of dollars to those costs. In addition to the increased expense to which mining companies would be put to meet the bill's requirements, there would be added a reclamation fee or tax of 35c per ton on surface mined coal and 15c per ton on coal mined underground, or 10 percent of the value of the coal at the mine. These increased costs would, of course, have to be passed on to consumers of coal.

1183 The present Administration has emphasized its determination to reduce the size and cost of the federal government and the federal bureaucracy. The United States Industrial Council strongly endorses that objective. Since S. 7 would expand, rather than reduce, the size of the federal government and federal bureaucracy, as well as aggravate our serious energy problems, we urge that this legislation be rejected.

THE UNIVERSITY OF ALABAMA
POST OFFICE BOX 4664
UNIVERSITY, ALABAMA 35486
March 30, 1977
Honorable Lee Metcalf, Chairman
Subcommittee on Minerals, Materials and Fuels
Senate Committee on the Interior
U.S. Senate
Washington, D.C. 20510
Letter Presentation to the Committee on Interior and Insular Affairs Briefings on the Regulation of Surface Mining
Dear Senator Metcalf:

1184 The following information and comments are presented for your consideration relative to the need for Federal Surface Mining Reclamation Legislation as embodied in bills S. 7 and H.R. 2.

1184 It is my considered professional opinion that existing state laws are more than adequate to regulate the surface coal mining industry and provide for the proper reclamation of affected lands. The continuing clamour for Federal Control by a small but vocal group of radical environmentalists is not justified when one reviews the tremendous progress that has been made

during the past decade at the state level. In consideration of widely varying climatic and geologic
conditions, I think it is a wise choice to leave these matters up to the state governments.

1184 Having lived, studied and worked in Alabama, Pennsylvania and Colorado, I can testify
to the vast difference associated with surface coal mining in all three regions. The cost of
reclamation is apparent to all who pay electric utility bills; the cost of steam coal has increased
three-fold in most areas of the country if not more, and I fail to see how the additional cost that
would be imposed by another Federal Bureaucracy set up to enforce a new federal strip mine law
could have any benefit for the American people. Since good reclamation is good reclamation
regardless of who regulates the industry, I would urge you to seriously reconsider the need for
legislation at the Federal level that can at best only deplicate what the states are already doing.

1184 As for Alabama specifically, you have at previous hearings been delivered false
information by persons who desire not to regulate surface mining, but ban it entirely.

1184 For the record, approximately 15 million tons of coal are surface mined in Alabama
annually, and almost 90 per cent of this production is used to general

1185 Honorable Lee Metcalf

1185 March 30, 1977

1185 electric power. To date, approximately 70,000 acres of land have been surface mined in
Alabama and about two-thirds of this land has been reclaimed and restored to useful forest and
agricultural uses. This represents less than 1/2 of one percent of the land area of the state. A
rather small impact when one considers that approximately 9 per cent of the state is dedicated to
highways, roads and parking lots. In fact, coal mining is probably the least contributor to
environmental pollution in the state when compared to our other civilized land use activities.

1185 The 1975 Alabama Surface Mining Reclamation Act was passed to strengthen the
previous state law and bring Alabama regulations up to recognized national standards with due
recognition of the unique social, economic and environmental climate existant in Alabama. I
would hope that our law as well as other state laws would be allowed to function in lieu of
Federal Regulations.

1185 Surface mining is the safest and most economical way to produce coal from the earth's crust. It also affords a healthier working environment for the individual miner. Since most radical environmentalists are opposed to both nuclear power and surface coal mining, the alternative most often recommended is a coal fired electric system using underground mined coal. Before you commit to this philosophy, please understand that underground coal mining is the most dangerous and one of the most unhealthy places a man can work. The State and Federal governments are now engaged in an extensive research program to develop better technique and equipment for underground mining; however, it may well be twenty years before any significant improvements are made. One can build a strong humanitarian argument against increased underground mining in lieu of surface mining until these adverse health and safety problems are solved. Past experience indicates that one human life will be sacrificed in an underground mine for each section of land "saved" from the strippers shovel if this philosophy is adopted. Not to mention the untold hours of human misery brought about by Black Lung.

1185 Since the environmental aspects of surface coal mines are being adequately handled by the states, I would ask that your committee address itself to developing a sound energy policy for the U.S. while we still have time to develop alternative energy sources.

1185 Thank you for your consideration of my testimony.

1185 Sincerely,

1185 Robert M. Cox, Ph.D., P.E.

1185 University Mining Engineer

1185 Chairman, Alabama Surface Mining

1185 Reclamation Commission

1185 nw

1185 cc: Senator Floyd K. Haskell

1185 Senator James B. Allen

1185 Senator John Sparkman

Mobil Oil Corporation
May 19, 1977
The Honorable Clifford P. Hansen
United States Senate

Washington, D.C. 20510
Dear Senator Hansen:

1186 You asked what mining companies in the States of Wyoming and Montana presently are in the position of having applied for mining permits on Federal leases but have not yet had these applications approved and the resulting permits granted.

1186 In the State of Wyoming the following companies, to the best of our information, find themselves in that situation -

1186 Peter Kewitt: The Whitney Mine

1186 Kerr McGee: East Gillette Mine

1186 Peabody Coal: Rochelle Mine

1186 Arco: Coal Creek Mine

1186 Shell: Buckskin Mine

1186 Mobil-Consolidation Coal: Pronghorn Mine

1186 Given the limited time for response, we have only partial information on companies in the State of Montana. It was obtained through Mr. Jack Ratcheye of Decker/Kewitt Coal Company who met with you last week. He informs us Decker has two permits pending, Pacific Power & Light has one pending, and there may be several others.

1186 While I am unable to cite the chronology for other companies in their efforts to bring their Federal leases to production, I want to assure you Mobil has systematically moved forward in its own efforts. Our Federal coal lease was acquired on February 1, 1971. On October 6 and 7, 1976, we filed permit applications with the U.S. Department of the Interior (USGS) and with the Land Quality Division of the Wyoming Department of Environmental Quality, the responsible agency for the State of Wyoming. During the time between lease acquisition and filling of permit applications, it was necessary for many requisite activities to be concluded before permits could be requested. Among these were drilling of the coal to determine the quality and extent of the deposit, engineering studies to develop a. mine plan, surface and hydrological evaluations, and a one-year environmental base-line study. All of these must be available for submission with the permit application. Surely, other applicants have proceeded similarly.

1186 Respectfully yours, J. P. Keehan

1186 JPK: jpc

1186 cc: Senator Lee Metcalf

1187 INTERSTATE MINING COMPACT COMMISSION

1187 MINUTES OF THE MEETING AT HARRISBURG, PA., FEBRUARY 28 AND MARCH 1, 1977

1187 The Interstate Mining Compact Commission met in Harrisburg, Pennsylvania on February 28 and March 1, 1977. Those present were:

1187 Maryland - Dr. Kenneth Weaver and Mr. Anthony Abar.

1187 Pennsylvania - Mr. Walter N. Heine, Mr. Don Fowler, Mr. Gary Martin, Mr. William Guckert, and Mr. James Rochow.

1187 Illinois - Mr. George Lane.

1187 West Virginia - Mr. Benjamin Greene and Mr. Bill Rainey.

1187 Indiana - Mr. Richard McNabb.

1187 Kentucky - Commissioner John Witt.

1187 Texas - Mr. Jerry Hill.

1187 Compact Office - Mr. Kenes C. Bowling.

1187 The purpose of the meeting was to review and formulate amendments to surface mining legislation, specifically H.R. 2.

1187 A discussion was held on "Rebate of the Severance Tax to the States." A motion was made by Mr. Richard McNabb of Indiana that the state's share be held by the state rather than be sent to Washington. The motion failed for lack of a second.

1187 After discussion, a motion was made by Commissioner John Witt of Kentucky to amend the "Back to Original Contour" section in such a way that a partial highwall could be left. The motion failed for lack of a second.

1187 See Attachment A for all proposed amendments and rationale for same that were accepted by the Compact Commission.

1187 On March 3, 1977, a committee of the Commission met in Room 1320 of the Longworth House Office Building, Washington, D.C. along with staff members of the House Insular Affairs

Committee. The purpose of this meeting was to present the staff with the Commission's
proposed amendments and rationale for the amendments of H.R. 2. Those present were:

1187 Maryland - Dr. Kenneth Weaver, Mr. Anthony Abar, and Ms. Ellen Fraites.

1187 Pennsylvania - Mr. Walter Heine and Mr. James Rochow.

1187 Kentucky - Commissioner John Witt.

1187 IMCC Office - Mr. Kenes C. Bowling.

1187 House Insular Affairs Committee Staff - Mr. Don Crane and Mr. Stanley Scoville.

1187 In the time allotted, we discussed the major proposed amendments. Our suggestions
were well received; however, no commitments were given by the staff.

1187 As instructed, we are proceeding to send copies of the proposed amendments to each
member of the House Insular Affairs Committee, to Dr. Schlesinger, to Secretary Cecil Andrus,
and to the President. We will have touched all available bases.

1187 It now behooves each state to contact their respective congressmen and urge them to
support our proposed amendments. If it becomes necessary, we may need to get the major
amendments introduced on the Floor of the Congress.

1187 [Attachment C]

1187 RESOLUTION

1187 INTERSTATE MINING COMPACT COMMISSION

1187 Be it known that:

1187 Whereas the Interstate Mining Compact Commission consists of the following 12 states:
Alabama, Illinois, Indiana, Kentucky, Maryland, North Carolina, Oklahoma, Pennsylvania, South
Carolina, Tennessee, Texas, West Virginia, and

1187 Whereas these states collectively produce approximately 80 percent of this nation's coal
and

1187 Whereas approximately 50 percent of the coal produced in the Compact states is mined
by surface methods and

1187 Whereas the Compact states have developed effective reclamation programs in their

respective states and collectively represent a great reservoir of talent in mining and reclamation
and

1187 Whereas coal will become increasingly important to this nation as a primary energy
resource as our supplies of domestic oil and gas are depleted and

1188 Whereas federal surface mining legislation has again been introduced in the Congress
of the United States.

1188 Therefore be it Resolved , That: the Interstate Mining Compact Commission does
declare its intention to work with the Congress and the executive agencies of the Federal
Government to assure that the legislation on surface mining presently under consideration will
conform to the states' needs in the area of reclamation and environmental control while at the
same time allowing for the development of the vital coal resources of this Nation. It is our desire
to assure that the primacy of states in implementing and enforcing the programs is an integral
part of federal legislation. We will seek to obtain amendments to the present language of the
federal bills which will correct and update some of the sections of this legislation.

1188 Issued this 16th day of February 1977.

1188 KENES C. BOWLING,

1188 Attest.

1188 RATIONALE FOR CHANGE IN IMPLEMENTATION OF INTERIM STANDARDS

1188 The proposed IMC amendments to sections 501, 502, 503, and 504 of HR 2 clarify the
time schedule for promulgation of regulations by the Secretary, submission of proposed state
programs, evaluation of proposed state programs by the Secretary, and resubmission of state
programs and approval of state programs or implementation of a federal program if necessary.
The time constraints for each successive action are dependent upon completion of the
prerequisite action, rather than tied to the date of HR 2 enactment. The schedule is also revised
to provide more time (4 months) for the states to resubmit programs, if disapproved after initial
submission.

1188 The proposed amendments eliminate the interim federal enforcement program.Creation
of a federal enforcement/inspection capability, composed of untrained personnel from existing

federal agencies - such as USFS, USGS, SCS, and ASCS - and new positions in the Office of
Surface Mining Reclamation and Enforcement whose functions may cease within 12 months is
considered highly undesirable. Existing mining operations would continue to be regulated by
existing state programs, until a state program or federal program is implemented under sections
503 or 504 respectively.

1188 RATIONALE FOR PROPOSED AMENDMENTS TO HR 2

1188 TITLE I

1188 1. The Act as it is hereby proposed to be amended, would not develop underground
extraction technologies. The research effort in the Act should be limited to reclamation and
water pollution control technology. This Act should not attempt to both regulate and promote
mining, either surface or underground.

1188 2. For clarity . . . present wording limits "finding" to States' role in regulation enforcing
whereas implementing approved State programs is the complete charge to the States.

1188 3.To emphasize that mine drainage pollution is a major aspect of abandoned mine
restoration.

1188 4. Emphasizing that abatement of polluting mine drainage is a purpose of the Act, not
just land reclamation.

1188 5. Reducing verbage without reducing scope of public participation.

1188 6. Same as No. 1; neither the Act nor the regulatory agencies should both regulate and
encourage development of extraction technology or "promote" coal. This intent is further stated
in Section 201(b).

1188 7. Again limiting the legislation to regulating mining, not "stimulating" production.

1188 TITLE II

1188 1. This is for consistency with the later proposed amendments to Title IV allowing states
to seek primacy in implementing an abandoned mine reclamation program. The charge to the
Secretary is realigned so as to stress primary intent for States to be aided in seeking primacy.

1188 2. Proposed amendments to Title IV will de-emphasize purchase of land prior to

reclamation.

1188 3. The last phrase is unnecessary and ambiguous.

1189 4.The Director should limit research review and recommendations to protecting the environment and not promotion of mining he regulates (underground mining).

1189 5. Reduces paperwork and multiple reporting to Congress.

1189 TITLE III

1189 6. Deletion of Title III will remove a duplicative effort in mineral extraction research and training of mining personnel now carried out by ERDA, Bureau of Mines and MESA. Research pursuant to this Act should be limited to that related to environmental protection and should be funded by the Secretary and by the States through the abandoned mine reclamation funds.

1189 TITLE IV

1189 1. Allow States to acquire primacy pursuant to an approved State plan.

1189 2. Authorize the States, after State plan approval, to establish a State fund to implement the program.

1189 3. Remove the Secretary of Agriculture from participation in the program since this amendment allows Interior or the State regulatory authority to reclaim private lands without acquiring the land. Previously, only Agriculture would be allowed to expend funds on private lands through grants to landowners.

1189 4. Encourage acquiring private land easements to reclaim thereby reducing costs and simplifying procedures.

1189 5. Establish priorities for expenditures of the funds.

1189 6. Define mechanisms for enforcing payment into the fund.

1189 7. Describe procedures for entry on or acquisition of land, methods of applying liens and emergency powers of the Secretary.

1189 TITLE V

1189 1.This would require the Federal Government to make a public positive finding that a State's program is contrary to the intent of this Act before the State would be required to seek

primacy or be preempted.

1189 2 through 12. These will be prepared as a separate document relating to scheduling of enforcement implementation.

1189 13. Clarifying that renewal of permits requires same public notice procedures as new permit, that is, opportunity for hearing, not a mandatory hearing.

1189 14. Strengthening amendment to require specific certification (perhaps an affidavit as many States require) that applicant has a legal right to mine area.

1189 15. Hydrologic studies as originally suggested for every application are much too broad in scope so as to be prohibitively costly and much more than necessary to evaluate most applications. The amendment focuses on the cumulative effect of an application or group of applications without guessing on future mining. The regulatory authority must be able to waive unnecessary studies but require, when pertinent.The specific parameters mentioned (types of solids) may or may not be pertinent to evaluation. For brevity, why should a few parameters be mentioned?

1189 16. The regulatory authority should not be required to perform the hydrologic evaluation for the applicant nor in any way participate in preparation of the application. The regulatory authority's task is to evaluate applications and perform only such corroborative functions as it deems necessary. It is untenable for a regulatory authority to be placed in a legal position of, perhaps, preparing the technical data to support an application for it would then be directly a party to failure of the operator to prevent pollution, so could hardly take enforcement action against the committee. With the proposed amendment to give waiver authority for the detailed hydrologic evaluation (p. 63), this requirement should not be extremely burdensome to small operators.

1189 17. A strengthening amendment since damage from use of explosives is usually not included in the operators' insurance. This would require it.

1189 18. This duplicates application requirements in Section 507(b) 15.

1189 19. This recognizes that surface mining may reduce quantity of water available for nearby wells and springs. It therefore provides that alternate sources be provided when protection cannot be assured.

1190 20. The regulatory authority, based on current bid prices it receives for abandoned mine reclamation, has the best information on cost to a third party to reclaim. "Independent estimates" could be hard to acquire and/or will be perfunctorially prepared for a fee with no real meaning since they are not based on an actual contract competitive bidding situation. If the regulatory authority's land rates are consistently low, the Secretary's oversite will detect this and require corrections. The cost to a "third party" should not be the criteria since a third party could be an operator who can reclaim for less than government. Bond should be based on cost to the regulatory authority, under legal bidding requirements.

1190 21. Strengthening amendment to disallow "self insuring." No history of solvency assures future solvency nor does self-bonding make funds readily accessible to the regulatory authority to carry out reclamation plans, but it must litigate with the company to acquire the funds.With collateral bonds or certificates of deposit, the large "solvent" company can still collect interest on its "bond" so will not be significantly hurt financially by submitting a bond.

1190 22. The purpose of this sentence is not understood.

1190 23. The word is superfluous and unnecessary.

1190 24. The regulatory authority should not become involved with such local matters as taxation. Its informing responsibility should end with notice to the local governmental officials.

1190 25. Conforming with proposed amendment to Page 63, paragraph 11.

1190 26. Hundreds of entire watersheds throughout the country are "under study" for some special designation (Wild and Scenic powers, etc.) and will be studies for years. Permits should not be disapproved until actual designation as unsuitable for mining is accomplished.

1190 27. Minor revisions to permits should not be subject to hearings because of the enormous paperwork and cost involved.

1190 28. The word insertions will clarify handling of the advertisement. The deletion is proposed because public newspaper advertising should suffice for notice to interested parties. A state can notify whom they wish pursuant to State law or regulations as many now do.

1190 29. This will more clearly state the intent to allow the regulatory authority to attempt to informally resolve objections, a procedure successful 90% of the time.

1190 30. This would preclude need to transcribe public record when agreements are reached in hearings without need for adjudication.

1190 31. Thirty days is much too short to receive transcripts, evaluate them and write adjudications.

1190 32. Rationale will be submitted separately.

1190 33. This paragraph is so ambiguous that it is completely unworkable. It appears to promise some relief from future subsidence which it cannot deliver. It specifically cannot prohibit room and pillar mining, the largest cause of subsidence and the "economically feasible" phrase would not allow prohibition of long-wall mining (an undesirable prohibition anyway).

1190 34. Conformity.

1190 35. These technical procedures have no place in a law. The intent is clearly stated and the details should be left to regulations and technical manuals.

1190 36. This appears out of place; the Section deals with underground mining, not surface mining.If it refers to surface effects of underground mining, then this specificity is unnecessary.

1190 37. Often, a responsible official is not available at a mine site so he must be informed before some inspections and meetings which are necessary to discuss mine site problems.

1190 38. Although on some policing operations this might seem desirable, it is extremely difficult to disrupt the home life of an inspector by constant rotation. Even the State Police are questioning its usefulness. A dishonest inspector will carry his dishonesty wherever he goes. In at least one State, Pennsvlvania, the inspectors are unionized, and their contract disallows transfers without the inspectors' permission. This would seriously jeopardize some States qualifying for primacy.

1190 39. The term "State area of mining" is confusing. The amendment clarifies that the intent is for records to be available for public review at sufficient locations near the mining area.

1190 40. To reduce the frequency of reporting to Congress.

1191 41. The requirement for public advertising, notification and public hearings for bond releases discounts the numerous points of public participation and opportunity for recourse included in the bill. A well-planned operation, diligently inspected will achieve reclamation which complies with this proposed Act. This section implies the need for a "citizen police force" to review every operation to assure compliance. Such actions plus the complicated burden of timely public notices will needlessly harass the operator.

1191 The opportunity for the public to appeal alleged inadequate reclamation to first, the inspection supervisor and second, the Federal agency: together with the specific procedure written into this bill for that eventuality, provide a more than adequate mechanism for redress of a citizen's complaint. As a practical economic fact, many operators can only survive by timely bond release after approval of their reclamation since that bond is then reassigned to another portion of a job. An anti-surface mining citizen could effectively cease a miner's ability to operate a minimum of four months with frivolous hearing requests and no proof of any violations being committed by the operator. That is a sufficient time to bankrupt many small operators.

1191 42. Determination of adequacy of reclamation for bond release must be based on the condition of the site, not an attempt to relate water quality criteria to a non-point source. A suspended solids determination "under seasonal flow conditions" is meaningless, if not uninterpretable.The determining factor should be the operator's compliance with performance standards in a similar manner that construction projects or farm soil conservation measures are judged.

1191 43. Same as No. 41.

1191 44. A citizen suit should be allowed by a person who is adversely effected by another person or the Secretary . . . not may be adversely effected.

1191 45. Two acres of coal each year could be significant production in thick seams so the law should apply for parity in fund payments.

1191 TITLE VII

1191 1.Nine definitions are added pertinent to Title IV.

1191 2. It would be a costly, fruitless exercise for the Secretary to attempt to ascertain employment shifts due to this Act's enforcement as other factors (market, technical developments) affect employment much more. After this involved study and hearings, the Secretary makes "recommendations" . . . to what effect and for what legal purpose? The entire paragraph should be deleted.

1191 3. The State program funding should receive perpetual authorization for funding to encourage States to seek primacy and to assure continuity in the State program efforts throughout the country.

1191 4. Research authorities in coal extraction and health and safety now reside in ERDA, MESA and Bureau of Mines. Research pursuant to this Act should be limited to environmental protection aspects already set forth in the Act. The savings of $35,000,000 by this deletion is noted.

1191 [Mailgram]

1191 WOMEN VOTERS OF KENTUCKY, Louisville, Ky., February 27, 1977.

1191 Senator HENRY M. JACKSON, Senate Office Building, Washington, D.C.

1191 The League of Women Voters of Kentucky urges that you resist pressures from Kentucky officials to permit unrestricted mountain top removal and delete contour replacement requirement now a part of H.R. 2 (S. 7). Mountain top removal is widely processed here on slopes too steep to mine legally otherwise, and it has not been the subject of adequate public scrutiny. Our concern for long term prosperity of the region now being ruined for tourist and new industry prompts this message. Please leave this bill intact.

1191 PAT STEWART, President.

1192 [Mailgram]

1192 Nashville, Tenn., March 21, 1977.

1192 Subject: H.R. 2 (Federal surface mining reclamation bill).

1192 Representative LEE METCALF, House Office Building, Washington, D.C.

1192 The State of Tennessee has found for five years of experience that our present Law and regulations concerning surface mine activity is environmentally and economically sound. We, therefore, feel a duplicatory Federal mine program would be redundant.

1192 However, if Federal action deemed appropriate, amendments are necessary to account for topographical and geographical conditions which exist in this State.

1192 I. Sec. 515(b)(3) and (d)(2) refer to "return to approximate original contour after mining." Such a technique is not always practical, possible, or desirable in Tennessee. We strongly urge that the section language be changed as follows:

1192 (A) Suggested addition to section 515(b) to provide an additional general performance standard.

1192 Sec. 515(b)(22) an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained in place as a barrier to slides and erosion;

1192 (B) Amend sec. 515(d)(2) to read:

1192 (2) Complete backfilling with spoil material shall be required to cover completely the highwalls and return the site to the approximate original contour, unless slope stability analysis indicates that the spoil material will not remain stable following mining and reclamation in which event the highwalls shall be reduced to the maximum extent consistent with sound engineering technology, and provide further that a vegetation plan has been approved which is reasonably calculated to screen the remaining portion of the highwalls within 5 years after initial seeding or planting.

1192 II. Subsection (c), section 515 refers to the mountain top removal technique of mining. The section as written is too restrictive, and we recommend the following changes:

1192 515(c)(1): Where the mining operation will remove an entire seam or seams running through the upper fraction of a mountain, ridge or hill by removing all the overburden in creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting postmining uses in accord with the requirements of restoring the mined area to approximate original contour as provided in subsection 515(b)(3) or 515(d) of this section shall not apply where . . .

1192 (2) The reclaimed area will be suitable for an agricultural, industrial, commercial,

residential or public use (including recreational facilities);

1192 (3)(a) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use, as compared with the pre-mining use, and is:

1192 (I) Comptatible with adjacent land uses;

1192 (II) Obtainable according to data regarding expected need and market;

1192 (III) Assured of investment in necessary public facilities;

1192 (IV) Supported by commitment from public agencies where appropriate;

1192 (V) Practicable with respect to private financial capability for completion of the proposed development;

1192 (VI) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation in reclamation with the postmining land use;

1192 (VII) Designed by a registered engineer in conformance with professional standard established to assure the stability, drainage and configuration necessary for the intended use of the site; and

1192 (VIII) Consistent with adjacent land use plans and programs.

1192 (b) The regulatory authority provides the governing body of the unit of general-purpose government in which the land is located in any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use;

1193 (c) All other requirements of this act will be met.

1193 (4) In granting a permit pursuant to this subsection the regulatory authority shall require that . . .

1193 (a) The resulting plateau or rolling contour drains inward from the outslopes except at specified points;

1193 (b) All other requirements of this act will be met.

1193 (5) The regulatory authority shall promulgate specific regulations to govern the issuance of permits in accord with the provisions of this subsection, and may impose such additional

requirements as it deems to be necessary.

1193 (6) All permits granted under the provisions of the subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

1193 III. In its present form, title IV does not clearly provide for State primacy in the reclamation of abandoned mines. This seems to be inconsistent with the stated policy and purpose of the act as given in sections 101-102. We recommend that this title be rewritten to clearly allow Tennessee's on-going mine reclamation program to assume primacy in this area.

1193 IV. Section 528(2) exempts from regulations a surface mining operation of two areas or less. It is felt that this would provide a recognizable loophole that would allow unpermitted (wildcat) operations to flourish. We feel that this provision should be eliminated in its entirety.

1193 V. Section 705(A) authorizes grants to the States for a period of four years to assist in developing, administering, and enforcing State programs. There appears to be no valid reason for terminating this grant program after the fourth year, as the States' obligations and costs will continue. E prefer the 40 percent grant to continue for each year thereafter.

1193 VI. Section 521(A)(1) provides for Federal intervention in an approved State program within 10 days of receipt of any complaint. We believe that 10 days is unrealistically brief, and further do not feel that it would be appropriate for continuing Federal involvement in an approved State program.

1193 We recommend extension of this period to 30 days which should allow the State time to solve most problems without unreasonable Federal intervention.

1193 VII. Section 517(A)(3) requires a rotation of inspection personnel. This concept is a valid one, but it must be balanced with some stability of location in an inspector's personal and family life. The expense of retraining personnel because of resulting rapid turnover rates would be counter-productive.

1193 We would appreciate your consideration and support for the specific recommendations.

1193 RAY BLANTON, Governor of Tennessee.

1193 [Telegram]

1193 BISMARCK, N. DAK., March 17, 1977.

1193 NORM WILLIAMS, Dirksen Office Bldg., Washington, D.C.

1193 Subject: Special testimony of the State of North Dakota concerning pending Federal strip mine legislation.

1193 The State of North Dakota concurs with the position statement of the Western Governors' Regional Energy Policy Office on the pending Federal strip mine legislation. Due to the unique patterns of Federal coal ownership in North Dakota, however, additional comments are necessary.

1193 The State of North Dakota recognizes the need for surface owner protection. As a result North Dakota has a strong Surface Owner Protection Act.

1193 The position of the State of North Dakota concerning the so-called "Mansfield amendment" contained in Senate bill No. 7 has already been adequately stated in the position statement of the WGREPO. The related provisions found in section 714 of House of Representatives bill No. 2 also present problems for North Dakota.

1193 North Dakota concurs with the intent of section 714 insofar as surface owner consent is concerned. The provisions of subsection (G), however, defining surface owners may result in coal development interests buying surface estates and riding out the three year waiting period. Such a practice could be detrimental to the farm-based economy of rural North Dakota.

1194 Subsection (M) and (N) of section 714 are also objectionable to North Dakota. It is common practice in North Dakota for surface owners to receive additional consideration in the form of bonuses, rentals or surface royalties. The State of North Dakota finds nothing objectionable about this practice and will likely allow and, indeed, encourage such a practice where State owned coal underlies private ownership.

1194 Retention of subsections (M) and (N) of section 714 may result in a total halt of coal mining in many areas of North Dakota where Federal severed coal is checkerboard throughout a

given area. If mining operations are conducted in such an area orderly and environmentally
sound development will not take place.

1194 Surface owners overlying Federal coal will have been singled out by the Federal
Government and, in effect, discriminated against. A surface owner overlying private or State
owned severed coal may receive more compensation for his surface estate than his neighbor who
owns land overlying federally owned severed coal.Subsections (M) and (N) of section 714 are,
therefor, arbitrary and discriminatory provisions that will be uniquely damaging to the orderly
development of coal in North Dakota due to the large concentration of federally owned severed
coal in the State.

1194 North Dakota therefore requests that subsections (G), (M) and (N) of section 714 of H.R.
2 be deleted.

1194 Additionally, it is also suggested that the Congress relinquish its claim to all federally
owned severed coal underlying State grant lands received pursuant to the enabling acts. The
State of North Dakota does not recognize the Federal claim to this coal and will litigate this
matter if necessary. North Dakota believes that it is entitled to all coal underlying trust land
grants and does not believe the Federal claim to such coal is valid. Federal claims arrive out of
amendment to the Homestead Act made March 3, 1909; June 22, 1910; April 30, 1912; and July
17, 1914. Such a relinquishment would mean that the State could lease the coal underlying its
own land without interference from the Federal Government.

1194 ARTHUR A. LINK, Governor and Chairman of the Board of the University and School
of the State of North Dakota.

1194 [From the Alton, Ill., Telegraph, December 22, 1976]

1194 MAJOR ENERGY FIRMS HAVE BOUGHT UP HUGE COAL RIGHTS IN 2 AREA COUNTIES

1194 EDITOR'S NOTE. - This is the first of a five-part series on coal mining and land use
questions facing the people of Macoupin and Madison counties. The series focuses on the extent
and methods of coal rights purchases, the dilemma of farmers and some of the aspects of coal
and energy development including subsidence and coal gasification.

1194 (By Bill Lambrecht, Telegraph Staff Writer)

1194 In the new "coal boom" under way in Illinois, major energy corporations have quietly purchased coal righs to more than 200,000 acres of prime farm land in Macoupin and Madison counties.

1194 With Exxon and its subsidiaries in the lead, coal rights acquisition now totals at least 119.840 acres in Macoupin County and more than 93,270 acres in Madison County, a Telegraph investigation of county records shows.

1194 Coal and energy companies, banks and land speculators began the current buying surge a decade ago when it became apparent that U.S. oil and natural gas supplies were rapidly dwindling.

1194 In that time, a concentrated land grab has been carried out at a sometimes madcap pace, with virtually all of coal-rich Macoupin County and major sections of Madison County parceled up among corporations and banks.

1194 Vast acreage of coal options have been consolidated and expanded as late as this month, in the wake of current federal energy policy aimed at curbing oil imports and increasing coal production nationally.

1195 And with the Federal "project independence" expected to continue under the administration of President-elect Jimmy Carter, a continuance of the major construction and expansion by the coal industry in Illinois is predicted.

1195 In the past decade, Illinois has been a major focus of energy producers. Though normally considered a farming area, Illinois, which leads the nation in agricultural exports, also leads the nation in coal reserves with an estimated 161 billion tons.

1195 Macoupin County, according to the Illinois State Geological Survey, leads Illinois with an estimated 6,504 million tons of recoverable coal reserves.

1195 Of the 10 new mines in various stages of construction in Illinois, one is in Macoupin County - Freeman Crown No. 2 near Virden. Also operating in Macoupin County is the Montery No. 1 mine south of Carlinville.

1195 Although much of the coal, especially in the southeastern part of the county, was generally thought to be mined out of Macoupin County in the early 1900's, today's new mining methods have brought a renewed heavy focus on the county.

1195 Coal companies refuse to discuss their plans for Macoupin County. However,
speculation by knowledgeable county officials and purchase patterns indicate that at least three
more mines could be opened in the county within the decade.

1195 "There might be one more mine in the fairly near future in Macoupin County," says Paul
Lingo of Monterey Coal, the most active area mining concern.

1195 However, Lingo declines to speculate further, and says that such questions of coal
industry expansion are "unanswerable."

1195 Monterey Coal Co. is the best example of heightened expansion in the area.

1195 Monterey, a subsidiary of Carter Oil, which in turn is a subsidiary of Exxon Corp.,
recently located its national headquarters outside Carlinville.

1195 In the last two years alone, Carter Oil has renewed or obtained at least 200 coal options
in Macoupin County.

1195 Monterey, Carter and the energy conglomerate have now purchased at least 35,800 acres
of coal rights in the county, the highest of any energy companies, records in the offices of
recorder of deeds and supervisor of assessments show.

1195 The presently dormant Mount Olive & Staunton Coal Co. is next in holdings with at least
24,381 acres of coal rights, records show.

1195 In Madison County, where the last mine ceased operations in 1937, nearly 1/3, or 31,006
acres of coal rights is owned by the Ziegler Coal & Coke Co., a holding of the Houston Natural
Gas Corp.

1195 No new mines have been dug in Madison County, although projected coal gasification
plants in the Metro-East area is expected to have a bearing on coal extraction plans. Ziegler Coal
Co. officials were unavailable for comment on their plans.

1195 Peabody Coal Co., a holding of the Kennecott Copper Corp. and the state's largest coal
producer, is next in Madison County with at least 12,895 acres of coal rights, Telegraph
computation shows.

1195 Peabody also owns outright at least 651 acres in Moro Township bordering on the
Holiday Shores area, including a 61-acre tract on the tip of Holiday Lake.

1195 Although company officials have refused to confirm or deny speculation, it has been widely rumored that Peabody plans to strip mine the coal in the area.

1195 In Madison County, an estimated 23.8 per cent of the recoverable coal reserves is strippable, according to the Illinois State Geological Survey.

1195 Only an estimated 4.2 per cent of the coal reserves are strippable in Macoupin County, however, where coal reserves lay deeper than 150 feet below the surface.

1195 Thursday: Who owns what coal reserves; the coal companies' secrecy in acquisition.

1196 [See Illustration in Original]

1197 [From the Alton, Ill., Telegraph, December 23, 1976]

1197 COAL RIGHTS BUYERS: BASHFUL, SNEAKY, MYSTERIOUS

1197 THE COAL BOOM - PART II

1197 (By Bill Lambrecht, Telegraph Capital Bureau)

1197 Carlinville - "Bashful," "mysterious" and "downright sneaky" are terms area residents have used to describe the coal industry as it continues a massive coal rights grab which now approaches a quarter million acres in Macoupin and Madison counties.

1197 Just who owns what, and where, and when will they mine it, and how? These are questions which have plagued the farmers sitting on the coal and area residents concerned with the use of their lands and natural resources.

1197 The question of ownership can only be pieced together by days of copying deeds and tax records in the county courthouses. And then, only a partial picture emerges.

1197 As Macoupin County Treasurer Michael "Allan" Zippay puts it, "sometimes the coal companies don't even record their purchases. We find out when farmers come in to discuss assessments."

1197 What does appear on the county records is a complex and often confusing array of corporations, banks and speculators who usually don't want you to know who they are or for whom they are buying.

1197 All together in Madison and Macoupin counties, coal rights are owned by 14 coal

companies, 13 individual agents and speculators, five banking organizations, four land and
royalty companies, four oil corporations, two steel corporations and one railroad, Telegraph
investigation shows.

1197 But things are not in clear black and white. Figuring out who works for whom, who's
speculating, who's wildcatting and who's "just blowin' smoke" - as one former coal agent put it -
can be a full-time job.

1197 Indeed, Carter Oil and other top coal seekers installed full-time agents in Carlinville over
the past decade in an effort to one-up the competition.

1197 Sorting out the puzzle, however, is not the easiest task for the everyday peruser of county
records.

1197 For example, Monterey Coal Co., the biggest coal rights holder in the area, usually
purchases through Carter Oil, its parent company in the Exxon conglomerate. Some of the nearly
36,000 acres of Monterey-Carter-Exxon holdings are also thought to be in the name of the First
National Bank of Houston.

1197 And then there's Meadowlark Farms, a wholesome enough sounding operation. But
Meadowlark Farms, which controls nearly 9,000 acres of coal rights in Shaws Point, Gillespie
and Carlinville townships, is actually the front name for the American Metal Climax (AMAX)
Corp. of New York, a worldwide mineral extraction company.

1197 Meadowlark Farms in reality is a reclaimed strip mine operation in Northern Illinois.

1197 AMAX has, in the words of one knowledgeable observer, "created a tremendous puzzle"
by its recent silence after heavy coal rights purchases in the late 1960's and early 1970's,
including the holdings of Ayshire Collieries.

1197 There is a theory afoot that AMAX and Monterey reached an agreement last year in
which they divided holdings along the Illinois Central Gulf line in the county, with AMAX
deeding over their holdings from the west side of the rail line.

1197 The theory is borne out to some degree by county records, which show that Meadowlark
Farms (AMAX) has in the past two years transferred more than 6,700 acres of coal rights in 41
parcels to Carter Oil (Monterey Coal) - more than 40 per cent of the AMAX holdings in

Macoupin County.

1197 Although a few tracts of coal rights are owned locally or by smaller mining operations, the greatest amount of coal reserves in Macoupin and Madison counties is controlled by major national and international corporations.

1197 In addition to Monterey No. 1 owned by Exxon, the other mine in operation, the Freeman-Crown No. 2 mine is owned by General Dynamics.

1197 Ziegler Coal and Coke Co., another major coal owner in the area, is owned by the Houston Natural Gas Corp. Peabody Coal Co., the state's largest producer, is owned by Kennecott Copper Corp., a multinational mineral extraction industry.

1198 Of the top 11 coal companies which produce 90 per cent of Illinois coal, (fifth in the nation), all are controlled by the nation's largest energy producers and conglomerates.

1198 Although coal companies, especially Monterey, are trying to reshape their images these days, area residents still talk about the subterfuge, the fancy footwork and the general ripoffs pulled by the coal industry in days past.

1198 There was a time, those close to the scene tell about, when coal company representatives would travel under assumed names, trying to "pick off" landowners and even play landowners against one another.

1198 Agents and speculators would also play games among each other, buying rights to worthless land to outfox the competition.

1198 "People have been sent in here from Florida, traveling under false identification to buy land, and the coal companies haven't been above it," Frank Thomas, executive secretary of the Madison County Farm Bureau recalls.

1198 A Carlinville woman who once worked for a local abstract firm handling coal leases said, "These guys even traveled under different names."

1198 "A while back, two members of one firm came to town for a lengthy stay, and I was told I would be working with them, and that I was to keep absolutely quiet about everything . . . it was completely hush-hush," added the woman, who asked to remain unidentified.

1198 A man who also worked close to the coal companies and speculators in the 1960's when

land acquisition was heavy says that Monterey Coal was one of the prime deceivers.

1198 "Monterey would come in and buy coal in five or six names, trying to confuse everyone . . . They tried to keep things hidden until it became obvious what they were doing, and they began to look rather foolish."

1198 "AMAX, or Meadowlark Farms I should say, was another one. They were extremely bashful," said the man, who also asked to remain anonymous.

1198 Two major owners of coal rights who are not speculators or energy producers are the counties of Madison and Macoupin.

1198 More than 12,300 acres of coal rights have reverted to trusteeship of Madison County because of failure of coal companies to keep up taxes, while Macoupin County now has 2,467 acres in trust.

1198 These coal rights, though many are worthless, are then resold to other companies or individual speculators in regular auctions.

1198 Friday: The coal boom and the farmer.

---

*2*What companies own the coal

*2*MACOUPIN COUNTY - BY TOWNSHIPS

	Acres
Brushy Mound: Jet Oil	3,472.
Honey Point: Carter Oil (Monterey-Exxon)	8,604.
Shaws Point:	
Carter Oil	1,487.
Mt. Olive & Staunton Coal Co	8,079.
Meadowlark Farms	316.82
Carter	1,065.
Macamon Coal Co	18.26
Carlinville:	
Carter	3,913.
Meadowlark Farms	4,244.
Meadowlark Trans. to Carter	5,120.
Macoupin County Treas	1,760.
Macoupin Co. Treas. trans to Steve Marko	454.
Staunton: Ziegler Coal & Coke Co	626.
Mount Olive: Ziegler	1,570.
Gillespie:	
Meadowlark Farms	3,594.
Gillespie Coal Co	75.65
Sentry Royalty Co	497.

Carter Oil	4,514.
Mt. Olive & Staunton	2,914.
Dorchester:	
Chicago Title & Trust Co	8,080.
Ziegler	843.43
Hilyard: Jet Oil	6,353.9
Polk:	
Jet Oil	2,430.
James L. Armstrong	1,004.
Girard:	
Lasalle National Bank	2,037.
Macamon Coal Co	1,583.
Royal Collieries	475.
Virden:	
Virden Mining Corp	1,749.
American National Bank & Trust	491.
P. L. Denby	185.
Macoupin County Treas. (From Denby)	1,405.
Peabody Coal Co	190.
Theresa Lane	120.
Freeman Coal Co	82.
Royal Collieries	50.
Nilwood:	
Ark Land Co	7,022.
Mt. Olive & Staunton Co	3,872.
Merchants & Manufacturers Fuel Co	1,353.
Gordon Brown	1,668.
Union Fuel Trans. to Illinois National Bank	160.
Southwest Steel Corp	220.
Macoupin-Montgomery Coal Co	217.5
Claude Akins	40.
South Otter:	
Meadowlark Farms	610.
Carter Oil Co	1,525.
Mt. Olive & Staunton Coal Co	9,516.
Meadowlark Farms Trans. to Carter	532.
Illinois National Bank, Springfield	360.
Verna Denby	70.
MADISON COUNTY, BY TOWNSHIPS	
Moro:	
Peabody Coal Co	870.
Peabody (Own Outright)	651.
Omphgent:	
Ziegler	8,915.
Peabody	4,565.
Madison County Treasurer	1,654.
Kerens-Donnewald Coal Co	120.
Joseph L. Broadus	30.
Pin Oak:	
Ziegler	10,307.
National Steel Corp	4,712.
Forsythe-Carterville Co	40.
Madison County Treas	186.
Fort Russell: Madison County Treas	179.
New Douglas:	
Mt. Olive & Staunton	5,135.

Lafayette Coal Co	18.
Olive:	
Lafayette Coal Co	8,045.
Mt. Olive & Staunton	823.
Madison Co. Treas	45.
Alhambra:	
Ziegler	1,674.
Lafayette	812.75
Conrad-Kem Etal	193.
Hamel:	
Mt. Olive & Staunton	5,713.
Ziegler	4,803.
Peabody	684.
Leef:	
Mt. Olive & Staunton	281.
Carter	223.
First City National Bank of Houston	1,456.
Saline:	
Carter Oil	2,176.
First City National Bank of Houston	1,273.
Helvetia: Carter Oil	934.
Jarvis:	
Peabody	6,455.
National Steel Corp	925.
Madison County Treas	597.
Marine: Ziegler	131.
St. Jacob: Ziegler	374.
Edwardsville:	
National Steel Corp	2,013.
Madison Coal Corp	2,039.
Madison Co. Treas	4,171.
Collinsville:	
Madison Co. Treas	5,470.
Madison Coal Corp	1,577.
Forsythe-Carterville	1,577.
National Steel Corp	908.
Peabody	320.

1200 [From the Alton, Ill., Telegraph, December 26, 1976]

1200 FARMER WITH COAL UNDER HIS LAND IS AT CENTER OF BOOM

1200 THE COAL BOOM - PART III

1200 (By Bill Lambrecht, Telegraph Staff Writer)

1200 Carlinville - At the center of the new coal boom is the farmer. It is beneath the land of the farmer where the seams of black gold lie and it is the farm family which must make the long-range land use decisions when coal companies come knocking at the door.

1200 In the frequent cases of coal rights optioned away 20 and even 75 years ago, farmers

have little choice but to grudgingly co-exist with the mining industry.

1200 The farmer must sometimes worry about strip-mining, and often today mine subsidence
and the questions of liability when the ground above the honeycomb of coal tunnels sink or caves
in.

1200 Those farmers who do have a choice must take great care in contract negotiations when
the coal companies make their moves.

1200 Counseling from the Farm Bureau or land organizations can prevent coal industry tactics
such as "picking off" the most vulnerable owners or playing landowners against each other to
acquire cheapest rights.

1200 Some farmers even have to stand guard over the coal in their land. Macoupin County
State's Attorney Ken Boyle tells of a farm family near Carlinville "whose coal was mined right
out from beneath them without them even knowing about it."

1200 "They went to sell their coal, and the buyer said 'what coal?'" Boyle chuckles.

1200 More subtly, coal companies have turned modest investments into booming profits,
especially in Macoupin County, which has an estimated 6,504 million tons of coal reserves.
(That total was understated in Part I of this series.)

1200 In the past two years, for example, Carter Oil Co. (Monterey-Exxon) has bought up
some 200 options of coal contracted in 1965-66 at $50 an acre.

1200 There may be 1,000 tons of coal in an acre of ground, and sometimes more. At a selling
price of around $2 5 per ton, a coal company could resell the coal at nearly a 2500 per cent profit
before costs.

1201 "Carter got a steal on that one. Yes they did," a former coal company agent remarked.

1201 "They really made it big around here on those deals, and they got about all the $50 coal
left anywhere," he added.

1201 Frank Thomas, executive secretary of the Madison County Farm Bureau scoffs at the
$50-per-acre coal contracts.

1201 "That's the price they were offering 30 years ago. It's ridiculous," Thomas said.

1201 In coal options contracted in the 1970s, farmers began receiving a per-ton royalty on contracts from some companies. And with the recent hikes in coal costs to utilities and other burners, some coal companies are now offering a sliding royalty contract.

1201 For example, such a contract might include royalty provisions of one per cent or 12 cents per ton, whichever is greater.

1201 Unlike mining areas in Southern Illinois where landowners' protection groups have formed, farmers in Macoupin and Madison Counties have taken their general contracting advice from county farm bureaus.

1201 Darwin Nelson, executive secretary of the Macoupin County Farm Bureau, offers farmers a standard set of counseling and precautionary advice when coal companies are on the buy.

1201 "The best course of action is to sit down with the entire family, and the kids, and discuss the situation because these are long-term contracts," Nelson said.

1201 A major question is how will the mining affect the farming operation, and perhaps the land value, according to Nelson.

1201 Then, Nelson says, call a lawyer. Providing for coal companies contracted liability for mine subsidence should be a key focus in contract negotiations, according to Nelson.

1201 "Neighbors should also be contacted to meet," Nelson says, "to discuss how the mining will affect the community."

1201 Some of the dangers farmers must anticipate, according to Frank Thomas of the Madison County Farm Bureau are "strip mining, the possibility of flooding, coal chemicals killing land and subsidence."

1201 Next to drought, strip mining has long been the farmer's great nemesis, for stripped land is usually out of production forever.

1201 Although reclamation laws no longer permit coal companies to leave the land looking like the underside of the moon, row-crop agriculture and prior soil nutrient condition are virtually impossible to achieve in reclamation.

1201 Because of the area's general coal depth from the surface, however, stripmining is

perceived as a threat only in portions of Moro Township in northern Madison County where
Peabody Coal Co. owns some 650 acres outright.

1201 Some farmers interviewed said they object to the coal companies' "pushiness" and
"secrecy."

1201 "Farmers are an unusual breed. I guess," says Marvin Wrightsman of rural Virden.

1201 "Because when coal companies come in and just tell you what they are going to do, right
away you're mad, and you stay that way," says Wrightsman, who has experienced subsidence and
drainage problems as a result of mined-out tunnels under his property.

1201 Dean Lloyd of rural Girard recently led a landowners fight to prevent the Freeman Coal
Co. (General Dynamics Corp.) from obtaining an easement they sought to run a water line from
the Old Freeman Mine near Farmersville six miles to the new mine.

1201 "They come in, they offer you a token amount, they guarantee you nothing, and they want
it forever," Lloyd says.

1201 After the resistance from farmers, Freeman eventually rerouted the water line. And
according to Lloyd, several breaks have occurred, "just like we feared."

1201 "We felt we couldn't allow the easement because of liability questions and concern for
public welfare," Lloyd says.

1201 Another general complaint of farmers is lack of cooperation and secrecy by the coal
companies.

1201 "We just never know what they're up to. They might be mining right under our house or
our barn, and we wouldn't even know it," Lloyd says.

1201 (Monday - The growing threat of mine subsidence and cave-in.)

1202 [From the Alton, Ill., Telegraph, December 27, 1976]

1202 SUBSIDENCE OF OLD COAL MINES IS INCREASING BUGABOO

1202 THE COAL BOOM - PART IV

1202 "Homes and other structures have been seriously damaged . . . entire structures have
dropped or shifted as underground mines have collapsed. Foundations and walls have cracked
and many structures have been abandoned . . ." - Illinois House Executive Subcommittee report

on mine subsidence, Nov. 29, 1976.

1202 (By Bill Lambrecht, Telegraph Capital Bureau)

1202 Springfield - Of fast-growing concern in heavy coal areas like Macoupin and Madison counties is mine subsidence, the cave-in or settling of ground was shaft-mined areas.

1202 In years past, the most feared effect of mining was the ravages of stripping, where great sections of earth were left barren and despoiled after ground was peeled back for coal extraction.

1202 Now, as wooden pillars and supports of the century's early mines rot, there is the new and alarming trend of subsidence. Recent damage has been reported in more than 30 Illinois communities.

1202 And the problem continues to heighten with community sprawl into growing areas where the mines have been located.

1202 In Ziegler, major structural damage was suffered when an elementary school shifted and sank this year. This fall, Gov. Dan Walker released $2 15,000 to purchase mobile classrooms for Ziegler school children.

1202 In 1974, the first Illinois school collapse from subsidence was reported in Johnson City in Southern Illinois. However, efforts to set up a state legislative "disaster relief fund" at that time failed.

1202 Since 1974 there has been a steady increase in reports of subsidence, including area in Macoupin and Madison counties. Complaints from farmers about buildings settling and cropland sinking have come from as far south in the Telegraph area as Maryville, to as far north as Virden.

1202 Marvin Wrightsman of rural Virden tells of 10 acres on his farm which have sunk. Wrightsman fears a "wet season" next spring, which he says could put his acreage out of production.

1202 Or take the residential case of Mr. Maria Hatzadony, whose ranch-style home in the Canterbury Manor section of Belleville is literally crumbling at the foundation.

1202 "It's like hanging from a noose," Mrs. Hatzadony has said, "One that tightens with each

new crack."

1202 Sufficient evidence of the new subsidence outbreak already exists. It is widely known, though, that many property owners and farmers simply do not disclose damage to their buildings and property, fearing a deflation in property value.

1202 This growing trend of subsidence has prompted a special investigation of the Illinois House Executive Committee.

1202 The author of the subcommittee report being circulated now, Rep. Celeste M. Stiehl, R-Belleville, warns that "subsidence will become an even greater problem for Central and Southern Illinois residents within the next few years."

1202 Because of the increasing emphasis placed on coal production nationally and in Illinois, coal production is expected to increase 25 million tons annually in Illinois, with at least 10 new mines now under construction.

1202 In often alarming tones, the subcommittee after hearings in Belleville and Marion this year, reported, "homes and other structures resting above or near land atop underground mines have been seriously damaged by coal mine subsidence."

1202 "Entire structures have dropped or shifted as underground mines have collapsed."

1202 "Foundations and walls have cracked and many structures have been abandoned. Additionally, water mains, sewage pipes and gas lines have broken, causing communities great hardships and economic loss," the report states.

1202 "The worst possible" subsidence situation, according to the report, occurs when only part of the ground under a home or structure shifts. The building may then slant or break up.

1203 At the core of the subsidence problem is the question of liability.

1203 Just who is financially responsible for damage resulting directly from underground mining?

1203 Generally, not the company that mined the coal. The coal industry has been extremely careful to avoid liability by terms in coal options.

1203 Although there have been some court rulings in which homeowners were awarded damages, there has been no definitive decision which serves as a landmark and precedent for the landowner in court action.

1203 So the brunt of the losses - estimated in the millions of dollars in Illinois alone - have gone to the farmer and landowner.

1203 One federally funded project to remedy mine subsidence is now underway near Maryville in Madison County.Using $1 million from the U.S. Bureau of Mines, the hydraulic backfill method of filling in mine tunnels is being tested.

1203 That hydraulic backfill method, however, was considered unsuitable for a mine reclamation project at the old Consolidated Number 7 Mine East of Staunton in Macoupin County this past year, however, and was scrubbed by the Illinois Mined Land Reclamation Council.

1203 Despite the problems and apparent people needs, the Illinois General Assembly has done absolutely nothing to remedy the situation.

1203 However, as a result of the executive report, legislation setting up a new insurance program for subsidence protection will be introduced in the House next spring.

1203 That legislation, modeled after a widely-acclaimed subsidence insurance program in Pennsylvania, would set up a state subsidence insurance funded by a new Illinois severance tax on coal.

1203 Though the details will be haggled out beginning in January, a new subsidence insurance board would be made up of Illinois Mines and Minerals Department, Insurance Department, and Business & Economic Development Department, and would be empowered to set up regulations and procedures for a new "Illinois Coal Mine Subsidence Insurance Fund."

1203 Funding could present a problem though. Two separate severance tax proposals failed in the General Assembly last spring. Sponsors, however, have indicated a willingness to redraft this year's severance tax proposals earmarking a certain per cent - perhaps six per cent - for the subsidence insurance fund.

1203 If the severance tax is again blocked by a very vocal coal industry or other funding

problems arise, subsidence insurance proponents point to alternate funding including state coal development bond funds, anti-pollution bond funds, abandoned mined land reclamation funds or direct appropriations from the General Revenue fund.

1203 The Pennsylvania program which subsidence insurance proponents seek to model has paid $1 ,018,522 in claims over the past four fiscal years, and now includes 8,500 standard policies and 525 commercial policies with an average policy value of $25,000.

1203 In the meantime, area farmers are involved in a move to help their subsidence liability plight.

1203 Based on a resolution adopted just this month at an Illinois Farm Bureau meeting, local farm advisors are telling landowners that when coal rights are sold, they should insist on a topography survey, so that subsidence liability may possibly be proved at a later date.

1203 So, as in the case of Norman Blomenkamp of rural Freeburg, it won't be a lasting shock as when he was operating a combine in October, and the ground beneath him caved in.

1203 Or, in the case of the Cumberland County farmer this year: he went in for supper, and came back to find his tractor in a 10-foot-deep hole.

1203 Tuesday: Last of a series - Land-use questions in coal development.