

**HEARING, FEBRUARY 28, 1977 AND MARCH 4, 1977**

**Legislative History**

**February 28, 1977 and March 4, 1977 Hearing**

Following is the February 28, 1977 and March 4, 1977 hearing before the House Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

**SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES**

**H.R. 2; FEBRUARY 28, 1977, MARCH 4, 1977, Serial No. 95-1 PART IV**

1 MONDAY, FEBRUARY 28, 1977

1 U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, Washington, D.C.

1 The subcommittee met, pursuant to recess, at 9:45 a.m., in room 2172, Rayburn House Office Building, Hon. Morris K. Udall (chairman of the subcommittee) presiding.

1 The CHAIRMAN. The subcommittee will be in session.

1 We have scheduled what we had hoped to be the final day of witnesses on H.R. 2, the Surface Mining Control and Reclamation Act of 1977.

1 We have a long list of witnesses and we will get under way.

1 We are privileged to have this morning our colleague, the Honorable Ralph Regula of Ohio, who was formerly a member of this committee who moved on to greater things, but is one of the real authorities in the Congress on this subject.

1 As a member of the Ohio Legislature, he helped write the very good law which was written in that State. He has been a cosponsor of this legislation in past Congresses.

1 Ralph, we are delighted to have you with us and you may proceed.

1 [EDITOR'S NOTE: All prepared statements and additional material submitted for the hearing record will be placed in the appendix at the conclusion of this volume.]

STATEMENT OF HON. RALPH REGULA, A REPRESENTATIVE IN THE CONGRESS FROM THE STATE OF OHIO

TEXT: 1 Mr. REGULA. Thank you, Mr. Chairman.

1 There are two things I wanted to bring to the attention of the committee.

1 No. 1, in drafting this legislation I hope you will give those States doing a good job the opportunity to carry on their own program without burdening the industry with a duplication of administrative procedures - engineering mapping and so on.

1 The reclamation programs are expensive. In States such as Ohio, where I think we are getting excellent reclaiming of the land, it seems to me it would be an advantage ultimately to the consumers - who pay this bill and the electricity they buy and so on - to not require a duplication of effort by the mine operators, if it does not add any thing to the ultimate quality of the reclamation.

2 I do hope the bill will recognize that if States are doing a good job on their own they will be pretty much left alone subject to oversight by the Federal agency.

2 Second, in the event there is some type of severance tax in the bill, I hope recognition would be given to the States that already have this kind of a tax for reclamation of orphan lands and allow a credit for it.

2 In Ohio we do have a modest effort taking place in terms of reclaiming orphan lands. To States doing it on their own, the benefit I see is that the highest and best use of reclaimed lands will be ultimately in the area of recreation.

2 Most States understand the need for recreation within their borders. Therefore, if the States are encouraged to develop orphan lands through the use of some kind of severance taxes, I think they would mount an effort that would be more beneficial to their needs. This would be based on what their departments of recreation and natural resources, on the State and local levels determine would best serve their people.

2 I know you supported an amendment, Mr. Chairman, I offered to the last bill to accomplish this legislation against any Federal-State taxes to be levied.

2 It was lost in conference because the Senate did not agree to it, but I would urge again we have this kind of language. I do feel the States are best equipped to reclaim the orphan lands to serve the needs of their particular localities.

2 The CHAIRMAN. Thank you, Congressman Regula.

2 Those are good suggestions and we will try to follow through on them.

2 After the election was over and we had a President who was favorable to

the bill, there were some who were saying let's write a punitive piece of legislation and let's fix the coal companies and so on.

2 That is not my philosophy. We want to write a bill that regulates but in a fair way and does not require unnecessary paperwork of the kind you referred to.

2 We are delighted you came today.

2 Mr. TSONGAS. No questions.

2 The CHAIRMAN. Thank you very much, Congressman Regula.

2 The next three witnesses are a panel consisting of Mr. Curry, Mr. Masterson, and Mr. Seiboldt.

2 If you will come forward and deploy yourselves in a defensive or offensive method, we will hear from you.

2 Mr. SEIBOLDT. We are missing one of our members. I wonder if we could be on after the consumer witnesses.

2 The CHAIRMAN. We will be pleased to accommodate you.

2 Mr. Holum, Mr. Partridge, Mr. Radin, and Mr. Weinberg, would you come forward please?

2 We have shifted the order so you can go next.

PANEL CONSISTING OF ROBERT PARTRIDGE, GENERAL MANAGER, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION; ALEX RADIN, GENERAL MANAGER, AMERICAN PUBLIC POWER ASSOCIATION, AND EDWARD WEINBERG, ESQ., DUNCAN, BROWN, WEINBERG & PALMER; KENNETH HOLUM, GENERAL MANAGER, WESTERN FUELS ASSOCIATION

3 Mr. PARTRIDGE. Mr. Chairman and members of the committee, I will make a brief opening statement, if I may.

3 The American Public Power Association and the Western Fuels Association have worked together in developing a position paper with respect to H.R. 2 and stripmine reclamation legislation in general.

3 We have worked hard to develop what we think is a constructive and positive approach. Our paper sets out our basic views. It has been made available to the committee and it has guided all of us as we have considered the proposed legislation.

3 Western Fuels Association, represented by Mr. Holum and Mr. Weinberg, is a member of both the American Power Association and the National Rural Electric

Cooperative Association.

3 While it is a new organization relatively, it is actively engaged in the business of procuring coal for rural electric cooperatives and rural utilities.

3 Because he has that background we have suggested Ken Holum, general manager, draw on his experience to summarize our position.

3 He will also make additional comments on behalf of Western Fuels, Inc.

3 All of us are here to participate in the discussions and answer any questions you may wish to ask.

3 The CHAIRMAN. Thank you.

3 Mr. Holum?

3 Mr. HOLUM. Thank you, Mr. Chairman and members of the committee.

3 It is a pleasure to be here this morning.

3 A week ago I read in the daily press a list of water resource development projects. When I read that list, I remembered many occasions when I had appeared before the committees of Congress supporting the authorization of water development resource projects.

3 It was my view at the time and it is my view today that those examinations by the Congress of the United States and to the economics and conservation aspects of those projects was searching and comprehensive.

3 I am here today, a week later, on an entirely different mission.

3 I am here today to talk to the members of the committee and to the Congress of the United States about H.R. 2.

3 I would like to speak to you first as Mr. Partridge has said from the point of view of three organizations: NRECA, APPA, and Western Fuels.

3 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 electrification utilities in the United States.

4 Many of our members generate their own electricity or electricity for sale at wholesale through the smaller distribution cooperatives.

4 All are frantically trying to obtain adequate supplies of fuels 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.

4 H.R. 2 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.

4 We support surface mine reclamation but believe the bills need some changes and the position paper explains why.

4 My name is Ken Holum and I am general manager of Western Fuels Association, Inc., a nonprofit organization whose purpose is to supply fuels to our members, rural electric generating and transmission cooperatives and municipal power systems.

4 With me are Al Radin, general manager of the American Public Power Association, which represents more than 1,400 municipal and publicly owned utilities in 48 States and also Bob Partridge, general manager of the National Rural Electric Cooperative Association, which represents more than the 1,000 electric systems serving 25 million consumers in 46 States.

4 I would ask that our position paper be included in the record of the hearing.

4 I will summarize briefly and then proceed with the individual testimony of Western Fuels.

4 Mr. HOLUM. 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 House and Senate.

4 We think some hearings can be consolidated or eliminated.

4 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.

4 But we believe steps should be taken to make the citizen suit process responsible and balanced.

4 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.

4 The position paper provides more details, and we are prepared to discuss

its provisions as the subcommittee members may desire.

4 With your permission, Mr. Chairman, and the permission of the members of the committee, I would like to highlight the statement I have prepared on Western Fuels so you may know a little better who we are and what the concerns are.

5 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.

5 As I have said, I am the general manager of Western Fuels.

5 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.

5 We are presently permitted to provide fuel to generating stations being constructed near Wheatland, Wyo., which will serve rural electric cooperative systems in eight States.

5 We will supply the coal required by the new Erman station being built by the Board of Public Utilities of Kansas City, Kans. Under our existing commitment, we will deliver in excess of 10 million tons of coal in 1983 just to meet our current commitments.

5 I would like to add to my prepared statement that we are at the present time in the business of searching out the fuels resources required by Plains Electric, building generating stations to meet the cooperatives of all of New Mexico and Arizona.

5 We are in the process of searching out coal for a group of municipal electric systems in Missouri.

5 I would like to say to this committee that our responsibilities involving as they do the rural electric cooperatives in New Mexico, Colorado, Wyoming, Montana, and North Dakota bring us into intimate contact with all of the people who are directly involved in the principal western coal-producing States, and I can assure you that working for that group of people that Ken Holum, forgetting about his own farm background from South Dakota, cannot be cavalier in his attitude toward lands, nor can we be toward the adequate compensation of those people who own the surface over the federally owned resource.

5 With the background, let me say Western Fuels, in spite of its keen interest in legislation, did not participate actively in the strip mine

legislation in the 94th Congress.

5 We did not participate in the survey because the congressional work was too far advanced. We did, however, have an opportunity to express ourselves by giving vigorous support to strong Federal strip mine legislation designed to achieve real and environmental protection.

5 We also have, and I reiterate it this morning, at all appropriate opportunities, expressed our concern and support for legitimate interests in this area.

5 However, we also have expressed our strong concern for the best interests of the American consumer who is the owner of the coal.

5 Strip mine legislation should contain adequate and generous owner protection. 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. We are not here this morning to discuss in detail the features of H.R. 2 that have to do with land reclamation. We are prepared to accept the judgment of the Congress on these items.

6 If the Congress decides that the land should be restored to its approximate original contours, Western Fuels will express that judgment.

6 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.

6 As an Assistant Secretary of the Department of the Interior during the Kennedy and Johnson administrations I worked with Basin Electric Power Cooperatives headquartered at Bismarck, N. Dak., one of our present members in developing the plans for Basin Electric because the first electric utility in the United States voluntarily and on its own motion, long before reclamation legislation was being considered at the national level, to include in its fuel supply contract a requirement that the coal supplier restore the land. I applauded that decision in 1962. It is still a noteworthy and pioneering action.

6 My statement says I have with me a prepared statement of Basin Electric. Unfortunately, the Postal Service has not delivered it. I would appreciate the opportunity to make it available to the committee for your records when it arrives.

6 I do have with me and I think we have in the room enough copies of a brochure prepared by Basin Electric having to do with the operation and the reclamation of the land at Glenn Harold mine where they pioneered strip mine

reclamation.

6 I would also like to take this opportunity and I am sure I would have the cooperation of Basin Electric and Consolidation Coal Co., to say it would seem the committee might wish to examine in the field the results of strip mine reclamation legislation. If you decide to make such an effort, I would suggest a visit to the Glenn Harold mine and I am sure Basin Electric and the Consolidation Coal Co. would be good hosts.

6 Since we already have noted our views on surface owner protection, I want to express Western Fuels concern in two areas: Western Fuels, a small organization with limited financial resources - we will have to operate on debt financing. 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 the large coal companies will secure the financing they need even if H.R. 2 is adopted without change.

6 I have great doubts that Western Fuels will be able to do so.

6 The legislation as drafted and as we understand its language would mean we would have only 3 years to begin surface mining operations after receiving our permit and the permit would have only 5 years' duration. Heavy mining equipment, draglands equipment, which will cost as much as \$25 million or more, cannot be ordered or delivered in 3 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 payments over 25 or 30 years on the basis of a 5-year contract?

7 Western Fuels must be able to finance from commercial sources or we must fail. We believe Congress can accomplish the desired objective by granting a reclamation permit for the time the mine will be in operation, while simultaneously providing periodic review with changes in permit provisions as required by the permit authority, and with strict sanctions including cancellation where the requirements of the permit are not met.

7 We have prepared amendments to H.R. 2 to accomplish that objective. We would urge this committee and the Congress to review the various hearing records, 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 opportunity for judicial review is clearly appropriate. We feel strongly, however, there should be a limit to these opportunities and that the law should be drafted to make citizen suits possible,

while simultaneously making the citizen intervenors responsible.

7 We have drafted amendments 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.

7 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. Western Fuels believes H.R. 2 should be written for strict 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 that we propose and which Mr. Weinber has drafted will accomplish that objective while permitting the operator - and Western Fuels certainly intends to be one of those who will protect and restore the environment - to mine the coal the Nation urgently needs.

7 I would like with your permission to have Mr. Weinberg explain our amendments.

7 Mr. WEINBERG. Thank you, Mr. Chairman. My name is Edward Weinberg. I am an attorney in private practice in Washington, and I am counsel for Western Fuels.

7 For the record, I might say that for 25 years I was an attorney in the Department of the Interior holding every legal position known to man over there. From 1963 until 1968, I was the Deputy Solicitor of the Department, and in 1969 I was honored by the President in being appointed Solicitor and confirmed by the Senate; and I left the Department in February 1969.

7 So, Mr. Chairman, like Ken Holum, it is sort of old home week for me to again appear before the House Interior Committee where I spent many happy hours, and also a few heated hours from time to time in exchanges of one kind or another, although in a different room. I feel out of place in this magnificent temple here. It is a little bit more luxuriant than the working room over there in 1324.

7 Like Mr. Holum, I spent a good deal of my time on a couple of these projects which came into great prominence last week. The Central Arizona project occupied my time for years as it did others in the Department. That project was the most thoroughly studied project that I ever encountered. I have no doubt that it and most of the others on that list at least that I am familiar with will pass the test.

8 One interesting note about the Central Arizona project, as the chairman knows, as originally conceived that project had a dam on the main stem of the Colorado River which was opposed on the ground that it would dam the Grand

Canyon. There was quite a difference of opinion about that, but it was studied and restudied and it was at the suggestion of the Sierra Club that a steam plant was substituted for the dam. So now there is a coal-burning thermal electric generating station at Page, Ariz., which consumes a very large quantity of strip mined coal as a part of that project.

8 Mr. Chairman, there is before the committee the detailed amendments that I have prepared together with an addendum sheet of three pages and my prepared text.

8 With the committee's permission, I will not read the prepared text. All I would request is that all of these documents be a part of the record.

8 The CHAIRMAN. We will make them a part of the record.

8 Mr. WEINBERG. The point I would like to make, Mr. Chairman, is that we concluded as we got into the strip mine legislation that it would not do for us to come up here and express alarms and request the restudy. We felt that we had an obligation to the committee to assist it by putting down on paper the specific proposals or the specific thoughts that have occurred to us on how the bill could be revised to better meet its objective which is to require the effective and thorough strip mining reclamation and to weed out those operators who seek to evade their responsibilities, and to fairly protect the surface owner.

8 The amendments that we have are not written in stone. They are not handed down from the mount. They represent our best thinking at this time.

8 We would welcome the opportunity to discuss with the staff and members of the committee in detail the particular language because in every product improvements obviously can be made and points are often overlooked.

8 I would like first to turn, as an example, to some of the things that concern us to the provision dealing with hearing on permits, which is section 513 and section 514.

8 We are troubled by section 513 and 514 as they are now drawn because they seem to us to deny, if that is not too strong a word, an operator who wants to comply with the law and meet his obligations a full opportunity for a hearing and an opportunity before the hearing to be confronted with the objections which have been found.

8 Let me explain what I mean by that: As section 513 is now written, only public agencies and interested citizens who object may trigger the hearing

process before a permit is issued. If the objectors do not request a hearing there is no provision made for a hearing at the request of the operator until and unless his permit application has been denied.

9 That seems to us, frankly, to be pretty late in the game; it strikes us that having been convicted, we are then offered an opportunity to try to persuade the judge that he made a mistake.

9 We think the procedure is backwards.

9 Moreover, in the case of objections that are filed by objectors, there appears to be no provision in the bill for these objections to be made available to the applicant. Of course, the regulatory authority could make them available but there is no requirement that they do so. So far as the bill is written, quite a dialog could be carried on between the regulatory authority and objectors before the applicant even has a chance to get up to bat.

9 Finally, the hearing itself, we believe, lacks the certain fundamentals of due process which should attend the issuance or denial of a permit which, when you really look at what it really is, it is a right to be in business or the denial of the right to be in business.

9 With so much at stake, we believe that the hearing should be of the kind required under the Administrative Procedure Act. As the section is now drawn, there is no right to cross-examination. There is no guarantee of an impartial administrative law judge; and there is no guarantee to have the decision made on the basis of the record, free of ex parte contacts and off the record information.

9 This omission may well have been intentional because the full panoply of due process hearings is provided for in other provisions of the bill, for example, section 513(b), dealing with the assessment against an operator, and section 513(h), where certain enforcement provisions are provided for.

9 It is our position that the right to appeal a hearing is imperative when there is a question of whether you get into business at all or the question of whether you have transgressed the provisions of the permit once it has been issued.

9 So we urgently request the committee to take another look at sections 513 and 514 and make those corrections which we think will make the hearing more effective, guarantee the applicant as well as objectors a right to a hearing and guarantee that the evidence, the objections are on the table with the applicant

having an opportunity to see them before the hearing commences and to respond to them if he so desires.

9 Mr. SEIBERLING. May I ask a clarifying question?

9 The CHAIRMAN. I don't want to get into questioning unless it is just a short clarification of what he said.

9 Mr. SEIBERLING. I just want to make sure I understand what he said.

9 Are you saying we should try to apply the Administrative Procedure Act to State regulatory authority hearings or simply write into this bill safeguard equivalents?

9 Mr. WEINBERG. The equivalents for the State. The amendments as I have drafted them provide in substance where the Secretary is the regulatory authority the hearing be subject to section - U.S.C. 554, I believe, is the number. My memory for numbers is not that good.

9 As to the States, I have added a provision to the elements of the State plan which the Secretary must find to exist before he can approve it. One of those elements would be that the State, where the act requires the Secretary to accord an APA-type hearing, that the State plan provide for an equivalent type procedure.

10 Mr. SEIBERLING. You don't see any constitutional problems or other technical problems with applying a Federal standard to a State procedure?

10 Mr. WEINBERG. No; I don't, Mr. Seiberling. I think what could be done without any constitutional difficulties at all would be for the Congress of the United States which is exercising its commerce clause powers over coal, which is going to be shipped in interstate commerce and otherwise affects commerce to require that if a hearing is held that it meet certain standards. I think that is perfectly constitutional and well within the powers of Congress. I am not suggesting that the States have to enact the APA per se, but what I am suggesting is that they should have provisions for an impartial hearing officer, for a right to file exceptions, and a right to file briefs, a right to cross-examine.

10 The CHAIRMAN. I think in the interest of orderly procedure, you should finish your summarizing and then we will return for questions.

10 Mr. WEINBERG. Mr. Holum adverted also to problems of duplicative hearings. I would point out that in connection with that, the Coal Leasing Amendments Act requires land-use planning before a coal lease sale can be held.

The land-use plan itself was to be the subject of public hearings and the coal lease must be compatible with the plan.

10 In addition, before the Secretary can issue a Federal coal lease now he must determine the method of mining that is to be used.

10 In other words, before anyone gets a lease from here on out in the West, the Secretary - and he proposes to strip mine that coal - the Secretary is going to have to determine that strip mining is the most effective, economical, and practical way of getting out that coal. That will also be done after hearings.

10 Those things will have been decided and we suggest that they need not be duplicated on permit applications, and certain other matters on this bill, and in this bill in the case of a Federal lease, one of our amendments so provides.

10 One of the most important concerns we have deals with the duration of the permit. This is section 506. Section 506 now provides that a permit may not exceed 5 years. The regulatory authority may issue a permit authority for less than 5 years, and coal mining operations must begin within 3 years after the issuance of the permit.

10 Coal mine operations is a term which, even though it is defined, is subjective. We believe it would be in the interests of all to avoid possible litigation on that point and to provide an ample period of time - we suggest 7 years - to get into operation after the strip mining reclamation permit has been issued.

10 We suggest 7 years because it takes anywhere from 4 to 6 years to order a dragline. There are also going to be inevitable delays of one kind or another, and 7 years really accords with the scheme of things as to a Federal coal lease under the recently enacted Federal Coal Leasing Act Amendments where the leaseholder is given 10 years from the time of issuance of the lease to produce coal in commercial quantities.

11 As to the up to 5-year provision, we think it woefully too short and it is unnecessary to have a 5-year time limit to accomplish the objectives of the bill. For one thing, again, taking the Federal coal lease under the Coal Leasing Act Amendments as an example, there is a bit of now-you-see-it,

now-you-don't here, because the Secretary issues a coal lease which continues so long as coal is mined in commercial quantities, subject, of course, to periodic revision of the terms and rates and conditions.

11 It seems a bit incongruous to us, all other considerations aside, for the United States on one hand to issue a 40-year lease or to last as long as the mining operation lasts, knowing that the coal has to be strip mined in many instances, and, on the other hand, saying you can only have a permit for 5 years and then we are going to start you over again.

11 A permittee is constantly monitored under the act. The regulatory authority is required to make inspections on an average interval of not less than once a month. The regulatory authority will require numerous reports from the operator.

11 The regulatory authority will receive information from other sources. The act provides for an immediate shutdown when any condition or practice exists even if that condition is not a violation of the act, if that condition creates an imminent danger to the public health or safety or is causing or can reasonably be expected to cause environmental harm to land, air or water resources.

11 We do not quarrel with those provisions. We accept them and are prepared to live with them, and I might add we do not quarrel with the concept of a strip mine bill.

11 If I may be permitted another personal note, when I was Deputy Solicitor and Solicitor of the Department of the Interior 10 years ago, we were before Congress that time urging that strip mine legislation be enacted.

11 Now, to the requirements of the bill, we would add two others in terms of the length of the permit. If the permit period is extended as we propose it be, which is the life of the mine or the life of the lease whichever is shorter, subject to termination for violation, one point is that the applicant be required to update as required by the regulatory authority, but at least once every 5 years, the baseline and other data be filed as a part of his application and reclamation plan so that the regulatory authority, even though the permanent life is longer than 5 years, will receive the same kind of updated information that it would receive with a 5-year life of permit.

11 The other is that we have drafted language which would mandate that the

regulatory authority at intervals, reasonable intervals, review each permit to determine whether the provisions of the permit should be modified in some way.

That is discretionary in the bill as it now stands. We would make it mandatory that this be done.

11 We submit, Mr. Chairman, that with these provisions, there is no need to require as the bill now does, that the permitholder go through yet another hearing and to prove that he has not violated either the law or his permit. We are very much concerned about those provisions.

12 I might point out, also, in connection with the length of the permit that at one point, in section 508, it is flatly stated that a permit is not transferable. A few pages later provision is made for transferring the permit. We agree permits should be transferable. We propose that the bill be modified to require that the regulatory authority issue regulations dealing with transfers of the permit.

12 I do call the committee's attention to this seeming inconsistency.

12 Another inconsistency that we see in the provisions dealing with permit renewal which we suggest be taken out, as they now stand, at page 59 there are certain requirements that are set out. It is stated that a renewal shall be issued subject to public hearing upon the findings by the regulatory authority that the requirements set out at 59 have been met.

12 Now, you turn to page 73, and 74, however, and we find another set of conditions which, as the bill is now drawn, are applicable to a renewal application, and these conditions in some respects do not simply mirror the provisions on page 59.

12 As I say, I believe with the amendments we propose, this whole issue of a shorter permit is unnecessary, can be eliminated, and the bill can retain the same oversight, the same monitoring oversight, the same enforcement provisions there are there now, and the operators will be relieved of what can be a very, very difficult situation for them in financing as a result of litigation that could arise, growing out of hearings on these 5-year hearings and renewal.

12 I would like to discuss the citizen suit provision, and I want to emphasize that we support the concept of a citizen suit. We believe that certain changes should be made to eliminate some provisions which we see as unnecessarily friction-causing.

12 In looking over the citizen suit provision, it is identical with the citizen suit provision that was included by the conferees in the vetoed H.R.

and in the bill which the House committee reported out after that, which was 13950.

12 Now, about that provision, the conference report stated that under that provision an operator could not be sued in a citizens suit if he is operating in compliance with the permit and the regulations and the complaint really is that the regulatory authority is failing to enforce the act. Unfortunately, at least in my reading of the text of section 520(a), I find that I conclude a citizens suit can be brought against the operator when the real complaint is that the regulatory authority is failing to comply with the act. That can be corrected by language.

12 My point is, I don't think that the language as written bears out or fully carries out the intent of the committee.

12 Another point that was stressed in the conference report and in the committee reports was that there was a concern that the citizens suit provision not be turned into a vehicle for the bringing of frivolous lawsuits, and obviously we share that concern.

12 The safeguards that were suggested by the committee were the provisions for the award of court costs and for the posting of bond as a condition to a temporary restraining order or a preliminary injunction.

13 Unless the language for the award of court costs includes a provision for an award of attorneys' fees, I doubt that it is going to be much of a safeguard. Under Federal law, an authorization for the award of court costs does not include attorney's fees. An attorney's fees must be provided for specifically. The citizen suit provision in the Water Pollution Control Act amendments does include a provision for attorney's fees and in this citizens provision in this bill another correction there is an authorization for attorney's fees. We believe that authorization should be included here, too.

13 There is one other provision which we believe should be considered by the committee to effectively safeguard against frivolous actions. Frivolous is perhaps the wrong term. We are not concerned so much with frivolity as we are the use of the citizens suit be determined opponents of the concept of strip mining itself.

13 It is one thing to be against strip mining unless it is properly safeguarded. It is another thing to be against the strip mining per se.

13 If the Congress of the United States passes this bill, it will have made a judgment that it is not the public policy of the United States to be against

strip mining per se. We all know in the real world that litigation can be brought by opponents, by people who do not believe in the concept of strip mining at all under any circumstances, litigation which is brought for the purpose of delay, for lengthening out the review process in the hope of wearing out the operators.

13 Now, those things happen, unfortunately. We suggest, therefore, that the citizens suit provision be modified by providing that we say before a suit can be brought an affidavit has to be filed by the person bringing the suit. We suggest that the bill provide that if the court finds that that affidavit was filed in reckless and wanton disregard of the allegations that the court be authorized to award exemplary damages.

13 The standard that I have given is not an easy standard. You will recognize it as the standard applied by the Supreme Court in liability cases against the public figures. It is not an easy standard to overcome, to meet, and yet it does provide some safeguards so that in the extreme case there is a remedy against the needless, timeconsuming litigation which is brought not for the purpose of enforcing effective strip mining, but for the purpose of "simply stop the whole idea".

13 We have also proposed an amendment to the judicial review commission.

13 The CHAIRMAN. We have a long witness list and undoubtedly there will be some questions. I have read your statement in full; it is excellent and there are a lot of suggestions we will have to look at. But if you can expedite your statement, it will be helpful to us.

13 Mr. WEINBERG. On judicial review, we simply suggest that judicial review of all orders be in the court of appeals rather than in some cases in the district court, which is one step to the court of appeals in the case where if it is important, it is going to go anyway.

13 Mr. Chairman, I believe the other points which I was going to make are set off in my prepared statement. In the interest of time I will stop at this point and I will be glad to answer any questions that the committee has.

14 The CHAIRMAN. Does this conclude your presentation, Mr. Radin?

14 Mr. RADIN. Yes.

14 The CHAIRMAN. Let me say I thank all of you and the constructive work that has gone into your presentation this morning. You have raised specific issues and I want to look at your specific suggestions. I recognize that the group before us here this morning not only represents public-owned,

cooperative-owned, user-owned utilities, but represents people who have been for strip mining.

14 I sometimes get a little impatient with witnesses who tried very hard to sustain a veto, who fought the concept of strip mining legislation all along, who are now here telling us we are now going to have legislation, and you want to make it better. Your track record shows you are for sound reclamation and we want to work with you and take a sound look at the recommendations you have made.

14 Mr. Vento?

14 Mr. VENTO. Mr. Chairman, I looked at the statement, I would echo your sentiments. I think some of the suggestions made here seem to be in terms of good spirit in terms of making this proposal workable.

14 I am particularly interested in a lot of the parts, but particularly the permit part where you talk about the 5-year length of permit. The problem seems to be you need more leadtime in order to get the capital once you get the permit on line. You are suggesting almost 3 years, but on the other hand I think there is sometimes an uneasiness about granting permits with a longer period of time in the event we want to hasten production.

14 I think the act provides and asks for certain requirements in terms of setting up the process so that that permit application does not cost some money to get done to provide the plan and so forth and so on.

14 I wonder if with that process you have thought about the preparation costs. I don't think permits are going to be granted as easily. I think there has been sort of an idea of risk involved and let's take a chance and permits are more easily granted without too much thought about the overall plan, but I think this bill envisions a permit process that looks ahead and says, we are going to do this, we are going to make the commitment.

14 Is there any way you can begin the process of bringing about the necessary capital and so forth prior to that without necessarily modifying the law?

14 How long did you say again it would need? How much time do you think you would need?

14 Mr. WEINBERG. Let me answer you this way, and this is out of experience

under the Federal Mineral Leasing Act.

14 After the lease is issued, one begins the process of developing the mining plan. Now, the mining plan is really the mining and reclamation plan, and one must assemble the same kind of information that is required in this bill and one must assemble and it is just as expensive. Because it is so expensive, and so detailed, it is difficult, and unusual and almost never happens that this kind of detailed examination is begun before the issuance of the lease because it is so expensive.

15 We have not suggested to this committee that it eliminate those requirements. We do suggest that they be looked at in connection with the requirements that are also imposed on the development of a mining plan, but we don't suggest that they be done away with. We will live with them but because they are so expensive, and the extensive number of borings that have to be made, hydrologic and other data that has to be gathered, we are concerned, and we really cannot start until we have our lease; and we are, therefore, concerned about this 3-year aspect.

15 Mr. VENTO. Are you suggesting permits be 8 years in length? What are you suggesting in this area?

15 Mr. WEINBERG. What we are suggesting is after the permit is issued that the permittee have 7 years to get into operation and that the length of the permit be coextensive with the life of the lease or the mining operation, whichever is the shorter, subject, of course, to termination in the event of default or violation.

15 Mr. VENTO. I think that is most reasonable. Thank you.

15 The CHAIRMAN. Are there any questions on my right?

15 Mr. Skubitz?

15 Mr. SKUBITZ. Mr. Weinberg, you placed your finger on one of the sections that has bothered me about this legislation. That is the so-called interested parties. Are they interested because of some matter related to reclamation or are they interested in stopping mining. It is my desire to place some clause in this bill that will help us get at the so-called interested persons whose game is simply to stop the mining of coal because of action on their part. This type program can break a small operator by stopping his strip operations.

15 Thank you, sir. I commend you on your testimony.

15 The CHAIRMAN. Mr. Seiberling?

15 Mr. SEIBERLING. Thank you, Mr. Chairman.

15 I will be brief. Mr. Holum and Mr. Weinberg, your testimony is very refreshing. I guess I am about as far out as anybody on this committee and not just from where I happen to sit, either. But you are trying to give the constructive, thoughtful, and, I think, in most cases - and I want to study it - meritorious suggestions. As far as I am concerned, if I am convinced that you have a good point, I will be glad to offer an amendment myself if nobody else does.

15 I would just like to ask you, Mr. Weinberg, with respect to one of your comments, if a losing plaintiff in a citizens suit can be charged with attorney's fees, wouldn't this effectively kill most citizen suits before they get off the ground?

15 Mr. WEINBERG. I believe not. Bigness is the curse of this country and it has affected citizen suits, too. These citizen suits are brought by organizations that are formed for this purpose, that are well financed and, believe me, they know how to litigate.

15 The effective citizen suit I don't believe is going to be brought by an organization that either is developed for the purpose and obtains finances or already exists.

15 Mr. SEIBERLING. A private person or a Sierra Club could not. They start out with one strike and have to raise money from contributions.

15 It does seem to me this is going a bit far.

16 Mr. WEINBERG. May I comment on that, Mr. Seiberling? The organizations, and I am a contributor myself, are tax free.

16 Mr. SEIBERLING. The specific ruling of the IRS ruled the Sierra Club was not.

16 Mr. WEINBERG. That is correct, but they can set up separate and apart from the legal arm. The NAACP does it and most of the organizations do it.

16 Mr. SEIBERLING. I agree that would be a help.

16 Let me just say the way to approach this seems to me would be to provide that the judge has discretion where he finds that the suit was brought in bad faith, for purposes of harassing or for some other reason which by traditional

reasonable and equitable principles the judge can take that kind of action.  
But  
just because of the loss of that suit will not justify awarding of damage.  
There has to be some finding of bad faith.

16 Mr. WEINBERG. I would agree with you. It was not our purpose to suggest the awarding of attorney's fees or exemplary damages be automatic.

16 Mr. SEIBERLING. Thank you.

16 The CHAIRMAN. Thank you, gentlemen. You have given very effective testimony this morning.

16 Mr. HOLUM. May I thank you for the opportunity to have appeared before you this morning.

16 The CHAIRMAN. We will try to take a closer look at your suggestions and try to develop constructive approaches here.

16 [Prepared statement, together with proposed revisions to H.R. 2 and S. 7 and position paper submitted by the panel may be found in the appendix.]

16 The CHAIRMAN. Can we have the agricultural panel on now?

STATEMENT OF A PANEL CONSISTING OF ROGER SEIBOLDT, CHAIRMAN, LAND USE COMMITTEE, KNOX COUNTY, ILLINOIS BOARD; WILLIAM CURRY, PRESIDENT, NATIONAL CORN GROWERS ASSOCIATION; ROBERT MASTERSON, ZONING ADMINISTRATOR, KNOX COUNTY, ILL.; AND RUSSELL ARNDT, TRIANGLE FARMS, LaCROSSE, IND.

TEXT: 16 Mr. SEIBOLDT. Thank you, Mr. Chairman, and the committee for affording us time here from the Midwest to talk to you.

16 My comments will be quite brief. They consist of a written statement and a photo album which we have prepared to show the soils, the mining operations and reclamation in Knox County in western Illinois.

16 The CHAIRMAN. For the record, will you identify yourself and your colleagues?

16 Mr. SEIBOLDT. My name is Robert Seiboldt. I am a Knox County farmer. I am a township supervisor from Copley Township, which is a subdivision of Knox County of which I am a board member of their body here to appear before you today.

16 Also, I have some maps -

17 The CHAIRMAN. Will you go down the table and identify your colleagues?

17 Mr. SEIBOLDT. On my immediate left is Mr. Robert Masterson, zoning administrator of Knox County. On his left, John W. Curry, president of the National Corn Growers Association, and on his left is Russell Arndt from La Crosse, Ind., of Triangle Farms.

17 My name is Roger Seiboldt. I'm from Victoria, Ill. I am a Knox County farmer and supervisor of Copley Township. I am also a member of the Knox County Board from district 4.

17 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.

17 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.

17 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.

17 From my own standpoint as a 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?

17 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.

17 According to the Illinois State Geological Survey, Illinois contains approximately 160 billion tons of coal reserves of which 88 percent 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.

17 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 counties for only 12 percent of the State's coal?

17 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.

17 Who 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.

17 In closing, I would like to extend, once again, our invitation to this committee to come to Illinois to our Knox County and view the prime agricultural land affected by the process of strip mining.

17 You will find attached to the back of my prepared statement a news article which appeared in our local paper on February 23 about some comments from our Governor Thompson.

18 I won't read it at this time, but I would like to ask that it be a part of my statement.

18 [The newspaper article has been placed in the committee files.]

18 Mr. SEIBOLDT. I would like to say at our county board meeting in which Mr. Masterson and I discussed this trip with the other members of the board, and there was some question that arose about us coming here and lobbying and using tax dollars for the purpose, this trip has not been funded by any tax money.

18 There have been private contributions from banks, agribusiness, and private individuals which are funding our trip here today.

18 I think that will conclude my portion of it, but here is the album. I would like to hold up the maps so you will understand what they are.

18 This is a plat map of the area of Copley Township and the land that is colored in red is either owned or has been disburbed by the strip mining process.

18 Mr. SEIBERLING. Is it about half of those?

18 Mr. SEIBOLDT. Around a third.

18 There are 23,000 acres and something over 7,000 acres so it is approximately a third. The land acquisition process is still a day-to-day thing.

18 Here is a map of Knox County in which it shows the total lands affected or to be affected in the county by the process. It is owned or controlled.

18 I would like to leave these things with the committee. They can look at them and inspect them at their leisure.

18 Mr. TSONGAS. They will be made a part of the file.

18 Mr. VENTO. Mr. Chairman, I have listened to that. I am a little

perplexed by the statement attached. I don't know what the Governor's position is by virtue of that statement.

18 Is that to indicate that he is sympathetic to your presentation here today?

18 Is that the point? What is the point of attaching that?

18 The article attached to your testimony - I don't quite understand that.

18 What is your position? Do you favor the legislation as we have it here; is that correct?

18 Mr. SEIBOLDT. Yes; we support the legislation and Mr. Masterson in his prepared statement will outline in more detail the county's position.

18 Mr. VENTO. Mr. Chairman, I think we would want to go through the whole panel and then have questions. Maybe we ought to proceed that way, if there is no objection.

18 Mr. MASTERSON. May Mr. Curry at this time give his brief statement?

18 Mr. TSONGAS. You may proceed.

18 Mr. CURRY. I am John Curry, a farmer from Knox County, and president of the National Corn Growers Association, but more than that a farmer who has had over 20 years experience acting the part of a farmer, of a partially mined farm.

19 I have a short statement I would like to read related to that.

19 During the last 24 years, I have operated a farm that first faced the trauma of impending mining, anticipating the destruction of a family farm with the precise assurance of an advancing cancer.

19 However, due to a legal and economic maneuver, we averted complete takeover and salvaged one-half of the farm from being stripped.

19 We then were faced with the problem of what to do with a farm that was partially spoils and the balance not disturbed. We turned our efforts to upgrading the land by leveling, reseeding, erosion management, weed and tree control.

19 We reoriented our business to a pasture emphasis.

19 A significant portion of the spoils is covered by water, made up of small and large lakes. We researched the potentiality of catfish production for a

10-year period. We have introduced and protected scarce wildlife. We provided and encouraged its recreational potentials. The costs have been high, the returns very low.

19 The soil is droughty, and has a short pasture production season. Spoils land must be supplemented by unmined land to balance a livestock program. Twenty years of experience tells me that the productive potential of spoils created by the present system of mining are and will be low.

19 No. 1 land in our area, on the other hand, has very high productive potential, 160 bushels of corn are current expectations from this land.

19 With management practices now available, we could well expect to continue to reach at least this yield for the foreseeable future - 4 1/2 tons of high quality energy that sustains men for each of 50, 100, or even 1,000 years is not a prospect that should be ignored when compared to one-time "cropping" of coal and virtual nonproduction into the very distant future.

19 This is not to say that coal should not be mined or that stripping should be stopped. It is to say that a prime renewable natural resource, our great lands, are being destroyed to utilize a one-time resource.

19 It is to say that the technique used is very crude and unsophisticated in terms of its capability to protect topsoil. It is to say that prime lands must be preserved if we are to feed our people and maintain our balance of trade.

19 If I might ad lib there at that point, 40 percent of the good lands of the entire world lay in our midwest probably, bounded on the east by the Ohio River and on the west by the Mississippi and on the north by the State of Minnesota and on the south by the Ohio River - 40 percent of the prime land of the world and a great lot of this area contains coal underneath the surface of the land.

19 It is to say that better techniques of mining are being and will be devised. It is to say that man, in his search for survival, is justified in seeking assurance that those resources he deems necessary to his survival and good fortune, are protected and used judiciously.

19 It is to say that there are reasonable answers; reasonable men find reasonable answers.

20 Thank you for the opportunity to appear before this committee.

20 The CHAIRMAN. Thank you.

20 Mr. MASTERSON. Mr. Chairman, my name is Robert Masterson. I reside in

Galesburg, Ill.

20 I have been employed by the County of Knox since early 1967 as zoning administrator, plat officer, and de facto director of planning.

20 I appear here today on behalf of, and with the authority of, the County Board of Knox County, Ill.

20 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 in H.R. 2.

20 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.

20 My appearance here today is not intended as an indictment by the county board, against any particular coal company or the industry in general.

20 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.

20 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.

20 The CHAIRMAN. Let me suggest something. I have read your statement through and it is excellent, but we have other witnesses and a crowded schedule. A lot of your material is about the importance of agriculture to Illinois.

20 We know a lot of it is about the richness of your Illinois soil. We understand that. We really need to understand better what that shows through your slide show and have your specific suggestions as to what we might do in this bill to make it better for you.

20 Take the 10 minutes or so you will need. It will take the rest of the morning if you read this entire statement.

20 Mr. MASTERSON. Since you are familiar with the quality of the soil and its high productivity and what we may lose in the event we don't get a decent strip-mining bill or if we don't put aside the prime agricultural land which

comprises 71 percent of our county, we are underlain by coal to the amount of 61 percent of that total land area.

20 We stand to lose over 250,000 acres if strip mining continues. I am talking about 250,000 acres of prime agricultural land. Illinois, of course, is ranked high always in agricultural output. Illinois has always ranked first or second in export of agricultural products of States in the Union.

20 I would like to touch on our experience as we have tried to handle this problem locally which seems to be the industry's position in many instances that the Federal Government not get involved in strip-mine legislation because it could be handled on a local level, preferably on the State level where each State has a different set of conditions and you can't apply a Federal law equitably throughout the country on each State and then at the State level they will argue only the Federal Government can handle it because they can come up with a uniform code and come up with a code that will not present to one State over another certain economic advantages.

21 In Knox County generally we have attempted in the past to control strip mining through the State-granted powers of zoning, each case first in 1954 where the county attempted to ban strip mining on certain areas.

21 They were overruled by the Supreme Court. However, the Supreme Court made it certain that under certain conditions we may be able to set certain standards.

21 In 1974 we were again defeated in the Supreme Court on a ruling that the State Reclamation Act prevented us and we could not set any standards.

21 We are in court again testing whether we can set any conditions with respect to adjoining land and the effect of strip mining on adjoining lands.

21 We have lost the first round; the coal company has been granted an injunction and on a 3-year permit they are stripping as usual.

21 I think they have found an effective way of circumventing any local control and this process can continue ad infinitum, so we are supporting Federal legislation even though we may prefer to have some local input and that is the area we are primarily concerned with, which is the ability of local units to have an input into this legislation.

21 I would like to touch on one other point, which I believe is critical to our area and that is dealing with assessed valuations.

21 It is an argument that is consistently brought into consideration whenever we discuss the effects of strip mining in a particular area.

21 The coal companies are quick to assure us that the county is not likely to lose assessed valuation after they have completed strip mining a piece of land.

21 They never ask that the land be assessed downward. In 1959 the county took a reassessment of all lands and as a result of that assessment, assessments were dropped on stripped or spoiled lands.

21 In fact, we undertook a study and this was just 3 years ago and it covered a period from 1940 to 1971. It included four heavily stripped townships in our county. We compared tracts within the townships and we did not compare townships to townships because each does have its own assessed valuation.

21 But we found that stripped lands on an average throughout the county showed a loss in assessed valuation over that period of minus 4 percent, while assessed value increased 40 percent.

21 Tax dollars returned on those lands, stripped lands, showed a plus 3.3-percent increase and unstripped land showed a 69-percent increase or a difference of 65.7 percent between stripped and unstripped land.

22 I believe although there may not be relative changes in assessed valuations on the overall picture, unstripped lands in those townships are going to be expected to assume more and more of the tax burden.

22 The county again is proposing to do a reevaluation in 1978 or 1979 and in the event that occurs the assessors advise us that productivity of the soil is going to be a definite factor in establishing assessed valuations for taxing purposes.

22 We have considerable lands stripped and spoiled in that period of time so we can expect considerable reduction on the value of some of those lands; this is all documented.

22 Without taking much more time, I would just like to conclude by saying that 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:

22 First, that all prime agricultural land be placed off limits to strip mining until the reclamation of prime agricultural lands can fully restore them to premining productive capability.

22 Second, that section 506 of H.R. 2 and 406 of S. 7 permits provide that the applicant prove that no prime agricultural land is included within an area to be strip mined.

22 Third, that section 513 of H.R. 2 and 413 of S. 7, public notices and public hearings, be amended to provide local governments between 45 and 60 days to respond to the official notification of the regulatory agency of an application for surface mining.

22 Many county boards only meet once a month and it is possible that the 30 days, as proposed in the present bill, could fall between meetings.

22 Fourth, that section 522 of H.R. 2 and 422 of S. 7 be amended to automatically designate all prime agricultural land as unsuitable for surface mining.

22 Prime agricultural land shall be defined or determined by the State department of agriculture and the U.S. 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.

22 In our county alone we have 39,000 acres zoned and a program of continual purchase of land and this could mean that the bill would have no effect whatsoever in those areas where large amounts of land have already been put together.

22 Fifth, that definition 17, "person", in section 701 of H.R. 2 and section 501 of S. 7 be expanded to include "appropriate local units of government."

22 At the present time the definition seems to be a little vague and we feel maybe it ought to be tightened up a little.

22 In closing the county board calls attention to an apt inscription on the former agronomy building on the campus of the University of Illinois in Urbana:

22 "The wealth of Illinois is in its soil - its strength lies in its intelligent development."

23 Again, our purpose is not to stop strip mining.

23 The CHAIRMAN. Thank you. We would like to see your slides.

23 [Slide presentation.]

23 Mr. MASTERSON. We are trying to look at the quality of the land from

various angles, what land is being stripped and what has been done in the past on reclamation in our area.

23 Mr. SEIBERLING. Are you north or south of the Shelbyville Marina?

23 Mr. MASTERSON. It would be north.

23 Mr. SEIBERLING. Your comments would not apply to areas south.

23 Mr. MASTERSON. They may apply in certain States, Mr. Seiberling.

23 Mr. SEIBERLING. Thank you.

23 Mr. MASTERSON. To be more specific, I think our comments would apply to just those lands which are rated as prime.

23 Mr. SEIBERLING. Would that be true of the prime lands south of Shelbyville?

23 Mr. MASTERSON. The prime lands, as our testimony spells out, we would identify them in Illinois as those lands which support the major cash grain crops in Illinois, and prime land in other States are even possible in other parts of the States that may be prime for certain uses which would not be prime in the north or central part of the State.

23 Generally, prime land in Illinois is that which supports four or more major crops.

23 The CHAIRMAN. That concerned me. How do you define prime agricultural land?

23 I am with you. I want to protect you. We are losing 2 million acres of land a year of best agricultural productive land to strip mining, subdivision, and all of these other uses.

23 That is one reason I could not understand why agricultural people were against our land-use planning bill. This was one bill that offered hope for preserving the agricultural land.

23 We can talk about that later. Go ahead with your slide presentation.

23 Mr. MASTERSON. The slide on the screen is a scene of Knox County northeast of Victoria, a small community in Knox County. It just shows the type of land being stripped.

23 You will notice in the center section of the slide an active strip mining operation. This photo is dated 1974.

23 They have gone through this area to the left side of the screen since that time.

23 This shows the same general area. It is from about the same position except it is looking southeast from that point.

23 It shows the land in full bloom in July of 1976, this past year. It just shows the type of crop and the full utilization that is made of the prime land in the county.

23 This slide shows a closeup, a ground-level shot of the land. You will note that the soil is almost as dark as the coal underneath it. This land is destined for strip mining.

23 This is the type of land that is being stripped and I might mention in Illinois we have a new reclamation act. They are removing the topsoil, this type of soil, stockpiling it and replacing it on top-graded land.

24 However, at this point, even according to our mines and minerals department director, there is no prediction of how long before that land will be brought back to the way it was earlier.

24 This is last year's crop of corn in Illinois. In Illinois, we have never had a complete loss of crop due to a drought or due to a washout situation. That is Knox County.

24 This is a field of soybeans. Everything grows very well in this part of the State.

24 This photo was taken last summer in an active area being worked today. It shows the type of land being stripped and the purpose is to show the contrast.

24 Then off to the left the topsoil or surface soil has been removed and stockpiled.

24 This is to give an idea of the soil strata. You will note the rather rich surface soil to the top, the material here is a depth between 15, 20, 25 feet including the topsoil and the loess material. The coal in this zone is probably 45 to 50 feet.

24 We are into areas where the overburden is anywhere from 22 feet down to about 65 to 70 feet.

24 This is another shot to show the darkened surface soil toward the top of the cut.

24 This is the way the overburden is distributed. His shovel puts it down in end rows. No effort is made to segregate out the various types of soil. It is all mixed.

24 This is the type of soil that is being used under the returned surface soil and it is very doubtful what this land is going to be capable of in the long term.

24 Mr. RUPPE. Do you have any experience in Illinois as to what has been done with mined land in previous situations of this type?

24 Mr. MASTERSON. Yes, sir, there was an experiment conducted last year in Knox County.

24 They did not get a very good result and it is really too early to tell. They are saying it may be 10 years before they can really have a comprehensive set of data to know what will happen as to how long these lands could be productive.

24 The test plots were put into corn and soybeans and the yields are extremely low.

24 I have to be very cautious, because it is the first experiment in our area and I don't think the yields last year would be indicative of what may happen.

24 We have had a lot of rain and then close to a drought period last year, so it is pretty difficult to use that.

24 Mr. TSONGAS. Do I assume that will be bulldozed level?

24 Mr. MASTERSON. Yes, sir, that will be graded as they refer to a row topography relatively flat, probably between zero and 4 percent.

24 Mr. SEIBERLING. How deep will that soil be?

24 Mr. MASTERSON. State law requires they replace up to 18 inches if it is available. The law specifically says they will not be required to put land back in a condition better than it was prior to stripping.

24 Mr. CURRY. You need the subsoil water-holding capacity of about 10 inches of water. This is the water that is used to maintain the crops in July and August.

25 This new soil does not have the capacity. I know this from 20 years of experience. It has a very low holding capacity for water.

25 This is the reason we have some serious question whether this can in the foreseeable future be returned to a high productive level.

25 The CHAIRMAN. It is a very critical problem and it is important that

techniques be developed for soil layers going back into their same relative position.

25 Mr. MASTERSON. These are lands that were disturbed in the early 1950's in Knox County. The red area, the water area is the result of an uncovered slurry pond.

25 The area surrounding that slurry are lands that were not reclaimed to any reproductive state.

25 There were some trees planted on it. It has been allowed to grow up pretty much in a natural state.

25 There is an Illinois police association youth camp utilizing part of this ground. South of that slurry or to the lower right side of the screen is a private development, a recreational, second-home type development, with a 580-acre lake developed by a private firm and some of the problems they have been faced with is the quality of water which drains off this slurry and into their lake.

25 At this point, however, the pollution factor in the lake has not caused a problem with this slurry.

25 This slide shows an active processing plant, waste disposal area. That is the slurry area and off to the upper left, about the center of the photo is an active gob pile and for those who may not know what the difference is, a slurry is a very fine water slolution with very fine tailings from the cold washing process.

25 The gob is the heavy material, in many cases heavily acidic, and if allowed to remain up to the air and water, it does produce a sulfuric acid which eats out concrete culverts, kills all vegetation in its path. It is very destructive.

25 The slurry itself is maybe not quite as acidic. It is barren and it will never grow anything.

25 One of the problems faced with the uncovered slurry is it does dry out and the particles do become airborne and they are blown across the country.

25 Mr. SEIBERLING. Deep mine or strip mine?

25 Mr. MASTERSON. We don't have any active deep mines in the county. They are all strip mines.

25 This area was reclaimed under the first act in Illinois where they struck off the caps on the peaks or spoils and much of this land may be used for

pasture.

25 It is a very, very substandard pasture. It takes about ten acres of this to one acre of natural pasture. The community in the upper right is the small community of Victoria, Ill.

25 This slide just shows a tract that was left. The coal apparently was too deep when this area was mined. The reclamation of the land was done under the 1962 Illinois Land Reclamation Act.

25 These are spoils that were left, what we called manufactured pasture and it was prelaw land prior to 1962 in Illinois.

25 We are on the order of 1,200 acres. All of the land in Illinois has been rated by various research groups in the University of Illinois as being high and having natural fertility.

26 One of the things about Illinois soil in this area of the State takes a minimum amount of tillage.

26 This is a shot of the stockpiling of removed surface soil which will be replaced and it might mention is being replaced now on some of the land that was stripped last year.

26 This just shows the land after the surface soil has been removed.

26 You will notice the quality of the subsoil here. It is of a quality that is almost as good as the surface soil that has been removed.

26 This is just another shot of te county. It is in the early part of the year before seeding.

26 We were afraid we would get this in backward. This just shows the effects of reassessing property in the county.

26 I might just point out there was a piece of land here, you will note, in about the middle of it looks like a solid line.

26 That was one tract of land at one time until about the middle of the graph which is 1960 and then it splits into two.

26 The lower portion is the tract that was stripmined and surveyed off from the original tract.

26 The other line, the light blue line continues to rise and increase in assessed value up to 1971.

26 So, it does have a rather drastic effect on assessed tax values and per-acre return.

26 This slide shows what is left after they moved through. That house has since been removed.

26 Mr. Chairman, that concludes our slide presentation and our oral presentation.

26 I would like to leave with the committee four prints of four of those slides which I showed which I believe give a representative picture of the conditions in the county.

26 Thank you very much.

26 The CHAIRMAN. Thank you very much. We are delighted to have them and you have made a very effective presentation, Mr. Masterson.

26 [Prepared statement of Robert Masterson may be found in the appendix.]

26 I just have two things I want to get into.

26 Pursuing the point I made before, if the Soviet Union had a secret plan under which they are going to poison 2 million acres of our choicest farmland so that it could never be used again, we would be outraged because productive prime land is something we have that most countries are very envious of.

26 We are losing 2 million acres a year. We are doing it to ourselves through unwise use of land, through lack of planning, through stripmining where land is not put back.

26 The thing that has always shocked me when we had a simple little bill here to try to let counties like Knox County sit down and say we are going to look ahead and protect our land and we are putting this prime land off limits for stripmining or for other uses, we got assaulted by everybody but the groups that I could never understand were the farm groups, the agricultural groups.

26 If there is one group in America that has a stake in giving States and communities the right to look ahead and preserve their most valuable land, it would be the agricultural groups in America.

27 Maybe I am unduly bitter on this subject, but you triggered some thoughts.

27 New Jersey was known as the Garden State producing produce for the whole east coast, fantastic productive soil, half of the farmland in New Jersey is

gone in the last 25 years, not through stripmining but unwise development that could have occurred in a different pattern.

27 The same is true in Suffolk County, Long Island, and lots of other places.

27 What you have shown us today is a pretty good argument for sensible locally controlled land-use plans.

27 Mr. MASTERSON. Mr. Chairman, you asked how we define prime agricultural lands and in the presentation we touch on that and how it has been done in Illinois.

27 It can be coordinated with or correlated with the U.S. Department of Agricultural Soil Conservation Service.

27 The CHAIRMAN. I hope you will work on your Governor and the Illinois Legislature because section 522 which has been the subject of some criticism, but this bill on page 127 permits a State or indeed requires a State to have a process under which the State can say, the local people can say, this land is unsuitable for stripmining - it is a national park, choice recreation land, prime farmland, something we are going to designate unsuitable for stripmining.

27 On page 128 it says surface area may be designated unsuitable for certain types of coal operations if such operations will affect renewable resource lands.

27 This is subparagraph C, in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or accrued fiber products, such land to include aquifers, and so on.

27 It seems to me that would cover your situation. If it does not, tell us how.

27 I like what one of you said earlier. We have a lot of coal in America, deep mine and surface mine, but we don't have all of the agricultural land we want.

27 Until the day comes when we can put this land back as you showed in the pictures, you may want to say we will get a lot more use from all of this as farmland than from going to one time and getting out the coal.

27 I would like to see your county have the right to designate whatever areas you want to as unsuitable for surface mining.

27 That was the purpose of this section in the bill. If your lawyers tell you it does not give you that power, tell us how to change it.

27 We would like to give you that power.

27 Mr. MASTERSON. We are not questioning that provision of the bill. We believe it offers a lot of hope. If it is contained in the Federal bill and it is passed it puts more pressure on the State to include this type of program in their reclamation act.

27 It will give us, I believe, an opportunity for input.

27 The CHAIRMAN. Mr. Tsongas.

27 Mr. TSONGAS. The chairman took my question away from me during the slide presentation. I come from the East and I have no farming or coal mines to be concerned about but it seems to me it is in the interest of the people in my district to be protected and critically so.

28 The land use bill was killed mainly from organizations of which you are a part and speaking again as someone with no farmland, I could never really fathom that.

28 Mr. MASTERSON. This is the way we felt and we felt the Midwest and maybe Illinois was not getting the input into these hearings that would give you that type of picture.

28 If we have done that today, we have accomplished something and we would appreciate your support.

28 The CHAIRMAN. Mr. Ruppe?

28 Mr. RUPPE. Do you have a county land use plan in Knox County?

28 Mr. MASTERSON. Yes, sir, we have.

28 It may be questioned because we recognize that maybe 80 to 90 percent of that county has been designated for prime agricultural use.

28 We recognize as a legitimate land use the productivity and production of crops on that land. Too often when we think of land use plans they think of grandiose plans of industrial developments -

28 Mr. RUPPE. Could you have excluded through zoning or other devices coal mining from any of the lands in that county?

28 Mr. MASTERSON. We thought we could exclude it under the State right to zone and we have been beaten down on that issue.

28 The areas were designated as agricultural. Strip mining was handled on a conditional use provision. In other words, it was subject to a permit and a public hearing and where problems were brought to the attention of our zoning board of appeals they would set conditions which would mitigate those problems.

28 However, the industry was not satisfied with the conditions that were set in granting the conditional use permit. We were taken to court and subsequently the court ruled that we had no jurisdiction to set any type of reclamation standard.

28 Mr. RUPPE. Could you have prohibited coal mining in the county if you chose to do so?

28 Mr. MASTERSON. I think we would be on rather thin ice if we attempted that.

28 Mr. RUPPE. It is difficult for us to get into the exclusionary process to the extent you are discussing it.

28 We in the Congress and the Federal Establishment, are we the ones to say this farmland in this country can't be mined or is that a decision of State and local governments?

28 It seems to me in many respects those decisions would best be made at the State and local level rather than calling upon the Congress to be the final arbiter on something as important as this.

28 Mr. MASTERSON. Sir, it depends on the type of national value you place on food production capabilities in this country. I don't think the land in Illinois is Illinois land or in the West is the West's land.

29 It is to the best interest to be used for everyone in this country. I think the Federal Government does have a responsibility to protect some of these resources. I think the States and local units of government should also have an input.

29 Mr. RUPPE. Your farmers from Knox County, I would think, could exclude coal mining.

29 Mr. MASTERSON. We may try it and it is being discussed now.

29 Mr. RUPPE. While they wish to farm the land, they really do want the benefits and protections which perhaps that type of legislation could afford.

29 The problem really is when there is a better economic use for the land they also want the right to sell the land and land use would give them the former and deny the latter.

29 Mr. MASTERSON. I think when we talk about economic tradeoffs, we are comparing corn to coal and we can't compare corn to coal.

29 We have time factors and generations involved, in fact. We are talking about a resource that cannot be replaced once it has been destroyed. I think there is more involved than just saying coal will give you 40 times what a crop will give you in a certain period of time.

29 The CHAIRMAN. Are there any other questions?

29 Mr. MARLENEE. Mr. Seiboldt said 23,000 acres in the township of Copley and 7,000 acres is controlled by the mining industry.

29 Is this a minerals ownership or are they buying the land in total?

29 Mr. SEIBOLDT. It is complete ownership. They hold complete title to the land.

29 Mr. MARLENEE. How did they acquire this?

29 Mr. SEIBOLDT. It is through fee simple title to the land. I think probably you want to know if they bought it from the farmers and this type of thing; is that right?

29 Mr. MARLENEE. Yes; did they go in and buy it on an individual contract basis?

29 Mr. SEIBOLDT. When it started, most of this land was east and south of Victoria, which has been surface mined to this date.

29 Some of it is yet to be surface mined. There were coal leases that were entered upon back as early as 1931 or 1932 when we were right in the midst of the Great Depression and the farmers in the Midwest were severely caught in a production squeeze or economic squeeze.

29 Interested parties in the industry came into the county and into the townships and bought up coal leases which would be subject to future purchase of this land and would pay an option payment of \$1 an acre or whatever they negotiated for this.

29 At that time, I think the people did not perceive such an operation happening in the community and they were glad to take the coal leases because this money afforded them substance to pay their taxes so they could hold onto their farms for another year.

29 In later years, in the past 15 to 20 years, there have been people who have retired, become aged, they do not have oncoming generations to follow on the family farm, and it is a quick way to sell the land and get all the money at once or whatever terms might fit their income bracket so they, consequently, sold.

30 Mr. MARLENEE. What are they doing after they finish the mining and so-called reclamation?

30 Does the mining company continue to hold the land or do they dispose of it?

30 Mr. SEIBOLDT. In most cases, they continue to hold it. There was a mine that ceased operation in 1960 in which they sold off a certain amount of their holdings to private individuals in the community but most of it went on to the succeeding mining company.

30 Mr. MARLENEE. They then are reclaiming it and returning it to productivity; is that correct, and operating the surface?

30 Mr. SEIBOLDT. Not to the prior productivity.

30 Mr. MARLENEE. Do you feel that the land can be reclaimed, in fact, if the proper methods are used?

30 Mr. CURRY. I am not sure I know the answer whether it can be to 100 percent of the productivity. I am not sure. We do know there is a technique available to chip the layers over somewhat in the same strata relationship that they are now.

30 We know that the potentiality is much greater than we now have. This is a very delicate thing built with literally centuries of activities. The topsoil was laid down with a glacial action in this particular area.

30 Whether man can do this in the foreseeable future we do not know, but we do know the techniques can be greatly improved.

30 Mr. MARLENEE. Let me ask a question or two more.

30 What is the annual rainfall in that particular county?

30 Mr. MASTERSON. About 34 inches annual average.

30 Mr. MARLENEE. This is sufficient?

30 Mr. MASTERSON. Given that type of rainfall and the capability of that soil to maintain moisture, it is adequate.

30 We have never had full crop failure due to drought or washout.

30 Mr. MARLENEE. The substrata surface has moisture-holding capabilities; is that correct?

30 Mr. MASTERSON. It is difficult to recreate.

30 The CHAIRMAN. Mr. Seiberling?

30 Mr. SEIBERLING. I want to make sure I understand your point and I think this is what the chairman was saying, on the land-use planning bill we would have encouraged the States to set up a process for deciding what lands were suitable for certain types of activity with local governments actually doing the deciding but the State setting up some guidelines along the suggestions of the the statute.

30 The interesting thing to me is we hear a lot of criticism of this bill for being too specific. Then we hear criticism from the same sources saying but then when you get to saying designations of lands for surface mining, it is too vague.

30 As I understand that provision, what we are doing is saying to the States, "You decide what the criteria are."

30 Now, is that too vague? Should we put some guidelines in here as to what should be the criteria for deciding?

31 I notice in your statement, Mr. Masterson, you suggested we specify certain U.S. Department of Agriculture definitions.

31 Mr. MASTERSON. Mr. Seiberling, I was not suggesting that this bill specify, aside from that it be based on a definition supplied either by the State geological survey or the State department of agriculture which would be more familiar with soil capabilities than the U.S. Department of Agriculture Soil Conservation Service that works with us.

31 When the States define the land, they would use those classifications. I am not saying this bill necessarily should define them or spell them out.

31 Mr. SEIBERLING. Should we make that decision in consultation with the U.S. Soil Conservation Service?

31 Would you suggest we go that far?

31 Mr. MASTERSON. I believe so because they are probably more familiar with conditions from State to State and they can coordinate a more effective program,

I would think, in tying the whole picture together.

31 Mr. SEIBERLING. I think your statement is excellent and you have emphasized what I think has been too much overlooked. Everyone is concerned about the energy crisis and if we keep on destroying our agricultural lands from now we will have a food crisis that will make the energy crisis seem tame.

31 We seem to rush from crisis to crisis because no one does any longrange planning.

31 What we are trying to do in this bill is stimulate that.

31 I think in Ohio, for example, where we have been strip mining probably longer than they have in Illinois, we have seen the devastation not just to the land, but whole towns have been wiped off the face of the Earth by strip mining.

31 The tax base of a lot of other communities was just dried up, and the population of the area has dwindled. So, we have lost in several different ways, so it is no coincidence Ohio was one of the first States to put in some really tough strip mining laws.

31 It is difficult to enforce when surrounding States are weakly enforcing their laws.

31 Thank you very much.

31 The CHAIRMAN. You have given us a special kind of perspective here this morning that is helpful. I have had the pleasure of being in Knox County quite a few times.

31 I hope you will keep up your fight for your way of life and what you can do with corn and reclaimed land.

31 Keep up the good work and we will heed your recommendations when we come to writing the bill.

31 Mr. MASTERSON. Thank you.

31 The CHAIRMAN. The House is going into session shortly and we have some more witnesses.

31 We will see how far we can get here.

31 Is the Montana land group ready to go?

31 Would you please come forward?

31 Will you identify yourself and your associates at the table?

STATEMENT OF A PANEL CONSISTING OF MARCUS L. NANCE, PRESIDENT, NANCE CATTLE CO., BIRNEY, MONT.; ARTHUR F. HAYES, PRESIDENT, BROWN CATTLE CO., BIRNEY, MONT.; DAN HINNALAND, HINNALAND RANCH, BROCKWAY, MONT.; BURTON B. BREWSTER, QUARTER CIRCLE-U RANCH CO., BIRNEY, MONT.; SOREN P. JENSEN, JR., PRESIDENT, COTTONWOOD RANCH, INC., McCONE COUNTY, MONT.; AND JACK KNOBLOCH, KNOBLOCH, MONT.

32 Mr. NANCE. To my right is Pete Jensen, Dr. Art Hayes, Mr. Dan Hinnaland, Burton Brewster, and Jack Knobloch.

32 My name is Marcus Nance.

32 The CHAIRMAN. As you have probably seen this morning, we have a time problem.

32 Mr. NANCE. We are going to go just as fast as we can.

32 The CHAIRMAN. Where we try to make a hearing record which ends up in a big printed volume and where we collect the advice of everybody we can get, we will print your statements in full. Take whatever time you need to tell us the things we need to know and try to summarize your positions.

32 Mr. NANCE. We are a bunch of country boys and we don't like to talk too long, anyway, so I think we can make this pretty short.

32 I live on my ranch near Birney, Mont. I have lived there for nearly 60 years and my property is located near the center of the Powder River Basin.

32 I would like to make it clear that I do not oppose a Federal strip mine bill, but I do oppose very strongly two sections of this bill.

32 First in regard to section 510(b)(5)(A), in our alluvial valleys, we have, in most cases, plenty of topsoil which has washed into our valleys from the side creeks running into these valleys.

32 We have in many cases ample irrigation water, and with the help of the summer Sun, we have the opportunity to pool our cropland with our undeveloped rangeland in a reclamation plan that will increase both our productivity and the total acres of cropland.

32 The ranches out here obtained this coal interest, fee coal, by homesteading on these lands before 1910 and at that time they had the choice of the West.

32 They naturally took up land along the valley where the lands were more productive and water was available. These fee coal lands join lands above the valley floor where there are also substantial coal deposits.

32 Mining these upper lands and leaving the fee lands would not only be wasteful but would also leave the fee lands practically valueless because the amount left would be uneconomical to mine.

32 I would like to point out here that the total amount of cropland that would be taken out of production in the Powder River Basin would be very small since the coal in most of these areas has been eroded out years ago.

32 I do not want to imply that all valley floor land can be reclaimed any better than other lands in our area due to the soil types of the hydrological effects, but I think areas to be mined or not mined should be taken on a case-by-case basis, not a blanket position.

33 The State of Montana, which has one of the best strip mining laws in the Nation, and the State of Wyoming, have both been faced with the alluvial valley legislation in their recent legislatures and due to the variable conditions within each State have soundly defeated such legislation. I find this condition more complex nationally.

33 Second, in regard to section 714, the surface owner protection, I would like to point out that there are very few ranches where over 10 percent of the ranch is private surface over Federal coal that is economical to strip.

33 I would also like to point out that we have many different types of ownership both in regard to minerals and in regard to surface.

33 In our area, for example, we have State lands, Burlington Northern lands, private lands and a combination of one owning the surface and others owning the minerals.

33 To obtain a proper land use plan as required in the recently passed Mineral Leasing Act, Public Law 94-377, it would be nearly impossible in most cases if one or more of these mineral ownerships were deleted from the mining or reclamation plan.

33 Under the restrictions of this section, I do not believe that there are many places where a proper land use plan could be put together.

33 I thank you for your attention and for the opportunity to appear here today.

33 The CHAIRMAN. You don't favor the Mansfield amendment, I take it.

33 Mr. NANCE. I am not in favor of the Mansfield amendment.

33 Dr. HAYES. I want to concur with what Mr. Nance said. I think by proper mining methods with this alluvial valley going through it, a proper mining method would be on one side of the river until that mine is developed and

reclaimed and stripped and you go on the other side provided the hydrological and water integrity stay in the river and I think it can be done.

33 In my statement I said there were two reports from the Big Horn Mine which existed on the river for 40 years, and the largest mine in the country, the Decker Mine, and the hydrological reports we receive from the State are very favorable to those things.

33 I concur with what Mr. Nance said. We have a chance to do a proper job and we have a chance to have increased productive value in this particular area.

33 Thank you.

33 Mr. HINNALAND. Mr. Chairman, members of the committee, my name is Dan Hinnaland and I own a ranch near Brockway, Mont., in McCone County. My father, who came from Norway, started the place in the early 1900's primarily as a sheep ranch.

33 The nature of the operation has changed substantially over the years.

33 Today I own nearly 30,000 acres of deeded surface and lease nearly that much additional surface from the Bureau of Land Management, the Burlington Northern Railroad, and the State of Montana.

34 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.

34 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.

34 Fort Peck Reservoir is less than 15 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.

34 I am here today not in opposition to H.R. 2, but rather to voice my concerns about two specific sections, 510(5)(A) and 714.

34 I believe the alluvial valley sections of the bill is wrong.

34 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.

34 I believe that through proper planning and reclamation that the productivity of the land and adjoining areas can be improved.

34 The proximity of the Fort Peck Reservoir opens up the alternative of irrigation that would also benefit the entire area.

34 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.

34 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.

34 With regard to section 714, Surface Owners Protection, I believe that decisions regarding the sale, lease or any other disposition of one's land is an individual property right and should not be legislated.

34 Before taxes reached the proportions they are today, one could accumulate resources to build and improve his place. When my father died in 1960, his life savings were wiped out to pay his estate taxes.

34 I fear that without other income that my family will have to sell part or all of the ranch to pay my estate taxes.

34 Resource development has already helped us through some lean years and coal development appears to be an insurance policy against future financial problems. I don't always get what I want for my agricultural products, but I sell them.

34 Land is different. I can ask a price for it and if it is offered I may sell it.

34 Just because I have federally owned coal under my ranch I should not be limited in what I can receive for the land if it is to be mined.

34 The decision with regard to the surface should remain mine without limitations.

34 I agree with Mr. Nance and everything he has said, so that will be all from me.

34 Mr. BREWSTER. Mr. Chairman, I am Burton Brewster from Birney, Mont.

35 I own 24,000 acres in the middle of the coal area. I have 2,600 acres of fee coal.

35 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.

35 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.

35 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.

35 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.

35 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.

35 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 topsoil far from water.

35 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.

35 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.

35 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.

35 Probably more significant, gentlemen, is the difficulty in defining an alluvial valley in a manner that will avoid delays, stoppages, lawsuits, and harrassment in general.

35 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.

35 Hay meadows may be claimed where a stockyard still stands, built 50 years ago but no hay has been cut since those early homestead days.

35 Finally, to deny one from mining coal on his deeded alluvial valley is discriminatory and a denial of one's individual rights.

35 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.

35 What about the surface owner's consent to mine coal? It should be a two-way street.

35 I am a strong believer in one's individual rights.

36 Because of the checkerboard pattern of coal ownership and land ownership, I firmly believe that the Federal leases should be granted and coal should be mined where the surface owners want development.

36 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.

36 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.

36 Thank you.

36 Mr. KNOBLOCH. I am Jack Knobloch from Birney, Mont. I will skip over the first part of this and go into what I am concerned about.

36 I think you have a copy of my statement.

36 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.

36 The exclusion of the alluvial deposits in areas where reclamation can be accomplished will cause a more piecemeal mining operation.

36 This will result in a less efficient use of our coal resources. Due to a more broken mining pattern, it will be compatible with the unmined surface.

36 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.

36 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.

36 Decisions to prohibit areas to be mined should be done on a case-by-case basis with landowner guidance.

36 In regard to the surface owner problems, 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.

36 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.

36 The proposed regulations for the surface owner protection will take away our right to realize the maximum return and production from our land.

36 In some cases, it may not cover the actual loss of production that the mining operation may cause to the ranch or farm unit.

36 I want to thank you very much for the opportunity to appear here today.

36 The CHAIRMAN. Thank you, Mr. Knobloch.

36 Mr. JENSEN. I am Pete Jensen.

37 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.

37 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.

37 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.

37 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.

37 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.

37 Montana has been conscious of the importance of this.

37 Energy has never been more important to our country than now.

37 Can we selfishly expect other States to provide the needs for us?

37 I believe in a tradeoff 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.

37 We do appreciate good laws, and commend you for your efforts.

37 Thank you, Mr. Chairman.

37 The CHAIRMAN. Mr. Nance, does that complete your group?

37 Mr. NANCE. It does.

37 The CHAIRMAN. Let me thank you for your direct and forthright summary of the points that bother you. I know it was difficult for you to come here. We appreciate it very much.

37 On the two points you raised, I had just two points on each.

37 We have been told by all sorts of experts and concerned groups that these alluvial valley floors, at least the center part of the floor, where the subirrigation is, that portion is so different, that the hydrology is so delicate that if you interfere with that in the course of strip mining, you are going to change the whole character and drainage and desirability of an alluvial valley.

37 You seem to disagree with that because I know you love the land and I know you don't want to see these valleys in which your parents and grandparents lived destroyed.

37 Do you agree with the disturbing of the alluvial valley floor?

37 Mr. NANCE. Mr. Chairman, in my particular ranch, we have done a great deal of research in core drilling and overburden studies.

37 We find areas where our elevation, you would say would be 10 feet above the water level - you have in those cases the alluvial material is washed in in these valleys that you are referring to.

37 They have techniques now called buffer dams. The water comes in from these irrigated areas. They are not high enough for irrigation. But they put in buffer dams to stop that water from coming in during mining and after mining, breaking those buffer dams out and we have practically the same material in there less the coal we had before.

38 So, modern technology is a great deal different from some of the mining we saw in Illinois in 1950. I think we have to be able to look at the technology in order to make those judgments.

38 The CHAIRMAN. You argue, then, in some cases, in some locations you can mine through the whole alluvial valley floor and get a good result?

38 Mr. NANCE. I would say in most cases.

38 The CHAIRMAN. Second, you seem unhappy about the surface owner consent provision which is on page 172 of the bill.

38 What we tried to do there, and there was a long and bitter dispute, was to say, all right, if the rancher in that area wants to continue to ranch, we will protect him, even the Government owns the coal and maybe the people of the United States could get some energy out of it, we will protect you.

38 On the other hand, we say if you do want to mine that area, we will give you complete protection from loss of income during the years the mining is going on.

38 We give you complete cost location and relocation during the mining and reclamation process. We give you compensation for loss of livestock, other improvements, any other damage to the surface or reasonably anticipated to surface of the land and the value of the land and the value afterward.

38 On top of that, there is a bonus. You can get double the amount of all of these things I have listed or \$100 an acre. Now, why isn't that fair?

38 Mr. NANCE. Due to the small percentage that would be involved. You are assuming you have one ranch with one solid bottom hole. We have burned out and washed out areas and none I know would be affected by 25 percent, 10 percent in most cases, and to take 1 percent out at twice the appraised value would be uneconomical to the rancher because even if his land was worth \$110, he would get \$210.

38 The CHAIRMAN. Are you telling me in most cases a big surface mining operation is going to be checkerboarded?

38 Mr. NANCE. What I am trying to tell you is that you won't get consent for that valuation.

38 I think it resembles the Mansfield amendment.

38 The CHAIRMAN. Are there any questions?

38 Mr. MARLENEE. You gentlemen are all highly successful ranchers and I can attest to that.

38 I would like to ask if all of you have visited the reclamation site at Colstrip?

38 Mr. NANCE. We have.

38 Mr. MARLENEE. Do you feel the forage, the productivity on the ground that has been reclaimed has returned that land to the productivity that it originally had or has exceeded that?

38 Mr. NANCE. Mr. Marlenee, the land they have reclaimed and the land they have mined recently, yes. The land that was claimed in the area of the 1950's, as the gentleman from Illinois pointed out on his slides, I would say no.

39 At those times, they did not preplan the reclamation plan. The situation is a great deal different now than it was then. That mine started out, I think, in 1926.

39 There was a coal mine there and just left in a pile.

39 Naturally, your topsoil was mixed with all the rest of it and it could not be put back in a proper manner. But the land that is being mined now since 1973 and reclaimed, yes, it is better than it was.

39 Mr. MARLENEE. I appreciate you gentlemen traveling some 2,000 miles to get out here to testify.

39 Mr. HINNALAND. May I add the area around Colstrip takes roughly 30 acres to run a cow a year and we have 13 to 15 inches of rainfall a year so you will not talk about destroying a lot of vegetation.

39 With the modern methods we have of reseeding and fertilization, I think there is no doubt it can be claimed just as a productive State or more than before.

39 The CHAIRMAN. Mr. Vento?

39 Mr. VENTO. Mr. Chairman, I listened with interest to the statements. You suggested certain problems, that there were not problems with alluvial valley floors in terms of mining them.

39 In this Colstrip location, which I have not been to, are there any examples of reclamation of alluvial valley floors?

39 Mr. NANCE. No, sir, not at Colstrip.

39 There is at Decker, which is the largest coal mine in the world. It is not in a crop land deal. It is in range land, but the soil types would be the same as if there had been crop land there.

39 Mr. VENTO. In your judgment, do you think that is a successful restoration or reclamation of the alluvial valley floor to its previous

condition?

39 Mr. NANCE. There is no doubt that that would be much better. The soil structure at this Decker Mine was a very highly saline post to start at so it is not really a test.

39 All I can tell you is it is similar in hydrological effect. As far as the reclamation point, it would not be because the country around the Decker Mine is heavy saline in the first place.

39 So, no, there are not any in the State of Montana. I am sure there are in Wyoming.

39 Mr. VENTO. I guess after the testimony we received earlier, there are no examples of reclamation of alluvial valley floors.

39 The second point is the alluvial valley floors only made up a small percentage of the areas involved. I think that the figure may have been 3 or 4 percent of an area that might be coal minable.

39 Mr. NANCE. The problem I have with that is that smaller percentage is the only percentage that the private individual owns.

39 It is confiscation of practically all of the private individual's fee coal because they are all in the alluvial valley.

39 Mr. VENTO. In other words, you are suggesting you would have to have permission in order to mine in those areas?

39 Mr. NANCE. I will leave this map with the committee. You can see it is just a typical situation. The white area is the fee coal. All the rest, the green, is Federal coal.

39 You can see the old homesteads along the creek. Naturally, they wouldn't move if they had the chance to do so.

39 So, practically all the individuals who fee coal, at least the alluvial valley, will come out at least in the valley.

39 The CHAIRMAN. Thank you.

39 Mr. Seiberling?

39 Mr. SEIBERLING. Thank you, Mr. Chairman.

39 How many of you gentlemen have already entered into agreements to permit the mining of your land?

39 Mr. NANCE. I think all of us have.

39 Mr. SEIBERLING. As I understand it, most, if not all, of that land you entered into agreement on is partly at least in the alluvial valley floor?

39 Mr. NANCE. No; practically all of our fee coal is in the alluvial valley floors. However, we have surface position over nonfee coal.

39 Mr. SEIBERLING. My question is the coal with respect to which you have entered into agreements to permit the mining includes coal in the alluvial valley floors; does it not?

39 Mr. NANCE. It would, yes.

39 Mr. SEIBERLING. So, you already in effect committed yourself to permitting this to happen?

39 Mr. NANCE. That is correct.

39 Mr. SEIBERLING. I have a map here showing the location of some of your properties, and specifically Mr. Knobloch, Mr. Nance, Mr. Brewster, and Mr. Hinnaland, and a lot of it is in the Tongue River Valley.

39 I also have a map which has been prepared by the U.S. Department of the Interior, Bureau of Land Management, September 1973, entitled "Birney Decker Planning Unit, Mile City District, Montana."

39 It would indicate that your coal mostly is in the area entitled either economic reserves, which is area two, I take it which is Mr. Nance's and Mr. Knobloch's coal, or area three, entitled "Marginal Reserve," and I take it that is primarily Mr. Brewster and Mr. Hinnaland and some of Mr. Nance's.

39 Is that correct?

39 Mr. NANCE. That is probably correct. We have some misgivings about the Birney Decker study. We thought it was poorly done.

39 Mr. SEIBERLING. If there are additional problems in mining particularly alluvial valley floors, the people with whom you signed agreements might well go ahead and decide not to go ahead with mining.

39 Mr. NANCE. That could be, sir.

39 Mr. SEIBERLING. We have had testimony while you can put back material into the alluvial valley floor after mining and nobody questions that, it will no longer have the same flow characteristics as far as the water percolating

through it.

39 Do you have any evidence that is correct? I am referring to the subirrigation.

39 Mr. NANCE. None of this is the Tongue River Valley is subirrigated.

39 Mr. SEIBERLING. None of it is subirrigated?

39 Mr. NANCE. No, sir.

41 Mr. SEIBERLING. I think we should ask the USGS.

41 Mr. NANCE. Anything from the basin would be coming down the Tongue River.

41 Mr. SEIBERLING. So, it is a side tributary that would be subirrigated?

41 Mr. NANCE. Yes.

41 Mr. SEIBERLING. Those would also be covered under your mining agreement?

41 Mr. NANCE. Yes.

41 Mr. SEIBERLING. If there were adverse effects from submining of these alluvial valley floors, would these not affect other offsite areas particularly downstream?

41 Mr. NANCE. Our State laws prohibit us from doing so without an alluvial valley implication in the State law.

41 Mr. SEIBERLING. If it adversely affects downstream owners, you would be prohibited from mining?

41 Mr. NANCE. That is correct.

41 Mr. SEIBERLING. I understand that a Dr. Ray Gould for the Montana Energy Advisory Council did a study which indicated that the majority of the area's residents said they didn't want coal mining in the Birney Decker area; is that correct?

41 Mr. NANCE. I met Mr. Gould a member of times and Mr. Gould is very biased about the situation.

41 Mr. SEIBERLING. You mean his study did not indicate that?

41 Mr. NANCE. His study indicated it was not the fact.

41 Mr. SEIBERLING. Are there any other studies that confront Mr. Gould?

41 Mr. NANCE. I don't think any other studies were done.

41 Mr. SEIBERLING. On what did he base his study?

41 Mr. NANCE. Dr. Gould is from the University of Montana. He only likes to talk to people who are compatible with his views and his ideas are a great deal different from those of the principal land owners of Montana

41 Mr. SEIBERLING. If the majority of the residents said they did not want coal mining, it would seem he is compatible from the majority of the people.

41 Mr. NANCE. The majority of the people don't have coal under their lands.

41 Mr. SEIBERLING. They would be adversely affected if the effects were adverse?

41 Mr. NANCE. Not under our State laws other than a socioeconomic effect.

41 Mr. SEIBERLING. Thank you very much.

41 The CHAIRMAN. Thank you very much for being with us.

41 I grew up in a little town in northern Arizona. Somebody said it was so small that they said the entering and leaving signs were on the same post.

41 Mr. NANCE. Thank you for your time, Mr. Chairman.

41 [Whereupon, at 12:43 p.m., the committee adjourned, subject to the call of the Chair.]

41 [Prepared statements of Marcus L. Nance, Arthur F. Hayes, Dan Hinnaland, Burton B. Brewster, Jack Knoblock, and Soren P. Jensen, may be found in the appendix.]

FRIDAY, MARCH 4, 1977

43 U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, Washington, D.C.

43 The subcommittee met, pursuant to notice, at 9:10 a.m., in room 2212, Rayburn House Office Building, Hon. Paul Tsongas presiding.

43 Mr. TSONGAS. This morning we will continue hearing testimony on H.R. 2, the Surface Mining Control and Reclamation Act of 1977, and if we are going to hear all the witnesses, we should start reasonably on time.

43 What I have done arbitrarily is to allocate a half hour for each of the five groups that are testifying, which should finish us up somewhere near 12 o'clock.

43 Mr. Arthur, do you want to start?

STATEMENT OF HARRIS ARTHUR, EXECUTIVE DIRECTOR, RESEARCH CENTER, SHIPROCK, N. MEX.

43 Mr. ARTHUR. Thank you, Mr. Chairman.

43 Mr. Chairman, and members of the subcommittee. My name is Harris Arthur. I am from Shiprock, which is in northwestern New Mexico on portion of the reservation where there is now extensive coal mining and energy development activity.

43 There are plans now to develop regions, coal deposits in that region, to supply coal for as many as seven coal gasification plants, each consuming 8 million tons of coal annually.

43 Total deposits between the El Paso lease and the Utah International lease in that region total 1.9 billion tons of coal, strippable coal.

43 It is right in my backyard, so to speak. I was born and raised there. My family and my people are all there.

43 Currently, there is mining going on to feed the Four Corners powerplant. Utah International is mining about 8 million tons annually, 20,000 tons a day.

43 There are other areas of the reservation that are being mined or are under lease, totaling 107 acres, plus an additional 40,000 acres which we share equally with the Hopi Nation.

43 So my concern and the concerns of my people who live in the impacted area are very clear, they are very definite, there is extensive apprehension and fear, and rightly so from these developments.

44 We feel, those of us living in the area, that if we are to have these types of developments, there ought to be some stringent form of legislation or regulation to control it.

44 As it is now, all the mining that has taken place out there up until now has taken place without Federal control, such as the legislation that is being considered here, or any tribal regulation. The States have assumed regulatory authority, but that brings in the question of conflict of jurisdictions,

jurisdictional conflicts, tribe versus State, which is a very, very tough issue at this point.

44 What we would like to see - what I would like to see, and those that agree with me who live on the land - is regulation that would guarantee, or that would preserve the integrity of the land, that would protect us from the pressures of development.

44 We know that our tribal leaders are under pressure to develop, and consequently, they make hasty decisions, often, and I for one have been very critical of these hasty decisions.

44 An example is that the El Paso Natural Gas Co. leased, renegotiated a 40,000-acre lease, and I for one believed it was hastily done because of the need and the pressure to develop. As a result, the tribal council agreed to 8-percent minimal royalties, while we know that Federal coal leases for 12.5-percent minimum royalty.

44 This 4.5-percent difference could mean a \$4 00 million loss over the life of the mine, 678 million tons, all because the council was not well informed, the agency responsible, the Bureau of Indian Affairs, did not lay the cards out.

44 The reasons these pressures are exerted are plain. I am the first to acknowledge the need for jobs. I do not need some coal company or energy company telling me I need jobs for my people. We have an unemployment rate of 60 percent. We have a per capita income of \$9 00. The average educational level of the people is the fifth grade.

44 I know what we need, but I know that if we are going to solve our problems, we are going to have to do it in such a way that the Navajo people regain their dignity, their identity, their respect, and do it in such a way that they preserve what makes them Navajo, and certainly developing energy resources such as coal on a massive scale such as that being proposed threatens that fiber which makes us Navajo, or Indian people.

44 We are land-based people, and what we want is the protection to preserve that base, to preserve the integrity of that base.

44 It is not that the people who live on the land are against development. It is not that at all. It is a real, true desire to be able to choose how you are going to live, and how you want things done, and how you want things to happen, and we are tired of people telling us how we are going to live, from Window Rock, from the BIA, from energy interests, and what we want is the dignity of choice.

44 We have given - the leases that have been signed so far under which mining has taken place are inadequate in many cases. Attempts are now being

made to rectify some of these leases. Annually, the Navajo Reservation exports enough energy to maintain the energy needs of the State of New Mexico for 16 years.

45 So, we have given. We have done our share, and we can do more, but I think we are going to do more, if we are going to be asked to pick up some of this slack to meet the demands of the rest of the Nation so that the people in Los Angeles and Phoenix and Tucson can run their electric toothbrushes, we demand a fair shake, and we want to be treated with some respect and some dignity, so that we can all maintain or continue to maintain lifestyles that the American people are used to.

45 But that lifestyle is where the pressure comes from. I believe from the bottom of my heart that if the American people would realize that there are limits on this Earth, that the resources of this Earth are finite, that they will begin to realize, or adjust to the shortages we are now experiencing in this country, perhaps by the next generation or so, a few generations down, we will have a generation of Americans who will realize that there are limits and that they have to live within these parameters of these limits.

45 That is, I think, what we are trying to tell the American people. We are willing to share, but we are willing to share equitably, and certainly we need jobs and certainly we need the money. I do not question that one bit, but it is the way things are happening that I question.

45 Up until this point, development has been hasty, uncontrolled, and that has been very dangerous to the survival of our people.

45 So with legislation, strong, stringent Federal legislation, I believe we can begin in the right direction, and this legislation that is before you, H.R. 2, the section on Indian lands, I am advised by the attorneys that work with us that the language stated in H.R. 2 is dangerous, because "allowing tribes to elect to assume full regulatory authority over the administration and apportionment of the regulation and apportionment of surface coal on Indian lands," implies that the Navajo Nation or the Indian tribes do not now have that full authority.

45 We have the full authority and the absolute power. We do not need to be allowed that authority. The study provision, I believe, in H.R. 2 as it reads, says that we would like to see legislation changing this, and I am aware of

other legislation that was attempted in the 94th Congress, I believe, which was more acceptable to the Indian communities I have been in touch with, for instance, the Northern Cheyenne and the Crow and what was known as the Melcher amendment, I believe, was more to their liking, and I certainly agree with them.

45 Currently, the Navajo Tribal Council and the tribal officials in Window Rock have in their hands legislation for surface mining controls and reclamation, and I am told by our attorneys that this legislation is as strong, and more so, than the present legislation you are considering, H.R. 2 and it was designed after previous Federal legislation.

45 Even that is on the shelf because of what I am told is a conflict in law. The Indian Civil Rights Act of 1968 limits the penalties of violations that the tribal courts can enforce. So the tribal council have promulgated their own regulations, and they found violations of these regulations. but they would be limited in the extent of the penalty of those regulations. These are some of the problems, I think. This is a particular problem why that piece of legislation has not moved on.

46 So, I think if we were to resolve issues such as this and move ahead, we can begin to control the strip mining activities out there more effectively.

46 Thank you. That is all I have to say. I want to thank you for the opportunity for coming here. I think it is indeed an honor for me as a citizen from the Navajo Nation. I have no official capacity in the tribal government. I direct a group which independently was formed because of the concerns of coal mining activity up there, and we are thankful that we can have an opportunity to speak before you.

46 Thank you.

46 The CHAIRMAN. Mr. Arthur, I wanted to thank you for coming here and giving what I think is impressive and moving testimony. I liked your emphasis on the land as the basic resource of the Navajo people. I know the deep love and affection and respect that you and your people have for the land, and I want to make very sure that any legislation we write takes this into account, and is satisfactory to intelligent, concerned people in the Navajo Nation, and certainly you are one of those.

46 I have been trying to, trying very hard, to get the members of the committee who will be making these tough judgments out in the field to see some

of these situations on the ground. I do not think there is any substitute for it. We have tentatively scheduled a trip leaving here a week from today that will go to Wyoming and then spend the night in Farmington and give us an opportunity with helicopters to see the mining areas that you have spoken about in your statement. Then maybe we will get on over to Black Mesa and see what is being done there.

46 So as far as I am concerned, if you develop the capacity of the Navajos to administer their own land, under tough laws to govern places where we are going to get the coal out, I would be happy to see that in the legislation.

46 We will go back and take a look at the Melcher approach as opposed to what we find in 710. I think you find 710 as now written inadequate for your purposes.

46 Mr. ARTHUR. Right.

46 The CHAIRMAN. Have you had a chance to visit Black Mesa? They have been at it 4 or 5 or 6 years there. Have you had a chance to see the adequacy of the reclamation they have been doing? Do you have any judgment on that?

46 Mr. ARTHUR. They have a better chance of reclamation out there, to the extent that they receive a little more rainfall than we do around the Navajo, Four Corners area.

46 The reclamation activity, this I will grant Utah International. The reclamation activity of Utah International I think is an honest effort, but I really believe it is just an exercise in futility, because they have to import water, and sustain the growth with irrigation, and at Black Mesa they have to do the same, but not to the extent that they do out at Utah International.

47 So there is an effort being made, but to this day, not 1 acre of the areas that have been stripped is classified as reclaimed by any regulatory authority, and they have been mining since 1962.

47 The CHAIRMAN. You have about 15 years experience there?

47 Mr. ARTHUR. Right.

47 The CHAIRMAN. Well, it should show results. If they cannot do it in 15 years, one begins to ask whether they can do it at all.

47 Mr. ARTHUR. That is what we are saying. We have seen the efforts of Utah International and have seen what is happening, and planning on more and more without having seen successful results really scares the hell out of you.

47 The CHAIRMAN. Well, I thank you very much.

47 Mr. Chairman, I wanted to say to the other witnesses here today that I have an overriding engagement that I have to keep this morning, and I asked Congressman Tsongas to preside for me today. I have been through, I guess, hundreds of hours of hearing on this subject, but I learn something new each time. Each new witness from a different area with a different perspective has something different to offer. I will follow carefully your testimony today.

47 Mr. TSONGAS. There are those who have argued before this committee that you cannot reclaim land, that when you tear up the soil, even if you take out the topsoil and put it back later on, that the various strata are mixed up and you essentially will never have land that is as productive as it was initially.

47 Is that your opinion, or is that your experience?

47 Mr. ARTHUR. It depends, you know. This subject of reclamation is very broad, and the definition of reclamation is so evasive.

47 If society, wherever the mining is taking place, defines reclamation as just regrading the slopes and that is it, and if society will accept that, then it is reclaimed. But the society, if it says, "No, you have to put it almost the same," get the same vegetation growing and established like it was before, and establish the standards so tough that it cannot be achieved, then it is impossible.

47 I believe this is the case out there, that it is just impossible to get it back to the productivity that it had before, because of the soil profile and because of the water. The natural rainfall cannot sustain the vegetation that they have experimented with.

47 Mr. TSONGAS. Does New Mexico have a strip mining law?

47 Mr. ARTHUR. Yes; they do. They have a Surface Mining Control Act. What I was referring to earlier, sir, is that the States versus the tribe's jurisdiction, that question is such a tough issue, and I for one believe strongly that to give regulatory authority to the State over Indian lands is a very dangerous situation to be in.

47 Mr. TSONGAS. One final question, if I can.

47 The land that is going to be strip mined, or proposed to be strip mined, what is the agricultural use of that land now?

47 Mr. ARTHUR. Right now it is grazing, but the land does have the potential for extensive agricultural development, because next to it is the Navajo Indian irrigation project. So it can be productive for agriculture, you know, farming, but right now, it is mainly grazing at this point.

48 Mr. TSONGAS. Mr. Seiberling?

48 Mr. SEIBERLING. Thank you.

48 Is the Navajo mine in Farmington, N.Mex., in the Indian lands?

48 Mr. ARTHUR. Right.

48 Mr. SEIBERLING. This is one of the areas you are referring to, where there is no really meaningful reclamation?

48 Mr. ARTHUR. Right. I was saying earlier, sir, before you were here, that Utah International, which is mining that area, is making a serious attempt, but they have gone at it on an experimental basis, and have poured extensive amounts of money into it, supplementing their vegetation program with irrigation, extensive irrigation. It is not natural rainfall or natural precipitation.

48 Mr. SEIBERLING. Is it the theory that once they get the cover established, then, they will not have to irrigate it any longer?

48 Mr. ARTHUR. That is one of the theories they are working on, but it has not worked so far. Once they pull the irrigation off, the soil and the vegetation cannot sustain itself. They have found that the native species stand the best chance, and the exotic species, they are very unsuccessful with that.

48 Mr. SEIBERLING. Well, our bill provided revegetation with native species, and I am going to take a new look at it. It has gone through so many changes since I was last out there in your area that maybe you can no longer say that it is as strong as it ought to be.

48 But certainly our intention was that if it cannot be reclaimed and revegetated, it must not be strip mined, and I am just wondering if the bill does so provide, and the regulatory authority, whether it be the State of New Mexico or the Navajo Tribe, will not then have its hand strengthened in seeing that it is not stripped unless revegetated. Will that not help solve the problem that you are concerned about now?

48 Mr. ARTHUR. That would certainly solve the problems that exist out there now, but here, again, we are touching on an area, a very fine line here.

Certainly I see the tribe developing their resources down the road, but I think if the tribe were to do it, they could be more sensitive to the issues that they are concerned with now, if they were to do it themselves.

48 You see, what I am saying is that if we create legislation that would preempt the tribe from doing their own thing, so to speak, it would be a little touchy, but certainly stringent regulations, such as the provisions of reclamation, if those were strong, that would certainly be helpful.

48 Mr. SEIBERLING. We provided the tribe can set up the regulatory authority for any strip mining on tribal land or lands on a reservation. Would that give you the degrees of control that you seek?

48 Mr. ARTHUR. Yes; I was addressing that issue earlier, about the tribe now has in its hands regulations in draft form. They are just about as complete as you can get it. All they need to do is get a few conflicts in the law straightened out, with this Indian Civil Rights Act, and their strip mining regulations. That legislation was designed after Federal legislation that you are considering.

49 Mr. SEIBERLING. It is certainly our aim to give the tribe the opportunity to regulate strip mining on tribal lands, and the Federal Government would intervene only if the tribe, like a State, were not complying with the minimal conditions and standards set forth in the act.

49 Mr. ARTHUR. I want to say that what we would like to see is legislation to achieve this and give the tribes the same status that you would give the States.

49 Mr. SEIBERLING. The States.

49 Mr. ARTHUR. Yes.

49 Mr. SEIBERLING. I understand.

49 Well, thank you. I must say that some of the old areas that were stripped at Farmington, really, just are shocking. Have they reclaimed them since 1973?

49 Mr. ARTHUR. No. An experiment is taking place, but since 1962 when Navajo Mine opened near Farmington, I was saying earlier that not 1 acre to this day is classified as reclaimed by any regulatory authority.

49 Mr. SEIBERLING. Is that essentially because there is no vegetation on it?

49 Mr. ARTHUR. Because they are unsuccessful in getting anything to grow.

49 Mr. SEIBERLING. They have restored it to the approximate original contour, have they not?

49 Mr. ARTHUR. Yes.

49 Mr. SEIBERLING. Thank you, I have no further questions.

49 Mr. TSONGAS. Thank you very much.

49 [Prepared statement of Harris Arthur may be found in the appendix.]

49 Mr. TSONGAS. The people from the Powder River citizens panel and the gentleman from Montana.

49 Mr. MARLENEE. I would like to welcome my Montana neighbors to testify here before the Interior Committee, and I would introduce Helen Waller, from Circle, who is indeed one of our neighbors, and a friend, and Wally McRae, who has been an eloquent spokesman for individuals in Montana on this problem for some time and is very well versed, and Mr. Moravek, from Wyoming, who is with the Wyoming counterpart of Northern Plains, and a very fine gentleman.

A PANEL CONSISTING OF WALLACE McRAE, ROCKER-SIX CATTLE CO., COLSTRIP, MONT.; HELEN WALLER, CIRCLE, MONT.; AND GERALD W. MORAVEK, SHERIDAN, WYO.

49 Mr. McRAE. Mr. Chairman, and members of the committee, 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. Also with me today, as Congressman Marlenee said, is Helen Waller, president of the McCone Agricultural Protection Organization (MAPO), an affiliate of NPRC, and also Mr. Moravek, of Sheridan, Wyo.

50 I have a prepared statement and I submit it for the record, but I have pride in authorship, and I ask that you read it. I might read some of the things most pertinent.

50 [Prepared statement of Wallace McRae may be found in the appendix.]

50 Mr. TSONGAS. It seems to be my history that people who have 25-page statements want to read it all, and people who have 7-page statements want to summarize it; I do not know why that is.

50 Mr. McRAE. People who write seven-page statements do not feel they are qualified to speak.

50 Mr. SEIBERLING. That is because we deal in this legislation not only with ecosystems, but egosystems.

50 Mr. McRAE. There are three main points to cover in the testimony that you have. These are not all the provisions that concern us in the bill, but I

think they are the provisions that concern us the most and have to do with renewed or the possibility of renewing agricultural productivity in the Northern Great Plains region after mining takes place. I think that Mr. Moravek will speak to you about the surface owner protection in the act, and also two of the other things of the protection of alluvial valley floors. I think that each of our individual agricultural operations in that region is a very delicately balanced situation, and I think the key to the balance is the alluvial valley floors, where most of our hay and winter feed production comes from.

50 I think it is well understood that if you do not have anything to feed your cattle in the winter, that probably you do not have any cattle in the summer.

50 Also, if you mine alluvial valley floors, I think that the history of water degradation due to chemical and physical changes is well documented and well known, and I do not need to go into that here, but I think it is something that is less well understood, perhaps, and that is if you mine an alluvial valley floor, you also develop a system of other impacting corridors.

50 I have land on Tongue River in southeastern Montana. There is a tentative planned mine on an alluvial valley floor there at the present time. It will only mine a very small portion of that river bottom, and it will impact to varying degrees everything downstream from that until you get to the Yellowstone.

50 Mr. SEIBERLING. Is your land downstream?

50 Mr. McRAE. Yes, sir; but what is even more disturbing to me is the fact that if this mine is developed, you are going to have a paved highway, you are going to have a transmission line, at least one, and over the long term, you are going to have approximately 100 miles of railroad, and all of those are also going to be in the alluvial valley floor, in association with the one mine.

50 The third point that I think that we are concerned with, and I will touch on this only briefly, is the importance of the national forest. Agricultural entities use the national forest under the multiple-use concept for grazing. The grazing is done primarily in the summertime, and I think there is perhaps a misconception on some of the forest lands in our area. They are not solid timber, but they are very good grass.

51 The season of use, however, is in the summer. The reclamation that has taken place in our area, that is, to a degree successful, is almost exclusively in spring grazing pastures. They are introduced species, crested wheat grass and bream and they dry out in the summer and the fall, and in the early winter,

and they are not worth much.

51 Also, one of the other factors on the national forest that affects agriculture is the fact that the near surface aquifer in almost every case is the coal seam, and if you mine the pipe, and if you reclaim and have grass, and you have no water for that livestock, you are not going to have much.

51 Also, the national forests tend to be in higher elevations and are an aquifer recharge area. If you mine those areas, the national forests on the higher elevations, interrupting the aquifer recharge area, you are probably going to impact a lot of surrounding private land, private surface, and I think this would be a very unfortunate thing.

51 I would like to refer back to my testimony that I submitted to you and read some things that really are not in the bill, but that I think are significant and important, before I turn it over to Mr. Moravek.

51 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 home town 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."

51 There is a dangerous premise here, that has been assumed by many well-intentioned people. This assumed premise says:

51 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.

51 This example is an oversimplification of the emerging science of reclamation research. Reclamation research is a new form of alchemy. Although old-time 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.

51 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.

51 I ask you not to assume that the passage of a reclamation act will guarantee reclamation. In my statement, 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 reestablished aquifers at least equal in quality and quantity to those existing before mining.

52 Further, I have seen no reclamation that, frankly, does not 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.

52 I will concede that there are site-specific areas where reclamation is a visual esthetic, and photographic success, however. Further, the presence of visual successes in reclamation jeopardizes, rather than enhances, the possibility of agriculturally successful reclamation.

52 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 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. I think the numbers for the cattle on the native land that had never been fertilized or manipulated in any way, outgained the cattle on the revegetated mined lands eight-tenths of a pound a day.

52 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.

52 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.

52 Mr. MORAVEK. Gentlemen, I am Gerald Moravek, sometimes called "Digger," and I live north of Sheridan, Wyo., just south of the Montana line. As Mr. McRae said, we have written testimony. We will summarize and touch on the key spots.

52 One thing Wally did not mention in his statement on the alluvial valley mining and the impact of the railroads and highways that I might mention is that those entities have the right of eminent domain and may condemn private surface to enter on the lands to provide these services required, so this is another concern in this area.

52 In testifying before you and before the Senate yesterday on S. 7.

52 S. 7, we think, should have this provision included. First of all is the Mansfield amendment. It is rather all-inclusive. It stops further development on Federal lands. We favor this amendment in a modified form. We feel that the Secretary of the Interior should have continued authority to issue leases where those leases, future leases, would enable the building of an economic mining package to previous leases issued. We think this is beneficial to the Nation, its problems would be beneficial to the utilization of coal.

53 However, there are over 800,000 acres of Federal lands presently under lease in the West. There are 16 billion tons of coal underlying those lands.

53 We do not feel that we can justify a continued leasing program which the Secretary is now contemplating under the EMARS program.

53 The second reason for this is to maintain a viable deep mining industry. Figures vary, but there is only 3 to 10 percent of the coal resources of the United States that are stripable, and yet we find a great movement of financial development to the West to get these stripable coal seams.

53 We do not want to put ourselves as a nation in the same position that we got into with oil and gas, where we have developed one part part of our energy resources at the expense of others, and we wind up 40 or 50 years from now back in the hole we are in today. So, we feel a modified version of the Mansfield amendment is appropriate at this time, to assure that we maintain a reserve of stripable items, that we maintain a viable deep mining industry.

53 We feel that there is sufficient coal under lease to meet our midterm goals.

53 Second, regardless of the outcome of the Mansfield amendment, we feel that the surface owner should have the right of consent.

53 Now, in the bill as written, we greatly favor the definition of the surface owner which specifies that the man must have lived on the land for 3

years, gained his income from the land, or a major portion of it. We do not feel the consent from an energy company who owns the surface is required, but certainly the consent from the actual man who is getting his benefits from agriculture productivity should be protected.

53 In this line there has been talk of windfall profits to these surface owners. I do not know of any energy company that is going to allow windfall profits in bidding for surface rights. We feel that the dickering over the price of the surface property should be between the owner and the energy firms involved prior to his consent, and prior to the Secretary issuing a lease.

53 There is no man who knows the value of your place better than you do. You know each gully, each little ravine, each hilltop, you know the grass that is produced, you know the carrying capability. You know the limitations, and you know the advantages of a typical piece of ground.

53 You know what it is going to cost you to tear up your roots, to relocate, to move to town in some cases, dependent upon your age, but most people who have developed that country on the surface have long-range goals. We never have enough money to do the things we would like to do on the place, to put up the facilities to make the improvements, but the goals are there, and we know each part of our place that lends itself to those goals.

53 We do not feel that a group of arbitrators, appraisers, et cetera, as spelled out in H.R. 2 can develop a feeling for these things associated with surface ownership.

53 Therefore, we strongly recommend that the dickering on the price, or consent, between the surface owner and the energy companies - the following point we strongly favor: State control of Federal lands as to reclamation and operation.

54 Now, in this line, we feel that those States which currently have an agreement with the Federal Government should not be kept in limbo during the implementation of a bill, but should continue on their activities to control the mining activities, to prevent the building up of a second stage of regulatory authority at the Federal level in those areas.

54 We think this makes sense for the States, and for the Government, and for the mining operator.

54 Now, since we favor this, we also favor that Federal fund now programmed for the first 4 years for support of this program should be on a permanent basis. The States are doing a Federal job, and we feel that they should be paid for this. We feel, further, that the fairest way to gain the revenue for this, and we are basically conservative - we like to pay as we go - is a small tax

across the board for mined coal which would go to pay the Federal cost-sharing arrangements with the States for implementation of these programs.

54 One final statement is that we would support the tribes' position that they be given the status of the States in the bills rather than as in the study provision.

54 Gentlemen, that concludes my testimony. I would be happy to answer any questions.

54 [Prepared statement of Gerald Moravek may be found in the appendix.]

54 Ms. WALLER. I have not prepared a written statement, because it would agree with what these two gentlemen have said. I am from McCone County, Mont., which is primarily an agricultural area, and we do definitely feel a need for passage of some type of legislation in this session, and the three main things that they have touched on are definitely concerns of my area and the people who will be left there to try to make a living off the land after the coal companies have been there and gone.

54 Thank you.

54 Mr. TSONGAS. Thank you very much. Someone who is not from the West, and I think I have three farms in my district, I think to many Members of Congress who do not have that kind of agricultural background, think that reclamation is a lot easier than it appears to be. This whole idea that land may never be brought back to its original productivity, I think, is a serious question, and I would like to thank you.

54 I think you were the first person, at least in my experience, who raised the question before the committee when I was present, so I commend you for doing that.

54 Mr. Marlenee?

54 Mr. MARLENEE. Mr. Chairman, first of all, I certainly would invite you to attend the field inspection trips in Montana, as I am sure these people would like to extend that invitation when we do visit the strip mines out there, to look at this particular problem. You will be there, no doubt, Wally, when the Interior Committee comes out?

55 Mr. McRAE. I think I am probably going to be calving heifers, and I should be home right now. We are about to move into maternity row back there, and I do not think I will be able to attend.

55 One thing I would suggest to you, and I alluded to it in my testimony, is that I think that when you look at reclamation, you are going to think that this is the greatest thing since sliced bread, because it is going to look good to you, especially in comparison to the undisturbed native range and it is going to be taller and ranker and now probably greener than the native land.

55 But I asked some of the energy company people, I said, "Look, if you are reclaiming for visual effects, why don't you plant bamboo? It is greener and taller and ranker than crested wheat and so forth." That is a little facetious.

55 Mr. MARLENEE. You feel the Mansfield amendment is too restrictive as it is, and you want changes. Do you want to go with something like the Hansen introduction on the side of the Senate?

55 Mr. MORAVEK. We do not feel the Mansfield amendment is far too restrictive, sir. We feel we should make minor modifications to give the Secretary the authority to make minor leasing quantities available, where they would build an economic unit to previously leased operations.

55 Now, this would entail very small acreage as we visualize it. As I understand Senator Hansen's amendment, on surface owner consent, the two are basically to be taken as separate items, that surface owner consent will not remove an awful lot of land from consideration.

55 Most of the people that want a lease, or want to get out, have already gotten out or leased. The people that we are concerned about is the man who winds up stripped by strip mines, ringed with highways, and ringed with other facilities, because he wanted to stay, and finally, he gets it right up to the eyebrows and he finds he no longer can stay. But right up to that time, he should have the yea or nay.

55 If at a certain point in time, he feels he has to go - I am going to ask Wally to expand on this a little bit.

55 Mr. MARLENEE. Let me ask you another question here. As I understand what you want to do, you would like to have the Mansfield amendment, and yet you would like to be able to negotiate directly with the coal companies.

55 Mr. MORAVEK. Yes, sir.

55 Mr. McRAE. I am intrigued by the idea of Senator Hansen's replacement, or amendment, for the Mansfield amendment. I hesitate to pass judgment until I see it in writing, because a lot of times things change, and I am not really sure what all this encompasses, how all-encompassing it is.

55 I think as far as the Mansfield language goes that we are facing a political fact of life. I do not expect a reclamation bill to emerge from the U.S. Congress this year with Mansfield language in it. I think that that is - well, perhaps I should not concede that, but I think that is very practical, and I think it is probably what is going to happen.

56 Mr. MARLENEE. Where do your viewpoints differ from the provisions in the present bill, H.R. 2? That is, the clauses and the definitions of surface owner consent?

56 Mr. McRAE. I do not like, and I do not think the Federal Government should like, nor do I think the Congress should like, the Secretary serving as an agent in an area where he is not required. I do not think that he is going to serve a purpose as a buffer. I think that - I know why the Secretary was cast in there, but the way it is going to work out, the Secretary is going to sit in Washington, D.C., he is going to decide the top dollar on what land in the West is worth, and it might not be enough for replacement costs.

56 Because I do not think that land can be reclaimed. The pervading theory is that you get your cake and you can eat it, too. Your land is taken out of production for a certain time, you are made munificently for this, you get your land back, it is in better shape than it was before, and your aquifer has not been interrupted. On my place alone, if the mining ever starts, I expect it to last for more than 40 years. I do not think that today, if the law, if it were passed with the language in the House version, that the Secretary could evaluate what that land is going to be worth 40 years from now.

56 Mr. MARLENEE. You mean to tell me that the language spells out how the evaluation will be arrived at, but it forecasts the price 10 or 15 years in the future, the present language of the bill?

56 Mr. McRAE. Right. You can go back, as I understand -

56 Mr. MARLENEE. And this is at the discretion of the mining company when

they come in to mine it. They say "This is worth \$1 00 an acre today, that is the price we arrived at," and then they have the option of waiting 15 years before they exercise that prerogative at \$100?

56 Mr. McRAE. You do have the option to go back, when the mining takes place and tie it to a cost of living index increase, I think, but Congressman, you know that the value of land in that area has been rising at a much faster rate than the cost-of-living index, and if this land that has been mined cannot be reclaimed to its former productivity, where are you going to go to try to replace that land?

56 Mr. MARLENEE. I would like to question, Mr. Chairman, on the productivity.

56 Your feeling is, your stand is, that we cannot reclaim this land to former productivity. Yet, we see an increase in the forage amounts. Do we really have the basic information that allows us to make a decision at this time as to whether livestock can be grazed, and this is mostly livestock land in the West, whether they can be grazed on that land, and whether they gain or lose, based entirely on scientific methods of evaluation.

56 Mr. McRAE. I do not sell pounds of forage. The reclamation efforts at Colstrip, Mont., have produced more pounds of forage than is exhibited there in the native range situation, but that is not the product I sell.

56 The product I sell is pounds of beef, and percentage of calves.

56 As you disturb that land, you bring up a lot of trace minerals. This is a copper-molybdenum balance that is a scary thing. The spoil material is much higher in molybdenum. That precludes the animals' ability to use land. It is rich in selenium. Some of the plants collect selenium, those akin to the loco weed.

57 The theory of reclamation says that you plant that which grows, because the real interest in the energy companies that are reclaiming land is in how good does it look, and how good does it photograph with the proper filter and low-angle photography, not how many pounds of beef are we going to get off that acre.

57 Mr. MARLENEE. Surely we can arrive at a scientific evaluation on this.

57 Mr. McRAE. Most of the research in Montana is financed by the coal

companies. They go to a completely detached outfit like the experiment station and they say, "We think that there should be some research done, why don't you write up a funding proposal?" So, the Montana Agricultural Experiment Station writes up a funding proposal and goes to the companies with it, and the companies say:

57 Well, we think this is a good idea, but we think you should do this and this and this, and rather than putting cattle on here and cows and calves on there, and checking not only how much the calves gain, but also what the reproduction rate is, what kind of a calf crop you are getting out of that 100 cows, we think it is more important for you to dry weigh forage.

57 They say "We think it is significant," and the companies say, "We do not want to fund it, then."

57 This is what goes on. If they have an unbiased experiment there, the companies still have the veto power over what they are funding and not funding. It is hard to get objective research when the companies are funding the research.

57 Mr. MARLENEE. Mr. Chairman, one further area of exploration I would like to go into would be the alluvial valleys. The problem of the definition, I feel, is that it is somewhat discriminatory, to say that everything west of the 100th parallel, that the alluvial valley section of the bill will apply to that. I do not know what the reasoning is there as far as the committee is concerned in drawing up the bill, but I know it applies to Montana, and that is one of the problems we have there.

57 Now, the Tongue River, or the Powder River, either one, how wide is that alluvial valley along those river systems? That is a live stream.

57 Mr. McRAE. A quarter of a mile?

57 Mr. MARLENEE. At the widest point?

57 Mr. McRAE. Probably.

57 Mr. MORAVEK. You have a great variety in the width. I live on the Tongue. The width from each bank is about 400 yards, but you go downstream a quarter of a mile and it narrows to a quarter of that on each side.

57 A mile and a half down the river, it widens out so that it is three-quarters to a mile wide. So it depends on the geologic formations this river is running through.

57 The Powder River favors a change in definition, a narrowing of definition. We feel the term "alluvial valley" should be tied down to those lands along onflowing streams which can be irrigated.

58 Mr. MARLENEE. Do you think this should be done on the Federal level, or the State level? You know, in Montana, the concept of alluvial valley is a lot different than the concept in Illinois or in -

58 Mr. SEIBERLING. There are not any in Illinois.

58 Mr. MARLENEE. It is all one, then.

58 Mr. SEIBERLING. They do not have alluvial valleys in the sense they have them out West. It is strictly a Western phenomenon.

58 Mr. MARLENEE. The areas do vary.

58 Mr. TSONGAS. Could you proceed with your definition?

58 Mr. MORAVEK. I would like to locate and quote, sir. At the bottom of page 4 and the top of page 5 of our testimony:

58 In the Powder River Basin, alluvial valleys comprise less than 3 percent of the surface if they are simply defined as those areas along a streambed where gravity flow irrigation may be practiced, or which are naturally subirrigated, and we would include in that definition undeveloped range lands are generally lying along the stream in areas which are wide enough and the soil is deep enough for surface development.

58 However, those undeveloped rangeland portions carry the same aquifers, and serve the same purpose of recharging the underground purposes, of running the water through.

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58 However, those undeveloped range land portions carry the same aquifers, and serve the same purpose of recharging the underground purposes, of running the water through.

58 We feel that undeveloped range land portion is entitled to the same protection as the irrigated areas.

58 Now, to your question specifically, sir: We feel that this definition which only ties in 3 percent of the surface, is a very narrow definition, and should be the basis in the Federal bill.

58 Now, if individual States feel that this definition is not broad enough for them, certainly under the provisions of the bill, they can enact more stringent statutes which would apply to their specific areas.

58 Mr. MARLENEE. Thank you.

58 Thank you, Mr. Chairman.

58 Mr. TSONGAS. Mr. Seiberling?

58 Mr. SEIBERLING. Thank you

58 I will just throw this out to any of the panel here, but I know, Mr. Moravek, in your testimony you go on record as supporting the Mansfield amendment provided that a certain degree of flexibility is also written into the provision.

58 Mr. MORAVEK. Yes, sir.

58 Mr. SEIBERLING. Could you give us a specific suggestion as to how you would write, or rewrite, the Mansfield amendment to provide the kind of flexibility you are thinking of?

58 Mr. MORAVEK. What I would like to do, sir, is to forward that specific working to you within the next few days.

58 Mr. SEIBERLING. Well, I think that would be helpful.

58 [The information referred to, when received, will be placed in the committee files.]

59 Mr. SEIBERLING. Second, there has been some testimony last week or earlier this week to the effect that the definition of alluvial valley floor and the related provisions of this bill are a little too vague. With respect to the testimony, I guess maybe it was not by you, but by Mr. McRae, or one of the others, concerning the coal being an aquifer, and the effect of mining the coal outside of the alluvial valley floor.

59 I would like to just explore those two problems a little bit.

59 First of all, I would like to point out that the section of the act which covers application requirements, section 507(b)(11) on page 63, requires a determination of the hydrologic consequences of the mining operation both on and off the minesite, with respect to the quantity and quality of water, and surface

and ground water systems, et cetera. That is so an assessment can be made of the cumulative impacts of the mining in the area upon the hydrology of the area and particularly upon water availability.

59 We have had people from Kentucky and West Virginia in here saying, "Oh, if you make the poor small operator go through that, he is going to throw up his hands and give up."

59 Is that a feasible requirement as far as Western coal mining operations are concerned?

59 Mr. McRAE. I hate to allude to someone else's testimony, but in the Senate hearings yesterday, there was a gentleman from my local neighborhood coal company, Mr. Smeckel, from Western Energy Coal Co., and he said there is no way that we can predict, there is no way we can comply with this provision, and he was recommending substituting from language in there, "to the greatest extent practical and possibly," and things like that, because he said, "We have no way to predict what will happen to an aquifer, although we expect that the impact will be extremely minimal," or something like that. He does not know, I do not know, and nobody knows what is going to happen, but it is not going to be good.

59 Mr. SEIBERLING. It is a shot in the dark.

59 Mr. McRAE. Yes, and he was complaining because he was asked to tell where the shot in the dark was going to go.

59 Mr. SEIBERLING. In that same section on pages 64 and 65, as it requires cross section maps which will be prepared by a registered professional engineer, a registered land surveyor, and a professional geologist when specific subsurface information is deemed essential and requested by the regulatory authority, or other qualified personnel showing, among other things, the location of subsurface water if encountered and its quality.

59 Now, I assume that if it did not encounter it, that takes care of that.

59 Then it goes on to say that the location and extent of known workings of any underground mines, the location of aquifers. And so forth.

59 Now, I assume that is not any known aquifers, but that requires them to spell out the location of aquifers in the area that is covered by the mining plan.

59 Is that a feasible requirement?

59 Mr. McRAE. Well -

60 Mr. SEIBERLING. I realize you are not a geologist, but I am trying to draw on your field.

60 Mr. McRAE. Usually, the way you find this out is by core drilling. The more extensively you core drill, the more accurate your information is going to be, but also the more extensively you core drill, the more aquifer impaction you are going to have, because you are drilling through that, you are drilling through this aquifer, through this one and down to that one, and then you are mixing the whole thing up, and by the time you find out what really was the existing state prior to core drilling, you have messed the whole thing up and you still come up with nothing.

60 Mr. SEIBERLING. You mean even if you core drill, you can damage the aquifer?

60 Mr. McRAE. Sure. Seismographic does it all the time in the West.

60 Mr. SEIBERLING. Is that true if the aquifer is the coal seam itself?

60 Mr. McRAE. Yes.

60 Mr. SEIBERLING. Can you determine by core drilling whether the coal seam is an aquifer?

60 Mr. McRAE. Yes. You can determine what the water content of the coal is, and I think by that determine whether or not it is an aquifer, but as far as the direction in which the aquifer is moving, no.

60 Mr. SEIBERLING. This does not require that. It requires the location.

60 Mr. McRAE. I think that probably with core drilling you can find out whether an aquifer exists there, but sometimes they get fooled.

60 Now, there are three areas being mined at Colstrip right now. They set up an aquifer study in part of the Western Energy mine called area A. They went out there, and it was faulted and was dry. So I do not know what happened there. I do not know, but they expected to find water in area A, and they did not.

60 Mr. SEIBERLING. What you are telling me is that even when we take precautionary measures to locate these things, we create irreparable damage.

60 It reminds me of the British poet who said, "Nature is so tender that

even when we seek to mend her, we end her."

60 Now, I would like to take you over to section 510(a)(5) on page 75. This is the permit approval or denial, and this gets us to the alluvial valley floors, and the provision which we had some testimony on, where it was indicated that it was a little too vague.

60 Subsection (5)(b) says that the proposed surface coal mining operation, if located west of the 100th meridian would, and then under (b), "not adversely affect the quantity or quality of water in surface or underground water systems to supply those valley floors in (a) of subsection (b)(5)."

60 That is the one referred to in the previous paragraph.

60 That is an absolute prohibition.

60 The first thing said was that the word "adversely" needs to be further defined. You are telling us that any mining on the bench is going to adversely affect the alluvial valley floor, if the coal is an aquifer. Is that true if it is not an aquifer?

60 Mr. McRAE. I am kind of getting out of the area of my expertise. I think all coal is an aquifer. I am guessing, and I have to admit that, but I think all coal has the potential capacity of being an aquifer. I think that all coal is a pipe underground. Most of the pipes in the West are full, and some are empty.

61 Mr. SEIBERLING. Well, if you have any ideas as to how we might revise that language and still provide a reasonable degree of protection to the alluvial valley floors - if you cannot tell the direction of the flow of the water in an aquifer, it seems to me it is hard to tell whether it is going to adversely affect the surrounding area.

61 Mr. McRAE. I am getting more and more intimidated on my qualification as a hydrologist.

61 Mr. SEIBERLING. I wondered based on your experience as a rancher.

61 Mr. McRAE. I think -

61 Mr. MARLENEE. Mr. Chairman, may I say this. Wally, you do not need to feel as if you are intimidated -

61 Mr. SEIBERLING. I am not trying to intimidate, but to elucidate.

61 Mr. MARLENEE. Your experience is that a rancher will lots of times shed more light on the subject than experts.

61 Mr. TSONGAS. Don't compare yourself to a hydrologist. Compare yourself to us. [Laughter.]

61 Mr. McRAE. I am a cowboy hydrologist.

61 Mr. SEIBERLING. So you know more about it than we do.

61 Mr. McRAE. I think there are ways you can drill into a waterbearing coal seam and find out the direction and the amount of the flow. I think that you can drill a hole over there and dye it, put in dye and find out the direction, and you have another well over here and if it turns pink or green, you know the water came from here or here.

61 Mr. MORAVEK. I would like to interject here, sir, a little personal thing. The mine that was proposed next to my place, in our discussions with the mining people, in that particular area, based upon their core drilling, they determined that the coal was not the major aquifer, that the major aquifers in that area were above and below the coal seams which they intended to mine. This was because of the type of soil that was actually there. It was more permeable than the coal seam itself.

61 However, in these discussions, they advised me that in that particular area, the water flow was not toward the river, in these aquifers, but in fact was away from the river.

61 So this would indicate - I cannot give a basis for how they do it - but it would indicate they have the ability to determine water flows beneath the surface.

61 It may well be by a system of dyeing.

61 Mr. SEIBERLING. I just have two more questions.

61 Suppose we water down this word "adversely," and make it a little more flexible by some language. Perhaps that would be in the preceding subparagraph, which says that a negligible impact, or that it would not have any significant adverse effect, or something like that. Would you feel that that gave the rancher using the alluvial valley floor any protection from the practical standpoint, knowing how coal companies operate?

61 Mr. McRAE. There is always the danger of leaving it open to an interpretation of what the qualifying word means.

62 Mr. SEIBERLING. "Adverse" means "significant" anyway, I guess, Maybe that could be clarified.

62 Mr. McRAE. If you would put - well, probably there is an acceptable adverb that you could put in there. I don't know.

62 Mr. SEIBERLING. I can see how someone could say "well, any person with this wording here could move in and just stop with a lawsuit any strip mining if there was any effect on the aquifer, because then it is bound to be other than favorable, it would seem to me, and yet I doubt if the regulatory authorities of the States or the Federal Government are really qualified to weigh the balances of protecting land for food production and other purposes, and mining coal. That requires a rather nice determination of the cost and benefits of each consideration.

62 All right.

62 Mr. McRAE. I think I am much more concerned about (a) than I am about (b). I don't expect mining to be nearly as much of an impact on the quality or quantity of water in the streams. That is not nearly as much a concern of mine or any of us, I think, as it is that you keep the mining out of those areas. Because the further away from that alluvial valley floor the mine is, the more the effect is going to be mitigated.

62 Mr. SEIBERLING. We had testimony, also, that if you mine more than quarter of a mile from the edge of the alluvial valley floor, you may in certain cases, where the drainage is away from the alluvial valley floor, result in draining the alluvial valley, where the soil is permeable, for example.

62 So we have that problem, too, but that is one that geologists are going to have to answer.

62 Finally, on page 89, it says one of the standards required by subsection 10(e) at the bottom of page 89 is "replacing the water supply of an owner of interest in real property who obtains all or part of his supply of water" and so forth, where such supply has been affected, and so forth resulting from mining.

62 Is that a practical requirement in terms of any one being able to comply with that in the West?

62 Mr. McRAE. No.

62 You can't repalce water.

62 Mr. SEIBERLING. We need some information on how to measure productivity of the land before and after reclamation.

62 Can you give us some way of measuring productivity, such as say, animal unit months or some other approximate way of measuring?

62 Ms. WALLER. I would like to respond on agricultural land. Most county offices through the Federal ASC office has a proven yield on agricultural land, and farmers and ranches have an operation of keeping records and proving their yield. We have established a proven yield on our agricultural land, that might be a suggestion as to what the actual productivity of the land is.

62 Now, when you prove a yield, you have to average in your good years and your bad years. If you get hailed ot one year, that brings down your proven yield, but I think it is the basis and could be used in the line of agricultural crops.

63 Mr. SEIBERLING. Mr. McRae mentioned in terms of cattle raising how much additional weight each animal could gain from different types of land. Is that a way of measuring, or is it susceptible to measuring?

63 Mr. MCRAE. It is awful tough.

63 Mr. SEIBERLING. How did you get that figure?

63 Mr. MCRAE. It was through research on mined and unmined land. After mining takes place, then you can attempt to, after it is revegetated, then you can find out how well you have done. But if you haven't done well, then I don't know what you do. Then you go back to your alchemy theory, that you add more money to it.

63 Mr. SEIBERLING. I certainly appreciate your testimony. You have added to our store of knowledge here. I could ask other questions, but I have used up more than my share of the time, Mr. Chairman.

63 Mr. TSONGAS. Mr. Vento?

63 Mr. VENTO. I just finished reading the testimony. I think the most interesting thing that has not been discussed by the question process here is the last couple of paragraphs of testimony from Mr. McRae and Ms. Waller, and that is the study that you point out in Montana in terms of productivity of land, which really hinges on the last question asked by my colleague, Mr. Seiberling.

63 You point out that there is a significant loss of crop production on land that has been reclaimed, even though it has been fertilized and the moisture content is apparently all right in it, as well as weight gain.

63 I guess I am not familiar with that study, and I think that might be helpful for us to have it in the record of our hearings, Mr. Chairman.

63 If they would like to comment further on that, I think that is a most interesting result, because I think it points out some of the problems that do exist with current mining practices, and I think the question arises as to whether or not the bill we have in front of us today is going to perhaps cause that change.

63 I don't know where that study is, when it was done, or whatever? Can you give me more information than what I have read here?

63 Mr. MCRAE. I could excerpt the portions I think you would be interested in. I think it is from the 1975 report of the Montana Agricultural Experiment Station on mined land as Colstrip, Mont. Almost all of the information on the crop comparison, and I think they did about eight different types of crop. They did spelts, wheat, barley, spring wheat, and maybe rye. I can't think of all of the ones. There was one crop that produced more on the reclaimed land than it did on the undisturbed, and I think it was spring wheat. I don't know why there is very little spring wheat raised in the area, and I think the numbers they had for the normal yield on spring wheat were inadequate. I don't know, but it is all contained in a small table, but I could get that to you.

63 Mr. VENTO. I guess it is secondhand, but did they point out any reasons why they felt that occurred that way? Was it because of the reclamation process, that they hadn't replaced the soil in the order which it occurred?

64 Mr. TSONGAS. Would the gentleman yield? I think it might be worthwhile for the staff to locate that study, and we will make it part of the files.

64 [The study, when received, will be placed in the committee files.]

64 Mr. MCRAE. The second part of the study concerning weight gains hasn't been published yet, but it probably will be in the next few months.

64 Mr. VENTO. Thank you.

64 Mr. TSONGAS. Mr. Marriott?

64 Mr. MARRIOTT. No questions.

64 Mr. TSONGAS. Mr. Ruppe?

64 Mr. RUPPE. No questions.

64 Mr. TSONGAS. Thank you very much.

64 Now we have the Commonwealth of Pennsylvania panel.

STATEMENT OF WALTER N. HEINE, DEPARTMENT OF ENVIRONMENTAL RESOURCES,  
COMMONWEALTH OF PENNSYLVANIA

64 Mr. HEINE. Our panel has been cut in half. Mr. Preate was unable to attend.

64 Mr. TSONGAS. You may proceed.

64 Mr. HEINE. Thank you for allowing me to make a brief statement here.

64 Governor Shapp of Pennsylvania appeared before you once before. I also appeared, as you may recall, and we showed slides of a steep slope mine at that time, and Governor Shapp indicated his strong support for Federal legislation providing that there was some fine-tuning at some point in the legislation.

64 I was asked to appear here today to repeat that commitment and that support, and also to discuss briefly with you some of the finer technical points, if you will, of the proposed legislation, particularly as it discusses approximate original contour, steep-slope mining, and a little bit, perhaps, about the abandoned mine reclamation program.

64 There has been testimony presented to you in the past that might lead you to believe that Pennsylvania has no steep slopes as such, and, therefore, we have no particular interest in the steep slope provisions of the bill, meaning that over 20 degrees.

64 We feel that we originally did the pioneering work in steep slope mining with regard to the handling of the overburden so that it would not be pushed down the hills, and in highwall elimination.

64 Again, ever since 1964, vertical highwalls have not been permitted in Pennsylvania, and in the more recent years we have minimized the amount of overburden that we allow to be put over the sides, in mining on steep slopes.

64 Again, in reference to steep slopes, we feel the technology we have developed in the steep slope area is appropriate and is applicable to the steep

slopes of West Virginia, and eastern Kentucky, and perhaps some other States.

64 Certainly it is true that from an overall production basis of coal, not a great deal of our coal comes from underneath areas where the topography is over 20 degrees, but some does, and I guess the question is how often do you have to prove the technology?

65 I think the point has been made, perhaps by some testimony to you previously, that we don't have much steep slope, and so, therefore, perhaps our technology that we developed on steep slopes is not appropriate. I don't think that is a good argument.

65 I think there is a serious concern about our operators and by others about what approximate original contour means, especially with respect to remining old mined-out areas. I don't think we should have anything in the legislation that discourages remining of backfilled strips in the past. In fact, a major portion of our reclamation of abandoned areas is being done by active operations. About 3,000 acres a year are being restored in that manner.

65 But looking at the original contour definition, it appears to us that where it says that approximate original contour means a surface configuration so that it closely resembles the land prior to mining, and blend into and so forth, we feel that the reaffected of old areas which allow what we might call a rolling terrace wherein your drainage patterns are complementing the existing drainage patterns, where you try to retrieve as much of the topsoil that was removed at that time, perhaps from mining from 30 years prior. When that topsoil is put back to the best extent possible, we feel this does meet the AOC definition, and I hope we are correct on that, because it would be quite serious if it did not.

65 But, again, because of your intent to reclaim some old abandoned land and to have operators do it as much as possible, the AOC definition certainly should meet the rolling contour practice done in Pennsylvania.

65 I think it should be clear by now that by "approximate original contour" you certainly do not mean that every swale shall be put in as it was before, and every undulation in the ground shall be put back as it was. I think that is clear.

65 Mr. SEIBERLING. Mr. Chairman, at this point, would it be appropriate to ask Mr. Heine if he would recommend in any way revising the definition of "approximate original contour" contained in H.R. 2?

65 Mr. HEINE. I would not recommend a change. I think that it is a unique definition, and I think in one respect it is rather broad, and yet I think it states clearly what is intended. So I think it gives a certain amount of discretion to the State regulatory authority, and the Secretary of the Interior.

65 I can't imagine any rewording that would make things much clearer.

65 Mr. SEIBERLING. Thank you.

65 Mr. HEINE. You are going to see, those of you who will attend a field trip on Sunday, when I believe you are intending to be in Pennsylvania, and you will have the opportunity, and I hope we have nice weather, to see some of the steep slope highwall elimination, and approximate original contour in Elk County.

65 As the name implies, it is rugged country in that county, and we have slopes up there, and some of them have been measured at 37 degrees, and they have been put back to approximate original contour, with the walls eliminated.

This is being done by small companies. These are two bulldozer, one front-end loader type operations, and yet somehow they are making a living, and apparently are going quite well.

66 Maybe one last point, and perhaps you might have some questions for me then.

66 On the abandoned mine reclamation program in title IV, we have submitted to your staff a proposed rewriting of title IV. I think that there is a whole different way that you can go about title IV, which we have recommended, and I think we are getting some sympathy for that. Certainly we feel the State should have an opportunity to use the 50 percent of the money that goes back to the States to actually run the reclamation programs themselves, because many of the States have experience in it, and I think it would be administratively a much better way to do it.

66 One of the key features that we are recommending is that lands do not have to be purchased in order to be reclaimed. Attempting to purchase lands, reclaim them and sell them, supposedly at a profit, simply doesn't work. It has been attempted in Pennsylvania, West Virginia, and Maryland. You get tied up in litigation prior to land purchase. It was unpopular for the States to try to purchase the land. I think it would be equally unpopular if the Federal Government comes in. We have had a great deal of success in getting easements

to go on the property to do the work, and to avoid the possibility of a windfall profit to the landowner by his land being improved, we have a provision in there for a "before" and "after" assessment of the land and a lien being placed on that property for the increased evaluation of the land.

66 On a practical basis, however, all three of these States I have mentioned, including ourselves, have found that the actual increase in the value of that land is minimal in most cases, and a lien isn't even necessary.

66 When you get rugged mountain land that had a strip cut in it and now is reclaimed, and now you have a reassessment of that because that strip cut is not there, it has not increased in value from an assessor's standpoint, very much.

66 But if we are going to eliminate these scarce -

66 Mr. TSONGAS. May I interrupt you? In what way has it increased in value? What is the land being used for?

66 Mr. HEINE. Primarily, the land is not being used for much of anything. If we talk about the old abandoned strip mine land, you have the cuts, there you have water in the cuts. It is a dangerous situation. You are creating acid mine drainage. The land is being used perhaps for hunting.

66 Mr. TSONGAS. Once it is reclaimed?

66 Mr. HEINE. Once it is reclaimed, it is probably still being used for hunting. It is rugged land. I am talking about the typical case now. Of course, there are exceptions. But you have eliminated a danger and a pollution source, and this is to the good of society, and, therefore, it ought to be done.

67 We spoke about the ability to put out mine fires. That is one of our biggest headaches, and that is mine fires that have to be put out immediately before they expand and become a multimillion-dollar extinguishment problem.

67 If you don't mind, I think I can conclude with that. I hope our understanding of the approximate original contour definition and how it would work in Pennsylvania and Appalachia in general is accurate.

67 We think the highwalls should be eliminated. We have been doing that for many years. We are doing it with small operators prospering from both, and primarily from a viewpoint of protection of the environment, it is necessary for those highwalls to be eliminated.

67 A highwall is unstable, it causes erosion, it certainly is a dangerous thing. We have had men killed on them. We have animals living at the bottom of these highwalls all the time, we find, and maybe there has been too much emphasis in the past on the esthetics of eliminating the highwalls. I don't think that should be discarded.

67 I think one of the reasons the industry doesn't enjoy a good reputation in this country is that it has left highwalls, which are obvious things. I think it is good for industry to have to eliminate those highwalls.

67 Mr. TSONGAS. Thank you very much.

67 In deference to the people following, I would like to have the questioning as brief as possible, so that there will be some attendance here, because the House will be in session at 11 o'clock.

67 Mr. SEIBERLING. Thank you.

67 I will try to keep it brief.

67 Mr. Heine, I am interested in your last remarks, because Mr. Bell, who I guess is your opposite number in Kentucky, and I believe it was he to whom I addressed the question as to whether he didn't consider highwalls a public safety problem, and his response indicated that I was just, that my question was ridiculous. But I take it as far as Pennsylvania is concerned, you have had, as you just said, people and animals falling off highwalls. It seems to me that they must have the same problem in Kentucky, and I expect maybe when he has had the job a little longer maybe he will hear about it.

67 Now, we heard testimony recently from Pennsylvania mine operators that Pennsylvania law would be nullified by H.R. 2. How do you feel about that?

67 Mr. HEINE. I don't know what that means. Nullified - it seems to me that although the present bill, and again we are recommending certain amendments which would reduce what we think are some unneeded bureaucracies, and perhaps, if you want to say, harassment of the operators. With some of those amendments, we feel that there will not be any significant new tasks imposed on our operators

67 The reclamation requirement, for example, should be met by our operators, and I think are being met right now. I would think that would be any operator's major concern, because that is where the money is, "How much earth do I have to move, do I have to get more machines to comply with this law"?

67 In my judgment, there will be little or no requirement by Pennsylvania

operators to do much more than they are doing now. So I don't think it will have a significant effect, let alone supplant our law.

68 Mr. SEIBERLING. All right.

68 Maybe the staff could make available to you the specific comments that that claim was made on, and if you are prepared to comment on it for the benefit of our staff, we certainly want to have a bill, or a law that is possibly for the States who are trying to do a good job to meet.

68 Now, Mr. Heine, on the highwall question, did I understand you to say that Pennsylvania has required elimination of highwalls since 1964?

68 Mr. HEINE. That is correct.

68 I think, more accurately, no vertical highwalls were allowed. This means that by definition, in our law, that highwalls had to be graded back, or the soil pushed against the highwall. I know this is a fine point, but it is made to me by the industry sometimes.

68 But in substance, there are no dangerous vertical highwalls, and there have been none left since 1964.

68 Mr. SEIBERLING. Very small operators been able to comply with that requirement?

68 Mr. HEINE. Yes; they have.

68 We have an unusually high number of small operators in Pennsylvania. We have something over 850 licensed small operators in Pennsylvania. Our average tonnage, the median tonnage for Pennsylvania operators is something like 50,000 tons a year. That is very small.

68 Mr. SEIBERLING. Can you estimate how many of them are operating on steep slopes, slopes of 20 degrees or more?

68 Mr. HEINE. I wouldn't like to be held to this, but I recall figures we pulled together a couple of years ago. It seems to me we came up with 15 or 20 percent, but that is just from memory.

68 Mr. SEIBERLING. They are backfilling the highwalls, too?

68 Mr. HEINE. Yes.

68 Mr. SEIBERLING. Would you think it practicable from the viewpoint of an administrator to have language in the bill permitting a variance, maybe along

the lines of mountaintop removal, so that they have to have an engineer certify that it is geologically stable? Would that be feasible?

68 Mr. HEINE. In regard to highwall removal?

68 Mr. SEIBERLING. Yes.

68 Mr. HEINE. No; I don't think that would be feasible. I have difficulty in visualizing how either the law or the regulations could be written that would say that sometime the highwall has to be eliminated or sometimes it does not. You will end up with the lowest common denominator. If it is an engineer showing a study that shows on a certain operation shows they can leave 30-foot highwalls, as I understand they still do in eastern Kentucky, you would end up with exactly that, 30-foot-high highwalls throughout the country.

68 I think you are better off sticking to your present wording to eliminate the highwall. I think there will be a little judgment that will come in a few instances, where perhaps a roadway is left at the top of an operation.

69 Mr. SEIBERLING. We authorized that.

69 Mr. HEINE. You authorized that, so you feel you have already taken care of that kind of contingency?

69 Mr. SEIBERLING. We have had a lot of people come in here and say, "Well, in Kentucky and West Virginia and Virginia, in the mountain areas, most of it is mountainous anyway, and the people are desperate to get flatland, and the owners of the land want a bench there, they want it left flat so they can use it for cattle grazing and the like."

69 So you feel this is an accurate or relevant or valid position based on your experience?

69 Mr. HEINE. It could certainly be that some landowners want flatland, and I am sure that is a fact in some of the mountain country. I think the question is, does society want to, in fact, allow that flatland to be established at a cost generally to society by increased erosion, instability of the highwalls, and this type of thing?

69 Mr. SEIBERLING. So it is a question of public safety and health and welfare, versus private property owners' gain?

69 Mr. HEINE. That is how I envision it.

69 Mr. SEIBERLING. Now, is Pennsylvania a member of the Interstate Mining Compact?

69 Mr. HEINE. Yes; it is.

69 Mr. SEIBERLING. Can you tell us what other States are members?

69 Mr. HEINE. Yes.

69 West Virginia, Kentucky, North and South Carolina, Tennessee, Oklahoma, Texas, Illinois, Indiana; and I have two more to go. Pennsylvania. I can't recall the other one offhand. It is Maryland. Excuse me.

69 Mr. SEIBERLING. Has the compact taken a position to seek changes in the requirement to eliminate highwalls in this legislation?

69 Mr. HEINE. No; it has not.

69 It proposed some amendments recently, but the change in your highwall definition was not among those.

69 Mr. SEIBERLING. We also had testimony that the small operators simply couldn't comply with the requirements for hydrologic information in connection with the permit application.

69 Do you think that any distinction should or could reasonably be made between large and small operators in connection with these requirements?

69 Mr. HEINE. I have given quite a bit of thought to that. It is a very knotty problem.

69 It would seem to me that the small operator, if required in every application to make a detailed hydrologic study that this could be an onerous burden on him, and could affect many small operators.

69 At the present time, of course, the bill provides some relief, a considerable amount of relief, in fact, for that so-called small operator to have these studies done by the regulatory authorities.

69 We have problems with that concept, because the regulatory authority has to review these applications and has to review for the adequacy of these hydrologic studies. We don't think the regulatory authority as the reviewer should also be the preparer of the plan.

70 Some of your very brilliant staff people came up with a thought which I think may have some promise, and I think should be pursued, and that is the possibility of either to have State geologic surveys, or perhaps local universities who have expertise in these areas might be funded to help the small operators to carry out these studies, and more or less like the county agricultural agent helps out farmers.

70 That kind of assistance, I think, would work the best. That way, the regulatory authority, although it should dispense, perhaps, the funds to these universities or what have you, to do this work, or to geologic survey, it would still be divorced from the final determination of that group and, therefore, could objectively review the recommendations of those consultants to the surface miner.

70 Mr. SEIBERLING. That sounds like a worthwhile idea that ought to be pursued.

70 Just one final question, Mr. Chairman.

70 Does Pennsylvania grant variances on the basis of the size of the operation?

70 Mr. HEINE. No; there is no provision in law or in our regulations for any variances based on size.

70 Mr. SEIBERLING. Do they grant variances on the basis of any specific standards or site conditions?

70 Mr. HEINE. We have some variance provisions with regard to how close a person may mine to a highway, and to an occupied dwelling, and this kind of thing, but that is only after publication and an opportunity for public hearings, and the variance can or cannot be granted on that basis.

70 Mr. SEIBERLING. Thank you.

70 Mr. TSONGAS. Mr. Ruppe?

70 Mr. RUPPE. Thank you very much.

70 Now, you indicated that vertical highwalls are not permitted. You do permit shaving in Pennsylvania, do you not?

70 Mr. HEINE. I beg your pardon?

70 Mr. RUPPE. Shaving of the highwall, as I recall seeing it several years ago.

70 Mr. HEINE. Yes; that is correct.

70 Mr. RUPPE. Is that one of the ways to eliminate the highwall? Could you shave it down to some smaller degree?

70 Mr. HEINE. Yes; sure.

70 You could reduce the angle of the highwall. As a practical thing, not too many operators do much shaving, because what it does is just disturb more area above the highwall, and it means he is moving a lot more earth.

70 Mr. RUPPE. As I recall my trip to Pennsylvania, they did do some shaving.

70 Mr. HEINE. The shaving would come into play after the spoil to a large extent has been pushed up against the high wall and compacted against the highwall. Then it might be that you have your last 5 or 6 feet or something, and it makes more sense to blend it in, if you will, shave it down to blend in with the rest.

70 Mr. RUPPE. I don't think shaving is permitted in this bill. Do you think it is going to be a handicap to the operator not to have shaving available to him in the circumstances you have stated?

71 Mr. HEINE. I think it is permitted.

71 Mr. SEIBERLING. On page 99, subparagraph three, it specifically authorizes it.

71 Mr. HEINE. As I recall 99, and I think we put that in shortly after you were in the field -

71 Mr. RUPPE. So that does cover it?

71 Mr. HEINE. Yes.

71 Mr. RUPPE. You indicated, too, that you did minimize the placement of overburden on the downslope, and I assume this refers to steep-slope mining. When you say to minimize spoil on the downslope, does that mean you permit it only for the first cut, or do you have certain circumstances even after that where overburden in some degree is permissibly placed on the downslope?

71 Mr. HEINE. We have no specific regulation on mining of steep slopes, very frankly. All right?

71 The technology of the modified block cut method which later went into the haulback method used extensively in West Virginia, was aimed at putting very little spoil on the downslope. So since we have no specific regulation, an operator can come in and say, "Hey, here are one or two examples where I want to put some spoil down the slope, but I will grade it out and plant it and stabilize it and this kind of thing."

71 If we find in one or two instances that it may not be too terrible environmentally, we have no alternative but to let him do it.

71 Mr. RUPPE. Now that we are preparing to write a bill, would this be a handicap or any kind of an implement to mining to have a prohibition against any spoil whatsoever from being placed on the downslope?

71 Mr. HEINE. No; I don't think it is. I don't think there is any problem at all.

71 Mr. RUPPE. It would change some of the regulatory practices of the past in Pennsylvania?

71 Mr. HEINE. Yes.

71 Mr. RUPPE. You are prepared to say you can live with a change?

71 Mr. HEINE. Yes. In the beginning of the block cut method, I think the spoil was placed more often than necessary on the downslope. That technology has been refined to a great extent, and I have spoken to the people in West Virginia and Kentucky, and they both say they have no problem, and they heartily endorse not putting spoil on the downslope.

71 Mr. RUPPE. Fine.

71 Referring to your definition of the approximate original contour, are you satisfied with the definition in the bill? You do suggest that in Pennsylvania you do provide for certain rolling contours in your definition of an approximate original contour.

71 I believe you also have, do you not, terracing in Pennsylvania?

71 Mr. HEINE. That is correct.

71 Mr. RUPPE. As a matter of curiosity among us, does this bill under the definition of approximate original contour permit either rolling contour or terracing, and I would ask the staff, because seriously, you are more knowledgeable.

72 Mr. SCOVILLE. It is the staff's opinion that it does, as long as the definitions of the AOC definition is met.

72 Mr. RUPPE. Do you think the AOC definition permits terracing?

72 Mr. SCOVILLE. Yes; it does.

72 Mr. RUPPE. On mountaintop removal, do you have any other variances other than mountaintop removal as far as return to original contour is concerned?

72 Mr. HEINE. I will probably be tripped up by this, but I can't think of any.

72 Mr. RUPPE. You can take that question back and respond. It is tough to answer it.

72 Mr. HEINE. There are no institutionalized procedures.

72 Mr. RUPPE. You do have mountaintop removal?

72 Mr. HEINE. You might term it that; yes.

72 Mr. RUPPE. In the situations where we permit mountaintop removal, we say the postmining use of the land must be defined, and we specify the number of requirements that must be entered into and carried out before the variance can be granted to the operator. Do you feel that that is particularly restrictive? Some mining people have said that you can't at the time of applying for the variance know exactly what the postmining land use will be, you can't be assured that the community will supply you the water, or whatever, and the utilities. You can't be sure of the necessary financing for any particular postmining project, and I think they would like to have mountaintop removal without, if you will, from their point of view, the onus of establishing all of the ingredients of a postmining use.

72 How do you feel about that type of provision?

72 Mr. HEINE. This is the area of one of our amendments, incidentally, "our" being the Interstate Mining Compact amendments, and I think it may be included in Pennsylvania's amendments which we expect to get in a few proposals on, many of which will parallel the Interstate Mining Co. proposals.

72 I do have a problem with the way mountaintop removal is presently worded. I think by the definition in that law, we do do a lot more mountaintop removal than I first suspected, if you read very closely our definition.

72 On the other hand, I think anybody would have the problems of lowering the profile of the whole Appalachian Mountains as the result of continual mountaintop removal.

72 Perhaps a compromise could be made that mountaintop removal might be allowed in those areas where you have these mesas, where strip mining has gone all the way around, or deep mines that are polluting that are about to be taken out by mountaintop removal.

72 Perhaps initially you could concentrate in those areas.

72 But again, to answer your question, you do have a problem with the striction now that mountaintop removal -

72 Mr. RUPPE. Could you send us a memo outlining that a little bit?

72 I have one or two more questions.

72 Mr. HEINE. Yes.

72 I believe Maryland is preparing that kind of language.

73 Mr. SEIBERLING. Could you yield a minute on the mountaintop removal so that we wrap it all up in one sequence?

73 Mr. RUPPE. Yes.

73 Mr. SEIBERLING. Of course, when I read this, on pages 95 and 96, it can be, for example, agricultural postmining use, or even reclamation, and you don't have to have any great market or investment or investment from public agencies, or private financial investment; so that I wonder really in reading this whether this is the case of people actually looking at the language and seeing how it applies in different types of situations.

73 The old saying "when all else fails, look at the statute."

73 I wonder if you would comment on that, Mr. Heine?

73 Mr. HEINE. My reading of the statute, it does say "commercial agriculture," whatever that means. If that means that a man who works in the city of Pittsburgh and has a little farm and a little piece of ground that it is mined and he raises three steers on it, and it is going to be on an area such as this, that that is commercial agriculture, then there is no problem. But if that is no problem, then there is no need to have all this language in there anyway.

73 Mr. SEIBERLING. I think we could add the word "grazing" just to make clear that is one of the uses.

73 Mr. HEINE. It is going to be, if you will, watered down to that extent, and you have to question whether it is necessary or desirable to have this rather complicated public notice, opportunity for public hearing, checking out with the State planning agencies all that to do certain mountaintop mining.

73 Mr. SEIBERLING. One of the reasons we went through this exercise, and I would like to get your thinking on it, is that we were concerned about the fellow who comes in and says, "Oh yes, I am going to put it back into pastureland," and he throws some grass seed on it and he, in fact, never uses it for any purpose like this. But this is an excuse not to have to comply with the other requirements of the bill.

73 Mr. HEINE. I think it comes down to the question of, if the area is, upon completion, stable; certainly in the East, he will get a substantial grass growth on it. Slowly, it will reinforce itself through natural seeding. It will not be an environmental problem as such from the strict, narrow viewpoint of water pollution, let's say, that - well, it may be that he has no idea in the world what that will be used for 20 years hence or whether it will ever be used for anything. So I don't know.

73 Mr. SEIBERLING. As I see it, the only point of this mountaintop removal provision is where the operator, instead of putting the overburden back on top of the mountain wants to take it all off and put it somewhere else, so that he has a bigger flat top.

73 Now, there is nothing, even if you don't have this provision, there is nothing in this bill as I understand it that prevents, and in the definition of the approximate original contour that prevents an operator after he has removed a mountaintop from regrading it so that it will be flat instead of pointed, if it is a pointed mountain originally.

74 In other words, as long as he has kept the overburden there instead of throwing it over the downslope, and has no high walls, it seems to me that if he wants to make it a subsequently rounded rather than a peaked mountaintop, that that is already covered by the bill.

74 Mr. RUPPE. Just to put our bill in perspective, doesn't the operator have to restore it to approximate original contour and can only go to a mountaintop removal situation with the approval of the regulatory authority, and then that approval is dependent on meeting the requirements of the section?

74 Mr. SEIBERLING. The word "approximate" means "approximate" and if I understand the definition, if he has a mountain that comes to a point, he goes through, mines out the coal, puts the spoil back on top and instead of having a peak, it is more or less level, then he has complied with the approximate original contour requirements.

74 What this provides, this mountaintop removal, is where he wants to take all the overburden off and put it somewhere else and have a much bigger flat area. That is all we are talking about.

74 Mr. RUPPE. OK. If you mine the hill without the head of the hollow business, you are going to put it back, aren't you, Mr. Heine, to almost the approximate original contour, because the coal seam removed is not going to take that much away in landmass, such that you will vastly alter the configuration of the hill.

74 So when you get anywhere near mountaintop removal, I think you are assuming ahead of time the use of a hollow fill and a postmining variance for the land in question.

74 Mr. SEIBERLING. I think you are referring to offsite, and it may be at the foot of the hollow, and not the head of the hollow. That could be a big difference.

74 Mr. RUPPE. It would still be classified, then, as a mountaintop removal situation, and would have to go through the requisite requirements with respect to a variance in this area?

74 Mr. SEIBERLING. He would.

74 Mr. RUPPE. In Pennsylvania, are most of the head of the hollow fills on the mined area, or adjacent to it, or are some of the head of the hollow fill areas in the permit area, but away from the mined area?

74 Mr. HEINE. We have little or no head of the hollow fill. It is a matter of mining through, and often mesa-type situation, or a butte if you will, where it has been strip mined previously, and it pays to go through and take the entire coal seam. There is very little overburden offsite.

74 Mr. RUPPE. So you would have a sort of a mountaintop removal there? No matter what you took off, you restore or replace the spoil and topsoil in question.

74 Mr. HEINE. That kind of thing has been going on for many years, certainly in Pennsylvania, and I think when this was written, this whole section on mountaintop removal, I don't think it really envisioned this kind of practice done in rolling country.

74 But by definition, and that is a seam that runs entirely through the hill, by definition we do do mountaintop removal.

75 Mr. RUPPE. In the legislation, there is a requirement for a 5-year term of responsibility for revegetation. Small operators have suggested that this is a rather lengthy and onerous burden on them in terms of getting the necessary bonding.

75 Do you feel that that is indeed a rigorous or difficult burden for them to meet in financial terms?

75 Mr. HEINE. I have difficulty -

75 Mr. RUPPE. I know it is difficult, but I think Pennsylvania could make a pretty good case for the 26 inches of moisture.

75 Mr. HEINE. I have difficulty answering that with respect to the financial burden it may place on Pennsylvania operators. I frankly just don't know. I haven't discussed it with them, and I am not familiar with their finances.

75 Certainly in many places in the East, you can get an excellent vegetation in a few years, and you know pretty well if you are going to have a failure in that time.

75 On the other hand, there may be other areas in the East that you need 5 years. So, frankly, I am rather neutral on that whole point.

75 Mr. RUPPE. All right.

75 The last thing I will go back to, because there is a difference, I think, in what you do. As far as approximate original contour, the language in the bill says it is the surface configurations achieved by backfilling and grading so that it closely resembles the surface configuration of the land prior to mining.

75 You do have terracing in Pennsylvania, and I would think if you have terracing after mining that resultant configuration would not closely resemble surface configuration of the land prior to mining.

75 My only concern is that while you have expressed the policy of Pennsylvania which permits terracing, I hope that we have not in this legislation written a definition of an approximate original contour which later on the courts will define on the face of the language, and exclude terracing, because the concept of terracing or rolling configuration is really not identified, in my opinion, as a layman, really, in the definition, and I can only hope that later on the courts will take cognizance of our colloquy and some of the testimony given, and permit the rolling configurations and/or the terracing we indeed may in fact desire as a postmining land configuration.

75 It is important, because you use it in Pennsylvania, and you obviously are sold on it as useful and perhaps necessary postmining land contours.

75 Mr. HEINE. I would make this point, though, that the original surface

configuration is not a smooth curve that just goes up and down the hill. It has undulations, it has swales, it has little rivulets going through it. So if you end up with something that sort of looks like that anyway, it seems to me that you are meeting and blending and complementing the drainage pattern. I think you are meeting almost everything else here, and I think you could make a devil of an argument that it closely resembles the surface configuration.

75 Mr. RUPPE. Except that, in my postmining efforts to backfill so that it closely resembles the surface prior to mining, I would not terrace. I think I could make the argument in court that terracing should not be permitted where the operator could, if he so chose, restore the land to almost the same configuration. In other words, that is a very conscious decision, to let that man terrace, and he could, I think, do a better job of restoring the land to the original configuration without this particular variance, if you will - not variance - but if that particular mining plan were not permitted by the regulatory authority.

76 Mr. HEINE. I think there is one other point. Our industry when it testified, was concerned that terracing would not be allowed where they re-affect old mining. That was their testimony, as I understand it.

76 Certainly, I think it is unreasonable to ask an operator who is going into a previously mined area, where your highwalls are there, where you may have a deep cut with water near it, and spoil down the downslope, for him to pull all that spoil up the mountain that was put down there before.

76 By the way, the cut, is that the original configuration of the land? I don't know if you can make an argument on that, too.

76 Mr. RUPPE. You bring up an interesting point. I hope I am not taking too much time. Where a man is mining in a previously mined area where some of the backfilling to original contour would almost preclude the mining, but if he terraced would the land be far better than what he found when he went into the area?

76 Mr. HEINE. Exactly.

76 Mr. RUPPE. Now, the last question. If the land has no swales and no original terraces to begin with, do you think under the language of this bill terracing would then be permitted?

76 I am not trying to loosen the requirements so much as I want to have this

thing settled here in this Congress and not in some court 5 years down the road.

76 Mr. SEIBERLING. Would the gentleman yield?

76 Mr. RUPPE. Yes.

76 Mr. SEIBERLING. Why would anyone want to take rolling or level land and terrace it?

76 Mr. RUPPE. Ask the gentleman. You do have a lot of terracing in Pennsylvania?

76 Mr. HEINE. That is mostly in old cuts.

76 Mr. RUPPE. But the language doesn't speak to that point.

76 Mr. HEINE. But it seems to me, and the point you made, and I thought we agreed, that the original surface configuration was a deep cut with a highwall and now the plan has improved greatly upon that, and he certainly is coming pretty close to improving upon the original configuration. He has improved the drainage patterns and so forth.

76 Mr. SEIBERLING. Do we need a variance to permit on level land sort of the reverse of the mountaintop removal? Suppose you were out in Illinois and some guy says, "You know, after you finished mining, we could really make money and you could convert this into a 300-foot-high ski slope."

77 Should we have that kind of a variance? I am serious. That might be a possibility.

77 Mr. HEINE. That is difficult to answer. He could do that. Does he have to do it as part of his mine operation? It seems to me that is a kind of variance that would happen throughout the whole history of mining, perhaps, and I am sure something will be worked out on that.

77 Mr. SEIBERLING. I think the point raised by Mr. Ruppe, while a valid one, is better handled in the committee report in which we elaborate on what the specific language means in different situations, because we have been already beat over the head with this idea that this bill is already too detailed, and I wonder if that would satisfy the gentleman?

77 Mr. RUPPE. It may well do it, and I am not trying to pick at the bill, but everything else we seem to do ends up in court.

77 Even the definition of AOC says the postmining land has to resemble the

surface prior to mining. Prior to what mining? Today's mining, last year's mining, or the mining 15 years ago?

77 We have to clarify it, because otherwise it ends up in the hands of those who perhaps philosophically don't like mining, and I don't blame them.

77 You could stop his mining. He said here, John, if he goes back in a once-mined area, the mining the second time will vastly improve the terrain.

77 Mr. SEIBERLING.No question about it.

77 Mr. RUPPE. But it may be impossible for the miner on the second go-around to achieve the reclamation that would have been achieved under the bill's provisions, because a lot of the stuff the first time is thrown down the slope. Do we ask that guy to bring all that stuff up to original contour? He won't mine it.

77 Mr. SEIBERLING. There are two ways to do it. One is to have a specific exception for reaffected land, and the other is to write in the report that where you are reaffected the land and it is not practical, feasible or economic to restore the previous premined contour, that you do a reasonable reclamation job that will be sound and better than the worst possible conditions. I would that that would be about where you would end up. I hope the staff is making notes of this.

77 Mr. HEINE. Yes, I think you would end up there.

77 Mr. SEIBERLING. I am trying to make a record here for your markup.

77 Mr. TSONGAS. As someone sitting between the two sides, it doesn't sound to me like it is all that difficult.

77 Mr. SEIBERLING. I don't think it is.

77 Mr. TSONGAS. Thank you very much.

77 Mayor Dolan and the midwestern panel.

77 Would you identify your panel?

STATEMENT OF HON. TERRY DOLAN, MAYOR, CATLIN, ILL., ACCOMPANIED BY JACK DICKSON, SUPERVISOR, CATLIN TOWNSHIP; GEORGE KINDER, CHAIRMAN, CATLIN TOWNSHIP ZONING BOARD OF APPEALS; R. MARLIN SMITH, SPECIAL COUNSEL TO VILLAGE AND TOWNSHIP OF CATLIN; CHANDLER MORTIMER, ENVIRONMENTAL PLANNING CONSULTANT; AND NAN HARDIN, NEW-BURGH, IND.

78 Mr. DOLAN. Yes, I will.

78 Mr. Chairman, and members of the committee, we thank you for the

opportunity to appear this morning and present our views on House bill H.R. 2.

78 I am Terry Dolan, the mayor of the village of Catlin, Ill., located in Vermilion County, on the eastern side of the State.

78 With me this morning are Mr. John Dickson on my immediate right, supervisor of Catlin Township, and member of the Vermilion County Board District 3, and Mr. George Kinder to my far right, chairman of the zoning board of appeals, who has been for the last 34 years a soil and water conservation specialist.

78 Mr. SEIBERLING. Mr. Chairman, before the witnesses proceed, could we have them tell us in precisely what part of Illinois Catlin Township is? Is it short of the Shelbyville Moraine?

78 Mr. DOLAN. Approximately 35 miles north of the Shelbyville, 35 miles east of Champagne, the home of the University of Illinois.

78 To my left is Mrs. Nan Hardin, of Newburgh, Ind., and who will have a short presentation after I finish, and second to her is Mr. Martin Smith, our special counsel, and on the far left is Mr. Chandler Mortimer, our environmental consultant.

78 We are here today in our official capacity and on behalf of the citizens of Catlin and Catlin Township. We have prepared and submitted this morning a statement of the views of the village of Catlin and Catlin Township with respect to H.R. 2.

78 We support that legislation and believe that although some modifications are desirable, the bill will provide significant new protections against the adverse environmental consequences of strip mining.

78 Although there is presently no strip mining in the Catlin Township, Vermilion County has been the scene of much strip mining in the past, and the land still bears the scars from this mining.

78 Over 6,000 acres is proposed to be strip mined, so we have in our statement utilized the Catlin community as an example for the need for Federal legislation to protect Midwest farmland.

78 We regard the provisions of H.R. 2 that deal with the designations of land not suitable for strip mining as among the most important in the proposed act.

78 It is in these sections that we believe the bill needs some modifications.

78 We have several special suggestions.

78 First, our most productive agricultural land should be preserved for raising crops and protected from strip mining. To this end, section 522(a) (3) should be amended to provide for the designation of prime agricultural land as not suitable for surface coal mining operations.

79 We have proposed in our prepared statement a specific definition of the setting minimum standards for prime agricultural land based in part on work of the soil conservation service that we suggest be added to the definitions in section 701 of the bill.

79 Second, section 501(b) (4) and section 522(a) (6) may be interpreted as to whether legal commitments and financial commitments as to posed to mining operations will insulate land from the designation. We would require the permit applicant to demonstrate that he would meet the standards of section 522(a) (6) .

79 Third, the procedures for securing the designation of lands as unsuitable for surface mining does not become effective until after a State program is certified under section 503, or a Federal program 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.

79 We believe that such delay could operate to frustrate the operation of one of the most important provisions of the legislation. We have proposed a method of making preliminary administrative determination of lands that are unsuitable for mining with the moratorium imposed on mining such lands until 180 days after a State or Federal program becomes effective, or the preliminary determination is rescinded on appeal under section 522(c) .

79 The feasibility of restoring a significant fraction of the productivity of farmland, prime farmland, is unknown at this time.

79 There is no evidence of such lands being reclaimed or restored to significant yields of productivity.

79 Restoration has never been achieved, and it will be several years before it is known whether restoration is in fact a possibility.

79 Our Nation needs its energy resources and its food production resources. Recovery of sources of energy should not interfere with the production of food

and, even temporarily, unless it is plainly necessary. No such necessity presently exists.

79 In Illinois, for example, the recoverable reserves of coal that can be deep mined are approximately nine times the reserves that are recoverable 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 it should be a 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 coal reserves must be recovered.

79 We have recently come to understand that we live in a fragile environment that can be easily damaged.

79 The late Arnold Toynbee, speaking of the biosphere, which he called "the film of water, dry land, and air enveloping the globe of our planet, Earth," said:

79 It is the soil present habitat, and as far as we can see today, the soil habitat that will ever be accessible for all species of living beings, including mankind, that are known to us. The biosphere is limited in its volume, and there is contained 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.

80 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 resources of prime agricultural land.

80 I would like to turn it now, unless there are questions, to Mrs. Hardin.

80 Mr. TSONGAS. I wonder whether we could ask you a couple of questions, and then after the vote come back and pursue your testimony.

80 I must say that if I lived in Catlin, I would vote for you, too.

80 Mr. DOLAN. Thank you.

80 Mr. TSONGAS. My experience with mayors have not always been enlightening, excluding in my district.

80 Mr. SEIBERLING. I would not even exclude some of them.

80 Mr. TSONGAS. In your district, or mine?

80 Mr. SEIBERLING. Mine.

80 Mr. TSONGAS. In your testimony, you refer to a study that was done in terms of corn yields and soybean yields. Is that considered to be a comprehensive study? Because the figures you used are 33 and 55 percent, very low, and the question is, is that a 1-year figure? Is that projected to improve over time? Are these isolated examples?

80 Mr. DOLAN. Are you referring to page 2?

80 Mr. TSONGAS. Page 4.

80 Mayor DOLAN. Page 4. The 33-percent figure on the corn is in Galesburg for 1 year, a 1-year yield test plot.

80 Mr. TSONGAS. Does one assume that as time goes on, the yields will improve as the soil settles and the conditions become more natural all the time?

80 Mr. DOLAN. That would certainly be the hoped-for case, but there is absolutely no information that leads us to believe that soils can be restored to anywhere near the productivity we now enjoy, which is 150 bushels to the acre of corn and 48 bushels to the joy, which is 150 bushels to the acre of corn and 48 bushels to the acre in soybeans.

80 Mr. TSONGAS. Your figure that 98 percent of the recoverable coal is recovered through deep mines and not surface mining, what is the basis of that statistic?

80 Mr. DOLAN. Nine times, sir. That particular -

80 Mr. TSONGAS. It is still 90 percent.

80 Mr. DOLAN.OK. This is based on a recent - there is a report in progress that is being done by the State Geological Survey Office, and we have been told it will be published sometime in 1977, and what they have done is, in the case of the strip minable coal, is to remove from the acres of those figures all of the towns, highways, and places that will not be stripped with a certainty, and we have ended up with a percentage estimate, and we do not have the exact figures, but the 20 billion tons, estimated as reserves in Illinois that are strippable under those conditions would now be reduced down to something less than 3 billion tons.

81 Mr. TSONGAS. We are going to have to recess for about 10 minutes and answer this vote and come back.

81 Mr. DOLAN. Thank you.

81 [Whereupon, a brief recess was taken.]

81 AFTER RECESS

81 Mr. TSONGAS. We will resume.

81 You may proceed, Mrs. Hardin.

81 Mrs. HARDIN. My name is Nan Hardin. I live in Newburgh, Warrick County, Ind. I am pleased to be here on behalf of the citizens of my county.

81 Warrick County is Indiana's largest coal producing county and the largest county geographically. Indiana ranks ninth in coal production. So far as I know there are no deep mines producing coal in Indiana. All coal produced presently is strip mined. Some 60 companies were engaged in strip mining in Indiana in 1976 with reported tonnage at 23,300,554. Not all tonnage has been reported, however. In Warrick County alone 9.9 million tons of coal were produced in 1976.

81 Warrick County is a microcosm of the interlocking social, environmental, economic and political problems of strip mining.

81 Social. - I have with me three letters from residents of Warrick County who are being harrassed by coal company blasting. May I read you one of these and place it and the others in the record.

81 Had I had time, I could have secured others.

81 I will read one and place it in the record.

81 DEAR MR. UDALL: My husband and I have been under a strain for the last 2 years. This strain is getting worse as the blasting of AMAX Coal Co. is getting worse. I have a pressure in my head and I get a terrible headache. I have a heart condition.

81 They ruined the plastering in our home, and cracked the walls. The fireplace is not safe to use. The mortaring is falling off the chimney.

81 We certainly need help, and soon, with this problem.

81 [Letters submitted by Nan Hardin may be found in the appendix.]

81 This is an elderly couple, and very recently some of their windows cracked from the blasting, and just after they brought me this copy of the notarized letter, the old gentleman is 81 years old and was taken to the hospital with a bleeding ulcer.

81 I understand that other residents of my county have corresponded with Mr. Udall already. During the past summer at a local meeting with State mining officials, 28 homeowners spoke out about blasting damage. A recent check of court dockets in Warrick and nearby Vanderburgh County showed 12 cases involving blasting damages.

81 Because of our low tax rate Warrick is one of Indiana's fastest growing urban areas. We are on a collision course in this county. Homes are being built at an accelerated rate while 35 percent of our county will be stripped to get all the coal. The coal companies are waging war on the people and our homes are the battleground.

81 Environment. - Indiana's requirements for reclamation are the weakest in the Nation, I believe. There is no provision for return to original use. There is no saving of subsoil or topsoil. The final cut in each permit area can be left open. There is a final cut near my home which is 3 to 4 miles long with highwalls several hundred feet high. We call them stripper pits and every summer people drown in them. Indiana collects no fees to reclaim abandoned land beyond modest deposits. We have no provisions to limit acid mine drainage. However in Warrick County our problem is hardness of water due to the heavy mineral content. Coal companies generally chose what they will reclaim the land-to-rangeland, pasture, forest and row crop. Row crop to a coal company means wheat.

82 Slopes can be as much as 33 degrees. All stripped land is higher than the surrounding land. In Indiana only the graveyards are left unstripped. Isolated by highwalls and surrounded by desolation, visible for miles, perhaps the graveyards are an appropriate symbol of what strip mining is all about.

82 The widest road in Warrick County is not I-64, which crosses the northern portion of the county. The widest roads are unreclaimed haul roads.

82 Economics. - I came here to invite the committee to come to Warrick County. Come to see Millersburg which 30 years ago was a thriving community with a fine red brick high school - a winning basketball team and a debating society. Now Millersburg is a desolate rural slum isolated by miles of hideous pits.

82 Is this to be the economic fate of all these people who are buying homes

in Warrick County? Are we to pay high interest rates, invest our all in our homes and in 20 or 30 years see our properties devaluate when coal is no longer king. We have no severance in coal in Indiana and property taxes on coal are assessed at less than \$50 0 an acre.

82 Political. - Most of Indiana's local, State, and Federal officials are adept at ignoring the pleas of citizens about the abuses of coal companies.

82 There may have been something missing, but I have never seen anything from any Senator or any Representative.

82 Perhaps the proximity of Amax's national offices in Indianapolis and Peabody's headquarters in St. Louis have a bearing on this. I refer you to a letter by Father Rohleder enclosed in which he talks about how people are afraid to speak out. He has recently left a parish in the stripped area. People are afraid to speak out. If they have a relative employed by a coal company, it becomes expedient to keep one's mouth shut. Should not the Federal Government protect its people from the necessity of choosing between submitting to these outrages or suffering economically and politically.

82 In regard to blasting, cannot an injunction process protect people before their homes are destroyed. Are we to have recourse to courts only after the damage is done?

82 I reiterate, come to Warrick County where we can show you a microcosm of the evils of strip mining.

82 I reiterate, gentlemen, come to Warrick County. We would like to show you what strip mining is all about.

82 Mr. TSONGAS. Thank you very much. That is very well done.

82 Have you had a chance to read over H.R. 2?

83 Mrs. Hardin. I have not read the bill. I am familiar with the other bills that have been passed previously, but I do not have a copy of H.R. 2 as yet.

83 Mr. TSONGAS. Let me ask Mayor Dolan a question.

83 Are there plans to do extensive studies on reclamation in terms of agricultural lands? Does the university, for example, have any such program?

83 Mr. DOLAN. As stated in our prepared statement, the University of Illinois has a 5-year program that is presently being undertaken. We do not have all of the final details on that, but that is the first one of any magnitude by independent State bodies, that should be impartial.

83 Mr. TSONGAS. Deemed to be extensive enough to begin to get some of the

answers we are looking for?

83 Mr. DOLAN. It should be extensive enough from what we have read and seen of the report to certainly start, and to make that clear, just start to find the answers.

83 Mr. MORTIMER. In terms of a real extent, it probably will be. The final phase of what is to be tested in this study hasn't been completed at this time, and we are discussing with the researchers some of the things which we think should be covered. There may be a problem, although I have no reason to believe that the case at this time, of what actually will be tested.

83 For example, current Illinois law requires replacement of topsoil of 18 inches. It is likely that the experiment will use an 18-inch replacement, 12-inch replacement and 6-inch replacement. It may not use 24 or further segregation of subsoil. These are things that we would like to see in the experiment. It is not clear yet whether they will be or not.

83 The experiment is funded. The initial 2 years of it are funded through the P.A. The researchers felt, and we certainly agree, that 2 years wouldn't be enough to get any sort of reliable results, and they have extended it to 5 by getting additional funding from a consortium of mining companies. Again, I will refer back to the specific details of what has been tested. That has not been finalized.

83 Mr. TSONGAS. Is there any attempt at this point to keep some of these lands from being stripmined until such time as this kind of data are available?

83 Mr. DOLAN. As far as the Illinois rules and regulations, there is not. As far as our particular case, there is. The rules and regulations by the State of Illinois do not direct themselves to the problem with farmlands, and to our knowledge not one mine has been refused a permit, including the one that we are involved against.

83 Mr. TSONGAS. Do you think that there would be problems of definition if prime agricultural land were to be at least temporarily removed from that area deemed to be stripable, either until such time as data are collected or until such time that that is the only land left?

83 Mr. DOLAN. Would there be a problem?

83 Mr. TSONGAS. Definition.

83 Mr. DOLAN. Yes. I would like to refer to Mr. Kinder to answer that.

84 Mr. KINDER. In answer to your question, yes, there would be a problem, but it could be solved by going to the Federal Soil Conservation Service and they have soil maps of the county and the State of Illinois that they could do this real quick from. They could designate land that shouldn't be strip mined. They could do that real easy. All it takes is a soil conservation soil map of the area that tells them the type of the soil, the slope and the degree of erosion, and they could set those criteria up for all States throughout the Nation, and particularly the farm belt, where most of the land is mapped.

84 This is a map of the State of Illinois, and it gives the plats, types of the land, and so forth.

84 Mr. TSONGAS. Under the definition you have on the bottoms of pages 6 and 7, which lands on that particular map would be affected?

84 Mr. KINDER. The lands that would be effected would be the highly productive lands. It would be all land you could raise corn and soybeans on, or you could farm it economically. In other words, that is lands that are now being farmed and can continue to be farmed if it isn't mined and make profit on it.

84 Mr. TSONGAS. In particular reference to that map, which land would we be talking about?

84 Mr. KINDER. Definitely about this whole center area here [indicating on map], and outlying from this possibly 50 or 60 percent of the State of Illinois, actually. There is a lot of cropland there. It would take up a lot of land, really, yes.

84 Mr. DOLAN. We wish we had this report that we spoke of earlier that is in the process of being published, because it would appear from preliminary information received that it would boil down now to that there are approximately 900,000 to 950,000 acres in Illinois that can be stripped. Our belief is, and we have no pertinent data to show this, but after they have deducted all the towns, et cetera, the majority of that coal will lie under the best agricultural land in the State, and 900,000-plus acres of stripped farmland in Illinois will

certainly change the entire picture of its economy, plus lives.

84 Mr. TSONGAS. What percentage is that of the State?

84 Mr. DOLAN. The closest I will give you is 3 percent. That doesn't sound like much, but we have to remember that it is under the best farm land, as you see in our colored photographs.

84 Mr. TSONGAS. So you say 3 percent of Illinois land is stripable in terms of the quality of the coal. Is that correct?

84 Mr. KINDER. He means 3 percent is in cities and so forth. You misunderstood the question.

84 Mr. DOLAN. No; you said what area of the State?

84 Mr. TSONGAS. What percentage of the State are those lands that are deemed to be appropriate for strip mining, as you define it?

84 Mr. DOLAN. Using the known reservers, we are looking at 3 percent of the State acreagewise, that is strippable.

84 Mr. MORTIMER. This is a revision that sounds lower than the number you have probably heard before. It is based on this inprogress study of the Illinois Geological Survey. Earlier, numbers were reached by, I think, assuming a minimum of 18 inches of thickness of coal seam, and using an overburden of 150 feet. The Geological Survey uses this method, because that is an uneconomical way of getting the coal, using those two extremes of an 18-inch seam and 150 feet of overburden.

85 They revised these, and the figures Mayor Dolan is giving are subject to some change, but in the view of the Geological Survey, they are likely to be correct. If the seam is 18-inches thick, they are using a maximum of 50 feet of overburden. If they are 48-inches thick, 100 feet of overburden, and so forth.

85 They also specified a minimum size of 6 million tons in place in the land. So, it eliminates a lot of the area which under previous figures has been considered as stripable.

85 Mr. TSONGAS. If the definition on page 7 were to apply, what percent of the - 3 percent - would be taken out of the acreage allowable for strip mining?

85 Mr. DOLAN. I can't answer that, but as a specific figure -

85 Mr. MORTIMER. We don't have the answer to that, but existing soils data could be used, similar to the last couple of pages of the soil interpretations for Grummer and Flannigan, which we have supplied. Those are available for all the soils in Illinois.

85 Mr. TSONGAS. What would you guess be?

85 Mr. MORTIMER. I would be afraid to make a guess on that, but the point is that -

85 Mr. TSONGAS. Give me a range.

85 Mr. MORTIMER. You are asking me what percentage of the 3 percent? I would guess a majority of it under these minimum requirements. More than 50 percent, and I don't know how much higher than 50 percent.

85 Mr. TSONGAS. Mr. Seiberling?

85 Mr. SEIBERLING. Thank you.

85 Mr. Dolan, it seems to me your recommendations here are excellent, and we should take a very careful look at your proposals and your proposed revisions to the bill.

85 I would just like to ask you one question with respect to this concept of defining prime agricultural land and making it unsuitable, or putting it in the unsuitable for surface mining category.

85 Suppose we could show that the prime agricultural land of a particular type could be reclaimed and be substantially as productive as before. Would it not then be all right to remove it from the category of land unsuitable for surface mining?

85 Mr. DOLAN. If there were enough data and research information available, or over the years could be produced to prove that fact, then there would be a lot more of the prime farm land that would probably be strip mined. The idea is that there is no known restoration figure available that show that, and the headlong rush by the coal companies to mine this land and the State's to give permits, we will wake up some morning, and it will be too late for many of those acres.

85 Mr. SEIBERLING. I am suggesting that perhaps we take your definition and declare that that land is unsuitable for surface mining until and unless a

mining operator or proposed operator can demonstrate on the basis of studies that have been made of comparable land under comparable conditions that substantially the same, or better, productivity will result after restoration if it is done under certain techniques.

86 Mr. DOLAN. We allowed to that in our statement, that once this was ever done, that it might be necessary to strip mine that land.

86 Mr. SEIBERLING. I am suggesting that we write into the statute a way out, so that the land isn't permanently locked up, if studies will show that that particular land can be reclaimed. That is, instead of just having a categorical exclusion, because we are talking about an awful lot of land here, and the more we exclude, the more difficult it is going to be to get this bill through the Congress.

86 Mr. DOLAN. We are speaking of a lot of land, but we are not speaking of that many tons of coal in relation to our reserves.

86 Mr. SEIBERLING. I think that is true, but if a company has options on certain coal, or owns it, they are going to be fighting any effort to keep them from mining that coal.

86 Now, I suppose you could get around that by grandfathering them in, but I don't like grandfather clauses if there is a better way to do it.

86 Mr. DOLAN. No, sir.

86 To answer your question more directly, if those things were proven, that would be a way to improve the bill. If it were written into the language properly.

86 Mr. SEIBERLING. All right. Let me say that if Mrs. Hardin had local officials who were as concerned and as well informed and competent as the people on the other side of the line do, I think she might have a different situation in her area, and I certainly want to commend all of you, as well as the other officials from Illinois that testified earlier, I think they all have shown an outstanding attitude and outstanding degree of competence, and I wish all local officials, and all Members of Congress, for that matter, had that same degree.

86 Mr. DOLAN. Thank you.

86 Mr. SEIBERLING. Mrs. Hardin, I would like to say I found your testimony very interesting, because it is practically a carbon copy of the same sort of

thing that I could show you that has happened in my own native State of Ohio. I could practically come up with people who would repeat almost verbatim what the lady said in your letter you wrote us, and what you testified to. I could show you towns that have actually been totally eliminated, everybody but the church and the graveyard, just as you have pointed out.

86 Tax bases have simply dried up because the towns have gone with the strip mining, and the rest of the country, the farms are no longer productive. In my office in the Longworth Building, I have pictures on my wall that I personally took showing you what happens to farms that have been stripped, the soil, the tumbled down buildings, and the abandoned area.

86 So, this is a real gut issue, and I think that, Mayor, you have posed the issue in a way that I don't think the Congress can possibly evade, where you have fertile farmland. It isn't a question of environment or environmentalists. It is a question of whether we are going to throw away our future ability to grow food for people who follow us in this country just because we are too greedy to get the immediate gain to take proper precautions.

87 If we ever need that coal, it will be there if we haven't dug it out. That is the thing that sticks in my craw when I hear people talking about the energy crisis. Ninety percent of the coal in this country can only be deep mined, and we have testimony that in recent years, the safety rate for miners is better in deep mines than in strip mines.

87 So, we are not talking about a great improvement on the safety side. So, I don't normally make speeches any more. I guess I have been down this road too many times, but your testimony, I think, is among the most compelling we have had.

87 Mr. DICKSON. Mr. Seiberling, I think there is another thing that should be brought in. This coal is real high in sulfur content. In fact, at this time, I don't think it is too marketable. That is another reason we feel we are destroying good productive land for that coal.

87 Mr. SEIBERLING. I can tell you of an Ohio experience, and I am right in the middle of that. The minute they start mining that coal, the utilities, companies, and organized labor are going to hit every local official who has anything to do with air quality standards and get them loosened up or waived, or

whatever, so they can continue to use that coal, because if you don't, you will throw miners out of work and shut down factories and make our electricity too costly.

87 If there is high sulfur coal, I think there are processes developed to use high-sulfur coal and still meet the sulfur dioxide emission standards.

87 But, nevertheless, that is one of the other aspects of this, and you put your finger right on it.

87 So, you are better off if you get another kind of coal to slow down a little bit on exploiting the high sulfur.

87 Mr. DICKSON. There was a deep mine south of this site that was closed in 1946 because of the high sulfur content.

87 Mr. SEIBERLING. No politician likes to see a mine closed in his State or his district, and neither do a lot of other people. I don't think we ought to get ourselves out on a limb where we are in that position if we can avoid it, and if there are other kinds of coal that could be mined, we ought to have some way, it seems to me, of setting some priorities. I guess we can't do it through this bill, but at least it is part of the problem that we in Congress have to recognize.

87 Mr. DICKSON. I think it is the finest bill we have seen yet, and I hope you can continue on and get it into effect.

87 Mr. SEIBERLING. Thank you.

87 Mr. TSONGAS. If everybody in Congress were as enlightened as this Congress is, we wouldn't have any trouble.

87 Mr. SEIBERLING. Amen.

87 Mr. TSONGAS. To finish your statement quoting Toynbee, I must say that that should be required reading for every Member of Congress. They probably think Toynbee played third base for the Chicago Cubs or something like that.

87 [Laughter.]

87 Mr. SEIBERLING. Mr. Chairman, there are a lot of instances, and some of the Indian cultures of Latin America are examples, where there are now Mayan and Aztec ruins, and the archeologists concluded the reasons the civilizations collapsed was this, they weren't around and moved their agriculture from place

to place, mined out all the topsoil, and when the topsoil was gone, everything else went.

88 Mr. DOLAN. I have seen a film record of that.

88 Mr. TSONGAS. Mr. Ruppe?

88 Mr. RUPPE. Thank you very much.

88 Are you saying that in portions of Illinois, you have taken good farmland, mined it, and it is not productive land anymore?

88 Mr. DOLAN. That is correct.

88 Mr. RUPPE. Is it because the State has failed to pass legislation providing the same safeguards as we envision with the passage of this particular bill before us?

88 Mr. DOLAN. Part of it was because some of it had been stripped and there weren't any regulations that were passed that did govern it.

88 Second, Illinois recognized as having one of the better strip mine bills in the country, but it does not address itself to "prime farmland."

88 In the case of Illinois, the director of mines and minerals has absolute power to change - it is his decision as to what finally will happen with the mine.

88 Mr. RUPPE. If the land in Illinois were mined in accordance with the standards of this bill, the prime farmland, do you think it would be possible to return it to prime farm condition after the mining process, assuming that the vegetation provisions of this bill were passed, or are you of a mind that it still would be less productive in terms of its original use?

88 Mr. DOLAN. With the present knowledge of reclamation, it would not be as productive as before, to our minds. The question, then, is brought up in there concerning the State having to answer to the act within 18 months, and propose to the Federal Government for approval programs concerning this. If they don't, then the Federal Government has a period of months in which to answer and set this up for the State. That is 30 months.

88 With the known reclamation that is present in the country, there is no way that we can reclaim or restore, as a better word, prime agricultural land.

88 Mr. RUPPE. In Pennsylvania they have mined certain areas which I would

assume would be prime agricultural land, and I believe, according to Mr. Heine and others, after the mining is concluded and after the topsoil is restored and revegetation has taken place, that land is as good or some people have argued in certain circumstances it is more productive than it was prior to the mining process.

88 So, it does seem very difficult to draw a general rule as to whether strip mining has a deleterious effect on prime agricultural land or not.

88 To some extent, it would seem to me that it would be advisable if the State addressed that problem. They could address it either by separate legislation, or even in section 522 of this act. I believe the State is called upon to designate an area as unsuitable for certain - and I would assume all - types of surface mining operation. The State regulatory authority determines whether reclamation pursuant to the requirements of the act is feasible.

89 To my mind, reclamation would be restoring that land to its general economic character that it enjoyed in the prior mining stage. So, I would think even under this bill that the regulatory authority could in Illinois designate, if they chose, and make certain parts of the State off limits to mining if they wanted to protect a very good agricultural base.

89 The concern was expressed by you and by others that the mining of that land would indeed reduce the postmining quality of the prime agricultural land in that area.

89 Could you not, under the bill, use your regulatory authority to put off limits the land to which you have addressed yourself here this morning?

89 Mr. DOLAN. That could be done, but there has been no attempt by the State up to this point, to give any consideration at all to that.

89 Mr. RUPPE. The State will have to make that determination under the bill if it passes the Congress. I would assume, of course, that the States can have more or less enthusiasm in addressing that point, and I assume they would be able to develop their own standards as to what should and should not be mined.

89 But, I would think it is difficult for the Congress to address directly that point in view of the fact that the people in some States say you can have a postmining use that is comparable to that which was enjoyed before, and in your case you feel that you cannot have that type of use. So, it is hard to

establish Federal legislation, I think, in that area.

89 Mr. DOLAN. I would like to make one statement and then refer this to another one of our gentlemen.

89 We cannot find - one of the problems that has occurred is the definition of "prime farmland." In thinking of this, we are thinking not only about Illinois, but the State of Ohio, and any other area or section of the country. This makes it a very difficult task, in this sense, because prime farm land to east central Illinois does not carry the same connotation as prime farmland to Pennsylvania or Georgia, or Indiana, or any other area.

89 That is why with the minimum definitions put in here, that would allow the Soil Conservation Service to expand on this and State by State designate, at least for the present time, that certain land be put off limits for strip mining until known restoration is possible. We don't think it is possible in many cases, at least under today's economics of mining coal, and I take that from statements by the coal companies.

89 Mr. Smith, would you like to address this for a moment? We have looked at this thing for several months.

89 Mr. SMITH. I might, if I could, Mr. Ruppe, just address the provisions of section 522(a)(3)(c) of the bill, which is one of the real problems that I think the mayor and the other folks from Catlin were trying to address.

90 That provision provides for a designation on petition of land as unsuitable for mining when it will affect renewable resource land in which operations could result in a substantial loss or reduction of long-range productivity of water supply, or food or fiber products.

90 That is really a relatively weak provision on the question of what can in fact be done by way of restoration of the best agricultural farm land, because of the very distinct absence of any careful studies of reclamation of highly productive crop land.

90 It is the notion that you can restore what George Kinder calls the corn and soybean lands to their same levels of productivity. That is one thing that has simply not been tested.

90 Thus, in the context of this particular provision of the bill, it becomes very difficult to show that mining could result in a substantial loss or reduction of long-range productivity of those lands. The mining companies are

quite quick to assure, as they have assured the people in Catlin, that such productivity can be restored, but no one really knows now, and I think the Catlin people are simply asking that we know this time before we take steps that may be irreplaceable, and you do that simply by determining that there are certain kinds of land which you can define as prime agricultural land, and say, prima facia, that at the outset we are not going to mine those, but make a preliminary determination of what those are, preserve individual due process rights, but don't make us prove in a designation proceeding a standard such as you have in subparagraph (c). Because I don't think we can meet that.

90 Mr. RUPPE. So the argument gets down to who carries the burden of proof. On the one hand, one might say that you could mine in an area unless the mining would reduce the agricultural base. The other side of the coin is that you can't mine there until you show that the postmining use of the land won't in any way reduce the agricultural base of the community.

90 Mr. SMITH. I think you are quite right, sir. It is a question of the burden of proof, and I think Catlin comes down on the side of insisting on a burden of proof that protects the land as it is and as it was given to us.

90 Mr. SEIBERLING. Mr. Chairman, could I ask one further question?

90 Mr. RUPPE. I yield to the gentleman, if I have any time left.

90 Mr. SEIBERLING. Thank you.

90 The definition that you have, I take it, is based on the Illinois - what Illinois would consider prime agricultural land?

90 Mr. DOLAN. No, it is not.

90 Mr. SEIBERLING. My question is this: Is the land that you would exclude by that definition, exclude from surface mining, land that is exceptional?

90 In other words, Illinois, I presume, in your part of Illinois, has land that is far more productive than, say, land on the mountainous slopes in Appalachia.

90 Mr. DOLAN. The criteria set forth here are based on information through total Soil Conservation Service information, and as an example, appropriate levels of PH, we put a range of 4.5 to 8.5. We don't want 4.5 soil. That is not what our optimum soils are. Nor either 8.4 percent PH.

91 But in some areas of the country, their prime soils will fit that category, and therefore, and therefore these are minimal characteristics, and only the Soil Conservation Service could step forth and say to the Federal

Government, "OK, as a preliminary designation of land for the time being; and in this case we are asking for a 180-day moratorium; that these lands be set aside and not mined at this present time until further information is known."

91 Mr. SEIBERLING. It seems to me if we are going to develop a rule of excluding land from mining, even if it is just initially, that it ought to be limited to the best land as far as the Federal standards are concerned, and then if the State wants to impose additional controls on land and say, "Well, we don't have a lot of that deep topsoil like they have in Iowa or Illinois, but nevertheless, we need to grow some crops in our own State, so we are going to have more stringent requirements," that is up to them.

91 But shouldn't the Federal statute aim itself at that which, from a national standpoint, is our best and most fertile land?

91 Mr. DOLAN. That could be done.

91 Mr. MORTIMER. This list is Federal standards.

91 Mr. RUPPE. Yes; but to declare your prime agricultural land off limits even now, you would have to develop some kind of a planning process.

91 I was reading here on page 128, item 4, which says that the State that does demonstrate that it is developing a process, which includes a State agency responsible for coal lands, and a data base and an inventory system which will permit evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations, and in item (d) we have a requirement for notice, public participation of hearings prior to the designation of any lands pursuant to this section, and also a requirement that individuals be given protection for the legal interests that they might have.

91 I don't know if that goes far enough, but that does seem to require a planning process that would mandate at least the inputs if not the designation that you would like to see.

91 Would you care to respond to that?

91 Mr. SMITH. If I might, Mr. Ruppe. The procedures, I think, in H.R. 2 are good procedures, and there is really no quarrel with the procedures. Our difference of opinion is in two areas.

91 First of all, we think that there is a danger that there will be a race to establish mines because of the relatively long period of time between the effective date of the act and the time the procedures can become effective. The States don't have to submit a program for 18 months, and it can be as much as

another year before those procedures become effective. So, there is a gap that we have suggested a temporary moratorium for, and that is the basic reason for the designation process.

91 The second problem is one you and I discussed a moment ago, Mr. Ruppe, the problem of burden of proof, and whether the standards in the act impose a burden of proof that those who would preserve the prime farm lands would be able to meet.

92 Mr. TSONGAS. We do have a vote to take. I would like to thank you very much for coming.

92 Mr. DOLAN. We offer our help to you if we can be of any further service.

92 [Short recess.]

92 Mr. TSONGAS. The hearing will resume.

92 It is my understanding that the State strip mining laws, an inventory and analyses of key statutory provisions of 28 coal-producing States will be made a part of the record at this point, and a treaty has been arrived at with that, and it will not be read.

92 [Laughter.]

92 I will agree, that as much as the people you are going to be addressing; namely myself and the staff, are simpatico from the beginning anyway. One thing I would like to ask you to give some thought to, the panel that was here from Illinois was very impressive, and I think the issue they raised about prime agricultural land, and how you structure in this bill a provision that would take into account the concerns they were raising, in view of the fact that so much of the coal lies under that land.

92 We would like to have your input with staff to try to formulate some kind of an amendment that would not be so bureaucratic as to be worried about, but I think that has to be addressed, and we had better address it now rather than 3, 4, 5 or 10 years from now.

92 [Prepared statement of Terry Dolan may be found in the appendix.]

STATEMENT OF LOUISE DUNLAP, ENVIRONMENTAL POLICY CENTER; ACCOMPANIED BY JACK DOYLE AND JOHN McCORMICK

92 Ms. DUNLAP. I am Louise Dunlap from the Environmental Policy Center. With me is Jack Doyle, Washington representative, and John McCormick, a

Washington representative.

92 With respect to the time problem we have this afternoon, we would like to submit for part of the hearing record, the study just completed by Jack Doyle for the Environmental Policy Science Institute, "An Inventory and Analyses of Key Statutory Provisions in 28 Coal-Producing States," and for the committee file, a report by John McCormick for the Environmental Policy Center, entitled, "Facts About Coal in the United States."

92 Monday, we will submit our complete comments on H.R. 2 with recommended suggestions, and we will also submit for the record our summary statement for today.

92 Mr. TSONGAS. Fine.

92 [The study entitled, "An Inventory and Analysis of Key Statutory Provisions in 28 Coal-Producing States," together with prepared statements of John L. McCormick and John C. Doyle, may be found in the appendix.]

92 Mr. TSONGAS. Could I just pursue this for a minute? I think the issue of strip mining is obviously important, and the whole issue of coal as an energy source. It goes beyond whatever environmental damage may be caused to agricultural land. This committee also has jurisdiction, as you know, over nuclear energy, and part of any decision of nuclear, there is going to have to be an understanding of what the alternatives are.

93 I suggested to Chairman Udall that we hold hearings on alternatives to nuclear, a major component of which would be coal, and what it means to burn coal over the long term. We haven't had any decision yet as to whether those hearings will take place. I suspect they will, and if Chairman Udall is unable to chair them, I will be glad to do it myself.

93 But I think there is going to have to be some understanding, not only in terms of strip mining, but in terms of the whole energy picture of what coal is all about. We have now proposed some simplistic advertisements on television about the panacea coal reports. The more I look into it, the more concerns I have. If we indeed have those hearings, I would like for you to participate.

93 Ms. DUNLAP. You will find that the Environmental Policy Center's position, and I think the position of the citizens and agricultural groups around the country that we work with, reflect a strong support for increasing domestic coal production, as well as finding ways to extract both surface and underground coal more efficiently, mindful of underground health and safety problems, and efficiency problems, and that the context of the debate for the Federal strip mine bill is, from our point of view, in the context of strong support for increasing domestic coal production.

93 Mr. TSONGAS. There has been an agreement, Mr. Ruppe, that the statements would be put in the record in lieu of testimony. Do you have any questions?

93 Mr. RUPPE. Fine.

93 Louise, as far as the variance is concerned, we got into that a little bit this morning, for mountaintop removal, do you think there ought to be a variance for mountaintop removal if certain environmental standards can be met, or do you suggest there should be mountaintop removal only if there is a very definite postmining use of the land?

93 Ms. DUNLAP. The citizens group in Appalachia who have to live around and under the mountaintop mining are going to be submitting to the committee an amendment to phase out in an orderly, wellplanned fashion, all mountaintop mining. They recognize that the bill currently permits mountaintop mining under its procedures. I think the main reason for strong resistance to mountaintop mining in Appalachia is less connected with the esthetic problems - and there are esthetic problems - than they are connected with the problems of placement of spoil in the head of the hollow fashion.

93 If mountaintop mining involved the extraction of the coal while keeping the spoil pretty much on top of the mountain, which is possible in some cases, depending on what kind of a mountaintop you have, there would be less resistance on the part of neighboring communities to mountaintop mining.

93 So, I guess the answer is that while the industry is going to be asking to be allowed to conduct mountaintop mining with reclamation requirements, but not under a variance procedure, the citizens groups of Appalachia will be asking you to consider a complete phase out of that process.

94 I think that the reason, and there were really well thought out reasons for the variance procedure to begin with - the reasons those extra burdens of proof were put into that section of the bill was because mountaintop mining on steep slopes over 20 degrees has historically presented some very bad problems in the mountains, with siltation, erosion, and sedimentation.

94 At the same time, the promoters of that method of strip mining have presented to the local communities around the mining operations positive postmining aspects of it. It has been the strip miners who have gone to the communities and the neighbors saying, "We are going to put an airport here, we are going to put a housing development here, we are going to put a beneficial use of the land on top of the mountain when we are finished."

94 OK, there is not a feeling against creating flatland in Appalachia on the part of citizens who are upset about current strip mine practices. What is a cause of controversy is that the operators come in and promise a particular kind of postmining use, and then it oftentimes is not realized.

94 Meanwhile, the placement of spoil in the head of the hollow, or various ways of throwing the spoil on the downslope creates problems, but the original justification for the placement of the soil was connected to a beneficial postmining use.

94 Mr. RUPPE. That is what I am getting at. Should we be talking about the beneficial postmining use when we talk about mountaintop removal, or simply say we would permit it if the mining itself is done to our standards and if the head of the hollow fill, which would be, I assume, a result of mountaintop removal, were undertaken according to the engineering requirements of the bill?

94 I guess I am focusing on mountaintop removal. Should we be thinking of the end result after mining, or in terms of efficient, if you will, and proper reclamation and proper engineering of any head of the hollow fill?

94 Ms. DUNLAP. The citizens want to phase it out. The bill, H.R. 2, does not dictate what specific postmining use should occur on a mountaintop, and that is important to understand, because some industry representatives suggest that the legislation dictate the particular postmining use; it does not.

94 But it does matter what the postmining use is going to be.

94 Mr. RUPPE. Why?

94 Ms. DUNLAP. Depending on how the spoil is placed.

94 If, for example, for the convenience of an operator to mine a particular coal seam on a mountaintop, the operator may want to throw the spoil in one place. It may be more convenient to say, "We will put an airport in," and the airport may not be a viable postmining use of the land. There may not be a demand for it, and it may never really materialize.

94 But I think it is important in the mountains because of the serious landslide and erosion problems to connect whatever the operator chooses to be the postmining use of the land to the particular requirements of the permit.

95 If you are talking about a housing development versus an airport, versus commercial agriculture, you may have very different methods of placing the spoil.

95 Mr. RUPPE. But, Louise, in the placement of the soil under any conditions, whether it is housing, airport or no postmining use, you still would want tough requirements in terms of the engineering in the head of the hollow fill.

95 Ms. DUNLAP. Certainly, but the bill allows head of the hollow fill, and the implication is that operator X wants to do some mountaintop mining, beneficial use of the surface is proposed for after the mining, and the bill does not prohibit that. But an attempt is made to connect the actual placement of the spoil during and after mining with the specifically proposed postmining use of the land, and in the mountains, that is very important.

95 Mr. RUPPE. Is it, or is it not, though, possible to have a good head of the hollow fill, well engineered, well designed, and a head of the hollow fill that will not have slides and water runout and so forth?

95 In other words, I guess I am more concerned about what you can do to the head of the hollow fill, and if you can't, forget it, regardless of the postmining use of the land.

95 Ms. DUNLAP. The bill currently allows head of the hollow, but the reason the variance is constructed the way it is, is an attempt to direct the spoil in a manner consistent with what the postmining use is going to be. Typically in the mountains, the operators propose a certain use of the land and it never materializes, and that is really a problem.

95 I cannot give you right now the statistics, but a very small percentage of the flat mountaintops that have been mined out are really being put to beneficial economic uses now in the mountains.

95 Now, the reason for that may be a problem of demand. It may be a problem in terms of the way the spoil was actually placed.

95 Mr. RUPPE. I think you will always have a hard time getting back in the remote areas, or the boondocks, as we might say. You are always going to have a tough time getting a good postmining use. It may be a mirage on the horizon. I wonder if we should simply say, "You can have the head of the hollow, but you

have to be careful in meeting the engineering standards of this bill," and if we are going to focus on the engineering standards and not the postmining use -

95 Mr. MCCORMICK. Mr. Congressman, when we refer to a hollow, that is caused by run-off, and that run-off has caused the hollow, and that run-off might become water supply for a municipality. These hollows are the water sheds that supply downstream usage.

95 Mr. RUPPE. Then I would argue that you shouldn't have head of the hollow fill regardless of the mining use if that is the case.

95 Mr. MCCORMICK. That is the point I want to make. While we are discussing engineering techniques, we are changing the configuration of what was once a water shed and may preclude the ability of nature to provide water downstream.

96 Mr. RUPPE. Then perhaps we are better off to say that if it is a present water shed and has a purpose needed in the surrounding area, maybe we should prohibit head of the hollow, and focus less on the postmining use than on the character of that head of the hollow fill.

96 Mr. MCCORMICK. But the postmining use may require head of the hollow fill, also.

96 Mr. RUPPE. Then don't have it if the head of the hollow fill is going to upset a water table, or a municipality water facility.

96 Ms. DUNLAP. Congressman Ruppe, at the very least, I think there should be a connection, though, between what the operator suggests as the postmining use and the requirements in that variance section for the operator prior to mining on the mountaintop to demonstrate all the necessary approvals, financing and so forth. The reason for that is that if an operator is going to mine, then say, "I am going to put in an airport"; it may really affect the way the spoil gets placed.

96 You know, how far the spoil may be allowed on the head of the hollow fill for a runway extension or something like that, and if the airport is really not going to realistically be constructed there, there should be some clear record of that before the permit is issued, because there have been too many broken promises.

96 Mr. RUPPE. All right, to put it another way, I think we are about at the end of this, but I will put it another way.

96 Suppose I came to you and said, "I don't have any great postmining use of the land, of the mountaintop, I am going to mine it and put it back and it will look OK. However, in doing so, I do have a head of the hollow fill arrangement here and it is going to be engineered properly and all of the water and hydrology would be taken care of. Would you be of a mind to grant a permit?"

96 Ms. DUNLAP. I think the bill should still have a very tight requirement for head of the hollow fill.

96 Mr. RUPPE. Supposing you have the tight requirement and I meet it. And I say, "Louise, I will meet every requirement you have, but I haven't got any great postmining use of the land." Would you give me a permit?

96 Ms. DUNLAP. The operator would still have to demonstrate that he absolutely would do a head of the hollow fill, which in some cases he may not have to do.

96 If a mountaintop becomes desirable to mine from the standpoint of the operator, promises are made locally -

96 Mr. RUPPE. But that generally doesn't develop. We are kidding ourselves.

96 Ms. DUNLAP. But the variance should not be considered without some foundation, because it was intended to connect the promises of the operators with specific postmining plans.

96 Mr. RUPPE. Several witnesses here this morning have talked about a.o.c. and what it means, original contour, of course, being somewhat different in different people's minds.

96 People in Pennsylvania have envisioned some terracing, not only in areas which have been once mined and where presumably you almost have to put terracing, but also because terracing may be a legitimate configuration within the definition of a.o.c. in an area that is being mined for the first time.

97 What is your feeling on that?

97 Ms. DUNLAP. I think the argument about terracing is a bogus argument. I think the people who are using the terracing example in Pennsylvania are really trying to attack the high wall requirement, and I think you would find that there would not be strong resistance, on page 154, line 10, after the phrase, "surrounding terrain" to include "including terracing," just two words, so long as the rest of that phrase "with all high walls and spoil piles eliminated is retained in the definition of approximate original contour."

97 In other words, what I am saying is that I think it is a convoluted, irrelevant argument to try to say that terracing is inconsistent with the definition of approximate original contour in H.R. 2. in its current form, and that the people who are trying to say, "Well, terracing is allowed in Pennsylvania, it is not specifically allowed here, therefore, there is some great inconsistency, "I think that is a mirage, and I think the basis of that criticism is to attack the high wall requirement.

97 So, we would probably go along with an amendment saying "including terracing."

97 Mr. RUPPE. I thought I would bring that up so that we won't get into court about 1 year from now in a long hassle.

97 Ms. DUNLAP. I don't think that is the real basis for that criticism.

97 Mr. RUPPE. The gentleman from Pennsylvania mentioned - I have forgotten - did he say he might have to leave some spoil on the downslope in those situations where you mined a once-mined area, but I assume the bill really applies to new mining operations, so in effect that is really not -

97 Ms. DUNLAP. The reference in H.R. 2 to not placing spoil on the downslope except for the initial cut is with respect to mines that come into conformance with the new legislation.

97 Mr. RUPPE. Obviously, if it is a mined-over area in Pennsylvania, you wouldn't expect the poor guy to haul stuff from 1890 up the hill again.

97 Ms. DUNLAP. It may be possible to do a reconfiguration of the spoil on the downslope. One of the reasons it is so important not to place spoil on the downslope to begin with, is because it is so difficult to bring it up on the bench.

97 Mr. RUPPE. I suppose in the premined area, that question is left to the applicant and the regulatory authority at the time of the permit?

97 Ms. DUNLAP. Presumably.

97 Mr. RUPPE. I can't think of any other destructive questions at the moment.

97 Ms. DUNLAP. We want to thank you for your continuing encouraging support for this legislation. We are making the presumption that you are still supporting H.R. 2.

98 Mr. RUPPE. I have always supported you, Louise. If you aren't true to the bill, my conscience would never permit me to do it.

98 A last question.

98 The bill proposes a present problem in the West on the alluvial valley floors, as to whether an alluvial valley floor extends from mountainside to mountainside, from the top of one hill to the top of the other hill? [Indicating] and does it mean all the area underneath which has these underground water sources? Do you think there is a need for a somewhat tighter definition of what is an alluvial valley floor?

98 Ms. DUNLAP. I think that the recent study of Harold Malde of the USGS in Denver, concerning mapping of the alluvial valley floors, and in southeastern Montana is very instructive and should be looked at closely by the committee. Contained in that study is a definition of alluvial valley floors which makes it quite clear that it is both easy to identify the alluvial valley floors on the ground and it is possible to make a distinction verbally, or in legislation in writing between the alluvium and the colluvium.

98 Mr. RUPPE. Do you think there are ideas there, helpful to our purposes here?

98 Ms. DUNLAP. I think the definition in H.R. 2 is consistent with the USGS definition. If you preferred to take their literal definition, that would probably be OK. I don't think it is the intent of the supporters of section 510(b) (5) (a) to try to get a larger area of land of limits beyond the actual alluvial valley floors.

98 Now, (b) (5) (b) refers to whether or not it will be permitted to have mining operations outside of the alluvial valley floors, where they may adversely affect the quality or quantity of water flowing into them.

98 I think 510(b) (5) (a) easily made a mandatory off limits section while (b) (5) (b) is really a discretionary decision left to the regulatory authority for those mines outside the alluvial valley floors where they should be making a determination that there is going to be, you know, serious adverse effect to the alluvial valley floors.

98 Mr. RUPPE. Thank you.

98 Ms. DUNLAP. So, I think the definition in the bill is adequate. If you want to perfect it, the USGS has very good definitions, and they feel confident that you can make a distinction between alluvium and colluvium.

98 Mr. RUPPE. It says that - let me see. It says that the permit cannot adversely affect the quality or quantity of water.

98 Someone has suggested the word "seriously," or do you think that opens it

up too much for you?

98 Ms. DUNLAP. I think the language in the bill is sufficient, because it is a discretionary decision.

98 Mr. RUPPE. It is discretionary.

98 Ms. DUNLAP. Yes; because with a good definition of an alluvial valley floors, which we think the bill has, but the USGS is confident that they can define further, if you want that. (4) (a) is basically an off-limits provision.

99 One of our amendments will suggest that it is irrelevant how the surface use, how the surface of an alluvial valley floor is being used.

99 In other words, if it is within the hydrologic, geologic definition of an alluvial valley floor, we would suggest that (5) (a) should say, "stay out of the alluvial valley floors," and (5) (b) by the way it is constructed has to be a discretionary decision, because the regulatory authority will have to decide whether or not it is adversely affecting the quality or quantity.

99 Mr. RUPPE. That is true, but it is an absolute, though could not I make the argument if I were opposed to mining that any permit would, to some extent affect, even to 1 minute extent, the quantity or quality of the water?

99 Ms. DUNLAP. To some extent is not necessarily to adversely affect, and the bill has "adversely affect."

99 Mr. RUPPE. Thank you very much. Really, thanks a lot.

99 Mr. TSONGAS. Looking through this analysis, I wish we had had this 6 weeks ago.

99 Mr. DOYLE. We tried.

99 Mr. RUPPE. They didn't want to tip their hand.

99 Mr. TSONGAS. I must admit this is, as I understand it, the last public hearing. This room could not be more appropriate. I don't know whether the strip miners or environmentalists put that up there.

99 Mr. RUPPE. That isn't an all-volunteer group.

99 Mr. TSONGAS. The picture on the back wall suggest where we are at at this point.

99 There will be 10 days for members of the general public to provide statements or whatever for the record, and then we will proceed to mark-up.

99 Thank you.

99 [Whereupon, at 1:32 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

STATEMENT OF EDWARD WEINBERG OF DUNCAN, BROWN, WEINBERG & PALMER, P.C.  
Counsel to WESTERN FUELS ASSOCIATION, INC. Before the HOUSE SUBCOMMITTEE ON  
ENERGY AND ENVIRONMENT of the HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS  
On. H.R. 2

February 28, 1977

101 The Amendments to H.R. 2 which I have prepared and which have been provided to the Subcommittee are addressed to Title V, which deals with control of the environmental effects of surface mining, to Title VI, dealing with the designation of lands unsuitable for strip mining, to the definitional section, which is section 701, and to the surface owner protection provision - section 714.

101 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 H.R. 2 would accomplish its purpose.

102 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; to weed out those operators who seek to evade their responsibilities and to fairly protect the surface owner.

102 The methodology of those portions of H.R. 2, on the other hand, results in a text of some 107 pages.

102 The public interest will not be served if H.R. 2 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.

102 We want H.R. 2 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.

102 That is why it is critically important that H.R. 2's fine print be carefully examined.

102 On the basis of our examination, we are convinced that H.R. 2 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.

102 We believe that the amendments we propose will, in major respects, correct these deficiencies without sacrificing the goals of effective reclamation and surface owner protection.

103 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.

#### 103 Hearings on Permit Application

103 H.R. 2 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 513 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 his request 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!

104 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.

104 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 quote, "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 4 at page 81, 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 proposal" referred to is the agency's own proposal which it disclosed to the objectors. I have gone back to the text of the conference report on the vetoed measure, H.R. 25, and to H.R. 13950, 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.

105 Another point in connection with the hearing needs to be made. The hearing that is provided for, even the Section 514 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 518(b) dealing with assessment of penalties against an operator, and section 525(h) where Secretarial review of certain enforcement decisions is provided for.

105 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.

106 I have no hesitancy in concluding that as now drafted, Section 513 and the accompanying Section 514 fall so far short of procedural fairness as to amount to a probable denial of the process.

106 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.

106 Duplication of Hearings and Other Administrative Actions Under the Federal Coal Leasing Amendments Act of 1975.

106 We have reviewed H.R. 2 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.

107 To avoid unnecessary, expensive and time consuming duplications, we propose that when hearings were held and determinations made under the provisions of the Coal Leasing Amendments Act as to such matters, such hearings and determinations would also serve as the hearings and determinations on these matters under H.R. 2.

#### 107 Permit Duration

107 As Mr. Holum stated, we strongly urge that Section 506 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.

107 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.

108 The permittee will be under constant oversight. Section 517 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.

108 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.

108 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.

109 There is, by the way, an inconsistency in the permit sections which we deal with in our amendments. Section 506(b) states flatly that permits are not transferable. Nineteen pages later, Section 511(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.

#### 109 Citizen Suits

109 Section 520, the citizen suit provision, is identical to the citizen suit provision included in the conference report on the vetoed H.R. 25 and in the subsequent House bill, H.R. 13950.

109 The conference report states (H.Rep. 94-189, at 84 and 86) that subsection 520(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.

110 Unfortunately, the text of section 520(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.

110 Another point stressed in the committee reports was that the provision

for award of court costs and for the posting of bond, if a temporary restraining order or preliminary injunction is sought, safeguarded against the bringing of frivolous suits.

110 We have substantial doubts. First, no mention is made of awarding attorney fees, although in subsection 520(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. 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.

111 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.

111 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.

111 To provide at least some substantiative 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.

112 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.

112 Another amendment we propose to Section 520 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 participate 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.

112 Judicial Review

112 Section 526 of H.R. 2 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.

112 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 526 be amended accordingly.

113 H.R. 2 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.

113 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.

#### 113 Surface Owner Protection

113 Previous reports by this Committee have 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 Section 714 is not intended to void "valid existing rights," as indeed it could not constitutionally.

113 In the interest of clarity, we suggest that Section 714 be made explicitly subject to valid existing rights, whatever they may be. Such explicit reference to valid existing rights is made in Section 522(e) which prohibits surface mining in National Parks, Refuges, Wilderness and National Forest lands.

114 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.

114 Effect on Permittee of Transfer From State To Federal Program and From

## Federal to State Program

114 Where an approved state program supersedes a federal program under which permits have been issued, Section 504 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.

115 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.

115 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.

115 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 504 and 521 accordingly.

116 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.

117 WESTERN FUELS ASSOCIATION, INC.

117 PROPOSED REVISIONS TO H.R. 2 AND S. 7

117 I. Application Procedures and Requirements

117 A. Initial Regulatory Procedures

117 H.R. 2

117 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"

117 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".

117 S. 7

117 1. Section 402(f). No change needed.

117 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".

117 B. Federal Programs

117 H.R. 2

117 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).

118 2. Section 521(b). At p. 125, strike all beginning with line 5 through "finding" in line 10, and insert in lieu thereof:

118 "(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."

118 3. Section 521(b). At p. 125, line 13, after "enforce" insert: "in the manner provided by this Act,".

118 4. Section 521(b). At p. 125, at end of line 16, change the period to a colon and add:

118 "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."

119 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:

119 "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."

119 6. Section 504(d) [formerly 504(f)]. At p. 55, strike all beginning with "The State" in line 16 through line 25.

119 S. 7

119 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).

120 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.

120 3. Section 421(b). At p. 108, line 19, after "enforce", add same language set forth in 3 above under H.R. 2.

120 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.

120 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.

120 6. Section 404(d) [formerly Section 404(f)]. At p. 40, strike all beginning with "The State" line 10 through line 19.

120 C. Permits and Revision of Permits

120 H.R. 2

120 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 state is the regulatory authority, such regulations shall be promulgated only after opportunity for public comments."

121 2. Section 510(b). At p. 73, line 24, after "permit" strike ", revision, or renewal application."

121 3. Section 511(b). At p. 77, strike subsection (b) lines 18 through 21.

121 4. Section 506(c). At p. 58, line 16, strike "three" and in lieu thereof insert "seven".

121 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; P 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; P Provided further,".

122 6. Section 506(c). At p. 58, line 17, capitalize "that".

122 7. Section 506(d). At pp. 58-60, strike entire subsection (d), line

22, p. 58 through line 9, p. 60.

122 8. Section 511(b). At p. 77, line 18, add a new subsection (b) as follows:

122 "(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.

123 (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."

123 9. Section 511(c). At p. 77, line 22, following "authority" insert: "shall at reasonable intervals review outstanding permits and".

123 S. 7

123 1. Section 406(b). At p. 43, line u, 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.

123 2. Section 410(b). At p. 58, line 5, after "permit" strike", revision, or renewal application."

123 3. Section 411(b). At p. 61, strike subsection (b), lines 12-15.

123 4. Section 406(c). At p. 43, line 12, strike "thtee" and in lieu thereof insert "seven".

124 5. Section 406(c). At p. 43, line 13, after " Provided" insert language set out in 5 above under H.R. 2.

124 6. Section 406(d). At pp. 43-45, strike entire subsection (d), line 18 p. 43 through line 7, p. 45.

124 7. Section 411(b). At p. 61, line 12, add a new subsection (b) as set out in 8 above under H.R. 2.

124 8. Section 411(c). At p. 61, line 16, following "authority" insert language set out in 9 above under H.R. 2

124 D. Application Requirements

124 H.R. 2

124 1. Section 507(a). At p. 60, line 20, after "paid over the," insert "first five years of the".

124 2. Section 507(b)(7). At p. 62, line 19, after "used" insert "to accomplish maximum practicable recovery of the coal".

124 S. 7

124 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".

124 2. Section 407(a). At p. 45, line 18, after "the", insert language set out in 1 above under H.E. 2.

124 3. Section 407(b)(7). At p. 47, line 19, after "used" insert language set out in 2 above under H.R. 2.

125 E. Reclamation Plan Requirement

125 H.R. 2

125 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".

125 2. Section 508(a)(7)-(9). At p. 69, strike entire subparagraphs (7) and (9) and renumber the remaining subparagraphs accordingly.

125 S. 7

125 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".

125 2. Section 408(a)(7)-(9). At pp. 53 and 54, strike entire subparagraphs (7), (8) and (10) and renumber the remaining subparagraphs accordingly.

125 F. Public Notice and Public Hearings

125 H.R. 2

125 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".

125 2. Section 513(b). At pages 80-81, strike entire subsection (b) and in lieu thereof insert a new (b) as follows:

126 "(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 request for a hearing within fortyfive 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."

127 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."

127 4. Section 513(d). At p. 81, following line 20, insert a new subsection as follows:

128 "(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.

128 5. Section 514(b). At pp 82-83, strike entire section 514(b). Redesignate subsection (c) as subsection (b).

128 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.

128 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

129 "508(b)" to "408(a)(12)" "and 408(b)".

129 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.

129 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.

129 5. Section 414(b). At pp. 65-66, strike entire section 414(b). Redesignate subsection (c) as subsection (b).

129 G. Permit Approval or Denial (Alluvial Valley Floors)

129 H.R. 2

129 1. Section 510(b)(5). At p. 75, line 10, strike the comma appearing after "but".

129 2. Section 510(b)(5). At p. 75, strike all after "floors" in line 12 through line 16, and in lieu thereof insert: ", 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,".

129 3. Section 510(b)(5). At p. 75, line 17, change "(B)" to "(C)".

130 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:"

130 5. Section 510(b)(5). At p. 75, line 21, strike "paragraph and insert "subparagraph".

130 - S. 7 - Section 410

130 1. Section 410(b)(5). At p. 59, strike lines 11 through 22 and insert in lieu thereof Section

130 510(b)(5) of H.R. 2 modified in conformity with 1-5 above under H.R. 2.

130 H. Decisions of Regulatory Authority and Appeals

130 H.R. 2

130 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".

130 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."

130 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:

130 "(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."

131 S. 7

131 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".

131 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."

131 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.

132 II. Enforcement, Administrative and Judicial Review

132 A. Inspections and Monitoring

132 H.R. 2

132 1. Section 517(g). At p. 109, line 13, strike "the above sentence" and insert in lieu thereof "this subsection".

132 S. 7

132 1. Section 417(g). At p. 92, line 18, strike "the above sentence" and insert in lieu thereof "this subsection".

132 B. Penalties

132 H.R. 2

132 1. Section 518(c). At p. 111, strike lines 19 and 20, and in lieu thereof insert:

132 "(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".

132 2. Section 518(d). At p. 112, line 3, strike "thirty-first" and insert in lieu thereof "sixty-first".

132 3. Section 518(e). At p. 112, line 7, strike "526" and insert in lieu thereof "521".

132 4. Section 518(e). At p. 112, strike all after "in" line 9 through line 10 and insert in lieu thereof:

133 "in the District Court of the United States for the locality in which the surface coal mining operation is located."

133 5. Section 518(f). At p. 112, line 15, strike "525" and insert in lieu thereof "521".

133 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.]

133 S. 7

133 1. Section 418(c). At p. 94, strike lines 23 and 24, and insert in lieu thereof:

133 "(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".

133 2. Section 418(d). At p. 95, line 8, strike "thirty-first" and insert in lieu thereof "sixty-first"; strike "fiscal" and insert "final".

133 3. Section 418(e). At p. 95, line 11, strike "426" and insert in lieu thereof "421".

133 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.

134 5. Section 418(f). At p. 95, line 19, strike "425" and insert in lieu thereof "421".

134 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.]

134 C. Release of Performance Bonds or Deposits

134 HR. 2

134 1. Section 519(f). At p. 117, in line 1 after "the" insert "responsible". At the end of line line 2, insert:

134 "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".

134 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."

134 3. Section 519(g). At p. 117, line 15, after "prejudice" insert "to"; and after "objectors" insert "and applicant".

135 4. Section 519(g). At p. 117, line 18, strike "precedure" and insert "procedure".

135 5. Section 519(h). At p. 118, line 2, after "vicinity" insert:

135 "If the regulatory authority is the Secretary the hearing shall be subject to 5 U.S.C. @ 554."

135 S. 7

135 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.

135 2. Section 419(f). At p. 100, at end of line 24, add language set out in 2 above under H.R. 2.

135 3. Section 419(g). At p. 100, preceding line 25, insert a new subsection (g) and redesignate subsection (g) as subsection (h):

135 "(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."

135 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.

136 D. Citizen Suits

136 H.R. 2

136 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".

136 2. Section 520(a). At p. 118, strike lines 9 through 19 and insert:

136 "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".

136 3. Section 520(b). At p. 119, lines 12 and 14, strike "this Act" and insert in lieu thereof "this Title".

136 4. Section 520(b). At p. 119, line 15, strike "person" and insert "citizen".

136 5. Section 520(b). At p. 119, after line 16, insert:

136 "(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."

137 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".

137 7. Section 520(d). At p. 120, after "litigation" in line 12, insert", including reasonable attorney and expert witnesses fees,".

137 8. Section 520(d). At p. 20, after "appropriate." in line 13, insert:

137 "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."

137 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."

138 10. Section 520(f). At p. 121, line 1, after "damages" strike "(including attorney)" and insert "(including reasonable attorney and expert witness)".

138 11. Section 701. At page 149, after line 18, insert: "(4) "Citizen" means any person who has interest which is or may be adversely affected." Redesignate all subsequent definitions accordingly.

138 S. 7

138 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."

138 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.

138 3. Section 420(b). At p. 102, lines 17 and 19, strike "this Act" and insert in lieu thereof "this Title".

138 4. Section 420(b). At p. 102, line 20, strike "person" and insert "citizen".

138 5. Section 420(b). At p. 102, after line 21, insert language set forth in 5 above under H.R. 2.

139 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".

139 7. Section 420(d). At p. 103, after "litigation" in line 17, insert the language set out in 7 above under H.R. 2.

139 8. Section 420(d). At p. 103, after "appropriate" in line 18, insert the language set out in 8 above under H.R. 2.

139 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.

139 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)".

139 11. Section 501. At page 126, after line 12, insert language set out in 11 above under H.R. 2.

139 Redesignate all subsequent definitions accordingly.

139 E. Enforcement

139 H.R. 2

139 1. Section 521(a)(1). At p. 121, line 13, after "said" insert "alleged".

140 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."

140 3. Section 521(c). At p. 126, line 19, after "relief" insert "or a higher Federal court".

140 S. 7

140 1. Section 421(a)(1). At p. 104, at end of line 18, insert "alleged."

140 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)".

140 3. Section 421(c). At p. 109, at end of line 23, insert "or a higher Federal court".

140 F. Designating Areas Unsuitable for Surface Coal Mining

140 H.R. 2

140 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".

140 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".

141 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:

141 "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"

141 4. Section 522(a)(6). At p. 129, line 15, change "September 1, 1974" to "January 1, 1977".

141 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".

141 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).

141 S. 7

141 1. Section 422(a)(3). At p. 111, line 7, after "systems" insert language set out in 1 above under H.R. 2.

142 2. Section 522(a)(2). At p. 111, conform (C) to the modifications set out in 2 above under H.R. 2.

142 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

142 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".

142 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).

142 G. Review by Secretary

142 H.R. 2

142 1. Section 525(a)(1). At p. 137, line 17, strike "and" and in lieu thereof insert "or (a)".

142 2. Section 525(a)(1). At p. 137, strike all beginning with line 19 through "order," line 21, and in lieu thereof insert "citizen".

142 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".

143 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".

143 5. Section 525(b). At p. 138, line 22, following "or", insert "(a)".

143 6. Section 525(b). At p. 139, line 2, strike "a United States District" and in lieu thereof insert "the".

143 7. Section 525(d).7. At p. 140, line 4, following "suspended" insert  
"in whole or in part".

143 8. Section 525(d).At p. 140, strike line 13 and in lieu thereof insert:

143 "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-".

143 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".

143 S. 7

143 1. Section 425(a)(1).At p. 118, line 15, strike "and" and in lieu thereof insert "or(a)".

144 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".

144 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".

144 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".

144 5. Section 425(b). At p. 119, line 22, following "or" insert "(a)".

144 6. Section 425(b). At p. 120, line 2, strike "a United States District" and in lieu thereof insert "the".

144 7. Section 425(d). At p. 121, line 4, following "suspended", insert "in whole or in part".

144 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"

144 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".

145 H. Judicial Review

145 H.R. 2

145 1. Section 526(a)(1). At p. 140, strike lines 22 through 25 and in lieu thereof insert:

145 "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".

145 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.

145 3. Section 526(a)(2). At p. 141, line 20, strike the period and add "except as provided therein."

145 4. Section 526(b). At p. 141, line 21, strike "or complaint".

146 5. Section 526(c). At p. 142, line 5, following "(c)", insert "or (d)".

146 6. Section 526(c). At p. 142, strike line 7 and in lieu thereof insert  
"(a)(2), (a)(3), or (a)(4)".

146 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".

146 S. 7

146 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.

146 2. Section 426(a)(2). At p. 122, strike the first sentence of subsection (a)(2) beginning at line 9.

146 3. Section 426(a)(2). At p. 122, line 20, strike the period and add "except as provided therein."

146 4. Section 426(b). At p. 122, line 21, strike "or complaint".

146 5. Section 426(c). At p. 123, line 5, following "(c)" insert "or (d)".

146 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.

147 7. Section 426(e). At p. 124, line 1, following "program" insert:

147 "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."

#### 148 III. Coal Exploration Permits

148 H.R. 2

148 1. Section 512. At p. 78 insert "COAL EXPLORATION PERMITS" preceding Section 512.

#### 149 IV. Federal Lands

149 H.R. 2

149 1. Section 523(a). At p. 133, line 9 change the period to a colon and add:

149 "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."

149 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."

149 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).

149 4. Section 523(e). At p. 136, line 19, redesignate subsection (e) as (f) and insert a new subsection (e) as follows:

149 "(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."

150 5. Section 523(f) [formerly 523(e)]. At p. 136, line 19, strike "subsection (d)" and in lieu thereof insert "subsections (d) and (e),".

150 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".

150 S. 7

150 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).

150 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.

151 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).

151 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.

151 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.

152 V. Surface Owner Protection

152 H.R. 2

152 1. Section 714(a). At p. 170, line 23, after "shall" insert", subject to valid existing rights,".

152 2. Section 714(o). At p. 177, line 2, change "1976" in each instance to "1978" and in line 7, change "1975" to "1977".

152 S. 7.

152 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.

153 VI. Environmental Protection Performance Standards

153 H.R. 2

153 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)."

153 S. 7

153 1. Section 415. At p. 67, at end of line 7, insert same language as set out in 1 above under H.R. 2.

POSITION PAPER ON SURFACE MINING CONTROL AND RECLAMATION BILLS BY  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION AMERICAN PUBLIC POWER  
ASSOCIATION WESTERN FUELS ASSOCIATION, INC.

154 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.

154 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.

154 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.

155 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.

155 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.

155 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.

155 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.

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March 4, 1977

Honorable Morris K. Udall  
Chairman  
Committee on Interior and Insular Affairs  
1324 Longworth House Office Bldg.  
Washington, D.C. 20515  
Dear Mr. Chairman:

156 This letter will supplement my testimony of February 28 on H.R. 2, and I respectfully request that it be made a part of the record of the hearing.

156 In the time available, I was unable to comment on a matter which I would like to present for the Committee's consideration.

156 The necessity for Section 702(d) at page 157 appears to me to be questionable. The provision would require the preparation of an environmental impact statement under NEPA as a prerequisite of approval of a state program under Section 503(b), promulgation of a federal program under Section 504, and implementation of a federal lands program pursuant to Section 523.

156 Approval of state programs under Section 503(b) is required if they meet the criteria specified by the bill. Prior to the approval, the Secretary must hold a public hearing and must secure the views of EPA, among other agencies, and, in certain circumstances, the written concurrence of EPA is required. If a person is dissatisfied with the Secretary's approval of a state program, he has resort to judicial review.

157 It usually takes a minimum of six months, and in many instances a year or more, to complete an EIS. Thus, an additional substantial period of time would elapse before state programs could become effective, and this in the face of the policy of the Act to achieve strip mine regulation through state rather than federal administration. In these circumstances, to require an EIS would simply add another layer of preliminary proceedings, including public hearings, at an enormous cost in time as well as effort and expense, and would, moreover, open another channel for litigation concerning the adequacy of the EIS. The existence of such litigation would further add to the delay in

initiating state administration of the Act. Against these negative aspects of the requirement, it is difficult to see what positive contributions would flow from the preparation of an EIS as a part of the process of passing upon the sufficiency of state programs.

157 Much of the foregoing is also applicable in consideration of the desirability of tying an EIS requirement to the promulgation of a federal program. Here again, the Secretary's action in promulgating a federal program is subject to both public hearings and judicial review. In addition, Section 504 sets a time limit within which the Secretary must act. Finally, the purpose of the federal program is to fill the void left by the lack of an acceptable state program. Both the time required to prepare an EIS and the potential for time consuming litigation over the adequacy of the EIS, could well create a time void in which effective strip mine regulation is unduly delayed and interim procedures are unduly prolonged.

157 In the case of implementation of a federal lands program pursuant to Section 523, the time constraint is even more pressing. Section 523 requires the Secretary to promulgate and implement a federal lands program within six months. If past experience is any guide, the requirement for an EIS guarantees that this deadline can not be met. Again, the purpose to be served by an EIS in this circumstance is not apparent and the potential for litigation based on the adequacy of the EIS exists here as in the other two cases. The adequacy of the federal lands program can be tested in litigation without opening another avenue of potential litigation over the adequacy of the EIS.

158 For these reasons, I believe that Section 702(d) should be eliminated. If the Committee is in agreement, I would suggest that either it be explicitly provided that an EIS is not required for the approval of either a state program, a federal program, or the implementation of a federal lands program, or in the alternative, that the legislative history be very specific that such is the case. Otherwise, there is the possibility that litigation would arise over the question of whether an EIS is required.

158 Sincerely yours,

158 Edward Weinberg

158 of DUNCAN, BROWN, WEINBERG & PALMER, P.C.

158 EW: vcr

158 cc: Kenneth Holum

158 Alex Radin

158 Robert D. Partridge

Statement of Robert L. Masterson, Knox County Zoning Administrator on behalf of and with the authority of the COUNTY BOARD, KNOX COUNTY, ILLINOIS before the SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT OF THE INTERIOR AND INSULAR AFFAIRS COMMITTEE UNITED STATES HOUSE OF REPRESENTATIVES

February 28, 1977

160 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 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 (HR 2).

160 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.

160 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.

160 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.

## 160 ILLINOIS

160 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.

161 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.

161 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.

## 161 COAL RESERVES:

161 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% 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.

161 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.

## 161 PRIME AGRICULTURAL LAND:

161 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.

162 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.

162 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 Counservation Service state soil scientist for Illinois.

162 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

162 (Source: Soil Association of Knox County, Illinois, J. B. Fehrenbacher, et al; Corrected Printer's Galley proofs, February 1977.)

#### 162 KNOX COUNTY, ILLINOIS

#### 162 LOCATION AND AREA:

162 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.

#### 162 THE SOILS:

162 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.

162 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.

163 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.

163 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.

#### 163 PARENT MATERIALS

163 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 Wisconsin glacial stage and is considered to have formed over approximately 11,000 to 12,000 years.

163 Alluvium deposited on stream flood plains in Knox County is also an important soil parent material which has generally developed into agriculturally productive soils.

163 The major soil associations developed from these parent materials and which make up about 70% of the county soils are:

163 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 tilled to aid drainage.

163 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.

163 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.

164 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.

164 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.

164 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.

164 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.

164 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.

164 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.

164 40 B. St. Charles-Batavia Association, 40 C. St. Charles-Camden Association and 43 B. Worthen-Littleton-Raddle Association are all prime lands grade "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.

165 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.

#### 165 Climate:

165 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.

#### 165 Native Vegetation:

165 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.

165 Soil Texture and Moisture Availability:

165 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 permissible for root penetration of crops.

165 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.

165 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.

166 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.

166 Value of Crop Production:

166 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.

166 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 \$723 million and second in meat products exported, \$28.6 million.

166 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 \$666.55 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.

#### 167 STRIPPABLE COAL RESERVES IN KNOX COUNTY

##### 167 Strippable Coal Reserves

167 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.

167 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.

167 284,646 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.

167 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.

#### 167 RECLAMATION

##### 167 History

167 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.

167 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.

167 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.

168 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.

168 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.

168 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

168 n1. Letter from Russell Dawe to Mike Schechtman, Illinois South Project, April 19, 1976.

169 Knox County's legal efforts:

169 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.

169 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.

169 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.

169 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.

169 Every effort by the county to locally regulate mining and reclamation and to protect its soils has been successfully frustrated legally.

169 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.

169 ASSESSED VALUE AND TAXES

169 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.

170 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.

170 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.

170 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%

170 n1. Equalized assessed value is determined by the County Board of Tax Adjustment and is the figure used to determine taxes.

170 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.

#### 171 SUMMARY AND CONCLUSION

171 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.

171 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.

171 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.

171 With only 12 per cent of Illinois' abundant coal reserves strip mineable; with an ever increasing demand for energy, both coal and food, throughout 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.

171 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:

171 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.

171 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.

171 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.

171 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.

172 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."

172 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:

172 "THE WEALTH OF ILLINOIS IS IN ITS SOIL - ITS STRENGTH LIES IN ITS INTELLIGENT DEVELOPMENT."

173 [See Illustration in Original]

STATEMENT OF MARCUS L. NANCE PRESIDENT, NANCE CATTLE CO., BIRNEY, MONTANA

Washington, D.C., February 28, 1977

174 Mr. Chairman, Members of the Committee:

174 My name is Marcus L. Nance and I live on my ranch near Birney, Montana. I have lived here for nearly sixty years and my property is located near the center of the Powder River Basin.

174 I would like to make it clear that I do not oppose a federal strip mine bill, but I do oppose very strongly two sections of this bill.

174 First, in regard to Sec. 510(b)(5)(A). In our alluvial valleys we have, in most cases, plenty of topsoil which has washed into our valleys from the side creeks running into these valleys. We have in many cases ample irrigation water, and with the help of the summer sun, we have the most reclaimable land there is. The hayland which is deleted in this bill varies in productivity from one ton per acre to five or six tons per acre and it is interspersed with undeveloped range land. After mining, we have the opportunity to pool our cropland with our undeveloped range land in a reclamation plan that will increase both our productivity and the total acres of cropland.

174 The ranches out here obtained this coal interest (fee coal) by homesteading on these lands before 1910 and at that time they had the choice of the West. They naturally took up land along the valley where the lands were more productive and water was available. These fee coal lands join lands above the valley floor where there are also substantial coal deposits. Mining these upper lands and leaving the fee lands would not only be wasteful but would also leave the fee lands practically valueless because the amount left would be uneconomical to mine. I would like to point out here that the total amount of cropland that would be taken out of production in the Powder River Basin would be very small since the coal in most of these areas has been eroded out years ago.

175 I do not want to imply that all valley floor land can be reclaimed any better than other lands in our area due to the soil types or the hydrological effects, but I think areas to be mined or not mined should be taken on a case by case basis, not a blanket position.

175 The State of Montana, which has one of the best strip mining laws in the nation, and the State of Wyoming, have both been faced with alluvial valley legislation in their recent legislatures and due to the variable conditions within each state have soundly defeated such legislation. I find this condition more complex nationally.

175 Second, in regard to Sec. 714, The Surface Owner Protection. I would like to point out that there are very few ranches where over ten percent of the ranch is private surface over federal coal that is economical to strip. I would also like to point out that we have many different types of ownership both in regard to minerals and in regard to surface. In our area, for example, we have state lands, Burlington Northern lands, private lands and a combination of one

owning the surface and others owning the minerals. To obtain a proper land use plan as required in the recently passed Mineral Leasing Act (Public Law 94-377) it would be nearly impossible in most cases if one or more of these mineral ownerships were deleted from the mining or reclamation plan. Under the restrictions of this section, I do not believe that there are many places where a proper land use plan could be put together.

176 I thank you for your attention and for the opportunity to appear here today.

176 Respectfully submitted by, Marcus L. Nance

177 NANCE CATTLE COMPANY

177 BIRNEY, MONTANA 59012

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179 [\*]

STATEMENT OF DR. ARTHUR F. HAYES PRESIDENT, BROWN CATTLE CO., BIRNEY, MONTANA

Washington, D.C., February 28, 1977

180 Mr. Chairman, Members of the Committee:

180 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.

180 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 S. 7.

180 As an 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.

180 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 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 over 1,200, perhaps more.

181 If the Mansfield amendment in S. 7 is adhered to, such proper unitization would be impossible.

181 The forty year old history of the Big Horn Coal Mine, in the alluvial valley of the Tongue River and the six 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.

181 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 sulfur content of this coal, makes it very valuable. Extensive exploration work done within the last two years on our ranch confirm this appraisal.

181 It is my contention that this area can be mined in an orderly fashion as transportatin 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.

182 Section 714, the Surface Owner Protection provision of H.R. 2, which incidentally would not effect the Brown Cattle Co., because our commitment is prior to February 27, 1975, is, I believe inadequate. I have always been in favor of land owner consent, but I feel it should work both ways. Many have assumed that all land owners are against production of coal and federal leasing. This is not the case. Most land owners in our area have made legal commitments to their satisfaction. Energy companies have bought ranches with the rancher making a lease back arrangement. Some energy companies have negotiated straight

surface leases with the land owner, which they no doubt will exert at the proper time. However, the point is that in the vernacular of a cowman, I believe the surface owner protection section, as written in Sec. 714, consists of a lot of "Mickey Mouse" language. I think the replacement value on an animal unit basis, with the land owner having the option of including his whole ranch rather than just the disturbed part of it, is proper. If the land owner, on reviewing the mining proposal, thinks he can manage, I believe he should have rental value plus a lease back option. If he prefers to sell his land he should have that option rather than have one half of his ranch or less emasculated so that it is no longer a viable economic unit.

182 To have appraisers compute fair market value of the land to be disturbed, without looking at the ranch as an economic unit is not adequate. I believe the surface owner protection section as written in H.R. 2 will in turn end up with land owners making the decision to sell to energy companies on a replacement value basis plus other incentives. These owner arrangements should not be construed as windfall profits. On the contrary, the necessity for the United States Government to exercise its mineral interest in the land has already devalued the ranch units in the area and has made many of them unmerchantable.

182 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 higher productivity.

182 Thank you for the opportunity to appear here today.

182 Respectfully submitted by, Dr. Arthur F. Hayes

STATEMENT OF DAN HINNALAND HINNALAND RANCH, BROCKWAY, MONTANA  
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT HOUSE COMMITTEE ON INTERIOR AND  
INSULAR AFFAIRS

Washington, D.C., February 28, 1977

184 Mr. Chairman, Members of the Committee:

184 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.

184 I am here today not in opposition to H.R. 2, but rather to voice my concerns about two specific sections, 510(5)(A) and 714 I believe the alluvial valley sections of the bill is wrong.

185 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.

185 With regard to Section 714, Surface Owners Protection, I believe that decisions regarding the sale, lease or any other disposition of one's land is an individual property right and should not be legislated. Before taxes reached the proportions they are today, one could accumulate resources to build and improve his place. When my father died in 1960, his life savings were wiped out to pay his estate taxes. I fear that without other income that my family will have to sell part or all of the ranch to pay my estate taxes. Resource development has already helped us through some lean years and coal development appears to be an insurance policy against future financial problems. I don't always get what I want for my agricultural products, but I sell them. Land is

different. I can ask a price for it and if it is offered I may sell it. Just because I have federally owned coal under my ranch, I should not be limited in what I can receive for the land if it is to be mined. The decision with regard to the surface should remain mine without limitations.

185 Thank you for the opportunity to appear here today.

185 Respectfully submitted by, Daniel S. Hinnaland

STATEMENT OF BURTON B. BREWSTER QUARTER CIRCLE U RANCH CO., BIRNEY, MONTANA

Washington, D.C., February 28, 1977

187 Mr. Chairman, Members of the Committee:

187 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.

187 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.

188 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.

188 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.

189 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 ".

189 Thank you for the opportunity to appear here today.

189 Respectfully submitted by, Burton B. Brewster

STATEMENT OF JACK KNOBLOCH KNOBLOCH RANCH, BIRNEY, MONTANA SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Washington, D.C., February 28, 1977

190 Mr. Chairman, Members of the Committee:

190 I am concerned about the proposed strip mining regulations where they pertain the alluvial deposits and the surface owner problem.

190 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.

190 A mine is planned at the present time that will involve a substantial amount of our deeded surface.

190 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.

190 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.

191 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.

191 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.

191 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.

191 Thank you for the opportunity to appear here today.

191 Respectfully submitted by, Jack Knobloch

STATEMENT OF SOREN P. JENSEN, JR. PRESIDENT, COTTONWOOD RANCH, INC.,  
MCCONE COUNTY, MONTANA SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT HOUSE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Washington, D.C., February 28, 1977

193 Circle, Montana

193 February 24, 1977

193 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.

193 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.

193 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.

193 We do appreciate good laws, and commend you for your efforts.

193 Yours truly, Soren P. Jensen

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  
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Washington, D.C., February 28, 1977

194 Mr. Chairman, Members of the Committee:

194 Collectively, we the above named ranchers have prepared the following statement to express to this Committee, our views with regard to H.R. 2, 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.

## 194 Area Location

194 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 gravity flow ditches. Most of our families have been in the area since the 1880's.

195 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.

195 1. Mining should not be prohibited in alluvial valleys.

195 A decision to prohibit mining in alluvial valleys would be arbitrary 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.

195 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.

195 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.

196 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.

196 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 the companion bill in the U.S. Senate, 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.

197 2. The Surface Owner Protection, Section 714, is seriously defective.

197 The private market place can best determine the value of privately owned surface rights as they relate to the development of underlying coal. As the act provides, a competitive bidding process is the manner in which coal lease awards are to be made by the Secretary. Likewise, the private market place can best determine the value of privately owned surface rights.

197 The federal government should not attempt to fix land values for agricultural lands overlying federal coal. The combination of requiring surface owner consent from landowners over federal coal deposits and fixing the compensation that a landowner can receive, if he gives consent, is potentially dangerous. Any person owning land over federal coal that would be part of a logical mining unit could prohibit mining of that coal by his simple refusal to give consent. This appears extremely unwise in view of the growing national energy needs. Further, it allows one person, by his non-consent, to prohibit the development of a resource that belongs to all the people of the United States. It also allows the surface owner two options to object to mining - one,

because he doesn't like coal mining and two, because he thinks his land is more valuable than what he is offered.

197 A combination of factors should be considered in addressing the other inadequacies of Section 714. The enclosed memorandum points out a number of areas that should be given close attention during the deliberations with regard to the Surface Owner Protection section. The memorandum was prepared by the Minneapolis, Minnesota law firm of Dorsey, Windhorst, Hannaford, Whitney & Halladay.

198 3. Other problem areas.

198 The Bill if enacted would create another federal bureaucracy 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 periods to federal standards.

198 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.

198 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.

199 The bill will cause needless delays and added expense to future and existing operations. Section 520 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.

199 Conclusion:

199 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.

199 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.

199 Respectfully submitted, Marcus L. Nance, Dr. Athur Hayes, Jack Knobloch, Burton Brewster, Daniel S. Hinnaland, Soren P. Jensen, Jr.

200 MEMORANDUM

200 Re: Surface Mining Control and Reclamation Act of 1977, H.R. 2  
Comments  
on Section 714, "Surface Owner Protection"

200 This Memorandum will comment on Section 714, "Surface Owner Protection," of the Surface Mining Control and Reclamation Act of 1977, introduced as H.R. 2. A copy of Section 714 is attached. It is our opinion that the proposed wording of Section 714 is so technically defective that enactment without substantial revision would give rise to a substantial amount of litigation that could effectively delay development of Western coal for several years. We understand the predecessors of Section 714, including Section 716 of the Surface Mining Control and Reclamation Act of 1974, which were substantially similar in wording, have been controversial. While we believe any surface mining legislation should recognize and deal with the rights of surface owners, we believe the present wording fails to adequately deal with the concerns and interests of persons who will be affected in a manner that is consistent with assumed national objectives of establishing a policy for developing federally owned coal in a way that will be least harmful to the environment. This Memorandum will first discuss some of the background considerations giving rise

to Section 714, will list what appear to be relevant issues, and will then set forth specific comments on the section. Finally, it will set forth an alternative proposal. This Memorandum will be based primarily on information regarding the states of Wyoming and Montana, where vast amounts of coal exist, and will not necessarily be applicable to circumstances in other states. Also, the comments in this Memorandum are based on a review of Section 714 without a thorough review of other statutes, rules and regulations which may be relevant. In fact, part of our conclusion is that because of the complexity of the subject matter, Section 714 should not be enacted without substantial additional detailed study, which we believe would confirm our opinions regarding the shortcomings of the proposed section.

## 201 BACKGROUND

201 The fee ownership of most coal reserves in Western states has been severed from fee ownership of surface rights. Typically, a private rancher owns surface rights, and coal rights are owned by the United States, a state government, or by private interests. Particularly in Montana, the Burlington Northern owns fee title to substantial coal deposits. Ranchers and other private interests own some fee coal. A substantial amount of this coal has been leased by the fee owner to coal companies or others. On a section map of Montana, for example, one would see a "checker-board" pattern with Burlington Northern and the United States being the fee owner of every other section of coal, and the State of Montana being the owner of two sections in each township. Most of the surface is owned in fee by ranchers. It is our understanding that the question whether the owner or lessee of coal, including the United States, has an absolute property right to conduct surface mining using current techniques, despite the objection of the owner of severed surface rights, has not yet been resolved in the states of Montana and Wyoming. We believe that this question must be resolved judicially, with respect to each different type of non-federal coal deposit - including state, Burlington Northern and private fee, and with respect to each type of federal coal reservation. Therefore, any action taken by Congress at this time which would diminish the rights originally acquired by the surface owner may constitute a taking of property, raising complex constitutional issues. At the same time, we have recognized that Congress should determine the policy for developing coal owned by the United States, and that this policy should properly consider the manner in which overlying surface interest are held and the effect of future coal development on these interests.

202 Normally, a viable coal mining unit will be made up of federal, state and private coal, and private surface ownership, although there are undoubtedly substantial coal deposits entirely owned by the United States under surface that is also entirely owned by the United States. We do not believe the choice of which deposits of coal owned by the United States will be developed should be made solely on the basis of who owns the surface. To the contrary, environmental factors, proximity to transportation, water resources, community development, quality and amount of coal in a deposit, historic, archeological, and wild life considerations may suggest in certain areas that deposits under privately owned surface should be developed, rather than deposits under federally owned surface. Acquisition of sufficient rights to assemble a viable mining unit is an intricate and time-consuming process, and the coal developer may find himself dealing with the federal government, a state government, and various private interests. He will probably have to acquire coal leases from the federal government and from state or private interests, as well as acquire rights with respect to the surface from private ranchers. This procedure has been followed by the developers of surface mines presently in operation. Normally, the surface owner receives some compensation for the use of his land, and, in fact, he is probably entitled to compensation under one or more federal or state statutes. It is our understanding that the proposed legislation does not purport to increase or diminish any property rights held by the United States or any other land owner. We believe, however, the present wording of Section 714 conflicts with this concept.

### 203 ISSUES

203 Section 714 seems to present the following issues:

203 (1) Should the United States have a stated policy of preferring to lease coal deposits which underlie surface owned by the United States instead of leasing of coal deposits under surface owned by others?

203 (a) If so, why?

203 (b) How much coal would become unavailable for mining if this policy were adopted?

203 (2) If the United States proposes to lease coal deposits under surface owned by others, should Congress grant these persons the right to effectively veto the mining of such coal deposits?

203 (3) If the United States leases coal deposits under surface owned by others, should categories of surface owners be established with different rights

being granted to different categories of surface owners? (The proponents of Section 714 apparently feel that a distinction should be made between "bona fide" ranchers and farmers, on the one hand, and "speculators" on the other.)

203 (4) If the United States leases coal deposits under surface owned by others, should the legislation provide a specific procedure and formula for compensation of the surface owners?

#### 203 COMMENTS ON SPECIFIC PROVISIONS OF SECTION 714

203 (References are to Subsections)

203 (a) This subsection states that the United States will refrain from leasing coal deposits under surface which is owned by "surface owners" as defined in subsection (g). It should be clarified whether the Secretary is under any constraint with respect to leasing coal deposits under surface which is owned by others who are not within the definition of "surface owner" set forth in subsection (g). For example, if a coal company owns surface over federal coal, is the Secretary free to offer that coal for lease, since the coal company is not within the subsection (g) definition of "surface owner"?

204 (b) This subsection provides that no coal lease shall be awarded other than pursuant to competitive bidding. This may be overly restrictive where there are compelling reasons to grant a lease to a particular coal operator, such as where that operator is already mining adjacent coal. The question of proper compensation for any such lease could be resolved by appraisal or other methods establishing fair value.

204 (c) This subsection would require the Secretary to give any surface owner whose land is to be included in a proposed leasing tract actual written notice of this intention. Since subsection (g) defines "surface owner" as used throughout the section, the Secretary would apparently not be required to notify any surface owner who is not within the subsection (g) definition, nor would the Secretary be required to give any notice to the persons actually occupying the land. It would seem preferable that actual written notice be given to all title holders of record to the surface above the coal deposits and to all occupants of the land, whether or not they are "surface owners" as defined in subsection (g). The subsection should probably specify that a minimum number of days' notice be given. Technically, it would seem improper to say that the surface owner's land is to be included in the proposed leasing tract. Presumably, only the coal interest of the United States will be leased, together with a "consent."

204 (d) This subsection gives a "surface owner" within the subsection (g)

definition a veto right over the leasing of federal coal under his land.

204 Subsection (m) prohibits any person from inducing a surface owner to give consent, and a surface owner from receiving anything of value for giving consent, is subject to a penalty. However, nothing prevents the surface owner from selling his ranch to, for example, a coal company that would not have the right (or the desire) to veto the federal leasing of underlying coal. There seems to be no valid policy reason for permitting a rancher to sell his ranch, and in the process receive additional compensation because of the relationship of the surface rights to the underlying coal, while prohibiting him from receiving payment for granting consent to mining under circumstances that would perhaps allow him to continue ranching part or all of his property, subject only to the disruption that would occur during actual mining. An apparently unintended result of this subsection may be to make it substantially more profitable for a long-time rancher to sell his ranch outright to a coal company, rather than go through the consent procedures set forth in the subsection, and therefore be limited to the compensation permitted under subsection (e). It is not clear whether the consent, once given pursuant to subsection (d), is irrevocable. If so, the consenting surface owner would presumably then be bound to accept the valuation carried out under subsection (e) (subject to judicial review), regardless of the result.

205 (e) The term "fair market value of the surface estate" referred to in line 7 of subsection (e) is not defined. We believe it must necessarily reflect a higher value because the surface overlies coal deposits, since such higher value has already been well established in recent transactions involving surface overlying federal and non-federal coal deposits. Also, it would seem that "fair market value" must necessarily reflect subsequent transactions involving surface over federal coal among persons who do not qualify as surface owners under subsection (g) and involving comparable surface overlying private coal. Line 9 of subsection (e) could be clarified by inserting the word "proposed," "intended," "projected," or some similar word before the word "surface" to clearly establish that the losses and costs need not be actually incurred and that they will be estimated before the commencement of mining and will be payable in full, at the option of the surface owner, before the actual commencement of mining. The clause in paragraph (5) of the subsection "in light of the length of the tenure of the ownership" really does not seem to make much sense (and it appears there may be an error in the use of both "tenure" and "ownership" in the wording). A person who sold out his interest immediately

prior to the Act and took out some value from the coal situation did not get any more or less money because he had held the property for a long period of time.

Likewise, a recent purchaser of the property may very well have paid more for the property because of the underlying coal. These values should be reflected

in the fair market value concept. Since the long-time surface owner is not required to consent, there does not seem to be any compelling reason to give him

additional compensation when he does consent, solely because of the longevity of

his ownership (unless it is believed that the longer a person has been on the property, the less likely he is to consent, and paragraph (5) is therefore necessary as an added inducement to obtain the consent of such persons). The proviso to paragraph (5) is not clear. Apparently it is intended that such additional reasonable amount of compensation may not exceed the fair market value of the surface estate as established pursuant to this subsection plus the losses and costs as established pursuant to paragraphs (1) through (4) above. As written, it does not clearly say this. Furthermore, how does the Secretary (rather than the appraiser) determine the additional reasonable compensation under paragraph 5?

207 (f) This subsection is poorly written and confusing. Also, it is not

clear that the price index adjustment also applies to the \$1 00 of paragraph (5)

to subsection (e), and this could perhaps be clarified. It does not specify who

will conduct the review of the initial determination of the "amount of the surface owner's interest" and that phrase should perhaps read "value of the surface owner's interest." Also, the section does not provide who will bear the

costs of the appraisals. With respect to installment payments, reversionary rights, and the like, it would perhaps be helpful to specify what will constitute a valid assignment. For example, will local law prevail, or can the

Secretary establish some special notification procedure before he will honor an

assignment. (It is presumed the intention of the Act is to recognize the free

assignability of these rights.) Reversion should be to the surface owner or his

successor in interest.

207 (g) This subsection defines the term "surface owner" and creates a class

of persons who would presently qualify, and subsection (h) creates a second class who would qualify at a future date after they have held title for a period

of at least three years. Without comprehensive regulations (and perhaps even with such regulations) some very difficult interpretive questions exist under subsection (g), and since "surface owners" are being given the absolute right to

prohibit surface mining of coal deposits under their property, the resolution of

these interpretive questions could have a significant substantive impact. For example, the subsection is silent as to surface owned by joint tenants, some of whom may have their principal place of residence on the land and/or personally conduct farming operations on the land and/or receive a significant portion of their income from such operations, and others who do none of these. Similar questions would exist where title was held by a partner where some partners qualify and others do not. One solution might be to provide in the Act for a registration program whereby persons owning surface over federal coal deposits would be given an opportunity to apply to be classified as "surface owners" entitled to the benefit of Section 714. The Secretary could deny an application within a specified number of days on the grounds that the applicant was not within subsection (g); and, absent fraud or misrepresentation of facts in the application, the applicant would be deemed a surface owner under subsection (g) if the denial was not issued within that period. Some appeal procedure from a denial should then be established. This type of procedure might be more workable, administratively, if the registration were carried out only after the Secretary gave his initial notice of intention to include certain coal deposits in a leasing tract and persons owning surface over those deposits were then given an opportunity to register. On the other hand, it would seem that the type of surface ownership and the attitudes of the surface owners toward surface mining are two important factors among many which should be considered by the Secretary before reaching a final decision about placing specific coal deposits in a leasing tract. Paragraph (3) of subsection (g) is permissive and does not set forth a definition of "relative." The whole subsection could result in some parcelling of ownership, pursuant to rights of division, liquidation and the like, where multiple owners or multiple parcels are involved.

208 (h) This subsection could create a situation where a particular coal deposit is kept out of a leasing tract indefinitely. For example, if a person who meets the requirements of paragraphs (1) and (2) of subsection (g) but not paragraph (3) sells the property to another person who meets the requirements of paragraphs (1) and (2), a new three year period presumably begins, even if both these people want to give their consent. Again, this appears to be a substantial incentive for the first person to sell to a person who cannot qualify as a surface owner under subsection (g). The word "this" in the third line is in error.

209 (f) This subsection is probably in conflict with other provisions of Section 714, and seems likely to give rise to litigation.

209 (j) It is not clear whether this subsection is meant to protect the surface owner from being forced to litigate in the District of Columbia, or elsewhere than his home district, or whether it is meant to limit rights, such as the right of appeal to a Circuit Court, he might otherwise have. It is silent as to judicial review of other questions arising under Section 714, such as to questions of who are "surface owners" as defined by subsection (g).

209 (k) Item (3) of this subsection is technically incorrect since there is no procedure for anyone to "refuse" to give his consent. He can remain silent, and perhaps that is what is meant by "refusal" in this context.

209 (l) No comment is made.

209 (m) It is not clear whether this subsection is intended to cover the situation where surface rights are jointly owned or owned by a partnership and the consent of individual owners or partners may be required to effectively give consent to the Secretary under Section 714, where dealings between joint owners or among partners may take place, and a division of income from the property, including compensation under subsection (e), may be involved. Also, a typical situation might arise where a rancher owned surface over adjacent federal and non-federal coal deposits, and compensation for surface rights over the non-federal coal was contingent on actual mining. The contingent compensation would technically be an inducement to the rancher to consent with respect to the surface over the federal coal. Mining would be unlikely to commence unless both the federal and non-federal coal could be leased to make a mine unit.

210 (n) This subsection should be reworded to be made clear that a payment to a surface owner made pursuant to an agreement entered into on or before February 27, 1975 whereby the surface owner has agreed to permit surface mining, which payment is made after the February 1, 1976 effective date, does not in any way contravene the subsection, even though the surface owner gives his consent to the Secretary after February 1, 1976 to fulfill his obligations under the pre-February 27, 1975 agreement. Also, an automatic termination under subsection (n) of one lease in the middle of an active coal mining operation could have unintended consequences which would be very severe, especially since any new lease would be the subject of competitive bidding. Finally, it is not

clear whether the surface owner consent lapses upon a termination of the coal lease under this subsection, or whether the consent, once given, is binding for all time.

210 (o) The February 1, 1976 effective date appears to be in error, especially when read with subsection (m).

#### 210 CONCLUSIONS AND SUGGESTIONS

210 It is our conclusion that the language of Section 714 of the Act is seriously defective, and that a reexamination of underlying policy objectives and of specific language to achieve those objectives would be justified. Further consideration should also be given to the administrative practicalities of implementing this section, and the effect on development of the nation's coal resources of delays arising from the need for judicial interpretation of much of its language.

210 If it be agreed that a major objective of surface mining legislation should be to maximize the availability of the nation's energy resources for ultimate development while minimizing resultant disruption of our environment and other interests, we believe approaches other than that proposed by Section 714 would be more realistic. Any alternative approach should recognize that opening any coal mine in the Western states utilizing current surface mining methods will require a bringing together of private, state and federal mineral and surface rights. Just as the Act recognizes competitive bidding as the manner in which coal lease awards should be made by the Secretary, the private marketplace can best determine the value of privately owned surface rights as they relate to development of underlying coal. The Secretary's hands should not be unduly tied with respect to what federal coal will or will not ultimately be subject to lease, but a procedure should be established that will ensure that he give maximum consideration to competing interests in the decision-making process. It would seem that any proposal to lease specific deposits of federal coal should be the subject of public notice and hearing, and the views of all of the owners of the surface over that coal should be thoroughly considered by the Secretary before making a final decision to lease. We will suggest below one alternative approach which might achieve the desired objectives and be more realistic than Section 714. Our suggestion is intended merely as a statement of basic principles and concepts.

211 We suggest that a procedure be established that would normally commence with a request being made to the Secretary to have a specified federal coal deposit placed in a leasing tract. If the Secretary determined that the

deposit was unavailable for leasing, he would so inform the applicant, setting forth the reasons for the unavailability, and the request and response would be a matter of public record. If the Secretary determined that the deposit was available for leasing, he would issue public notice of the request, setting one or more public hearing dates, and give actual notice to owners of surface over the coal deposit and to various other designated persons. Any of the owners of the surface over the coal deposit would be entitled to file his written objections to the granting of federal leases stating the reasons for his objections, and, if possible, the amount and types of damages he would suffer if surface mining were commenced. It might then be provided that after the hearings and consideration of the responses, the Secretary would be justified in withdrawing the coal deposit underlying the surface of an objecting surface owner from the proposed tract. However, he would not be obligated to do so if he determined the existence of overriding reasons for leasing the coal, such as the position and importance of that particular coal within the total tract, the importance of the total tract, the nature and extent of the objections, and whether they could be overcome by the payment of reasonable monetary consideration. If the Secretary determined the existence of overriding reasons for offering the coal for lease, he would then announce his final decision to do so. If the objections of the surface owner had not been withdrawn within a specified period of time after the announcement, the Secretary could then be authorized to enter into an agreement with the surface owner, such as envisioned by subsection (d), providing for compensation of the surface owner under a formula similar to that set forth in subsection (e). A concept such as that employed in subsection (g) could be used to establish a class of persons who would be entitled to enter into such an agreement with the Secretary as of right and be compensated under the formula, but the Secretary could in his discretion, also be authorized to enter into such an agreement with other persons. It would be valuable, from a practical standpoint, if the Secretary were also granted the authority to swap certain federal surface with surface owners (and federal coal with private coal owners), subject to an appraisal procedure. (In the private sphere, we understand that many surface owners have been willing to trade properties and relocate.) With these authorities, the Secretary could perhaps negotiate to eliminate most of the objections of surface owners to surface mining. If consent had still not been obtained, the Secretary might also be authorized to use some form of condemnation procedure if it were deemed absolutely necessary to obtain the surface rights. Compensation in condemnation would be based on fair market value. Condemnation would, of course, only be

used as a last resort when there were compelling reasons for doing so. The Secretary would have no obligation to offer surface rights at the time leases of the coal deposits were made available for competitive bidding, and would offer the deposits of coal for lease regardless of whether surface owner consent had been obtained. The foregoing procedure would afford surface owners an ample opportunity to make their objections known and have them receive careful consideration; and, if the objections were overridden, it would subsequently give them an ample opportunity to reach an acceptable agreement with private interests or an agreement with the Secretary providing for compensation according to an equitable statutory formula. On the other hand, they would not be in a position to absolutely prevent the leasing of federal coal.

211 Dorsey, Windhorst, Hannaford, Whitney & Halladay

211 Minneapolis, Minnesota

211 February 24, 1977

Statement of Harris Arthur Before the Energy and Environment Subcommittee of the House Interior and Insular Affairs Committee On HR 2, "The Surface Mining Control And Reclamation Act of 1977"

March 4, 1977.

214 Mr. Chariman and Members of the Subcommittee:

214 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.

214 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 mined coal 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 HR 2 do not address the existing and potential problems that coal development of this scale represents.

215 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.

215 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.

216 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.

216 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 further 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.

216 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.

217 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 presently being administered by officials of the New Mexico state government.

217 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 pursuant 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 violations, is in question.

218 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.

218 In addition, I urge that such program provide us with all of the protection, assistance and benefits that states are accorded in HR 2. 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.

218 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.

219 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.

TESTIMONY ON H.R. 2 BEFORE THE HOUSE SUBCOMMITTEE ON ENERGY AND ENVIRONMENT HOUSE INTERIOR COMMITTEE

MARCH 4, 1977

Gerald W. Moravek

Sheridan, Wyoming

221 Gentlemen, it is a distinct honor to appear before you and to present testimony in support of strong federal legislation governing strip mining.

221 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.

221 The members of the Powder River Basin Resource Council have worked for passage of a federal strip 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.

221 While remarks of mine made before this Subcommittee on 13 January underscore the need for strong federal strip mine legislation, the Powder River Basin Resource Council is also aware tht major differences exist between H.R. 2 and S. 7, 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 H.R. 2.

221 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 extremists, 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 definates reasons.

222 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, including 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.

223 In Campbell County on existing leases which were approved by Interior

in the 60's, nine 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 indicated 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 boom-towns throughout the West.

223 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 Management planning - 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.

223 Gentlemen, federal leasing in the West must be considered, I think as the 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 Appalachia 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 lease 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 could be the first to support a review by Congress of the provision. Certainly with billions of tons of federal, state and private coal under lease that day is many years away.

224 The second reason we support Section 423(e) of S. 7 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 recognise that strippable coal is a limited resource, estimates place it at between 3 and 10% of the national coal reserve, and that some day we will run out of it. It would be 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 deep minable reserves now in order to better cushion ourselves for the day when all cheap fuel is exhausted.

224 For these reasons, the Powder River Council support in modified form the Mansfield amendment. I would add, however, that whether or not this is acceptable to both Houses of Congresses, we fully support the inclusion of strong surface owner consent provisions. The definition of surface owner as found in section 714(g) and (h) of H.R. 2 is vital. We concur in the leasing procedures of the Secretary as specified in 714 (a) (b) (c) and (d). We feel, however, that the determination of the fair market value of the surface owners interest should be between the surface owner and the mining companies, as opposed to the procedures set forth in sections 714(e) (f) (m) and (n).

224 As I mentioned in my earlier testimony before this committee, I had a little trouble last summer when I protested a valley floor mine. I also understand that there have been 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 land."

225 I urge the committee to adopt this language of section 510(b) (5) (A) with the above change (also, delete after "subirrigated on line 10, page 75 to after "production", line 16, page 75). The alluvial valleys are important in that they are the recharge areas for the underground aquifers. Their geologic importance must be recognized; not just the current use of their surface.

225 Section 510(b) (4) of this Act would allow the commencement of valley floor mining if the applicant shows "substantial legal and financial commitment" have been made prior to the enactment of the law. The coal lands of the West have historically been areas of speculative investment. If acquisition of either lands or leases is termed to be a substantial commitment, almost all valley floors 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.

225 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 have 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 experiemntal tracts should be allowed so that we can obtain adequate data to endure reclamation and protection of offsite lands and waters.

225 Another area that is of great concern to the Council is state control of reclmation 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. 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 final approval of state programs. 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 giver 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 stated administer the abandoned mine land programs.

226 Finally we feel that the financing of state programs, which is provided for in section 705 of H.R. 2 shoulf 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 is the fairest in this method of gaining monies for abandoned mine land reclamation.

226 This concluded by oral comments. I again thank this Committee and its members for addressing this important issue and for providing me with this opportunity of testify. I will answer any questions.

226 Thank you.

TESTIMONY OF WALLACE MCRAE HELEN WALLER NORTHERN PLAINS RESOURCE  
COUNCIL BILLINGS, MONTANA BEFORE THE HOUSE SUBCOMMITTEE ON ENERGY AND

ENVIRONMENT

MARCH 4, 1977

228 Chariman Udall, members of the Committee

228 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. Also with me today is Helen Waller, President of the McCone Agricultural Protection Organization (MAPO), an affiliate of NPRC. My family and I own and operate the Rocker Six Cattle Co., a ranch near Colstrip, Montana. My address is Forsyth, Montana.

228 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, two 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. 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.

228 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 adverse aspects of coal development.

229 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. John D. Rockefeller, Jr., once said: "I believe that every right implies a responsibility; every opportunity, an obligation; every possession, a duty." 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.

229 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." There is a dangerous premise here, that has been assumed by many well-intentioned people. This assumed premise says: "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." This example is an oversimplification of the emerging science of reclamation research. Reclamation research is a new form of alchemy. Although old-time 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. 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."

230 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. 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. 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 Members know, and the current President knows that this is indeed an idea whose time has come.

230 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. They will enlist credible mercenaries, and soldiers of fortune for their cause, and all of these will be, as Mark Anthony 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 for the footsoldiers. The creed is greed.

230 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.

231 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. 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 stripmined 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. In Montana only 3% of the strippable coal lies under alluvial valley floors. It is obvious that the other 97% 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. 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.

231 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. Since these public lands are used primarily for summer grazing, we must also consider the value of reclaimed land for the summer grazing of livestock. The plant most successfully grown on mined land is crested wheatgrass. 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. Therefore the plans 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 rendered 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.

232 The surface owner must be protected. However, under section 714 the surface owner should have the right to negotiate over the value of his surface with the energy companies prior to leasing. The surface owner knows best the value of his land in his particular agricultural unit. I can assure you, after having seen ranches in my area bought, traded and leases, that energy companies will never be guilty of providing the surface with "windfall profits." The procedure as it is now in the bill is much too complicated, and should be stream-lined.

232 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. 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 addiction. 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.

233 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 groundwater. These fears are genuine, and no mining engineer or hydrologist has shown me that they have successfully restored or reestablished 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. Wellintentioned 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. 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. 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.

234 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.

LETTERS SUBMITTED BY NAN HARDIN

235

March 2, 1977

Dear Senator Udall;

235 My Husband and I have been under a strain for the last two years, This strain is getting worse as the Blasting that Amax Coal Co. is doing is getting worse. I get a pressure in my head and am left with a terrible headache and this is having an effect on my Heart Condition.

235 They have ruined the plastering in our home, have cracked the basement walls and the floors. The Fireplace is now in such a condition that it is not safe to use. The mortar is falling from the chimney and the bricks in the chimney are being cracked. We built our home 40 years ago and have had none of this trouble until Amax started stripping coal a Mile from our home. We certainly need help and soon with this problem.

236

Dear Mr. Udall:

236 I am taking this opportunity of writing to you concerning the Federal Strip-Mining Bill. I feel like you and your colleagues are our best and last hope for solving the problems we homeowners are facing concerning BLASTING from Strip-Mining operations. There are hundreds of homes in this particular area, which is near 2 Amax Mines situated near Chandler and Newburgh. This is in Warrick County in Southern Indiana. My home, which was built in 1970, nearly 2 years before Amax began acquiring land for their mine near Chandler, is literally full of cracks in the basement and the brick veneer. The same can be said about our neighbors homes. Many of the hundreds of homes have minor to severe damage in the area.

236 There are several hundred large blasts in a years time and many of these are like small earthquakes. I have recorded on my calendar for February, 1977 alone a total of 39 large blasts. Our homes shake and pop, dishes and windows rattle, and our nerves are getting frayed. Our elderly neighbors, in their 70's and 80's, were sitting in their living room 3 months ago when a blast went off and cracked their living room window. Our homes were simply not built to withstand these small "earthquakes" day after day.

236 Many of us are very despondent about getting anything done by local and state politicians and governmental offices. We have called upon these people and they simply brush us aside in subtle ways, promising to help but doing

nothing. Indiana's only State Mine Inspector, who was of great help to us, quit in disgust several weeks ago saying the politicians and the mining industry were such bed-fellows that he simply had his hands tied and could get nothing done. His job to this day is still unfilled. A lady at the Indiana Bureau of Mines told me last week that the state law on blasting is very vague and is therefore virtually unenforcable. Therefore, Mr. Udall, I feel a strong Federal Bill on blasting regulations should be included in the strip-mining bill to help us forgotten people.

236 Thank you very much on any help you can give us.

236 Sincerely,

236 Mr. & Mrs. David B. DeMoss

236 R #2

236 Chandler, Indiana 47610

236 925-3976

236 DBD/sd

237

Dear Mr. Udall and To Whom it may Concern;

237 We live in what is one of the most beautiful parts of Southern Indiana. Peaceful and quiet yet convient to schools, shopping, churches and anything we need within 10 to 15 miles.

237 We looked for 10 years before we bought our 5 acreas on which to build our home and raise our 2 children. We built in 1966. We have a modest 3 bedroom brick home with a basement and beautiful trees and everything we thought we wanted. Then about 4 years ago we discovered that Amax Coal Co. or their predecessor was buying land around us within 1/2 mile for the Stripping of Coal. We organized and protested to no avail. Our County Comminisoners just let the coal co. take over. In the Spring of 1973 we met with the Amax Officials at Castle High School at Newburgh Ind. and they assured us they wanted to be good neighbors and could get the coal from the ground without Damaging or bothering us in any way.

237 Now it is March of 1977, Here we sit, Our Basement walls have cracks all through the mortar joints, some Blocks are broken right through the center of them. My Stone Mantle on the Fireplace is now in 6 or 7 pieces instead of just

ONE. My chimney is pulling away from the wall. I have a deep water well, We are just praying it will never be affected.

237 This is War! We have no recourse, Our Laws here in Indiana are not helping. Aplease help us by making some Strong National Laws to protect us. Before it is too late. Our Children and our Grandchildren will condemn us for tearing up this land. It is my understanding the coal that is being stripped here and the Amax Ashire Mine is being shipped to Japan.

237 Not only is this eternal blasting damaging my home and that of my neighbors as well, but my Mental, Physical and Spiritual condition is begining to weakenin. If I didn't know they were blasting in the area my neighbors and I would think we were experiencing earthquakes. These are not just small jolts, the tables shake, the windows rattle, Its just terriable. This happens as much as 6 or more times a day.

237 PLEASE HELP! : NOW!

237 P.S.

237 As I sit here and write this letter March 2, 1977 there have been 3 quakes. The times are 9:30 - 10:15 - 10:37 AM.

237 THIS IS JUST THE BEGINING OF MY DAY.

238  
ST. JOHN CHURCH  
625 FRAME ROAD  
NEWBURGH, INDIANA 47630  
March 3rd, 1977  
Mr. Morris Udall  
U.S. Congress  
Washington, D.C.  
Dear Mr. Udall,

238 I am pleased to make a statement for your hearings with regard to the operation of the Coal ompanies in South Western Indiana, because I have served as a Catholic Priest in the area for the last three years. I was at St. John's Church, Elberfeld, Ind., 2 miles away from the Amax Coal Co., and I now serve at St. John's Church, Newburgh, Ind., at the other end of the county.

238 I have seen first hand the results of strip mining and I believe they are terribly lacking in responsibility:

238 TOWARD THE PEOPLE who live in the area because of excessive blasting, and dnagerous truck driving

238 TOWARD THE LAND by not restoring it to a better and usable condition.

238 TOWARD THE COMMUNITY by lack of communication and by little concern for what is happening to the lives of real people, e.g. use of pressure tactics to buy land

238 While we all need energy, I trust that you and your committee will be able to bring some improvement to this problem.

238 Thanking you kindly,

238 Rev. Earl Rohleder, pastor

239 Dear Sirs:

239 Although I am a native Hoosier, I had never witnessed the effects of strip mining until I moved to the Evansville area in 1970. I could not believe that the coal companies were allowed to damage the land so severely without a meaningful attempt to protect adjacent areas and reclaim the stripped land. At several local meetings coal company representatives and members of Indiana's Department of Natural Resources who were responsible for reclamation assured us that the devastation we saw was done under the 1943 law governing strip mining and that the new 1967 law would correct the deficiencies.

239 Unfortunately, this has not proven to be true. Indiana's laws are not strong enough and are not enforced to the degree required to ensure that the mined land can be used productively. I have been on tours conducted by the coal companies and have also explored, on my own, other areas mined since the 1967 law has been in effect. The coal companies advertize that the land has been returned to row crops and is at least as productive as before it was mined. This is not factual. They consider wheat to be a row crop (farmers do not) so they load the ground (not soil) with high nitrogen fertilizer the first year in order that wheat can grow. Thus the reclamation procedure is considered to be completed. One of their spokesmen admitted that the land cannot be farmed at a profit even if reclamation costs are excluded. No topsoil is returned to the land because the Indiana guidelines require this only where practicable and, apparently, the coal companies and the reclamation officials seldom think it is practicable. Thus the land has been turned from farmland or forest into a hard clay (often acid) waste land that is incapable of supporting vegetation without the addition of inordinate amounts of fertilizer.

240 Acid drainage should be controlled by a 1963 law under the regulation of the State Stream Pollution Control Board, but pH values as low as 2.2 have been found in streams in the strip mined areas.

240 It is obvious to any informed individual who observes the reclaimed areas that the coal companies and the state of Indiana are not doing an adequate job in reclaiming strip mined land or protecting land adjacent to strip mined areas.

240 The coal and energy interests are quite strong in Indiana and it would be extremely difficult to obtain meaningful reclamation of strip mined land if it is left up to the state legislature. For this reason I feel that our only hope in saving thousands of acres of farmland and forests in Indiana is the enactment of a strong Federal strip mine reclamation law. I especially urge one which includes the return of the topsoil (horizon A) and subsoil (horizon B) to the disturbed land and controls siltation and acid drainage.

240 Sincerely,

240 E. Crosby Tompkins Ph.D.

240 4000 Kings Hill Dr.

240 Evansville, Indiana 47712

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

242 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.

242 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.

242 We do have, however, some suggestions for specific amendments to the bill which in our view will make the legislation more effective in achieving the Statement of Policy, Title I of the bill, and we have incorporated these suggestions in the concluding portion of this statement.

242 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.

243 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.

243 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.)

243 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.

244 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.)

244 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.

244 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.

245 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.

245 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.

246 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.

246 In summary, the feasibility of restoring a significant 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.

247 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:

247 "We subscribe to the concept of proper reclamation requirements and that areas which cannot be reclaimed should not be mined."

247 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.

247 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:

248 1. Adequate moisture supply (suggested: monthly supply at least equal to potential evapotranspiration during the growing season in eight of ten years)

248 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)

248 3. a growing season of sufficient length to produce a commercial crop

248 4. acceptable water table (suggested: a water table that can be maintained below 1.5 feet during the growing season)

248 5. appropriate levels of pH and conductivity (suggested: pH between 4.5 and 8.4)

248 6. limited damage by flooding (suggested; crop damage limited to no more than two years in five)

248 7. low coarse fragment content (suggested: less than 10% coarse fragments - greater than three inches - in the surface layer)

248 8. low erodability (suggested: a product of K [erodability factor] x percent of slope of less than 1.5)

248 9. a contiguous area of sufficient size to allow economical operations (suggested: 160 acres)

248 10. permeability (suggested: at least 0.02 inches per hour within 20 inches of the surface)

248 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:

249 (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;)

249 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.

250 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.

250 \* Illinois Geological Survey, report in progress, as supplied by Jack Simon, Urbana, Illinois, March, 1977

250 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

251 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.

251 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. \*

251 \* Toynebee, Arnold, Mankind and Mother Earth, Oxford University Press, 1976, page 5

251 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.

252 [See Illustration in Original]

253 [See Illustration in Original]

254 [See Illustration in Original]

255

\*5\*Soybean  
Yields: The  
Most Productive  
Illinois Soils

%	Rank in 380 Soils	Soil Type	Yield, bu./a.	Acreage, as	
			high-level/ management n1	Acreage, as % Illinois n2	of Vermilio 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]

255 n1 Productivity of Illinois Soils, University of Illinois at Urbana-Champaign College of Agriculture Cooperative Extension Service, Circular 1016. (1970)

255 n2 Soil Type Acreages for Illinois, University of Illinois at Urbana-Champaign College of Agriculture, Agricultural Experiment Station, Bulletin 735. (1969)

255 average per-acre

255 Yield for Illinois: 30

256

\*5\*Corn Yields:  
The Most  
Productive  
Illinois Soils

Yield, bu./a.	Acreage, as
%	

Rank in 380 Soils	Soil Type	high-level management n1	Acreage, as % of Illionis n2	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]

256 n1 Productivity of Illinois Soils, University of Illinois at Urbana-Champaign College of Agriculture, Cooperative Extension Service, Circular 1016. (1970)

256 n2 Soil Type Acreages for Illinois, University of Illinois at Urbana-Champaign College of Agriculture, Agricultural Experiment Station, Bulletin 735. (1969)

256 average per-acre

256 yield for Illinois: 87

257 [See Table in Original]

258 [See Table in Original]

259 [See Table in Original]

260 [See Table in Original]

Environmental Policy Institute

317 Pennsylvania Ave.S.E. Washington, D.C. 20003 202/544-8200

STATE STRIP MINING LAWS AN INVENTORY AND ANALYSIS OF KEY STATUTORY PROVISIONS IN 28 COAL-PRODUCING STATES

MARCH 1977

JOHN C. DOYLE, JR.

262 SUMMARY OF FINDINGS

262 This study examines 28 state strip mining statutes for provisions of law in a number of areas felt to be particularly important for environmental protection, public health and safety, and successful reclamation. This information is displayed graphically in 5 tables, which are also accompanied by narrative explanation and detailed examples for each table heading in the text which follows. A category-by-category summary of findings is presented below.

262 Year Enacted/Amended. Although 38 states have enacted strip mine laws, 25 of these actually produced coal by surface mining methods in 1976. Since

1970, no less than 26 states with strippable coal reserves have either enacted or amended strip mine laws.

262 Rules and Regs Promulgated. While most of the states examined in this study have promulgated rules and regulations required by their strip mine statutes, it is important to note that rules and regs only derive their legal authority from the individual provisions of the strip mine law itself, and therefore can do no more than what the law actually specifies.

262 Administering Agency. Departments of Environmental Resources, Natural Resources, or Conservation are the most prevalent state agencies charged with administering state strip mine laws. However, the mandates, structure and orientation of these departments can differ significantly from state to state.

A danger exists in some states of circumscribing the independence of the regulatory agency by placing it in a department that is also charged with the promotion of economic activity and the coal mining industry.

262 Covers Coal Only. In order to effectively regulate the surface coal mining industry, it is important that the strip mine law cover only coal, rather than attempting to regulate all surface minable minerals with one law. Ohio, Alabama, Virginia, North Dakota, New Mexico, Maryland, Kansas, and Louisiana have strip mine laws which give exclusive regulatory attention to coal.

262 Unsuitable Lands Review Process. Only six states - Ohio, Wyoming, West Virginia, Texas, North Dakota and South Dakota - have stated provisions for designating certain critical, vulnerable, or uniquely valuable areas as unsuitable for strip mining. Few of these provisions however, give little opportunity for citizen nominations. And in West Virginia's case, there is a clear refusal on the part of state officials there to exercise one of the better unsuitable lands provisions.

263  
\*8\*  
SUMMARY  
OF TABLE  
I \*  
\*8\*STATES  
HAVING AT  
LEAST  
MINIMAL  
PROVISION  
IN STRIP  
MINE LAW  
\*6\*  
Important  
Applicati  
on  
Requireme  
nts

Water  
Sampling

Listing	Unsuitabl e Lands	Hydrologi c	Core Sampling &	Post- Mining	Certifica te of	of	
Previous Covers Infractio Coal Only	Review Process	Consequen ces	Chemical Analysis Pennsylva nia	Blasting Plan West Va.	Land Use Approvals	Liability Insurance Pennsylva nia	ns nia
Pennsylva Ohio	Ohio	None (Texas and N. Dakota have partial provision s)	Ohio ( Illinois, Montana, West. Va., Texas, Maryland,	None	Ohio	Ohio	

PAGE

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HEARING 95TH CONGRESS, 1ST SESSION FEBRUARY 28, 1977, MARCH 4, 1977,

Virginia Dakota Texas New Mexico Maryland Virginia Kansas Louisiana Tennessee	West Va.    N. Dakota S. Dakota	and Iowa have incomplet e or non- mandatory provision s)		Alabama	West Va. Texas Utah  Louisiana	Wyoming N.  Alabama Texas
--	--	--	--	---------	--	---------------------------------------

[See Table in Original]

263 \* see complete Table I, p.26.

263 Source: Environmental Policy Institute, Washington, D.C. March, 1977

264 Important Application Requirements

264 Water Sampling & Hydrologic Consequences. No state strip mine law examined in this study specified a satisfactory provision for requiring that the results of water sampling and hydrologic analysis be reported in the permit

application. Texas' strip mine law requires " . . . information concerning . . . the anticipated hydrologic consequences of the mining operation . . . ", while North Dakota law asks for "hydrologic data".

264 Core Sampling & Chemical Analysis. Only two states - Pennsylvania and Ohio - required that the results of core sampling be submitted with the permit application. Montana has good language in a non-mandatory core sampling provision. Iowa requires "samples of overburden", and North Dakota law requires that the operator "submit a soil survey of the soil material overlying the deposits of coal . . . "

264 Blasting Plan. One state, West Virginia, specifies in its strip mine law that a blasting plan be submitted with the permit application.

264 Post-Mining Land Use Approvals. No state strip mine law required that post-mining land use approvals from local jurisdictions and other appropriate and federal agencies for contemplated changes in the use of land after mining be submitted in the permit application.

264 Certificate of Liability Insurance. Seven states - Pennsylvania, Ohio, West Virginia, Alabama, Texas, Utah, and Louisiana - required that a certificate of liability insurance be submitted by the operator, either with the permit application or immediately following approval.

264 Listing of Previous Infractions. Eight states - Pennsylvania, Ohio, Wyoming, West Virginia, Alabama, Virginia, Texas and Tennessee - made some provision in their strip mine laws for the listing of previous infractions in the permit application. Of these eight states, Ohio's provision offers the strongest language. However, none of the state strip mine laws examined in this study has a provision which requires the complete listing of all infractions accrued by an operator during the previous 5 years, including all notices of non-compliance, violations hearings, permit denials, permit revocations & suspensions, cease & desist orders, restraining orders, bond forfeitures, fines, criminal prosecutions, etc.

#### 264 Permit Approval or Denial Process

264 Burden of Proof on Operator. Only three state strip mine laws - those of Wyoming, Alabama and Missouri - listed any kind of provision for placing the burden of proof on the operator. Of these three, Wyoming offered the most explicit language for placing the burden of proof on the applicant in the permit review process as well

\*2\*STATES HAVING AT LEAST MINIMAL  
PROVISION IN STRIP MINE LAW

Burden of Proof on Applicant  
Wyoming Alabama Missouri (Kentucky,  
opinion of Attorney General)

Written Findings By Regulatory  
Authority

NONE. (Louisiana & Ohio come closest)

265 (see complete Table II, p. 44)

265 as during any hearings proceeding. Kentucky's Attorney General has interpreted the Kentucky strip mine law as requiring the operator to bear the burden of proof in the permit application process even though that state law has no specified burden-of-proof provision.

265 Written Findings From the Operator's Permit Application. This study examined 26 state strip mine statutes for a provision of law which would require the permit reviewing authority to make positive written findings from the operator's permit application in seven specified areas - Reclaimability, Legal Right of Entry & Surface Owner Consent, Protection of Public Water Supply, Protection of Landowner Water Supply, Protection of Alluvial Valley Floors, Compliance with Other Laws, and Protection of Public Works - before a permit could be approved and issued. None of the state laws examined in this study required their reviewing agency or board to make such written findings. The closest that any state strip mine law comes to requiring written findings is that of Louisiana, which requires that all orders of the Commissioner of the Department of Conservation pertaining to permits be "in writing" and "be a public record". Ohio's strip mine law also requires that any order of the Chief of the Division of Reclamation pertaining to permits be "in writing and contain a finding of the facts upon which the order is based".

266 Environmental & Public Safety Performance Standards

266 Requires Elimination of Highwalls. Only three states - Pennsylvania, Ohio and Montana have provisions in their strip mine laws which require elimination of all highwalls; Texas's law states that it will require the operator to eliminate highwalls if required by federal law.

266 Requires Elimination of Spoil Piles. Two states - Pennsylvania and Ohio - have specific provision in their strip mine laws for eliminating spoil piles.

266 Prohibits Spoil on Downslope. Only one state strip mine law, Tennessee's, specified provision for prohibiting spoil on the downslope, and in that case, exception is made for the initial cut.

266 Requires Burial of Toxic Substances. Fourteen state strip mine require the burial of toxic substances.

266 Requires Separation & Segregation of Topsoil. Ten state strip mine laws require topsoil separation.

266 Required Setbacks

266 Streams. Six state strip mine laws, those of Kentucky, Pennsylvania, Ohio, West Virginia, Kansas and Texas, include a setback requirement for strip mining near streams. However, while West Virginia law requires a 100 foot setback from streams, it does not prohibit coal access and haul roads from being constructed in or adjacent to existing stream channels, and will waive the requirement altogether for ". . . the dredging and removal of minerals from the streams or watercourses of this state".

266 Deep Mines. Only one state strip mine law, Texas, specified any provision for keeping strip mining away from abandoned or active underground mines, and in that case the the language states: ". . . refrain from surface mining in proximity to active and abandoned underground mines . . . "

266 Adjacent Landowners. Eleven of the state strip mine laws examined in this study specify setbacks for strip mining near adjacent landowners, four of which setback mining operations from permanent or occupied dwellings rather than property lines, and four others of which use a lateral support formula.

267  
 \*5\*SUMMARY OF  
 TABLE III \*  
 \*5\*STATES  
 HAVING AT LEAST  
 MINIMAL  
 PROVISION IN  
 STRIP MINE LAW  
 \*5\*  
 Environmental &  
 Public Safety  
 Performance  
 Standards

Requires Elimination of	Requires Elimination of	Prohibits Spoil	Requires Burial of Toxic	Requires Separation & Segregation
Highwalls	Spoil Piles	on Downslope	Substances	Topsoil
Pennsylvania	Pennsylvania	Tennessee (except for initial cut)	Kentucky	Pennsylvania
Ohio	Ohio		Ohio	Ohio
Montana			Wyoming	Wyoming
(Texas will if Federal law requires)				
			Illinois	Illinois
			Montana	Montana
			Indiana	Texas
			West Virginia	North Dakota

Virginia	Colorado
North Dakota	Iowa
Kansas	Louisiana
Tennessee	
Iowa	
Missouri	
Washington	

Required Setbacks For Strip mining

		Adjacent		
Streams	Deep Mines	Landowners	Public Roads	Public Parks
Kentucky	Texas	Pennsylvania	Kentucky	Kentucky
	("refrain from"			
	mining near)	Ohio	Pennsylvania	Pennsylvania
Pennsylvania		Wyoming	Ohio	Ohio
Ohio		Illinois	Illinois	Wyoming
West Virginia		Alabama	West Virginia	West Virginia
Texas		North Dakota	Alabama	Alabama
Kansas		Missouri	Texas	
		Colorado	North Dakota	
		Oaklahoma	Kansas	
		Kansas	Arkansas	
		Arkansas		

[See Table in Original]

267 \* see complete Table III, p. 57A.

267 Source: Environmental Policy Institute, Washington, D.C. March, 1977

268 Public Roads. Less than half of the laws examined required any setback from public roads. Only ten state strip mine laws specified any setback for mining near public roads, and several of these make allowance for variance.

268 Public Parks. Six state strip mine laws make some setback provision for mining near public parks - Kentucky, Pennsylvania, Ohio, Wyoming, West Virginia and Alabama.

268 Enforcement Powers, Penalties & Inspection

268 Minimum Frequency of Inspection. Only one state strip mine law, West Virginia's, specified a satisfactory minimum frequency requirement for the field inspection of all active strip mines, calling for one inspection every 15 days.

268 Suspension & Revocation Powers. Twenty-four state strip mine laws make provision for the suspension or revocation of a permit or license. However, many of these provisions are vague and linked to specific infractions or patterns of repeated violation. Ohio's strip mine law has one of the better provisions for permit revocation, specifying that after being convicted of a third offense, no such operator will be eligible for a permit or license for a period of five years.

268 Cease & Desist Power in Field. Without question, one of the most important enforcement levers at the disposal of the regulatory authority is the cease and desist order. A state strip mine law that does not empower its field inspectors with the legal authority to shut down abusive and dangerous mining operations on the spot is essentially a law that only has authority to "desk regulate" the strip mine industry. Only Pennsylvania, Texas and West Virginia give their field inspectors the cease and desist power, and of those three, Pennsylvania and West Virginia appear to offer the strongest provisions, while Texas automatically limits the potential shut down to the "portion" of the surface mining operation creating an imminent danger to the health or safety of the public.

268 Civil & Criminal Penalties. Twenty of the strip mine laws examined in this study make some provision for civil penalties, while eleven make provision for criminal penalties. Many of the civil penalties are discretionary or provide for waiver or refund, as in the case of Alabama's law, where the Alabama Surface Mining and Reclamation Commission is authorized to "waiver or refund up to 90 per cent of any penalty . . ." The strip mine laws of Louisiana and Missouri encourage their officials to settle violations through "conference, conciliation and persuasion".

268 Nine of the state strip mine laws examined in this study have no specified provision for criminal prosecution and/or imprisonment. Those state laws which do have imprisonment provisions are most always linked with a civil penalty and made an "and/or" option, as in the case of Virginia, whose law specifies that certain types of infractions will be a misdemeanor "punishable by a fine of not more than one thousand dollars or confinement in jail for a period not exceeding one year or both . . .". Ohio's strip mine law specifies that for

\*5\*SUMMARY OF  
TABLE IV \*  
\*5\*STATES  
HAVING AT LEAST  
MININMAL  
PROVISION IN  
STRIP MINE LAW  
\*5\*Enforcement

	Powers, Penalties & Inspection	Minimum Frequency of Inspection	Suspension & Revocation Powers	Cease & Desist Power In Field	Civil Penalties	Criminal Penalties
West Virginia			Kentucky Pennsylvania	Pennsylvania West Virginia	Kentucky Pennsylvania	Ohio Wyoming

Ohio	Texas	Ohio	West Virginia
Wyoming		Wyoming	Alabama
Illinois		Montana	Virginia
Montana		Indiana	Texas
Indiana		West Virginia	North Dakota
West Virginia		Alabama	Tennessee
Alabama		Virginia	Maryland
Virginia		Texas	Iowa
Texas		New Mexico	Louisiana
North Dakota		Colorado	
New Mexico		Tennessee	
Missouri		Kansas	
Colorado		Arkansas	
Tennessee		Iowa	
Washington		South Dakota	
Oaklahoma		Missouri	
Maryland		Utah	
Kansas		Louisiana	
Iowa			
Georgia			
Utah			
Louisiana			

Criteria For Bond Release & Successful Reclamation

Completed		Successful	Absence of	
Earthwork	Soil Testing	Revegetation	Suspended	Extended
Pennsylvania	Kentucky	Montana	Solids in	Operator
			Streams	Liability
			None.	Kentucky
			(Montana &	
Ohio	Ohio	Missouri	Pennsylvania	Pennsylvania
Montana	West Virginia	Texas	come closest)	Wyoming
	Indiana	Iowa		Montana
				Maryland
				Texas

[See Table in Original]

268 \* see complete Table IV, p. 76.

268 Source: Environmental Policy Institute, Washington, D.C. March, 1977 purposely misrepresenting or omitting any material fact in an application for a license or permit an operator "shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than six months, or both".

270 Criteria For Bond Release & Successful Reclamation

270 Completed Earthwork. An important measure of completed backfilling and grading in the reclamation process is that the strip-mined site be restored to its approximate original surface configuration in order that the surface drainage pattern and aquifer recharge capability be re-established and resumed after mining. Only three states - Pennsylvania, Ohio and Montana - specify adequate provision in their strip mine laws for contouring and completing

earthwork so that the approximate original surface configuration will be restored. Wyoming's law only requires "contouring operations to return the land to the use set out in the reclamation plan". Missouri's strip mine law specifies that "up to and including 25 per cent of the total acreage to be reclaimed each year need not be graded to a rolling topography . . . if the land is reclaimed for wildlife purposes . . ."

270 Soil Testing. Only four states - Kentucky, Ohio, West Virginia and Indiana - have provision in their strip mine laws which requires that soil tests be made on the mine site after it has been graded and backfilled, but before any seeding or planting is begun. Kentucky specifies that soil pH be considered, while Ohio requires that soil tests be made for "vegetation-sustaining factors".

270 Successful Revegetation. Only four states - Montana, Texas, Missouri and Iowa - have a provision in their strip mine laws which requires that mine-site revegetation withstand some test or capability standard beyond seeding or planting. Missouri's law requires "survival of supporting vegetation by the second growing season", Montana's law requires, in part, that the "diverse vegetative cover" be capable of "withstanding grazing pressure from . . . wildlife and livestock" and be "regenerating under natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds . . .", and Iowa's law requires that "a diverse, effective and permanent vegetative cover capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation shall be established on all affected land".

270 Absence of Suspended Solids in Streams. The absence of suspended solids above natural levels in surrounding streams is a particularly good indication that the vegetation has established itself and is holding soil on the reclaimed land. None of the state strip mine laws considered in this study specified such a provision in connection with bond release and successful reclamation. Pennsylvania's law, however, does specify that no permit shall be granted unless the reclamation plan provides for "a practicable method of avoiding acid mine drainage and preventing avoidable siltation or other stream pollution". The law continues to specify that "failure . . . 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 . . ."

\*3\*SUMMARY OF TABLE V \*  
\*3\*STATES HAVING AT LEAST

MINIMAL PROVISION IN STRIP  
MINE LAW

\*3\*Public Notice & Public  
Hearings

Unsuitable Lands Review  
Process

Texas

Enforcement & Monitoring  
Citizens Can Request  
Inspections  
None.

Permit Review Process

Wyoming  
Montana  
North Dakota  
Missouri  
Louisiana

Citizens Can Accompany  
Inspector  
None.

Bond Release

Montana

Citizen Suits  
Pennsylvania  
Alabama  
Ohio  
Montana  
West Virginia

270 \* see complete Table V, p. 87.

270 Source: Environmental Policy Institute, Washington, D.C. March, 1977

272 Extended Operator Liability. In order to insure that reclamation is successful over time, it is important that the operator be held accountable for the reclaimed site for a specified number of years after vegetation has been established. Of the six states offering provisions for extended operator liability in their strip mine laws, Texas has the strongest language, stating that ". . . the four-year period of responsibility shall commence no later than two complete growing seasons after the vegetation has been successfully established as determined by the commission . . .". The strip mine laws of Kentucky, Pennsylvania, Wyoming, Montana and Maryland also made provision for varying periods of operator liability after reclamation. In several of these states however, including Texas, the liability period may be too short.

272 Public Notice, Solicitation of Comment & Public Hearings

272 Unsuitable Lands Review Process. Of the six state strip mine laws found to have provisions for designating areas unsuitable for strip mining, only one, Texas, specified that citizens could petition the regulatory authority to have an area considered for review, and in that case, citizen participation is very narrowly drawn.

272 Permit Review Process. Only five of the state strip mine laws - those of Wyoming, Montana, North Dakota, Missouri and Louisiana - have non-discretionary provisions of law which clearly require public notice and the opportunity for a public hearing before permit approval.

272 Bond Release. Montana is the only state whose strip mine law has a clearly specified provision which requires public notice and opportunity for a public hearing prior to bond release.

272 Citizen Can Request Inspection & Accompany Inspector. None of the state strip mine laws examined in this study included a provision which specified that any citizen could request a mine-site inspection or that a citizen could accompany an inspector on a strip mine inspection.

272 Citizen Suits. Citizens and communities adversely impacted by strip mining activity should have the explicit right to sue the negligent and/or irresponsible regulatory authority for failure to enforce the provisions of the strip mine law. Of all the states examined in this analysis of strip mine laws, only Pennsylvania, Alabama, Ohio, Montana, and West Virginia make provision for citizen suits. However, the citizen suit/mandamus provisions in several of these laws have language that could easily scare off the average citizen, particularly those which mention perjury. Some of these provisions also specify that the citizen must first file a written statement under oath with the regulatory agency before he can bring an action of mandamus.

#### 273 INTERPRETATION OF FINDINGS

273 Of the 26 state strip mine statutes examined in this study for specific provisions of law, Ohio's emerged as the law having the most key provisions, leading all other states with 20 entries. The strip mine laws of Oklahoma and Georgia had the fewest number of provisions considered in this study, each having only two.

\*2\*NUMBER OF PROVISIONS FOUND IN STRIP  
MINE LAWS FOR INDIVIDUAL STATES

State	Number of Provisions Found
Ohio	20
Pennsylvania, West Virginia & Texas	17
Wyoming	14
Alabama	13
Montana	12
North Dakota	11
Kentucky	10
Kansas & Louisiana	8
Missouri, Tennessee, Maryland & Iowa	7
Illinois, Virginia & Colorado	6
Indiana, New Mexico, Arkansas & Utah	4
Washington & South Dakota	3
Oklahoma & Georgia	2

273 Source: Environmental Policy Institute, Wash., D.C.

273 Ohio, Pennsylvania and West Virginia each scored 3 of 6 possible

provisions under Important Application Requirements (Table I), leading all other states.

273 Ohio and Louisiana were the only states which made even oblique reference in their laws to Written Findings on the permit application (Table II), but neither specifically required written findings in the areas identified as important in this study.

273 Ohio and Pennsylvania headed the list in the area of Environmental and Public Safety Performance Standards (Table III), scoring 8 of 10 and 7 of 10 respectively.

273 West Virginia led all other states in the area of Enforcement Powers, Penalties and Inspection (Table IV), scoring 5 of 5 possible provisions, with Texas running second scoring 4 of 5. Pennsylvania and Montana scored highest in the categories under Criteria For Bond Release & Successful Reclamation (Table IV), each having 3 of 5 possible provisions.

274 In the area of Citizen Participation & Monitoring (Table V), Montana's strip mine law led all other states scoring 4 of 9 possible provisions, while Texas ran second in this area scoring 3 of 9.

274 Overall, for the provisions of strip mine law inventoried in this study, state strip mine statutes were generally weakest in the areas of Written Findings from the operator's application prior to permit approval; Operator Burden of Proof; Public Participation & Citizen Monitoring; Permit Application Requirements; and Criteria For Bond Release & Successful Reclamation. State strip mine laws tended to score their highest number of entries overall in the areas of Enforcement Powers & Penalties and Environmental & Public Safety Performance Standards.

274 In this study, there were 24 categories examined in which no more than six states made entries by having such provision in their strip mine law, while there were only 7 categories for which more than ten state strip mine laws made provision. In other words, there were significantly more key statutory categories in which state strip mine laws did not have provision than there were that did.

#### 274 Weakest Categories

274 Categories For Which No State Strip Mine Law Made Provision (5).  
Water Sampling & Hydrologic Consequences; Post-Mining Land Use Approvals; Written Findings on Permit; Absence of Suspended Solids in Streams; Opportunity for Citizens to Request Inspection; and Opportunity for Citizens to Accompany

Inspector.

274 Categories For Which One State Strip Mine Law Makes Provision (6).  
Blasting Plan; Prohibits Spoil on Downslope; Setback from Deep Mines; Minimum  
Frequency of Inspection; Public Notice & Public Hearings in Unsuitable Lands  
Review Process; and Public Notice & Public Hearings Prior to Bond Release.

274 Categories For Which Two State Strip Mine Laws Make Provision (2).  
Core Sampling & Chemical Analysis; Elimination of Spoil Piles.

274 Categories For Which Three State Strip Mine Laws Make Provision (4).  
Operator Burden of Proof; Elimination of Highwalls; Land Graded & Reclaimed  
to  
A.O.C.; Field Cease & Desist.

274 Categories For Which Four State Strip Mine Laws Make Provision (2).  
Soil Testing Prior to Revegetation; Successful Revegetation defined in terms  
of  
capability standards.

274 Categories For Which Five State Strip Mine Laws Make Provision (2).  
Public Notice & Public Hearing prior to Permit Approval; Citizen Suits.

274 Categories For Which Six State Strip Mine Laws Make Provision (3).  
Strip Mining Setbacks From Streams; Setbacks From Public Parks; Extended  
Operator Liability.

274 Relatively High-Scoring Categories

274 Categories For Which Twenty-Four State Strip Mine Laws Make  
Provision  
(1). Suspension and Revocation Powers.

275 Categories For Which Twenty State Strip Mine Laws Make Provision  
(1). Civil Penalties.

275 Categories For Which Fourteen State Strip Mine Laws Make Provision  
(1).  
Burial of Toxic Substances.

275 Categories For Which Eleven State Strip Mine Laws Make Provision  
(2).  
Criminal Penalties; Strip Mining Setbacks from Adjacent Landowners.

275 Categories For Which Ten State Strip Mine Laws Make Provision (2).  
Separation & Segregation of Topsoil; Strip Mining Setbacks from Public Roads.

275 Looking at six particularly important categories included in this  
study (and for which only ten strip mine laws qualified by having at least one  
entry) - Unsuitable Lands Review Process, Written Findings, Elimination of  
Highwalls, Cease & Desist in Field, Public Notice & Public Hearings on Permit  
and Citizen Suits - Ohio, West Virginia, Pennsylvania and Montana all emerge  
having at least 3 of the 6 provisions, with Ohio scoring 4 of 6 if its  
limited  
and incomplete written findings provision is considered.

275 KEY REGULATORY POWERS & REVIEW PROCEDURES: STATES HAVING PROVISION IN

STRIP MINE LAW

Notice & Hearing on Permit	Unsuitable Lands Review	Written Findings	Elimination of Highwalls	Field Cease	Citizen Suits
Wyoming	Ohio	None.	Pennsylvania	Pennsylvania	
Pennsylvania		(Ohio & Louisiana come closest)	Ohio	West Virginia	Ohio
Montana	Wyoming		Montana	Texas	Alabama
North Dakota	West Va.				Montana
Missouri	Texas				West Va.
Louisiana	N.D.				
	S.D.				

[See Table in Original]

275 Source: Environmental Policy Institute, Washington, D.C., March, 1977.

275 While Ohio's strip mine law has scored the highest of all state laws examined in this study, this is certainly no indication that Ohio's law - or any other "highscoring" law identified here - is adequate. The scores for the strip mine laws considered here are more indicative of weak state strip mine laws than they are of strong ones, particularly since each state law has its own peculiar penchant for framing loopholes, variances and other weaknesses that were not evaluated in this study, but which usually serve to weaken and/or circumvent the good provisions that may appear in any of these laws. A few of these other weaknesses - often unique to one state, but sometimes common to several - are offered below as examples for the reader's information.

276 OTHER WEAKNESSES IN STATE STRIP MINE LAWS

276 Pocket Approval of Permits

276 While Ohio's strip mine law scores high in almost every breakdown of this study's findings, there is a serious weakness in that law which has not been addressed in this study. Ohio's strip mine law allows surface mining permits and amendments to permits issue automatically, without review, after a 60-to-180 day waiting period, depending on the size of the area applied for. Under the Ohio law, permits not reviewed by the chief of the Division of Reclamation within the prescribed period are automatically "approved". Additionally, the operator whose permit expires is allowed to continue stripping while awaiting a new permit, though theoretically, according to the law, he could be denied a new permit.

276 Alabama also applies the "pocket approval" technique to coal leases, strip mine licenses, strip mine permits, and even final reclamation work and bond release. New Mexico, Colorado, and Maryland also have "pocket approval" provisos in their strip mine laws. It should be noted that a strip mine permit

or any final reclamation work that is "pocket approved" receives no thorough review by either the regulatory authority or the general public.

#### 276 Single Application & Consolidated Reclamation Plan

276 Under section 7 of the Texas Surface Mining Act of 1975, the operator is given the explicit option of submitting a "single application" and "consolidated reclamation plan" for "all of his mining operations", including noncontiguous operations. Such a provision may expedite the permit approval process for the more controversial mining operations by allowing the operator to lump them altogether in one application. This provision may also favor the larger, statewide operator whose mining activities are most likely to be "noncontiguous". The strip mine laws of Louisiana and Washington also make provision for the "single application".

#### 276 Temporary & Provisional Permits

276 Kansas will issue temporary permits to its operators if it finds that "unexpected or emergency conditions" make it "necessary or desirable to begin surface mining immediately" on land for which the operator has applied for a regular permit. Under Washington's strip mine law, even though an operator's reclamation plan is not approved, he may be issued a "provisional permit . . . until a plan is approved".

#### 276 Removal-of-Equipment Weakness

276 Virginia and Maryland have provisions in their strip mine laws which make the "removal of equipment necessary for reclamation" a kind of standard for the completion of backfilling and grading. According to the language in Virginia's law, "all grading and backfilling shall be completed before equipment necessary for such work is removed from the operation . . .". Sources in Southwest Virginia note that operators there often leave pieces of dilapidated equipment behind on strip mined lands so that they don't have to begin reclamation.

#### 276 Life-of-The-Mine Permits

276 The strip mine laws of Colorado, New Mexico, Maryland and Utah make specific provision for "life-of-the-mine" permits.

#### 277 Reclamation & Revegetation: Substitutions, Delays & Deferrals

277 Kansas, Missouri, Colorado, Georgia, Kentucky and Arkansas all have provisions in their strip mine laws for deferring revegetation and/or doing substitute reclamation, i.e., reclaiming a previously mined but unreclaimed site in lieu of reclaiming land at the active mine site. Colorado will defer reclamation for "toxic and/or stony lands" for up to 10 years, during or

afterwhich such lands may be declared "unplantable", and for which the operator may do substitute reclamation. Illinois and Oklahoma are among states which allow for delay and/or deferral of revegetation when the operator is "unable to acquire sufficient planting stock of the desired species . . ." Wyoming does not have a "native species" requirement in its strip mine law, while other state laws explicitly allow for "introduced species".

#### 277 Bonding, Bond Reduction & Bond Release Weaknesses

277 The Kansas strip mine law allows that ". . . in lieu of providing a suitable vegetative cover . . .", the operator may ". . . pay to the (reclamation) board a sum (of money) agreed upon by the board . . . and the bond filed by it as surety shall be released by the board". Kentucky's strip mine law has a similar provision, but is a bit more straightforward about the reason for its inclusion: "If the operator does not meet the planting requirements but does not want his bond forfeited, he may pay to the division a sufficient sum to cover the remaining reclamation costs and the bond filed by him as surety may then be released by the division".

277 The strip mine laws of Illinois, Colorado and Oklahoma all allow an operator to post previously reclaimed areas as bond. Under Tennessee's law, "no performance bond shall be charged for land upon which overburden is deposited, if, in the opinion of the Commission, the deposition of such overburden amounts to reclamation of a previously mined area".

277 Washington's strip mine law allows "a blanket performance bond" for two or more operations in lieu of separate bonds for individual operations. Under New Mexico's Coal Surface Mining Act, ". . . the commission may require an operator to file a bond . . .". Under Kentucky's law, the DNR, "in its discretion", is authorized to "reduce the amount of bond . . . to less than the required minimum".

277 Provision in Oklahoma's strip mine law allows for release of 80 per cent of the bond for each acre graded. Tennessee's reclamation Commissioner is authorized to release any remaining bond when he determines "that further efforts toward revegetation are impractical . . .", while under Arkansas' law, "after the second seeding or planting of any affected area, . . . and approval by the Commission, the area shall be deemed reclaimed".

#### 277 Increasing Permit Area & Amending Permits & Reclamation Plans

277 Virginia's strip mine statute gives the operator the opportunity to

increase the size of his permit area for "spoil spread". Illinois, Montana, Missouri, Colorado and Oklahoma also allow their operators to amend permits in order to increase the size of their permit areas.

277 In Indiana, the operator may, with the approval of the Commission, amend his permit application "at any time", while New Mexico's strip mine law states that, "mining plans may be amended at the instance of agreement of the director with the approval of the commission" for "good cause shown". According to Tennessee's strip mine law, the mining and reclamation plans "can be changed at any time . . . to take account of changes in conditions or to correct any previous oversight". Virginia's law allows the drainage and reclamation plans to be amended "to meet the exigencies of any unanticipated circumstance or event", while Pennsylvania's strip mine law will allow its regulatory authority to modify or waive certain permit application requirements "for cause".

#### 278 State Strip Mining Laws & Local Ordinances

278 Alabama's strip mine law "is intended to preempt local, county, and municipal regulation of coal surface mining" and "shall supersede and render void" any such regulation. Pennsylvania's law supersedes "all local ordinances and enactments purporting to regulate surface mining", except zoning ordinances, whereas the strip mine law of the state of Washington requires "evidence" from the operator in his reclamation plan, that the subsequent land use "would not be illegal under local zoning regulations".

#### 278 Other Weaknesses

278 In other areas, Oklahoma's law allows strip mining "in the flood plains of streams and rivers", but specifically exempts such operations from all grading requirements; Illinois allows coal haulage roads to become water impoundments; and for contour strip mining operations under Virginia's law, "spoils shall be retained on the bench insofar as feasible . . . "

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281 STATE STRIP MINE LAWS: A BRIEF HISTORY & OVERVIEW OF CURRENT TRENDS

281 State legislatures have been aware of the problems of highly mechanized surface coal mining ever since the mid-1940's, when the war effort caused coal production to increase rapidly. Few states however, have enacted meaningful or enduring legislation to control the most obvious environmental and social abuses associated with strip mining. Many of the early strip mine laws - those which date back to the 1940's - were not regulatory laws in the strict sense of the word, but were more like legal registers of mining activity. Few strip mine laws had internalized the concepts of operator penalization or mined land reclamation until the late 1960's, when state legislatures responded to social pressure for environmental protection. Following the Arab oil embargo in 1973 however, a new emphasis was placed on coal development, and therewith came a new consideration in the minds of state legislators charged with regulating the surface coal mining industry. As a result, most older strip mine laws have been amended, but not necessarily strengthened, with many state legislatures being most recently prodded to improve their laws only by the "threat" of Federal legislation.

281 Since 1969, approximately 24 state strip mine laws have been enacted, while 21 have been amended over that same period. Between 1970 and 1975, 32 of the state mined land reclamation programs became effective. n1 Today there are 38 states which currently have strip mining laws of one sort or another, not all of which are concerned with coal. Of the 38 states which ave strip mining laws, 25 actually produced coal by surface mining methods in 1976.

281 n1 Edgar A. Imhoff & others, A Guide to State Programs for the Reclamation of Surface Mined Areas, Geological Survey Circular 731, Resource & Land Investigations (RALI) Program, 1976, p. 1.

281 State strip mine laws vary from one state to another in the extent and

effectiveness of their coverage, some offering far less protection to the public and the environment than others. Variation among state regulatory programs in strip mining is due to more than topographic and climatic differences between states, and is usually found in each state's willingness or unwillingness to "get tough" on an industry that has historically enjoyed unprecedented laissez faire treatment. Certain states have genuinely recognized the laxity or nonexistence of controls on the strip mining industry within their own boundaries and reasonable levels of appropriation. Other states however, are more content to pass a strip mine law for the sake of having one on the statute books, and that's about as far as it goes. Some state legislatures have a difficult time getting any but the most basic and most cosmetic provisions enacted, while others do everything they can to gut the half-decent protections that they do have.

281 In Ohio for example, the Cleveland Plain Dealer described several proposed weakening amendments to the state's strip mine law with the headline, "Ohio Strip Miners are Nibbling Away at Reclamation Law." n2 Among the weakening legislative measure proposed in 1976, and supported by the Ohio Mining & Reclamation Association, were amendments aimed at restricting the regulatory agency's authority to set per acre bonding rates; another allowing for return of 3/4th's of the bond for reclaiming only 1/3rd of the mined-over site; and another for abolishing the provision that would revoke an operator's license for five years when he was convicted of three violations of the reclamation law.

281 n2 Robert J. Caldwell, "Ohio Strip Miners are Nibbling Away at Reclamation Law," The Sunday Plain Dealer, March 14, 1976.

282 In Indiana, a vague 1975 public law to regulate blasting at strip mine sites was legislated without penalty provisions or any authorization for manpower and monitoring. The blasting regulations required by this law were supposed to have been based upon U.S. Bureau of Mines blasting regulations, which according to one account are non-existent. A spokesman for the governor's office in Indiana described the recently enacted blasting law, Indiana Public Law 258, as "not worth the ink it took to print it." n3

282 n3 Fred Sievers, "Putting Teeth in Stripmine Law," Evansville Press, June 22, 1976.

282 In February session of the Virginia legislature this year, the House Mining and Mineral Resources Committee essentially killed four very important measures needed for improving Virginia's reclamation law and program: S.B. 347, which would have increased revenues to the Division of Mined Land Reclamation by raising permit fees from \$12 to \$36; n4 H.B. 1870, which would have required

strip mine operators to hold liability insurance for property damage and bodily injury before being eligible for a permit; H.B. 1932, which would have required public notice of the operator's intention to strip mine and application for a permit; and H.B. 1933, which would have required a 100-foot setback of strip mine operations from all public roads.

282 n4 Steven Griles, a spokesman for the Virginia Department of Conservation & Economic Development which oversees the Division of Mined Land Reclamation, and who was present at the Committee's vote, noted that the death of S.B. 347 would cause the Department "to study whether there will be enough funds to allow the present program to continue through 1978." ("Mining Committee Voices Little Support For Reclamation Program," Press Release, Virginia Citizens For Better Reclamation, Inc., Richmond, Virginia, February 11, 1977.)

282 In other states like Colorado and West Virginia, stricter measures, specific prohibitions, and strengthening provisos were introduced, especially during 1975, but most of these languished in committee, were defeated, killed, or otherwise delayed or passed by.

282 Although 38 states have enacted strip mining laws, there are very serious questions as to whether any of these laws is adequate or effective in the regulation of the surface coal mining industry. And while it is recognized that the simple appearance of a strip mining law on the statute books does not necessarily mean that the law will be applied, or that the provisions of the law will be adequate to control the abuses of strip mining or bring about even the most basic reclamation, the absolute first step in attempting to control the most serious societal costs of strip mining is precisely worded provisions of law which give the regulatory authority and citizens the legally enforceable standards they need to monitor the industry and protect the public welfare.

282 The following inventory and analysis of state strip mining statutes is undertaken to determine which state laws provide the most legal leverage for effective strip mine regulation, environmental protection, and successful reclamation.

#### 283 CONTROLLING STRIP MINING: THE BASIC REGULATORY PROCESS

283 The elements of a basic regulatory framework for the control of strip mining (see Figure 1) are relatively straightforward. First of all, anyone who wants to strip mine must hold a valid permit or license, not unlike a contract between two parties subject to certain performance criteria and conditions, which if not met or violated, can cause suspension or revocation of the permit, or can cause some other meaningful form of penalization to be levied, including

finer and/or imprisonment. In order to determine if the operator is responsible, a formal application process is essential, in which the operator is obliged to reveal his past record of performance and reclamation, as well as detailing his ability and intention to mine and reclaim within the current strictures of the law. This is done through the submission of detailed mining, blasting, reclamation and revegetation plans and schedules in the permit application.

283 Before any permit is approved, it is essential that the reviewing authority - usually a state reclamation board - find in writing that the operator has demonstrated in his application that he has the capability of meeting the requirements of the law, that the land will be reclaimed, and that the public will be protected throughout the mining process. In other words, the reviewing authority must find positive evidence from the information submitted in the operator's application - and detail such findings in a publicly available statement - that certain conditions will be met, and certain specified public and private values protected, otherwise a permit should not be issued.

283 The granting of a permit to strip mine does not mean that the operator has carte blanche on the permitted mine site. One of the conditions of the approved permit - in effect a legal agreement - is that the mining operation will "perform" to meet certain requirements. To insure that the operator is holding up his end of the "permit contract", and that these requirements are in fact being met, his operation must be periodically inspected by the regulatory authority. Inspections should occur both on a random and a regular basis, with field inspectors having the cease and desist power at their disposal in the event that there are serious violations at the mine state which jeopardize public health or safety. The threat of shutting down even individual mining operations should serve as an especially effective means of keeping the operator within the strictures of the law during active mining, while the possibility of permit or license revocation coupled with bond forfeiture should assure that he make more than just a token effort at reclamation.

283 During the mining operation, the operator should be required to "reclaim as he goes", or keep reclamation current with his mining operation, particularly with regard to backfilling and grading.

283 Once the earthwork portion of reclamation is complete, the site should be inspected and soil samples taken to determine the site's readiness for

revegetation. After revegetation, the site should be inspected for any surface run-off problems, particularly for pollutants or other materials entering nearby streams.

283 After the mining is completed and after the site has been initially reclaimed, there should be several legal levers at the disposal of the regulatory authority that can be used to insure that reclamation is successful according to the terms of the initial permit agreement, and that reclamation "holds up" over time - this means that the "reclaimed" site will not fail after a year or two. This crucial test period is called the liability period - the time during which the operator is held responsible and made liable for the site he has mined, and for which he is obligated by the conditions of his permit to successfully reclaim. This is why some form of collectable bond should be required of the operator at the point of permit approval, which the regulatory authority holds in escrow during the mining and reclamation process. As the operator completes certain phases of the reclamation, the regulatory authority can release proportional amounts of the bond. However, to maintain some assurance that the operator will complete the reclamation and remain responsible for the site over the liability period - which may be as long as ten years in some cases - the regulatory authority should retain an amount of bond equivalent to the cost of re-doing all earthwork and revegetation in the event that the operator's initial efforts fail. In some cases, alternative systems to bonding may be acceptable. The important point of a bonding program, or any alternative, is that through the possibility of monetary penalization, it keeps the operator committed to maintaining the site until reclamation is successful. In all cases, the cost of complete reclamation and revegetation should be covered, regardless of the system. In no case however, should an operator be allowed to post previously reclaimed lands as a form of bond, or substitute such lands for the reclamation of the site on which he is currently mining.

284 Other levers which can be used to insure a commitment to reclamation are those of license withdrawal and subsequent permit denial for operators who have been negligent in their reclamation responsibilities. In states where a license to strip mine is required, an operator who failed to reclaim could have his license suspended, thus forcing him to suspend all mining operations and permits everywhere in the state, which amounts to a very real form of monetary penalization.

284 Finally, no regulatory process which monitors strip mining and reclamation can be considered adequate if it is not a publicly accessible and

publicly open process. Public hearings, public notice, access to regulatory documents, opportunity to accompany field inspectors, the right to petition and sue the regulatory agency for failure to enforce the law, etc., should be available to any citizen concerned with strip mining and its effects.

285 [See Illustration in Original]

286 STATE STRIP MINE LAWS: INTRODUCTION TO THE ANALYSIS OF KEY STATUTORY PROVISIONS

286 This study only examines certain statutory provisions in state strip mine laws, and does not include an analysis or check-off of those same provisions in any companion set of rules and regulations. Rules and regulations, while usually within the bounds of the provisions of the law, speak with less legal finality than do the provisions of the law themselves. Very often, rules and regulations will be enjoined for going beyond the specific limitations or requirements established by the law. Some state strip mine laws, like that of New Mexico for example, specifically invite adjudication of any rule, regulation or decision when such rule or decision is not in accordance with the provisions of the law. n1 Missouri's strip mine statute also contains a provision which specifically instructs the court on what to look for when considering suits brought on the validity of rules and regulations. n2 In Ohio, rules and regulations that were offered in May of 1973, approximately one year after that state's strip mine law was amended, were for all practical purposes enjoined by the American Electric Power Co., the Ohio Coal Operator's Association, Consolidated Coal Co., and at least 28 other mineral-related companies in an appeal before the Franklin County Court of Common Pleas. Industry appealed the legality of these regulations - in a 51-point rule-by-rule petition - on grounds that they were "unreasonable, unlawful", unsupported by a prior public hearing record, and that the Chief of the Division of Reclamation lacked the statutory authority to make certain rules and definitions. As of February 1977, after several re-writes, negotiations with industry, and at least two public hearings, the new set of rules and regulations had not yet been officially promulgated - practically 5 years after the law was amended. And while it is recognized that some states may not have experienced any legal battles over regulations which have been adopted, an "aggrieved" operator could certainly appeal his own case when there are clear discrepancies between what the law requires and what the regulations require, particularly when what the law requires is substantially weaker. For this study then, the "bottom line" is what is written in the law. Moreover, neither administrative memoranda or department rulings which require stricter strip mine performance, nor "as is the current practice in the field" can be acceptable as substitutes for a less

stringent or non-existent provision in the law, since each of these can be changed at whim with changes in political administration or removal of "strong-man" enforcement personalities and practices.

286 n1 "Upon appeal, the court of appeals may set aside the regulation, its amendment or repeal only if found to be: (1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law." (New Mexico Coal Surface Mining Act, Section 12.C(1)-(3).)

286 n2 "In any suit filed pursuant to section 536.050, RSMo, concerning the validity of the commission's rules and regulations, the court shall review the record made before the commission to determine the validity and reasonableness of such rules and regulations and may hear such additional evidence as it deems necessary." (Revised Statutes of Missouri, Chapter 444, Rights of Miners and Mine Owners, Reclamation or Mining Lands (1971), Section 444.700(2).)

286 n3 Both Oklahoma and Pennsylvania have relied quite heavily on one-man enforcement efforts. In Pennsylvania's case, William Guckert has led a commendable enforcement effort which in some cases is not backed by provisions in the Pennsylvania strip mine law. Ward Padgett, Oklahoma's chief mine inspector, works with coal operators in that state on the basis of their voluntary compliance with the strip mine law.

287 In order for a provision of strip mine law to be "counted" as adequate in this tabular analysis of key provisions, it will have to be found in the body of the strip mine law itself, and be specifically worded to meet the conditions of the statutory category in question. The reader is urged to consider the explanations of each tabular category which precede each table, as these explanations often include detailed examples which elucidate the meaning of that particular provision as it is presented and analyzed in this study.

## 288 EXPLANATION OF CATEGORIES IN TABLE I

### 288 Year of Enactment and Latest Amendment

288 Since 1970, no less than 26 states with strippable coal reserves have either enacted or amended strip mine laws. The flurry of activity in the state legislatures surrounding the strip mine issue since 1969 has been undoubtedly influenced by the presence of the Federal strip mine bill in the U.S. Congress, as well as the concern for environmental protection expressed nationwide during

the early 1970's. It is interesting to note that although many states have enacted new laws or amended older ones, more than a few still lack many of the provisions listed in the tables of this study.

#### 288 Rules and Regulations Promulgated

288 Rules and regulations - which can include specific requirements, guidelines, performance standards, mining and drainage specifications, etc. - are usually proposed, adopted and officially promulgated after enactment and/or amendment of the strip mine law. Rules and regulations, while often expansive of certain provisions in the law, should not be regarded as a substitute for provisions absent from or nonspecific in the strip mine law. Rule-making procedures are usually held in public, and often serve to point up to citizens the inadequacies and lack of specificity in the law itself, as it is legally vulnerable to press for stronger regulations than those allowed by law.

288 In some cases, delays in promulgating rules appear intentional and can be drawn out to favor the industry, as in the case of Alabama, where the Governor failed to appoint a seven member Surface Mining Reclamation Commission for several months beyond the proscribed time limit established in the law, which in that case, was mandated to be "within 90 days of the date of this Act becoming law", which at that time, was September 30, 1975. The Alabama Surface Mining Reclamation Commission assumed full responsibility for the Act on December 1, 1976. n1

288 n1 The Alabama Surface Mining Reclamation Commission, only recently established, continues to have problems that will, no doubt, impair its credibility in the months ahead. A recent public announcement from the offices of the Commission in Jasper, Alabama of February, 1977, noted: "It has been announced by the Alabama Surface Mining Reclamation Commission that the monthly meeting scheduled for Thursday, February 24, will be postponed until the State Ethics Commission completes its inquiry into possible conflicts among its members."

288 Another delay tactic, which in some cases would seem to suggest conspiracy between government officials and industry lawyers, is to draft a set of regulations which have no clear legal mandate from the state law, thereby forcing a lengthy court proceeding and protracted re-drafting of legally acceptable rules and regulations.

288 Ohio has recently gone through an industry initiated legal confrontation and re-drafting of its rules as was discussed earlier in this paper, while Indiana contends that it need not promulgate its rules, foreseeing no legal problems with operators in that state.

## 289 Administering Agency

289 State agencies which administer strip mine regulatory programs range from the Department of Environmental Resources in Pennsylvania and the Department of Agriculture in South Dakota, to the State Corporation Commission in Kansas and the Board of Oil, Gas and Mining in Utah. By far, Departments of Natural Resources are the most prevalent administering agencies in the coal producing states, but the mandates, structure, and orientation of these departments can differ significantly from state to state. Where the final authority for administering and enforcing a state strip mine law rests in state government is often an indication of how much power that agency will have in regulating the industry; and if placed in an existing agency, for example, will such placement be proper in terms of jurisdiction and legislative intent? In some cases, there may be wide differences and clear conflicts between a parent agency and a division of reclamation placed in that agency - differences in administrative purpose and direction as vast as those which exist between the promotion and protection of an industry, and the regulation and control of that same industry in order to protect the public welfare. Virginia is an interesting case in point.

289 The Division of Mined Land Reclamation in Virginia is housed in the Department of Conservation and Economic Development, where it has received scant appropriation from the state legislature and no legal mandate to increase permit fees to coal operators for funding purposes (See Appendix A). In a letter to the 1976 state legislature, Mr. James McGlothlin, President of United Coal Co. and the Tri-County Independent Coal Operators' Association, urged that the Division be placed under the auspices of the Division of Mines & Quarries in the Department of Labor and Industry, pointing out that such a consolidation would expedite the activities of the surface coal mining industry and be more efficient since "one inspector could inspect for both safety and reclamation". In Virginia, there is evidence to suggest that the coal operators will pay and support small permit fees for abandoned land reclamation, but will not support funding levels necessary for a relatively independent regulatory and enforcement agency. The strategy for the strip mine industry in southwest Virginia is to keep both state appropriations and permit fees low for the Division, while calling for its consolidation with other agencies in the name of governmental efficiency. Either way, the regulatory effort is hamstrung.

289 Covers Coal Only

289 There is a great deal of difference between strip mining for coal and strip mining for other near-surface minerals. And even when the extractive techniques are similar, the environmental effects are inevitably dissimilar.

n2  
Effective government regulation of surface coal mining will entail different specifications and performance standards than government regulation of open-pit sand and gravel, uranium, or copper mining. The amount and degree of controls necessary for monitoring phosphate, tar sand, and oil shale stripping are significantly different than those required for coal. Manpower training requirements and enforcement techniques are also different. Consequently, state strip mining laws which attempt to lump all surface minerals into one regulatory package are severely hamstrung from the outset, and usually have to contend with a very broad mandate and much vague legislative language. Eight of the coal producing states included in this study have strip mine laws which solely regulate surface coal mining.

289 n2 This difference provided reason enough for the Interior & Insular Affairs Committee of the U.S. House of Representatives to work with a coal only strip mine bill in the 94th Congress.

289 "The Committee found . . . that the numerous distinctions between the mining technologies and associated environmental problems of coal surface mining as opposed to surface mining of such minerals as copper, iron and molybdenum militated against inclusion of all minerals in a single bill . . . "

289 Op.cit., H. Report No. 94-1445, p. 37-38.

#### 290 Unsuitable Lands Review Process

290 An integral part of any state strip mining regulatory program is a public procedure for the review and designation of areas unsuitable for strip mining. Areas of high agricultural capability; those with unique geological, archeological, or wildlife values; those which, if mined, could present a public health or safety problem; and those which cannot be successfully reclaimed for one reason or another, are among the range of possible areas to be considered or nominated as off-limits to stripping under a "unsuitable lands" review procedure. In order to be effective, any specified unsuitable lands designation should place off limits to mining the entire area or sub-region which is sought for protection, rather than weighing the possible effects of individual surface mining operations in such fragile or unique areas. The rationale for placing certain areas off limits to mining in the first place is that if such areas were mined, they would incur substantial public costs to clean up, restore or replace, and in some instances, might even be irreplaceable. It is important

therefore, that the review and designations process be conducted on a statewide functional area basis, rather than a case by case procedure, since the integrity of fragile or otherwise significant lands could easily be lost through "a permit here and a permit there" approach. Simply put, the process should exert foresight rather than hindsight. State laws which do not require such a designation process for unsuitable lands are in effect giving the "green light" to operators to strip unique areas first, before such areas have a chance of being designated as unsuitable for strip mining.

290 Many state strip mine laws have provisions which allow the reviewing authority to delete objectionable parts from a larger applied for mining area, for either environmental or public safety reasons. Montana n3, Tennessee n4, and Kentucky n5 provide examples of the language typical in these kinds of provisions. Such deletions, however, are only made when the operator submits a permit application, and the reviewing authority happens to discover some environmental vulnerability or hazard situation in its review of the application. Such provisions cannot substitute for a statewide review process where unique, valuable and/or hazard areas are considered and designated independently of the permit application process.

290 n3 "The Department shall not approve the application for a prospecting, strip mining or underground mining permit where the area of land described in the application includes land having special, exceptional, critical or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment or fundamental character or neighboring land having special, exceptional, critical or unique characteristics . . ." (Title 50, Chapter 10, Revised Code of Montana, Section 9. [50-1042], (2).)

290 n4 "If the commissioner finds that any part of the operation would constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, reservoir, water wells, officially designated scenic areas or other private or public property, the commissioner shall delete such part of the land from the area for which the permit is granted." (Tennessee Code Annotated, Title 58, Chapter 15, Section 58-1544. (g).)

290 n5 "If the division finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the Commonwealth with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be prevented, the division may delete such part of the land described in the application upon which such overburden exists." Kentucky Revised Statutes, Chapter 350, Strip Mining, Section 350.080(2).

291 West Virginia has a fairly good provision for designating areas off limits to strip mining n6, and gives specific authority to the Director of the Department of Natural Resources to "delete certain areas from all surface mining operations", but the Director has interpreted that provision as not giving him the power to delete entire areas from all surface mining activity. n7

291 n6 "The Legislature finds that there are certain areas in the state of West Virginia which are impossible to reclaim either by natural growth or by technological activity and that if surface mining is conducted in these certain areas such operations may naturally cause stream pollution, landslides, the accumulation of stagnant water, flooding, the destruction of land for agricultural purposes, the destruction of aesthetic values, the destruction of recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and in general creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface-mining process."

291 "Therefore, authority is hereby vested in the director to delete certain areas from all surface-mining operations." (West Virginia Surface Mining and Reclamation Act, Article 6 and 6A, Chapter 20, Code of West Virginia, As Amended, 1971, Section 20-6-11.)

291 n7 " . . . The Director of the Department of Natural Resources in fact has apparently chosen to read the provision as granting him only a narrow authority to prohibit surface mining in certain locales. "Those who support a narrow interpretation suggest that the first paragraph of section eleven is merely a general policy statement and that the authority of the Director to "delete certain areas from all surface mining operations" extends only to those specific situations outlined in the five paragraphs which follow immediately thereafter. This interpretation has, however, been challenged by at least one commentator who argues persuasively that such a limited interpretation of section eleven is clearly erroneous. The logic behind a narrow interpretation is tenuous at best and seems to fly in the face of the clear legislative intent to protect the environment in those areas of the state "which are impossible to reclaim." The Legislature found as a fact that in those areas environmental harm may result, inter alia, in water pollution, landslides, flooding, and the destruction of aesthetic values, recreation and future uses of surrounding areas. The possibility of the creation of such harm, said the Legislature,

constitutes "an imminent and inordinate peril to the welfare of the state." Thus, the Legislature, in the exercise of its power to regulate for the common good, has found that in some areas of the state surface mining must be prohibited.

291 Patrick Charles McGinley, "Prohibition of Surface Mining in West Virginia", West Virginia Law Review. Volume 78, June 1976 p. 449. See also, Cardi, "Strip Mining and the 1971 West Virginia Surface Mining and Reclamation Act," 75 W.Va.L.Rev. 319 (1973).

291 Additionally, in the cases of Anderson & Anderson Contractors V. Ira S. Latimer and Ramo Mining Co. V. Ira S. Latimer of June 22, 1976 in the Circuit Court of Kanawha County, in which the plaintiffs sought to have the unsuitable lands deletion provision found unconstitutional, Chief Circuit Court Judge Thomas E. McHugh found the following:

291 " . . . it is the opinion of this Court that neither the surface mining moratorium provision (Code, 20-6A-1) nor the provision allowing the Director to delete certain areas from all surface mining activities (Code, 20-6-11) constitutes a taking for which compensation must be paid." and ". . . It is the opinion of this Court that the legislative guidance to the agency in Code, 20-6-11 and 14a is within the parameters of constitutionality."

291 Pennsylvania, a state that does not have an unsuitable lands review process in its strip mine law, is proposing regulations to protect critical streams and watershed areas where little or no strip mining has taken place, as well as watersheds where water quality has suffered severely from too much surface mining in the past.

293 The strip mine laws of North Dakota n8 and South Dakota n9 both have fairly extensive criteria for evaluating areas that might be considered unsuitable for strip mining, but it is unclear to what extent citizens can participate in the designations process, and whether they can in fact nominate areas for consideration and review.

293 n8 "The legislature finds that there may be certain areas in the state of North Dakota which are impossible to reclaim either by natural growth or by technological activity, and that if surface mining is conducted in these certain areas, such operations may naturally cause stream pollution, landslides, flooding, the permanent destruction of land for agricultural purposes without approved rehabilitation for other uses, the permanent destruction of consequential aesthetic values, the permanent destruction of consequential recreational areas and the future use of the area and surrounding areas, thereby

destroying or impairing the health and property rights of others, and, in general, creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface mining process. Therefore, in such instances, authority is hereby vested in the commission to delete certain areas from all surface mining operations; to reject the application, or any part of such application; to require the operator to amend any application for a permit, or any part of such application, including any mining plan; or to require any combination of the foregoing." (North Dakota Century Code, Chapter 38-14, Reclamation of Strip-Mined Lands, 38-14-05.1.1., pp. 6 & 7.)

293 n9 "No permit shall be issued by the commission for a surface mining operation on land which is unsuitable for such surface mining. The commission shall promulgate rules for determining when land shall be deemed unsuitable for a surface mining operation under this section using the following criteria:

293 (1) Reclamation pursuant to the requirements of this chapter is not physically or economically feasible;

293 (2) The proposed operation is reasonably certain to create a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

293 (3) Overburden from the proposed operation is reasonably certain to create substantial deposition of sediment in stream or lake beds, landslides or water pollution that cannot be feasibly prevented;

293 (4) The biological productivity of the land is such that the loss would jeopardize certain rare species of wildlife indigenous to the area;

293 (5) The ecological importance of the land surrounding the area to be mined is such that the proposed operation's effects could cause an adverse reaction of unpredictable scope to be suffered by the total ecosystem of which the surrounding land is a part;

293 (6) The land, for which surface mining is proposed, has critical, unique, special or exceptional characteristics of a historic, archaeological, geologic, scientific, or recreational significance;

293 (7) Surface mining would be incompatible with federal, state, or local plans for land development; or

293 (8) Surface mining is reasonably certain to result in the loss or reduction of long-range productivity by watershed lands, aquifer recharge areas,

and significant agricultural areas." (South Dakota Laws, Chapter 45-6A, Surface Mining Land Reclamation, 45-6A-9.1 pp. 73-74.)

294 Wyoming's Environmental Quality Act has a provision for designating areas of "unique and irreplaceable historical, archeological, scenic or natural value" off limits to strip mining, and it also has a specified judicial review provision which addresses the "taking issue" in the designation process. n10

294 n10 " . . . Any person having a legal interest in the mineral rights or any person or corporation having a producing mine or having made substantial capital expenditures and commitments to mine mineral rights with respect to which the state has prohibited mining operations because the mining operations or proposed mining operations would irreparably harm, destroy or materially impair an area that has been designated to be of a unique and irreplaceable historical, archeological, scenic or natural value, may petition the district court for the district in which the mineral rights are located to determine whether the prohibition so restricts the use of the property as to constitute an unconstitutional taking without compensation. Upon a determination that a taking has occurred the value of the investment in the property or interests condemned shall be ascertained and damages shall be assessed as in other condemnation proceedings . . . " Wyoming Environmental Quality Act, 1973, Article 10, Judicial Reviews. Section 35-502-51(b)., p.31.

295 Although Maryland does not have a specified review process for designating lands unsuitable for strip mining in its law, it does flatly prohibit stripping on slopes of 20 degrees or more, and has a rather unique provision which allows the use of state Program Open Space funds to pay compensation for "taking" of mineral property on state-owned lands, upon which stripping is also prohibited. n11

295 n11 " . . . The bureau may not issue, extend or renew any permit to mine coal by the open-pit or strip method on any land the state owns whether or not the ownership includes mineral rights incident to the land. If the bureau's failure to issue, extend or renew a permit involves taking a property right without just compensation in violation of the Constitution of the United States or the Constitution of Maryland and the General Assembly has not appropriated sufficient funds to pay the compensation, the state may use available funds under Program Open Space to purchase or otherwise pay for the property rights." . . . Annotated Code of Maryland, Dept. of Natural Resources, Title 7. Subtitle 5, Strip Mining 1974, 7-505(b), p.3.

## 296 IMPORTANT APPLICATION REQUIREMENTS

296 Water Sampling & Hydrologic Consequences

296 A thorough chemical analysis of water samples taken from all surface

streams and tributaries in the proposed mining area is extremely important for determining the quality, volume and direction of flow of the area's water resources prior to mining. In addition, water well samples and sub-surface ground water samples should be taken on site and from adjacent properties. This analysis and sampling should be performed by a certified hydrologist, subject to verification and spot checking by the regulatory authority. The operator should be required to make a detailed statement - based on the water samples and hydrologic analysis - as to how the water resources in the proposed mining area will be impacted by the strip mine operation, how these impacts will be controlled, and whether there will be any alteration of the drainage pattern; or any change in the rate of percolation and/or aquifer recharge rate. This information is weighed by the regulatory authority before granting a permit to the operator.

296 This kind of detailed pre-mining information is not required for a pollution discharge permit, and so should not be waived or satisfied simply because an operator has acquired a water pollution control or dumping permit.

296 While a state strip mine law may require a drainage plan, which identifies and locates the major streams, tributaries and directional flow of surface water in the proposed mining area, this is not a sufficient picture of the total water resources question, particularly with respect to the chemical and particle content of surface and ground water resources before mining - information that can only be gleaned from careful on-site and off-site water sampling.

#### 296 Core Sampling & Chemical Analysis

296 A core sample is a representative, cylindrical cross section of earth and rock taken from a vertical boring into the ground to a specified depth and made with the aid of a hollow drill bit, which passes through and "samples" the earthen material overlying the coal, the coal seam or seams to be mined, and the geological material lying between and beneath the coal. The core sample, in other words, is a representative slice of the natural geological material and sequence. Such a sample enables a detailed chemical analysis to be made of the coal itself, all surrounding earthen materials, and the nature and extent of existing geologic structures. From such analysis, the economic value and heat content of the coal can be determined and weighted against predictable environmental problems which may arise during mining and/or reclamation. Topsoil availability, rate of erosion, probable siltation, acid content, cohesion & stability of spoil & overburden sulfur content of the coal, as well as the chances for successful reclamation can all be determined from a careful

analysis of core samples. n12. n13. Such information is critically important in determining whether reclamation is possible, and whether or not mining should be permitted in cases where clear public costs will result if stripping is allowed to proceed.

296 n12 "Core drilling is the most satisfactory method of obtaining accurate information for pre-mining planning". Elmore C. Grim and Ronald D. Hill, Environmental Protection In Surface Mining of Coal, Environmental Protection Technology Series, United States Environmental Protection Agency, EPA-670/2-74-093, October 1974 p.1.

297 "The key to a successful reclamation program begins with the basic knowledge of the physical and chemical characteristics of the mineral seam and overburden, which is obtained by core drilling or prospecting with a bulldozer. The bore hole data help to determine the proper handling, deposition, and segregation of the various strata in the spoil profile so that undesirable material is buried under clean fill and top soil is returned to the surface as a medium for vegetation". Ibid., p.153.

297 n13 "The identification of acid producing layers prior to stripping is critical, if these materials are later to be segregated and buried. Otherwise, acid materials may end up on top of the regraded strip mine, as was found on 13 southern West Virginia sites completed in 1969-1970. Although lime is usually added to such areas, this will eventually leach out resulting in acid runoff. Acid layers are generally identified before mining by "educated guesses," usually based on experience from nearby mines. According to the U.S. Forest Service, this method is neither accurate nor dependable. They recommend extensive core drilling prior to mining. Test on these samples should include analysis for total acidity (following complete chemical oxidation) and microscopic examination for pyrite."

297 Ed Light, The Effects of Modern Strip Mining on Water Resources, March, 1975. Campaign Clean Water, West Virginia Citizens Action Group., p.7.

298 Pennsylvania's Surface Mining Conservation and Reclamation Act requires that the coal operator display the results of test borings on the map submitted with permit application. n14 The Montana Strip and Underground Mine Reclamation Act has an optional provision for core sampling and chemical analysis that provides good language and should be made mandatory. n15 Under the Iowa strip mine law, "samples of overburden" are required in the "mine and rehabilitation plan", submitted with the "application for registration". n16

298 n14 "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 the test boring holes." .

.  
Surface Mining Conservation and Reclamation Act, 52 p.5. 1396-1, Section 4(1)

. . . .  
298 n15 "(the application shall include) . . . the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals including the acidity, sulphur content, and tract mineral elements of any coal seam, as well as the British Thermal Unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil .

. .  
" . . . Title 50, Chapter 10, Revised Code of Montana, Section 6. (50-1039),  
(2) (j), p. 7.

298 n16 Code of Iowa, Chapter 83A, "Surface Mining", Section 4, 83A.13, 2(d) .

#### 299 Blasting Plan

299 A key application requirement often overlooked by many state regulatory authorities is a detailed explanation of the need for blasting and a detailed blasting plan & schedule. Such a plan should include: the names and qualifications of all employees supervising and setting explosive charges; specifications for the setting, spacing and location of charges; expected duration and frequency of blasting periods, including time of day; impacts to underlying geology and ground water supplies; stated ground velocity and possible fatigue damage n17 to off-site structures for the duration of blasting operations; and a statement a major mortgaging agency and homeowner insurance company in that area that the operator's plan of blasting will not affect insurance rates or a prospective home buyer's ability to get a loan. n18 Unless the state strip mine law specifically requires a blasting plan as part of the operator's permit application, it must be assumed that no evaluation of blasting safety and liability will be made by the regulatory authority in the permit review process.

299 n17 "Fatigue damage" is damage to a structure over time from repeated loads, stress, blasting, etc., whose individual one time effect may be quite small, but whose cumulative effect over time may be destructive indeed.

Structures at considerable distances from the actual point of blasting will suffer fatigue damage over extended periods of time.

299 n18 As recently as April, 1976, the Montgomery Alabama Regional Office of the Veterans Administration continued to suspend loan-making on new homes and new home construction in Cherokee Estates in Warrior, Alabama, and an adjacent development, Hilltop Acres, for the stated reason that . . . "the area is not acceptable due to the adverse influences of blasting and strip mining" (Letter to W.L. Hudson, Builders, Warrior, Alabama., from Kenneth L. Harvey, Chief, Construction & Valuation Section, VA Regional Office, Montgomery, Alabama, April 6, 1974, 322/264, S/D 3032), Mortgage and building loans in that area have been suspended by the VA since May, 1974, when it found, upon inspection, that "strip mining and blasting are creating an adverse environmental effect on the properties in the area" (Letter to Joe Linton Realty Co., Gardendale, Ala. from Henry D. Moody, Chief, Construction & Valuation Section, VA Regional Office, Montgomery, Ala., May 3, 1974, 322/264, S/D 3032); and in one other instance, due to "adverse location factors" such as, "Strip mining throughout immediate area of subject" (Letter to Real Estate Financing, Inc., Birmingham, Ala., from Terry L. Washington, Appraiser, Veterans Administration, Regional Office, Montgomery, Ala., April, 26, 1976, 322/264, 225 624).

299 A building mortgage application made to the U.S. HUD in Birmingham for Lot #8 in Cherokee Estates, dated April, 1976 was turned down for the following reason: " . . . Close proximity to strip mining operation and damage to several dwellings by blasting. Serious marketability problems are anticipated due to above. Homeowners in subdivision are currently taking action through State Legislature to halt the strip mining operation. Veterans Administration will not issue any more CRV's and HUD/FHA will not issue any commitments in this S/D (subdivision).Commitment recalled with consent of mortgagee and builder." (HUD application, mortgagee: Jackson Company, Birmingham, Ala., Lot #8 Cherokee Trail, Cherokee Estates, Warrior, Ala., FHA Case No. 011-165765-203) April 7, 1976.)

300 Additionally, since September, 1974, the VA has been making re-appraisals of homes in the area, some of which have resulted in as much as a 10 per cent reduction of appraised value, which the VA is calling an "economic penalty" reflecting, according to the VA, "strip-mining and location factors" (Letter to Johnny Lee Mayfield, Gardendale, Ala., from Kenneth L. Harvey, Chief, Construction and Valuation Section, Veterans Administration, Regional Office, Montgomery, Ala., July, 6, 1976, 322/264, VA #225/264).

300 The Birmingham Office of State Farm Fire and Casualty Company refused to pay a claim filed by Mr. & Mrs. Frank Mosley of Morris, Ala., for damage to their dwelling assumed to be the result of strip mine blasting, but which the claims adjuster denied was the cause of the damage, finding instead that the damage was due to "foundation settling over an extended period of time." State Farm also refused to renew this couple's homeowner's policy, pointing to the "foundation problem" as reason for not meeting the company's underwriting requirements. (Letter to Frank H. and Nellie Sue Mosley, Route 1, Box 70, Morris, Ala., from Mary Helen Hall, Underwriter, State Farm Fire and Casualty Company, Birmingham, Ala., March 18, 1976, Policy #1-070-5168; see also letter to Mrs. Frank Mosley from Tharpe Forrester, Deputy Commissioner of the Alabama Department of Insurance, Montgomery, Ala., March 26, 1976).

300 See also forthcoming study of blasting problems from strip mining activity in the states of Alabama, Tennessee, Virginia, West Virginia, Indiana and Illinois, to be published by the Center for Science in The Public Interest of Washington, D.C. in April 1977. Preliminary findings from this report were submitted to the Subcommittee on Energy and Environment of the Interior and Insular Affairs Committee in the U.S. House of Representatives on February 22, 1977.

### 301 Post-Mining Land Use Approvals

301 Strip mine operators often seek variances from strict reclamation standards after they have their permit, claiming that the land does not need to be restored to its pre-existing use and approximate original condition since a housing development, industrial park or a recreational site will be constructed on what was formerly used as natural terrain, forest, agriculture, or some other less-intensive land use before mining.

301 Post-mining land use variances are an acceptable means of dealing with strip mine reclamation for sites that have planned changes in land use after being mined; however, these plans must be demonstrated to be economically viable and politically acceptable before the operator is issued a permit that includes such a variance. This means, for example, that if an operator claims that a housing development will be constructed on the strip mine site after it is mined, he must show in his application that all the necessary jurisdictional approvals have been made, that financing is available with initial commitments in hand, that water and sewer requirements can be met, and that no conflicts exist with local zoning ordinances and land use plans.

301 In the mountain and valley regions of Appalachia, operators typically argue that there is a lack of level land suitable for building and development, and that strip mining - in particular, the mountain top removal and head of the hollow fill techniques - can in fact increase the supply of level land for building purposes. While this may be the case in some areas of Appalachia, the "need for level land" argument should not be taken at face value, and in every instance, specific, approved development plans need to be verified for every such proposal, if not a demonstration by the operator that there is a lack of level land and suitable development sites elsewhere in that particular locality.

301 In the Northern Great Plains states, the problem with the post-mining land use variance is one which would allow intensive agriculture (like wheat, which at face value appears to be a "higher economic use") to replace native range agriculture, i.e., grazing. Reclaiming strip mined native range to short-term stands of wheat that produce 2 or 3 years of fair yields and then drop off sharply in productivity will be considerably easier than reclaiming to viable native range. The application stage is again crucial in the case of these Great Plains states, particularly where rancher surface owners are involved who wish to resume their ranching operations (if that is possible) after Federal coal has been removed.

301 Any variance for "intensive agricultural post-mining land use" in native range areas of the West should have to meet certain tests before granted, such as a showing that there is a dominant history of intensive agriculture in that area; a showing of economic proof that intensive agricultural reclamation has taken place in Western areas, including a demonstration of long-term harvests at least equivalent to an SCS or other recognized crop-yield standard; and that such reclamation can be accomplished at pre-mining levels of cost, fertilizer, water, seeding, etc.

301 A state strip mine law that allows for post-mining land use variances and does not require the operator to produce the necessary approvals, evidence and commitments for such a proposed land use change in his application, before a permit is granted, is leaving itself wide open to calls for variances n19 during the mining process, after the operator has the permit in hand, with no assurances that the claimed land use changes will ever take place, be economically viable, or hold up over extended periods of time.

301 n19 Under Wyoming's Environmental Quality Act, there is considerable regulatory latitude given for the purpose of granting and renewing variances:  
"

. . . Any person who owns or is in control of any real or personal property, any plant, building, structure, process or equipment may apply to the administrator of the appropriate division for a variance from any rule, regulation, standard or permit promulgated under this act. A variance may be granted upon notice and hearing . . . . . If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution, or mining operation involved, it shall continue in effect only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the director may prescribe . . . . . If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the director is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable . . . . . If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (b), (c) and (d) of this section, it shall be for not more than one (1) year. . . . Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance . . . . "

301 Wyoming Environmental Quality Act, 1973, Article 6, Variances, Section 35-502.45 (a), (b) (c), (e), (f), p. 26.

303 In many state strip mine laws, like that of Colorado for example n20, the operator is specifically given the opportunity of choosing the type of land use and reclamation for the strip mined area. Of course, some land uses are typically easier to reclaim than others, and most often, the operator is not required to reveal his choice at the point of permit application. And when a strip mine law does require that the proposed, post-mining land use be described in the permit application, invariably there is a provision elsewhere in the law, like those of West Virginia n21, North Dakota n22, and Texas n23, which allow modifications to be made or alternatives to be approved.

303 n20 "On all affected land, the operator in consultation with the

landowner where possible, subject to the approval of the board, shall determine which parts of the affected land shall be reclaimed for forest, range, crop, horticultural, homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife. Prior to approving any new reclamation plan or approving a change in any existing reclamation plan as provided in this section, the board shall confer with the local board of county commissioners and the board of supervisors of the soil conservation district if the mining operation is within the boundaries of a soil conservation district. Reclamation shall be required on all the affected land." Colorado Revised Statutes, Article 32, Chapter 34, Colorado Mined Land Reclamation Act, 34-32-116. (1)(k).

303 n21 "The purpose of this section is to require restoration of land disturbed by surface mining to a desirable purpose and use. The director may, in the exercise of his sound discretion when not in conflict with such purpose, modify such requirements to bring about a more desirable land use, including but not limited to, industrial sites, sanitary landfills, recreational areas, building sites: Provided, That the person or agency making such modifications will execute contracts, post bond or otherwise insure full compliance with the provisions of this section in the event such modified program is not carried to completion within a reasonable length of time."

303 Code of West Virginia, Article 6, Chapter 20, West Virginia Surface Mining and Reclamation Act, 20-6-10, line 85.

303 n22 "Upon the application of the operator, the commission in its discretion may allow, or upon its own motion may order, the modification of an approved reclamation plan, provided the modified plan will carry out the purposes of this chapter." North Dakota Century Code, Chapter 38-14, Reclamation of Strip-Mined Lands, 38-14-05. 12., p. 8.

303 n23 "The purpose of this section is to cause the land affected to be restored to the same condition as the land enjoyed before the mining or some substantially beneficial condition. (A method of reclamation other than that provided in this section may be approved by the commission, after public hearing, if the commission determines that any method of reclamation required by this section is not practicable and that such alternative method will provide for the affected land to be restored to a substantially beneficial condition. If an alternative method of reclamation is generally applicable to all surface mining operations involving a particular mineral, the commission shall promulgate appropriate rules and regulations in accordance with Subsection (d) of Section 7.)"

303 Texas Laws, 1975, Chapter 690, Surface Mining Reclamation Act,  
Section  
11(c).

304 Certificate of Liability Insurance

304 One of the most basic measures of operator responsibility, and an essential application requirement for the permit review process is evidence from the operator of an insurance policy which covers his mining activities for property damage and personal injury. The strip mine laws of Alabama n24, West Virginia n25, and Ohio n26 provide examples of statutory language for such a provision. It is noted however, that 19 of the coal-producing states included in this study do not have a provision in their laws which requires the operator to produce a certificate of liability insurance at the point of permit application.

304 n24 "The application for permit shall be accompanied by a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized or licensed to do business in this state covering all coal surface mining operations of the applicant in this state and affording personal injury and property damage protection, during the term of the permit.

304 The insurance shall cover the applicant and all of its agents and employees and shall not be less than seven hundred fifty thousand dollars (\$750,000.00) for personal injury and five hundred thousand dollars (\$500,000.00) for property damage."

304 Alabama Surface Mining Reclamation Act of 1975, Section 14, Insurance.

304 n25 ". . . There shall be attached to the application a true copy of an original policy of insurance issued by an insurance company authorized to do business in this state covering all surface mining operations of the applicant in this state and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, protection in an amount of not less than three hundred thousand dollars." Code of West Virginia, Article 6 and 6A, Chapter 20, As Amended 1971, Section 20-6-8, line 47.

304 n26 "(An application for a license . . . shall contain) . . . A certificate of public liability insurance company authorized to do business in this state or obtained pursuant to sections 3905.30 to 3905.35 of the revised code covering all strip mining operations of the applicant in this state, which insurance shall be maintained for the life of any permit held by the applicant,

and for the period of time until the bond deposited by the operator is released pursuant to division (e) of section 1513.16 of the revised code and shall afford bodily injury and property damage protection in amounts not less than the following:

304 (1) One hundred thousand dollars for all damages because of bodily injury sustained by one person as the result of any occurrence, and three hundred thousand dollars for all damages because of bodily injury sustained by two or more persons as the result of any one occurrence;

304 (2) One hundred thousand dollars for all claims arising out of damage to property as the result of any one occurrence including completed operations, with an aggregate limit of three hundred thousand dollars for all property damage to which the policy applies."

304 Ohio Revised Code, Chapter 1513, Section 1513.06(e).

#### 305 Previous Infractions

305 An operator's previous record of reclamation and performance while mining in the past is a very important measure in determining whether or not a particular operator is responsible, and whether he should continue to be granted permits to strip mine. A good state law will require, as a matter of basic information, that all permit applications include a list of all strip mine infractions accrued in any state during the previous 5 year period or longer. Such a list should include all notices of non-compliance, violations hearings, permit denials, permit revocations & suspensions, cease & desist orders, restraining orders, bond forfeitures, criminal prosecutions, fines, etc.

305 The Kentucky strip mine law requires that no new permits be issued to operators who have had a permit revoked, suspended, a bond forfeited, or who have "repeatedly been in non-compliance". n27 However, there is no provision in that law which requires the operator or his previous associates to list all infractions in any new permit application.

305 n27 "An operator whose mining permit has been revoked or suspended shall not be eligible to receive another permit or to have suspended permits reinstated until he shall have complied with all the requirements of this chapter in respect to all permits issued him, provided further, that no operator shall be eligible to receive another permit who has forfeited any bond unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid such sum as the department finds is adequate to reclaim such lands. The division shall not issue any additional permits to any

operator who has repeatedly been in non-compliance or violation of this chapter, or who has had permits revoked on more than three (3) occasions." Kentucky Revised Statutes, Chapter 350, Strip Mining, Section 350.130(3).

305 Seventeen of the states included in this study had no specified requirement in their strip mine laws for the listing of previous infractions in the permit application. Of the nine states having some kind of provision in their strip mine laws requiring the listing of previous infractions in the permit or license application. the language in Ohio's law appears to be the strongest. n28

305 n28 (the application for a license shall contain) . . . "a statement of whether the applicant, any partner if the applicant is a partnership, any officer or director if the applicant is a corporation, or any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant has ever had a strip mining license permit, or surface mining permit issued by this or any other state suspended or revoked or has ever had forfeited a strip or surface mining bond or a security deposited in lieu of bond, . . . "

305 Ohio Revised Code, Chapter 1513, Section 1513.06(D)

306 [See Table in Original]

307 [See Table in Original]

308 [See Table in Original]

309 EXPLANATION OF CATEGORIES IN TABLE II

309 Burden of Proof on Applicant

309 Information submitted by the operator to the regulatory authority in application for a strip mine permit must be complete, detailed and conclusive in order that the reviewing authority finds clear evidence of the operator's intention and ability to meet the requirements of the law, otherwise a permit should not be issued. The purpose of the application process is to "show cause" for the issuance of a permit, and the operator must do all the informational legwork required by the law. Additionally, the applicant must prove with the information submitted to the reviewing authority, that he will mine responsibly and reclaim the land in accordance with existing law and regulations. In the permit review process, the reviewing authority ought to be able to deny a permit application for lack of demonstrated evidence or incompleteness of information. The responsibility to complete the application is the operator's; the reviewing authority should not have to make any assumptions or fill in any missing

information. n1 All informational and evidentiary responsibilities must be borne by the applicant rather than the regulatory authority or the general public. Therefore, a burden-of-proof proviso should be stated clearly in the state strip mine law so that there is no question about who has the responsibility for completing the permit application.

309 n1 For example, under the West Virginia Surface Mining and Reclamation Act, when the operator submits a drainage plan as part of his permit application to the Director of the Department of Natural Resources, the Director, rather than the operator, is required to submit this same information to the Chief of the Division of Water Resources. ". . . Upon receipt of such drainage plan, the director shall furnish to the chief of the division of water resources a copy of all information required by this subdivision as well as the names and locations of all streams, creeks, or other bodies of water within five hundred feet of the area to be disturbed . . ." West Virginia Code, Section 20-6-9.

309 This burden-of-proof requirement received the blessing of Kentucky's Attorney General when that office reviewed certain sections of Kentucky's strip mine law and found it to apply even though that law has no specified provision which required the operator to bear the informational burden in the permit review process. n2

309 n2 "The burden of establishing that the proposed operation will in fact be so conducted as not to offend the proscriptions and purposes expressly set forth in this section and KRS 350.085 is upon the operator who applies for a permit." OAG 70-563 Opinion of the Attorney General on Kentucky Strip Mine Law, at KRS 350.020, p. 3.

310 Wyoming's Environmental Quality Act requires "proof" n3 from the applicant that he has complied with the act in the permit review process, and in any permit denial hearing, "the burden of proof shall be upon the petitioner." n4

310 n3 "(a) When an administrator, after consultation with the appropriate advisory board, has, by rule or regulation, required a permit to be obtained it is the duty of the director to issue such permits upon proof by the applicant that the procedures of this act . . . and the rules and regulations promulgated hereunder have been complied with." (Wyoming Environmental Quality Act. 1973, Article 8, Permits. Section 35-502.47(a), p. 29.)

310 n4 "If the director refuses to grant any permit under this act . . . the

applicant may petition for a hearing before the council to contest the decision. The council shall give public notice of such hearing. At such hearing, the director and appropriate administrator shall appear as respondent and the rules of practice and procedure adopted by the council pursuant to this act and the Wyoming Administrative Procedure Act shall apply. The burden of proof shall be upon the petitioner. The council must take final action on any such hearing within 30 days from . . ." (Ibid., Section 35-502.48., p. 29)

### 310 WRITTEN FINDINGS

310 While a state strip mine law may require several categories of careful scrutiny and consideration during the permit review process - such as legal right of entry, plan of reclamation, protection of water resources, etc. - and may specifically instruct the reviewing agency to consider and weight such factors in making its decisions on whether to approve certain permits or not; such provisions of law do not give any real substance to the review process since there is nothing to hold the reviewing authority accountable for its decisions. In the absence of such accountability, surface owner rights or compliance with other laws, for example, might be "considered" but dismissed. This is precisely why positive written findings for every approved permit are so very important in the permit review process. Under such a requirement, the reviewing authority would have to find positive evidence in the operator's application that certain enumerated areas of public value and personal property would be protected before granting any permit, making a publicly available written statement to that effect in whatever detail necessary. As long as the words "written findings" are not directly tied by law to specified areas of consideration in the permit review process, the reviewing authority can review a long and impressive list of criteria and still issue a permit without ever once being held accountable for its decision in any one of the areas "considered". Written findings make the reviewing authority responsible and liable, which, in turn, will require the operator to be more specific in his application.

311 In many states, whenever a regulatory authority fails to approve an application for a strip mine permit, that review body is required by a specified provision in the strip mine law to notify the operator in writing of its reasons for not approving the permit. By extension of this same logic, the regulatory authority should also be required to notify the public in writing of its reasons for approving any permit application; affirming to the public with detailed written findings that the values and resources outlined in Table II will not be degraded, threatened or jeopardized by the proposed mining plan and operation.

311 n5 The Tennessee Surface Mining Law states, for example, . . . .

311 "The commissioner shall then, in not less than twenty (20) nor more than thirty (30) days from the filing of the application for a permit, either approve said application or notify the operator in writing, stating in detail his reason for not approving the application." Chapter 15, Strip and Open Pit Mines, Section 58-1544(h), p. 79.

311 Moreover, when the Tennessee Commissioner of the Department of Conservation is satisfied with the earthwork portion of reclamation, the operator is "relieved of all further rehabilitation, except initial revegetation . . . , by a written release from the commissioner", Section 58-1547 A (10), p. 82.

311 The Illinois Surface-Mined Land Conservation and Reclamation Act, for example, does not require the reviewing authority to make positive written findings on the permit application, only that it "consider" certain environmental impacts and reclamation alternatives in making its evaluation. n6

In the event that a county board has objected to a permit that the reviewing authority seeks to approve, the reviewing authority is then required to make a "statement" as to the reasons for its decision and to make that statement public.

311 n6 ". . . The Department shall consider the short and long term impact of the proposed mining on vegetation, wildlife, fish land use, land values, local tax base, the economy of the region and the State, employment opportunities, air pollution, water pollution, soil contamination, noise pollution and drainage. The Department shall consider feasible alternative uses for which reclamation might prepare the land to be affected and shall analyze the relative costs and effects of such alternatives. Whenever the Department does not approve the operator's plan, and whenever the plan approved by the Department does not conform to the views of the county board expressed in accordance with subparagraph (f) of this Section, the Department shall issue a statement of its reasons for its determination and shall make such statement public . . ." Section 5(g), p. 5

312 However, in most instances, all that the reviewing authority is required by law to "find" before issuing a strip mine permit is that there is "probable cause to believe" that the proposed strip mine operation and plan of reclamation will be carried out "consistent with the purposes of this Act". The closest that any state strip mine law comes to requiring written findings is that of Louisiana, which requires that all orders of the Commissioner of the Department of Conservation pertaining to permits be "in writing" and "be a public record". n7 Ohio's strip mine law also requires that any order of the

Chief of the Division of Reclamation pertaining to permits be "in writing and contain a finding of the facts upon which the order is based". n8 However, neither the Ohio nor the Louisiana law ties a written finding requirement to specific areas of public protection or personal property values. A partial list of some of the more obvious areas in which written findings should be required (See Table II) are discussed in the sections which follow.

312 n7 ". . . Within sixty days of receipt of a proper application the commissioner shall call a public hearing pursuant to the provisions of Section 910 of this Chapter. If, at such hearing, it is found that the applicant has the capacity to properly do the acts and perform the operation proposed and said proposed operations are found to conform to the provisions of this Chapter, and the requirements, rules and regulations of the commissioner adopted thereunder, an order granting the requested permit shall be issued; otherwise such application shall be denied . . ." (Louisiana Revised Statutes, Title 30, Chapter 9, Surface Mining and Reclamation Act, Section 905 D.)

312 n8 ". . . All rules, regulations and orders made by the commissioner shall be in writing and shall be entered in full by him in a book kept for that purpose. This book shall be a public record and shall be open for inspection at all times during reasonable office hours. A copy of a rule, regulation, or order, certified by the commissioner, shall be received in evidence in all courts of this state with the same effect as the original." (Ibid., Section 910 G.)

### 313 Reclaimability

313 Surface coal mining in the United States takes place under various condition of geology, topography, soil topology, vegetation and climate. Not all areas are subject to the same rate of restoration, or the same level of post-mining utilization and performance. n9 Some areas, if strip mined, may not be capable of being successfully restored to their approximate pre-mining condition and capability.

313 n9 The 1973 National Academy of Sciences study, Rehabilitation Potential of Western Coal Lands made the following observations:

313 "The potential for rehabilitation of any surface mined area in the West is critically site specific. Nevertheless, some broad principles apply to all sites. The rehabilitation of a specific site will depend on the detailed ecological and physical conditions at that site, the projected land use for the site after mining, the available technology that is applied to the site, and the skill in applying that technology.

313 We believe that those areas receiving 10 inches (250 mm) or more of annual rainfall can usually be rehabilitated provided that evapotranspiration is not excessive, if the lands are properly shaped, and if techniques that have been demonstrated successful in rehabilitating disturbed rangeland are applied. However, we must emphasize that this belief is not based on long-term, extensive, controlled experiments in shaping and revegetating western lands that have been surface mined. Few such studies have been made, and those in process have only a few years' data to report.

313 The drier areas, those receiving less than 10 inches (250 mm) of annual rainfall or with high evapotranspiration rates, pose a more difficult problem. Revegetation of these areas can probably be accomplished only with major, sustained inputs of water, fertilizer, and management. Range seeding experiments have had only limited success in the drier areas. Rehabilitation of the drier sites may occur naturally on a time scale that is unacceptable to society, because it may take decades, or even centuries, for natural succession to reach stable conditions.

313 While none of the state laws examined in this study includes a specific provision which requires a written finding on the reclaimability of proposed strip mine sites, several do specifically recognize that there are geographic areas that may be impossible to reclaim. For example, under its unsuitable lands review provision, West Virginia's strip mine law states: "the legislature finds that there are certain areas in the state . . . which are impossible to reclaim either by natural growth or by technological activity . . ." n10 The North Dakota strip mine law has that same provision identically stated in its unsuitable lands section. n11 South Dakota's law makes provision for designating areas unsuitable where "reclamation is not physically or economically feasible", n12 and Montana's law requires that no permit application be approved in areas where . . . "the land, once adversely affected could not return to its former ecological role in the reasonable foreseeable future . . ." n13 And while it is recognized that the proper way of dealing with inherently unreclaimable areas is to designate them off limits in the first place, the regulatory authority should also be required to make a written finding from every permit application that areas capable of reclamation will be reclaimed.

314 n10 West Virginia Code, Article 6 and 6a, Chapter 20, Section 20-6-11.

314 n11 North Dakota Century Code, Chapter 38-14, Reclamation of Strip Mined

Lands, Section 38-14-05. 1.1.

314 n12 South Dakota Laws, Chapter 45-6A, Surface Mining Land Reclamation, Section 45-6A-9.1.

314 n13 Title 50, Chapter 10, Revised Code of Montana, Section 9. (50-1042)  
(2) (b).

314 A good state strip mining law will require the regulatory authority to make a written finding on whether an operator can successfully reclaim the area he proposes to mine. This finding must be made in two different ways: first, in the form of proof, offered by the operator, that strip mined areas topographically and climatically similar to the one he proposes to mine have been successfully reclaimed and restored; and secondly, that there is evidence in his permit application - in the form of detailed mining and reclamation plans which delineate mining methodologies; mining technologies to be employed; method of handling and controlling spoil, toxic substances and other wastes; topsoiling and revegetation schedules and materials; sequence and phasing of mining and reclamation operations; etc., - that the area to be mined will be completely and successfully reclaimed and restored. If this finding cannot be made from the operator's permit application, then a permit should not be granted.

314 It should be noted that "probable cause to believe that the proposed method of operation, backfilling and grading or reclamation of the affected area can be carried out . . ." is not the same as a provision of law that requires the regulatory authority to make a written finding of reclaimability based on demonstrated evidence in the operator's application.

#### 315 Legal Right of Entry and Surface Owner Consent

315 The reviewing authority should also make a written finding from the permit application that the operator has the clear legal right to mine through a surface estate to extract near-surface coal resources, and that all legal surface-owner rights will be upheld and honored, or in the alternative, that such rights have been clearly adjudicated by the courts before strip mining is permitted. n14

315 n14 A Kentucky Court of Appeals decision of May 9, 1975 found that a permit application requirement for written consent from surface owners made to holders of a broad form deed prior to permit approval was unconstitutional on grounds that such a requirement was not an environmental conservation measure,

that "it puts the surface owner in a position to be paid again for what he or his predecessor in title has already received (in) compensation", and that its purpose "is to change the relative legal rights and economic bargaining positions of many private parties under their contracts rather than achieve any public purpose". (Interestingly enough, however, this decision did reaffirm the right of the state legislature to put certain areas off limits to strip mining as an environmental conservation measure . . . "It may well be that the General Assembly, in the exercise of its legislative wisdom, might strike a balance between the 'energy crunch' and the necessity to conserve the environment which, for example, would prohibit strip mining entirely, prohibit strip mining which would remove tillable soil from production, limit strip mining to areas which have less than a given percentage of grade, require extensive restoration of land to be stripped, limit the activity in areas where the watershed and wildlife might be adversely affected and even protect the aesthetic beauty".) (Kentucky DNR, Henry Hurt, et.al., V. No. 8 Limited of Virginia, Court of Appeals of Kentucky, File no. 75-190.)

315 In two other State Supreme Court decisions, one in Texas and the other in Ohio, the interpretation was somewhat different as regards the stripping of surface estates and surface owner rights under the broad form deed.

315 " . . . the right to 'use' the surface cannot be reasonably construed as the right to destroy it . . .

315 We hold that the right to strip mine is not incident to ownership of a mineral estate. Because strip mining is totally incompatible with the enjoyment of a surface estate, a heavy burden rests upon the party seeking to demonstrate that such a right exists. This is especially true when the deed relied upon was executed prior to the time when strip mining techniques became widely employed." (Ohio Supreme Court, Skivolocki v. East Ohio Gas Co., 38 Ohio St. 2d 244, 251, 313 N.E. 2d 374, 378-379-1974.)

315 "The parties to a mineral lease or deed usually think of the mineral estate as including valuable substances that are removed from the ground by means of wells or mine shafts. This estate is dominant of course, and its owner is entitled to make reasonable use of the surface for the production of his minerals. It is not ordinarily contemplated, however, that the utility of the surface for agricultural or grazing purposes will be destroyed or substantially

impaired. Unless the contrary intention is affirmatively and fairly expressed, therefore, a grant or reservation of 'minerals' or 'mineral rights' should not be construed to include a substance that must be removed by methods that will, in effect, consume or deplete the surface estate." (The Texas Supreme Court, Acker vs. Guinn 464 S.W. 2nd 348-1971)

316 Surface owner consent is required under Wyoming's strip mine law - the Wyoming Environmental Quality Act - but only for those who have acquired surface title prior to 1970, or those acquiring surface title after that date through descent, inheritance, or gift or conveyance from another family member. n15 Moreover, the reviewing authority in Wyoming can "issue an order in lieu of consent" if it makes certain findings. A good surface owner consent provision will protect the wishes of the surface owner in all cases, and will require the regulatory authority to make a written finding that written surface owner consent has been given before a permit is approved.

316 n15 ". . . For an application filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner, if different from the owner of the mineral estate, granting the applicant permission to enter and commence surface mining operation, and also written approval of the applicant's mining and reclamation plan. As used in this paragraph, "resident or agricultural landowner" means a natural person or persons who, or a corporation of which the majority stockholder or stockholders:

316 (A) Hold legal or equitable title to the land surface directly or through stockholdings, such title having been acquired prior to January 1, 1970, or having been acquired through descent, inheritance or by gift or conveyance from a member of the immediate family of such owner; and (B) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by the surface mining operation, or receive directly a significant portion of their income from such farming or ranching operations.

316 For any application filed after March 1, 1975 including any lands privately owned but not covered by the provisions of W.S. 35-502.24 (b) (xi) an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

316 (A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval; (B) 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; (C) That the use does not substantially prohibit the operations of the surface owner; (D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feably possible; . . ." (Wyoming Environmental Quality Act, 1973, Article 4, Land Quality, Section 35-502.24 (b) (xi) and (xii), pp. 16-17.

316 In a 1976 report on the pending Federal strip mine bill, the Committee on Interior and Insular Affairs of the U.S. House of Representatives noted that although the Federal legislation "contemplates the full reclamation of strip mined lands following the destruction of the surface during the mining period and the the interruption of the use of the surface during the mining period and the delay in the restoration of the surface to full productivity or value requires that the interests of the surface owner be recognized." n16 Given such potentially long-term interruption in the use of the surface, the surface owner ought to be given the clear and undeniable legal right of refusing to allow mining to proceed on the surface from which he derives an economic livelihood and to which he has clear legal surface title.

316 n16 U.S. House of Representatives, Committee on Interior and Insular Affairs, Committee Report, "Surface Mining Control and Reclamation Act of 1976, H.R. 13950, 94th Congress, 2nd Session, House Report No. 94-1445, August 31, 1976, p. 78.

### 317 Protection of Public Water Supply

317 Sedimentation, acid mine drainage, and other forms of mine site water pollutants, often enter the hydrologic regime and natural water course system at strip mine operations in watersheds which eventually supply public drinking water to city, town and county residents. These actively mined watersheds may also supply water to public reservoirs. There is ample evidence in many states that public water supplies are threatened and water supply facilities jeopardized by strip mine caused pollutants. n17 n18 n19

317 n17 "In West Virginia a Glade Mining Company active strip mine in the Bakerstown seam on Joe's Run of the North Branch of the Potomac River produced acid water down to PH 3.2 in 1973 . . . Strip mines active in West Virginia through 1972 discharged excessive turbidity, iron, manganese, and sulfate the city of Beckley's drinking water reserrior . . . Strip mining done on Red Run of

Shavers Fork, West Virginia from 1970-1973 produced sediment and acid, wiping out a native brook trout population . . . Recent strip mining in Kentucky has contributed to the sedimentation of Fishtrap Reservoir . . . A 1973 Tennessee study of a major sedimentation problem in the New River Basin found that 51% of the sediment came from areas stripped since 1970 . . . Active and recently reclaimed strip mines polluted the North Fork of Pound Reservoir in Virginia with acid and metals from 1969-1972 . . . The Red Rock Dam Project in Iowa was polluted by acid and sediment from active strip mining in 1973" (Ed Light, The Effects of Modern Strip Mining on Water Resources, Campaign Clean Water, West Virginia Citizen Action Group, March 1975, pp. 2-3.)

317 n18 "My name is Brian Tarras, I am with the Corps of Engineers in Huntington, West Virginia. Our concern with the surface mine industry in the state of Virginia is the Department of Mined Land Reclamation deals with three watersheds that drain into our multi-purpose reservoir projects. We have Fishtrap Lake which covers Buchanan County, John W. Flanagan which covers parts of Dickenson and Wise County and North Fork of Pound which covers parts of Wise County. These projects were built a few years ago with both government and state money. The purpose of these projects is to provide flood control, recreation for the people of Virginia and water supply for the people of Virginia. Namely, North Fork of Pound provides water supply for the town of Pound and John W. Flanagan will supply water supply in the future for major parts of Dickenson and Buchanan Counties. Our concern with the surface mine industry is the excessive sedimentation that has taken place over the last couple of years in these projects. This sedimentation not only endangers the project purposes which I just discussed but could possibly cause the premature extinction of these projects. Currently, Virginia does not have adequate drainage control regulations." (Public Hearing, Proposed Drainage Control Regulations, Virginia Board of Conservation and Economic Development, Richlands, Va., October 29, 1976.)

317 n19 "A potential hazard associated with drinking water supplies contaminated by strip mining is that of cancer. Nickel and zinc are carcinogens, and are frequently identified in strip mine discharges. Even at very low levels, the presence of carcinogens in drinking water increases the long-term risk of a certain percent of the population contracting cancer. Other carcinogens occasionally found in strip mine discharges include arsenic, barium, chromium, cobalt, mercury, and selenium. The presence of a number of carcinogens can have an additive effect on the cancer rate . . ." (op.cit., Light, p. 13)

318 In conjunction with the protection of public water supplies, a state strip mine law should also require the reviewing authority to make a written

finding from the information submitted in the operator's application - such as that found in the on site methodologies and technologies proposed by the operator to ameliorate, control and/or prevent sedimentation, siltation, acid mine drainage, and other hydrologic impacts - that the mining and reclamation operations will minimize disturbances to the prevailing hydrologic balance and will not irreparably damage the on or off site hydrologic regime. Of critical importance in this finding is the determination that the quantity and quality of surface and ground water systems will not be permanently altered, diminished or polluted as a consequence of the mining operations. Therefore, it must be found in the applicant's mining and reclamation plans, that surface and sub-surface flows will be kept in their existing state or restored to their pre-mining quantities and qualities if disturbed or disrupted; that sedimentation as well as other suspended and dissolved materials which enter the hydrologic regime as a result of the mining activities will be prevented where possible and eliminated before bond release elsewhere; and that the aquifer recharge capacity and drainage patterns will be completely restored to their approximate original configuration, condition and capability. The operator should also have to demonstrate in his application that his mining activities will not violate any existing local, state or federal water pollution statutes.

318 n20 In the U.S. House of Representatives, the Committee on Interior and Insular Affairs, reporting on H.R. 13950, the proposed Surface Mining Control and Reclamation Act of 1976, defined "hydrologic balance" in the following manner:

318 ". . . The hydrologic balance is the equilibrium established between the ground and surface waters of an area and between the recharge and discharge of water to and from that system. Some of the measurable indicators of such an equilibrium are: flow patterns of ground water within aquifers; the quantity of surface water as measured by the volume rate and duration of flow in streams; the erosion, transport and deposition of sediment by surface run-off and stream flow; the quality of both ground and surface water including both suspended and dissolved materials; and the interrelationship between ground and surface waters . . ."

#### 319 Protection of Landowner Water Supply

319 Like public water supplies, private wells and landowner water rights and sources of water supply should be protected from strip mine pollution. The Montana Strip and Underground Mine Reclamation Act has internalized some remedial provisions for the protection of landowner water supply and water

rights. n21 However, these protections should be incorporated into the findings

process during the review of the permit application, at which point the regulatory authority should be required to make written findings that no interruption, diminution, or pollution of such water supply will occur.

Water

protection provisions should not be rear guard, after the fact compensatory actions for something that could have been prevented at the point of permit review.

319 n21 (3) An owner of an 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 source other than a subterranean stream having a permanent, distinct and known channel, may sue an operator to recover

damages for contamination, diminution or interruption of the water supply, proximately resulting from strip mining or underground mining.

319 (a) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal or disruption of overlying aquifer from designated "ground water areas" as prescribed in Title 89, Chapter 29. If the

area is not a designated "ground water area" showing that the coal or overlying

strata have been removed on disrupted shifts the burden to defendant (operator)

to show that Plaintiff's (owner's) water supply was not injured thereby.

319 (b) An owner of water rights adversely affected may file a complaint, detailing the loss in quality and quantity of his water, with the Department. Upon receipt of this complaint the Department shall:

319 (i) investigate the complaint using all available information including monitoring data gathered at the mine site;

319 (ii) require the defendant (operator) to install such monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

319 (iii) issue, within ninety (90) days, a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

319 (iv) order the mining operator in compliance with the water use act to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time replace the water in like quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

319 (v) order the suspension of the operator's permit, for failure to replace the water, until such time as the operator provides substitute water.

319 (4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining or underground mining on the dominant tract. (Title 50, Chapter 10, Revised Code of Montana Section 22 (50-1055), (3) and (4), pp. 19 and 20)

#### 320 Protection of Alluvial Valley Floors n22

320 n22 The House Interior and Insular Affairs Committee defines alluvial valley floors as follows:

320 "Alluvial valley floors refers to those unconsolidated deposits formed by streams (including their meanders) where the ground water level is so near the surface that it directly supports extensive vegetation or where flood stream flows can be diverted for flood irrigation." H.R. 9725 defines alluvial valley floors as "the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities" (Sec. 701(27)). In more technical terms, alluvial valley floors are the upper, near-horizontal surface of the unconsolidated stream-laid deposits which border perennial, intermittent, or ephemeral streams. The allivium that makes up the stream -laid deposits is composed of clay, silt, sand, gravel, or similar detrital material that has been, or is being, transported and deposited by streams. Alluvial valleys within this definition are traversed by perennial or intermittent streams or by ephemeral stream channels; are irrigated in most years by diversion of natural flow or ephemeral flood flow on the modern flood plain and adjacent low terraces, or by subirrigation of the flood plain by underflow; and are used for the production of hay and other crops that are an integral part of an agricultural operation. Excluded from the definition are the colluvial and other surficial deposits that normally occur along the valley margins, are higher than the modern flood plain and low terraces, are not irrigated by diversion of natural flow or by ephemeral flood flow, and are not subirrigated by underflow. It should also be noted that alluvial valley floors must be an integral part of a drainage network that transverses the area under consideration. These are part of through flowing stream (hydrologic) systems and are not small areas of isolated internal drainage." (op.cit. House Report No. 94-;445, p. 63)

320 An important finding that the reviewing authority should be required to make before granting a strip mine permit in Western states is that agricultural production dependent on the surface and underground water systems of alluvial valley floors will not be adversely affected n23 by the proposed mining operations. This means, in effect, a finding that existing agricultural operations dependent upon alluvial valley systems for water, hay production and/or pasturage, will not be interrupted, discontinued or prevented by the proposed mining activity. A key element in this determination of agricultural viability in alluvial valley floor areas is the extent to which the proposed mining operation will impact the movement, quality and quantity of water throughout the alluvial valley system. n24 A good state strip mine law should have a provision that only permits mining in an alluvial valley floor when a written determination is made by the reviewing authority that no significant or irreparable damage will occur to either alluvial valley dependent agricultural operations, or the alluvial valley floor hydrologic regime.

320 n23 The National Academy of Sciences made the following observation about mining and rehabilitation in alluvial valley floors:

320 "In the planning of any proposed mining and rehabilitation it is essential to stipulate that alluvial valley floors and stream channels be preserved. The unconsolidated alluvial deposits are highly susceptible to erosion as evidenced by the erosional history of many Western valleys which record several periods of trenching in the past several thousand years. Removal of alluvium from the thalweg of the valley not only lowers the water table but also destroys the protective vegetation cover by draining soil moisture. Rehabilitation of trenched valley floors would be a long and expensive process and in the interim these highly productive grazing areas would be removed from use." (National Academy of Sciences, Rehabilitation Potential of Western Coal Lands, 1973.)

321 n24 In its discussion and committee report on the proposed federal strip mine bill, the House Interior and Insular Affairs Committee pointed to the extent of protection needed when mining is to be permitted in alluvial valley floor areas of the west.

321 "Where mining is proposed on alluvial valley floors the methods of ground and surface management would have to be designed for the specific characteristics of the site and could be difficult to achieve. However, given the potential short- and long-term disruption of the lands and economy so affected, this additional effort appears necessary and justifiable. Preserving the essential hydrologic functions during the mining process includes assuring that the water balance both upstream and downstream of the mine is maintained so

that natural vegetative cover is not destroyed and the erosional balance of the area the backfilling, placement of material, and grading, must assure that the hydrologic function of the area prior to mining is continued and that the operation does not become a barrier to water movement and availability in the valley deposit." (Op.cit., House Report No. 94-1445, p. 63)

#### 321 Compliance With Other Laws

321 Before a permit is granted, the reviewing authority should also make a written determination, based on the information submitted in the operator's application, that the proposed mining operation and reclamation plan will not violate any other Federal, state, local or municipal statute, ordinance or permit. For example, if an operator's permit application does not show conclusively that his operation will meet a state's water pollution discharge standard, or has not received a permit to strip mine from a local jurisdiction that requires one, then the state regulatory authority cannot make a written finding that the proposed mining operation will be in compliance with all applicable laws and permit requirements, and therefore, a permit should not be granted. n25

321 n25 For example, as of July 1, 1976, the U.S. Army Corps of Engineers' jurisdiction over the discharge of dredge and fill material under Section 404 of the Federal Water Pollution Control Act, and its permitting authority thereto, was expanded to primary tributaries of navigable waterways, lakes and contiguous or adjacent wetlands. After July 1, 1977, this jurisdiction will further expand to include the headwaters of primary tributaries. In Appalachia, and elsewhere, many surface coal mining operations are found along primary tributaries and feeder headwaters of navigable waterways. Coal operators needing a 404 permit should have such an approved permit in hand, and as part of their application, when being reviewed by the state regulatory authority.

322 While the state regulatory authority is responsible for making the actual written finding, other appropriate state and local agencies may be contacted to review the application if necessary; but it is the operator's responsibility to have those reviews in hand when he submits his permit application to the state reviewing authority. In some cases, states may have already internalized a tougher or more specific standard from another environmental or safety law into their reviewing procedure for the strip mine permit. Pennsylvania applies the state's Clean Streams Law and permit system to all mining operations. n26

322 n26 ". . . 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 . . ."

322 ". . . 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 . . ."

322 ". . . 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' . . ." 52 Penn Statutes 1396.1 et.seq., Sections 4(a)(2) K, 4(b), 4(c)

#### 322 Protection of Public Works

322 In order to protect the value and planned functional lifetime of public works projects such as roads, dams, reservoirs, bridges, parks, recreation investments, etc., the reviewing authority should be required by law to make a written determination from he operator's permit application that the proposed mining operations, and their ancillary activities (such as the trucking of coal from the mine site), will not present any present or future physical threat to the functional integrity of any public works facility, and will not incur any additional maintenance or rebuilding costs for such facilities above those currently projected for normal utilization. If there are public works costs associated with proposed strip mine operations - and available evidence indicates there usually are n27 n28 - then such costs should be completely laid out in the permit application for full public review.

323 n27 See for example "The Economic Impact of Truck Traffic on Tennessee Highways", Transportation Center, University of Tennessee, for the Tennessee Department of Revenue, April, 1975, and "The Social and Economic Components of the Environmental Baseline Study for the Amax No. 1 Mine", (Source Document and Executive Summary, 2 vols.), March, 1976, Pruddy Widlock and others. A major finding was a potential cost impact of \$1 million in highway costs from Amax trucks hauling coal . . . County commissioners in Tuscaloosa County, Alabama have been warned by local school authorities that they are reluctant to allow school buses to cross certain bridges in that county due to

weakening of those structures by coal trucks . . . Interstate I-65 is being held up for strip miners outside of Birmingham, in Jefferson County, Alabama . . . Holt Reservoir in Tuscaloosa County has suffered serious siltation due to stripping; a law suit there is pending.

323 n28 In a recent comparative analysis of the Kentucky strip mine law with the pending Federal strip mine bill, the Kentucky Department for Natural Resources and Environmental Protection made the following comment about the impact of strip mining on U.S. Army Corps of Engineers projects in Kentucky: "U.S. Corps of Engineers will undoubtedly seek elements in Kentucky program to protect their projects which have undeniably been damaged due to either deficiencies in Kentucky law and/or regulations or poor enforcement thereof." Surface Mining Control and Reclamation Act of 1976 with added notes contrasting current requirements under Kentucky statutes and/or regulations, and summary comments of the Division of Reclamation, Kentucky Department for Natural Resources and Environmental Protection, January 15, 1977.

324 [See Table in Original]

325 [See Table in Original]

326 [See Table in Original]

327 EXPLANATION OF CATEGORIES IN TABLE III

327 Protection & Restoration of Surface Drainage Pattern and Hydrologic Capability

327 One of the most important reasons for reclaiming strip mined land to its approximate original surface configuration is to restore the hydrologic capability and drainage pattern n1. of that land. The restored surface configuration of any mined area, and the underlying sequence of replaced earthen and geologic material, directly affect the ability of that area to replenish its water resource and hydrologic functions. Vegetation, topsoil, sub-soil, geologic structure, slope, and the general "lay of the land" all contribute to how a particular area of land stores, filters, and moves water through the surface and sub-surface components of its physical regime. Most important, however, is what the coal operator does with the various earthen and geologic components of the hydrologic system during and after the mining operation, since this will determine the extent to which that area's hydrologic functions and capabilities can be restored. n2. Topsoil, for example, has specific moisture retention capabilities, which themselves are dependent on vegetative cover, slope and underlying sub-soils, all of which affect percolation rate, osmosis, and aquifer recharge. Depressions, sloughs and other irregularities on the surface that alter the drainage pattern will also affect the area's recharge capability.

327 n1. "In arid and semi-arid settings, mining alters drainage patterns which can "result in a decrease in storm run-off volume and loss of recharge to alluvial aquifers in downstream valleys. The unconsolidated materials resulting from strip mining can have similar hydrologic properties to the aggradational features of Western streams, which can result in a loss of water to both the surrounding lands and downstream areas." Op.cit., House Report, No. 94-1445, p. 56.

327 n2. "In order to assure that both the short and long term disruptive impacts of mining and ground water supplies are minimized, it is necessary that reclamation be conducted in such a way as to maximize the recharge capacity of the minesite upon completion. Recharge capacity refers to the ability of an area to replenish its ground water content from precipitation and infiltration from surrounding lands. Restoring recharge capacity does not mean restoring the aquifer, but rather that the capability of an area to recharge an aquifer be restored. Spoil handling and placement and grading operations should be designed to enhance the recharge potential of the site. It is anticipated that in those mining operations which singularly or in combination would mine or seriously affect large aquifers, mining should be predicated on the ability of the operator to replace to the extent possible the ground water storage and recharge capability of the site by selective spoil material segregation and handling" Ibid., p. 62.

327 The surface aspects of reclamation therefore are extremely important, since all water is initially received into the hydrologic regime at the surface. The environmental performance standards that control the way earthen materials are handled, stored, and replaced are of special importance with regard to restoring the mined area's hydrologic integrity. State strip mine laws, at a minimum, should require that all highwalls n3. and spoil piles be eliminated; that spoil be kept on the bench in mountain-type contour mining; that topsoil be carefully saved and protected during the mining operation and sequentially replaced, by horizon, after mining; and that all toxic and acid-forming substances are buried or disposed of in such a manner that water resources are not contaminated. Each of these reclamation requirements is important for other reasons as well, but will be discussed below with a primary focus on their role in restoring the hydrologic capability and drainage pattern of strip mined land.

327 n3. "Highwalls can also lead to pollution problems. An unstable highwall that sloughs off can ruin the natural drainage in a strip area. Material falling off the highwall can dam up channels and thereby prolong the

contact between water and toxic material, or even force the water to seep through toxic spoil piles. Sloughing highwalls can open up new toxic materials to weathering. Highwall problems such as these can often be overcome by grading the spoil back against the highwall and "knocking off" the top of the highwall." Op.Cit., Grim and Hill, p. 52.

### 328 Requires Elimination of Highwalls

328 The elimination of highwalls is perhaps the most important and certainly the most basic requirement in any state regulatory program that purports to control the environmental impacts of strip mining. Eliminating highwalls is an essential preventive procedure for abating pollution caused by strip mining, and is also a minimum first step in restoring strip mined land to its approximate original configuration. It is also the one reclamation procedure that coal operators, regardless of size, dislike the most, even though if done concurrently with the mining operation, it will not interrupt production and is actually cheaper and more efficient in the long run for both the operators and the taxpayers than reclaiming after mining. Of all the regulatory provisions in a state strip mining program, highwall standards are particularly revealing of how serious a state is about regulating strip mining and establishing an effective reclamation program. 328 n4. "Elimination of the highwall and permanent fill bench would, in our opinion, significantly reduce the major remaining environmental impacts of surface mining", p. 5, Research and Demonstration of Improved Surface Mining Techniques in Eastern Kentucky, Design of Surface Mining Systems in Eastern Kentucky , Volume I, Mathematica, Inc., Princeton, N.J. and Ford, Bacon & Davis, Inc., New York, 1974.

328 When the highwall is eliminated, and the approximate original configuration of the land is restored, there is no severe or permanent disruption of the landscape as there would be if the vertical highwall remained. Continuity of the landform is thereby retained, and subsequent land use is given a more reasonable opportunity. Equally important however, is that highwall elimination - in combination with topsoiling and grading to approximate original contour - restores some semblance of the land's prior drainage configuration, thus allowing for a more natural surface distribution of precipitation and thereby a more normal ground water replenishment. Such basic earthwork and surface re-configuration will also prevent unnatural mineralization and acid contamination of water resources, since the acid-forming or mineral-bearing rock strata often found in exposed highwalls would be covered over.

328 Under certain circumstances in contour reclamation, terracing may be a desirable approach to returning the land to its approximate original configuration, with the exposed highwall still being completely covered with earthen material to some predetermined grade and stability. In allowing terracing, the overriding consideration should be whether such proposed terraces would complement the surrounding drainage pattern. Under no circumstances however, should "pasture backfilling" - where a distinctly flat table is formed and the vertical highwall remains - pass for terracing. Terracing should only be permitted where an undulating approximate original re-configuration of the landscape is contemplated and made possible with a single terrace or series of terraces.

329 In no instance should "solid rock" or "stable rock" highwalls be exempted from reclamation and complete elimination, particularly since such exposed highwalls would contribute acid-forming or other chemical materials into the area's surface and underground water systems, disrupt land use, or through weathering, cause sloughing and crumbling that would pollute and/or impede water flows and natural drainage.

329 In no instance should the "highwall of final cut" be exempted from reclamation, except where, in an area type mining operation, a water impoundment in the pit of the final cut is permitted which meets certain carefully drawn standards of water quality, access, and planned utilization.

329 It should also be noted that in certain cases, like contour mining, where spoil has been dumped over the mountain side, the "highwall of the final cut" may be virtually indistinguishable from the highwall of the initial cut, particularly when mining a single seam, where there is usually only one discernible highwall that runs continuously around a mountain or along a series of ridges. n5.

329 n5. This "highwall of final cut" loophole, common to many state statutes, has not been lost on the coal operators of Southwest Virginia, where in seven counties, highwalls ranging in height from 45 to 60 feet increased almost 100% between January 1, 1974 and January 1, 1975 - from 360 miles to 607 miles.

329 There is absolutely no reason why any state legislature should bend to the argument that highwalls cannot be eliminated because the technology or the mining methods are not available. n6. A recent review and design study of at least 14 different surface mining techniques available for utilization suggests

that there are surface mining techniques which can eliminate highwalls, contain spoil and restore mined areas to their approximate original surface configuration.

329 n6. The primary finding in the (mining) methods areas is that complete contour restoration methods are generally desirable and feasible using existing equipment. Those methods involve a change in operating procedures, such that overburden materials are not placed even temporarily on natural slopes below the coal seam being mined. While this study was in progress, the practicability of complete contour restoration methods was demonstrated without government funding of any kind at mines in West Virginia and Pennsylvania. Planning and operating procedures for two contour restoration methods the buried highwall and spoil above highwall methods are described in detail in Chapter V of this report. Employment of either of these methods is feasible at the present time in Eastern Kentucky, and would result in an improved appearance, fewer landslides, and better materials classification (thus reduced water pollution).

330 Among the most promising contour techniques are: the haulback or lateral movement technique; n7., n8. longwall strip mining (experimental); and n9. the modified block-cut method. n10. Each of these techniques requires a degree of sophistication in operation and a willingness on the part of the operator to make a commitment to detailed pre-mining planning.

330 n7. With the haulback technique," . . . Spoil material generated by the initial benching-down process . . . is loaded and hauled to a previously determined storage area with segregation of blackish shale, waste coal, and toxic and acid-producing materials from those substances conducive to revegetation . . . All movement of overburden is toward the mined-out areas, thereby precluding the possibility of having uncontrolled spillage on the out-slopes. Spoils are segregated upon placement and regraded and revegetated as soon as possible. Concurrent reclamation associated with lateral movement allows for immediate revegetation and soil stabilization . . ." Diagrams of the process show complete elimination of highwalls. "Regional Aspects Affect Planning of Surface Mining Operations," Coal Age, October 1976, pp. 122-123.

330 n8. A study conducted by the Appalachian Resources Project at the University of Tennessee concluded: "the truck haul-back technology employed at Massengale is an efficient back-to-contour technique for steep slope surface coal mines in Central Appalachia". R. A. Bohm & others, The Economic Impact of Back-to-Contour Reclamation of Surface Coal Mines in Appalachia: The TVA Massengale Mountain Project, Appalachian Resources Project, The University of Tennessee, Knoxville, Final Report, December 15, 1976, p. 55.

330 n9. Longwall strip mining is a new technique being demonstrated in W.Va. by the U.S. EPA in which a conveyor system and a continuous mining machine follow the coal seam into the side of the highwall for a specified distance, and where, after mining, the highwall roof collapses, facilitating highwall elimination. "As the system advances along the bench, the remaining highwall is being backfilled and reclaimed . . . The reclamation plans call for total highwall elimination and regrading" Coal Age, October 1976, p. 127.

330 n10. In modified block-cutting operations, ". . . The cuts are mined as units, thereby making it easier to retain the original slope and shape of the mountain. Environmental benefits and disturbances are similar to those for the haulback method . . ." Ibid., p. 130.

331 In regions where area type mining methods are the predominant form of surface mining, the elimination of highwalls and spoil piles is usually accomplished by leveling the spoil piles and re-contouring the surface in the direction of the high-wall or the final cut, with the final cut included in the surface reconfiguration. n11.

331 n11. In explaining and diagramming both the modified area technique and multi-seam scraper mining after the Skelley & Loy study, Coal Age mentions no problem in eliminating highwalls or spoil piles, and of the scraper technique explains that . . ." Reclamation work is relatively easy using this method, because pans can dump uniformly and soils can be placed on top of the spoil", op.cit., p. 134. Of open pit mining, even where there is more removable coal than there is replacable overburden, Coal Age, reporting of the Skelley & Loy study, noted: "Initial overburden is spread and stored on adjacent land areas and revegetated . . . Overburden material is trucked and dumped in mined-out areas of the pit, and later graded to a contour compatible with surrounding terrain." op.cit., p. 141.

332 Requires Elimination of Spoil Piles and Prohibits Spoil on Downslope

332 Earthmoving on mountainous terrain is especially problematic when loosened and unconsolidated earthen materials are discarded indiscriminately on sloping land. In conventional contour surface mining, topsoil and other overburden are usually dumped down the mountainside. These materials become a public safety and health hazard for communities living directly below and downstream from the mining operation. n12., n13. Once dumped down the hillside, these earthen materials are irretrievably lost for backfilling and eliminating the highwall in the process of restoring the land to its approximate original configuration. n14. In order to save this material for backfilling and

regrading, the operator must either retain the overburden on the bench, using it to backfill in sequence behind the actual mining of the coal seam, but concurrently with the mining operation; or he must haul it to a protected storage area where it will not wash away and then haul it back for the purposes of reclamation after the mining operation is complete. All of the contour surface mining techniques discussed in the previous section on eliminating highwalls can also keep spoil off the outslope, with the exception of the "initial cut" allowance in the modified block-cut method.

332 n12. ". . . Because of the landslide problem, several states and the Tennessee Valley Authority have limited the bench width on steep slopes and forbid fill benches on slopes greater than 33 degrees . . . . Even with these precautions, landslides still occur. Sediment slides coming off mining operations have uprooted trees, covered highways, destroyed farmland, filled up reservoirs and water courses, clogged stream channels, covered fish-spawning beds, caused flooding of adjacent lands, and destroyed farm buildings and homes." E. C. Grim and R. D. Hill, *E Environmental Protection in Surface Mining of Coal*, Environmental Protection Technology Series, EPA-670/2-74-093, October, 1974, p. 49.

332 n13. ". . . Spoils are not being retained on the benches. According to our records, the Division's office and inspectors have received approximately 1,200 complaints during the last twelve months on these problems. There are at the present approximately 800 land slides occurring along about 1,700 miles of benches in southwest Virginia . . ." Wm. Roller, Director, Division of Mined Land Reclamation, at Drainage Control Regulations Hearing, Richlands, Va., Oct. 29, 1976.

332 n14. "Problems of preventing spoil erosion, slide conditions, and resultant stream sedimentation exist, of course, with any . . . downslope spoil disposal technique. The surface overburden, often the better portion of the spoil, is cast downslope, leaving the lower materials with higher pollution potential on the bench. Spoil segregation, though difficult to accomplish using (downslope spoil disposal methods), greatly assists revegetation attempts on regraded spoils . . ." "Regional Aspects Affects Planning of Surface Mining Operations", *Coal Age*, October, 1976, p. 128.

332 It is important that state strip mine laws specifically recognize the problems associated with "spoil on the downslope" by prohibiting the operator from dumping soil, rock and other overburden down the mountainside - or "over the side" as it is called. With such a provision of law, highly erodible materials are more easily controlled; a major source of stream sedimentation, pollution and landslides is eliminated; and topsoil can be saved and separately stockpiled for more successful reclamation and revegetation. A state strip mine

law which allows an operator to have a specified length of "fill bench" in addition to the solid bench, is not prohibiting spoil on the downslope.

333 In the eyes of the public, "peaks and ridges" are sometimes confused with highwalls. It should be pointed out that when a state strip mine law calls for "grading off the tops of peaks and ridges", it is not referring to highwalls, but spoil piles of removed overburden, which under such a provision would not be eliminated either. When highwalls are eliminated, spoil piles are eliminated as well, since spoil is normally used for backfilling in the reclamation process. In certain situations spoil material may swell and expand in size, thus creating a surplus, in which case, the material is still used in backfilling and grading to approximate the original surface configuration, and to complement the surrounding terrain and drainage pattern.

#### 334 Requires Burial of Toxic Substances

334 Toxic and acid-forming materials are often brought unnaturally to the surface during strip mine operations. n15. These materials can cause acid-mine drainage, n16. mineralization of surface and ground water supplies, contamination of topsoil, and the formation of a "hardpan" surface regime. n17. And, as the Committee on Interior and Insular Affairs of the U.S. House of Representatives has reported, the presence of toxic and acid-forming substances is not a "self-correcting condition". n18. In agriculturally productive regions, the presence of toxic and other mineral-bearing substances in the rooting zone of replaced spoils after mining will drastically reduce the likelihood of restoring the land's agricultural capability. n19. It is for these reasons that state strip mine laws should require the burial of all toxic and acid-forming substances to a depth sufficient to prevent leaching, mineral percolation, hard-pan formation, salt or sodic contamination of soil resources, and not be detrimental or inhibitory of the growth of native plant species or established agricultural cropping practices. The required burial depth should be dependent on the rooting range of the vegetation or agricultural crops which grew there prior to mining.

334 n15. ". . . During the normal stripping operation, the high quality overburden near the surface is placed on the bottom of the spoil pile and then covered with low quality and often toxic overburden, leaving toxic material exposed to weathering and conversion to soluble acids and minerals that are carried away by water . . ." op.cit., Grim & Hill, p. 49.

334 n16. "The removal of overburden often exposes pyritic materials (iron

disulfide). The oxidation of this material results in the production of ferrous iron and sulfuric acid. The reaction then proceeds to form ferric hydroxide and more acid . . . Consequently a low pH water is produced (pH 2-4.5). At these pH levels, the heavy metals such as iron, manganese, copper, and zinc are more soluble and enter into the solution to further pollute the water. Water of this type supports only limited water flora, such as acid-tolerant molds and algae; it will not support fish life, destroys and corrodes metal piers, culverts, barges, etc., increases the cost of water treatment for power plants and municipal water supplies, and leaves the water unacceptable for recreational uses." Ibid., p. 197.

334 n17. ". . . Spoils originating from deeper than about 50 or 60 feet are frequently high in both adsorbed sodium and clay content. Since modern mining methods commonly remove overburden to the 80 to 120-foot depth, high sodium spoils are often left on the surface after mining. Therefore, water infiltration is extremely limited in such spoils, runoff and erosion are severe, and vegetation is difficult to maintain." J. F. Power and others, "Can Productivity of Mined Land be Restored in North Dakota," Farm Research, July-August 1974, p. 30.

334 n18. "The presence of zones of toxic material in the overburden should be of great concern to operators and the regulatory authorities. Spoil toxicity is not a self-correcting condition . . . As the Forest Service notes, the "once popular concept that spoils will become more suited for growing vegetation if they are left to leach for a couple of years before planting is an erroneous one." According to the Forest Service, "Both laboratory leaching studies and field studies indicate that acid spoils do not necessarily become less acid or less toxic with prolonged leaching and weathering. In fact, these studies indicate that, when weathered, some acid spoils will become even more acid or toxic and will remain acid for some, as yet undetermined, period of time." Op.Cit., House Report No. 94-1445, p.53

334 n19. "Higher (agricultural) productivity presently cannot be achieved by merely treating spoils to change their characteristics. Thus, the alternative of burying undesirable spoils under surface soil or other suitable material must be investigated as a possibility for restoring productivity. First, we must know how deep spoils must be buried to achieve the level of productivity sought. Earlier research in western North Dakota has established that small grain exhibit significant root growth and activity into the fourth foot of soil, grasses into the fifth or even sixth foot (when water is available) and alfalfa to depths greater than eight feet. To achieve nearly full productivity we might estimate that highly sodic spoils should be buried at least to the depth of

rooting of the crop to be grown. Consequently, to return mined land to a productive wheat field or high quality pasture, four to six feet of surface soil would have to be returned, and for alfalfa eight feet might be needed. If spoils were lower in sodium content, somewhat less soil material might have to be returned." op.cit., J. F. Powers & others, p. 32.

### 335 Requires Separation & Segregation of Topsoil

335 Topsoil is perhaps the most crucial ingredient in the reclamation process. n20. Without it, attempts at revegetation and restoring agricultural lands to their former capabilities will most certainly meet with failure. The absolute minimum state standard should require that all topsoil be saved, segregated from subsoils, stored separately, and spread over the land after mining.

335 n20."The removal and placement of growth supporting soil material, or "top soil", is one of the most beneficial methods for assuring establishment of vegetation. Soil is a natural resource and its value may equal or exceed that of the coal mined . . ." op.cit., Grim & Hill., p.3.

335 Where topsoil is found to be non-existent or extremely thin, the prospects for revegetation and any post-mining land use dependent on soil nutrients should be laid out realistically in the permit application. A detailed soil survey submitted with the core sample in the permit application should be required in order to determine the extent, nature, and availability of topsoil material in the proposed mining area. A state regulatory agency may want to prohibit strip mining where topsoil is inadequate, too thin, or too vulnerable n21. for mining and reclamation.

335 n21. Some soils may only be held by existing vegetation, and when these materials are removed for mining purposes, so is the available soil.

335 In cases where agriculturally productive lands have been strip mined, and the state seeks to restore that land to its prior agricultural capability, n22. the reclamation statute should require that the topsoil be removed, separated and segregated by soil horizon n23. (normally the A and B horizons, and in some cases, the B and C horizons), and specify the depth of topsoil replacement in feet, with particular attention paid to the rooting zone of the agricultural crops or range grasses. It should be noted however, that there is no demonstrated scientific evidence to date which conclusively shows that strip mined agricultural lands can be restored to their full, pre-mining levels of agricultural capability. n24. Yields per acre on reclaimed land simply do not compare to yields per acre on undisturbed lands. Restorative time frames, even

working with good soils and high inputs of maintenance and fertilizer, are running in the neighborhood of 30 years, with no guarantee of original productive potentials.

335 n22. See appendix B for a critical analysis of Illinois' attempt to require coal operators to reclaim strip mined land to a condition suitable for row-crop agriculture.

335 n23. ". . . Regeneration of useful ecosystems after mining is usually very difficult unless the soil is reconstructed in such a manner that many of the necessary organisms are preserved within it during the mining operations. Stockpiling the A horizon separately from the B horizon, and spreading it back over the surface, is essential to relatively rapid regeneration of desirable vegetation and other living organisms in the soil. It should cost little more than stockpiling a mixture of A and B horizons." (p.4). . . . Burying the A horizons under many feet of spoil during the surface mining operation is certainly not compatible with full restoration of productive potentials. Neither is mixing the A horizon with the next lower horizon - the B horizon which, due to its relatively less favorable quality, we have attempted to keep covered by the A horizon. This mixture of A and B horizons is unfortunately referred to as topsoil in most discussions and legislation relative to surface mining. Both practices leave us far short of full restoration of productive potentials, as well as of ecological potential and associated environmental values" (pp. 7-8). Donald E. McCormack, "Soil Reconstruction: For The Best Soil After Mining", Coal and the Environment Technical Conference, Louisville, Ky., October 22-24, 1974.

335 n24. See John C. Doyle, Jr., "Strip Mining In the Corn Belt: The Destruction of High Capability Agricultural Land for Strip-Minable Coal in Illinois, Environmental Policy Institute, Washington, D.C., June 1976.

336 Under Maryland's strip mine law, there is no specified provision for topsoil separation and segregation and it would appear from the language of that statute that the operator determines if the overburden is suitable or will become suitable for revegetation purposes. n25. Sixteen states included in this study had no specified provision in their strip mine laws which would require the separation and segregation of topsoil.

336 n25. "If the overburden deposit is composed of material suitable for the support of tree growth, the growth of grass or other reclamation vegetation, or if this material can be expected to become suitable by any natural leaching and weathering process, the overburden material shall be graded to cover the final pit. The operator shall take steps to assure that overburden material for grading required by paragraphs (1) and (2) is not lost or made unavailable."

336 Annotated Code of Maryland, Dept. of Natural Resources, Title 7. Subtitle 5, Strip Mining, 1974, 7-508(b)(2), p.6.

337 Required Setbacks: Streams, Deep Mines, Adjacent Landowners, Public Roads & Public Parks

337 Setbacks are requirements of allowable operating distance imposed on certain economic activities in order to insure some margin of public health or safety, or for the protection of public resources or public works. State strip mine laws should require certain minimum setbacks from streams, lakes, reservoirs, public roads, public parks, adjacent landowners and deep mines, with no exceptions, but subject to increasing those minimum setbacks where necessary to insure protection and/or public safety. Setback requirements will necessarily depend on topography, geology and other site-specific characteristics.

337 Most state strip mine laws do not specify setback requirements (See Table III). When they do indicate specific operating distances, there is usually a variance mechanism available to the operator, as in case of Pennsylvania, n26. or the setback language in the statute is vague or unenforceable to begin with as in the Texas strip mine law, n27. which asks the operator to "refrain from" mining near deep mines and building roads in streams.

337 n26. "From the effective date of this act, as amended hereby, no operator shall open any pit for surface mining operations 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." 52 Pennsylvania Statutes, 1396.1 et. seq., Section 4.2(c).

337 n27. Texas Laws, (1975) Chapter 690, Surface Mining and Reclamation Act, Section 11(b)

337 The West Virginia Surface Mining And Reclamation Act requires a 100 foot setback from stream, but does not prohibit coal access and haul roads from being constructed in or adjacent to existing stream channels, and will waive the setback requirement when minerals are found beneath the stream. n28.

337 n28. "The director shall not give approval to surface mine any area

which is within one hundred feet of any public road, stream, lake or other public property, and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, that the one-hundred-foot restriction aforesaid shall not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor shall it apply to the dredging and removal of minerals from the streams or watercourses of this state." West Virginia Code, Article 6 and 6A, Chapter 20, Section 20-6-11, lines 44-56.

338 [See Table in Original]

339 [See Table in Original]

340 [See Table in Original]

341 EXPLANATION OF CATEGORIES IN TABLE IV

341 Minimum Frequency of Inspection

341 Indiscriminate and illegal mining practices can often cause a great deal of property damage and water pollution in a relatively brief period of time. In order for the strip mine operator to conduct his activities in accordance with the required mining performance standards and environmental protection requirements, it is imperative that his operations be frequently and thoroughly inspected. On-site field inspections should occur on an irregular and unannounced basis, but in no instance should any active operation be visited less than once a month. The state strip mine law should specifically insert the once-a-month requirement, or more frequent interval, in the language of the statute.

341 Of all the state strip mine laws examined in this study, West Virginia's was the only one that specified a minimum interval for mine-site inspections: ". . . The director shall cause inspections to be made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days . . ." (West Virginia Code, Article 6 and 6A, Chapter 20, Section 20-6-5, lines 8-11).

341 Field inspections should be conducted with some measure of detail and recordkeeping, with particular attention paid to water impacts, off-site operation or property damage, and attempts at keeping reclamation current with mining. n1

341 n1 "If an inspector merely drives to the active area of a permit, many violations will not be observed. Water and soil tests must be conducted so that acid, sediment, and iron discharge are detected. The entire area should be covered by foot so that any mining off the permitted area and spoil pushed over the slopes is discovered." Albert J. Fritsch, Mark L. Morgan & Others, Enforcement of Strip Mining Laws, Center For Science in the Public Interest, Washington, D.C., 1975, p.25.

341 Mandatory field inspections are only as effective as the number of inspectors available to do the monitoring and field work, n2, n3. and the size and effectiveness of the inspection force is, of course, directly linked to how much money a state legislature appropriates to enforce its inspection requirement n4.

341 n2 While not necessarily indicative of the situation in Pa., Ky., or W.Va. as of January 1977, a 1975 study of enforcement practices in these three states does serve to illustrate that size of inspection force has a direct bearing on how frequently and how thoroughly mine sites can be inspected:

341 "In a July 18, 1975 interview, Supervisor Lowell Haga said the optimal mining operations-to-inspector ratio is between 12 and 16 to 1. However, in a June 30 interview, Chief Greene explained that an inspector's responsibility ranges from 4 to 36 operations, and the average number is 20. This average is supported by CSPI computations. However, CPSI found Greene's upper limit of 36 operations to be low. CSPI's survey of West Virginia inspectors revealed that one inspector is responsible for 53 operations, over three times as many as Supervisor Haga stated an inspector could effectively handle." (pp. 57-58)

341 "The most accurate way to assess the frequency of inspection in Pennsylvania is to examine the inspector-operation ratio - the number and size of the operations each inspector is responsible for. CSPI's survey of Pennsylvania inspectors revealed that the average inspector is responsible for 73 operations, double or triple the Kentucky and West Virginia averages . . .

341 The work load of the inspection force in Pennsylvania is one of the state's major enforcement problems. DER recognizes this fact, however, Deputy Secretary Walter Heine acknowledged the problem during an interview, admitting that the goal of one inspection per site per month is rarely met." (pp.81-82)

341 "On July 11, 1975, Ken Ratliff, acting Chief of Reclamation, stated that

operations may be visited as infrequently as every two months . . .

341 The most obvious reason for these infrequent inspections is that Kentucky inspectors are responsible for too many mines. The average respondent to the CPSI survey inspects 35 mines of an average size of 68 acres, and some must investigate 150 operations." (p.25) Albert J. Fritsch, Mark L. Morgan and others, Enforcement of Strip Mining Laws , Center for Science in the Public Interest, Washington, D.C., 1975. See also appendix A, subtitle, "Inadequate Enforcement Personnel" at the end of this report.

341 n3 "The biggest problem we face today is workload," says Reclamation Director Ralph Waddle. "We've increased our manpower, but we just can't keep up. You can see why; in 1970 the state had 900 permits active, covering 23,692 acres. As of September, 1976, we had 5,360 permits, covering 181,147 acres, either stripped or being stripped. John Ed Pearce, Sunday Courier Journal "Can Kentucky strip-mine its coal and keep its land?" Jan. 16, 1977, p.25.

341 n4 See Appendix A, subtitle "Inadequate Funding."

#### 343 Suspension and Revocation of Permits

343 A state strip mine law that gives its regulatory agency the power to grant permits for strip mining should also give that same agency the power to suspend and revoke such permits. Without such authority, the regulatory agency is virtually powerless to enforce any reclamation, environmental, or public safety requirement. Moreover, the grounds for suspension and revocation of the permit should be clearly specified in the law in order to remove all regulatory discretion from such actions with no exceptions. A suspension is usually triggered by repeated minor infractions or some major mal-practice that threatens public health and safety. If the minor infraction continues, or the out-of-compliance situation is not corrected by the operator within a specified period of time, the permit should be automatically revoked, and no new permits should issue to that operator. n5 Revocations should also occur when an operator fails to reclaim or forfeits a bond. Again, no new permits should issue to that operator.

343 n5 In Pennsylvania, strip mine operators are licensed. When a Pennsylvania operator's license is suspended, all of his permits are suspended as well. Licensing strip mine operators is a very effective means of measuring operator; or responsibility, and can be used as a very effective enforcement lever. Few states, however, employ the licensing.

343 . . . Some states, however, like Tennessee, specifically prohibit

closing down any active mine site other than the one in violation. The relevant language in that strip mine law reads as follows:

343 ". . . the commissioner is empowered under all the provisions of 58-1540 - 58-1564 to suspend or revoke a mining permit or fail to grant a mining permit only to the extent of the one or more mines that in the opinion of the commissioner violate or violates the provisions of such sections, and he is not empowered to shut down, suspend a mining permit, or fail to grant a mining permit on the other mines or prospective mines of the operator that are in compliance with the provisions of 58-1540 - 58-1564. In no event is the commissioner empowered to shut down any of the operations of an operator except the actual operation of the mine or mines, that, in his opinion, violate the provisions of 58-1540 - 58-1564. Tennessee Code Annotated, Title 58, Chapter 15, Strip & Open Pit Mines, Section 58-1564 p.94.

343 Suspensions and revocations should be effective enforcement tools, particularly since the errant operator will suffer an economic penalty while restrained from mining coal. All too often however, these enforcement powers are underutilized, and frequently are drawn-out to the operator's advantage by repeated warnings and administrative appeals; are directly and indirectly ignored by the operator; or are stymied by lack of manpower and appropriations.  
n6

343 n6 "Despite the suspension's potential impact, (Kentucky's) Ken Ratliff was able to explain a weakness of the tool. DNREP sends suspension orders by registered mail so that the department has proof that the operator has received notice of suspension. However, this system alerts the operator to the suspension's presence before he picks it up from the post office. Consequently many suspension orders languish unretrieved in local post offices. Therefore the operator does not receive the order until it is hand delivered by an inspector. As previously explained, DNREP inspectors are too overworked to visit sites with adequate frequency. Therefore the "suspended" operator may mine undisturbed for weeks." op.cit., Fritsch, Morgan & others, p.38

344 An opinion out of the Attorney General's office on one section of Kentucky's strip mine law supported the right to revoke permits "if it is determined subsequently that the permits were improvidently granted." n7 Permits would not be improvidently granted" in the first place if the state law incorporated strict application requirements and positive written findings on the permit before it could be approved. The revocation power should not be used as a clean-up to a sloppy permit application process.

344 n7 "The granting of permits in the first instance does not prevent the state from revoking those permits if it is determined subsequently that the

permits were improvidently granted.OAG 70-563.Opinion on Kentucky Revised Statutes 350.130,p.14.

#### 345 Cease and Desist Power in Field

345 Without question, the single most important strip mine enforcement tool is the cease and desist order. n8 A state strip mine law that does not empower its field inspectors with the legal authority to shut down abusive operators on the spot is essentially an act that only has authority to "desk regulate" the strip mine industry. Without the cease and desist power in the field, the regulatory authority becomes a mere ticketing agency, and regulates the industry with paper from afar rather than with real legal clout at the point of the on the ground activity.

345 n8 " . . . Pennsylvania Chief of Reclamation Bill Guckert claims that the field cease (no coal may be mined) is the most important enforcement tool available to strip mine regulators. The cease allows inspectors to ensure immediate compliance and still develop a flexible scheme for future compliance.

Guckert maintains that operators feel more pressure from being ceased than from many sanctions. For example, on June 22, 1975, Guckert informed CSPI that a Pennsylvania operator loses about \$3 0,000 per day when he is ceased. Each day costs a field-ceased operator about thirty times as much as the average 1971-1975 fine levied in Kentucky . . . " op.cit., Fritsch, Morgan & others, p. 32

345 The threshold for the field exercise of the cease and desist order should be triggered when any strip mining activity or condition presents or creates "an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent, irreparable environmental harm to land, air or water resources." n9

345 n9 See op.cit., House Report No. 94-1445, pp. 75-76 for an explanation of "significant, imminent, irreparable environmental harm."

346 Only Pennsylvania, Texas, and West Virginia give their field inspectors the cease and desist power, and of those three, Pennsylvania n10. and West Virginia n11. appear to offer the strongest provisions, while Texas n12. automatically limits the potential shut-down to the "portion" of the surface mining operation creating an imminent danger to the health or safety of the public.

346 n10 " . . . 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 calls for the immediate 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 . . . " (52 Pennsylvania Statutes, 1396. 1 et.seq., Section 4. 3.)

346 n11 " . . . Notwithstanding any other provisions of this article, a surface-mining reclamation inspector shall have the authority to order the immediate cessation of any operation where (1) any of the requirements of this article or the rules and regulations promulgated pursuant thereto or the orders of the director or the commission have not been complied with or (2) the public welfare or safety calls for the immediate cessation of the operation. Such cessation of operation shall continue until corrective steps have been started by the operator to the satisfaction of the surface-mining reclamation inspector. Any operator who believes he is aggrieved by the actions of the surface-mining reclamation inspector may immediately appeal to the director, setting forth reasons why the operation should not be halted. The director shall determine when and if the operation may continue . . . " (West Virginia Code, Article 6 & 6A, Chapter 20, Section 20-6-14a.)

346 n12 " . . . When, on the basis of any inspection, the commission or its authorized representative or agent 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 the commission shall immediately order a cessation of surface mining operations on the portion thereof relevant to the condition, practice, or violation. Such cessation order shall fix a time and place for a hearing to be held before the commission which shall be as soon after the order is issued as is practicable. (The requirements of Section 16 as to the time for notice, newspaper notice, and method of giving notice do not apply to such hearing, but such general notice shall be given as in the judgment of the commission is practicable under the circumstances.) No more than 24 hours after the commencement of such hearing, and without adjournment of the hearing, the commission shall affirm, modify, or set aside the order . . . " (Texas Laws 1975, Chapter 690, Section 20(a).)

347 In a 1976 Kentucky Circuit Court decision, the judge ruled that the suspension of an operator's permit for violations of that state's strip mine law

would constitute a denial of due process to the operator if a pre-suspension, evidentiary hearing were not held first. n13 While Kentucky strip mine law does not give its strip mine inspectors the cease and desist power in the field, the logic behind this circuit court decision might conceivably emerge in other states for the same due process reasons where the field cease is used and provided for MESA inspectors have also recently encountered legal problems for initiating deep-mine site inspections without first having search warrants.

347 n13 " . . . The conduct of a hearing required by the due process clause of the 14th amendment is a prerequisite to the exercise of the suspension of any license or permit which is otherwise authorized by KRS 350.050 and KRS 350.130 . . . " Franklin Circuit Court, Franklin County, Kentucky, Civil Action No. 87290, Kentucky Land and Fuel Shares, Inc. Vs. Robert D. Bell, Secretary, Kentucky Department of Natural Resources and Environmental Protection, September 10, 1976.

347 A provision inserted into the strip mine law, like Missouri's, n14 which requires the operator to give his written consent to the regulatory agency for permission to enter the mine site for the purposes of inspection and enforcing the law, may mitigate any subsequent operator charges of trespass, illegal search, or denial of due process. Such a written consent provision should be required from the operator in his permit application.

347 n14 " . . . The written consent of the applicant and any other persons necessary to grant access to the commission or the director to the area of land affected under application from the date of application until the expiration of any permit granted under the application and thereafter for such time as is necessary to assure compliance with all provisions of sections 444.500 to 444.755 or any rule or regulation promulgated under them: . . . " (Revised Statutes of Missouri, Chapter 444, Rights and Duties of Miners and Mine Owners, Reclamation of Mining Lands (1971), Section 444.550 1 (5).) The Indiana Strip Mine Law also incorporates this "written consent" provision. See Indiana Code 1971, 13-4-6-5, as amended by Senate Enrolled Act No. 66, (1974) Section 5(b) (6) .

#### 348 Civil and Criminal Penalties

348 Although a state strip mine law may make provision for civil and criminal penalties, when such penalties are discretionary, their actual use and deterrent effect are both drastically reduced. Some laws have written in waivers, n15. others require the enforcing agency to go through the Attorney

General to bring civil actions, and others encourage conciliatory settlements and conferences. n16 There is a long and sad history of "wrist-slapping" fines, reluctant administrative and adjudicatory actions, and/or operator favored judgments, many of which flow from vague & discretionary language in state strip mine laws. n17

348 n15 Alabama's Surface Mining and Reclamation Commission has the explicit authority to "compromise, waiver or refund" civil penalties and other regulatory orders under the Alabama Surface Mining and Reclamation Act of 1975:

348 " . . . the Commission shall have the power to . . . settle or compromise in its discretion, as may be advantageous to the State or equitable on the facts, any action to recover any penalty or to compel compliance with this Act or any order, rule or regulation hereunder and waiver or refund up to 90 per cent of any penalty where the person against whom the penalty is assessed takes satisfactory remedial action . . . " (Section 5(15))

348 n16 The Kansas Mined-Land Conservation and Reclamation Act of 1968 has a provision of law through which the non-compliant operator can enter into "an agreement with the board" as a before hand alternative to having his permit revoked or bond forfeited:

348 " . . . If the operator has not reached an agreement with the board or has not complied with the requirements set forth by it within forty (40) days after mailing of the notice, the permit may be revoked by order of the board and the performance bond shall then be forfeited to the board . . . " (Kansas Statutes Annotated, 49-416, 1968, ch. 395,).

348 n17 In its publication, Enforcement of Strip Mining Laws, the Center for Science in The Public Interest illustrates the historical problem of token and infrequent fines in the state of Kentucky:

348 "Perry White, general counsel for DNREP, said in a July 11, 1975 interview that in many cases, fines would have to range from \$35,000 to \$70,000 before they would deter violations. A case in point was described in the 1974 telegram from C.C. McCall, formerly chief supervisor for Western Kentucky. McCall related that Charbon Stripping Company had been issued 11 notices of non-compliance for draining water that contained large quantities of sulfuric acid into a stream. As a token enforcement effort, DNREP assessed a \$4,500 fine. The violation had been occurring for over 70 days when the fine was assessed, thus Charbon could have been fined over \$70,000 under the KRS 350.990

civil penalty provision. McCall explained the DNREP's fine had no effect because the mine was still draining acid at the time the telegram was sent." op.cit., Fritsch, Morgan & others, p. 40. Additionally, in a 1975 Capital University Law Review article, three Ohio officials intimately acquainted with strip mining in that state made the following observations about the hesitancy of the courts in meeting out swift and effective penalties, and particularly the court's reluctance to fine at the high end of an optional fining scale:

349 "An operator convicted of a criminal violation of Ohio Revised Code Chapter 1513 is subject to severe penalties, including \$5,000 plus \$1,000 per acre of land affected for mining without a license, and (not more than) six months imprisonment for willfully misrepresenting material facts in an application for a license, to \$100 to \$5,000 for violations of other prohibitions. In practice, however, the penalties imposed very rarely approach the maximums. Again, it is very difficult to convince a judge that violation of a license regulation is deserving of harsh criminal punishment." Bruce Cryder, Kenneth Faulk and Jay McKirahan, "Strip Mining: The Ohio Experience", Capital University Law Review, (Vol. 4:169, 1975), p. 176.

350 Missouri's strip mine law only requires the leveling of civil penalties and fines for illegal operations (i.e., operations without an approved strip mine permit), and for operations that continue operating in spite of a revocation order. n18 In other instances of non-compliance, the Missouri law encourages the Director of the Land Reclamation Commission to eliminate violations through "conference, conciliation and persuasion"; in the event such actions fail, he is then instructed to lodge a "formal complaint with the Commission to hear the case and thereby arrive at some determination as to suspension, revocation or other "appropriate corrective measures." n19 Louisiana's strip mine law also has the provision for settling violations through "conference, conciliation and persuasion." n20

350 n18 Revised Statutes of Missouri, Chapter 444, Rights and Duties of Miners and Mine Owners, Reclamation of Mining Lands (1971), Section 444.680(1).

350 n19 " . . . If the investigation shows that a strip mining operation for which a permit has been issued is being conducted contrary to or in violation of any provision of sections 444.500 to 444.755 or any rule or regulation promulgated by the commission or any condition imposed on the permit or any condition of the bond, the director may by conference, conciliation and persuasion endeavor to eliminate the violation. If the violation is not eliminated or the director determines that conference, conciliation and persuasion will not be effective, the director shall file a formal complaint with the commission for suspension or revocation of the permit or for appropriate corrective measures, and for forfeiture of bond. When the director

files a formal complaint, the commission shall order a hearing and cause to have issued and served upon the person complained against a written notice together with a copy of the formal complaint, which shall specify the provision of sections 444.500 to 444.755 or the rule or regulation or the condition of the permit or of the bond of which the person is alleged to be in violation, and a statement of the manner in, and the extent to which, the person is alleged to be in violation. The person complained against may appear and answer the charges of the formal complaint at a hearing before the commission at a time not less than ten days after the date of notice." *ibid*, section 444.680(2).

350 n20 Louisiana Revised Statutes, Title 30, Chapter 9, Surface Mining and Reclamation Act, Section 906. C.

350 Several state strip mine laws will charge the operator with a misdemeanor for certain offenses and violations, but very few have provisions which specify terms of imprisonment for operators who commit more serious offenses. Civil and criminal penalties put forward in state strip mine laws need to be exactly worded and attached to specified infractions. In order to be effective, state strip mine laws should include civil and criminal penalty scales which itemize and identify separate infractions, each with their own mandated civil and/or criminal penalty.

#### 351 CRITERIA FOR BOND RELEASE & SUCCESSFUL RECLAMATION

##### 351 Completed Earthwork

351 The purpose of the earthwork phase of reclamation is to restore the area's hydrologic and drainage capabilities and ready the site for revegetation. Since the earthwork elements are only the beginning of reclamation, only a small portion of the bond, if any, should be returned to the operator. At this stage, there is no guarantee that the site will be successfully reclaimed, and so there is a logical basis for withholding the entire bond until the process is complete. n21

351 n21 The problem of returning too much of the bond too soon is described in the study, Enforcement of Strip Mining Laws:

351 " . . . There is a time lag between the detection of the errant operator's unwillingness to reclaim and the state's reclamation. During this time the land is left exposed to sulfuric acid and mud drainage. This problem becomes worse if DNREP has returned the grading bond and forfeited only the revegetation bond. Ratliff explained that the regraded land will suffer severe erosion between the time the revegetation bond is forfeited and the time of the

bond's collection. Consequently the land will have to be regraded at the state's expense because the grading bond has been returned to the operator. The result is deficient reclamation at a large cost to Kentucky's taxpayers. An obvious solution to this problem is for DNREP to hold the entire bond until the mined land has been reclaimed and has sustained at least 80% vegetative cover at least one year." op.cit., Fritsch, Morgan & others, p. 39.

351 The elements of the completed earthwork phase of reclamation include the elimination of highwalls, burial of toxic substances, regrading, topsoil replacement, and restoration of the surface and subsurface components of the hydrologic system (i.e., the surface drainage pattern and sub-surface aquifer recharge). A state strip mine law should specify these elements as necessary parts of the earthwork phase and should also require on-site inspection if any bond is to be released at this point in the reclamation process. Many states do not define earthwork or revegetation as sequential and distinct steps toward complete reclamation, and so do not differentiate these "steps" in their laws.

#### 352 Soil Testing

352 After the earthwork is completed, but before seeding or planting is begun, the regulatory authority should take soil samples at the mine site, including pH readings, in order to determine if the topsoil is free from contamination and replaced to a depth adequate to insure that all toxic and acid-forming materials are removed from the potential rooting zone of the vegetation or agricultural crops contemplated for the mine site. Of all the state laws examined in this study, Kentucky's has the most acceptable provision for soil testing. n22 West Virginia, Ohio and Indiana also have provisions for soil testing in their strip mine laws. However, as Table IV indicates, most state strip mine laws inventoried in this study do not make provision for soil testing before revegetation.

352 n22 . . . "When the backfilling and grading shall have been completed and approved by the division, and the soil pH level required by division regulations has been satisfied, the director shall release the bond which was filed for that portion of such operation in its full amount less two hundred dollars ( \$2 00) per acre, which shall be retained by the division until such time as the planting and revegetation is done according to law and approved by the division . . . " (Kentucky Revised Statutes, Title 28, Chapter 350, Strip Mining, Section 350.090(6))

#### 353 Successful Revegetation

353 Establishing vegetation on a strip mined site is dependent on how well

that site was prepared in the earthwork phase. n23 Planting and seeding are only the beginning of the revegetation process. The operator's responsibility for revegetation should not end after he meets a simple planting or seeding requirement. State strip mine laws should recognize planting as only one more step toward successful reclamation, holding the operator's bond until there is demonstrated evidence of successful revegetation. One way of insuring that the operators go beyond the mere planting or seeding stage of revegetation is through a provision in the state strip mine law which specifically requires that any plantings and/or seeded vegetative materials survive through the first growing, or that such material be capable of beginning natural growth at the start of the second growing season. It is important that there be some minimum survival period specified in the strip mine law that puts the operator on notice that he must be concerned about establishing a viable stand of vegetation on the strip-mined site. Such "beyond seeding" and/or "one growing season" tests are of course minimum tests and should be coupled with longer requirements of growth and liability.

353 n23 " . . . It's the pre-operation engineering, the earth-handling that is important. If the earth is handled well, revegetation is nearly always successful and simple. If the earth isn't handled well, simply replanting to cover up the scars doesn't do any good." Robert Bell, Secretary, Kentucky Dept. of Natural Resources, "Can Kentucky Strip Mine Its Coal and Keep Its Land?", Sunday Louisville Courier Journal Magazine, January 16, 1977, p. 20; and . . . " Elements critical to successful revegetation include climate, stability of regraded areas, appropriate drainage and moisture availability, the absence of toxic materials on the surface or in potential root zone levels, and appropriate surface soil manipulation and soil conditioning. "op.cit., House Report No. 94-1445, p. 52

353 Successful revegetation is not something that can be pronounced after one growing season. It is, even in the most favorable of situations, a long-term proposition measured in terms of the performance (i.e., plant growth, agricultural productivity, soil stabilization, etc.,) of the revegetated site. The conditions of successful revegetation and site performance have been discussed at some length by the Interior and Insular Affairs Committee of the U.S. House of Representatives n24. and include demonstrated findings of an effective and permanent vegetative cover, a diversity of planted species, the ability of the planted species to reproduce, and the ability of the planted species to bring about a natural ecological succession of plant communities. Where a state strip mine law does not define successful revegetation with some

attention to these conditions and performance criteria, that state's provision for successful revegetation should be considered inadequate.

353 n24 "(1) the operator must establish an effective and permanent vegetative cover consisting of diverse species native to the area or introduced species where appropriate, all capable of self-regeneration;

353 "(2) the operator will be responsible for the survival of the revegetation for a period which varies with the annual amount of precipitation on the area; and

353 "(3) the reestablished vegetation must be capable of plant succession within the ecological context and time frame particular to the area. The use of the term "effective" describes both the productivity of the planted species concerning its utility to the intended post-mining land use (e.g., nutritional value for livestock) as well as its capability of stabilizing the soil surface with respect to reducing siltation to normal pre-mining background levels." Ibid., p. 52.

354 In no case should a state strip mine law allow for "substitute revegetation", where an older site may be revegetated "in trade" for a more difficult active site. The Kansas Mined-Land Conservation and Reclamation Act of 1968 n25. allows the operator . . . to do "substitute revegetation" on other parcels of previously mined lands when currently mined lands are found to have unsuitable soils. Alternatively, the operator may defer planting on such land "until the soil has become suitable for such purposes", which may be indefinitely since the lands in question may never become "suitable".

354 n25 "If an investigation indicates that planting so as to provide vegetative cover of an area of land affected by surface mining may not be successful, the board may authorize the operator to defer such planting until the soil has become suitable for such purposes and a yearly report shall be filed with the board indicating the soil conditions until a successful planting or seeding has been completed. In lieu of planting to provide vegetative cover for the area of land covered by the operator's permit, the board may authorize the operator to do planting to provide vegetative cover for a different area of land. Such different area of land must be land affected by surface mining in the past which has soil that has become suitable for planting, and not less acreage than the land covered by the permit. An application by the operator for authority to plant a different area of land planting, and not less acreage than the land covered by the permit. An application by the operator for authority to

plant a different area of land shall be accompanied by a map showing its location, area and boundaries. The application shall be accompanied by the written consent of the owner of the land covered by the permit to release the operator from his obligation to provide a vegetative cover for the land covered by the permit. If the board grants the application for the planting of a different area of land and the planting is carried out in accordance with its orders, the operator shall be relieved of its obligation to provide a vegetative cover for the area of land affected by its operation for which a different area of land has been substituted" (K.S.A., 49-411, 1974, ch. 229)

354 Under Maryland's strip mine law, a portion of the operator's bond is designated as a revegetation bond, which can be released as soon as one month after planting. n26 The remainder of the bond can be held for as long as five years after mining, but can also be released prior to that time for unspecified reasons, or held longer for other reasons. n27 However, if a strip mined area is designated for deep mining, reclamation on that site can be postponed for as long as 2 years, even when no deep mining has taken place during that time. n28 Another interesting provision in Maryland's strip mine law related to reclamation, is the one which gives a subsidy to the operator in the form of 50% of the cost of fertilizer, lime and seed for the purposes of revegetation. n29

354 n26 "Within one week after planting is completed, the operator shall file a planting report with the director of the bureau, on a form furnished by the bureau, giving the following information: identification of the operation, type of planting, date of planting, area of land planted, and other relevant information the director requires. The director shall submit this report to the State Forester, who either in person or by his designee shall inspect the premises within one month after the planting report is filed. If the State Forester finds the planting has been done in a workmanlike manner and the area reported has been planted in accordance with the prescribed plan or procedure, or if the operator has been relieved from the obligation to plant trees, shrubs, or grasses as provided in this subtitle, the State Forester shall notify the director who shall release the bond and collateral in proportion to the area planted or relieved from planting. On this release, the State Treasurer shall return immediately to the operator the amount of cash or securities specified in the release." Annotated Code of Maryland, Dept. of Natural Resources, Title 7. Subtitle 5, Strip Mining, 1974, 7-511, pp. 8-9.

354 n27 " . . . The liability of the operator under the bond shall be for

the duration of open-pit mining at each operation, and for a period of five years thereafter, unless he is released prior to that time or his liability is extended for a longer period in a portion reserved for haulage ways, deep mining, or auger mining locations as provided in 7-509(b) . . . " Ibid., Section 7-506(a), 5.

354 n28 " . . . If within two years after the completion of the strip mining operation deep mining has not been initiated at the proposed location, reclamation shall be completed in accordance with this subtitle." Ibid., Section 7-509(c), p. 8

354 n29 " . . . To encourage optimum revegetation, the committee may recommend to the state that it contribute up to 50 percent of the cost of fertilizer, lime, and seed required by an approved mining and reclamation plan." Ibid, Section 7-510(b), p. 8,

#### 356 Absence of Suspended Solids in Streams

356 One of the most important criteria for measuring the performance of a revegetated strip mine site - and particularly those on mountainous terrain or other sloping land - is the frequency of sediment coming off that site and entering surface streams in the on- and off-site mining area. The absence of additional suspended solids above natural levels in surrounding streams n30 is a particularly good indication that the vegetation has established itself and is holding soil on the reclaimed land. n31 Such a criterion in a state strip mine law can be a most effective enforcing mechanism when made a condition for bond release and successful reclamation. The same kind of test should be extended and applied to chemical pollutants related to the mine site.

356 n30 "An additional factor which can result in the discharge of a high concentration of suspended solids no matter what drainage system is used is the erosion of strip mine spoil with a high clay content. According to a West Virginia Department of Natural Resources report, silt dams are ineffective at controlling clay pollution. Due to its electrical charge, this form of sediment resists settling. Yet permits are apparently still issued regardless of the clay content of a site. The only strip mine that has effectively removed clay from its discharge is in the State of Washington, which employed an expensive coagulation/flocculation treatment system." Op.cit., Light, p. 5.

356 n31 Suspended solid readings from surrounding streams should be on file with the operator's permit and water sample, submitted with the permit application. These readings can then be compared to samples taken after the vegetation has become established. In the proposed Federal strip mine bill, the

language regarding "no additional suspended solids" reads as follows: ". . . . No part of the bond or deposit shall be released . . . 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." Surface Mining Control and Reclamation Act of 1977, H.R. 2, in the U.S. House of Representatives, Section 519, (c)(2), p. 116.

#### 356 Extended Operator Liability

356 In order to insure that reclamation is successful, it is imperative that the operator be held accountable for the reclaimed site for specified period of time after completion of reclamation and during which the restored site must "perform" to the designated level of rehabilitation. The liability period should roughly coincide with the time it takes to establish a self-sustaining stand of vegetation of similar diversity and hardiness to what existed there prior to mining, and capable of natural regeneration and natural succession. In any event, the state strip mine law should specify a minimum period of time in years for which the operator will be liable and responsible for the reclaimed site if such site should fail; be obligated to restore and reclaim it once again upon such failure; and have a major portion of his bond withheld until such liability period has expired. The liability period specified in the pending federal strip mine bill requires the operator to "assume the responsibility for successful revegetation . . . for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work . . . except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation or other work . . . ." n32

356 n32 95th Congress, 1st Session, H.R. 2, "Surface Mining Control and Reclamation Act of 1977, Section 515(b)(20), p. 93. In its discussion of this provision in a previous committee report, the House Interior and Insular Affairs Committee was careful to point out that state regulatory authorities could impose longer periods of operator responsibility given more difficult local conditions:

356 "The differential time limits for revegetation responsibility based on the average annual precipitation isopleth demarcating the coal fields in the arid and semi-arid West from those in the more humid areas of the East and

Northwest. Thus the standard of 26 inches became the basic measure used in the bill to distinguish between coal mine regions in arid and semi-arid areas and such regions in humid areas.

356 "The Committee recognizes, however, that within arid and semiarid regions the length of time necessary to reestablish vegetation on mining spoil varies considerably. The time estimates for revegetation set forth in the Academy report for the wettest of the potential mining areas (given the natural vegetation characteristics of the area) in the arid and semi-arid areas of the country ranges from 10 years upward. Thus a 10-year standard of the bill represents a minimum time under the most favorable circumstances. Regulatory authorities may establish longer periods of responsibility suitable to subregional climatic and vegetative zones.

356 "The time limit set for revegetation responsibility in the more humid areas (over 26 inches of precipitation) was set at five years. This provides sufficient time for the revegetation to prove establishment and regeneration. For instance, "on the average, four years elapsed - after mining - before mine sites are adequately and totally reclaimed in accordance with Kentucky regulations. (Mathematica, page I-54)."

356 Op.cit., House Report No. 94-1445

357 The Montana Strip and Underground Mine Reclamation Act has a decently drawn provision for determining successful revegetation, with several good performance criteria applicable to the semi-arid regions of that state. n33 Its extended liability period, however, which connects to the test of successful revegetation over time, might be somewhat short for a good measure of permanence in those drier western environments. n34

357 n33 "After the operation has been backfilled, graded, topsoiled, and approved by the Department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as are necessary to provide a suitable permanent diverse vegetative cover capable of:  
(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation; (b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and (c) preventing soil erosion to the extent achieved prior to the operation." Title 50, Chapter 10, Revised Code of Montana, Section 12.(50-1045), (c)-(c), p. 15.

357 n34 "Inspection and evaluation for permanent diverse vegetation cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the Department determines that a satisfactory permanent

diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing; but in no event shall such remaining bond be released prior to a period of five (5) years from the initial planting provided for in section 12 of this act." Ibid., Section 14.(50-1047) (3), p. 16.

358 The Indiana strip mine law has a provision which allows the regulatory authority to hold the posted bond for as long as 15 years, or "until a satisfactory vegetative cover has been established", but does not attach specific capability measures or performance criteria to "satisfactory vegetative cover", and does not specify a minimum time period for site performance or liability. n35

358 n35 "The amount of bond shall continue to be posted until satisfactory vegetative cover has been established, but not for a period to exceed fifteen (15) years. If the bond is forfeited, it shall be expended by the director in a reclamation program for the area of land for which it has been posted." Indiana Code, Title 13, Article 4, Chapter 6, Strip Mining-Reclamation, Section 13-4-6-7(e).

358 Of all the state laws examined in this study, six - Kentucky, Pennsylvania, Wyoming, Montana, Texas and Maryland - specified some kind of minimum liability period. Several of these provisions however, offered wide discretion to the regulatory authority or held out possibilities for an earlier release of bond. Only Texas had a liability provision that appeared to stand firm. n36

358 n36 "Reclamation standards . . . shall require the operator as a minimum to . . . assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan, provided that the four-year period of responsibility shall commence no later than two complete growing seasons after the vegetation has been successfully established as determined by the commission . . ." Texas Laws 1975, Chapter 690, Surface Mining and Reclamation Act, Section 11(b) (18).

359 [See Table in Original]

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362 EXPLANATION OF CATEGORIES IN TABLE V

362 Citizen Participation & Monitoring

362 Public Notice, Solicitation of Comment & Public Hearings

362 Unsuitable Lands Review Process

362 If the state strip mine law provides for the nomination and review of areas in the state for the purpose of classifying such areas as unsuitable for strip mining, the reviewing authority should also be required by statute to solicit comment from the public on nominated areas through adequate public notice, and should also hold a public hearing when requested in writing to do so by any interested person. Insofar as any "unsuitable lands" review process allows citizens to nominate areas for consideration, a public hearing on the pros and cons of such a designation would presumably follow automatically. Nevertheless, such provisions need to be specified in the strip mine law, since all too often citizens are left out of the review process entirely, or are allowed to participate only in a very limited fashion. Of the six strip mine laws found to have provisions for designating areas unsuitable for strip mining - Ohio, Wyoming, West Virginia, Texas, North Dakota and South Dakota - only one, Texas, specified that citizens could petition to have an area considered for review, and even in that case, citizen participation is very narrowly drawn. n1 While "any person" can petition the Texas Railroad Commission to have an area designated as unsuitable or have such a designation terminated - with the commission given the option of determining which petitions are valid - only the "person affected" can "intervene" before a public hearing with facts and/or supporting evidence that would establish allegations. Under the Act's definition of "person affected," n2 remote and unpopulated areas of unique or critical environmental value with no constituency of "persons affected" may not be represented or have recourse to appeal.

362 n1 "Any person shall have the right to petition the commission to have an area designated as unsuitable for surface mining operations or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which in the opinion of the commission would tend to establish the allegations. The commission shall make a determination of the validity of the petition . . . . Upon application shall make a determination of for which a valid petition has been filed, the commission shall hold a public hearing . . . . Any person affected may intervene prior to such public hearing by filing allegations of facts with supporting evidence which would tend to establish the allegations . . . . In the event that all the petitioners and the applicant stipulate agreement prior to the requested hearing, such hearing need not be held." Texas Laws 1975, Chapter 690, Surface Mining and Reclamation Act, Section 13(d).

362 n2 "'Person affected' means any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage." Ibid., Section 4(11).

### 363 Permit Review Process

363 A very important role for the public in the surface mining regulatory process occurs at the point of permit application. Before any strip mine permit is approved, the public should be notified in detail about the applicant and the location of the proposed mining activity. Public notification should detail where and when the operator's permit application - including his mining, blasting, reclamation, and revegetation plans - will be available for public inspection and review. Public comment on these and other aspects of the permit application should be solicited in the text of the notice. It is also important that the provisions for solicitation of comment and public review be extended to local governmental bodies, and specify that these entities prepare comments which citizens can review concurrently with the permit applications. n3

363 n3 The pending federal strip mine bill, H.R. 2, details this provision with an emphasis on the responsibility of the local public bodies to prepare comment: ". . .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 obligations 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." 95th Congress, 1st Session, H.R. 2, Section 513(a).

363 If a public hearing is requested by any person who has also filed

written objections or questions concerning the pending permit application, the regulatory authority should be required to hold one, and again provide adequate and advanced public notice as to time, place and location of such hearing. Public notice, solicitation of public comment, and the opportunity for a public hearing are particularly important citizen monitoring provisions to incorporate in the permit approval process, and should be made mandatory by the strip mine statute. Only five of the state strip mine laws examined in this study - those of Wyoming, Montana, North Dakota, Missouri and Louisiana - have non-discretionary provisions of law which clearly require public notice and the opportunity for a public hearing.

363 The North Dakota Reclamation Law makes provision for a public hearing on all pending strip mine permit applications, if such hearings are requested with written objections, but only if "good cause has been shown therefor." n4 Nowhere in the law, however, is "good cause" defined in any precise fashion.

363 n4 "When a petition for a hearing has been made, and good cause has been shown therefor, the commission shall set a time and place for a hearing on the question of whether the permit should be granted. Notice of such hearing shall be given to the operator and to any party previously filing protest or petition for hearing." North Dakota Century Code, Chapter 38-14, Reclamation of Strip-Mined Lands, Section 38-14-04.1., p. 11.

364 The Illinois Surface-Mined Land Conservation and Reclamation Act makes provision for a public hearing only when a County Board requests that one be held. Moreover, when no public hearing is requested by a County Board, the law only requires that written testimony from county boards be considered. There is no specified mechanism in the law which gives citizens the explicit right to request a hearing nor any provision which solicits written testimony from the public when no public hearing is held. Furthermore, the law indicates that the Department of Mines and Minerals will be required to make written testimony available to the operator, but it is unclear whether such testimony or operator response to such testimony will be made available for public inspection and comment in the absence of a County Board requested hearing. n5

364 n5 "If requested by a county board of a county to be affected under a proposed permit, a public hearing to be conducted by the Department shall be held in such county on the permit applicant's proposed reclamation plan . . . "

Section 5(f), p. 5 . . . " In cases where no public hearing is held on a proposed plan, the Department shall consider written testimony from county boards when submitted no later than 45 days following filing of the proposed plan with the county board. The Department shall immediately serve copies of such written testimony on the applicant and give the applicant a reasonable opportunity to respond by written testimony . . . " Section 5(g), p. 5.

#### 364 Bond Release

364 Prior to any release of bond or deposit, the operator should be required by the strip mine law to give adequate public notice that he is applying for partial or full release of bond, again detailing all relevant aspects of the mine-site location as well as all reclamation work completed to date. This notice of intent to seek release of bond should also invite public comment and the opportunity for public inspection of the mine site. At the very least, the public should have the opportunity to review and comment upon the regulatory agency's field inspection and report of the reclaimed mine site. If written objections to the bond release are filed, and a hearing requested, the regulatory agency should be required to hold a public hearing. Of all the state strip mining laws examined in this study, only that of Montana n6 had a clearly specified provision which required public notice and opportunity for a public hearing prior to bond release.

364 n6 "Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the Department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing . . . " Revised Code of Montana, Title 50, Chapter 10, Section 14 (50-1047) (3).

#### 364 Citizen Can Request Inspection

364 Regardless of how often active strip mines may be inspected by the regulatory agency, a very important complement and back-up to agency-initiated inspections are inspections requested by citizens. Citizens should be able to request an inspection of any active strip mine site when they have information or knowledge that the operation is illegal, that it is in violation of the strip mine or other law, or that it has not been inspected in the time frame specified by the law. All citizen requests for inspections should be in writing and should detail the available facts and the reason for inspection. The regulatory authority should be required to initiate action on the request within a specified period of time, but no later than one week after it receives the request. None of the state strip mining laws examined in this study included a

provision which specified that any citizen could request a mine-site inspection.

### 365 Citizen Can Accompany Inspector

365 Through the state strip mine law, citizens should be assured of the right to accompany public officers on routine inspections of strip mines simply to understand how on-site inspections are performed, and especially when they have expressed concern or voiced specific complaint about a particular mining operation. However, none of the state laws examined in this study included such a provision.

### 365 Citizen Suits

365 Citizens adversely impacted by strip mining activity should have the explicit right to sue both the negligent or abusive operator for property damage and the irresponsible regulatory authority for failure to enforce the provisions of the state strip mine law. Legal standing under the citizen suit provision should be extended to any citizen who has an interest that may be adversely affected by strip mining; "interest" in this case being broadly construed to include persons who live in the immediate mining area, persons and communities downstream from the strip mining activity, and persons or groups of persons who have occasioned some intermittent or seasonal use of the area, such as recreation.

365 While several states have citizen suit provisions in their strip mine laws, such provisions are often hamstrung by state definitions of standing, n7 or, in the alternative, are circumvented or overridden by other provisions or other legal conditions. n8 Some citizen suit provisions in state strip mine laws require the citizen to make findings that the regulatory authority "willfully and deliberately" failed to enforce the law, or require him to submit such findings under oath, and/or post bond where injunctions or restraining orders are sought. In other situations, citizens are vulnerable to countersuits and/or post bond where injunctions or restraining orders are sought. In other situations, citizens are vulnerable to countersuits and/or cross examination by the charged operator.

365 n7 "At present, a group of Appalachian citizens has obtained legal counsel so that these citizens can prevent strip miners from destroying their homes. Despite these organizational efforts, which reflect the sincerity and desperation of these people, they are unable to gain legal standing - the right to bring their case to a court of law.

365 Each state has rules on standing. Some allow corporations such as the group just described to sue. Others require the group to name an aggrieved

individual as party to the suit. Some require that this aggrieved individual was or will be directly affected by the mining which inspired the suit. These restrictive standing laws often prevent environmental groups from bringing suit to prevent strip mining. To utilize legal channels, a person must live in the area or spend a large amount of time there to prevent an area's destruction. Ironically, it is these uninhabited and undisturbed areas that particularly need protection from strip mining; but state and federal standing requirements block them from the courts.

365 Rules on standing should be expanded so that individuals and corporations interested in protecting an area can have a court listen to the merits of the case . . . " Op.cit. Fritsch, Morgan & Others, p. 101.

365 n8 "Kentucky law contains a major deterrent to the bringing of citizen suits. Only in Kentucky do the courts still uphold "broad form" deeds. Simply put, the owner of the mineral rights can perform any necessary damage to the land surface to extract minerals. Statutes, such as Kentucky's 1971 Surface Mining Act, prevent the destruction of private homes whether on broad form deed land or not. However, there is little else the surface owner can protect . . . Until the people of Eastern Kentucky free themselves from these deeds, the civil suit route will not be as open to them as to their counterparts in other Appalachian states." Ibid., p. 47.

366 One argument often levelled against the inclusion of a strong citizen suit provision in state strip mining laws is the danger that such a provision would overload the courts. In a study conducted by the Consumer Interests Foundation entitled, "Do Citizen Suits Overburden Our Courts?" this question was investigated head-on in six states having citizen suit provisions. A sampling of comment from the several states in that study indicates that a "log-jam in the courts" just isn't the case. n9

366 "I can categorically state that the idea that there would be a flood of cases is a myth that has been exploded." (Gregor McGregor, Assistant Attorney General, State of Massachusetts)

366 "The number of suits has not clogged the courts. It is too expensive and time-consuming a process for frivolous suits to be brought." (James R. Brindell, Attorney for the Department of Pollution Control, Florida)

366 "It would not appear that an unreasonable burden has been placed on our

judicial system to date." (Jonathan H. Morgan, Deputy Attorney General, Minnesota)

366 "It is the position of Attorney General Frank J. Kelley that the Michigan Environmental Protection Act of 1970 is an extremely important asset in the effort to abate pollution in our state. We believe that the Act provides necessary access to the courts both for public officials and for ordinary citizens on important environmental issues.

367 Furthermore, Attorney General Kelley believes that the Act has not produced a burden on the judiciary of our state. Specifically, we concur with the conclusion reached by Professor Joseph Sax of the University of Michigan Law School and the author of the Michigan Environmental Protection Act of 1970 that ' . . . enough cases have been resolved speedily and intelligently to mark the Act as a success.'" 70 Mich L Rev 1004, 1080 (May, 1972) (Charles Alpert, Asst. Atty. Gen'l, Michigan Environmental Protection and Natural Resources Division) p. 7.

367 n9 Consumer Interests Foundation, "Do Citizen Suits Overburden Our Courts," A Case Study of The Judicial Impact of State Environmental Legislation, 1973, pp. 5-8.

367 Perhaps what is most important about the citizen suit provision is simply its legal presence in the strip mine statute, and that it can have a deterrent effect without being over-used: n10

367 " . . . Plainly, a statute's influence is not limited to lawsuits actually instituted. Industrial and administrative agency behavior may be modified by the fear of a lawsuit and its attendant publicity; developments in one suit may bring about institutional changes of behavior in similar matters . . . "

367 n10 Joseph Sax, 70 Michigan Law Review 1004, 1080 (May, 1972), cited in "Do Citizen Suits Overburden Our Courts?" p. 9.

367 Of all the states examined in this analysis of strip mine laws, only Pennsylvania, n11 Alabama, n12 Ohio, n13 Montana, n14 and West Virginia n15 made some provision for citizen suits. However, the citizen suit/mandamus provisions in several of these laws have language that could easily scare off the average citizen, particularly those which mention perjury. Some of these citizen suit provisions also specify that the citizen must first file a written statement under oath with the regulatory agency which details the charges, violations and/or failure to enforce before he can bring an action of

mandamus. Subsequently, under such provisions, the citizen can then only bring suit if it is determined that the regulatory agency has neglected the complaint or has refused to act for an "unreasonable time". Such built-in delay provisos can make any citizen suit provision completely ineffective.

367 n11 "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 employee 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 employee. 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 employee 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 relates 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 employee, whose duty it is to enforce such provision, to perform his duties, and upon failure to do so such public officer or employeeshall 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)" 52 Pennsylvania Statutes, 1396.1 et.seq. Section 18.3.

368 n12 "Any citizen of the state having knowledge that any of the provisions of this Act are willfully and deliberately not being enforced by any public officers or employee whose duty it is to enforce any of this Act, shall bring such failure to enforce the law to the attention of such public officer or employee. 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. If such public officer or employee neglects or refuses for an unreasonable time after demand to enforce such provision, any such citizen shall have the right to bring an act of mandamus in the Circuit Court of the county in which the

operation which relates to the alleged lack of enforcement is being conducted.

The Court, if satisfied that any provision of this act or the rules and regulations of the Commission is not being enforced, may make an appropriate order compelling the public officer or employee, whose duty it is to enforce such provision, to perform his duties, and upon failure to do so such public officer or employee shall be held in contempt of court and shall be subject to the penalty provided by the laws of the state in such cases." Alabama Surface Mining Reclamation Act of 1975, Section 18.

368 n13 " . . . the Attorney General or any other person adversely affected or about to be adversely affected by an operation may apply to the court of common pleas of the county wherein the operation is situated to enforce compliance with, or to restrain violation of, any requirement of Chapter 1513 of the Revised Code, a rule adopted thereunder, or an order of the chief . . . .

368 " . . . Any resident of this state, with knowledge that any requirement . . . is not being enforced by any public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit shall subject the affiant to penalties prescribed under the law of perjury." Ohio Revised Code, Section 1513.15 (A) & (B).

368 n14 "A resident of this State, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employees whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

368 "If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident can bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose

duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law." Revised Code of Montana, Title 50, Chapter 10, Section 22 (50-1055), (1) & (2).

368 n15 "The failure of the director to discharge the mandatory duty imposed on him by this section shall be subject to a writ of mandamus, in any court of competent jurisdiction by any private citizen affected thereby." West Virginia Code, Article 6 and 6A, Chapter 20, Section 20-6-11, lines 64-67.

370 [See Table in Original]

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372 [See Table in Original]

373 APPENDIX A

373 VIRGINIA'S STRIP MINING LAW PROBLEMS WITH ENFORCEMENT

374 VIRGINIA'S STRIP MINING AND RECLAMATION LAW: PROBLEMS WITH ENFORCEMENT AND REGULATION

374 Room For Improvement

374 In a formal presentation of November 20, 1975 before the Board of Conservation and Economic Development concerning problems in the administration and effectiveness of Virginia's surface mining program, Commissioner William O. Roller of the Division of Mined Land Reclamation listed Federal and State agencies that have been critical of the Division's attempt to regulate and control the surface coal mining industry in Southwest Virginia. Chief among the agencies critical of the regulatory effort was the Virginia Water Control Board, which submitted 66 recommendations to the Division for strengthening the reclamation program. According to Roller, the U.S. Army Corps of Engineers also indicated a need to improve surface mining regulations, particularly in the areas of erosion and sedimentation. The Corps specifically pointed to the water pollution and sediment problems of "trickling streams" in the Southwest Virginia coal fields. More stringent rules for erosion control and drainage plans were suggested by both the Water Control Board and the Corps of Engineers. Roller also added that the Soil Conservation Service, Virginia Polytechnic Institute, and the State University Extension Service have all "expressed concern for improving the reclamation program".

374 In his statement before the Board, Roller noted that after the debate and subsequent defeat of the Federal coal surface mining bill in 1975, many state leaders felt "that Virginia was doing some good work in reclamation but improvement was needed". Roller also added, "It was specifically pointed out by

Congressman Wampler at a meeting which I attended 'that the State of Virginia and the industry within the State simply must improve their reclamation program'". This statement is in marked contrast to what the Congressman was saying on the floor of the House about Virginia's reclamation law and program during the debate over H.R. 25, before the bill was vetoed. On May 7th, 1975,

Congressman Wampler, at some length, defended Virginia's ability to reclaim the land and control the coal surface mining industry, specifically pointing to the adequacy and strength of Virginia's strip mining law:

374 "Since 1966 the State of Virginia has regulated surface coal mining operations within its boundaries. Amended in 1968 and again in 1972, the law has proven effective, yet it has not placed unreasonable burdens upon operators within the State . . . "

375 " . . . The Virginia surface mining law is not a weak law. The law is tough where it needs to be tough . . .".

375 Elsewhere in his statement, Roller himself acknowledged a need for more frequent inspections, minimizing the rate of employee turnover, and problems concerning the length and stability of spoil materials on the steep outcrops of the Southwest Virginia col fields.

#### 375 Inadequate Funding

375 In order to bring the enforcement and reclamation program up to even minimal standards in Virginia by June, 1977 (including the addition of 10 new inspectors), the funding level for the regulatory program will, according to the Division's own estimates, have to be more than doubled, or from \$6 35,810 at its present level to a projected 1976-1977 level of \$1 ,354,750. However, the state legislature is not about to make up the difference with any increase in the General Fund Appropriation (expected to be \$2 40,275, even with an optimistic 15% increase), and the coal industry is fighting a proposed increase in permit fees (from \$12 and \$6 per acre to \$48 and \$30 per acre) that would generate over \$1 million in needed revenues, claiming that any such increase would put Virginia coal operators at a competitive disadvantage with operators in other states. The Division, in other words, is given just enough money to hang itself administratively - operating inefficiently on a meager appropriation and having

no other alternative but to increase operator fees, thus laying themselves open to charges of ineptness and inefficiency from industry. A letter from Mr. James McGlothlin, President of the United Coal Co., and Tri-County Independent Coal Operator's Association to State Senator Bill Hopkins dated December 23, 1975 (and subsequently sent to all members of the 1976 General Assembly is typical of the industry approach, in this case, to emphasize the sacrosanct orphaned lands Special Fund as a calculated "good guy" strategem to divert attention away from the more serious problems associated with the need to regulate active strip mining:

375 " . . . On a two year basis, the orphaned land fund would amount to \$1,730,960. Naturally, it was hoped and expected by the General Assembly and the Industry as a whole that all of this money would be used to reclaim orphaned land and funds have been paid into this fund since July of 1972 to take care of this worthy purpose. However, the Division of Mined Land Reclamation since July of 1972 has reclaimed only 225 acres of orphaned land and has in fact spent the rest of our money for the administration of their Department".

375 Industry, naturally, wants to avoid any closer scrutiny by the Division, and charges that the Division is inept and inefficient in its handling of the program, particularly when it asks for more money to improve its enforcement capabilities. Virginia's coal operators believe that the proper role of the Division is one of orphaned lands reclamation (or as clean-up to industry) and not one of increased capability for enforcement and regulation of active surface mining activities. Industry is willing to see its permit fees expended for after-the-fact clean-up but not preventative and protective regulation in the active mining phase.

#### 376 Moves To Relocate The Division of Mined Land Reclamation

376 Directly related to the Division's budgetary difficulties are attempts by the coal industry (in the name of efficiency and budgetary frugality) to move the Division to a more remote and less bothersome corner of the Virginia bureaucracy. Mr. McGlothlin and B.V. Cooper, Executive Director, Virginia Surface Mining and Reclamation Association, have both suggested that the Division of Mined Land Reclamation be placed under the auspices of the Division of Mines and Quarries in the Department of Labor and Industry, pointing out, for example, that "one inspector could inspect both for safety and reclamation". In the letter referred to above, McGlothlin also notes that such a consolidation

would expedite the activities of the coal surface mining industry, again hitting the Division for ineptness and its lack of orphaned lands attention:

376 "Certainly this consolidation should also mean that the Industry would start getting its money's worth so to speak in terms of having orphaned land reclaimed with the money paid for permit fees rather than being used for the inept and inefficient administration which is disrupting the surface mining industry".

376 There is at least one bill currently before the Virginia General Assembly which proposes that the Division of Mined Land Reclamation be transferred to and merged with the Division of Mines and Quarries, in the Department of Labor and Industry. Other sources within the Division of Mined Land Reclamation in Richmond indicate that there is also a move within the Department of Conservation with the Division of Forestry. In either event, the intention is to limit, if not abolish, any meaningful regulation of the coal surface mining industry in Virginia.

#### 376 Inadequate Enforcement Personnel

376 In a report prepared by the Division of Mined Land Reclamation entitled "A Proposed Program to Properly Administer The Coal Surface Mining Regulations In Southwest Virginia", it is noted in the first sentence that: "The uptrend of coal production from the surface mines in Southwest Virginia has diluted the effectiveness of the regulatory measures performed by the Division of Mined Land Reclamation". In attachments to that proposal, it was pointed out that "by the end of the year (1975) a total of 900 permits will be subject to the field inspection status". As of November 20th, 1975, there were 20 field inspectors available for enforcement purposes, 5 of whom were then "inspector trainees". Each of these 20 inspectors was, on the average, responsible for approximately 43 permits. This compares to "case loads" of 25 permits per inspector in Kentucky and 20 permits per inspector in West Virginia, according to the Division's own figures. The Division conservatively estimates that only 42% of all permits are active, meaning that the average Virginia inspector is responsible for 18 active permits and 25 "inactive" permits; "active" meaning "coal producing". Since a complete inspection trip in Virginia requires 3 to 4 hours per job (also conservative), an inspector can only make 13 to 17 inspection trips to active jobs in a one month period. This means that active strip mines in Virginia are not even being inspected once a month.

377 Furthermore, since all active mines should be inspected at least twice a month at a minimum - meaning an average of 36 inspection trips per month per available Virginia inspector, or two visits for each inspector's 18 active

permits - the Division's inspection frequency is substandard by its own calculations, or 19 to 23 active mine visits per month short of the minimum standard it has set for itself.

377 In its proposal, "A Proposed Program to Properly Administer The Coal Surface Mining Regulations in Southwest Virginia", the Division acknowledges that it needs at least 10 additional inspectors to be able to inspect all active mine sites at least twice a month (and this calculation was made with a generous and arbitrary 30% reduction of required total manhours for such items as decreased travel and less report writing due to an expanded inspection force).

#### 377 Confusion in The Field

377 In a March, 1974 letter to Marvin Sutherland, Director of the Department of Conservation and Economic Development, William O. Roller, Commissioner of the Division of Mined Land Reclamation seeks advice and clarification on how his men should apply the law in the field:

377 ". . . we are seeking advice as to whether or not we should continue to enforce as we understand the definition of surface mining."

377 "Our field men are somewhat confused as to who to enforce the law on and it becomes difficult for us to advise them from the office when we have to remember that there are so many versions of the definition. It can be confusing when a person comes to the office to get a permit and pays his fees, etc., and another person is mining the same coal, disturbing the same amount of land and we cannot force him to obtain a permit. The second person can have all (the) profits plus he does not have to reclaim the land. The people who obtain permits keep asking us why the other fellow doesn't have to obtain a permit."

377 "If the law was intended to apply only to the established surface mining companies; then, in my opinion, it is very discriminating because many tons of coal are removed from the surface and the land is left to erode".

#### 378 "Preparatory Excavations" Front For Strip Mining

378 In a memorandum from William Roller to Mr. Sutherland dated August 28, 1974, Mr. Roller points out that operators, judges and even the Commonwealth's Attorney all work to undermine the Division's enforcement program. Roller appears to be asking Sutherland for a clear-cut directive or policy stand, or

even some precise definition of coal surface mining that will give him the basis he needs to enforce the law and Department policies concerning strip mining:

378 "We have been having many excavations for coal that has been hauled from the surface by operators who say they are opening a deep mine or preparing for house sites, trailer courts, etc.,. We recently, on August 21, 1974, had a case dismissed in Dickinson County by the county judge. The Commonwealth's Attorney told the judge that he was opening up all of Dickinson County to be stripped legally, and six days later we have the situation to come up again in Dickinson County. Tom Stegar interprets the definition of coal surface mining laws to include the fact that people who excavate and sell coal regardless of what activity occurs after removal of the coal, would be subject to obtain a coal surface mine permit. It is certainly difficult for our men to check all of these activities out and expend the time in court to have them all thrown out by land left unreclaimed" (sic).

378 In his November 20th, 1975 report to the Board of Conservation and Economic Development, Mr. Roller confirmed the point that "there is much coal surface mining being carried out under the pretense of opening underground mines".

378 Enforcement Staff Pleading to Administrator For Tougher Stand

378 In an Aug. 15, 1975 memorandum to Assistant Commissioner Lowell Marshall, Enforcement Instructor R. Wayne Hopkins points out the impact of "going soft" on one operator, particularly the effect such action will have on other operators, not to mention how such administrative action affects the attitude of inspectors in the field:

378 "There is (sic) a couple of reasons why I believe the state should try to force Mr. Stacy to regrade this area instead of the state reclaiming it, even if it cost more for court proceedings than it does to regrade the area".

378 "First, other strip operators in my area know that Mr. Stacy removed the coal from this area and know that he was fined \$2 50 for stripping coal without a permit. These operators have stated 'what is the use in getting a permit if a small fine is the only penalty'? (Other than not being able to strip under their name again)."

379 "Also they have stated that the amount of fine would be no more than what it would cost to get maps made for a permit."

379 "If the state can force Mr. Stacy to reclaim the land it will at least show the other operators that at least if they did strip without a permit and were convicted of stripping without a permit they would be forced to get a permit and reclaim the area in the same manner as if it were permitted to start with".

#### 379 Bureaucratic Delay In Enforcement Action

379 Files and memoranda within the Division of Mined Land Reclamation in Richmond indicate that there is one built-in procedure in the regulatory program that hampers swift and consistent enforcement actions in the field: the Commissioner of the Division of Mined Land Reclamation must request authorization from the Director of the Department of Conservation and Economic Development every time he wants to issue an operator a notice of noncompliance. This means that the noncompliance power - a mere "ticketing" procedure - is two layers removed from the very people who should have it at their immediate disposal - the field inspectors.

#### 379 Environmental Policy Center

379 Washington, D.C. 20003

379 March 1976

#### 380 APPENDIX B

380 ATTEMPTS AT ROW-CROP RESTORATION UNDER THE ILLINOIS STRIP MINE LAW AND RULE 1104 n1

380 n1 This appendix is excerpted from John C. Doyle, Jr., "Strip Mining in the Corn Belt: The Destruction of High-Capability Agricultural Land For Strip-Minable Coal in Illinois", Environmental Policy Institute, Washington D.C., June, 1976, pp. 22-29.

381 Under the Illinois Surface-Mined Land Conservation and Reclamation Act of 1971, as amended in 1975, there is no provision or mandated review process that would consider designating lands as unsuitable for strip mining. Nor is there a provision of law that requires the separation and segregation of the A and B soil horizons. The only provision of law under the Illinois act that relates to agricultural lands is section 6(j) and Rule 1104, "Lands to be Reclaimed for Row-Crop Agriculture".

381 Under Section 6(j), the Director of the Illinois Department of Mines and Minerals is given the discretion of determining whether or not "the optimum future use of the land affected is for row-crop agricultural purposes", which,

if so determined, subjects the operator desiring to strip mine such land to the conditions of that Section and Rule 1104. However, there are no guidelines or criteria which specify how the Director's determination is to be arrived at; no tests of what other future uses might be construed more optimum than rowcrop agriculture. This means that the Director has essentially a free hand in determining what agricultural land or how much agricultural land, if any, will be returned to row-crop production.

381 Once subject to Rule 1104 under a determination that the optimum future use is row-crop agriculture, there are several areas in the rule which will have an adverse effect on the productivity levels of strip-mined farmlands "restored" to row-crop topography. For example, after mining, row crop agricultural lands can be graded to slopes that are 2 to 3 per cent greater than their original contour, and in some cases terracing will be permitted. n1 Citizens from Catlin, Illinois, arguing against this provision, believed that farmland should be returned to its original grade. A Knox County planner suggested that no land be graded to a slope greater than 7%, but his suggestion was construed as possibly requiring that land be restored "to create a soil condition better than that which existed prior to mining", and so, flatly prohibited by language in the Act. At this point it is well worth noting what soil scientist Fred Caspall has to say about the importance of slope and retention of topsoil:

381 The form of the newly created surface is the most critical and least often mentioned aspect of surface mine land reclamation. Slopes up to 8 or 9 percent are common in newly graded areas. While such surfaces appear "pleasing to the eye", erosion can be severe. It has been shown that silt loam soils under continuous tillage on slopes of 4 percent lose material at the rate of seven inches in fifty years. Consider mine spoils with no aggregate stability in the surface layers where erosion is rampant even on slopes as gentle as 2 percent. Little is gained by spending several hundreds of dollars per acre to reclaim land that is subject to severe erosion. An erosion-free surface can be created by grading to less than a 2 percent slope at an additional cost of 5 to 10 percent. In western Illinois, surface form is clearly the most important factor in surface mine reclamation. When low aggregate stability of spoils is considered, it is unreasonable to attempt the re-creation of a truly row-crop surface unless it is leveled to at least the original grade. n2

381 n1 All discussion and excerpts from Rule 1104 refer to: Rules and Regulations pertaining to the Surface-Mined Land Conservation and Reclamation

Act, "Lands To Be Reclaimed For Row Crop Agriculture", Statement of the Rule, Statement of the Principal, & Reasons for Adopting the Rule, Illinois Department of Mines and Minerals, February, 1976, pp. 1-18., hereafter, "Rule 1104".

381 n2 Fred C. Caspall, "Soil Profile Redevelopment and 'Topsoil' Replacement on Surface Mine Spoils in Western Illinois", 2nd Inter-University Energy Conference, Carbondale, Ill., May 18, 19 & 20, 1975, p. 7.

382 In so far as increased grades become permanent after mining, and lessen the prior level of soil productivity in doing so - as grade is a primary factor contributing to soil productivity - then row crop yields on such land over time are bound to be reduced from their prior levels. Similarly, terracing may permit less land to be cultivated through the removal of land from production or more difficult management, maintenance and cultivation with modern farm technologies.

382 Other provisions in Rule 1104 allow "abrupt slope changes" for "unusual conditions such as (but not limited to) ditches, terraces, and roads". (Rule 1104(3)).

382 Subsection (4) of Rule 1104 requires "practices to provide adequate drainage and erosion control for sustained row-crop production" without explaining what "sustained levels of row-crop production" means in terms of yields and prior levels of productivity. It is worth noting here that the Illinois Coal Operators Association argued unsuccessfully for the deletion of the word "sustained" in this subsection.

382 The texture requirement for topsoil and sub-soil under Subsection (5) of Rule 1104 allows for an increase in coarse material to occur after mining in the "root medium" below the darkened surface soil, of which up to 1/2 of the allowable 20% coarse material can be rocks up to 10 inches in dimension. Since coarse materials have a lower moisture holding capacity - and moisture holding capacity is a factor of soil productivity and soil fertility - then any increase in coarse material that occurs in row crop agricultural soils after they have been stripmined and "restored", will obviously contribute some measure of loss to the original fertility and productive capabilities of those soils.

382 In its defense of the coarse material allowance in combination with the total root medium soil requirement of 4 feet, and their effect on the potential moisture holding capacity of such restored soil, the Department of Mines and Minerals relied on the expertise of Dr. J. B. Fehrenbacher, who maintained that the coarse material allowance and the soil depth requirement would be adequate

to "furnish the requisite moisture for high-yield row-crop agriculture". However, at least two other soil scientists questioned whether this requirement would result in yields comparable to what the land was capable of producing in its premining state:

382 . . . It is believed that available water may be an important factor that will limit yields. Dr. Fehrenbacher has postulated that 4 feet of desirable soil materials would supply 8 inches of available water during the growing season which, combined with 10 inches of rainfall, would supply the 18 inches required by a 100 bushel (per acre) corn crop. But much of the potentially strippable land is capable of producing 175 bushels per acre. What depth of topsoil and what conditioning of underlying layers would be needed to reestablish a 175-bushel capacity? A desirable texture can be provided, but the effects of settling and consequent compaction on soil structure and soil porosity are not known. Special drainage requirements of reclaimed stripped areas are apparent but are largely unsolved at this time. n3

383 n3 "Status Report On Strip-Mine Land Reclamation: Activities, Interest And Capabilities Of The College Of Agriculture", Samuel R. Aldrich, Assistant Director, Paper prepared for Coal Research Office, Univ. of Illinois, Sept. 27, 1974, p. 2.

383 Additionally, this "coarse material allowance", when combined with the requirement in Section 6(j) in the Act that only mandates the return of a maximum of 18 inches of darken surface soil, "when available in such depth", and no less than 8 inches, regardless of color in all other cases, may present big problems to farmers in some areas of the state when they attempt to plow and cultivate 8 inch topsoils covering rocky subsoils. Mike Schechtman of the Illinois South Project explains the problem:

383 . . . In many areas of Southern Illinois, . . . very little of the surface soil is appreciably darkened. n4 It is not clear whether this will mean that in most cases the reclamation plan for land in Southern Illinois which is suitable for row crop agricultural production will require only the top 8 inches of soil to be segregated and replaced. If this is so, and if the maximum amount of the 10% of the coarse material allowable in the agricultural root medium comprised of rock material of 3 to 10 inch diameter is in fact comprised of large stones approximately 10 inches in diameter, then there is likelihood of a relatively high frequency of 10-inch rocks at depths of slightly greater than 8 inches and continuing on down.

383 Generally speaking, most plowing reaches a depth of 6 to 9 inches, and a chisel plow, which is commonly used in Southern Illinois, reaches a depth of 8 to 10 inches. Thus, at the limits of the definition - the minimum depth of surface soil and the maximum amount of large rock material - we can anticipate a lot of contact between plow teeth and rock at a degree of severity which will most likely result in damage . . . .

383 Not only could this result in costly expenses for plow repairs and/or replacement of parts, if the damaged parts could not be repaired during the rather short time span which comprises ideal planting period, farmers could suffer very severe economic setbacks.

383 Of additional concern is that the contact between rock and plow teeth generally pulls the rock material toward the surface. Over time, the rock material will continue upwards, and once it emerges on the surface, such material will pose a very serious problem for farm machinery, particularly combines. n5

383 n4 Fehrenbacher & others' prime ag. land Grade C includes "either light- or darkcolored" soils, see Fehrenbacher & others, op.cit., p. 15.

383 n5 Mike Schechtman, "Comments on Proposed Rule 1104", Illinois South Project to Illinois Department of Mines and Minerals, January 7, 1976, pp. 1-2.

383 J. B. Fehrenbacher, B. W. Ray, T. S. Harris and E. E. Voss, "Prime Agricultural Land in Illinois", Illinois Research, University of Illinois Agricultural Experiment Station, Fall, 1974. Vol. 16, No. 4, p. 15.

384 The Department of Mines and Minerals defended its "coarse material allowance" as striking a balance between the reclamation of agricultural land and the development of energy resources, suggesting that the provision could be changed and rocks removed in the future if the rule proved insufficient for "high level row-crop yields".

384 Under subsection (5) of Rule 1104, the Department of Mines and Minerals defined the characteristics of a suitable agricultural root medium as that "of a vertical thickness adequate, including the darkened surface soil, to ensure a total depth of four feet". While alluding in an earlier sentence in the same paragraph to "chemically suitable" materials in the agricultural root medium, the Department does not indicate what those might be, or how they might best be preserved or restored. It is at this point in the explanation of Rule 1104 that one might quite reasonably expect a discussion of the importance of preserving the chemical and organic functions of the tospoil ecosystem, and so, the merits

of separating the A and B soil horizons. However, none exists in the body of that paper.

384 When a Mr. George Kinder of Catlin, Illinois suggested: (1) that topsoil be replaced on the same area from where it was removed; (2) that subsoil down to 60 inches be removed and separately segregated; (3) that glacial till be segregated and replaced separately, and (4) that subsoil and topsoil be replaced in uniform layers", the Department of Mines and Minerals replied that "All of the suggestions exceed the current requirements of the Act and are subjects properly to be taken up by the Legislature".

384 Subsection (8) of Rule 1104 allows the final cut and haulage roads to remain as water impoundments after strip mining on previous croplands, a provision which automatically removes as much as 30% of once productive agricultural land from future agricultural use. Actually, even more land will be indirectly taken from productive agricultural use as field patterns and efficient farm operation and management will be severely hampered by water impoundments scattered irregularly over a farmstead.

384 The variance mechanism under Rule 1104, which allows the Director of the Department of Mines and Minerals to "alter slope and texture requirements" in the Rule, is a variance proviso that will contribute to lower levels of agricultural productivity on strip-mined agricultural lands throughout Illinois. Although this variance procedure has been defended by the Department on the grounds that a variance "would result in more productive agricultural land", the weakness in this argument is that the variance procedure might allow more agricultural acres per se, but not necessarily acres which produce pre-mining agricultural yields. Thus, under this procedure, "more productive agricultural land" could easily be construed as more pasture land rather than more row-crop land. Thus, under the logic of this variance, returning a one hundred acre mined-over farmstead to 80 acres of pasture rather than its original 60 acres of row-crop land would be possible since numerically more acres of "productive? agricultural land would be reclaimed. n6 Further, the test in the variance procedure only requires that a granted variance "better effectuate the purposes of this Act", of which "planting crops for harvest" is only one.

385 n6 This has in fact been the prevailing practice in the last few years, and Rule 1104 and the 1975 amendments to the Illinois strip mine law appear only to accommodate what was practiced in the past: e.g., " . . . of the land on which mining permits were issued in the five years prior to 1972, 61 percent was in cropland and 18 percent was in pasture. However, the planned reclamation shows that none was to be in cropland and 91 percent was to be in pasture". (Harold D. Guither, "Illinois Lands Affected by Strip Mining",

Illinois Agricultural Economics, July 1974, p. 19); and, "In 1972, of all land reclaimed, 93 percent and 7 percent were reclaimed as pastures and forest respectively. No land was reclaimed for row crops" (Thad Godish and Arnie Spielbauer, Letter to the Editor, The Quincy Herald-Whig, February 2, 1975).

385 If existing practices are any measure of the effectiveness of the Illinois strip mine reclamation law, "agricultural loss" - of both productivity and acres - will become standard practice in Illinois as long as coal is strip mined from productive agricultural land. Peabody Coal, for example, has submitted an application for a permit to strip mine in Randolph County, where 95% of the land in question is farmable, but Peabody only proposes to return 610 acres of the 1382 acre site to row crop production; that's a 50% loss of row-crop agriculture, not to mention the probable productivity losses on the restored 50%. n7

385 n7 Mike Schechtman, Illinois South Project, "Summary of Remarks", Paper for Congressional briefing on strip mining, Washington, D.C., April 13, 1976, sponsored by the Environmental Policy Center, p. 1.

385 In a recent letter to Russell Dawe, Director of the Illinois Department of Mines and Minerals, Mike Schechtman of the Illinois South Project has described how the "loopholes" of the Illinois strip mine law - including those which exempt haulage roads and the final cut from reclamation - actually work to the operator's advantage and accelerate agricultural land loss:

385 The "loopholes" in the law which I referred to . . . have to do with allowances for haulage roads and the final cut wherein they do not have to be reclaimed if approved by the Director. I have asked Mr. Earl Smith, an engineer for Consolidation Coal Co., what efforts are taken to avoid having haulage roads in areas of row-crop land. He replied that none are taken, and in fact, since row-crop land generally will have the least slope in a given area to be mined, they tend to locate the haulage roads in the row-crop portions in order to save expense. Furthermore . . . I have asked two of the Department's field inspectors, Mr. Don Larsen and Mr. Bill Smith, for their estimates on how much land surface area is lost to haulage roads and the final cut, and their estimates ranged from 20% to 30%. I have reviewed 5 current permit applications for surface mining in Randolph and Perry Counties, and almost all of them have substantial acreage designated for impoundments, much of which is land suitable for row-crop agriculture. This contradicts what to me is the spirit and intent of the amendments signed into law in 1975; to put back the maximum possible

amount of land into a condition suitable for row-crop agriculture when land to be mined is capable of row-crop production.

386 My comments that operators are attempting to circumvent the intent of the law by restoring row-crop capability land to a pasture capability was not in reference to the past, but in direct reference to current permit applications by coal operators in Perry and Randolph Counties. In Perry County, for example, Amax Coal Co. has a permit application for 1315 acres, for which they have only designated some 400 acres to be returned to row-crop condition. The Soil Conservation Service has determined that the permit area contains 1013 acres of class II and class III soils which are suitable for row-crop production. The difference of 600 acres is rather substantial. In Freeman United's permit application (in Perry County) for 848 acres, the operator did not clearly and specifically designate which acres would be returned to row-crop standards. For this permit area, SCS has determined that at least 479 acres of class II and class III soils should be returned to row-crop condition. Southwestern Illinois Coal Co. has a permit application for 1815 acres, and had the audacity to try and circumvent the role of the Perry County Board by designating all the land to be reclaimed to a pasture condition, and indicating that the Director of the Department of Mines and Minerals shall determine which acres shall be reclaimed under the provisions of Rule 1104. In this case, SCS has determined that 1557 acres of class II and class III soils should be returned to a row-crop condition . . . n8

386 n8 Letter to Russell T. Dawe, Director, Illinois Department of Mines and Minerals, April 29, 1976, from Mike Schechtman, Staff Member, Illinois South Project, Carterville, Ill.

386 As has been shown in an earlier section of this paper, there are serious questions as to whether high capability agricultural lands strip mined for coal can be returned to their original capacities within an acceptable period of time. The question in this instance is not whether agricultural lands can be reclaimed, but rather, can they be restored to their full productive capability. Furthermore, the measure of productivity is not whether some mined-over agricultural lands reclaimed and controlled by Amax or Peabody produces "knee-deep crops of alfalfa", but rather what the quality of that alfalfa yield is per acre, whether alfalfa grew there before, and what kind of alfalfa is growing there now. The test is not merely one of "showcase growth", but productive, quality yields on a sustained basis and on a par with the full agricultural value of whatever grew there before. As long as that cannot be

done, then there are real grounds for putting productive agricultural lands off limits to strip mining.

387 The problem with the Illinois Mined Land Conservation and Reclamation Act and Rule 1104 is that nowhere in the law or the regulations is either pre-mining agricultural productivity or pre-mining agricultural yields even so much as mentioned. Phrases such as "acceptable crop yields", "high level of row-crop agricultural production", "quality row-crop yields", "high level of row-crop productivity", and "productive row-crop usage" abound throughout the discussion and explanation of Rule 1104 in an attempt to assure the reader that restored agricultural productivity is what the Department of Mines and Minerals is concerned with, but only once is the issue of pre-mining productivity ever mentioned head on, and in that instance only in the context of a "theoretical goal":

387 " . . . While restoring the mined land to its original production characteristics should be the theoretical goal of any reclamation statute or regulation, striking a workable balance between reclaiming land in a fashion which will assure a high level of row-crop productivity and the efficient removal of valuable energy resources is desirable. Hence, we have struck that balance by establishing the 20% coarse material requirement. If this requirement can be demonstrated to be insufficient to provide for high level row-crop yields, then the provision could be changed in a future rule making.  
n9

387 n9 "Rule 1104", op.cit., p. 12.

387 Thus, the "balance" that will be struck in Illinois as long as coal is strip mined from productive agricultural lands under the current law, will be one of continuing agricultural loss. Under this law, some land will be completely taken out of agricultural production, some will be shifted to less productive kinds of agricultural use, and all such lands impacted will lose some measure of their premining agricultural capability.

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Statement by John L. McCormick Before the Energy and Environment Subcommittee of the House Interior and Insular Affairs Committee

On HR 2, "Surface Mining Control and Reclamation Act of 1977"

March 4, 1977.

389 Mr. Chairman and Members of the Subcommittee, I want to thank you for this opportunity to appear before you to present the views of the Environmental Policy Center on the importance of enacting a Federal coal surface mining bill. This is an issue which has gone too long unanswered and the additional hundreds of thousand of acres of land left scarred and, in some cases, permanently broken are testimony to the effect of this delay in enactment.

389 Once again, the people whose lives have been endangered and interrupted by strip mining, have had to come to the Congress to tell their story and demand

a phase-out of strip mining as a method of mining coal. While they speak, the visible proof of their complaints, more miles of highwalls, more silt in streams and rivers and more erosion of their land and tax base, are added to the total destruction.

390 Finally, however, there is some indication that this Congress will heed their pleas and the President will sign the bill into law. While there are those who have come before you to demand a phase-out bill, there are also those who want to concentrate on trying to regulate the strip mine operators and take their chances with a regulatory bill wherein the Federal government would play a "watchdog" role to assure that the state regulatory authorities carry out the intent of the law. The abolitionists have a long history behind them to convince even the optimistic that a strong law will not eliminate the damages and suffering because tough laws have been past before but have not been enforced. For them, only abolition will solve the problems and put an end to the destruction.

390 I see the need for a phase-out from their perspective but I see the need for a phase-out from a National coal policy perspective also. It may sound incongruous, to suggest a coal policy based on legislation what would preclude the mining of 55% of our present coal production. But it makes as much sense as telling a food addict that his great desire for food is going to destroy his health and bring about his demise. I say this because I see that the trend in the coal industry, away from underground coal mining, toward strip mining, is the onset of a crisis that will overcome this Nation a few generations from now. We are watching the beginning of a coal crisis. Strip mining will have aided in the increase of total coal production over the one billion ton mark before 1990. If strip mining continues to increase its percentage of contribution, as it has been doing steadily for the past 10 years, it is likely that strip mining could represent about 80% of total production. In 1967, strip mining contributed only 37% of total coal production. This is an alarming situation that has not caught the attention of the energy experts because it may be too subtle for them to grasp the importance of. While more than one-half of our total annual coal production is coming from strip mines, only approximately 10% of our coal reserves can be recovered by strip mining.

391 We talk of these strippable reserves in terms of the tonnage they represent, not the heat - or energy - content they contain. In terms of

tonnage, the U.S. Bureau of Mines has estimated about 132 billion tons of coal can be strip mined. Of this total, 96 billion tons are Western subbituminous and lignite coals with a heat content equal to only 2/3 of the heat content of Eastern bituminous coals. Therefore, those Western reserves total only 64 billion tons when that lower heat content is reflected. That would diminish the strippable reserves in the Nation to about 100 billion tons. That does not imply that we will strip mine all of those 100 billion tons of coal. Quite obviously, the coal operators are not going to fight over the last tons of strippable coal. Long before the reserves are exhausted, there will be considerable difficulty in locating strippable blocks of coal with reserves large enough to allow the mining operator to amortize the investment on his equipment - a period of time generally about 25 to 30 years duration.

392 Since Eastern strippable coal reserves, in certain states, are less than 2 billion tons, they will be exhausted first and the increasing coal demand will continue the trend of an industry shift to the Midwestern and Western coal fields.

392 Evidence of this shift can be seen by virtue of the fact that Montana and Wyoming increased their collective strip mine production by 51 million tons in the past 10 years. During that period, the eight Appalachian coal producing states increased their collective strip mine production by only 23 million tons. National strip mining production increased more than 165 million tons in the past decade, further substantiating the decrease in the East's share of total coal production. While Kentucky has increased its strip mine production total, that new coal is coming, generally speaking, from small, spot market mines where the operators jump into the business when coal prices are high. There has not been a new strip mine of significant size opened in Western Kentucky in the past five years. The reason for that is simple; there are no large blocks of unmined coal remaining, which would allow for a return on the investment to purchase large equipment. It has little reflection on the sulfur content of the coal since production from those fields, as well as similar fields in Southern Illinois, continues to increase.

393 What does this western shift of our coal industry mean to our future dependence upon coal? It means that we are getting fat on a diet of cheap, easy to recover, strip mined coal and as our appetite becomes greater, our supply becomes less and its lifespan is shortened. We will begin to approach a point of no return where we cannot dig strip mined coal from the ground in quantities we will have come to demand because of the great difficulty in opening new strip mines large enough to fill that great demand. The precise

time is immaterial because when it happens, it will be too late to correct that condition.

393 Economists dismiss these fears by saying that market forces will dictate that the coal industry will shift from surface to underground coal mining to meet the demand as strippable seams become depleted. That is an unfounded are careless statement to be made by persons who may not have any familiarity with the fragmented, and highly complex underground coal mining industry. That is not an industry whose production can be cranked up or down readily as the demands for coal fluctuate. That is a characteristic found in the spot market strip mine coal producers who can open up a new coal mining operation in a few weeks and close it as quickly.

394 Underground coal mining companies are part of a unique industry in this Nation. It has few counterparts which include hardrock underground mining and construction tunneling. It is made up of skilled miners with years of experience who are available to provide on-the-job-training to new miners; engineers trained formally and by practical experience who design mines, taking into consideration the multitude of potential problems which could jeopardise the miners' health and safety and the equipment within the mine; equipment manufacturers and designers; rock tectonics experts; foremen and managers of underground mines and companies with experience in setting up deep mines. All of these are highly skilled and specialized individuals who, first of all, do not have an aversion toward working in cramped, isolated conditions far beneath the surface.

394 The deep mine work force is only as good as the number of experienced miners it has in its ranks. As deep mines are forced to close because of their inability to compete with the externalized costs of strip mining, the coal industry loses more of this valuable work force to other industries or to employment outside of the region.

395 Presently, the underground mining work force is made up of an imbalance of young, inadequately trained coal miners. Many of these new entries into the work force are former Viet Nam veterans. Some voices within the coal industry site this as a contributing factor in the increase of fatal and non-fatal accidents in coal mines.

395 In 1975, deep mine operators employed 134,710 miners to produce 293 million tons of coal. How many trained miners will be needed to fill the gap when we do, in fact, exhaust our strippable coal seams and must return to deep mining to meet the higher coal demands in the future. The industry may have to

encourage three times the number of presently employed deep miners to mine that kind of tonnage.

395 Where are these new miners going to come from if the people have been forced off their land or out of the coal mining industry by the ravages of strip mining and its unfair competition advantages? Will the new workers choose to live in such a scarred environment? I doubt that they will, nor should they have to.

395 The Nation is looking to this Congress and President Carter for a rational energy policy and, within that framework, a coal policy. This legislation, with a phase-out of surface coal mining over a realistic time period, can be the important step forward as we begin to use our coal reserves to supply an increasingly greater portion of our total energy needs. Failure to see the connection between steadily increasing strip mining and a diminishing deep mining industry, may preclude the opportunity to advance the only coal policy that can accomplish that goal - a policy where regional coal demands are met by regional coal reserves.

396 The U.S. Department of the Interior's Coal Extraction Task Force gave careful thought to the impact of massive Western strip mine development in its Coal Extraction R & D Program, revised on December 27, 1973 and published in March of 1974. Interior created the task Force to determine the research and development required to enhance the prospects for accelerated coal production and to mitigate the undesirable environmental and social effects. The objective of the effort was to increase annual coal mining capacity from the 1972 level of 600 million tons to about 2.0 billion tons by 1985. Two strategies were postulated for achieving the target production level.

396 Strategy 1, was a maximum reliance on surface mining Western coal to achieve the stated objective. It assumes that production from the Western surface reserves will expand from 50 million tons in 1972 to 1.440 billion tons by 1985; an annual production level to be maintained through 2000. Surface mine production in the East is assumed to grow modestly from 250 million tons in 1972 to 380 million tons by 1985. Deep mine production from the West is not initiated and production from deep mines in the East is not expanded.

397 Strategy 2, balances the increased production between regions and mining methods. It would reduce dependence on surface mining after 1980 by relying more heavily on deep mining in the East and West. Underground development in the East would double to 600 million tons by 1985 and after 1985, relatively large increments are made by deep mine coal development from this region. Eastern strip mining is steadily reduced after 1985.

397 Additions to reserves from resources were not considered. Thus, the analysis defined the impact based on current reported reserves.

397 Since Strategy 1 is oriented toward the low btu surface mine coal of the West, the annual production required from all regions is 2.12 billion tons for Strategy 1 as compared to 1.98 billion tons for Strategy 2. Cumulatively, over the period 1972-2000, Strategy 2 requires about 3 billion tons less coal than Strategy 1. This is equal to about a 5 year output at current production levels.

397 The Task Force concluded that Strategy 1 would, ". . . exhaust the current surface mine reserves in the West by 1996; an additional 5.74 billion tons of coal will need to be added to reserves to support production from 1997 to 2000. It would also consume about 10 billion tons of strip mine reserves in the East - 67% of the total from that region."

398 Strategy 2 would require about 21 billion tons of surface coal in the West (82% of the reserves) and 9 billion in the East (60% of reserves). Greatly accelerated development of underground reserves would still leave 93 billion tons in the East and 41 billion tons in the West by 2000.

398 As detailed above, Strategy 1 would cause rapid regional changes and exhaust a very high proportion of reported surface reserves in both the East and West by the year 2000, threatening rapid decline in surface mine development after the turn of the century. Thus Strategy 1 would cause an initial rapid transition which may be followed by rapid downturn. Additionally, the ability of the coal industry to develop mines of sufficient size to mine efficiently (and to attract capital) is a function of the planned life of the mine which, in turn, is a function of the size of the reserve base. Given that the life of a mine is typically 20-30 years, continued increases in production past the point of consumption of half of the recoverable reser total is unlikely. Thus Strategy 1 cannot be depended upon to maintain a production output such as was perceived by the Task Force. For these reasons, it found Strategy 1 to be unacceptable. Accordingly, the Task Force used Strategy 2 to define the Coal Extraction R & D Program.

399 Since that report was published in 1974, there has been no visible change in the thinking of the Legislative or Executive branches of the government regarding where and how we will mine coal in the future. The present

Administration has given indications that changes are forthcoming but they will have to recommend broad and imaginative proposals to be of any help at this time. The problem has been allowed to slowly deteriorate to the degree that it has and revival of that industry will not be accomplished readily.

399 The technology used to deep mine coal has been retarded by the shift to strip mining and is far behind that of the European coal industry. The longwall mining method, which incorporates massive jacks and ripper plows, is used extensively in European mines. It provides for greater safety as the miners work under heavy steel shields supported by a series of four-legged jacks placed side by side, each having a lift capacity of 100 tons or more. However, only 9 million of a total 293 million tons of deep mine production in this country was recovered by that mining method in 1975.

399 The Energy Research and Development Administration's R&D program must include a comprehensive plan to bring about new methods of mining underground coal safer and more rapidly. Otherwise, the low production per man-day figures inherent in the industry today, will prevail and our hopes of mining the quantities of deep mined coal anticipated in the future will be frustrated.

400 There must be an immediate commitment on the part of the government or industry, or both, to initiate a training program which provides a thorough education of all aspects of coal mining safety to all newly recruited miners. Federally supported and operated model mines must be made available for such training and for demonstration of new mining methods and equipment.

400 All of this will take time to put into place and during this necessary lead time, we have to be assured that the continuing strip mines will be made to cease their destruction of the land, watersheds, farms and personal property. The passage of this strip mining bill is a beginning, but important, step. Enforcement, also a Federal responsibility under the strip mining bill, is a far more important task.

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Statement of John C. Doyle, Jr. Before The Energy and Environment Subcommittee of The House Interior and Insular Affairs Committee

On H.R. 2, "Surface Mining Control and Reclamation Act of 1977"

March 4, 1977

401 Mr. Chairman, Members of the Subcommittee, since October of 1976, I

have been working on a study of state strip mining laws for the Environmental Policy Institute. I have recently completed the initial tabulations of that study and would like to report to the committee some of my findings.

401 The study included surface mining laws from 28 states with coal reserves, 25 of which actually produced coal by surface mining methods in 1976.

The purpose of this study was to determine which state strip mine laws contained certain basic provisions of law necessary for a minimal level of environmental protection. public health and safety, and successful reclamation.

401 It was contemplated at the outset of this study that perhaps one of the most important functions of any state regulatory program affecting strip mining - a program which would inevitably derive its legality and authority from the construction of the strip mine statute itself - is to help internalize the historic social and environmental costs that have traditionally resulted from laissez faire mining activities. In other words, in undertaking this study, it was assumed and expected that responsibly drawn provisions of law could help to make strip mining a more socially responsible and publicly accountable economic activity.

402 In this study, I attempted to look at the regulatory process in each state through the construction of its strip mine law. I developed five tables of information covering nearly 50 individual provisions of law. a category-by-category summary of findings, with summary tables, and an interpretation of findings is presented below.

402 Year Enacted/Amended. Although 38 states have enacted strip mine laws, 25 of these actually produced coal by surface mining methods in 1976. Since 1970, no less than 26 states with strippable coal reserves have either enacted or amended strip mine laws.

402 Rules and Regs Promulgated. While most of the states examined in this study have promulgated rules and regulations required by their strip mine statutes, it is important to note that rules and regs only derive their legal authority from the individual provisions of the strip mine law itself, and therefore can do no more than what the law actually specifies.

402 Administering Agency. Departments of Environmental Resources, Natural Resources, or Conservation are the most prevalent state agencies charged with administering state strip mine laws. However, the mandates, structure and orientation of these departments can differ significantly from state to state. A danger exists in some states of circumscribing the independence of the regulatory agency by placing it in a department that is also charged with the promotion of economic activity and the coal mining industry.

402 Covers Coal Only. In order to effectively regulate the surface coal

mining industry, it is important that the strip mine law cover only coal, rather than attempting to regulate all surface minable minerals with one law. Ohio, Alabama, Virginia, North Dakota, New Mexico, Maryland, Kansas, and Louisiana have strip mine laws which give exclusive regulatory attention to coal.

402 Unsuitable Lands Review Process. Only six states - Ohio, Wyoming, West Virginia, Texas, North Dakota and South Dakota - have stated provisions for designating certain critical, vulnerable, or uniquely valuable areas as unsuitable for strip mining. Few of these provisions however, give little opportunity for citizen nominations. And in West Virginia's case, there is a clear refusal on the part of state officials there to exercise one of the better unsuitable lands provisions.

403  
 \*3\*  
 SUMMARY  
 OF TABLE  
 I \*  
 \*8\*STATES  
 HAVING AT  
 LEAST  
 MINIMAL  
 PROVISION  
 IN STRIP  
 MINE LAW  
 \*6\*  
 Important  
 Applicati  
 on  
 Requireme  
 nts

Listing	Unsuitabl e Lands	Water Sampling & Hydrologi c	Core Sampling & Chemical Analysis Pennsylva nia	Blasting Plan	Post- Mining Land Use Approvals	Certifica te of Liability Insurance Pennsylva nia	of ns nia
Previous Covers Infractio Coal Only Pennsylva Ohio	Review Process Ohio	Consequen ces None (Texas and N. Dakota have partial provision s)	nia Ohio ( Illinois, Montana,	West Va.	None	nia	nia
Alabama	Wyoming					Ohio	Ohio

West.Va.,  
 Texas,  
 Maryland,  
 and Iowa  
 have  
 incomplet  
 e or non-  
 mandatory  
 provision  
 s)

Virginia	West Va.		West Va.	Wyoming
N. Dakota	Texas		Alabama	West
Va.				
New				
Mexico	N. Dakota		Texas	Alabama
Maryland	S. Dakota		Utah	
Virginia				
Kansas			Louisiana	Texas
Louisiana				
Tennessee				
[See Table in Original]				

403 \* see complete Table I, p. 26.

403 Source: Environmental Policy Institute, Washington, D.C. March, 1977

404 Important Application Requirements

404 Water Sampling & Hydrologic Consequences. No state strip mine law examined in this study specified a satisfactory provision for requiring that the results of water sampling and hydrologic analysis be reported in the permit application. Texas' strip mine law requires ". . . information concerning . . . the anticipated hydrologic consequences of the mining operation . . . ", while North Dakota law asks for "hydrologic data".

404 Core Sampling & Chemical Analysis. Only two states - Pennsylvania and Ohio - required that the results of core sampling be submitted with the permit application. Montana has good language in a non-mandatory core sampling provision. Iowa requires "samples of overburden", and North Dakota law requires that the operator "submit a soil survey of the soil material overlying the deposits of coal . . . "

404 Blasting Plan. One state, West Virginia, specifies in its strip mine law that a blasting plan be submitted with the permit application.

404 Post-Mining Land Use Approvals. No state strip mine law required that post-mining land use approvals from local jurisdictions and other appropriate and federal agencies for contemplated changes in the use of land after mining be submitted in the permit application.

404 Certificate of Liability Insurance. Seven states - Pennsylvania, Ohio, West Virginia, Alabama, Texas, Utah, and Louisiana - required that a certificate of liability insurance be submitted by the operator, either with the permit application or immediately following approval.

404 Listing of Previous Infractions. Eight states - Pennsylvania, Ohio, Wyoming, West Virginia, Alabama, Virginia, Texas and Tennessee - made some provision in their strip mine laws for the listing of previous infractions in the permit application. Of these eight states, Ohio's provision offers the strongest language. However, none of the state strip mine laws examined in this study has a provision which requires the complete listing of all infractions accrued by an operator during the previous 5 years, including all notices of non-compliance, violations hearings, permit denials, permit revocations & suspensions, cease & desist orders, restraining orders, bond forfeitures, fines, criminal prosecutions, etc.

#### 404 Permit Approval or Denial Process

404 Burden of Proof on Operator. Only three state strip mine laws - those of Wyoming, Alabama and Missouri - listed any kind of provision for placing the burden of proof on the operator. Of these three, Wyoming offered the most explicit language for placing the burden of proof on the applicant in the permit review process as well

#### 405

\*2\*SUMMARY OF TABLE II  
\*2\*STATES HAVING AT LEAST MINIMAL  
PROVISION IN STRIP MINE LAW

Burden of Proof on Applicant	Written Findings By Regulatory Authority
Wyoming	NONE.
Alabama	
Missouri (Kentucky, opinion of Attorney General)	(Louisiana & Ohio come closest)

405 (see complete Table II, p. 44)

405 as during any hearings proceeding. Kentucky's Attorney General has interpreted the Kentucky strip mine law as requiring the operator to bear the burden of proof in the permit application process even though that state law has no specified burden-of-proof provision.

405 Written Findings From the Operator's Permit Application. This study examined 26 state strip mine statutes for a provision of law which would require the permit reviewing authority to make positive written findings from the operator's permit application in seven specified areas - Reclaimability, Legal Right of Entry & Surface Owner Consent, Protection of Public Water Supply, Protection of Landowner Water Supply, Protection of Alluvial Valley Floors,

Compliance with Other Laws, and Protection of Public Works - before a permit could be approved and issued. None of the state laws examined in this study required their reviewing agency or board to make such written findings. The closest that any state strip mine law comes to requiring written findings is that of Louisiana, which requires that all orders of the Commissioner of the Department of Conservation pertaining to permits be "in writing" and "be a public record". Ohio's strip mine law also requires that any order of the Chief of the Division of Reclamation pertaining to permits be "in writing and contain a finding of the facts upon which the order is based".

#### 406 Environmental & Public Safety Performance Standards

406 Requires Elimination of Highwalls. Only three states - Pennsylvania, Ohio and Montana have provisions in their strip mine laws which require elimination of all highwalls; Texas's law states that it will require the operator to eliminate highwalls if required by federal law.

406 Requires Elimination of Spoil Piles. Two states - Pennsylvania and Ohio - have specific provision in their strip mine laws for eliminating spoil piles.

406 Prohibits Spoil on Downslope. Only one state strip mine law, Tennessee's, specified provision for prohibiting spoil on the downslope, and in that case, exception is made for the initial cut.

406 Requires Burial of Toxic Substances. Fourteen state strip mine require the burial of toxic substances.

406 Requires Separation & Segregation of Topsoil. Ten state strip mine laws require topsoil separation.

#### 406 Required Setbacks

406 Streams. Six state strip mine laws, those of Kentucky, Pennsylvania, Ohio, West Virginia, Kansas and Texas, include a setback requirement for strip mining near streams. However, while West Virginia law requires a 100 foot setback from streams, it does not prohibit coal access and haul roads from being constructed in or adjacent to existing stream channels, and will waive the requirement altogether for ". . . the dredging and removal of minerals from the streams or watercourses of this state".

406 Deep Mines. Only one state strip mine law, Texas, specified any provision for keeping strip mining away from abandoned or active underground mines, and in that case the the language states: ". . . refrain from surface mining in proximity to active and abandoned underground mines . . . "

406 Adjacent Landowners. Eleven of the state strip mine laws examined in

this study specify setbacks for strip mining near adjacent landowners, four of which setback mining operations from permanent or occupied dwellings rather than property lines, and four others of which use a lateral support formula.

407

\*5\*SUMMARY OF  
TABLE III \*  
\*5\*STATES  
HAVING AT LEAST  
MINIMAL  
PROVISION IN  
STRIP MINE LAW  
\*5\*  
Environmental &  
Public Safety  
Performance  
Standards

Requires Elimination of of Highwalls Pennsylvania Ohio Montana (Texas will if Federal law requires)	Requires Elimination of Spoil Piles Pennsylvania Ohio	Prohibits Spoil on Downslope Tennessee (except for initial cut)	Requires Burial of Toxic Substances Kentucky Ohio Wyoming Illinois Montana Indiana West Virginia Virginia North Dakota Kansas Tennessee Iowa Missouri Washington	Requires Separation & Segregation Topsoil Pennsylvania Ohio Wyoming Illinois Montana Texas North Dakota Colorado Iowa Louisiana
Required Setbacks For Strip mining		Adjacent Landowners Pennsylvania Ohio Wyoming Illinois Alabama North Dakota Missouri Colorado Oklahoma Kansas Arkansas	Public Roads Kentucky Pennsylvania Ohio Illinois West Virginia Alabama Texas North Dakota Kansas Arkansas	Public Parks Kentucky Pennsylvania Ohio Wyoming West Virginia Alabama

Required Setbacks For Strip mining

Streams Kentucky Pennsylvania Ohio West Virginia Texas Kansas	Deep Mines Texas ("refrain from" mining near)	Adjacent Landowners Pennsylvania Ohio Wyoming Illinois Alabama North Dakota Missouri Colorado Oklahoma Kansas Arkansas	Public Roads Kentucky Pennsylvania Ohio Illinois West Virginia Alabama Texas North Dakota Kansas Arkansas	Public Parks Kentucky Pennsylvania Ohio Wyoming West Virginia Alabama
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407 \* see complete Table III, p. 57A.

407 Source: Environmental Policy Institute, Washington, D.C. March, 1977

408 Public Roads. Less than half of the laws examined required any setback from public roads. Only ten state strip mine laws specified any setback for mining near public roads, and several of these make allowance for variance.

408 Public Parks. Six state strip mine laws make some setback provision for mining near public parks - Kentucky, Pennsylvania, Ohio, Wyoming, West Virginia and Alabama.

408 Enforcement Powers, Penalties & Inspection

408 Minimum Frequency of Inspection. Only one state strip mine law, West Virginia's, specified a satisfactory minimum frequency requirement for the field inspection of all active strip mines, calling for one inspection every 15 days.

408 Suspension & Revocation Powers. Twenty-four state strip mine laws make provision for the suspension or revocation of a permit or license. However, many of these provisions are vague and linked to specific infractions or patterns of repeated violation. Ohio's strip mine law has one of the better provisions for permit revocation, specifying that after being convicted of a third offense, no such operator will be eligible for a permit or license for a period of five years.

408 Cease & Desist Power in Field. Without question, one of the most important enforcement levers at the disposal of the regulatory authority is the cease and desist order. A state strip mine law that does not empower its field inspectors with the legal authority to shut down abusive and dangerous mining operations on the spot is essentially a law that only has authority to "desk regulate" the strip mine industry. Only Pennsylvania, Texas and West Virginia give their field inspectors the cease and desist power, and of those three, Pennsylvania and West Virginia appear to offer the strongest provisions, while Texas automatically limits the potential shut down to the "portion" of the surface mining operation creating an imminent danger to the health or safety of the public.

408 Civil & Criminal Penalties. Twenty of the strip mine laws examined in this study make some provision for civil penalties, while eleven make provision for criminal penalties. Many of the civil penalties are discretionary or provide for waiver or refund, as in the case of Alabama's law, where the Alabama Surface Mining and Reclamation Commission is authorized to "waiver or refund up

to 90 per cent of any penalty . . . " The strip mine laws of Louisiana and Missouri encourage their officials to settle violations through "conference, conciliation and persuasion".

408 Nine of the state strip mine laws examined in this study have no specified provision for criminal prosecution and/or imprisonment. Those state laws which do have imprisonment provisions are most always linked with a civil penalty and made an "and/or" option, as in the case of Virginia, whose law specifies that certain types of infractions will be a misdemeanor "punishable by a fine of not more than one thousand dollars or confinement in jail for a period not exceeding one year or both . . . ". Ohio's strip mine law specifies that for

409

\*5\*SUMMARY OF  
TABLE IV \*  
\*5\*STATES  
HAVING AT LEAST  
MININMAL

PROVISION IN  
STRIP MINE LAW  
\*5\*Enforcement

Powers, Penalties & Inspection Minimum Frequency of Inspection	Suspension & Revocation Powers	Cease & Desist Power In Field	Civil Penalties	Criminal Penalties
West Virginia	Kentucky	Pennsylvania	Kentucky	Ohio
	Pennsylvania	West Virginia	Pennsylvania	Wyoming
	Ohio	Texas	Ohio	West Virginia
	Wyoming		Wyoming	Alabama
	Illinois		Montana	Virginia
	Montana		Indiana	Texas
	Indiana		West Virginia	North Dakota
	West Virginia		Alabama	Tennessee
	Alabama		Virginia	Maryland
	Virginia		Texas	Iowa
	Texas		New Mexico	Louisiana
	North Dakota		Colorado	
	New Mexico		Tennessee	
	Missouri		Kansas	
	Colorado		Arkansas	
	Tennessee		Iowa	
	Washington		South Dakota	
	Oaklahoma		Missouri	
	Maryland		Utah	
	Kansas		Louisiana	
	Iowa			
	Georgia			
	Utah			
	Louisiana			

[See Table in Original]

409 \* see complete Table IV, p. 76.  
 \*5\*Criteria For  
 Bond Release &  
 Successful  
 Reclamation

Completed Earthwork	Soil Testing	Successful Revegetation	Absence of Suspended Solids in Streams	Extended Operator Liability
Pennsylvania	Kentucky	Montana	None. (Montana & Pennsylvania come closest)	Kentucky
Ohio Montana	Ohio West Virginia Indiana	Missouri Texas Iowa		Pennsylvania Wyoming Montana Maryland Texas

[See Table in Original]

409 Source: Environmental Policy Institute, Washington, D.C. March, 1977

409 purposely misrepresenting or omitting any material fact in an application for a license or permit an operator "shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than six months, or both".

410 Criteria For Bond Release & Successful Reclamation

410 Completed Earthwork. An important measure of completed backfilling and grading in the reclamation process is that the strip-mined site be restored to its approximate original surface configuration in order that the surface drainage pattern and aquifer recharge capability be re-established and resumed after mining. Only three states - Pennsylvania, Ohio and Montana - specify adequate provision in their strip mine laws for contouring and completing earthwork so that the approximate original surface configuration will be restored. Wyoming's law only requires "contouring operations to return the land to the use set out in the reclamation plan". Missouri's strip mine law specifies that "up to and including 25 per cent of the total acreage to be reclaimed each year need not be graded to a rolling topography . . . if the land is reclaimed for wildlife purposes . . . "

410 Soil Testing. Only four states - Kentucky, Ohio, West Virginia and Indiana - have provision in their strip mine laws which requires that soil tests be made on the mine site after it has been graded and backfilled, but before any seeding or planting is begun. Kentucky specifies that soil pH be considered, while Ohio requires that soil tests be made for "vegetation-sustaining factors".

410 Successful Revegetation. Only four states - Montana, Texas, Missouri and Iowa - have a provision in their strip mine laws which requires that mine-site revegetation withstand some test or capability standard beyond seeding or planting. Missouri's law requires "survival of supporting vegetation by the second growing season", Montana's law requires, in part, that the "diverse vegetative cover" be capable of "withstanding grazing pressure from . . . wildlife and livestock" and be "regenerating under natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds . . .", and Iowa's law requires that "a diverse, effective and permanent vegetative cover capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation shall be established on all affected land".

410 Absence of Suspended Solids in Streams. The absence of suspended solids above natural levels in surrounding streams is a particularly good indication that the vegetation has established itself and is holding soil on the reclaimed land. None of the state strip mine laws considered in this study specified such a provision in connection with bond release and successful reclamation. Pennsylvania's law, however, does specify that no permit shall be granted unless the reclamation plan provides for "a practicable method of avoiding acid mine drainage and preventing avoidable siltation or other stream pollution". The law continues to specify that "failure . . . 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

411

\*3\*SUMMARY OF TABLE V \*

\*3\*STATES HAVING AT LEAST MINIMAL PROVISION IN STRIP MINE LAW

*3*Public Notice & Public Hearings	Permit Review Process	Bond Release
Unsuitable Lands Review Process		
Texas	Wyoming	Montana
	Montana	
	North Dakota	
	Missouri	
	Louisiana	
Enforcement & Monitoring		
Citizens Can Request	Citizens Can Accompany	
Inspections	Inspector	Citizen Suits
None.	None.	Pennsylvania
		Alabama

Ohio  
Montana  
West Virginia

411 \* see complete Table V, p. 87.

411 Source: Environmental Policy Institute, Washington, D.C. March, 1977  
or  
permit . . . "

412 Extended Operator Liability. In order to insure that reclamation is successful over time, it is important that the operator be held accountable for the reclaimed site for a specified number of years after vegetation has been established. Of the six states offering provisions for extended operator liability in their strip mine laws, Texas has the strongest language, stating that " . . . the four-year period of responsibility shall commence no later than two complete growing seasons after the vegetation has been successfully established as determined by the commission . . . ". The strip mine laws of Kentucky, Pennsylvania, Wyoming, Montana and Maryland also made provision for varying periods of operator liability after reclamation. In several of these states however, including Texas, the liability period may be too short.

412 Public Notice, Solicitation of Comment & Public Hearings

412 Unsuitable Lands Review Process. Of the six state strip mine laws found to have provisions for designating areas unsuitable for strip mining, only one, Texas, specified that citizens could petition the regulatory authority to have an area considered for review, and in that case, citizen participation is very narrowly drawn.

412 Permit Review Process. Only five of the state strip mine laws - those of Wyoming, Montana, North Dakota, Missouri and Louisiana - have non-discretionary provisions of law which clearly require public notice and the opportunity for a public hearing before permit approval.

412 Bond Release. Montana is the only state whose strip mine law has a clearly specified provision which requires public notice and opportunity for a public hearing prior to bond release.

412 Citizen Can Request Inspection & Accompany Inspector. None of the state strip mine laws examined in this study included a provision which specified that any citizen could request a mine-site inspection or that a citizen could accompany an inspector on a strip mine inspection.

412 Citizen Suits. Citizens and communities adversely impacted by strip

mining activity should have the explicit right to sue the negligent and/or irresponsible regulatory authority for failure to enforce the provisions of the strip mine law. Of all the states examined in this analysis of strip mine laws, only Pennsylvania, Alabama, Ohio, Montana, and West Virginia make provision for citizen suits. However, the citizen suit/mandamus provisions in several of these laws have language that could easily scare off the average citizen, particularly those which mention perjury. Some of these provisions also specify that the citizen must first file a written statement under oath with the regulatory agency before he can bring an action of mandamus.

#### 413 INTERPRETATION OF FINDINGS

413 Of the 26 state strip mine statutes examined in this study for specific provisions of law, Ohio's emerged as the law having the most key provisions, leading all other states with 20 entries. The strip mine laws of Oklahoma and Georgia had the fewest number of provisions considered in this study, each having only two.

#### \*2\*NUMBER OF PROVISIONS FOUND IN STRIP MINE LAWS FOR INDIVIDUAL STATES

State	Number of Provisions Found
Ohio	20
Pennsylvania, West Virginia & Texas	17
Wyoming	14
Alabama	13
Montana	12
North Dakota	11
Kentucky	10
Kansas & Louisiana	8
Missouri, Tennessee, Maryland & Iowa	7
Illinois, Virginia & Colorado	6
Indiana, New Mexico, Arkansas & Utah	4
Washington & South Dakota	3
Oklahoma & Georgia	2

413 Source: Environmental Policy Institute, Wash., D.C.

413 Ohio, Pennsylvania and West Virginia each scored 3 of 6 possible provisions under Important Application Requirements (Table I), leading all other states.

413 Ohio and Louisiana were the only states which made even oblique reference in their laws to Written Findings on the permit application (Table II), but neither specifically required written findings in the areas identified as important in this study.

413 Ohio and Pennsylvania headed the list in the area of Environmental and Public Safety Performance Standards (Table III), scoring 8 of 10 and 7 of 10 respectively.

413 West Virginia led all other states in the area of Enforcement Powers, Penalties and Inspection (Table IV), scoring 5 of 5 possible provisions, with Texas running second scoring 4 of 5. Pennsylvania and Montana scored highest in the categories under Criteria For Bond Release & Successful Reclamation (Table IV), each having 3 of 5 possible provisions.

414 In the area of Citizen Participation & Monitoring (Table V), Montana's strip mine law led all other states scoring 4 of 9 possible provisions, while Texas ran second in this area scoring 3 of 9.

414 Overall, for the provisions of strip mine law inventoried in this study, state strip mine statutes were generally weakest in the areas of Written Findings from the operator's application prior to permit approval; Operator Burden of Proof; Public Participation & Citizen Monitoring; Permit Application Requirements; and Criteria For Bond Release & Successful Reclamation. State strip mine laws tended to score their highest number of entries overall in the areas of Enforcement Powers & Penalties and Environmental & Public Safety Performance Standards.

414 In this study, there were 24 categories examined in which no more than six states made entries by having such provision in their strip mine law, while there were only 7 categories for which more than ten state strip mine laws made provision. In other words, there were significantly more key statutory categories in which state strip mine laws did not have provision than there were that did.

#### 414 Weakest Categories

414 Categories For Which No State Strip Mine Law Made Provision (5).  
Water Sampling & Hydrologic Consequences; Post-Mining Land Use Approvals; Written Findings on Permit; Absence of Suspended Solids in Streams; Opportunity for Citizens to Request Inspection; and Opportunity for Citizens to Accompany Inspector.

414 Categories For Which One State Strip Mine Law Makes Provision (6).  
Blasting Plan; Prohibits Spoil on Downslope; Setback from Deep Mines; Minimum Frequency of Inspection; Public Notice & Public Hearings in Unsuitable Lands Review Process; and Public Notice & Public Hearings Prior to Bond Release.

414 Categories For Which Two State Strip Mine Laws Make Provision (2).  
Core Sampling & Chemical Analysis; Elimination of Spoil Piles.

414 Categories For Which Three State Strip Mine Laws Make Provision (4).  
Operator Burden of Proof; Elimination of Highwalls; Land Graded & Reclaimed to

A.Co.C.; Field Cease & Desist.

414 Categories For Which Four State Strip Mine Laws Make Provision (2).  
Soil Testing Prior to Revegetation; Successful Revegetation defined in terms  
of  
capability standards.

414 Categories For Which Five State Strip Mine Laws Make Provision (2).  
Public Notice & Public Hearing prior to Permit Approval; Citizen Suits.

414 Categories For Which Six State Strip Mine Laws Make Provision (3).  
Strip Mining Setbacks From Streams; Setbacks From Public Parks; Extended  
Operator Liability.

414 Relatively High-Scoring Categories

414 Categories For Which Twenty-Four State Strip Mine Laws Make  
Provision  
(1). Suspension and Revocation Powers.

415 Categories For Which Twenty State Strip Mine Laws Make Provision  
(1).Civil Penalties.

415 Categories For Which Fourteen State Strip Mine Laws Make Provision  
(1).  
Burial of Toxic Substances.

415 Categories For Which Eleven State Strip Mine Laws Make Provision  
(2).  
Criminal Penalties; Strip Mining Setbacks from Adjacent Landowners.

415 Categories For Which Ten State Strip Mine Laws Make Provision  
(2).Separation & Segregation of Topsoil; Strip Mining Setbacks from Public  
Roads.

415 Looking at six particularly important categories included in this  
study  
(and for which only ten strip mine laws qualified by having at least one  
entry)  
- Unsuitable Lands Review Process, Written Findings, Elimination of  
Highwalls,  
Cease & Desist in Field, Public Notice & Public Hearings on Permit and  
Citizen  
Suits - Ohio, West Virginia, Pennsylvania and Montana all emerge having at  
least  
3 of the 6 provisions, with Ohio scoring 4 of 6 if its limited and incomplete  
written findings provision is considered.

\*6\*KEY  
REGULATORY  
POWERS &  
REVIEW  
PROCEDURES:  
STATES HAVING  
PROVISION IN  
STRIP MINE  
LAW  
Notice &

Hearing on Permit	Unsuitable Lands Review	Written Findings	Elimination of Highwalls	Field Cease	Citizen Suits
Wyoming Pennsylvania	Ohio	None.	Pennsylvania	Pennsylvania	
		(Ohio & Louisiana come closest)	Ohio Montana	West Virginia Texas	Ohio Alabama Montana West Va.
Montana North Dakota Missouri Louisiana S.D.	Wyoming West Va. Texas N.D.				

[See Tabel in Original]

415 Source: Environmental Policy Institute, Washington, D.C., March, 1977.

415 While Ohio's strip mine law has scored the highest of all state laws examined in this study, this is certainly no indication that Ohio's law - or any other "highscoring" law identified here - is adequate. The scores for the strip mine laws considered here are more indicative of weak state strip mine laws than they are of strong ones, particularly since each state law has its own peculiar penchant for framing loopholes, variances and other weaknesses that were not evaluated in this study, but which usually serve to weaken and/or circumvent the good provisions that may appear in any of these laws. A few of thses other weaknesses - often unique to one state, but sometimes common to several - are offered below as examples for the reader's information.

#### 416 OTHER WEAKNESSES IN STATE STRIP MINE LAWS

##### 416 Pocket Approval of Permits

416 While Ohio's strip mine law scores high in almost every breakdown of this study's findings, there is a serious weakness in that law which has not been addressed in this study. Ohio's strip mine law allows surface mining permits and amendments to permits issue automatically, without review, after a 60-to-180 day waiting period, depending on the size of the area applied for. Under the Ohio law, permits not reviewed by the chief of the Division of Reclamation within the prescribed period are automatically "approved". Additionally, the operator whose permit expires is allowed to continue stripping while awaiting a new permit, though theoretically, according to the law, he could be denied a new permit.

416 Alabama also applies the "pocket approval" technique to coal leases, strip mine licenses, strip mine permits, and even final reclamation work and bond release. New Mexico, Colorado, and Maryland also have "pocket approval" provisos in their strip mine laws. It should be noted that a strip mine permit or any final reclamation work that is "pocket approved" receives no thorough review

by either the regulatory authority or the general public.

#### 416 Single Application & Consolidated Reclamation Plan

416 Under section 7 of the Texas Surface Mining Act of 1975, the operator is given the explicit option of submitting a "single application" and "consolidated reclamation plan" for "all of his mining operations", including noncontiguous operations. Such a provision may expedite the permit approval process for the more controversial mining operations by allowing the operator to lump them altogether in one application. This provision may also favor the larger, statewide operator whose mining activities are most likely to be "noncontiguous". The strip mine laws of Louisiana and Washington also make provision for the "single application".

#### 416 Temporary & Provisional Permits

416 Kansas will issue temporary permits to its operators if it finds that "unexpected or emergency conditions" make it "necessary or desirable to begin surface mining immediately" on land for which the operator has applied for a regular permit. Under Washington's strip mine law, even though an operator's reclamation plan is not approved, he may be issued a "provisional permit . . . until a plan is approved".

#### 416 Removal-of-Equipment Weakness

416 Virginia and Maryland have provisions in their strip mine laws which make the "removal of equipment necessary for reclamation" a kind of standard for the completion of backfilling and grading. According to the language in Virginia's law, "all grading and backfilling shall be completed before equipment necessary for such work is removed from the operation . . . ". Sources in Southwest Virginia note that operators there often leave pieces of dilapidated equipment behind on strip mined lands so that they don't have to begin reclamation.

#### 416 Life-of-The-Mine Permits

416 The strip mine laws of Colorado, New Mexico, Maryland and Utah make specific provision for "life-of-the-mine" permits.

#### 417 Reclamation & Revegetation: Substitutions, Delays & Deferrals

417 Kansas, Missouri, Colorado, Georgia, Kentucky and Arkansas all have provisions in their strip mine laws for deferring revegetation and/or doing substitute reclamation, i.e., reclaiming a previously mined but unreclaimed site in lieu of reclaiming land at the active mine site. Colorado will defer reclamation for "toxic and/or stony lands" for up to 10 years, during or after which such lands may be declared "unplantable", and for which the operator

may do substitute reclamation. Illinois and Oklahoma are among states which allow for delay and/or deferral of revegetation when the operator is "unable to acquire sufficient planting stock of the desired species . . ." Wyoming does not have a "native species" requirement in its strip mine law, while other state laws explicitly allow for "introduced species".

#### 417 Bonding, Bond Reduction & Bond Release Weaknesses

417 The Kansas strip mine law allows that ". . . in lieu of providing a suitable vegetative cover . . .", the operator may ". . . pay to the (reclamation) board a sum (of money) agreed upon by the board . . . and the bond filed by it as surety shall be released by the board". Kentucky's strip mine law has a similar provision, but is a bit more straightforward about the reason for its inclusion: "If the operator does not meet the planting requirements but does not want his bond forfeited, he may pay to the division a sufficient sum to cover the remaining reclamation costs and the bond filed by him as surety may then be released by the division".

417 The strip mine laws of Illinois, Colorado and Oklahoma all allow an operator to post previously reclaimed areas as bond. Under Tennessee's law, "no performance bond shall be charged for land upon which overburden is deposited, if, in the opinion of the Commission, the deposition of such overburden amounts to reclamation of a previously mined area".

417 Washington's strip mine law allows "a blanket performance bond" for two or more operations in lieu of separate bonds for individual operations. Under New Mexico's Coal Surface Mining Act, ". . . the commission may require an operator to file a bond . . .". Under Kentucky's law, the DNR, "in its discretion", is authorized to "reduce the amount of bond . . . to less than the required minimum".

417 Provision in Oklahoma's strip mine law allows for release of 80 per cent of the bond for each acre graded. Tennessee's reclamation Commissioner is authorized to release any remaining bond when he determines "that further efforts toward revegetation are impractical . . .", while under Arkansas' law, "after the second seeding or planting of any affected area, . . . and approval by the Commission, the area shall be deemed reclaimed".

#### 417 Increasing Permit Area & Amending Permits & Reclamation Plans

417 Virginia's strip mine statute gives the operator the opportunity to increase the size of his permit area for "spoil spread". Illinois, Montana,

Missouri, Colorado and Oklahoma also allow their operators to amend permits in order to increase the size of their permit areas.

417 In Indiana, the operator may, with the approval of the Commission, amend his permit application "at any time", while New Mexico's strip mine law states that, "mining plans may be amended at the instance of agreement of the director with the approval of the commission" for "good cause shown". According to Tennessee's strip mine law, the mining and reclamation plans "can be changed at any time . . . to take account of changes in conditions or to correct any previous oversight". Virginia's law allows the drainage and reclamation plans to be amended "to meet the exigencies of any unanticipated circumstance or event", while Pennsylvania's strip mine law will allow its regulatory authority to modify or waive certain permit application requirements "for cause".

#### 418 State Strip Mining Laws & Local Ordinances

418 Alabama's strip mine law "is intended to preempt local, county, and municipal regulation of coal surface mining" and "shall supersede and render void" any such regulation. Pennsylvania's law supersedes "all local ordinances and enactments purporting to regulate surface mining", except zoning ordinances, whereas the strip mine law of the state of Washington requires "evidence" from the operator in his reclamation plan, that the subsequent land use "would not be illegal under local zoning regulations".

#### 418 Other Weaknesses

418 In other areas, Oklahoma's law allows strip mining "in the flood plains of streams and rivers", but specifically exempts such operations from all grading requirements; Illinois allows coal haulage roads to become water impoundments; and for contour strip mining operations under Virginia's law, "spoils shall be retained on the bench insofar as feasible . . . "

#### AN INTERVIEW CONCERNING DEVELOPMENT ON RECLAIMED STRIP MINE SITES

(An interview with Mr. William Shelton, Chief of Program Planning and Support Branch of the Community Development Division of HUD, Knoxville, Tennessee)

Submitted to the House Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, Hon. Morris K. Udall, Chairman.

March 4, 1977

Interview by:

Peggy Mathews, staff

Save Our Cumberland Mountains

P.O. Box 457

Jacksboro, Tenn. 37757

420 INTERVIEW WITH CHIEF OF THE PROGRAM PLANNING AND SUPPORT BRANCH OF THE COMMUNITY DEVELOPMENT DIVISION OF HUD, KNOXVILLE, TENN.

420 Do you know of any cases where HUD has funded any development on reclaimed surface mines?

420 Not that I know of.

420 Do you know of any development at all, not necessarily under HUD, on reclaimed surface mines in Tennessee?

420 We're not all knowledgeable on the subject, really. But as far as I know there aren't. Now the Farmer's Home Administration would probably be more involved with this, since they mines are mostly in rural areas. HUD, until just a few years ago, has been centralized around urban dwellings. We had, I suppose, a very small percentage, less than 10 percent, in rural development.

420 Do you know if FHA has a loan policy for funding projects on reclaimed strip mines? I have heard that FHA requires the land remain undeveloped for 20 years before they will approve a loan.

420 I think what you're talking about is a technical figure that is thrown around, but there is nothing in the regulations, it's just engineering standards that are most acceptable. The way we would handle that is if George [another HUD official present in the office during interview] got an application for development, if he got a plan to develop a mined out area, in all likelihood he might go out there and say it looked pretty good on the surface, that we could use this area for development. Now as an engineer, I would go out and take a look at it. Now if I could determine that they could get the building on solid type of soil, . . . here's a hillside [drawing a cross-section of a hill that has been cut into and filled [\*] ] that has been cut out and this spoil has been pulled back in to where maybe the hill mounds like this [ [\*] ]. Now you might want to use it as back yard area or front yard area, or run roads on this. But if they could determine that they could get the building on solid type of soil, or that if some of this area had been put in to 95% compaction, which brings it

back to almost its original . . . but you can't hardly afford to fill a mile of trench not knowing that you're going to build more than one house on it. It's just not economically feasible to put it all back to 95% compaction. What you really want is would be that area right where you're building at 95%, and the rest could be less, as long as it would drain. Now if they were to put multiple housing or a number of single homes on this trench, we would have to know that all of it was done to 95% approximate density, that's a measure of compaction. And that feature alone would almost make it necessary that even before they started reclaiming it, before we were going to develop it . . . in other words, development 2 or 3 years after you've gone out and refilled this, we would almost just turn thumbs down on it, saying we don't know what's down there.

421 And by the time you come in - say this fill is 60 feet deep - you come in with drilling equipment and "split spoon" sampled it, and if it hits a log or a twig, they can get a piece of it, then they know there's a tree under there. Alright, 20 years from then, that tree is going to rot and they're going to get cave in underneath the building. And we know that unless you got an inspector out there watching these guys, he dozes trees and tree stumps and roots, and whatever you have back in there. That's really the meat of the whole thing. In other words, in order to say that it has been put back to 95% modified proper density, they would have to have an engineering testing laboratory representative certify that as they came up in layers with the spoil, using a "sheep's foot" roll, rolling it all in over this one mile stretch, that inspector would be out there all the time testing. This alone may cost \$2 0,000. Or another way to figure it is by the time the testing laboratory certifies that the spoil has been put back in to the requirements so it would be safe and liveable . . . whatever time it took to redo that area, it might cost as much as \$2 00 a day. But it's not a small amount, and it's not a fixed amount. It all depends on where you get into the process. If you were stripping a mile area and you knew that you were going to reclaim it for the purposes of building and you went at it with that in mind, filling it in, the cost of putting it back might be \$5 0,000. But if you didn't do that, I don't know, it might cost you \$1 00,000. It's a sort of a variable that if you don't plan, and then as an after-thought go back in there and try and get the stumps out or find out that there are no stumps where you have compacted it, it might be three or four times the cost of doing it right originally.

421 Now to do it right originally would simply mean you knew that you were going to use it. Most of the reclaimed, mined out areas, will never have developments. So in my opinion, there is no good reason to go in there and put it back to 95% compaction, it is prohibitive.

422 Besides, most of those areas will be used for wildlife, now I'm projecting. You know, I agree with the environmentalists to some extent . . . I came from those areas and I hate to see them scarred up. But you can make it prohibitive - with regulations that deemed a strip miner operator had to put this material back the way nature had it. Very soon there's no reason to strip mine because it's going to cost as much to take the coal out and reclaim the land as what the coal sells for, so there's no profit.

422 It's not economical.

422 Now going back to that 20 year figure you mentioned before. That has from time to time been brought up, and is not an engineering physical law. There's not a physical law anywhere that says if you go out here and excavate an area and put the soil back, that in 20 years it will be compacted back to its original. You can't get an engineer that's licensed to tell he'll accept it because it's 20 years old. He might accept it just as quick if it's 5 years old or 10 years old. There's no way you can tell that this trench has reached its original density in 20 years or 50 years or 1,000 years.

422 So this is just a base figure that FHA uses to consider projects?

422 No, we don't even consider it. If George called me and said "Look, Shelton, we got a piece of soil out here that's been mined out 20 years ago and they went in and put the soil back just the way it was before." My first, last, and only statement would be "George, don't touch it." Because you could build a house there, and there's a log laying there underneath the building. And the minute you put that pressure on it and there's another log sticking out of the surface that is pushed up and opens the soil up so the other log gets some air . . . three years later that log under the building is rotted out and the end of the building is sunk.

422 Do you know of cases where that has happened?

422 Not exactly, but I do know that as long as air is not there, a log underground can lay there indefinitely. The minute air gets to it, it begins to rot, to deteriorate. So you have a large trench filled up, and you have logs and stumps and everything else. As long as its not disturbed, those logs may

lay there 500 years. But the minute you start digging footings and disturbing the soil, letting air into it, then they begin to deteriorate. And if you don't find them, they rot out from underneath the whole end of the building.

422 Yeah, we have had a few buildings break where we've built on a few logs.

423 We had a rather peculiar instance that can illustrate what I'm saying, in Covington, Kentucky. We had a multi-family project planned for several buildings, on a 10 acre tract. This tract flooded, so they said "O.K. can we cut the hillside down, bring the elevation of this soil up so it won't flood?" And we said "Yes, but you'll have to compact it to 95% approximate density and you'll have to furnish us with copies of the test report and certifications that this has been done." So they went out there and started work, and they figured that they weren't going to build on the entire 10 acra. So they came back to FHA and said, "We would like to build pads for the buildings about 3' high, and we'll put those at 95% compaction. And all the rest of the area in between the pads we'll put in, say, at 75-80% compaction, enough so we can put in sewage lines." Alright, now if I had been the engineer, I would have made a base line, and I would have known where everyone of those pads were. But their enginner didn't - I don't know if he lost his base line, if they knocked his stakes out or what. Anyway, they put the pads in and we had all the work on it, Then they came back and put the fill in. Now soil is soil, and you can't tell by looking at the texture what the different compaction might be. So now it's all level, 3 feet high. Where are the pads? So they go in and they build the houses and they miss the pads. Two years later those houses broke. Then we took them to court and made the engineer clear it, and broke everybody. It cost the architect \$20,000, the engineering firm about \$2 0,000 - \$3 0,000. They had to go back in and jack those buildings up and put down 3 feet of concrete.

423 So if George had come to me and said "That soil, all of it, was put in loose and I don't know what all was put in there, but it's good soil" Could also be there's wood, trash, tin cans, put in there twenty years ago. I wouldn't take that, I'd say "Absolutely not" If he said 100 years, I'd say no. We don't know anything about that soil. You go get a test from the laboratory, roll the soil, do compaction test, if you can certify to us that it is 95% compaction we'll take it, but maybe we won't

423 You mentioned a case in Greenville, Tennessee that wasn't a strip mine reclamation project, but had features similar to a reclaimed strip mine. What happened in that case?

423 They abandoned the site. Several years ago, a developer came in with a proposal to build a multi-family project. That job, at that time, was about a million and a half dollars. But this area had been used for "borrow", meaning that land had been dug out and used to fill other sites. Then as time goes on, land becomes more valuable. So here you've got an old dug out area messed up. And they don't cut it to a uniform grade because the owner didn't know what we would do with it later, and he had no objections to digging below the grade of the road. So this developer wanted to build on it - it had brick and concrete blocks, and old slabs of concrete dumped in low areas. Nobody knows what was in there. So I was telling them what they would have to do, just the national estimate standards that explain the tests needed. They spent probably \$5 00 for the testing laboratory report which told them they would have to fill in areas. And by the time they hauled that soil from cross town at \$2 a yard, and compacted the soil, it was going to cost \$7 5,000 - \$1 00,000. So they said "O.K. we'll just go to another site where we don't have to do this."

424 Land is not scarce enough yet, that developers have to go through such reclamation expenses.

424 In counties such as Campbell county and Anderson county, where it is so mountainous with few strips of flat land, operators say that strip mining is providing more flat land. But it is not being developed. Would you say that the cost is the main factor that keeps people from developing on surface mine areas?

424 As long as there's available land elsewhere, and there's just not the demand in Campbell county to make it economical. I would say yes.

424 Do you foresee a time when development on strip mine sites in the mountains will be economical?

424 It would be my guess that any real heavy development in all that area, Scott, Morgan, Anderson, Campbell counties will be in the flat land areas around those mined out. I'd say not even in your lifetime will you see development move to the stripped areas. It is erroneous for strip miners to say "O.K., you

don't need this land now, so we'll go on and strip it for coal". Meanwhile they put anything back in the ground, and then say "By the time we'll need it for building, it will be suitable." That is erroneous.

424 I'm giving you sort of an impossible problem here because I'm saying a strip mined site is unsuitable to build on if you don't reclaim it right, and if you do reclaim it right, it's prohibitive. I would think it will be the same in another 30-40 years. If I was an active developer 30 years from now and I was in Campbell county or most of that area, I would not be looking at strip sties, its's just too expensive, especially since rural land costs maybe \$500/acre and it costs \$5 0,000 to reclaim it properly. Now those figures are not fact, it's just illustrating my point. But \$50,000 wouldn't be out of line.

425 Now also you have to consider . . . let me draw sketch. Let's assume you have a mined out area, now you fill it back in, this is a trench. Let's say not more than 5 or 4 percent grade, which would be unusual, but let's say it is. We would build on this, or we would accept it if you flattened out a place for a front yard. And say it's compacted to 95% density to put a house on here. Alright, my first question, then, is, "Where are we going to put a septic tank?" And I'll tell you straight out that we aren't going to use this area here. You can't put a septic tank in a filled area. It just doesn't work, because when you fill an area back in, the grains of sand don't reorient themselves in a manner that would allow us to put a field line in. So we would have to move the house down to where we could put our field line in undisturbed soil. Now on undisturbed soil in some instances, we can take off and fill back up to 3 feet, but the main thing is your percolation down through the soil of waste water. It just doesn't work whenever we put it on filled areas. And in no cases that I know of will they permit you to go back in to a filled where it's over a couple of feet.

425 So if that's the operator's argument, that they're fixing it for rural development, why, you can't put a septic tank in there.

426  
Congress of the United States  
House of Representatibes  
Washington, D.C. 20515  
March 8, 1977  
Mr. Don Crane  
Subcommittee on Energy and Environment

1320 Longworth HOB  
Washington, D.C. 20515  
Dear Mr. Crane:

426 Enclosed is a statement of a resident of the 18th Congressional District of Illinois in regard to the hearings on H.R. 2 now before the Subcommittee on Energy and Environment.

426 Mr. Herman has requested that his statement be submitted as written testimony and I request on his behalf that you incorporate it in the record.

426 Thank you.

426 Sincerely,

426 Robert H. Michel

426 Member of Congress

426 RHM:CCJ

426 CC: Mr. William Herman

427 PREPARED STATEMENT OF WILLIAM HERMAN, WILLIAMSFIELD, ILL., MARCH 8, 1977

427 In view of Federal legislation concerning Strip Mining Reclamation and in view of Knox County officials testifying and lobbying in Washington for banning strip mining in agricultural areas, I feel it necessary to add a viewpoint I know is shared by many in Knox County, Illinois.

427 As a Local Union President and as a taxpaying citizen of Knox County and as a coal mine worker in Knox County it becomes necessary to speak out for fear that miscalculations of conditions in Illinois could mean loss of our source of income.

427 In 1973 the Mecco Mine was shut down for a few months because the Knox County Board of Appeals for zoning denied Midland Coal Company a permit to mine coal. The broad ruling made by the board was later, through the courts, found to be contrary to regulation administered by the State Department of Mines and Minerals under Illinois law.

427 What followed this confrontation was a drive, pioneered in Knox County for a new State Reclamation Law, which became effective I believe July 1, 1975. This new law called for the replacement of topsoil, grading close to the original topography and other requirements. Midland Coal Company is a

frontrunner under this new law. They started removing and stockpiling topsoil long before the new law became effective. Some topsoil has been replaced on leveled areas in the past year. Test plots were implemented for the last growing season and Midland's attitude of cooperation and leadership presently continues. Midland is taking all the topsoil not just what is required by law. This kind of attitude cannot be denied. This new State Reclamation Law has not reached the first growing season, and has not had time to prove itself. Additionally, a fair evaluation of conditions in Knox County should only be taken on land mined and reclaimed under the New Reclamation Law effective July 1, 1975. Also a fair evaluation by the Subcommittee requires an inspection of the area during each of the four seasons. It would appear also that a fair evaluation could only be given after reclamation efforts have had a chance to prove themselves under the new state law.

428 With an adequate state reclamation law which replaces topsoil and original topography, what could be the rationale for the push to ban mining. Rumor has it that certain people hope, when the mining reaches a particular township it would be stopped; that the concern is actually not agricultural land, but a residential area. It has become evident that certain people, through pride or whatever, do want the mine shut down. Why else would these people ask to ban mining. We have the topsoil replacements. Anyone with reasonable thinking can see if they will look at the finished product of reclamation that the land is being returned to agricultural use. All ready wheat has been harvested from reclaimed land under the law prior to July 1, 1975. It is reasonable to assume that row crops will follow.

428 Apparently people look at spoils, old spoils, and areas affected under the old law instead of waiting to see the finished product of the new reclamation law.

428 It would appear that to improve even further on reclamation laws would be a common goal for all of us to reach for, in an economical manner. Light bills are soaring, gas is in short supply, coal is needed. Our goals should be to extract the coal and then return the land to reproduction.

428 Possibly Federal Strip Mine Standards are needed to establish minimum standards for the states to live up to. But, to ban mining where land can be reclaimed is not the answer to the fuel crisis. To be able to extract the coal and return the land to reproduction is the answer We must in the American way strive for common goals beneficial to us all, not just to certain groups of people.

429 If strip mine legislation is enacted it must be enacted only after very careful consideration of all aspects to be considered and time must be taken to evaluate the problems of different regions

429 At the time of this writing I am unaware of what Knox County officials will present to the Committee, but I suggest that care must be taken to consider only that evidence relative to conditions after the establishment of the current Illinois State Reclamation Law.

429 Being a resident of Knox County for 21 years and having worked as a coal miner for 21 years this May 31, I respectfully submit these comments believing that this is a general picture of how our coal miners and John Q. Public feel about mining in this area.

429 I would then submit that Federal legislation which includes a ban on mining, is not in the best interest of all the citizens of the area, and that it be rejected or changed to reach common goals of all citizens in each area so affected.

TESTIMONY OF J. DAVITT MCATEER AND L. THOMAS GALLOWAY COUNSEL FOR THE COUNCIL OF THE SOUTHERN MOUNTAINS, INC. BEFORE THE SUBCOMMITTEE ON THE ENVIRONMENT COMMITTEE ON INTERIOR AND INSULAR AFFAIRS U.S. HOUSE OF REPRESENTATIVES ON H.R. 2

L. Thomas Galloway

J. Davitt McAteer

Center for Law and Social Policy

1751 N Street, N.W.

Washington, D.C. 20036

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431 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, community-oriented, 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.

431 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 H.R. 2.

431 \* 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.

432 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.

432 Our testimony will focus on two areas of H.R. 2 and two areas only: enforcement of H.R. 2 and citizens' participation in enforcement.

432 As this Committee is aware, the enforcement mechanisms in H.R. 2 and its predecessor legislation were modeled on the Mine Safety Act. This is apparent both from a reading of H.R. 2 enforcement provisions and from the legislative history of predecessor bills. In comments from a committee report on H.R. 11500, a bill which contained the same enforcement provisions as H.R. 2, Representative Philip E. Ruppe wrote:

432 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 [sic] from those of 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 seek 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. Other departures, particularly in regard to the issue of civil penalties, represent, in my view, an effort to prevent deficiencies in the model structure from carrying over to this bill. \*

432 \* H.R.Rep. No. 1072, 93rd, Cong., 2d Sess. at 185 (1974).

433 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 H.R. 2, their language and structure are substantially the same. We believe H.R. 2 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.

433 We wish also to testify on citizen participation in the enforcement of H.R. 2. We note with approval that H. 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.

434 In our testimony today, I will review similarities in the enforcement procedures between H.R. 2 and the Mine Safety Act in several major areas. Mr. McAteer will examine the citizen participation aspects of H.R. 2. He will discuss the need for persons to participate in proceedings, particular points in the administration and enforcement of H.R. 2, and suggest changes in the bill.

#### 435 I. ENFORCEMENT TOOLS IN H.R. 2

435 There are two major enforcement mechanisms in H.R. 2: the citation provisions in Section 521, and the civil and criminal penalties in Section 518. We shall deal with each in turn.

##### 435 A. Citations in Section 521

435 The citation authority granted federal inspectors in Section 521 of H.R. 2 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.

435 Section 104(a) of the Mine Safety Act provides for closure of a mine (or the affected portion) whenever an imminent danger exists. H.R. 2 includes the

same authority in @ 521(a)(2), and defines the concept of imminent danger in an almost identical manner. H.R. 2 also provides for closure wherever conditions or practices cause or can reasonably be expected to cause "significant, imminent environmental harm to land, air, or water resources." \*

435 \* Most of our testimony concerns dangers to health and safety rather than damage to the environment. In most instances, however, the sanctions in @ 521 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.

435 H.R. 2 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.

436 Finally, H.R. 2 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.

436 The basic sanction scheme in H.R. 2 is sound; however, we believe certain changes would streamline enforcement and make the sanctions more effective enforcement tools.

436 For purposes of clarity, we shall deal in turn with the three major types of citation authority in H.R. 2.

#### 436 Imminent Danger

436 As we have already noted, federal inspectors under both the Mine Safety Act and H.R. 2 may close a mine or a portion thereof whenever they believe an imminent danger exists.

436 The imminent danger order is the most important safety enforcement provision in either the Mine Safety Act or H.R. 2. 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 H.R. 2 become law.

437 1. Both H.R. 2 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 withdrawal 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 will be the case under H.R. 2.

437 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 H.R. 2 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.

437 \* 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.

438 However, as currently drafted, the imminent danger order in H.R. 2 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.

438 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 H.R. 2 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.

439 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.

440 The inadequacy of an imminent danger order that does not allow the inspector to force corrections of the danger is patent.

440 There are other problems with the imminent danger order that result from the different purpose it will serve under H.R. 2 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.

440 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.

441 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.

441 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.

441 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 H.R. 2 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 H.R. 2 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 H.R. 2. This would be nothing less than a disaster.

442 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 imminent danger order.

\* 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.

442 \* 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:

442 "[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.

442 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.

442 Freeman was appealed to the Seventh Circuit Court of Appeals, where the Court incorporated the threshold requirement, finding that

442 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).

442 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."

442 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 explicitly, yet stated:

442 ". . . 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 . . . "

442 seemingly applying the Eastern test.

442 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.

442 The Council argued this issue in Pittsburgh & Midway Coal Co. v. MESA, IBMA 76-57, on March 24, 1976 (decision pending).

444 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.

444 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.

444 We suggest the following test to determine whether a given condition or practice creates a reasonable expectation of death or serious injury:

444 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.

444 3. There are other, less major problems with the imminent danger provision. First, it should be made clear in the legislative history, if not H.R. 2 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.

445 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.

445 \* Representative Ruppe's concurring remarks in the House Report on H.R. 11500 provide some guidance:

445 . . . 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 in cases where only permissive, controlled, or temporary environmental harm is occurring.

445 H.R.Rep. No. 1072, supra at 187.

445 However, there is still significant ambiguity. Does this mean that the harm must also be permanent? What kind of environmental harm is significant? The importance of these questions lies in the fact that the closure authority granted the Secretary in § 521(a)(2) rests on imminent danger or significant environment 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.

446 A similar problem is found in the concept of "imminent threat" contained in § 520, providing for citizens' suits. As we read § 520, 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 § 520(a)(2)? This ambiguity should be clarified.

446 Finally, § 521(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.

446 Section 521(a)(3) Notice of Violation - Everyday Violations

446 Section 521(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.

447 Section 521(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 Violations have been issued since the Act went into effect in 1970. Section 521(a)(3) can be expected to play the same role for H.R. 2.

447 We have one very significant problem with @ 521(a)(3) and it arises from the different functions a closure order performs under the Mine Safety Act and what it will perform under H.R. 2. 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.

447 The situation however will be different, at least in many instances, under H.R. 2. 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."

448 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 @ 521(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.

448 Unwarranted Failure. H.R. 2, @ 521(a)(4); Mine Safety Act, @ 104(c)

448 Section 521(a)(4) establishes a system for dealing with recalcitrant operators - those who unwarrantably fail to comply with the requirements of the Act. Under @ 521(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.

449 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.

449 There are a number of weaknesses in @ 521(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.

449 To cure these difficulties, @ 521(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 @ 521(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.

449 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.

450 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.

450 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.

450 The above system is a substantial improvement over @ 521(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. \*

450 \* A major problem with @ 521(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 sanctior 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.

451 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 H.R. 2.

#### 451 Other Closure Authority

451 There is other closure authority now being considered for the Mine Safety Act which is relevant to H.R. 2, 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 down 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.

452 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 H.R. 2, the persons around the mining activity. It should be included in H.R. 2. \*

452 \* There may be overlap between the suspension provisions of @ 521(a) (4) and the civil penalty closure order.

452 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.

#### 452 B. Civil Penalty Program

452 Section 518 of H.R. 2, 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. \*\*

452 \*\* H.R. 2, 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.

453 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.

453 Section 518 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.

454 If the experience of the civil penalty program under the Mine Safety Act is any indication of the future of civil penalties under H.R. 2 - and there is every reason to believe that it is - @ 518 as presently drafted will not achieve its purpose of deterrence.

454 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.

454 The purpose of a civil penalty under H.R. 2 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:

454 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. \*

454 \* S.Rep. No. 1198, 94th Cong., 2d Sess. at 23 (1976). 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.

454 \* Id.

455 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:

455 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:

455 . . . - Penalties paid were much lower than the amounts originally assessed and were a questionable deterrent to noncompliance. \*\*

455 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.

455 \* Id.

455 \*\* 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:

455 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.

456 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.

456 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 H.R. 2 will almost surely result in a dismal "mess", to borrow the term used by a past MESA Administrator in describing the program.

456 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 H.R. 2 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.

456 We suggest the following changes in H.R. 2's civil penalty program \* to meet these problems:

456 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.

456 \* For the Committee's information, the changes suggested below are being considered by the Labor Committee for amending the Mine Safety Act.

457 Consider the Scotia Coal Mine, for example, whose management blatantly ignored safety regulations with the result that two methane gas explosions occurred, killing 26 men.

457 Methane gas was present at Scotia. The concentration of this colorless, tasteless, odorless 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.

458 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."

458 Low assessments and even lower collections have proven to be the norm for repeated violators. Scotia is the rule, not the exception.

458 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:

459 [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. \*

459 \* 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.

459 \* S.Rep.No. 1198, supra, at 26.

459 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.

459 The Senate Labor Committee had this in mind, and appears to have adopted the first approach when it concluded:

459 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.

459 \*\* Id.

460 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 \$750 as a minimum additional penalty. The Secretary should be given the discretion to increase the add-on penalty if circumstances warrant.

460 \* 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 H.R. 2 such as @ 515(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.

460 3. The civil penalties should be made mandatory 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: 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.

460 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. \*

460 \* S.Rep.No. 1198, supra, at 26.

462 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 penalties enormously.

463 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 H.R. 2. Consequently, for the H.R. 2 civil penalty system to work, a mechanism must be developed to remove the incentive for delay that is built into the present system.

463 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.

463 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:

464 "S. 1302 - Changes in the Civil Penalty Assessment System. 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. \*

464 \* 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.

464 6. The "knowing or willful" standard for individual civil penalties in Section 518(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.

464 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 @ 521(a) (3). The Senate Labor Committee proposed such a change in the Mine Safety Act in August:

465 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.

465 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.)

465 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.

#### 466 C. Inspections

466 Section 517(c) of H.R. 2 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" will almost inevitably cause difficulties.

466 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?

466 There is obviously a vast difference in terms of manpower required, and the thoroughness of the examination in the two possible definitions of inspections.

466 We suggest that the Mine Safety Act approach be adopted, namely that H.R. 2 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.

467 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 @ 521 is mandatory, that is, whenever an inspector determines certain conditions exist that constitute a violation, he must issue a citation. The language of @ 521 certainly supports this construction. However, we are concerned about the remarks made by Rep. Ruppe in his additional views in H.R. 11500, a predecessor bill:

467 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 purposes of monitoring a State regulatory authority's performance. H.R.Rep. No. 1072, supra, at 187.

467 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 H.R. 2.

468 A second problem with the inspection authority of H.R. 2 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.

468 The Mine Safety Act has a civil provision (Section 108) which is copied in H.R. 2, 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 H.R. 2 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 H.R. 2.

468 The inspectors have a tough job. They are entitled to adequate protection from abuse.

#### 469 II.PUBLIC PARTICIPATION

469 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. \*

469 \* 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.

469 The bill under discussion here today is committed to implementing this concept. This Committee in its report on the bill last year stated:

469 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. In addition, providing citizen access to administrative appellate procedures and the courts is a practical and legitimate method of assuring the regulatory authority's compliance with the requirements of the Act. Thus in imposing several provisions which contemplate active citizen involvement, the Committee is carrying out its conviction that the participation of private citizens is a vital factor in the regulatory program as established

by the Act. \*

469 \* H.Rep. No. 1445, 94th Cong., 2d Sess. at 42 (1976).

470 Indeed, even dissenting Committee members endorsed the concept of public participation so as to protect the public at large as well as persons affected. \*\*

470 \*\* Id.

470 More recently, the concept has received strong endorsement 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."

470 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 constituents of H.R. 2, 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. \*

471 \* The charge of additional delay in administrative decision-making 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:

471 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.

471 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:

471 "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."

471 . . . 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.

471 S.Rep. No. 863, 94th Cong., 2d Sess., at 10-13 (1976).

471 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.

472 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.

472 In an effort to obtain clarity and efficient successful participation we

propose the following modifications and amendments to H.R. 2.

472 A. Informal Review

472 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.

473 \* Section 8(f)(2) of the Occupational Safety & Health Act states as follows:

473 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.

473 B. Civil Penalty Process

473 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.

474 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.

474 \* 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.

474 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.

474 Finally, the citizen participation will hopefully serve to increase the operators' reluctance to violate the provisions of the law because of the public exposure.

#### 475 C. Setting The Amount Of Bond

475 Sections 519(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 @ 509. On reflection, however, we believe that citizens' interests could best be protected by establishing a minimum per-acre bond level. We note that @ 509(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 @ 509.

#### 475 D. Omit "Under Oath" Requirement For Citizen Suits

475 Section 520(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. There is no experience under any of these statutes which indicates that unsworn notices are a burden on the regulator. Nor is there any reasons to suspect that unsworn notices under H.R. 2 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 H.R. 2.

#### 476 E. Citizen Suit Exemption

476 Section 520 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 Control Act (Sec. 20 of P.L. 94-469, 15 U.S.C. @ 2619). Moreover, it was previously in H.R. 2'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 H.R. 2 than they are under other federal legislation.

476 \* Section 223(a) of H.R. 11500 stated as follows:

476 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.

477 The relevant portions of the citizen suit provisions of the Clean Air Act, FWPCA and TSCA are set out below.

477 Clean Air Act:

477 @ 1857h - 2. Citizen suits - Establishment of right to bring suit

477 (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf -

477 (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

477 (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.

477 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.

478 FWPCA:

478 CITIZEN SUITS

478 "Sec. 505. (a) Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf -

478 "(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

478 "(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.

478 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).

478 TSCA:

478 SEC. 20. CITIZENS" CIVIL ACTIONS.

478 (a) In General - Except as provided in subsection (b), any person may commence a civil action -

478 (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

478 (2) against the Administrator to compel the Administrator to perform any act or duty under this Act which is not discretionary.

479 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)

479 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)

479 F. Legal Access Standards

479 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 H.R. 2.

\*2\* Availability And Standards Of Access

For Administrative And Judicial  
Procedures Under H.R. 2

Administrative Proceeding  
permit approval/denial and level of

Access Standard

bond @ 513(b)	"valid legal interest
informal review of inspection civil	
penalty @ 518	
bond release @ 519(f)	"valid legal interest"
Judicial Proceedings	
judicial review by Secretary @	"interest which is or may be
adversely	
525(a) (1)	affected".
	"interest which is or may be
adversely	
citizen suit @ 520(a)	affected"
	"injured in any manner through the
	failure of the operator ot comply
with	
	any rule, regulation, permit or
order"	
damage suit @ 520(f)	under the Act.
	"any person who participated in
judicial review of state or federal	administrative proceedings and who is
program @ 526(a) (1)	aggrieved"
judicial review of all other orders or	
decisions @ 526(a) (2)	
[See Table in Original]	

481 Clearly H.R. 2 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.

481 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 ( @ 513(b)); (3) Informal review of inspections; (4) Civil penalty proceedings ( @ 518); (5) Bond release ( @ 519(f)); (6) Review by the Secretary of Orders and Notices ( @ 525(a) (1)); and (7) Review by the Secretary of the state plan.

482 In terms of citizen initiation of administrative action, that is, under @ 525(a) (1), we believe the Committee's access standard "interest which is or may be adversely affected" to be well-reasoned.

482 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.

482 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 1974, endorsed this principle:

482 "The Committee bill adopts a broad test of standing to participate in such critical decisions as the issuance of a permit, designation of areas unsuitable for surface coal mines and bond release." \*

482 \* H. Report 1072, 93d Cong., 2d Sess., at 78 (1974).

482 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.

482 In the leading case in this area Judge (now Chief Justice) Burger stated:

483 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. \*

483 \* Office of Communication of United Church of Christ v. FCC, 359 F.2d 994, 1003 (D.C.Cir. 1966).

483 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. \*\*

483 \*\* See especially, Note, "Selection of Administrative Intervenor: A Reappraisal of the Standing Dilemma," 42 Geo.Wash.L.Rev. 991 (1974).

483 The relaxation can be analyzed as having occurred in the following stages:

483 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).

483 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).

483 3. Recognition of Non-Economic Interests: Economic injury not an indispensable element of standing: Scenic Hudson Preservation Conference v. FPC, 352 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).

483 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):

483 "A person suffering legal wrong because of agency action, or adversely affected by agency action within the meaning of a relevant statute, is entitled to judicial review thereof".

483 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.

483 (a) [Whether] the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise; and

483 (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.

483 Numerous subsequent cases have found the "injury in fact" test to be determinative. See *National Welfare Rights Organization v. UFinch*, 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).

483 See generally, Comment, "Public Participation in Federal Administrative Proceedings." 120 U. of Pa.L.Rev. 702 (1972).

#### 484 G. Compensation For Citizen Participation

484 1. Award of fees from the operator. Persons whose life or property is directly affected by an operator's strip 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.

484 \* See Appendix for a list of these statutes.

486 H.R. 2 clearly recognizes the necessity for private enforcement by providing attorneys' fees to persons who seek damages for injury to their property by an operator ( @ 520(f)). \*

486 \* H.R. 2 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.)

486 An earlier version of this bill, H.R. 11500 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 H.R. 2. 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.

486 We further suggest that the Secretary be empowered to award reasonable attorneys fees and costs against the operator in administrative proceedings under H.R. 2 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. \*

486 \* 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.

486 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 @ 525(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.

488 2. Award of compensation to citizen groups for participation in agency proceedings.

488 In addition to, and totally apart from, the award of attorneys' fees and costs against the operators as discussed above, we ask that H.R. 2 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, H.R. 2 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.

488 H.R. 2 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.

489 As a practical matter, systematic advocacy of diverse points of view in agency decision-making in general, and H.R. 2 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 assistance. 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. \*

489 \* This point was driven home in a Senate Report on public participation in government proceedings:

489 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:

489 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.

489 Another group had tried to fight the siting of a powerplant which they felt would have dangerous environmental consequences. It cost them over \$55,000 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.

489 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.

489 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.

489 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. 5

489 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 participate 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. 6

490 The Kennedy-Mathias mechanism for compensating public participation

has already been adopted in a number of regulatory situations at both the state and federal levels. For example,

490 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.

491 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 H.R. 2.

491 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 H.R. 2.

492 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 H.R. 2.

492 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." \* H.R. 2 should be amended to  
reflect  
this judgment.

492 \* Remarks of Sen. Kennedy, Cong.Rec. (January 14, 1977).

#### 493 CONCLUSION

493 We believe that the basic decision to utilize the enforcement scheme  
of  
the Federal Coal Mine Health and Safety Act in H.R. 2 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 H.R. 2 to give citizens a practical  
means of access to any decision that might affect their interest.

493 We thank the Committee for the opportunity to present our views on  
the  
enforcement and public participation aspects of H.R. 2.

#### 493 APPENDIX A

##### 493 ATTORNEY FEE STATUTES

493 Federal Contested Election Act 2 U.S.C. @ 396

493 Freedom of Information Act 5 U.S.C. @ 552(a)(4)(E)

493 Privacy Act 5 U.S.C. @ 552a(g)(3)(8)

493 Government Organization and Employees 5 U.S.C.@ 8127

493 Packers and Stockyards Act 7 U.S.C. @ 210(f)

493 Perishable Agricultural Commodities Act 7 U.S.C. @ 499(g)(b)(c)

493 Agriculture Unfair Trade Practices 7 U.S.C. @ 2305(c)

493 Plant Variety 7 U.S.C. @ 2565

493 Bankruptcy Act 11 U.S.C. @@ 104(a)(1) 109 205(c)(12) 641 642 643 644

493 Federal Credit Union Act 12 U.S.C. @ 1786(o)

493 Bank Holding Co. Act 12 U.S.C. @ 1975

493 Clayton Act 15 U.S.C. @ 15

493 Unfair Competition Act 15 U.S.C. @ 72

493 Securities Act of 1933 15 U.S.C. @ 77(k) (e)

493 Trust Indenture Act 15 U.S.C. @@ 77 ooo(e) 77 www(a)

493 Securities Exchange Act of 1934 15 U.S.C. @@ 78(i) (e) 78(r) (a)

493 Jewelers Hall-Mark Act 15 U.S.C. @ 298(b)

493 Trademark Act 15 U.S.C. @ 1117

493 Traffic and Motor Vehicle Safety Act 15 U.S.C. @ 1400(b)

493 Truth-in-Lending Act 15 U.S.C. @ 1640(a)

493 Fair Credit Reporting Act 15 U.S.C. @ 1681(n), (o)

493 Motor Vehicle Information and Cost Savings Act 15 U.S.C. @@ 1918(a)  
1989(a)

493 Consumer Product Safety Act 15 U.S.C. @ 2072, 2073

493 Federal Trade Commission Improvements Act 15 U.S.C. @ 2310(d) (2)

493 Copyright Act 17 U.S.C. @@ 1 116

493 Organized Crime Control Act of 1970 18 U.S.C. @ 1964(c)

493 Education Amendments of 1972 20 U.S.C. @ 1617

493 Mexican American Treaty Act of 1950 22 U.S.C. @ 277 d-21

493 International Claims Settlement Act 22 U.S.C. @ 1623(f)

493 Federal Tort Claims Act 28 U.S.C. @ 2678

493 Norris-LaGuardia Act 29 U.S.C.@ 107(e)

493 Fair Labor Standards Act 29 U.S.C. @ 216(b)

493 Welfare & Pensions Plan Disclosure Act 29 U.S.C. @ 308(c)

493 Labor Management Reporting & Disclosure Act 29 U.S.C. @@ 431(c)  
501(b)

493 Coal Mine Safety Act 30 U.S.C. @@ 829 938

493 Longshoremen's and Harbor Workers' Compensation Act 33 U.S.C. @ 928

493 Water Pollution Prevention and Control Act 33 U.S.C. @@ 1365(d)  
1367(c)

493 Ocean Dumping Act 33 U.S.C. @ 1415(g) (4)

493 Deepwater Ports Act 15 U.S.C. @ 1515(d)

493 Patent Infringement 35 U.S.C. @ 285

493 Servicemen's Group Life Insurance Act 38 U.S.C. @ 784(g)

493 Servicemen's Readjustment Act 38 U.S.C. @ 1822(b)

493 Veterans' Benefits Act 38 U.S.C. @ 3404(c)

493 Safe Drinking Water Act 42 U.S.C.@ 300j-8d

493 Social Security Act Amendments of 1965 42 U.S.C. @ 406(b)

493 Social Security Act Amendments of 1965 42 U.S.C. @ 406(b)

493 Clean Air Act Amendments of 1970 42 U.S.C. @ 1857h-2

493 Civil Rights Act of 1964, Title II 42 U.S.C. @ 2000a-3

493 Civil Rights Act of 1964, Title VII 42 U.S.C. @ 2000e-5(k)

493 Fair Housing Act of 1968 42 U.S.C. @ 3612(c)

493 Noise Control Act of 1972 42 U.S.C. @ 4911(d)

493 Railway Labor Act 45 U.S.C. @ 153(p)

493 Merchant Marine Act of 1936 46 U.S.C. @ 1227

493 Communications Act of 1934 47 U.S.C. @@ 206 407

493 Interstate Commerce Act 49 U.S.C. @@ 8 15(9) 16(2) 20(12) 94  
908(b) (e)  
1017(b) (2)

493 Trading With Enemy Act 50 U.S.C.App. @ 20

493 Housing and Rent Act 50 U.S.C.App. @ 1895(a) (b)

493 Japanese-American Evacuation Claims Act of 1948 50 U.S.C.App. @ 1985

493 Defense Production Act 50 U.S.C. @ 2109(c)

495 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.

495 Source: Hearings on S. 2715, Public Participation in Federal Agency Proceedings, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, 94th Cong., 2nd Sess., at 325-328.

496 APPENDIX B

496 The following are additional comments which we would like to submit for the Committee's consideration. While these comments fall generally under the

headings of enforcement and public participation, they do not specifically fall within the topics as outlined and therefore are attached separately because of their importance.

496 1 In the area of judicial review of orders and notices, both the Occupational Safety and Health Act of 1970, and the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. @ 801 et seq., provide for review by the United States Court of Appeals for the circuit in which the affected violation (or mine) is located, or the United States Court of Appeals for the District of Columbia Circuit. The provision for judicial review contained in H.R. 2 restricting review to the U.S. District Court for the locality in which the surface coal mining operation is located, @ 526(a)(2) is clearly inconsistent with the above-mentioned acts and will in a serious way jeopardize the appeal rights guaranteed under this provision.

496 2 H.R. 2 provides for substantial administrative review of enforcement activity. However, it sets up no administrative body to handle the review function. In this, it is similar to the Mine Safety Act. After the Mine Safety Act was passed, an administrative review body, the Office of Hearings and Appeals, was established by regulation. The Office, which is within the Office of the Secretary, is composed of a Hearings Division and an appellate board. This system has not proven to be satisfactory for a number of reasons, not the least of which is the fact that the Board was used as a political dumping ground and unqualified people were appointed. Consequently, the Senate Labor Committee now favors the establishment of an independent Commission, and it reported this out favorably in August, 1976.

496 Of course, the states will have a much larger role under H.R. 2 than they do under the Mine Safety Act, and once the state plans are approved, there might not be enough to do to justify an independent commission. If this is the case, we strongly suggest that at least some minimum safeguards be built into H.R. 2 to ensure impartial decisions by qualified, neutral judges at both the federal and state levels.

497 3 Generally, we believe that a number of the venue provisions as contained in H.R. 2 are overly restrictive regarding action brought to implement and enforce various provisions.

497 We further believe that these restrictions impair the right of the individuals involved under the Act and the public at large to fairly participate in the Act as is the Committee's stated intention. In the area of rulemaking by

federal or state governments, the standard established by the OSHA Act is that a person affected can bring an action in the U.S. Court of Appeals for the circuit wherein such person resides or has his principle place of business.

497 4 Another difficulty with the civil penalty program under the Mine Safety Act is a provision in Section 109(a) (4) which provides for enforcement of the civil penalty in federal District Court when the operator fails to pay it within a certain period. The provision requires de novo review of the civil penalty assessment. Section 518(e) of H.R. 2 is essentially the same. That section in the Mine Safety Act has several failings. First, de novo review encourages operator delay and has led to a backlog of civil penalty cases in the district courts. As the Senate Labor Committee concluded:

497 This right to a de novo hearing before a jury in the District Court has had the effect of encouraging operators to require enforcement of civil penalties in the district courts, thus delaying still further the actual payment of the penalties assessed. The resultant backlog of penalty cases has flooded the district courts in the coal mining areas of the country, and the delay engendered has seriously hampered the collection of civil penalties.S.Rep. 1198, 94th Cong., 2d Sess., at 33 (1976).

497 A related problem involved with the collection of civil penalties is the serious backlog of cases in many of our federal district courts. The flood of civil penalty cases under the Mine Safety Act exists in addition to existing backlogs in other litigation in district courts such as the Eastern District of Kentucky. The net result has been severe problems with the enforcement of the civil penalty scheme under H.R. 2.

497 We concur with the Senate Labor Committee in its view that:

497 civil penalties are most effective as an enforcement tool when they are promptly assessed, and paid; and that long delays between the violation which gives rise to the penalty and the actual amercement destroys the relationship between the violation and the penalty, destroying the use of a penalty as a means of encouraging compliance with the Act and the standards. Id.

498 Toward that end, S. 1302 provided for review of civil penalties in the U.S. Court of Appeals for the circuit in which the operator has its principal office or the Court of Appeals for the District of Columbia circuit. Where a final citation was uncontested but unpaid, the bill provided that the clerk of court, unless otherwise ordered by the court, would immediately enter a decree

enforcing the order. In a contempt proceeding brought to enforce such a decree, the Court would be authorized to assess civil penalties in addition to invoking other remedies. Where there was a petition for review of a civil penalty from an administrative proceeding, S. 1302 provided that the review would be made only on questions of law.

498 This procedure has several advantages over the present scheme in H.R. 2. First, it would insure that appeals will be made on significant legal issues. Second, it would discourage operators from delaying payment of civil penalties by providing a workable sanction for failure to comply with the civil penalty assessment. Third, the procedure would operate with relative swiftness.

498 5 Section 518 provides for criminal penalties as well as civil, and its criminal provisions appear to be drawn directly from @ 109 of the Mine Safety Act. As this Committee knows, the criminal penalty provisions have been invoked very rarely, although it is certainly not because there have been no willful violations of the Act.

498 The problem we believe lies in the bureaucracy and in the enforcement of the provisions, rather than in the provisions themselves.

498 6 Upon a finding in the District Court that an operator has violated any of the requirements set out in @ 9521(c), the bond of that operator should be immediately forfeited.

498 The reason for such a requirement is plain. If the operator refuses to comply with an imminent danger order, for example, then the Secretary must enforce his order in District Court. All the violations or refusals to comply set out in section 521(c) are serious, and a refusal to comply with a Secretarial order reflects recalcitrance and a disregard for the Act. The penalty for such blatant disregard of the Act should be severe. A number of state reclamation acts contain relatively broad provisions for bond forfeiture where there are violations of reclamation performance standards. For example, Ark.Rev.Stat.Ann. @ 52-908(e) (Supp. 1975); Idaho Code @ 47-1513(a) (Supp. 1975); Md.Nat.Res. Code Ann. @ 7-5A10 (Supp. 1976); Pa.Stat.Ann.Tit. 52 @ 1396.4(h) Supp. 1975); Tex.Rev. Civil Stat.Art. 5920-10 @ 22 (Supp. 1976); Utah Code Ann. @ 40-8-14(6) (Supp. 1975).

499 The operator's due process interests are protected in this procedure since the bond would not be forfeited until the District Court had made the required finding.

STEARNS COAL AND LUMBER COMPANY  
STEARNS, KENTUCKY 42647  
February 25, 1977

The Honorable Morris K. Udall  
Chairman, Energy and the Environment Subcommittee  
The United States House of Representatives  
235 Cannon House Office Building  
Washington, D.C. 20515

In Re: H.R. 2 - "Surface Mining Control and Reclamation Act of 1977" -  
Sections  
522(e) and 522(e) (2)  
Dear Mr. Chairman:

500 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 522(e) and 522(e) (2) of H.R. 2, "Surface Mining Control and Reclamation Act of 1977." We are very much concerned about the following underscored language of Section 522(e) (2) of H.R. 2:

500 "(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

-

500 "(2) on any Federal lands within the boundaries of any national forest except surface operations and impacts incident to an underground coal mine;"

500 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.

501 In said deed of conveyance, Stearns Coal and Lumber Company expressly retained and reserved unto itself:

501 " . . . all metaliferous minerals, coal, oil, gas and limestone in, upon and under the above described tracts of land, in perpetuity;

501 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).

501 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.

501 We consider the above quoted language of Section 522(e)(2) of H.R. 2 to be ambiguous, vague and perhaps litigious in its application to our unique situation. We request that consideration be given to amending Section 522(e)(2) of H.R. 2, 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.

501 Accordingly, we suggest that Section 522(e) be rewritten to provide as follows:

501 "(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 -

502 "(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."

502 We further request that this letter be made a part of the Committee records of the hearings relating to H.R. 2.

502 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.

502 Respectfully submitted,  
502 Robert E. Gable  
502 Chairman of the Board and  
502 President  
502 REG/lh  
502 Enclosure

503

Waters, Frank ot ux.	May 17, 1915	4-28
Waters, Cal. ot ux.	Feb. 27, 1920	9-342
Waters, Potor ot ux.	June 24, 1927	18-614
Watson, Mrs. Alo	Mar. 18, 1937	30-50
West, Amanda	July 5, 1924	23-37
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

503 There is EXCEPTED, however, the right of uaor in the public as to such roads over and across said lands as are now located on the grounds and designated on the Grant Hap of the United States of America.

503 There is, also, EXCEPTED, and not horoby conveyed, all minorals, coal and gas the title to which is now outstanding of record in third parties.

503 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 logal purposes until same are abandoned or surrondored by vondor, or its assigns, of approximately forty (40) acres, as designated and drown by dash lines on the Grant Map of the United States of America, at the mouth of each of the following minos: #1, #4, #11, #15 and #16, Cooperative, Fidelity and Grassy Fork.

503 These reserved areas include mine openings, tipples, tracks, bridges, sub-station and shops.

504 There is also, RESERVED, easements or rights-of-way now existin; 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.

504 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 Stearns Coal and Lumber Company.

504 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 Greek, 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:

505 [\*]

506 [\*]

507 [\*]

508 [\*]

509 [\*] 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 years.

510 TO HAVE AND TO HOLD the said promises as herein described, with its appurtenances, 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, 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.

510 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.

510 STE. RUS COAL AED LUMBER COMPANY

510 By Vico-President

510 Attest:

STATEMENT OF THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION IN OPPOSITION TO PROPOSED FEDERAL REGULATION OF SURFACE COAL MINING AS SET FORTH IN H 2

511 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 H 2, 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.

511 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.

512 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.

512 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 No. 1.

512 n2 All these utilities have fuel adjustment clauses which pass the majority of increased fuel costs through directly to their subscribers.

512 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. 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.

513 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. n3 Further, we submit that this mechanism is operative and effective and meeting these objectives and that this federal legislation is superfluous, although ostensibly, it will not supersede any existing or future state legislation insofar as these laws are consistent with the provisions of H 2. We respectfully submit that the 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.

513 n3 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.

514 In addition to the foregoing regulatory considerations, two practical considerations must be considered - supply and cost.

#### 514 THE EFFECT ON SOUTH CAROLINA'S ELECTRIC CONSUMERS - SUPPLY AND COST:

514 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. n4 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.

514 n4 For example, Duke Power Co., estimates that approximately 45% of their 1976 coal supply was derived from surface mining in Central Appalachia.

515 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. n5 This position, and that of H 2, seem incongruous at a time when a unified policy is so absolutely essential.

515 n5 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)

515 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. n6 This will most likely cause the loss of many small producers as a result of the costs of permitting and other requirements under H 2. 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:

516 1) new supplies are transported, at higher transportation costs, from other regions suitable under H 2;

516 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 H 2, or mined sub surface . . . n10

516 3) opportunity costs involved in investment in additional rolling stock to facilitate increased transportation demands.

516 n6 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.

516 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".

516 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 predominately 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.

517 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 H 2, 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 H 2 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.

518 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.

518 ATTEST:

518 J. HENRY STUCKEY

518 COMMISSIONER-SIXTH DISTRICT

518 For the South Carolina Public

518 Service Commission

519

\*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	

Appalachian COALition

Eastern Section of THE NATIONAL COALITION AGAINST STRIP MINING

March 9, 1977

The Honorable Morris K. Udall  
235 Canon House Office Building  
Washington, D.C. 20515

Dear Congressman Udall:

520 These comments are supplementary to our discussion of certain provisions in HR 2 in your office on March 3. We wish to express our appreciation to you for that opportunity and to urge your careful consideration of these additional remarks.

520 Some of the information in the position papers submitted to the Subcommittee by Secretary Robert Bell of the Kentucky Department for Natural Resources and Environmental Protection causes us growing concern about the provisions in HR 2 relative to mountaintop removal and return to approximate original contour. One of our greatest concerns in relation to the mountaintop removal method has been the large-scale topographical changes that we anticipate

resulting from a leveling of mountain peaks over a wide area. As the industry has mounted an all-out attack upon the mountaintop removal variance provisions, our concern has deepened to a fear that the operators see more at stake than just a few highly yielding coal seams: with the technology presently available and in experimental stages, it is becoming feasible to conduct area stripping operations in mountainous terrain, in which not only the high seams would be recovered but the mountain could quite literally be leveled to the valley floor to recover all seams. A statement in the 1976 Mathtech report cited by Secretary Bell lends credence to our supposition; it is stated there that "Although construction equipment is used for overburden removal and spoil placement 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." The Amax attempt in eastern Tennessee may well be only a harbinger of things to come! If the legislation passed by Congress allows this to happen to central Appalachia, all our efforts for all these years will have been in vain - central Appalachia, even if it could be protected against environmental degradation, will have ceased to exist. We must recognize that stripmining technology has developed to the point that we must begin to consider not only its environmental impact, but also its potential for landform modification.

521 For this reason we urge, first, that mountaintop removal be prohibited, and secondly, if outright prohibition proves impossible, that severe constraints upon use of the method be adopted, to include specifically

521 1) retention of the post-mining land use provision as currently written in HR 2;

521 2) a no second entry provision;

521 3) strict concurrent reclamation requirements;

521 4) possibly a restriction upon the depth to which overburden can be removed by this method;

521 5) detailed strictures upon allowable procedures for constructing hollow fills; and

521 6) a statement in the purpose section of HR 2 to indicate the intention of Congress that use of the method be severely restricted.

521 Although these provisions would not prevent a drastic change in the mountain skyline, they would make more difficult the total leveling of the

mountains themselves.

521 In regard to the provision for return to approximate original contour, the Coalition continues to support its inclusion in the bill, although we have some doubts as to the efficacy of the technique in eradicating environmental impacts. To again refer to the position papers of Secretary Bell, who is a civil engineer, we feel that his comments reinforce our general position that strip mining should be phased out on slopes exceeding 15 or 20 degrees. If, as he contends, it is engineeringly and environmentally unsound to restore to approximate original contour above 25 degrees and probably not desirable above 20 degrees, then the operation itself must certainly be undesirable on those slopes, for the greater proportion of the environmental impact comes during the disturbance, not after (assuming that some form of reclamation is carried out). However, if return to approximate original contour is the best we can hope for today, we will support that while working toward a better solution. We wish to go on record as opposing the requested variance on slopes exceeding 25 degrees, which would only result in more hollow fills.

521 With respect to the permit application requirements, the Coalition would be deeply disappointed to see any weakening of the provisions, especially Section 507(b)(11), which requires that a determination of the hydrologic consequences of the mining and reclamation operations be made. The effects of mining on both the quality and availability of water has been one of the most severe impacts of the industry in the region, and the issuance of permits in the future should depend upon the operator's ability to prevent those effects. If HR 2 cannot mandate such a provision, it is not much more desirable than existing state laws.

522 The phrase "Subject to valid existing rights" in Section 522(e) seems to us to largely invalidate the intention of that subsection to protect national forests, parks, wildlife refuges, etc., since it seems to indicate that holding title to the mineral confers the right to recover it by strip mining. Surely prohibition against extracting the mineral by a method destructive to the public's estate in the surface cannot be construed as condemnation or a taking of property; it is merely a limitation placed upon use of the mineral estate, and such limitations have numerous precedents in relation to surface estates, i.e., zoning ordinances, housing codes, etc. At any rate, the public interest in this context should take precedence over the individual's right to recover

what is undoubtedly an infinitesimal portion of the nation's coal reserves.

522 Another area of the legislation that is of great concern to the Coalition comprises those provisions relating to public participation. One of the primary reasons that the strip mining industry has been able to perpetrate the abuses that have characterized it for so long is the fact that the citizenry has been effectively precluded from participation in any of the decision-making and enforcement procedures. This situation has subjected state regulatory agencies to a unilateral pressure from the industry that has resulted in lax permitting and enforcement processes. If HR 2 is to be administered efficaciously, the public must have access to the process. We oppose any diminishing of the provisions for citizen participation and would like to see strengthening amendments in this area.

522 The Coalition hopes that you will give serious consideration to our comments and your support to our efforts to strengthen HR 2 during the legislative process.

522 Sincerely,

522 Donald Askins

522 Regional Coordinator

ARCH MINERAL CORPORATION

523  
500 NORTH BROADWAY  
ST. LOUIS. MISSOURI 63102  
March 24, 1977  
Honorable Morris Udall  
U.S. Representative  
235 Cannon House Office Building  
Washington, D.C. 20515  
Dear Mr. Udall:

523 Thank you for taking the time to speak to Mr. Robert Holloway and myself regarding the provisions of Section 515 of H.R. 2 (Surface Mining and Control and Reclamation Act of 1977). We also appreciate the opportunity you gave us to meet with Mr. D. Crane of your staff.

523 As you will recall, the subject of our meeting revolved around the concept of amending Section 515 to allow the use of final cuts and haulage road inclines for water impoundments. It is our opinion and that of Illinois that water impoundments are both environmentally compatible and desirable in mining plans similar to those undertaken in Illinois.

523 Mr. Crane expressed the opinion that the intent of H.R. 2 was to allow

the use of such cuts for water impoundments. His comment was that when Section 515(b) (3) is read concurrently with Section 515(b) (8) the intent of our proposed amendment would be fulfilled (i.e.: allowance of the use of cuts as water impoundments).

523 It is our belief that while the above argument may be valid, and while such use of cuts may indeed be the legislative intent, the ambiguity of the language will inevitably lead to litigation and delay. If the intent is to allow the use as outlined in our proposed amendment, we must ask why not adopt it and clear up any confusion. We are asking to make explicit what may be implicit in the statute. We would thus ask your consideration of our proposed amendment.

523 At Mr. Crane's suggestion we have prepared a brief statement addressing the merit of using such impoundments. This statement applies whether an amendment is appended or not. We would respectfully request that the attached brief statement be made a part of the official record in H.R. 2.

524 Once again allow us to express sincere appreciation for the consideration you have shown us.

524 Sincerely,

524 S. Marder

524 R. Holloway

525 Statement for the Record H.R. 2

525 Arch Mineral has reviewed the provisions of H.R. 2 and generally concurs with the purposes and findings therein. We would like to explore one area of the bill in some detail. That being Section 515(b) (3) and its relationship to 515(b) (8).

525 Section 515(b) (3) speaks to restoring land to the approximate original contour with all highwalls, spoil piles and depressions eliminated. The parenthetical language immediately following this clause indicates that areas for moisture retention will be allowed. Section 515(b) (8) speaks to conditions under which, and criteria whereby permanent impoundments can be created.

525 By reading these two sub-sections concurrently it appears that the legislative intent is to allow the use of such areas as final cuts and haulage road inclines as permanent impoundments, provided the criteria of 515(b) (8) are

applied. If this interpretation is correct, Arch Mineral totally endorses this concept. Sensible and environmentally comparable utilization of our water resources is crucial to a well balanced reclamation plan.

525 It is imperative to point out some of the beneficial uses of water impoundment:

525 First, water is obviously a necessity for irrigation purposes. As an example, in Illinois, Arch plans to return the majority of its reclaimed land to row crop production. We intend to grow corn, soybeans and wheat on recently reclaimed land. We must have adequate supplies of water for irrigation purposes. The natural proximity of final cut impoundments to reclaimed land will provide an invaluable source of such water.

526 Second, such waters can serve a tremendous social purpose as recreational facilities. Fishing, boating and water fowl sanctuaries are among the possibilities. Arch Mineral has already made this type of use a reality at our Captain mine.

526 Third, such waters can, and have served as a supplemental water supply for draught struck communities. During the draught years of the 1950's, impounded water at Arch's Streamline mine served as a public water supply for the City of Sparta, Illinois. The year 1977 may be yet another serious draught year. Already Governor Thompson of Illinois has sought to have Illinois designated as a disaster area due to draught conditions. Impounded waters may serve similar purposes to those of the 1950's.

526 Water is a resource which must be wisely managed and used. We believe the use of final cuts and haulage road inclines as impoundments is totally compatible with such a concept. As mentioned, we feel that the legislative intent is to allow such use, however, the words are somewhat ambiguous. Arch would favor an amendment which would make explicit what we feel is implicit in H.R. 2.

NATIONAL CATHOLIC RURAL LIFE CONFERENCE  
3801 GRAND AVENUE. DES MOINES. IOWA 50312  
TELEPHONE 515-274-1581

March 9, 1977

The Honorable Morris Udall, Chairman  
Subcommittee on Energy and the Environment  
Committee on Interior and Insular Affairs  
U.S. House of Representatives  
Washington, D.C. 20515  
Dear Mr. Udall,

527 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.

527 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.

527 The destruction of land and damage to other vital resources necessary to human life cannot be justified by our need for strip mined 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.

527 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.

527 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) a 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. 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 where complete reclamation is impossible, and which provides incentives for the safe development of our deep coal reserves.

528 We request that this letter and the enclosed policy statements be included in the record of hearings on proposed surface mining legislation.

528 Sincerely Yours,

528 Rev. John J. McRaith

528 Executive Director

528 JJM:1m

528 Encs.

529 ENERGY A POLICY STATEMENT OF THE NATIONAL CATHOLIC RURAL LIFE CONFERENCE

529 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.

529 NOVEMBER 1976

530 Policy Statement on Energy

530 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 shelter 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.

530 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.

530 Energy Trends and Current Needs In Energy Development:

530 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.

## 530 Coal

530 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 damaging vast areas of land, threatening vital water supplies, and disrupting life in many rural communities. Such policies must be reversed.

531 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 damage. 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.

## 531 Nuclear

531 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.

532 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.

#### 532 Solar

532 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 demonstraton 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.

#### 533 Geothermal

533 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.

#### 533 Energy Conservation:

533 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.

533 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.

533 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.

#### 534 Stewardship:

534 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.

534 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.

534 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.

535 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.

535 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.

#### 535 The Citizen and The Church:

535 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.

#### 536 Obligation to Share

536 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.

536 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

#### 536 Christian Responsibility

536 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

536 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

536 National Catholic Rural Life Conference 3801 Grand Avenue Des Moines, Iowa 50312

537 NATIONAL CATHOLIC RURAL LIFE CONFERENCE - POLICY RESOLUTION - 6/21/72 STRIP MINING

537 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.

537 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 stripable 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.

537 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.

537 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.

537 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.

537 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.

537 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.

537 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.

STATEMENT ON HR2 SUBMITTED TO HOUSE INTERIOR COMMITTEE BY ED LIGHT, 3/16/77.

538 WV-CAG supports this version of the Federal strip mine bill as providing the minimal controls needed to protect the public from problems created by strip mining. Although the Bill may not be strong enough to prevent such problems, we hope Congress will reject industry arguments to make this bill less stringent. The following is our analysis of the most significant industry statements suggesting amendments to the Bill:

538 Abandoned Mine Reclamation (Title IV)

538 The reclamation program to be carried out with the coal tax specified by this section is urgently needed. We disagree with industry arguments that this tax is too high, and that the costs of all reclamation and safety standards and hydrological studies should be deducted before the coal tax payments are made.

538 The revenue anticipated from this fund is reasonable in view of the very high cost of stabilizing and abating water pollution in the thousands of abandoned mining areas in states such as West Virginia. Most state and private efforts to reclaim these lands in the past have been simply cosmetic and much additional work needs to be done. The deductions suggested by industry would eliminate practically this entire fund. We would support some type of tax credit based on the cost per ton of complying with Federal laws, providing that the basic tax rate were raised high enough to keep the anticipated level of revenue the same.

538 Hydrological Considerations (Sections 502, 507 and 515, 516, 517)

538 The bill's requirements relating to hydrology must be kept in tact if water quality and quantity is to be maintained in coal mining regions. We disagree with industry arguments that it is inappropriate for an operator to determine the cumulative effect of his operations, that the pre-planning studies and aquifer monitoring are only needed for mines in the West because Eastern conditions are generally known to authorities and aquifers there are restored after stripping, experts are not available to make the studies, that best available technology to minimize suspended solids addition and channel enlargement should be deleted in favor of compliance with EPA discharge limits, and permit applications submitted between 6 months and a year of the Bill's enactment will not have time to obtain seasonal flow data.

538 We feel it would be most reasonable for the operator to determine the cumulative effects of stripping in small watersheds (i.e. first and second order streams). Cumulative downstream impact of all stripping conducted in large

river basins will be studied by the government, under the planning provisions of the Federal Water Pollution Control Act, or the suitability studies in this Bill.

538 Since Eastern strip mining can permanently pollute or lower groundwater, it is appropriate for operators to make hydrology studies in that region and, if necessary, install groundwater monitoring wells.

538 We have been informed by a person in the field that there are plenty of consulting hydrologists who could handle and use the work generated by this Bill.

538 Since EPA is not applying discharge limits to non point runoff from strip mined areas, it is appropriate for this bill to require best available controls to minimize siltation.

538 Aquifers can be determined from cores drilled by most operators to study their coal. Surface stream flow can be determined by watershed modelling techniques. Changes in runoff characteristics can be determined by using the Soil Conservation Service Engineering Handbook. Thus, the Bill's implementation schedule is consistent with the time needed for these studies.

538 Application Process (Sections 507, 508, 510)

538 The application requirements are very reasonable in view of the potential environmental hazards of strip mining. We disagree with industry arguments that core drilling data is unnecessary, that the filing fee, tests, and pre-planning requirements are too costly for small operators, and that it is not necessary to identify steps taken to comply with air, water, and safety laws.

538 Cores are normally taken in the course of prospecting for coal reserves. The site specific data they provide on aquifers and acid forming material are vital for adequate pre-planning. The high return on investment normally made by strippers makes the application cost not prohibitive. Although other laws and agencies may cover safety, air, and water standards, it is important that these activities be consistent and coordinated with reclamation.

538 Designating Areas Unsuitable (Section 510 and 522)

538 The bill must continue to recognize that, despite reclamation efforts, strip mining is still an incompatible land use in certain sensitive areas. We disagree with industry arguments that the definitions of areas qualifying for deletion must either be made more specific or eliminated and left up to the

States, and that before a State or person can hold up a permit issuance pending completion of a suitability study irreparable harm must be proven and a substantial bond posted.

540 The general categories mentioned in the Bill include any fragile important natural systems, historic lands, productive agricultural areas, and areas subject to frequent flooding, which can be shown will suffer significant damage if stripping is allowed. More specific wording could exclude areas where the long-term costs of strip mining clearly exceed the short run benefits. The Bill's language gives the States more than enough flexibility to evaluate the specifics of each situation before making the suitability determination.

540 The revisions suggested by industry to this section would make it unworkable. If new strip mines are permitted in a sensitive area where a suitability study is underway, long-term, if not irreversible damage could be done in the interim, defeating the whole purpose of this section.

#### 540 Public Participation (Sections 513, 514, 520)

540 The notices, hearings, and citizen suits allowed by the Bill are necessary and will often be the key to effective enforcement. We disagree with industry arguments that the hearings and lawsuits will be too costly for operators, and that hearings for every permit, renewal, and bond release are not needed. When there is enough public interest to trigger a hearing, as allowed in the Bill, their scrutiny and input should help regulatory officials to identify and focus on important issues relating to that particular operation.

#### 540 Approximate Original Contour (Section 515)

540 The return to contour is preferable to leaving a highwall, bench, and outslope. We disagree with industry arguments that alternative methods of regrading are environmentally preferable.

540 The Bill's contour definition has enough flexibility to allow small ditches to divert runoff around the site, break up long continuous slopes, and catch runoff below the fill. If these are combined with prompt revegetation, erosion will be minimized. Return to contour buries toxic materials deeper, prevents unstable highwalls from sloughing, provides access to land above the site, and is aesthetically more pleasing.

#### 540 Mountain Top Removal (Section 515(c))

540 Because the long-range impacts of a widespread flattening of mountain tops and the disturbance of vast areas of land in mountainous regions are largely unknown, but potentially severe, we feel the Bill's restrictions on mountain top removal are justified. We disagree with industry arguments that mountain top removal is environmentally preferable to contour mining, it opens up vital coal reserves, that the variance requirements are unrealistic, and flat

land is always needed.

540 Although mountain top removal sites may be technically stabilized, the aesthetic appearance of many of these sites in the same region is certainly not environmentally preferable. The additional coal reserves opened up by this method are miniscule compared to those available by other deep and strip mining techniques. The stringent variance requirements are justified in that, although there may be a few sites where a needed development could take place on a flattened mountain top, there will be no practical, urgently needed uses for most potential sites in an area such as West Virginia.

#### 541 Other Performance Standards (Section 515)

541 The performance standards specified by the bill are environmentally justified. We disagree with industry arguments that it is not necessary to restrict stripping within 300 feet of parks, and that small operators need a three year extension to obtain the capital and equipment needed to meet the standards.

541 The noise and visual problems created by an active strip job justify a restriction near parks. The reclamation standards of this bill can be achieved with standard equipment, and it is generally just a matter of changing operating techniques.

#### 541 Deep Mining Standards (Section 516)

541 We feel that the Bill's requirements pertaining to deep mining are very important, but do not go far enough toward minimizing the environmental effects of this alternative to strip mining. We disagree with industry arguments that these standards are inappropriate, are already covered by the Mine Health and Safety Act, and require zero discharge of pollutants.

541 Subsidance, and deep mine haul road, refuse pile, and mine site erosion are not adequately regulated under existing laws. Damage from these problems can be very costly to the public. Use of best available technology does not mean zero discharge.

541 A new section 516(b) (9) (A) (IV) is needed to recognize that a mine developed up dip is usually impossible to effectively seal with current technology:

541 Mine openings for all new above drainage drift mines in acid producing coal seams shall not be located in such a manner as would cause a gravity discharge. A minimum solid coal barrier (as required in regulations) shall be

maintained around the mine workings.

541 Also, the time schedule for enforcing the Bill's deep mining standards may need to be clarified. We suggest that they be made effective immediately for new mines, and within six months at existing mines.

541 Bond Release (Section 519)

541 The restrictions on release of performance bonds are needed to insure permanent reclamation. We disagree with industry arguments that two years of vegetative growth are adequate in the East, that the public does not need to be involved in the bond release determination, and that suspended solids requirements should be changed from "no addition above natural levels", to "not in excess of Federal or State discharge standards".

542 Initially successful plantings on Eastern strip mines have been known to die off after a few years. Many experts agree that a five year period is reasonable to determine the permanent effectiveness of the revegetation program. Since residents of the strip mined area may have a much greater opportunity than the inspector to view the vegetative condition and erosion on the site, especially during rainy periods, it is appropriate that they be allowed a say in bond release. Since EPA discharge limits don't apply to strip mines during the revegetation period, and the no siltation standard is the ultimate test of adequate revegetation, that requirement is justified.

American Fisheries Society  
ORGANIZED 1870 INCORPORATED 1910  
ROBERT F. HUTTON PRESIDENT 1976-1977  
CARL R. SULLIVAN EXECUTIVE DIRECTOR  
ROBERT L. KENDALL EDITOR  
March 16, 1977  
The Honorable Morris K. Udall  
House of Representatives  
Washington, D.C. 20515  
Attn: Donald Crane  
Dear Mr. Udall:

543 The American Fisheries Society, the nation's oldest and largest organization of fisheries scientists, has had a deep interest in Federal strip mine legislation for a long time. That interest is based on our concern for the sacrifice of thousands of miles of this nation's priceless waterways to the acid water and eroded sediment by-products of the coal industry. It is long past time that we stop these wanton practices and begin the prodigious job of reclamation. The American Fisheries Society supports the passage of H.R. 2 but we urge the Committee to consider the following changes.

543 Sec. 102(h) on page 7 states that one of the purposes of this Act is to "promote the reclamation of mined areas." Promote is far too indecisive a word for us because there are as many unsuccessful promotions as successful ones. We hope that H.R. 2 will uncompromisingly commit the American public to the reclamation of mined areas and we urge that promote be changed to achieve.

543 Our remaining comments concern the abandoned Mine Reclamation Fund which we believe will be tragically inadequate. According to the U.S. Bureau of Mines the following investments will be required to repair the coal industry damage already inflicted on this nation's environment.

543

1. Reclamation of 632,000 surface acres decimated by coal mining activities	632,000 [*] \$4,000 per acre = \$2.53 billion
2. Removal, leveling, covering, etc. of coal waste banks	12,500 \$ \$4,000 per acre = \$ .05 billion
3. Extinguish 400 plus fires in coal waste banks and abandoned mines	=\$ .83 billion
4. Correction of deep mine subsidence problems to prevent extensive surface damage	Cost at about \$30,000 per acre = \$11.90 billion
5. Elimination of acid mine drainage	=\$1 0.00 billion
Total	\$25.31 billion

544 It is immediately apparent that the deep mining of coal has been at least as responsible for historic environmental abuses as surface mining. Because of this circumstance and because of the great difficulty and potential losses in administering a "split level" reclamation fee, we urge that reclamation fees be the same for deep and strip mined coal.

544 When the magnitude of the reclamation job (25 billion dollars) is compared to the annual reclamation revenues (an estimated 16 billion dollars in the first year) it is obvious that the fees are far too low. This is made even more obvious by the knowledge that much of the reclamation fund will be used for administration, small mine assistance and public facilities. Accordingly, we strongly urge that the reclamation fee be raised from an average 25 cents per ton to a flat 50 cents per ton levied equally against all future coal production. For many years a reclamation fee on coal seemed unattainable because of the coal's competitive posture with other fuels. Today's energy problems have now eliminated this concern. Fifty cents per ton will constitute a very modest percentage increase, most of which will probably be passed on directly to the consumer. American consumers are the same people who are

demanding that mining abuses be stopped and they are prepared to do their share.

544 We appreciate the opportunity to make our support for H.R. 2 known and we ask that this letter become a part of the Record of Hearing.

544 Sincerely,

544 Carl R. Sullivan

544 Executive Director

544 CRS:bs

Tuniper Mining Co., Inc.  
Honorable Morris K. Udall  
House Interior and Insular Affairs  
Subcommittee on Energy and Environment  
6126 Longworth  
House Office Building  
Washington, D.C.  
March 4, 1977  
Att: Mr. Crane,  
Dear Sir,

545 Mr. Wylie informs me that I am too late to testify before the subcommittee, on behalf of the "small mine operators" of Ohio.

545 I have therefore prepared the attached testimony for submittal.

545 If possible, I would very much like to have the opportunity in the future to appear in person to give testimony to the members of the house.

545 Cordially,

545 Philip E. Martin

545 President

546 TESTIMONY OF

546 PHILIP E. MARTIN P.E. PRESIDENT JUNIPER MINING CO., INC. 2441 OLD STRINGTOWN RD. GROVE CITY, OHIO 43123

546 Information relating to the proposed strip mine legislation has recently come to my attention. Some of these new proposals will do nothing but cause more animosity toward members of Congress and force many more small businessmen out of business.

546 Why is it that you in Government feel that you are the only ones capable of loving or protecting this once great country of ours. There are also, certainly, a few of us outside Washington, D.C. who know that manure is slippery

or that we could get killed if a dozer runs over us.

546 According to reports, this new strip mine legislation will require "permit" approvals to be delayed due to

546 1. four (4) weeks of public advertisement and

546 2. provisions to be made for public hearings.

546 Most coal mines here in the State of Ohio (65%) are small enterprises mining less than 100,000 tons per year, and are not backed by huge amounts of money. A six (6) month to one year delay on a permit would wipe them out. Are we in the mining business to be subjected to the same indignities that have been forced on highway building, where it takes, ten (10) to fifteen (15) years to construct a new highway? We can suffer the loss of highways, but can we suffer the loss of energy when its needed?

546 Do we need another gas crises before Congress wakes up to the great damage it is doing the Country by its irresponsible passing of bills to get elected.

546 What this "strip mine law" will accomplish is the same as what happened to pension plans in small firms when the Federal Government decided to regulate them. They were canceled by the thousands, hurting the very people the law was supposed to protect. The head of a business will take just so much before he throws in the towel.

546 Ohio has made it so difficult to mine, and E.P.A. has made it so indecisive, that the Bonding Companies are refusing to bond anyone new. If this Federal Law goes into effect with its five (5) year restrictions and penalties, no bonds will be issued and no coal will be mined, throwing thousands out of work.

546 When citizens' lawsuits on mining are permitted, as planned, insurance rates will be driven up, creating the same problem the medical profession is faced with.

546 Reasonable requirements are not objected to, but creating a power mad, regulation crazy organization will not only not solve the problems in the strip mining business but will create more animosity towards you people in the Federal Government.

548 A flagrant abuse of the taxing powers by the Congress and the blizzard of paper work created by the regulations imposed by the bureaucracy have driven

most people in business to the wall. How much more we can take before we march on Washington is debateable.

Congress of the United States  
House of Representatives Washington, D.C. 20515  
March 10, 1977  
The Honorable Morris K. Udall  
Chairman  
Committee on Interior and Insular Affairs  
1324 Longworth HOB  
Dear Mo:

549 Enclosed is a copy of a letter I received from Professor Charles Fairhurst of the University of Minnesota. Professor Fairhurst wrote to express his feelings on the importance of Title III of H.R. 2, which Title would provide for the establishment of Mineral Resources Research Institutes at selected State universities.

549 I would very much appreciate your consideration of Professor Fairhurst's views in conjunction with the Committee's and the Subcommittee on Energy and Environment's work on H.R. 2.

549 With kindest regards, I am

549 Sincerely,

549 ALBERT H. QUIE

549 Member of Congress

550  
UNIVERSITY OF MINNESOTA  
TWIN CITIES  
Department of Civil and Mineral Engineering  
112 Mines and Metallurgy  
221 Church Street S.E.  
Minneapolis, Minnesota 55455  
March 1, 1977  
Rep. Albert H. Quie  
2182 Rayburn House Office Bldg.  
Washington, DC 20515  
Dear Representative Quie:

550 I have just learned that Secretary of the Interior Andrus in statements concerning the proposed "Strip Mining Bill" (HR2), has indicated that he does not consider Title III of the Bill to be an important or necessary part of the legislation. I do not have his exact comments and may have misrepresented him somewhat, but ask that you strongly urge the author of the Bill, Representative

Udall, of Utah, to retain Title III, and give him your full support in achieving this goal.

550 Title III would provide for the establishment of Mineral Resources Research Institutes at the selected State universities (the University of Minnesota would qualify) with funding provided on a continuing basis for mineral resources research and for staff and facilities. The total amount of money involved is not very large for a nation-wide program. (I believe it starts out at about \$8 - \$10 million per year rising eventually to \$16 - \$20 million).

550 Overall, Title III would start to do for mineral resources research programs at universities what other Federal programs have done for agricultural research. I am sure you are aware of the continuing achievements of agricultural research at the University of Minnesota. There is no comparable program for minerals - and the United States is in a critical situation as a consequence.

550 The OPEC oil embargo has made us realize our situation with regard to fuel, but there are other raw materials where the United States is heavily dependent on imports, and where aggressive and continued research and training to improve our capability to mine domestic ores economically and in an environmentally sound manner is long overdue. Title III would allow us at long last to begin. The critical need that Title III will help solve, and that no other Federal program addresses at all, is that of staffing of research institutes. I should explain:

550 Mineral engineering programs have been in decline throughout the United States since the 1950's. Enrollments boomed in the space, electronics, computer and similar "high-technology" engineering areas throughout the 1960's. Quite a few universities dropped their programs in mining engineering. Others, including Minnesota, barely survived. Research was virtually non-existent.

551 Enrollments have risen dramatically in the past two-three years as students recognize where the critical needs will be in their professional life - times, i.e. resources engineering (raw materials production, including fuels and new energy sources). Now we are reaping the results of the years of neglect. Where are the innovative ideas for solving these problems, the new environmentally protective mining systems ('in-situ' extraction of valuable minerals by chemical means, for example without movement of vast quantities of waste rock), the experienced and imaginative teachers to instruct the influx of students, etc?

551 Universities are generally in a 'no-growth' era. Governor Perpich has

recommended no new positions at the University for the 1977-79 biennium. We are under-staffed and cannot hire the high-calibre instructors and researchers on the chance that we might get some research money for one-year or, if we are lucky, two years. The few individuals that there are, have secure positions elsewhere usually in industry and won't accept the reduced salary, high uncertainty situation of a temporary position at the University. Title III would at least give the opportunity of some continuity of employment, (i.e. five years or so).

551 I have been "beating this drum" for almost 20 years, seeing the situation decline continuously, watching us march unthinkingly towards nationally critical problems. I have written each time to urge your support, seeing the equivalent of Title III in earlier Strip Mining Bills overwhelmingly pass Congress, only to be vetoed by Presidents' Nixon and Ford. I had begun to feel optimistic, knowing that President Carter would not veto a Strip Mining Bill. Now it seems that the significance of Title III is unrecognized.

551 I am willing to provide you with additional information on the need, and will visit Washington to discuss it if you feel that this would be helpful. But, please press for the retention of Title III.

551 Yours sincerely,

551 Charles Fairhurst

551 Professor and Head

551 CF:ams

COLORADO OPEN SPACE COUNCIL 1325 DELAWARE ST. DENVER, COLO. 80204 303/573-9241

Honorable Morris K. Udall, Chairman, and the Honorable John Seiberling  
Committee on Interior and Insular Affairs  
US House of Representatives  
Longworth Office Building  
Washington, DC 20515

Dear Chairman Udall and Congressman Seiberling:

552 On January 12, 1977, the House Committee on Interior and Insular Affairs held a briefing by members of the mining industry and the public on the Federal strip mine bill, HR 2. At that time the Committee heard testimony from E. Phelps, President of Peabody Coal Company, who asserted - by way of showing that a Federal bill is unnecessary - that Peabody was complying with the regulations and requirements of the twelve states in which it has coal mining operations. The truth of this claim was questioned by Mr. Seiberling with specific reference to Peabody's two coal mines in Colorado which as recently as May 1976 had been

operating without a valid State permit. Mr. Phelps retorted that the two mines had never been found to be in violation of Colorado law. This assertion by itself gives a distorted view of Peabody's compliance with Colorado law and, by implication, of the need for Federal legislation. The two Peabody mines have clearly been in violation of Colorado's Mined Land Reclamation Act, and the cases have been referred by the Colorado Mined Land Reclamation Board to the proper authorities for prosecution.

552 On behalf of the Colorado Open Space Council Mining Workshop, a citizens' organization which helped uncover the facts of the Peabody case, I present the following for the Committee's information and request that it be made a part of the hearing record. This specific example clearly shows why strong Federal legislation controlling strip mining is needed.

552 A June, 1975 report by the Staff of the Colorado Mined Land Reclamation Board detailed violations at Peabody's Seneca Mine dating from 1970 and violations at their Nucla Mine dating from 1972. The Staff Report said: "Peabody now recognizes they are not in compliance with current law and have submitted an application to do so . . . There are several alternatives the Board could take in this case, but in all cases it must be understood that Peabody Coal is operating without a permit and has been operating as such for nearly two years and under other interpretations three years. The alternatives include: 1) Close down the Seneca and Nucla Mines until compliance is achieved. . . ." However, the Board failed to take action to bring Peabody into compliance.

552 On November 25, 1975, the Colorado Open Space Council Mining Workshop submitted to the Board the results of its survey of mining operations in the State. COSC noted that Peabody's Seneca and Nucla Mines were substantially out of compliance with Colorado reclamation law: both mines were operating on illegally issued permits, permit fees had not been paid, nor had the required reclamation bonds been posted. The Board continued to take no action to remedy the Peabody violations until May 1976 - six months after the COSC report and one year after the Board's staff had reported violations which had continued over a period of years.

553 During this time Peabody Coal continued to operate the two mines without valid permits, without having posted bonds, and without bringing these operations into compliance.

553 In May 1976 Peabody came before the Board to seek a permit for 767 additional acres at the Seneca Mine. COSC once again called attention to Peabody's violations, and at that time, the State Attorney General's Office wrote to the Board, stating: "As to Peabody's Seneca Mine, the Board is in receipt of facts that between January 1, 1975, and March 1, 1976, an additional 86 acres have been mined beyond the 46 acres specified in the approved

application. . . . As to Peabody's Nucla Mine, the Board is in receipt of facts that between July 1, 1970, and June 30, 1975, the Company mined 20 acres more than were included in the approved permit applications . . . " The Attorney General's Office thus identified over 100 acres which Peabody had apparently mined without a permit.

553 Rather than formally contesting this allegation, Peabody immediately:

553 1. Closed down its Nucla Mine for two weeks so that it could obtain a permit for the Seneca Mine. (Colorado law prohibits the issuance of a new permit to an operator who is currently in violation of the law elsewhere in the State.)

553 2. Included in its Seneca mine permit application, the 86 acres identified above.

553 3. Posted a \$1 19,000 reclamation bond for the 86 acres at the Seneca Mine.

553 4. Included in its Nucal application the approximately 20 acres identified as having been mined without a permit;

553 5. Posted a reclamation bond on the Nucla Mine acreage.

553 Thus, all parties concerned recognized that illegal mining had occurred, and Peabody, once pressed by the public and the Attorney General, accepted responsibility for the land it had mined, without raising legal objections. Peabody's admission of illegal mining was not made verbally, but rather by its response to the charges. Peabody, of course, never formally admitted to mining illegally. Since Colorado law at that time provided for criminal penalties of up to \$1 ,000 per day for each day of violation, if the company had formally admitted to illegal mining, it would have left itself open to a potential fine of over \$1 million.

553 Although neither the Board nor the Attorney General could prosecute under the applicable law, the Board referred the cases to the District Attorneys for the counties in which the mines were located in the summer of 1976. This referral was the strongest action the Board could have taken. To date, neither Routt nor Montrose Counties have moved to prosecute the coal company.

553 Thus, Mr. Phelp's claim that Peabody's two Colorado mines were never found to be in violation is disingenuous and seems to dissemble the facts.

553 The Peabody situation in Colorado - in which major violations of the State's strip mine law had persisted for several years, in which even minimal remedies for the violations took over one year to accomplish after extensive

citizen efforts, and in which legal action against the violations was made the sole responsibility of the county in which the mine is located (effectively insuring that the issues would rarely if ever be brought to court) - this case points up the need for strong federal legislation. Contrary to Mr. Phelps' testimony, State laws do not provide adequate protection against strip mining abuses, as the Peabody case in Colorado graphically illustrates.

554 Sincerely yours,

554 Brad Klafehn

554 COSC Mining Workshop

554 Encls.

UNITED STATES INDUSTRIAL COUNCIL  
FIGHTING FOR FREE ENTERPRISE SINCE 1933  
March 1, 1977  
Mr. Donald Crane  
Subcommittee on Energy  
House Interior Committee  
1320 Longworth House Office Building  
Washington, D.C. 20515  
Dear Mr. Crane:

555 The United States Industrial Council respectfully submits the enclosed statement (three copies) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and requests that it be made a part of the record of the Subcommittee on Energy's public hearings on this bill.

555 If you have any questions about this statement, please call me at 833-3018.

555 Thank you.

555 Sincerely yours,

555 T. J. Hamilton

555 Washington Representative

555 Enclosures

556 STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL ON H.R. 2, A BILL PROVIDING FOR FEDERAL REGULATION OF SURFACE MINING

556 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 H.R. 2.

556 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.

556 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.

556 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.

557 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.

557 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.

557 H.R. 2 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.

558 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.

558 The reclamation standards set by H.R. 2 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.

558 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.

559 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.

559 At a time when increased energy costs are creating a serious problem for many consumers and adversely affecting the national economy, H.R. 2 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 35~ per ton on surface mined coal and 15~ 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.

559 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 H.R. 2 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.

Congress of the United States  
House of Representatives Washington, D.C. 20515  
March 16, 1977  
The Honorable Morris K. Udall  
Chairman  
Committee on Interior and Insular Affairs  
1324 Longworth House Office Building  
Washington, D.C. 20515  
Dear Mr. Chairman:

560 I am enclosing a copy of a letter I have received from the Chairman  
of  
the Virginia State Corporation Commission. As you can see, Mr. Shannon is  
expressing the views of the Commission with regard to surface mining  
legislation. I would appreciate it very much if you would take his views  
into  
consideration when your Committee deliberates this issue.

560 With all best personal wishes, I remain

560 Sincerely,

560 G. WILLIAM WHITEHURST

560 GWW:HES

560 Enclosure

561  
COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
March 10, 1977  
The Honorable G. William Whitehurst  
U.S. House of Representatives  
Washington, D.C. 20515  
Dear Congressman Whitehurst:

561 The Virginia State Corporation Commission is greatly concerned about  
the  
provisions contained in H.R. 2 and S. 7. After careful review of these  
legislative proposals, we have determined that the goal of reclamation of  
land  
disturbed by surface mining is good but the approach taken by these bills is  
extreme and will severely curtail the supply of coal.

561 Virginia has an excellent land reclamation law drawn to address the  
particular soil composition, topography, climate and vegetation conditions in  
our State. The continued strengthening of these laws as needed is much more  
effective and responsible than complex Federal legislation drawn to meet the  
conditions in all coal producing areas throughout the nation. It is our  
understanding that nearly forty states already have strong land reclamation  
statutes that are rigidly enforced and drafted to meet the needs of their  
states.

561 The State Corporation Commission is committed to the ultimate goal of

energy independence for our nation. Remote as this goal may be, striving toward anything short of it is contrary to the best interest of the future of the United States. Energy independence can only be achieved through conservation of scarce energy resources and increased dependence on coal and nuclear energy. Every effort must be made to increase production of coal on a substantial scale by surface and underground methods. An estimated one-third of our proven coal reserves can be extracted only by surface mining. At the present time surface mining produces 55 percent of the nation's coal, and 65 percent of the electric utilities' coal supply comes from surface mines.

561 The State Corporation Commission is responsible for the regulation of financial institutions and utilities. We are convinced that the enactment of H.R. 2 or S. 7 will have a drastic adverse economic impact on both of these entities and their customers.

562 The vast majority of Virginia surface mining operations are small businesses which are just now recovering from the coal industry's economic disaster of the late 1940's and early 1950's. The coal industry is the backbone of Southwest Virginia's economy, and financial institutions in that area have made substantial investments through financing the needs of surface mining operations. Also, loans have been extended to individuals who are dependent on the soundness of the coal industry. If a fraction of the surface mining operators who say they will have to go out of business because of the enactment of H.R. 2 or S. 7, do in fact go out of business, the banking system in Southwest Virginia and their correspondents may face a major catastrophe of a heavy run-off of deposits and debtor default.

562 Electric utilities will face major expense if H.R. 2 or S. 7, as presently drafted, become law. This legislation will require an increase in usage of coal from the Midwestern United States and the decrease in the usage of coal from the Eastern United States which would result in significantly higher transportation costs, use of fuel with a higher sulfur content and use of fuel with a lower BTU capability. In other words, utilities will have to use coal which would be more expensive, harmful to the environment and less efficient. Of course, all of this directly relates to Virginia ratepayers who are already paying rates that are much higher than we would like for them to be.

562 We respectfully urge you to oppose H.R. 2 and S. 7 because they are an encroachment into an area that is being handled well by state governments and it could adversely affect the lives of every Virginian.

562 Sincerely,

562 Preston C. Shannon

562 Chairman

562 PCS:stc

Congress of the United States  
House of Representatives Washington, D.C. 20515  
March 11, 1977

Hon. Morris K. Udall  
Chairman  
House Interior Committee  
1324 Longworth HOB

Dear Mo:

563 Enclosed is a copy of a letter I received from the Chairman of the Interim Joint Committee on Agriculture and Natural Resources of the Kentucky State Legislature which presents a suggestion to revise the content of H.R. 2 which I believe has a great deal of merit.

563 I would be grateful for your careful consideration of the advisability of including the Interim Joint Committee's recommendation in the version of H.R. 2 which emerges from the full Committee.

563 Thank you for your kind assistance.

563 With best wishes for you, I am

563 Sincerely yours,

563 Carroll Hubbard

563 Member of Congress

563 CH/dh

564

LEGISLATIVE RESEARCH COMMISSION  
State Capitol Frankfort, Kentucky 40601 Telephone. 502-564-3136  
March 3, 1977

The Honorable Carroll Hubbard  
United States House of Representatives  
423 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Hubbard:

564 I am enclosing a resolution passed by the Interim Joint Committee on Agriculture and Natural Resources on March 1, 1977, along with the Associated Press newsstory concerning that meeting for your information.

564 We feel that the areas of concern expressed in this resolution merit special attention from our senators and representatives because of their far-reaching impact on Kentucky. We do not consider Morris Udall, Henry Jackson

and others supporting the development of western coal as appropriate judges of what is best for Kentucky's future land uses. We do, however, put our faith through the ballot box in our elected congressmen and trust that they will make the necessary efforts on behalf of programs which enhance the future of our natural resources.

564 We feel that any federal legislation regulating surface mining in Kentucky should allow for the option of fish and wildlife habitat for the recreational benefit of our future generations. Common sense dictates that many areas are suitable for this and that this might well be the highest and best use for thousands of acres in Kentucky. This worthwhile use can be achieved in conjunction with developing our energy resources at no extra cost.

565 All that is needed is a little vision to resolve what is recognized as one of our greatest national tragedies - the increasing loss of wildlife habitat. We urge you to apply your energy and vision on behalf of all Kentucky toward the inclusion of this prerogative in any legislation you vote for.

565 Sincerely,

565 Senator Kenneth O. Gibson, Chairman

565 Interim Joint Committee on Agriculture

565 and Natural Resources

565 mlh

566 A RESOLUTION petitioning the Congress of the United States to include in pending surface mining legislation the establishment of wildlife habitat as an option for reclaiming surface-mined areas.

566 WHEREAS, the Kentucky Department for Natural Resources and Environmental Protection, the Kentucky Department of Fish and Wildlife Resources, and the Kentucky Reclamation Association cooperated in the development of an option for re-establishing wildlife habitat concurrent with the reclamation of surface-mined areas and are successfully undertaking the option on several hundred acres in western Kentucky; and

566 WHEREAS, the establishment of wildlife habitat enhances food and cover for both game and nongame species and provides opportunities for recreational hunting; and

566 WHEREAS, the impoundment of water in wildlife areas in western Kentucky provides wildlife with ready access to a water supply while at the same time

increasing the recreational potential of the area for fishing; and

566 WHEREAS, this source of water helps stabilize surrounding vegetation, reduces the off-site impact of mine drainage, retards erosion, and enhances the potential of the area; and

566 WHEREAS, proper habitat establishment for wildlife can also be undertaken on contour surface mining benches and retains accessibility of the area for forest management and fire-fighting purposes; and

566 WHEREAS, return-to-original contour requirements eliminate these positive land uses and may, in fact, create environmentally hazardous conditions from sliding, erosion and sedimentation;

567 NOW, THEREFORE,

567 Be it resolved by the Interim Joint Committee on Agriculture and Natural Resources on Tuesday, March 1, 1977:

567 Section 1. That the establishment of wildlife habitat should be included in pending federal surface mining legislation as a proper alternative for reclaiming surface-mined lands.

567 Section 2. That copies of this resolution be sent to the members of the Kentucky Congressional delegation, to the Senate Committee on Energy and Natural Resources, to the House Committee on Interior and Insular Affairs, and to the Secretary of the Interior.

568 THE COURIER-JOURNAL March 2, 1977

568 Reclamation changes discussed

568 By BILL BERGSTROM Associated Press

568 FRANKFORT, Ky. - Changes in the state's strip-mine reclamation rules could give Western Kentucky thousands of acres of new hunting and fishing territory at no cost to the government, state officials said yesterday.

568 Operators now must produce either forest or pasture land when they reclaim stripped land, said Arnold Mitchell, commissioner of the state Department of Fish and Wildlife Resources.

568 "A wildlife option would easily fit in and should be considered on the level of importance with the current agriculture and forestry options," Mitchell told the General Assembly's Interim Joint Committee on Agriculture and Natural Resources.

568 "The reclamation of strip-mined land in Western Kentucky provides the

opportunity to establish some 5,000 acres of wildlife habitat each year, which would create tremendous recreational potential over the years at no direct cost to the Commonwealth," he said.

568 If reclamation regulations can be changed to allow water impoundments to provide ponds in the wildlife areas, such plans could involve less grading and therefore less expense to coal operators, Mitchell said.

568 He said two wildlife habitat projects are under way on Peabody Coal Co. land, in Ohio and Muhlenberg counties, though the ponds cannot be included unless regulations are modified.

568 Rep.N. Clayton Little, D-Hartley, said that in the steeper hills of Eastern Kentucky, water impoundments can soften the earth and lead to slides.

568 He said relaxing the rules on impoundments, including one that requires them to be one-half acre or larger, he said, "might be fine for Western Kentucky, but it doesn't work in Pike County."

568 Ben Wolcott, Western Kentucky field director for the Kentucky Reclamation Association, an organization of stripmine operators, said the group favors a regulation that would allow the practice in Western Kentucky only.

568 Current reclamation regulations call either for establishment of 80 per cent ground cover of grasses and legumes with no trees, or 70 per cent ground cover with at least 600 trees per acre.

568 In many cases, Schuhmann said, the result is poor pasture land or forest that "does not supply sufficient food or cover for most species of wildlife."

THE UNIVERSITY OF ALABAMA  
POST OFFICE BOX 4664  
UNIVERSITY, ALABAMA 35486  
March 7, 1977

Honorable Morris K. Udall  
House of Representatives  
Longworth House Office Building  
Washington, D.C. 20515

Letter Presentation to the Committee on Interior and Insular Affairs House of Representatives Subcommittee on Energy and the Environment, Hon. Morris K. Udall, Chairman Briefings on the Regulation of Surface Mining  
Dear Congressman Udall:

569 The following information and comments are presented for your consideration relative to the need for Federal Surface Mining Reclamation Legislation as embodied in bill H.R. 2.

569 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 environmentalist 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.

569 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 duplicate what the states are already doing.

569 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.

569 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 electric power. To date approximately 70,000 acres of land have been surfaced 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 1/4 of one percent of the land area of the state. A rather small impact when one considers that approximately 8 percent 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.

570 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.

570 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 "save" from the strippers shovel if this philosophy is adopted. Not to mention the untold hours of human misery brought about by Black Lung.

570 Since the environmental aspects of surface coal mines are being adequately handled by the states, I would recommend 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.

570 Thank you for your consideration of my testimony.

570 Sincerely

570 Robert M. Cox, Ph.D., P.E.

570 University Mining Engineer

570 Chairman, Alabama Surface Mining

570 Reclamation Commission

570 nw