

HEARING, May 11, 1977

Legislative History

May 11, 1977 Hearing

Following is the May 11, 1977 hearing before the Senate Subcommittee on Public Lands and Resources of the Committee on Energy and Natural Resources. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

HEARING: ICF Inc. Study Inquiry

SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

MAY 11, 1977, SERIAL No. 95-35

1 WEDNESDAY, MAY 11, 1977

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

1 The subcommittee met, pursuant to notice, at 8:30 a.m., in room 3110, Dirksen Office Building, Hon. Lee Metcalf presiding.

1 Present: Senators Metcalf and Hatch.

1 Also present: Norm Williams, professional staff member.

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

1 Senator METCALF. The subcommittee will be in order.

1 During the course of the reorganization of Congress and the reorganization of the committees, new Members were assigned by lot and one of the Members assigned to this committee was the Senator from Utah, Senator Hatch. Senator Hatch was here during the consideration of the report from ICF on strip mining activity and energy and economic impacts of it. During the course of our early consideration of strip mining legislation he questioned some of the conclusions and the way the report was handled.

1 He wrote a letter to me as chairman of the subcommittee and I responded by getting some further answers from Mr. Stauffer who is chairman of the board of directors of ICF, Inc.

1 However, Senator Hatch felt that he would like to interrogate the authors of the report. So the purpose of this meeting this morning is to let the authors of the report respond to Senator Hatch's inquiries.

1 I am delighted to have the Senator from Utah back here. When the committee assignments were finally made, he was not on this committee; but we

will always consider him as an alumnus of this organization. We are glad to have you here this morning Senator and we are glad to have you, Mr. Stauffer as a witness.

1 So I am going to turn the meeting over to you, Senator Hatch.

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

1 Senator HATCH. Thank you, Senator. I appreciate the courtesy extended to me by Senator Metcalf who is always very gracious and I think that he is a very, very fine man.

2 During the early weeks of this 95th Congress, I, as a freshman senator, as Senator Metcalf indicated, had the occasion to be temporarily assigned to the Interior Committee. As an interim member of that committee I was afforded the opportunity to be present at some of the hearings on the strip mining legislation then under consideration.

2 During those hearings, Secretary of the Interior Andrus and Federal Energy Administrator O'Leary relied upon a report prepared by ICF, Inc., to support statements they were making which were favorable to the legislation. Close scrutiny of the report relied upon by Secretary Andrus and Administrator O'Leary raised some critical issues as to the accuracy of certain parts of the report.

2 The document referred to by Andrus and O'Leary was entitled "Draft Final Report" on the Energy and Economic Impacts of the Surface Mining Control and Reclamation Act, and was dated February 1, 1977.

2 That report contained figures and information which were substantially different from the "Draft Final Report" dated January 24, 1977, identical title and just a week earlier. The apparent discrepancies were not resolved at that time and the distinguished senior senator from Montana, Senator Metcalf, indicated that a hearing would be held to get to the bottom of the inconsistencies in the reports, including the propriety of such changes in materials presented to the Senate, without full explanation of the tentativeness of the report.

2 The memorandum prepared by ICF for EPA and CEQ, the contracting governmental agencies, was sent to both Senator Metcalf and me with a cover letter attempting to justify the changes made as being based upon the normal review and interchange involved with any report.

2 Unfortunately, the legislation has been reported out of the committee

without further attempt to resolve the issue of whether or not these documents were doctored and the official report of the committee upon which our colleagues must rely is clearly incomplete.

2 I am especially concerned that the changes made in the two reports may have motivation that is not impartial with respect to certain special interest groups favoring stronger than necessary strip mining controls.

2 While I appreciate the efforts of Senator Metcalf to pursue this matter now, it seems a little like closing the barn door after the horses have high-tailed out. I only hope that we can develop some information this morning which will bring us closer to the real truth of the ICF reports.

2 And I would like to say this: That Senator Metcalf, in my opinion, has been an advocate for this bill and I have deep respect for this bill. Therefore, I have to have deep respect for his advocacy, but I am concerned about this report and there would appear to be major discrepancies therein and I am concerned that too often the Federal Government - we have situations arise where we only get one particular side or one point of view. That may or may not be the case here and I appreciate you, Mr. Stauffer, taking time to come in and to testify today.

3 I also requested that others come in, but let's see if your testimony will resolve the difficulty; if it doesn't, then I will have to request that we hold hearings to have others come in as well. And, hopefully, this will be enlightening to all of us and we will resolve any difficulties that presently exist.

3 I wonder if we could swear Mr. Stauffer in, Mr. Chairman.

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3 Senator METCALF. Sure. Is Mr. Klein going to testify, too? Do you want them both sworn?

3 Mr. STAUFFER. He is not going to read our initial testimony.

3 Senator HATCH. Why don't we swear both of them.

3 Senator METCALF. Why don't you both stand and raise your right hand?

3 [Whereupon, Mr. Stauffer and Mr. Klein were duly sworn by the subcommittee.]

3 Mr. STAUFFER. I do.

3 Mr. KLEIN. I do.

3 Senator METCALF. Mr. Stauffer has, I see, a statement here which is relatively long. Do you want to have him read a statement or would you prefer to start with a series of inquiries?

3 Senator HATCH. I wonder if it wouldn't be better if we just start into the inquiry and put your statement - I ask unanimous consent that the statement be incorporated into the record in this matter so that the - your position can be fully known here. And the attachments, I take it - there are some attachments to your statement?

3 Mr. STAUFFER. The attachments are what we have sent up already.

3 Senator HATCH. They are already in the committee report.

3 Mr. STAUFFER. Right.

3 Senator HATCH. If they are not, I ask unanimous consent that they be included.

3 Senator METCALF. Yes.

3 [The prepared statement of Mr. Stauffer follows:]

STATEMENT BY C. HOFF STAUFFER, JR. CHAIRMAN OF THE BOARD OF DIRECTORS
ICF INCORPORATED

TEXT: 5 Mr. Chairman, thank you for the opportunity to appear here today. My name is C. Hoff Stauffer, Jr. I am Chairman of the Board of Directors of ICF Incorporated. With me today is Daniel E. Klein, a Senior Associate at ICF. We are here to answer questions which have been raised regarding the preparation of our Draft Final Report entitled "Energy and Economic Impacts of H.R. 13950," submitted to the Council on Environmental Quality and Environmental Protection Agency under Contract No. EQ6AC016. I am the ICF Director in charge of this study; Mr. Klein is our Project Manager.

5 On February 7th and 8th, during Senate and House hearings on S. 7 and H.R. 2, questions were raised regarding modifications made to our Draft Final Report during the review process. Although we have always responded fully to all questions which have been posed to us, we find that the same questions are still being raised. We consider this an extremely important matter because we perceive the tone of these questions as reflecting adversely upon our professional integrity. Accordingly, we appreciate the opportunity to appear before you today to dispense completely and finally, we hope, with any doubts regarding the analytical integrity of our work.

5 Our testimony today is organized into two parts. The first part will trace ICF's role in the analysis of surface mining reclamation legislation, and discuss the procedures we followed in preparing our Draft Final Report. The second part will detail the reasons certain modifications were made during the review process.

5 PROCEDURES FOLLOWED IN REPORT DEVELOPMENT

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

6 ICF Incorporated is not an advocacy group. We provide economic and policy analysis for decision-makers in government and industry. In undertaking our analysis of H.R. 13950, our directive was to conduct a thorough and unbiased study of the energy and economic impacts which might result were the legislation to be enacted and implemented. We were not directed to prepare an advocacy document nor to make recommendations.

6 A key aspect of our approach was the extensive degree of interaction with other government agencies and private sector organizations. From the very early stages of our analysis, ICF, CEQ, and EPA sought to incorporate suggestions and review comments from a broad spectrum of interests. As I am sure you understand, it is common practice for government agencies to solicit comments on draft reports prepared by contractors. This review procedure is common in academia and most professional research efforts as well. We think this is a good procedure, because it gives those who prepare the reports (like ourselves) the benefit of experience and expertise that is not available in any one organization. We welcome such reviews because they generally help to improve the quality of our products.

6 Preparation of the Draft Final Report

6 This review procedure was followed in the preparation of our Draft Final Report. As specified in our contract with CEQ, a preliminary final report was to have been submitted to CEQ and EPA by January 10, 1977. Following a review by CEQ and EPA, a draft final report for interagency review was to have been

submitted by January 24, 1977. After reviewing the interagency review comments, ICF was to submit a draft final report for distribution by approximately February 1, 1977.

6 ICF met this report schedule in full. Our preliminary report was submitted January 10, our draft final report for interagency review was submitted January 24, and our Draft Final Report for distribution was submitted February 1. This schedule had been arranged well in advance. The agencies participating in the interagency review were well aware that their comments would be considered for inclusion in our February 1 Draft Final Report.

7 Given that our report schedule was widely known and that we met every interim deadline, we were surprised and distressed to hear concern expressed regarding draft reports with different dates. The implication of these criticisms was that the January 24th report was somehow "recalled" in order to alter findings which would better achieve unstated political purposes. This is absolutely not true. The January 24th report was prepared solely for the purpose of interagency review, in order to solicit comments for consideration in our February 1 Draft Final Report. It was always intended that the February 1 Draft Final Report would be the document for distribution. It was not, as suggested, an "afterthought" undertaken to correct what some perceived as not fully satisfying political goals.

7 Procedures for Making Revisions

7 In each memorandum and report submitted for review, it was ICF's intent to present fully and accurately our findings based upon the most complete data available and our best interpretation of those data. Through our own continuing analysis and thoughtful comments from reviewers, we were able to improve subsequent drafts. Because of this, it is our view that the February 1 draft is superior to the January 24 draft. Hence, we would characterize our report as having been "refined" or "changed for the better" but not as having been "tampered with" or "laundered."

7 Of the numerous comments received, most were obviously based on thoughtful and careful review. We considered each comment carefully. When we judged the comment was sound, we attempted to refine our report appropriately. When we judged the comment was not sound, we made no changes. In no instance was any compromise made to the analytical integrity of our report in order to effect findings which would appear politically desirable. No changes were made which would distort or conceal substantive points. No omissions of previously-analyzed issues were made. No changes were made which would impart a

partisan tone (either for or against) to the discussion. It was we (and not our clients) who determined whether and how we would respond to each specific comment. All changes were made by ICF, not our clients, and were authorized by myself as Director.

8 MODIFICATIONS MADE DURING THE REVIEW PROCESS

8 So far, our testimony has dealt with the general procedures ICF followed in developing our Draft Final Report. We hope that you will agree that throughout this process, a high degree of attention was given to the solicitation of outside review, and to the incorporation of these review comments into our work according to the highest standards of professional analytical integrity.

8 Let us now focus our attention upon the types of changes that were made. Two basic types of changes were made - numerical and textual. Out of some 550 pages, numerical changes we recall were limited to portions of two sets of numbers (excluding typographical errors). As we will soon show, both changes were made in an effort to improve the analytical quality. In all cases, the data and assumptions are fully documented. Significantly, the numerical changes did not alter the substantive conclusions which are drawn from those estimates.

8 As with the numerical changes, the textual changes also do not alter the substantive conclusions. The textual changes which were made in the Draft Final Report can be categorized in three basic types:

8 (1) Readability. Several minor changes were made throughout the report to rephrase sentences and paragraphs in an effort to improve the flow of text and facilitate understanding of some of the more difficult portions of the analysis. These involved no changes in substance or tone.

8 (2) Clarity. Several additions were made in the Draft Final Report to expand upon the assumptions, methodologies, and findings. Most of these additions were made in response to questions raised during the review process, and include footnotes, supplementary descriptors, and additional caveats where necessary. These, too, involved no changes in substance or tone.

8 (3) Tone . Throughout this study we have attempted to present an impartial and factual analysis. This is in keeping with our instructions to develop impact estimates and not an advocacy document. We have not expressed judgments as to the merits of the legislation, and have limited our analysis to the impacts of H.R. 13950 as reported August 31, 1976. Although we tried to present our analysis in politically neutral terms, we were made aware of

several instances in which the phrasing could possibly suggest a bias either for or against the bill. To avoid the appearance of having taken any advocacy position, alternative wordings were sought which would not suggest a bias but would still retain the substantive value. We did not make such tonal changes when the result would have been to weaken or modify an analytical finding.

9 In the remainder of our opening statement, we will describe in greater detail some of the specific changes made between the interagency review draft of January 24, 1977, and the February 1 Draft Final Report. Specifically, we will discuss the refinements to portions of two sets of numerical estimates, and the reasoning behind some of the textual changes.

9 During preparation of our Draft Final Report, dozens, perhaps even hundreds, of minor modifications were made throughout the report in response to continuing analysis at ICF and thoughtful reviewer comments. It is our firm conviction that none of these changes, including those we will now discuss, changed any of the summary findings or conclusions. We have selected those changes we will now discuss only because others have made note of them, not because they are particularly significant in and of themselves. In particular, we will discuss those changes noted in the Dissenting Views to the House Report on H.R. 2.

9 Alluvial Valley Floors

9 Between the interagency review version of January 24 and the February 1 Draft Final Report, the assumptions used to develop estimates of the "worst case" or "high impact" production impacts that could result from the alluvial valley floor provisions of H.R. 13950 were modified. Whereas in the interagency review version the assumption was made that any lease area containing alluvial valley floors would be impacted, the Draft Final Report took account of the extremely low probability that all of these sites would be impacted, even under a very stringent interpretation of H.R. 13950. The effect of this change in assumptions was to reduce the high production impact estimates to approximately one-half of those presented in the interagency review draft. The other two sets of production impact estimates concerning alluvial valley floors - low and moderate - did not change at all. Likewise, no changes were made in the reserve base impact estimates.

10 In the interagency review, the estimate of high production impact was based upon very stringent interpretations of imprecise terms. Lands were not assumed to be undeveloped range land if there was any potential for hay

production. Even very small changes in water quantity or quality were assumed to be adverse effects. Finally, it was assumed that the grandfather clause was applicable only to presently permitted acreage, and that unpermitted parts of the long-range mining plan would not be grandfathered.

10 Under these interpretations, the impact upon production could be quite high indeed. In developing a numerical estimate, we made the assumption that any mine having any alluvial valley floors within the entire lease boundary could be impacted. Using the aerial analysis data documented in our report, this assumption projected about 70 percent of the future production in the Northern Great Plains as being impacted in some way.

10 In response to comments received during the interagency review process, we re-examined the substantive basis for this estimate. We were concerned that the extreme assumptions we had used resulted in an unrealistically high estimate which could be misleading.

10 We reviewed the data from our interviews with 19 western mine operators. Some were near alluvial valley floors which contained poor quality water or were clearly not productive. Others were located at a considerable distance from the alluvial valley floor or had the mining area separated from the valley floors by ridges. In still others, the actual identification of an alluvial valley floor was questionable from geologic and hydrologic viewpoints. Hence, the proximity of a lease to a possible alluvial valley floor clearly does not mean that in all cases, the mine site could impact that valley floor.

10 Based upon this review of the data which is fully documented (in Appendix F of our report), we concluded that our original assumption was overly harsh. The flaw lay in the fact that although any individual mine near an alluvial valley floor had some probability of being impacted by H.R. 13950, the joint probability that every mine would be impacted was extremely small. Since about one-half of the mine sites covered by our interviews could be unaffected due to the aforementioned reasons, and since one-half appeared a reasonable estimate given the less-than-adequate data available, we prepared a revised high impact estimate based upon the assumption that about one-half of the new production near alluvial valley floors would be impacted.

11 Further, the "worst case" estimates for the alluvial valley floor provisions of the January 24 draft were retitled as "high impact" estimates in the February 1 draft. It was argued by some that "worst case" implied that we opposed such an outcome, whereas others might see such an outcome as desirable.

In keeping with our apolitical approach, this term was changed to a more neutral "high production impact." This new title was also consistent with our revised estimates for the high end of the range, which were not of the most extreme case imaginable but which reflect reasonable probability judgments.

11 It is this particular numerical change which has been singled out for intensive questioning. Yet as we have just explained, the modification was made on what we believe is a sound analytical basis. In both the interagency review draft and the Draft Final Report, all data and assumptions are fully documented so that the reader can understand the basis of our estimates. We think it is significant to note that during the more than three months this estimate has been under intense public scrutiny, we have not yet received any comments suggesting that our estimate in the February 1 Draft Final Report did not represent the best possible estimate based upon the best available data.

11 It is also worth noting that the changes made had no bearing on the conclusion drawn from the table presenting the low, moderate, and high estimates. The conclusion is (in both drafts) that a wide range of potential impacts (associated with both data uncertainty and varying interpretations of the language of the bill) exists, ranging from zero to some very large numbers. This point did not change at all between the interagency review of January 24 and the Draft Final Report of February 1, 1977.

12 Finally, we believe that this focus on a specific set of numerical estimates is not productive. Due to the substantial uncertainties associated with estimating these impacts, we believe that no undue emphasis should be attached to any specific number or set of numbers. This was noted in the second paragraph on page one of our report:

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

12 Both draft reports make clear the substantial uncertainties regarding the estimates associated with the alluvial valley floor provisions. We suggest that discussions should focus on an interpretation of the range (i.e., that a broad range of potential impacts exist), and not on any specific numbers.

12 Surface Owner Protection Provisions

12 Between the interagency review version of January 24 and the February 1

Draft Final Report, the assumptions used to develop the reserve base impacts of the surface owner protection provisions were changed. In the interagency review draft of January 24, 1977, the reserve base impacts ranged from 0.8 to 8.5 billion tons. In the February 1 Draft Final Report, the range is 0.4 to 4.2 billion tons. The total potential impact upon the reserve base from all provisions ranges from 8.1 to 24.0 billion tons.

12 The methodology used to develop these estimates is the same in both drafts - beginning with estimates of the quantity of federal strippable coal beneath non-federal surface, adjustments are made to account for (1) the percent of this land owned by a qualified surface owner, (2) the percent of qualified surface owners who might be unwilling to consent to having the coal reserves leased, and (3) the nearby reserves which would be excluded. The changes in impacts relate directly to changes in these adjustment factors, and in total reduce the impacts by about one-half.

12 Reserve base impact estimates differ between drafts only because of changes in the subjective estimates of (1) the percent of this land owned by qualified surface owners, and (2) the percent of qualified surface owners who might be unwilling to consent to having the coal reserves leased. In both versions, the estimates of federal strippable coal beneath nonfederal surface are the same.

13 The factors which changed were and still are subjective estimates, based upon a paucity of meaningful data. Our subjective estimates were revised based upon reviewer comments relating to the success that energy companies have been having in acquiring surface rights in the West. Further, reviewers cited portions of our own analysis which noted that although the provisions would limit surface owners from obtaining windfall profits by giving consent, there were no restrictions against making windfall profits by selling the land. Based upon these observations, we concluded that our estimates of qualified surface owners who would refuse either to allow leasing or to sell were probably too high.

13 Still, there were very few data upon which assumptions can be based. We considered making no estimates at all, but judged that would not be a positive contribution toward helping others understand the potential impacts of the bill. Hence, we decided to estimate a range of potential impacts, making clear our methodology and assumptions. This gives the reader the opportunity to test the effects of alternative assumptions on the estimates.

13 We note again that during the more than three months this estimate has also been under intense public scrutiny, we have not yet received comments suggesting that our estimate did not represent the best possible estimate based upon the best available data.

13 Text Changes

13 As was noted earlier, changes in text were made to improve readability, clarity, or tone. These text changes do not alter the basic substance; hence, we do not consider such changes as being significant. They do not represent, as has been suggested, "doctoring," "tampering," or "watering down." Let us now take several examples of such changes, as cited in the Dissenting Views to the House Report on H.R. 2.

14 Example No. 1

14 In the interagency review draft of January 24, the last half of the first summary conclusion relates to possible undesirable effects of H.R. 13950. It reads:

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

14 In the February 1 Draft Final Report, this was presented as a separate summary conclusion, and reworded in a more general form. It reads:

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

14 During the interagency review, it was suggested that this first summary conclusion lacked parallelism in that general findings (i.e., with respect to cost impacts) were combined with specific points (i.e., with respect to non-cost impacts and varying interpretations). Further, it was suggested that the original wording implied that these were the only impacts, where in fact there were several more.

14 In response to what we considered to be valid criticism, we reworded this to read as two general conclusions. It is important to note that all of the specific issues raised are still raised in detail in the Summary, and all are analyzed in full in the body of the report. In making this change, our intention was to be clear and to impart a neutral tone. We did not and do not consider our conclusions to be weakened or watered down.

15 Example No. 2

15 In the summary to the January 24 interagency review draft, one conclusion relates to varying interpretations of provisions. It reads:

15 "In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could have effects quite different from the apparent Congressional intent. In most cases, the intent of the provision would have little cost or production impact. However, the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation."

15 In the February 1 Draft Final Report, this text is reworded as:

15 "In addition there are several other non-cost provisions in H.R. 19350 in which the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays. In most cases, the intent of the provision would have little cost or production impact."

15 In our view, there is very little difference between the two. However, the fact that the wording has changed has been looked upon with suspicion. In the House Report on H.R. 2, a sentence-by-sentence comparison was made, and turned up the fact that what had been three sentences was now rewritten as two. Accordingly, the parallel to the third sentence was a note saying "Language deleted in this version."

15 The reason the third sentence was deleted was that it was combined with the first sentence. The third sentence in the January 24 draft was ". . . the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation." The first sentence of the February 1 draft contains ". . . the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays." We believe the two sentences of the February 1 draft say the same thing as the three sentences of the January 24 draft.

15 The reason we revised this paragraph was to avoid reference to the "apparent Congressional intent." Reviewers noted that it was presumptuous of ICF to proclaim what the Congressional intent actually was. Further, it was pointed out that since H.R. 13950 did not pass in either house of Congress, the bill itself was not a reflection of Congressional intent. Accordingly, we sought a rewording which would convey the point that the literal wording could have

unintended effects, while avoiding the phrase "Congressional intent."
Elsewhere
in the Summary and in Chapter V, we made frequent use of the phrase "apparent
intent (as reflected in the statutory language and Committee Report)."

16 Example No. 3

16 In the January 24 interagency review draft, the summary of the
alluvial
valley floor analysis included a sentence to suggest the wide range of
impacts
associated with different interpretations. It reads:

16 "Imprecise wording in H.R. 13950 could lead to uncertain
interpretation; which could significantly limit western surface coal mining."

16 This was reworded in the February Draft Final Report to read:

16 "Some words and phrases in H.R. 13950 are subject to varying
interpretations. In the event that these terms were given a very stringent
interpretation, the impacts of H.R. 13950 could range substantially higher."

16 We consider the thrust of these two sentences to be the same, except
that the second sentence is phrased in a more general form. The reason for
this
change was to avoid use of the word "limit." As used here, "limit" implies
actual production curtailments. However, the analysis of the alluvial valley
floor provisions tried to estimate "production impacts," which were
explicitly
defined to include delays and mining plan revisions as alternative impacts to
production losses.

16 Thus, our original summary statement that mining could be limited by
these provisions was one which was not strictly supportable by our analysis.
Accordingly, we sought an alternative wording which would convey our concern
relating to the uncertain impact of imprecise wordings, while still being
supportable by our analysis.

16 Example No. 4

16 In the summary of the alluvial valley floor impacts, the January 24
interagency review draft elaborates on particular terms which could be
interpreted in different ways. It reads:

16 "Imprecise and undefined terms create a high degree of uncertainty
in
predicting impacts, and could likely result in extensive litigation. A
distinction can be made between flexibility and ambiguity. Flexibility refers
to
the ability of the regulators to make case-by-case decisions based upon
clearly
defined criteria. Ambiguity, on the other hand, refers to poorly defined
criteria, which could result in judicial interpretation and regulatory
inflexibility. Such imprecise terms include "existing coal mine," "valley
floor," "undeveloped range land," "adversely effect," "not significant," and
"substantial loss."

17 In the February 1 Draft Final Report, this paragraph was rewritten as:

17 "Certain phrases on Section 510(b)(5) are subject to different interpretations. For example, it is not clear whether the term "undeveloped range lands" includes lands which have the potential for hay production. Nor is it clear what kind of changes in water quality and quantity could constitute "adverse effects" within the meaning of Section 510(b)(5)(B). Other phrases may also be interpreted differently. Some of these uncertainties may be resolved when administrative regulations defining these terms are promulgated under the statute. Others will be clarified as regulatory authorities proceed to administer the Act on a permit by permit basis. Finally, the possibility exists that judicial interpretations of these terms may in some cases be sought."

17 The effort was clearly to provide greater specificity as to what we meant by "imprecise and undefined terms." In the original wording, some reviewers did not understand why we thought some terms were imprecise. Accordingly, we elaborated by giving examples. The full analysis of the alluvial valley floor provisions provides even more detail regarding the imprecision of particular terms.

17 Example No. 5

17 In the January 24 interagency review draft, the discussion of other non-cost issues includes the point that the citizen participation provisions could potentially be abused. It reads:

17 "The provisions for declaring lands as unsuitable for mining appear to offer citizens an easier means of forcing hearing than is provided by the standard permit hearing process. Further, the regulatory authority has little flexibility in deciding whether hearing are actually warranted."

18 This was shortened in the February 1 Draft Final Report to read:

18 "The provisions for declaring lands as unsuitable for mining could possibly offer citizens an easier means of forcing hearings than is provided by the standard permit hearing process."

18 The decision to omit the second sentence was basically an editorial judgment. Since the first sentence clearly states that citizens have the means to force hearings, implying little or no regulatory flexibility, the second sentence is in large part redundant. Further, we note that this point is explained in detail in the main body of the report.

18 Example No. 6

18 In the January 24 interagency review draft, the discussion of other non-cost issues includes a point on required effluent guidelines. It reads:

18 "The technology which might be required to control sedimentation is phrased different from EPA's effluent guidelines. While it was interpreted in this report to require EPA's 1983 standard of 'best available technology economically achievable' in 1978, it could be interpreted differently and could result in costly and time consuming litigation."

18 In the February 1 Draft Final Report, this point was reworded to read:

18 "The technology which might be required to control sedimentation is phrased differently from EPA's effluent guidelines. It was interpreted in this report to accelerate EPA's 1983 standard of 'best available technology economically achievable' into 1978."

18 This point was revised for two primary reasons. First, it is beyond our role and competence to predict specific legal challenges. Second, we felt that it was more important to emphasize our interpretation that the 1983 effluent guidelines would be accelerated. During the review process, we became aware that the possibility of this acceleration was not widely understood, despite its potentially large economic impacts. Accordingly, we chose to emphasize our interpretation, rather than qualify it with alternative possibilities.

19 Summary of Changes

19 We have just discussed the changes which have been referenced as major changes. We think it is apparent that all text changes were based upon considerations of readability, clarity, and tone. It is also apparent that all numerical changes are based upon what we believe are sound analytical judgments and are always fully documented.

19 Hence, we strongly disagree that the changes we have made in any way weaken or change our findings, or slant the facts to achieve partisan aims. Further, we see all of these changes as being minor, and in no case affect the basic substance of our analysis.

19 Mr. Chairman, this concludes our prepared remarks. Again, we appreciate this opportunity to present the facts of the situation before the Subcommittee. We would be happy to answer any further questions you may have.

20 A Memorandum from C. Hoff Stauffer, Jr. (ICF) and Daniel E. Klein (ICF) to Barry R. Flamm (CEQ) and James Speyer (EPA), dated February 10, 1977.

20 B Letter from Senator Orrin G. Hatch to Mr. William Stitt (ICF), dated

February 7, 1977.

20 C Letter from C. Hoff Stauffer, Jr. (ICF) to Senator Orrin G. Hatch, dated February 11, 1977.

20 D Letter from Senator Lee Metcalf to Daniel E. Klein (ICF), dated February 9, 1977.

20 E Letter from C. Hoff Stauffer, Jr. (ICF) to Senator Lee Metcalf, dated February 18, 1977.

20 F Letter from Senator Lee Metcalf to C. Hoff Stauffer, Jr. (ICF), dated February 24, 1977.

21 ICF INCORPORATED 1990 M Street, Northwest Suite 400, Washington D.C. 20036 (202) 785-3440

21 February 10, 1977

21 MEMORANDUM

21 TO: Barry R. Flamm (CEQ)

21 James Speyer (EPA)

21 FROM: C. Hoff Stauffer, Jr.

21 Daniel E. Klein

21 SUBJECT: "Energy and Economic Impacts of H.R. 13950"

21 It has come to our attention that questions have been raised regarding modifications to our report between the Draft Final Report released on February 1, 1977, and the interagency review version of January 24, 1977. Some of the differences have been noted during both the Senate hearings on S.7 (February 7, 1977) and the House hearings on H.R. 2 (February 8, 1977). On these occasions an inference was made that such changes could have been due to political considerations rather than analytical judgments. In this memorandum we would like to fully resolve any confusion which may have arisen.

21 We wish to strongly emphasize that in no instance in our Draft Final Report (or in any preliminary drafts and/or memoranda) was any compromise made to the analytical integrity in order to effect findings which would appear politically desirable. The Draft Final Report of February 1 represents our very best analytical judgments at that point in time, just as any earlier drafts and/or memoranda represented our best judgments at earlier points in time. Hence, changes over time represent what we consider to be improvements in methodology, data, and/or assumptions, and in no way represent analytical compromises made for political convenience.

21 Throughout our study we have fully documented the data and assumptions underlying the impact estimates. Thus, any changes in impact estimates can be related directly to changes in underlying assumptions, where such changes are based upon what we consider to be analytically sound judgments and are fully documented. Any textual changes relate directly to efforts to (a) improve clarity, (b) improve readability, or (c) impart a more neutral tone to the document, since our study does not represent an advocacy document but rather an analysis.

21 The following sections will expand upon these points and detail the changes in particular impact estimates which have been noted in previous discussions. The first section will be a general discussion of ICF's approach in developing a Draft Final Report. This is followed by a detailed explanation of changes found between the interagency review version of January 24, 1977 and the Draft Final Report released on February 1, 1977.

22 GENERAL COMMENTS

22 Since ICF began its analysis of H.R. 13950, our approach has been one which has stressed cooperation with numerous and diverse interest groups, both in and out of government. This analysis has proven to be quite complex; since our own resources are limited, we have welcomed valid inputs from all who were willing to contribute. The primary vehicle for the solicitation of advice has been the use of draft reports and memoranda. These reflected our best judgments and knowledge at the time. By virtue of the extensive cooperation and thoughtful comments we received from others, we were often able to make what we considered analytical improvements in subsequent drafts. In those instances where we felt that the review comments did not contribute to the substance and/or appeared to be political at the expense of the analytical integrity, such comments were rejected.

22 In keeping with this approach, we prepared preliminary copies dated January 24, 1977 for the purpose of interagency review. This was done for the purpose of allowing several agencies (CEQ, EPA, FEA, BOM, DOI, OMB, TVA) to review and comment prior to the release of our Draft Final Report of February 1, 1977. It was never intended that the interagency review version of January 24 be the version submitted as our Draft Final Report under the terms of our contract. In fact, we at ICF were making several minor changes concurrent with

the interagency review. Due to the high level of cooperation from these agencies, we were able to make what we consider to be analytically sound modifications and editorial improvements. Any suggestions which would have compromised the analytical integrity to achieve politically desirable findings were rejected, as were any other suggestions we judged to be unsound.

22 Accordingly, the Draft Final Report which we submitted on February 1, 1977 represents our best analytical judgments at this time. Still, we must note that it is a draft report, and is subject to further modification as additional reviewer comments are received. As stated in the Preface to the report,

22 "This draft is being distributed for purposes of review and comment. Further work is being conducted. Refinements are underway. Constructive comments are welcomed."

22 CHANGES IN TEXT

22 Some questions have arisen regarding textual changes which have occurred between versions leading up to the Draft Final Report of February 1, 1977. The concern was that these changes were made in an effort to distort or conceal substantive points developed in earlier versions. These concerns are unfounded.

22 Before describing the changes, it is useful to note types of changes which were not made. No changes were made which would distort or conceal substantive points. No omissions of previously-analyzed issues were made. No changes were made which would impart a partisan tone (either for or against) to the discussion. 23 The text changes which have been made in the Draft Final Report can be categorized in three basic types:

22 (1) Readability. Several minor changes were made throughout the report to rephrase sentences and paragraphs in an effort to improve readability and facilitate understanding of some of the more difficult points.

22 (2) Clarity. Several additions were made in the Draft Final Report to expand upon the assumptions, methodologies, and findings. Most of these additions were made in response to questions raised during the review process, and include footnotes, supplementary descriptors, and additional caveats where necessary.

22 (3) Tone. Throughout this study we have attempted to present an impartial and factual analysis. This is in keeping with our instructions to develop impact estimates and not an advocacy document. We have refrained from expressing judgments as to the merits of the legislation or to what preferred

legislation might read, and have limited our analysis to the impacts of H.R. 13950 as reported August 31, 1976. Although we have tried to present our analysis in neutral terms, we have been made aware of several instances in which the phrasing could possibly suggest a bias either for or against the bill. To avoid the appearance of having taken any advocacy position, alternative wordings were sought which would not suggest a bias while still retaining the substantive value. We did not make such tonal changes when the result would have been a diminution of the analytical finding.

22 Examples of such text changes which are particularly noteworthy are the first two major conclusions in the Executive Summary of the Draft Final Report. These paragraphs do not add any new material to the section, but seek to highlight the major conclusions which follow. In the interagency review version of January 24, these two paragraphs were combined. While the first part (relating to impacts which were not great) remained the same, the second part (relating to non-cost impacts and varying interpretations) was made less specific in the Draft Final Report. During the interagency review, it was suggested that this paragraph was combining general findings with specific points, and that insufficient detail had yet been presented which would make these specific points meaningful. Further, it was suggested that the original wording implied that these were the only impacts, where in fact there were several more. In response to what we considered to be valid criticism, we reworded this to read as two general conclusions. We note that all of the specific issues raised are still raised in detail in the Summary, and all are analyzed in full in the body of the report.

24 ALLUVIAL VALLEY FLOORS - HIGH PRODUCTION IMPACT SCENARIO

24 Between the interagency review version of January 24 and the February 1 Draft Final Report, the assumptions used to develop the high production impact scenario for alluvial valley floors were modified. Whereas in the interagency review version the assumption was made that any lease area containing alluvial valley floors would be impacted, the Draft Final Report took account of the fact that not all of these sites would be impacted under a reasonable high impact scenario. The effect of this change in assumptions was to reduce the high production impact estimates to approximately one-half of those estimated in the interagency review version.

24 The assumptions used in developing these estimates are fully documented in the analysis, and are summarized in the Executive Summary. The scenario specification used in the interagency review version of January 24 is as follows

(underlining added):

24 "A worst-case production impact is based upon very stringent interpretations of imprecise terms. Lands are not assumed to be undeveloped range land if there is any potential for hay production. Very small changes in water quantity or quality are assumed to be adverse effects. Finally, it is assumed that the grandfather clause is applicable only to presently permitted acreage; unpermitted parts of the long-range mining plan are not included. In states such as Montana, all mines become potentially impacted, since only one year's acreage is permitted at a time.

24 Under these interpretations, the impact upon production can be quite high. To estimate the magnitude of this impact, the percent of lease tracts containing alluvial valley floors (Table 2) is used as an estimate of the percentage of new mines which could be impacted. In Arizona, New Mexico, and Washington, it is assumed that new mines will not affect alluvial valley floors, since they are not characteristic of these areas. Thus, the percent of new surface mine production which could be impacted is assumed to be as follows:

	Percent Impacted
Colorado	71
Montana	65
North Dakota	91
Wyoming	81

25 Further, it is assumed that existing Montana production could be impacted in the same proportion, since only one year's acreage is permitted at a time. Using these assumptions in conjunction with the surface production forecast developed in Chapter III, the worst-case impacts are developed as follows:

*6*Worst Case

Impact (Million Tons)					
Year	Colorado	Montana	North Dakota	Wyoming	Total
1977	0.7	21.4	3.3	9.8	35.2
1978	1.3	22.3	4.5	22.8	50.9
1979	2.4	24.0	5.0	39.3	70.7
1980	3.7	27.1	6.3	57.9	95.0
1981	4.7	29.6	6.8	65.5	106.6
1982	6.1	32.6	7.3	91.7	137.7
1983	7.4	35.9	7.7	101.0	152.0
1984	9.0	39.5	8.2	128.3	185.0
1985	10.6	43.4	8.6	148.4	211.0

25 Although it is unlikely that this production will all be shut down, the potential for extensive litigation is quite high, which could in turn lead to substantial short-term production delays."

25 Source: Interagency Review version of January 24, 1977, pages F-34, 35.

25 In the Draft Final Report of February 1, 1977, we chose (properly, we think) to modify these assumptions to account for the fact that lease areas are often much larger than the mine site itself, and in many cases the mining plan would be far removed from and/or would have negligible impact upon the alluvial valley floor located elsewhere within the lease tract. The scenario specifications are likewise fully documented in the analysis, and are summarized in the Executive Summary. These specifications are as follows (underlining added):

25 "A high production impact is based upon very stringent interpretations of the provisions. Lands are not assumed to be undeveloped range land if there is any potential for hay production. Very small changes in water quantity or quality are assumed to be adverse effects. Finally, it is assumed that the grandfather clause is applicable only to presently permitted acreage; unpermitted parts of the long-range mining plan are not included. In states such as Montana, all mines become potentially impacted, since only one year's acreage is permitted at a time.

25 Under these interpretations, the impact upon production can be quite high. To estimate the magnitude of this impact, the percent of lease tracts containing alluvial valley floors (Table 2) is used as an initial basis of the percentage of new mines which could be impacted. At this starting point, this percentage is used as a surrogate measure to indicate those mines which need to be concerned with potential alluvial valley floor impacts. However, even under a reasonable high impact scenario, many of these sites will not likely have permitting problems with respect to alluvial valley floor provisions. Some will be near alluvial valley floors which contain poor quality water or are clearly not productive. Others will be located at a considerable distance from the alluvial valley floor or have the mining area separated from the valley floors by ridges. Under the high impact scenario, it is assumed that one-half of the mine sites having alluvial valley floors within the lease boundaries will have no permitting problems, and that the remaining one-half could be subjected to impacts (delays, mining plan revisions, production cutbacks, etc.). In Arizona, New Mexico, and Washington, it is assumed that new mines will not affect alluvial valley floors, since they are not characteristics of these areas. Thus, the percent of new surface mine production which could be impacted is assumed to be as follows:

26
Affected

Percent Near Alluvial Percent Assumed

	Valley Floors	By H.R. 13950
Colorado	71	35
Montana	65	32
North Dakota	91	45
Wyoming	81	40

26 Further, it is assumed that existing Montan production could be impacted in the same proportion, since only one year's acreage is permitted at a time. Using these assumptions in conjunction with the surface production forecast developed in Chapter III, the worst-case impacts are developed as follows:

*6*High Production Impact (Million Tons)					
Year	Colorado	Montana	North Dakota	Wyoming	Total
1977	0.4	10.6	1.6	4.8	17.4
1978	0.6	11.0	2.2	11.3	25.1
1979	1.2	11.8	2.5	19.4	34.9
1980	1.8	13.4	3.1	28.6	46.9
1981	2.3	14.6	3.4	32.4	52.7
1982	3.0	16.1	3.6	45.3	68.0
1983	3.7	17.7	3.8	49.9	75.1
1984	4.4	19.4	4.0	63.4	91.2
1985	5.2	21.3	4.3	73.0	103.8

26 Although it is unlikely that this production will all be shut down, the potential for delays are quite high, which could in turn lead to significant shortterm production losses."

26 Source: Draft Final Report, February 1, 1977, pages 36-37.

26 Several points are worthy of note:

26 The production impacts estimated for the low and moderate production impact scenarios remained the same in the interagency review version and the Draft Final Report of February 1. Further, the reserve base impacts remained the same under all scenarios. Importantly, it is the moderate impact scenario that reflects (1) what we believe would happen if the bill was interpreted consistent with the apparent intent (as reflected in the statutory language or Committee Report), and (2) our best judgments based upon existing data.

i7 In estimating production impacts due to the alluvial valley floor provisions, the term "production impact" should not be equated with the term "production losses." As clearly noted in the summary tables:

i7 "Production impacts, as used here, do not necessarily mean production losses; delays and/or mining plan revisions are alternative impacts."

i7 The term "worst-case production impact" was changed to "high production

impact" in the Draft Final Report of February 1, 1977. This change was made for two reasons. First, it was claimed by some that "worst-case" implied that we opposed such an outcome, whereas others might see such an outcome as desirable. In keeping with an apolitical approach, this term was changed to a more neutral "high production impact." Second, a worst-case estimate calls for the most extreme case imaginable; in this case, the joint probability of every mine having alluvial valley floors within the lease area being impacted. The joint probability of such an event is extremely small. A high impact estimate, on the other hand, need not include the most extreme case imaginable, but can be tempered with judgment concerning the low probability that every mine having alluvial valley floors within the lease area might be impacted. This judgment is clearly stated in our report.

i7 The change in assumptions made in the Draft Final Report was based upon our professional judgment that our original assumptions were overly strict. Through discussions generated during the interagency review process, coupled with a re-examination of the interviews with the western mine operators (fully documented in Appendix F), we concluded that alternative assumptions were necessary in order to ensure that the analysis presented our best analytical judgments at that point in time.

i7 The February 1, 1977 report is still a draft report. All assumptions have been documented. Reviewer comments are still welcome. Should new evidence be presented which convinces us that further modifications are warranted, further modifications will be made and the assumptions clearly documented.

i7 Due to the substantial uncertainties associated with estimating these impacts, we believe (as clearly stated in our report) that no undue emphasis should be attached to any specific number or set of numbers. In the case of the alluvial valley floor provisions, the point being made was that there is a wide range of potential impacts (associated with both data uncertainty and varying interpretations of the language of the bill) ranging from zero to some very large numbers. We note that this point did not change at all between the interagency review version of January 24 and the Draft Final Report of February 1, 1977.

28 SURFACE OWNER PROVISIONS - RESERVE BASE IMPACTS

28 Between the interagency review version of January 24 and the February 1 Draft Final Report, the assumptions used to develop the reserve base impacts of

the surface owner protection provisions were changed. The methodology used to develop these estimates is the same in both versions - beginning with estimates of the quantity of federal strippable coal beneath non-federal surface, adjustments are made to account for (1) the percent of this land owned by a qualified surface owner, (2) the percent of qualified surface owners who might be unwilling to consent to having the coal reserves leased, and (3) the nearby reserves which would be excluded. The changes in impacts relate directly to changes in these adjustment factors, and in total reduce the impacts by about one-half.

28 The description of the methodology is identical in both the interagency review version of January 24 and the Draft Final Report of February 1, and reads (underlining added):

28 "We know of no data, on either a raw or aggregate basis, which would indicate the proportion of non-federal lands which are owner-occupied. Even county courthouse records which would indicate surface ownership would not indicate the residency or income information needed to resolve Section 714's criteria. Further, it is also a matter of conjecture as to how those private surface owners who do fall under the provisions of Section 714 would respond.

28 Accordingly, the amount of reserves which may actually be excluded under Section 714 is likely to be significantly less than the federal coal beneath non-federal surface. Since there is no data which would indicate the proportion owned by qualified surface owners or their willingness to allow leasing, only a subjective estimate of excluded reserves can be made. In this analysis, three estimates are made, covering a range of qualified ownership percentages and willingness to allow leasing."

29 In the interagency review version of January 24, the reserve base impacts were developed as follows (page V-10):

	Scenario		
	Low Impact	Moderate Impact	High Impact
Federal coal beneath non-federal surface (million tons)	9,126	12,120	13,071
x Qualified surface owner (%)	33	50	67
x percent unwilling to allow leasing	25	50	75
+ Nearby reserves effectively excluded (%)	10	20	30
= Reserves impacted (million tons, rounded)	800	3,600	8,500

In the Draft Final Report of February 1, 1977, the reserve base impacts were

developed as follows (page V-11):

Federal coal beneath non-federal surface (million tons)	9,126	12,120	13,071
x Qualified surface owner (%)	25	35	50
x Percent unwilling to allow leasing	15	30	50
+ Nearby reserves effectively excluded (%)	10	20	30
= Reserves impacted (million tons, rounded)	400	1,500	4,200

30 The following points are worthy of note:

30 In both versions the estimates of federal strippable coal beneath non-federal surface are the same. Reserve base impact estimates differ only because of changes in the subjective estimates of (1) the percent of this land owned by qualified surface owners, and (2) the percent of qualified surface owners who might be unwilling to consent to having the coal reserves leased.

30 The factors which changed were and still are subjective estimates, based upon a paucity of meaningful data. Our subjective estimates were revised based upon reviewer comments relating to the success that energy companies have been having in acquiring surface rights in the West. These comments led us to believe that our earlier estimates had been too high.

30 The February 1, 1977 report is still a draft report. All assumptions have been documented. Reviewer comments are still welcome. Should new evidence be presented which convinces us that further modifications are warranted, further modifications will be made and the assumptions clearly documented.

30 We are uneasy about these estimates because there are very few data upon which assumptions can be based. We considered making no estimates at all, but judged this would not be a positive contribution toward helping others understand the potential impacts of the bill. Hence, we decided to estimate a range of potential impacts, making clear our methodology and assumptions. This gives the reader the opportunity to test the effects of alternative assumptions on the estimates.

31 @% United States Senate @%COMMITTEE ON @%INTERIOR AND INSULAR
AFFAIRS
@%WASHINGTON, D.C. 20510 @%February 7, 1977 @%Mr. William Stitt @%President
@%ICF, Inc. @%1990 M Street, N.W. @%Suite 400 @%Washington, D.C. 20036 @%Dear

Mr. Stitt:

31 It has come to my attention that your draft final report entitled Energy and Economic Impacts of H.R. 13950 submitted to the Council on Environmental Quality and Environmental Protection Agency under Contract No. EQ6AC016 on February 1, 1977 may have been tampered with. On January 24, 1977 your draft report stated in the summary of conclusions certain specific impacts would occur if H.R. 13950 became law. Those assessments were changed in the February 1, 1977 report.

31 Would you explain the following:

31 1. Why the production figures and other assessments made in the January 24th report were changed in the February report.

31 2. Who specifically made these changes.

31 3. What data did those who made the changes rely upon to justify the changes.

31 4. Is it your normal practice to submit your recommendations to a federal agency and then change your recommendations based upon input from the contract agency.

31 5. Which impact figures does ICF stand on - the January report or the February report - and please explain.

32 @%ICF INCORPORATED 1990 M Street, Northwest, Suite 400, Washington, D.C. 20036(202) 785-3440 @%February 11, 1977 @%Senator Orrin G. Hatch @%6313 Dirksen Senate Office Building @%Washington, D.C. 20510 @%Dear Senator Hatch:

32 My partner Mr. William Stitt gave me your letter concerning our draft reports (of January 24, 1977 and February 1, 1977) entitled Energy and Economic Impacts of H.R. 13950 submitted to the Council on Environmental Quality and the Environmental Protection Agency under Contract No. EQ6AC016. He did so because I am the ICF director in charge of this study. My title is Chairman of the Board of Directors.

32 General Comments

32 As I am sure you understand, it is common practice for government agencies to solicit comments on draft reports prepared by contractors. This procedure is common in academia and most professional research efforts as well.

We think this is a good procedure because it gives those that prepare the reports (like ourselves) the benefit of a great deal of experience and expertise that is not available in any one organization.

32 This is the practice that was followed in this case. The purpose of

the January 24 draft was to solicit comments from our clients and other knowledgeable professionals. We had the benefit of a great deal of comment, most of which was obviously based on a thoughtful and careful review of our draft report. We welcome such reviews because they help us to improve our reports.

32 We considered each comment carefully. When we judged the comment was sound, we attempted to refine our report appropriately. When we judged the comment was not sound, we made no changes. I want to emphasize that we (and not our clients) determined whether and how we responded to every specific comment.

32 Given that this was the procedure that was followed and that this procedure is common, we were surprised and distressed that "tampering" was mentioned. This we consider an extremely important matter because had it occurred, it would reflect adversely on our professional integrity. Accordingly, we appreciate the opportunity to respond to the points raised in your letter.

33 It is our view that the February 1 draft is superior to the January 24 draft because we were able to refine the earlier draft in response to numerous thoughtful comments. Hence, we would characterize our report as having been "refined" or "changed for the better" but not as having been "tampered with." Further, please note that the February document is also a draft, and the analysis is still proceeding.

33 Point #1

33 You asked us to explain: "Why the production figures and other assessments made in the January 24th report were changed in the February report."

33 Our report contains a great deal of "production figures and other assessments." Most of these were not changed at all between the January 24 and February 1 drafts.

33 Some were changed in response to the comments we received, where we judged the comments were sound. Such changes are described in a memo we prepared for our clients (which is attached to this letter).

33 Point #2

33 You asked us: "Who specifically made these changes?"

33 ICF made all the changes. All were authorized by myself as director of the study.

33 In some cases, reviewers took the trouble to suggest specific language changes. When we agreed with the thrust of the comment, we considered including

the specific language. In most cases, we re-edited the suggestions. The final versions of the draft report were edited exclusively by ICF and represent our best effort and judgments as of the date of the report.

33 Point #3

33 You asked us: "what data did those who made the changes rely upon to justify the changes?"

33 We relied upon what we believed to be the best data available and our best judgments. In some cases and particularly for the estimates of the effects of the provisions relating to alluvial valleys and surface owner consent, the best data available are not very good.

33 We made this point clearly in both draft reports. Further, the specific data and assumptions are thoroughly documented in both draft reports. The attached memo describes which of our assumptions changed and why.

34 Point #4

34 You asked us: "Is it your normal practice to submit your recommendations to a federal agency and then change your recommendations based upon input from the contract agency?"

34 Neither draft report contained recommendations. The purpose of the reports was to present the findings of an analysis assessing the potential impacts of H.R. 13950. As analysts, we leave the value judgments that would be associated with any recommendation to elected and appointed government officials.

34 It is normal practice to have our draft reports reviewed by knowledgeable professionals. We try to conduct our analyses and report our findings in such a way that there is no need to change our analytic findings. However, when we judge reviewers have a good point, we respond in an effort to produce the best possible report.

34 Please note (as described in the attached memo) that none of our summary conclusions changed between the two drafts. There were numerous text changes (in an effort to increase readability, clarity, and objectivity) and a few specific numerical estimates changed. However, none of the major points changed.

34 Point #5

34 You asked us: "Which impact figures does ICF stand on - the January report or the February Report - and please explain?"

34 We believe that the figures presented in the February report are more

sound than the figures presented in the January report.

34 However, I want to emphasize that the February report is also a draft and that further work is being done. Most of this further work is focused on extending the analysis (e.g., testing the effects of alternative assumptions, analyzing potential financing problems for small mines), rather than on refining the analysis. Yet, we would carefully evaluate and further responsible comments we receive.

34 Again, I appreciate the opportunity to respond to your questions. I would be pleased to answer any further questions you might have.

35 @%United States Senate @%COMMITTEE ON @%INTERIOR AND INSULAR AFFAIRS @%WASHINGTON, D.C. 20510 @%9 February 1977 @%Mr. Don Klein @%ICF, Inc. @%1990 M Street, N.W. @%Suite 400 @%Washington, D.C. 20036 @%Dear Mr. Klein:

35 On 7 February, 1977, during a hearing held by the Subcommittee on Minerals, Materials and Fuels on S. 7, the Surface Mining Control and Reclamation Act of 1977, Senator Hatch raised certain questions about a report entitled "Energy and Economic Impacts of H.R. 13950", which was submitted by ICF, Inc., to the Council on Environmental Quality and the Environmental Protection Agency under Contract No. EQ6AC016.

35 Senator Hatch referred to differences in the coal production loss estimates calculated from the alluvial valley floor provisions of H.R. 13950, between the initial ICF draft report dated 24 January and the final draft report dated 1 February, 1977.

35 We would appreciate it if you would explain what the differences are and why ICF changed the estimates in the initial draft. Did any employee of the Federal Government direct ICF to change the estimates? Your response will be inserted into the hearing record.

36 @%ICF INCORPORATED 1990 M Street, Northwest, Suite 400, Washington, D.C. 20036(202) 785-3440 @%February 18, 1977 @%Senator Lee Metcalf @%Chairman, Subcommittee on Minerals, Materials and Fuels @%Committee on Energy and Natural Resources @%1121 Dirksen Senate Office Building @%Washington, D.C. 20510 @%Dear Senator Metcalf:

36 Mr. Daniel E. Klein, Project Manager of our surface mining reclamation study, has given me your letter concerning our draft report (of January 24, 1977 and February 1, 1977) entitled Energy and Economic Impacts of H.R. 13950 submitted to the Council on Environmental Quality and the Environmental Protection Agency under Contract No. EQ6AC016. He did so because I am the ICF

Director in charge of this study.

36 General Comments

36 As I am sure you understand, it is common practice for government agencies to solicit comments on draft reports prepared by contractors. This review procedure is common in academia and most professional research efforts as well. We think this is a good procedure because it gives those who prepare the reports (like ourselves) the benefit of experience and expertise that is not available in any one organization. We welcome such reviews because they generally help to improve the quality of our products.

36 This practice was followed for our analysis of the impacts of H.R. 13950. The purpose of the January 24 draft was to solicit comments from our clients and other knowledgeable professionals. Of the numerous comments received, most were obviously based on thoughtful and careful review. We considered each comment carefully. When we judged the comment was sound, we attempted to refine our report appropriately. When we judged the comment was not sound, we made no changes. In no instance was any compromise made to the analytical integrity of our report in order to effect findings which would appear politically desirable. No changes were made which would distort or conceal substantive points. No omissions of previously-analyzed issues were made. No changes were made which would impart a partisan tone (either for or against) to the discussion. It was we (and not our clients) who determined whether and how we would respond to each specific comment.

37 Given that this was the procedure that was followed and that this procedure is common practice, we were surprised and distressed that questions concerning differences between our January 24 and February 1 drafts were raised during the Subcommittee hearing on February 7th. This we consider an extremely important matter because we understand the tone of these questions reflected adversely on our professional integrity. Accordingly, we appreciate this opportunity to respond to the points raised in your letter.

37 It is our view that the February 1 draft is superior to the January 24 draft because we were able to refine the earlier draft in response to numerous thoughtful comments. Hence, we would characterize our report as having been "refined" or "changed for the better" but not as having been "tampered with" or "laundered."

37 Further, please note that none of the summary findings and/or conclusions changed between the two drafts. The changes were limited to refining a portion of two sets of numerical estimates (in each report we suggested that specific numbers should not be given undue emphasis) and to making numerous editorial changes.

37 On February 10, 1977, we prepared a memorandum for our clients (CEQ and EPA) which details the modifications we made between the interagency review version of January 24, 1977 and the Draft Final Report released February 1,

1977. A copy of this memorandum is attached. Further, please note that the February document is also a draft, and the analysis is still proceeding.

37 Below, we respond to specific points raised in your letter.

37 Alluvial Valley Floor Provisions

37 You asked us to explain the difference between the two draft reports in the coal production loss estimates associated with the alluvial valley floor provisions of H.R. 13950.

37 The alluvial valley floor production impacts estimated under the low and moderate production impact scenarios were not changed. Further, the reserve base impacts were not changed. The changes were confined to the "worst case" or "high impact" production estimate.

37 The "worst case" estimates for the alluvial valley floor provisions of the January 24 draft were retitled as "high impact" estimates in the February 1 draft. This change was made for two reasons. First, it was argued by some that "worst case" implied that we opposed such an outcome; whereas others might see such an outcome as desirable. In keeping with an apolitical approach, this term was changed to a more neutral "high production impact."

37 Second, it was argued by some that our worst case estimate was the most extreme case imaginable - that every mine having alluvial valley floors within the lease area would be impacted. These reviewers were concerned that we were biasing our findings by using such an extreme case. We responded to this argument because it is clear that the joint probability of every such mine being impacted is extremely low. A "high impact" estimate need not include the most extreme case imaginable, but can reflect reasonable probability judgments.

38 In the interagency review draft of January 24, the "worst case" production impact was estimated by assuming that all new production capacity from mines having any alluvial valley floor area within the lease tract would be impacted (delayed, revised, or curtailed). This assumption had the effect of impacting about 70 percent of new western production and existing Montana production. Based upon comments generated during the interagency review and a re-examination of our interviews with western coal producers (fully documented in Appendix F), we decided to modify this assumption for the high production impact estimates in the February 1 Draft Final Report.

38 Some of the comments from interagency reviewers and the producers noted that many of the new mine sites would not likely encounter permitting problems because the mine a) would be far removed from the valley floor (e.g., where a ridge might separate the mine from the area where the lease tract overlapped an alluvial valley), b) would have negligible impact, and/or c) would affect an alluvial valley floor which was of poor water quality or otherwise unproductive. For reasons such as these, our moderate impact estimates are about 15 percent of planned production from mines having alluvial valley floors in the lease tract. Importantly, it is the moderate impact scenario that reflects (1) what we believe would happen if the bill were interpreted in a manner we believe is consistent with the apparent intent (as reflected in the statutory language or Committee Report), and (2) our best judgments based upon existing data.

38 Accordingly, it was reasonably clear that a high impact estimate should be greater than the moderate impact estimates but less than one hundred percent of production from all mines having alluvial valley floors within the lease tract. However, we had essentially no data to indicate where within these bounds the high estimate should fall. For the February 1 report, we assumed that one-half of such production would be impacted. The effect of this revised assumption was to reduce the high production impact scenario by one-half. In all cases, the data (and lack thereof) and assumptions are fully documented in the report.

38 Due to the substantial uncertainties associated with estimating these impacts, we believe that no undue emphasis should be attached to any specific number or set of numbers. This was noted in the second paragraph on page one of our report:

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

39 In the case of the alluvial valley floor provisions, the point being made was that there is a wide range of potential impacts (associated with both data uncertainty and varying interpretations of the language of the bill) ranging from zero to some very large numbers. This point did not change at all between the interagency review of January 24 and the Draft Final Report of February 1, 1977.

39 Report Preparation Responsibilities

39 You asked: "Did any employee of the federal government direct ICF to change the estimates?"

39 No. All changes were made by ICF, and all were authorized by myself as Director of the study. Indeed, even if we had received such direction, our professional ethics would have precluded us from following such direction, if it would have meant our reporting an analytic finding that did not represent our best judgment.

39 In some cases, reviewers took the trouble to suggest specific language changes. When we agreed with the thrust of the comment, we considered including the specific language. In most cases, we edited the suggestions prior to inclusion in the report. In those instances where we judged that the review comments did not contribute to the substance and/or appeared to be political at the expense of the analytical integrity, such comments were rejected. The final version of the draft report was edited exclusively by ICF and represents our best effort and judgments as of the date of the report.

39 Numerous changes were made between the January 24 interagency review version and the February 1 Draft Final Report, in response to what we considered to be valid reviewer comments as well as continuing analysis by ICF. As detailed in the attached memorandum, there were essentially three types of changes made:

39 (1) text changes, in order to improve readability and clarity, and to impart a more neutral tone to the analysis,

39 (2) the alluvial valley floor high production impact scenario, where all data and assumptions are fully documented, and

39 (3) the reserve base impacts of the surface owner protection provisions, where all data and assumptions are fully documented.

39 It is important to note that throughout our study we have fully documented the data and assumptions underlying the impact estimates. Thus, any changes in impact estimates can be related directly to changes in underlying assumptions, where such changes are based upon what we consider to be analytically sound judgments.

40 The Draft Final Report which we submitted on February 1, 1977 represents our best analytical judgments at this time. Still, we must note that it is a draft report, and is subject to further modification as additional reviewer comments are received. Should new evidence be presented which convinces us that further modifications are warranted, further modifications

will be made and the assumptions clearly documented. As stated in the Preface to the report,

40 "This draft is being distributed for purposes of review and comment. Further work is being conducted. Refinements are underway. Constructive comments are welcomed."

40 Again, I appreciate the opportunity to respond to your questions. I would be pleased to answer any further questions you might have.

40 Sincerely yours,

40 C. Hoff Stauffer, Jr.

40 Chairman of the Board of Directors

40 CHS, Jr.: cdw

40 Attachment

41 @%United States Senate @%COMMITTEE ON @%INTERIOR AND INSULAR AFFAIRS @%WASHINGTON, D.C. 20510 @%24 February 1977 @%Mr. C. Hoff Stauffer, Jr. @%Chairman of the Board of Directors @%ICF, Incorporated @%1990 M Street, N.W. @%Suite 400 @%Washington, D.C. 20036 @%Dear Mr. Stauffer:

41 Thank you very much for your 18 February letter concerning your draft report entitled, Energy and Economic Impacts of H.R. 13950.

41 Your response completely clarifies the matter as far as I am concerned. It will be made a part of the official hearing record.

41 Thanks again for your cooperation.

41 Very truly yours,

41 Lee Metcalf

41 Chairman, Subcommittee on

41 Minerals, Materials and Fuels

42 Senator METCALF. I want to say, Senator Hatch, that even though we went ahead with the hearings and the markup of the bill - as you know, before the bill was reported - an attempt was made to give you the hearing which I promised and this matter will be made a part of the record. We will put it in the Congressional Record so that it will be part of the whole material on the bill, if you desire to do so.

42 Senator HATCH. I appreciate that. And to clarify that matter, I was called at the last minute, right before the recess, as I recall, and really couldn't make that meeting. So I kind of felt like - that wasn't your fault.

You have done everything you can to give me a hearing in this matter, and I think that that is only fair because, as you know, I am not sure what side I should be on in this particular thing, but I do want to make sure that these discrepancies are explained so that the people at least feel that they have had an adequate review of this matter.

42 Let me just start in, Mr. Stauffer, your letter to me indicates that the purpose of the January 24 draft was to solicit comments from your clients and other knowledgeable professionals. How were you able to obtain such astute comments in just 3 to 4 days that would provide more information than had just been brought out in more than 4 months of review that supposedly went into the January 24 version?

42 Mr. STAUFFER. Why, our contract had been set up such that we would deliver a report for interagency review on January 24 and had been set up far in advance and the other - not only had we been notified, but the other agencies as well.

42 Similarly, it was understood by all, including us, that we would turn that around in a week and produce a draft final report for distribution on February 1. So we knew that we were going to do that. The other agencies knew we were going to do that.

42 We distributed the report as in the time frame and in the schedule on the 24th. The other agencies were given - I forget - I think it was 3 days, possibly it was 2 days to read it.

42 We had a large meeting over at the new Executive Office Building where they all came with us and provided their comments orally. They subsequently provided additional oral comments, and I believe some written comments.

42 Senator HATCH. Who was at that meeting?

42 Mr. STAUFFER. This may not be exhaustive, but our clients, CEQ and EPA were there, OMB representatives were there, TVA was there, the Bureau of Mines was there, and I think another office in Interior.

42 It is not clear to me exactly how Interior was there.

42 Senator HATCH. Who represented the CEQ?

42 Mr. STAUFFER. CEQ? Barry Flamm was there. Janie Markley was there. Jim Jameson was there. There may have been others.

42 Senator HATCH. Anybody from the President's staff there?

42 Mr. STAUFFER.No. 1, I am not sure what you mean by the President's staff -

42 Senator HATCH. Anybody from the Executive Office of the President.

42 Mr. STAUFFER. CEQ and OMB are in the Executive Office.From the White House Staff - I don't think I know those people.

42 Senator HATCH. Anybody from the White House, were they there?

43 Mr. STAUFFER. One, I don't think that I know those people; and two, I don't think so.

43 Senator HATCH. What about Kathy Fletcher and her part in the report?

43 Mr. STAUFFER. I have never met or seen the girl.

43 Senator HATCH. Did she have any input into this particular report?

43 Mr. STAUFFER. I did not talk to her. Did you talk to her?

43 Mr. KLEIN. No.

43 Mr. STAUFFER. Neither of us talked to her. It is my understanding that she did talk with our clients.

43 Senator HATCH. It is your understanding that she did talk to your clients, and that is CEQ and EPA?

43 Mr. STAUFFER. Right.

43 Senator HATCH. So she did have some input through them?

43 Mr. STAUFFER. Right.

43 Senator HATCH. Who were your main contacts with CEQ?

43 Mr. STAUFFER. Barry Flamm was the technical project officer and Janie Markley was the person that we had the most contact with.

43 Senator HATCH. But you had it with Janie Markley and Barry Flamm?

43 Mr. STAUFFER. Right.

43 Senator HATCH. EPA, who were your chief contacts?

43 Mr. STAUFFER. Jim Speyer, primarily, and Jim Ferry, who has since left.

43 Senator HATCH. Now, I notice, though, that you filed an interim report on September 9, 1976 prior to the January 24, 1977 report and it was quite a

substantial report and it asked comments at that time of the various agencies;
is that correct?

43 Mr. STAUFFER. What?

43 Senator HATCH. Interim report, wasn't that distributed to the various clients you have had with the Federal Government?

43 Mr. STAUFFER. What is the title of that, sir?

43 Senator HATCH. The title is "Interim Report Analysis of Surface Mining Reclamation."

43 Mr. STAUFFER. We believe that was distributed to a couple of agencies. The most discussion that we had on that was from the Economic Analysis Office of EPA.

43 Senator HATCH. So the first time that you submitted anything for general discussion was the January 24, 1977 report?

43 Mr. STAUFFER. Before, well -

43 Senator HATCH. For comments.

43 Mr. STAUFFER. I don't want to be misleading, sir. Starting from the end, the February 1 report was meant for general distribution to whomever wanted it. That meant it was going -

43 Senator HATCH. Let's go back and let's do it chronologically. The September 9 report, which is called the interim report and is entitled "Analysis of Surface Mining Reclamation Provisions."

43 Mr. STAUFFER. I think it is a methodology document. I don't think that there is any analysis in there.

43 Senator HATCH. It says here it was submitted to Council of Environmental Quality, contract No. EQ6AC016.

43 Mr. STAUFFER. I have no doubt that it was.

44 Senator HATCH. Was this the first document that you prepared for the clients in this matter?

44 Mr. STAUFFER. No, I don't think so.

44 Senator METCALF. Will the Senator yield?

44 Senator HATCH. Yes.

44 Senator METCALF. Are you familiar with the report about which he is inquiring?

44 Mr. STAUFFER. Well, we think so.

44 Senator METCALF. Would you like to take a look at it?

44 Senator HATCH. I would be happy to give it to you. It has got your ICF, Inc. binding on it.

44 Mr. STAUFFER. I know that it is mine.

44 Senator HATCH. You know that it is your report.

44 Mr. STAUFFER. I will bring it right back to you.

44 Senator HATCH. You can keep it there with you for the time being.

44 And you feel free to comment anytime that you feel like it.

44 Mr. KLEIN. If I may elaborate on this report -

44 Senator HATCH. Could I have your name, again?

44 Mr. KLEIN. My name is Daniel E. Klein and I am a Senior Associate at ICF, Inc.

44 Early in the contract phases, there were a series of memorandums and short reports which were necessary to develop the framework by which we pursued our analysis of H.R. 13950. The report which you have just given us, the Interim Report, is a full description of the methodology by which we chose to analyze this particular piece of legislation.

44 Senator HATCH. Does it give any of your analytical conclusions or any other information in that report?

44 Mr. KLEIN. No. There are no analytical conclusions I know of. It shows much of the data that we have used.

44 Senator HATCH. Prior to January 24, 1977, did you give out any other reports upon which you requested comments from your clients and other agencies of the Federal Government, or anybody else for that matter?

44 Mr. STAUFFER. There was one large report from which we requested comments from our clients.

44 Senator HATCH. What date was that, approximately? Do you know?

44 Mr. STAUFFER. That was approximately January 10 and then there were numerous memorandums and so forth between September 9 and January 10 because we

were continually updating the clients on what our analysis was showing.

44 Senator HATCH. But the first draft of the report - the final report was really the January 24, 1977 draft; is that correct?

44 Mr. STAUFFER. I want to be clear about that. No. I wouldn't say that that is true. That report was prepared for distribution to the other agencies - for interagency review. We prepared a January 10 draft for our clients.

44 Senator HATCH. Which was for comments also?

44 Mr. STAUFFER. Which was for comments by our clients.

44 Senator HATCH. Would that have been the first draft that was prepared for comments?

44 Mr. STAUFFER. That would have been the first full draft of the entire report.

45 Senator HATCH. After that time you had a lot of interagency exchange?

45 Mr. STAUFFER. I beg your pardon?

45 Senator HATCH. After that time you had a lot of interagency exchange between the agency and your consulting firm?

45 Mr. STAUFFER. That is right.

45 Senator HATCH. Then from the earliest one for general comments from the interagency groups, that would have been January 10?

45 Mr. STAUFFER. No.

45 Senator HATCH. That would have been January 24?

45 Mr. STAUFFER. Yes.

45 Senator HATCH. At any time, did you request any comments or any information from the industry itself?

45 Mr. STAUFFER. Yes.

45 Senator HATCH. And did you receive any responses from industry?

45 Mr. STAUFFER. The one that is clearly documented in our report is we contacted by telephone 19 producers in the West concerning the impact of alluvial valley provisions.

45 Senator HATCH. How many producers are there? Do you have any idea?

45 Mr. STAUFFER. I expect that there are more than 19.

45 Senator HATCH. That is what I thought. Would there be considerably more or just a few more?

45 Mr. STAUFFER. What do you think Mr. Klein?

45 Mr. KLEIN. Let me elaborate on that. The companies that we contacted, the 19 companies, are companies who are in the process of developing new capacity in the West. The existing mines in the West, as we interpret the provisions of H.R. 13950 would be grandfathered from the application of that provision.

45 From the Bureau of Mines, there was a list of approximately 70 to 100 planned projects in the West. The EPA's Denver Regional Office did aerial flyovers of virtually all of those sites and mapped out the alluvial valley floors in each of the lease areas. We analyzed their findings and we correlated that with data on production and our own knowledge of which mines were in what stages of planning.

45 From that we developed a list of 19 mines which we could see as being potentially impacted just on the basis of some very broad data. We contacted each and every one of those to gather more specific data for developing our findings that are documented in our report.

45 Senator HATCH. Did you contact the other mines across the country? Because this bill applies to all strip mining throughout the country, as I understand it.

45 Mr. KLEIN. We relied on data collected by a mining engineering consulting firm in Harrisburg, Pa., that was collected for EPA under a separate contract. And that contract collected specific data, financial and operating and geologic data from 24 mines or 25 mines, I think, in the Appalachian States, and we used that in our report as well.

45 Mr. STAUFFER. Although "rely" is a little heavy. We used that data, but I don't want to mislead you into having you believe that it was a very important part of our data base. It was a part, but not a large part.

46 Senator HATCH. I see. So that actually the first real dissemination for comments was January 10th and the next dissemination for comments was January 24th, 1977.

46 Mr. STAUFFER. January 24th was the first - and concerning our findings

- was the first large dissemination for comment to other than our clients. Throughout the fall we were meeting and sending memorandums to our clients.

46 Senator HATCH. Right. And January 24th was the first you had an interagency comment review request?

46 Mr. STAUFFER. Yes.

46 Mr. KLEIN. Senator Hatch, may I read from our contract? n1

46 n1 The section of ICF's contract concerning "Work Sequence and Reports" appears on p. 65.

46 Senator HATCH. I am not too concerned about that. I will accept your statement naturally. But the clients asked you to, from January 24, take 1 week to present your final draft which was your February 1 draft, your final draft report.

46 Mr. STAUFFER. Yes.

46 Senator HATCH. Which clients were those? EPA and CEQ?

46 Mr. STAUFFER.Right.

46 Senator HATCH.And which people particularly said you had to do your interagency comment review in really what appears to me to be about 3 days?

46 Mr. STAUFFER. That is right. We were working very hard. It was Barry Flamm as the technical project officer at CEQ and he was working closely with Jim Speyer at EPA.

46 Senator HATCH. Let me ask you this. Didn't you fellas say to Mr. Flamm that 3 days - really, the time from January 24, when we delivered our first - the final draft report to CEQ and EPA and all the other agencies that you felt were involved or would be interested in some kind of review of the matter, didn't you say to Mr. Flamm that 1 week just isn't enough to get agency review and get the comments back and to make the final conclusions that we need to make?

46 Mr. STAUFFER. I am not sure that we said that. I am sure, as I always say in these circumstances, if that is what you want to do, I will try to do it.

46 Senator HATCH.Didn't that seem a little odd to you, that they wouldn't give you a little bit more time to be a little bit more professional and a little bit more accurate in your final report?

46 Mr. STAUFFER. It is not a final report.

46 Senator HATCH. Well, your final draft report.

46 Mr. STAUFFER. It was a final draft report for distribution.

46 Senator HATCH. You are saying that your final report isn't in even though we reported this bill out?

46 Mr. STAUFFER. The final report has not been submitted.

46 Senator HATCH. Do you think that your final report will vary distinctly or drastically from the final draft report of February 1, 1977?

46 Mr. STAUFFER. As of this time I have no reason to believe that it will vary dramatically or in any way except editorially.

47 Senator HATCH. Now, you are aware, are you not - well, let me ask you this: Do you believe that the Department of the Interior Secretary Andrus and the Federal Administrator, Mr. O'Leary - do you believe that they both were aware of the January 24, 1977 report?

47 Mr. STAUFFER. Well, Dan says their agencies were - I really have no idea.

47 Senator HATCH. You don't know whether they personally were aware, but certainly their agencies were.

47 Mr. KLEIN. The FEA and the Department of the Interior were part of the interagency review group.

47 Senator HATCH. So they received this copy of the January report?

47 Mr. KLEIN. They received copies of the January 24 report from both agencies and submitted comments to us for inclusion in our February 1 draft final report.

47 Senator HATCH. I presume that you presume that the agency heads knew about those reports?

47 Mr. KLEIN. I have no way of knowing.

47 Senator HATCH. You are aware of the fact - are you aware of what happened in these hearings, that when I brought out President Ford's veto message and listed four of the dramatic impacts on this legislation - when he vetoed the bill back in 1975, then O'Leary held up your February 1, 1977 - the final draft report - and said there aren't really any significant impacts, in essence. That this report shows that.

47 Are you aware that he did that?

47 Mr. STAUFFER. Speaking for myself, I was not aware of that.

47 Senator HATCH. Are you aware that Mr. O'Leary and Mr. Andrus both appeared absolutely shocked when I finally raised the January 24 report, just 1 week earlier, that was called the final report, and pointed out what were apparently - at least to me apparently - very distinct differences and I think interesting differences between the two reports.

47 Mr. STAUFFER. I knew you had pointed out differences. I did not know or do not know whether they were shocked or whatever.

47 Senator HATCH. Let me assure you they were shocked. n2

47 n2 The point is expounded in a May 31, 1977 letter from ICF which appears on p. 66.

47 Senator METCALF. Haven't you been provided with a transcript of the hearing of that day when Senator Hatch got the report?

47 Senator HATCH. You should have been.

47 Mr. KLEIN. Nothing was provided to us regarding the hearing other than letters from each of you.

47 Senator HATCH. Do you know what these hearings were about?

47 Mr. STAUFFER. We do.

47 Senator METCALF. Just a moment.

47 Mr. STAUFFER. This may be indicative of the way that we work. We really try not to be too involved in the political process. We are analysts serving our clients on analytical matters.

47 Senator METCALF. I am told by the staff, Senator, that they were not sent a transcript. That is my fault. I should have - in accordance -

47 Senator HATCH. I don't think that that is your fault. I think maybe that is staff's fault. I am not sure. You have got too many things to worry about.

48 Senator METCALF. You should have been provided with it. And, of course, our letters are self-explanatory and I am sure that they raised the questions that the Senator is raising.

48 Senator HATCH. The thing that bothers me is that O'Leary held your - the final draft report, February 1, up as real reason and really a final report justifying this Federal strip mining bill. And that was his justification of it. And he held it up right there as really a final report and said this is the reason. He said don't worry about - in essence, don't worry about President Ford's veto message. It was a veto message and expectedly would be harsh and

then raise this report to show that we should worry about it. n3

48 n3 These points are expounded in a May 31, 1977 letter from ICF which appears on p. 66.

48 Now, I raised the January 24 report and pointed out the discrepancies and they were shocked and they didn't know what to say and then I accused somebody of doctoring these reports because of the discrepancy and I think - well, let's go into those in a few minutes - but I think that you might realize that I was pretty sincere in saying that.

48 Mr. STAUFFER. I am sure that you were.

48 Senator HATCH. Let's go a little bit further here. This study took place over what duration of time?

48 Mr. STAUFFER. I think it started June 1976.

48 Senator HATCH. So really a 9-month period almost?

48 Mr. STAUFFER. That is right. Although the - over the summer the engineering firm Dan mentioned was really doing most of the work and we were waiting for them to finish. Our effort started in earnest about September.

48 Senator HATCH. OK. So really 6 to 9 months. Over that period of time the figures in the final draft report dated January 24, 1977, did not really change. They were basically the same during that complete period of time?

48 Mr. STAUFFER. No. Most of the figures in the January 24 draft - in terms of the findings, if not the data - weren't even developed until December or January.

48 Senator HATCH. But, in any event, you gradually developed those figures up to the point where you had figures that you thought were accurate - at least accurate enough to disseminate to every Federal agency involved concerning the January 24, 1977, report?

48 Mr. STAUFFER. I would classify them as not being misleading. As we continually say in this report, neither the data nor the methodology we were able to develop lend themselves to precision.

48 Senator HATCH. I think you would admit that that was the January 24 report, you thought that those were the best available data figures.

48 Mr. STAUFFER. That we could develop, which is not to say we wanted to overplay and say that that is absolutely right.

48 Senator HATCH. These are estimate figures and we are not trying to say

that they are absolute figures, but they were the best that you could develop up to January 24, 1977; is that not correct?

48 Mr. STAUFFER. That is right.

49 Senator HATCH. All right. And in that particular time you had developed those figures based upon interagency review with CEQ and EPA; right?

49 Mr. STAUFFER. Right.

49 Senator HATCH. And your main contracts there were Barry Flamm and Mr. Speyer and you are aware that Kathy Fletcher had some input through CEQ and/or EPA? Is that right?

49 Mr. STAUFFER. Yes. Although the only time that I was aware of Fletcher having input was in January. I don't think that she had inputs prior to that.

49 Senator HATCH. But you are saying right before the final. Was this after the report of January 24, 1977, that she had her input or was it before January 24, 1977?

49 Mr. STAUFFER. I apologize. I don't really know.

49 Senator HATCH. But it could have been after the January 24 report and between and during that 1 week time between January 24, 1977 report and the February 1, 1977, report?

49 Mr. STAUFFER. It could have been. It could have been before, too.

49 Senator HATCH. And you were aware that her input was put into Barry Flamm and/or Speyer?

49 Mr. STAUFFER. It was put into those agencies. I don't know whom she talked to personally.

49 Senator HATCH. Who told you that she had some input into this matter?

49 Mr. STAUFFER. We can't be specific. It could have been Jim Speyer. It could have been Barry Flamm. It could have been Janie Markley.

49 You know, it is not something that concerns us very much.

49 Senator HATCH. Actually Ms. Fletcher wasn't part until after the President was sworn in -

49 Mr. STAUFFER. Once again, you are asking me about a person I haven't

met and I don't know of well. I believe that her former position was with a law firm in town or something.

49 Senator HATCH. So you were aware that she became a Presidential assistant as of, actually, January 20, 1977? So that it is very unlikely that she had her input before January 24, 1977.

49 Mr. STAUFFER. Possibly.

49 Senator HATCH. Do you know anything about her credentials? Is she a student in this area? Does she understand the quality of environmental considerations in this area?

49 Mr. STAUFFER. I know very, very little about her credentials.

49 Senator HATCH. How would you categorize CEQ and the people you work with there? As very, very proenvironment or very, very probusiness in this area?

49 Mr. STAUFFER. I would not like to use either category. The way that they deal with us is on an objective analytical basis and their view, in my understanding, as was ours, was this was an area where some good in-depth comprehensive analysis could contribute to the public debate and those were the kinds of discussions we had.

49 Senator HATCH. Did Flamm, Speyer or whoever else there was involved in this matter - and you have indicated those three specifically with your two clients - did they help you to rewrite the report between January 24, 1977, and February 1 in any way?

50 Mr. STAUFFER. They provided additional comments to us.

50 Senator HATCH. Did they suggest word changes?

50 Mr. STAUFFER. Yes; I think that they did. They suggested actual words.

50 Senator HATCH. Did you accept some of the word changes suggested by them?

50 Mr. STAUFFER. Sure we accepted some of them.

50 Senator HATCH. I don't mean to keep cutting you off. I do this to speed things up.

50 Mr. STAUFFER. Let me make one point. When we did accept it, it was me sitting there saying, yes, I am willing to say that. Now, if they happened to

have scribbled on a piece of paper words I was willing to say, I wasn't going to rewrite the sentence just to say we wrote it.

50 Senator HATCH. They were your contacts in this case?

50 Mr. STAUFFER. That is right.

50 Senator HATCH. How much were you paid for this report approximately?

50 Mr. STAUFFER. Up to that date?

50 Senator HATCH. Or up to today?

50 Mr. STAUFFER. Well, the total contract amount is \$1 10,000. I think up to that date we had been paid close to nothing simply because I hadn't sent an invoice. Up to now I think that we have been paid about 90. I am not sure.

50 Senator HATCH. About \$90,000.

50 Well, you will notice that one of the reasons, one of the things I raised which I was very upset about was that in 1 week after all of this 6 to 9 months work and all of this collection of data and arriving at figures, they should have been pretty accurate at that particular point, as of January 24, 1977 - in 1 week you changed with regard - well, let's take the January 24, 1977 report where it says, for example, while a moderate interpretation of the alluvial valley floor provisions could affect four mines with an additional production in 1978 of 12 million tons, our worst case interpretation could impact up to 51 million tons of western production by 1978 and 211 million tons by 1985. And yet, just 1 week later, as a result of probably only 3 days of analytical discussion, you changed the 51 million tons and reduced it down to 25 million tons and changed the 211 million tons for 1985 and reduced it down to 104 million tons by 1985.

50 Now, what I would like to know is what figures came up in those three days to justify those kind of changes. They seem like wholesale changes to me.

50 Mr. STAUFFER. Fine. Good. I am glad I can respond to that. Before I respond specifically to the alluvial valley floor numbers, let me point out that I believe in the whole report, the 550 pages - and some reporter weighed it at 10 pounds or something like that - that only two sets of numbers changed.

50 I think that that is important that there weren't wholesale changes. There were two sets of numbers that changed.

51 Senator HATCH. You have to admit these were the most critical numbers in this issue.

51 Mr. STAUFFER. In my opinion, I can't agree with that.

51 Senator HATCH. There isn't any other number in the report -

51 Mr. STAUFFER. I believe that you are saying that from a political point of view.

51 Senator HATCH. No, I am not.

51 Mr. STAUFFER. In your opinion, I believe.

51 Senator HATCH. No. The most critical thing about this is the alluvial valley floor provision. It is one of the most critical parts about this bill and it is one of the most controversial.

51 Mr. STAUFFER. I think that it is now, although when we were doing the report in the prior discussions and the veto focused very importantly on the mine closings that were resulting in Appalachia.

51 Senator HATCH. Let me see if I can narrow this down to what is of concern to me.

51 Who made the suggestions, either in staff or out of staff or both, regardless of who they are, that you reduce those figures better than in half?

51 Mr. STAUFFER. I don't think that anybody made a suggestion that we specifically reduce the figures in half.

51 Senator HATCH. Well, then how did you arrive at that?

51 Mr. STAUFFER. Let me be as clear as possible. Let me read the portion of the prepared testimony.

51 Senator HATCH. What page are you on?

51 Mr. STAUFFER. It starts in the middle of page 5.

51 Between the interagency review version of January 24 and the February 1 draft final report, the assumptions used to develop estimates of the "worst case" or "high impact" production impacts that could result from the alluvial valley floor provisions of the bill were modified. Whereas in the interagency review version the assumption was made that any lease area containing alluvial valley floors would be impacted, the draft final report took account of the extremely low probability that all of these sites would be impacted, even under a very stringent interpretation of the bill.

51 The effect of this change in assumptions was to reduce the high production impact estimates to approximately one-half of those presented in the interagency review draft. The other two sets of production impact estimates concerning alluvial valley floors, low and moderate, did not change at all. Likewise, no changes were made in the reserve base impact estimates.

51 In the interagency review, the estimate of high production impact was based upon very stringent interpretations of imprecise terms. Lands were not assumed to be undeveloped range land if there was any potential for hay production.

51 Even very small changes in water quantity or quality were assumed to be adverse effects. Finally, it was assumed that the grandfather clause was applicable only to presently permitted acreage, and that unpermitted parts of the long-range mining plan would not be grandfathered.

52 Under these interpretations, the impact upon production could have been quite high indeed. In developing a numerical estimate, we made the assumption that any mine having any alluvial valley floors within the entire lease boundary could be impacted. Using the aerial analysis data documented in our report, this assumption projected about 70 percent of the future production in the Northern Great Plains as being impacted in some way.

52 In response to comments received during the interagency review process, we reexamined the substantive basis for this estimate. We were concerned that the extreme assumptions we had used resulted in an unrealistically high estimate which could be misleading.

52 We reviewed the data from our interviews with 19 western mine operators. Some were near alluvial valley floors which contained poor quality water or were clearly not productive. Others were located at a considerable distance from the alluvial valley floor or had the mining area separated from the valley floors by ridges.

52 And in still others, the actual identification of an alluvial valley floor was questionable from geologic and hydrologic viewpoints. Hence, the proximity of a lease to a possible alluvial valley floor clearly does not mean that, in all cases, the mine site could impact that valley floor.

52 Based upon this review of the data which is fully documented in appendix F of our report, we concluded that our original assumption was overly harsh. The flaw lay in the fact that although any individual mine near an alluvial valley floor had some probability of being impacted by H.R. 13950, the

joint probability that every mine would be impacted was extremely small.

52 Since about one-half of the mine sites covered by our interviews could be unaffected due to the aforementioned reasons, and since one-half appeared a reasonable estimate given the less-than-adequate data available, we prepared a revised high impact estimate based upon the assumption that about one-half of the new production near alluvial valley floors would be impacted.

52 Further, the "worst case" estimates for the alluvial valley floor provisions of the January 24 draft were retitled as "high impact" estimates in the February 1 draft.

52 It was argued by some that "worst case" implied that we opposed such an outcome, whereas others might see such an outcome as desirable. In keeping with our political approach, this term was changed to a more neutral "high production impact." This new title was also consistent with our revised estimates for the high end of the range, which were not of the most extreme case imaginable but which reflect reasonable probability judgments.

52 It is this particular numerical change which has been singled out for intensive questioning. Yet as we have just explained, the modification was made on what we believe was a sound analytical basis. In both the interagency review draft and the draft final report, all data and assumptions are fully documented so that the reader can understand the basis of our estimates.

52 We think it is significant to note that during the more than 3 months this estimate has been under intense public scrutiny, we have not yet received any comments suggesting that our estimate in the February 1 draft final report did not represent the best possible estimate based upon the best available data.

53 It is also worth noting that the changes made had no bearing on the conclusion drawn from the table presenting the low, moderate, and high estimates. The conclusion is, in both drafts, that a wide range of potential impacts, associated with both data uncertainty and varying interpretations of the language of the bill, exists, ranging from zero to some very large numbers.

53 This point did not change at all between the interagency review of January 24 and the draft final report of February 1, 1977.

53 Finally, we believe that this focus on a specific set of numerical

estimates is not productive. Due to the substantial uncertainties associated with estimating these impacts, we believe that no undue emphasis should be attached to any specific number or set of numbers. This was noted in the second paragraph on page 1 of our report, and I quote:

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

53 Both draft reports make clear the substantial uncertainties regarding the estimates associated with the alluvial valley floor provisions. We suggest that discussions should focus on an interpretation of the range; that is, that a broad range of potential impacts exist - and not on any specific numbers.

53 Thank you.

53 Senator HATCH. Thank you. Let's go back to my original question. Did anybody - I want the names of the people who made this decision and who insisted in making this decision or who suggested this decision and anybody working for CEQ or EPA in those really about 3 days between January 24 and February 1 that the numbers were reduced by one-half.

53 Mr. STAUFFER. I made the decision.

53 Senator HATCH. Did Barry Flamm come in and point this out to you or suggest that the high impact approach was too tight?

53 Mr. STAUFFER. Barry Flamm made some astute comments in my opinion. He pointed out data we had presented on January 24 report that shows that assuming all mines on any lease touching alluvial valley floors was an extremely harsh assumption.

53 Senator HATCH. Didn't he point that out since January 10, 1977, or over the last 6 to 9 months while you were working on all these interagency memoranda which were going back and forth between your clients and yourself?

53 Mr. STAUFFER. To my knowledge, he did not. No; he did not.

53 Senator HATCH. You don't think that he did? So, finally, with your - the final draft report in that 3-day period he points out that these figures are too high; is that correct?

53 Mr. STAUFFER. He pointed out that the assumption we used to estimate the high end of the range on a table of three such figures was probably a little harsh.

53 Senator HATCH. The fact of the matter is the assumption isn't overly harsh and it could be considerably more impact than 211 million tons by 1985. And that is true with regard to these mines.

53 Mr. KLEIN. This is an annual production rate that we are referring to.

54 Senator HATCH. Right.

54 Mr. KLEIN. The mines that we talked about that went into the moderate impact estimates, we list what we think will be the production by year.

54 Senator HATCH. Let me tell you what bothers me, fellows. Here you are the experts. You fellows are professionals and, as far as I understand it, you have excellent reputations. I even have some respect for your organization. And, all of a sudden after 6 months of work - 9 months of work, in 1 week, 3 days you meet with the agency boys and you reduce these figures by 50 percent.

54 Now, I don't have to be a U.S. Senator to stop and think that maybe there was some agency pressure on you to reduce those figures, even though now you are calling Mr. Flamm pretty astute in doing that. And that is after Ms. Kathy Fletcher, who didn't even have a job with the Federal Government, comes in after January 20 and meets with Barry Flamm or meets with somebody in these two clients' offices. And you admit that.

54 Mr. STAUFFER. The main focus of our efforts throughout the period was on chapters 1 through 4. These are in the chapters that end up in chapter 4 estimating the mine closings that would result from the increased cost associated with the bill. That was the main focus of the study all along. That is where we at ICF spent the most time. And that is what our clients were most concerned about.

54 Senator HATCH. I hate to say this to you, but, you know, you did read the veto report of President Ford -

54 Mr. STAUFFER. I personally did not read it. n4 54 n4 See "Supplementary Exposition by ICF Inc.," which appears on p. 69.

54 Senator HATCH. You are aware that he listed a number of impacts among which were impact of coal production, impact on the cost of energy, impact on unemployment, impact on litigation. All of which you agreed to in the January 24, 1977 report.

54 Mr. STAUFFER. No. I am aware that he listed those things. I don't think that we agreed.

54 Senator HATCH. You didn't agree with his particular conclusions from a numerical standpoint, but you agreed that those were impacts that the strip mining bill will have.

54 Mr. STAUFFER. Yes, of course. It will have an impact on mine closing, but it is a matter of degree. And it will have an impact on coal prices, and it is a matter of degree. And it will have an impact on electricity prices as a matter of degree. I really don't think that I read the veto message. I did read some of the staff reports behind it and although I can't quote you, I know the impact.

54 Senator HATCH. You see what bothers me is President Ford decided on the veto message. Andrus and O'Leary looked through the message and they said it is a harsh message because he vetoed it. Your first report of January 24, 1977 comes out and it pretty well backs up the basic conclusions that, at least, from the standpoint of agreeing that it would have an impact in those areas.

54 Mr. STAUFFER. You are asking us to make what I consider political judgments. I would just look at the numbers. I think our numbers are substantially different than the ones that you -

55 Senator HATCH. I am saying the four conclusions, it would have impact on production, cost of energy, unemployment and on litigation and you agree with it. Now, I am not saying the numbers.

55 Mr. STAUFFER. I don't think that anybody could disagree that those impacts exist.

55 Senator HATCH. Except for one thing. You agree with that, and in more stringent terms in the January 24, 1977 report, in the one week that intervened between the 24th of January and February 1, 1977 - on February 1, you change all the language so that it doesn't read like you do agree with it. n5

55 n5 See "Supplementary Expositions by ICF Inc.," which appear on p. 69.

55 Let me give you some illustrations.

55 Mr. STAUFFER. I don't agree with that statement, sir.

55 See, I don't think that any of our conclusions - and I am reasonably sure - none of the numbers associated with mine closings of chapters 1 through 4 changed at all, and none of the summary conclusions associated with the alluvial valley, which I am not sure that he mentioned in his message, changed at all.

55 Mr. STAUFFER. Two sets of numerical numbers that were presented on tables from which more general conclusions were drawn were changed based on a change in assumptions which we thought was an improvement in the report.

55 Senator HATCH. You will admit the major numbers were changed and they were basically in there - 51 million and 211 million - most critical numbers.

55 Mr. STAUFFER. I agree that two sets of numbers of all the numbers were changed and that they were cut in about half. But there must be 10,000 numbers in the report.

55 Senator HATCH. How much work do you do for CEQ and EPA? How much have you done through the past number of years? Is this your first contract with them?

55 Mr. STAUFFER. No. It is our third contract.

55 Senator HATCH. Your third contract. And about how much total contract moneys were involved? \$110,000 for this one. How much for the other two?

55 Mr. STAUFFER. The, what we call, CEQ-1, I believe was to assist them in reviewing the adequacy of attention to environmental and conservation effects to the ERDA program. I think that was around \$200,000.

55 And that also, I might add, was an entirely different arm of CEQ.

55 And what we call CEQ-2, I think we did that this year and CEQ-1 was last year.

55 [ICF, Inc., later provided the following contract data:]
\$00

	Contract No.	Contract date	Amount
CEQ-1	EQC331	June 1973	\$144,500
CEQ-2	EQ5AC026	June 1975	221,248
CEQ-3	EQ6AC016	July 1976	110,000

55 Senator HATCH. Would you say this \$1 10,000 figure was a substantial part of your business of 1976?

56 Mr. STAUFFER. Our total sales these days are about \$2 million.

56 Senator HATCH. About \$2 million a year?

56 Mr. STAUFFER. Yes.

56 Senator HATCH. Is most of this through Federal Government agencies or is this all over?

56 Mr. STAUFFER. It is about - currently, it is about 60 to 70 percent Federal Government.

56 Senator HATCH. I see. And how many people do you have working with you, Mr. Stauffer?

56 Mr. STAUFFER. I think that we have 25 professionals and then secretaries and research assistants.

56 Senator HATCH. Let me tell you what really bothers me, in addition to those number changes, and I agree - although that pertains to the most critical part of your report, it seems to me, and it seems to be very important to me and I think to other people who have been concerned all over the country - some of the things that bother me even more were some of the critical semantical changes in the report after meeting with various people in interagencies between January 24 and February 1 of this year.

56 Now, let me just make one little other thing clear in my mind. During that 1 week intervening period, what agencies came in and really helped you to change this report and refine it, as you say?

56 Mr. STAUFFER. Well, I listed who I believe were the agencies at that meeting.

56 Senator HATCH. Well, all of them came to a meeting, but which ones actually came and helped you work on the report?

56 Mr. STAUFFER. Well, let's see. I am not sure I would characterize anybody as helping us work on the report.

56 Senator HATCH. Who came into your office - or you went to their office and discussed this matter so that you could define and come up with a final report, a final draft report?

56 Mr. STAUFFER. Beyond a large meeting at OMB, we had a meeting, actually right after that, in the CEQ offices.

56 Senator HATCH. And who was at that?

56 Mr. STAUFFER. CEQ, EPA, and OMB.

56 Senator HATCH. Who were the people? Were they Flamm and Speyer?

56 Mr. STAUFFER. Flamm, Speyer, Markley, Jameson, Michelle Zarubica.

56 Senator HATCH. But basically Flamm, Speyer, and Markley?

56 Senator HATCH. But basically Flamm, Speyer, and Markley?

56 Mr. STAUFFER. And Jim Ferry and Jim Jameson and Michelle Zarubica.

56 Senator HATCH. Now in your 1 week period, I see, for instance, in your summary of major conclusions, you say in the February 1, 1977 report:

56 However, several provisions of H.R. 13950 are subject to varying interpretations. In the event that these terms were given very stringent interpretations, the impacts could be substantially high and that is it.

56 Now, the January 24, 1977, report, the 1-week before report - and, incidentally, I suggest you left out all the specifics in your February 1 report. And in your January 24 report you say: "there are numerous provisions in H.R. 13590, not directly related to cost, which could create major difficulties," which is considerably different language.

57 Such impacts include - and this was all left out of your other report - substantial production impacts that could result in possible interpretations of the alluvial valley provisions, the delays in permitting - in other words, granting permits due to an inability to comply with established timetables and/or insufficient administrative funding; extensive litigation resulting from ambiguous and undefined terms; unintended effects due to mismatches between the apparent intent and the actual wording and losses to the coal reserve base, none of which are mentioned in your January or in your February 1, 1977, report.

57 Mr. STAUFFER. Yes; they are. Let me explain.

57 Senator HATCH. Well, they are not mentioned in that language.

57 Mr. STAUFFER. They are not mentioned at that point. I think they are mentioned - that language may be mentioned later on in the summary.

57 Senator HATCH. In the February 1 report?

57 Mr. STAUFFER. Yes; and we can show that to you, I believe. But let me explain just the background on that paragraph.

57 I think on January 23 we had completed the entire document and had it

typed and so forth and so on. Both Dan and I were exhausted. And I walked back to his office and I said this thing has one missing element that we have not anywhere tried to summarize overall. You know, one or two or three sentences, what the summary findings are.

57 We have specific summary conclusions on each chapter and each point in each chapter. But we hadn't pulled it altogether. So at that late date - and we were very tired - we created that first paragraph of January 24 and, as a matter of fact, I think it started out general and I suggested to Dan against his judgment that we should add some specifics because the general didn't seem to mean too much.

57 And it ended up - and I can see it right away - on the 24th after we distributed it that we had created a paragraph that was not parallel. There were two major sets of analysis in this report. The cost impact, chapters 1 through 4 and the other was the noncost impacts which was basically chapter 5.

57 And what we have done in that first paragraph was to provide some very general statements about the cost impacts and then provide a whole bunch of specific statements about the noncos impacts. So there is a lack of parallels in there. And the comments came back that just editorially there is - (A) a lack of parallels, and (B), it looks like you are harping on the specifics of the noncost impacts. The comments asked why we didn't mention the cost impacts as well, and why only list these five noncost impacts - and only those. It sounds like those are the only ones. And really there are more.

57 So from an editorial point of view -

57 Senator HATCH. Why didn't you list more?

57 Mr. STAUFFER. To avoid being misleading, we divided that first paragraph into two very general points: (A) what the cost impacts are in general and (B) what the noncost impacts could be, where the range is from very small to very large, depending upon interpretations of certain provisions.

57 So we addressed first the cost impacts, then the noncost impacts in a very general way. And then underneath that we dealt with these specifics. I believe first on the cost impacts and then on the noncost impacts.

58 Senator HATCH. You mean in the February first report? I haven't seen it.

58 Mr. STAUFFER. Yes; if you would like. Maybe we could go through and show you where each of these specifics are.

58 Senator HATCH. Is this the report itself?

58 Mr. KLEIN. These are all in the report in the summary part. The main body of the report still contains the full, in-depth analysis which we thought was pretty exhaustive. But the first impact -

58 Senator HATCH. Before you go into that, you have indicated that there were other impacts besides these four that you listed and you felt that maybe you would be misleading if you leave these four stand the way that they have. At least, I have interpreted it that way.

58 Mr. STAUFFER. There were a bunch of points. One, there was a lack of parallel in the paragraphs. It is just unclear from an editorial point of view.

58 Two, we were providing specifics on a second point which was the noncost impacts and we were not providing specifics on the first point, which was the cost impact.

58 Senator HATCH. So you decided to do away specifics?

58 Mr. STUFFER. And really there were more.

58 Senator HATCH. Were impacts?

58 Mr. STAUFFER. More noncost impacts than the ones we listed.

58 Senator HATCH. Would you tell us what those were and is there anywhere where you list all those?

58 Mr. KLEIN. The noncost impacts are mentioned. In fact, they get about two-thirds -

58 Senator HATCH. What are you reading from?

58 Mr. KLEIN. I am about to read from notes I have made here on my page. All of these are in the summary. I will give you the page numbers.

58 Senator HATCH. You are talking about the September summary; right?

58 Mr. KLEIN. No; I am talking about the February 1 draft, final report. The first impact relating to substantial production impacts that could result from possible interpretation of alluvial valley floor provisions. Those are mentioned on pages 12, 13, and 14 in our summary, as well as chapter 5, as well as a 50-page appendix titled appendix F -

58 Senator HATCH. Wait a minute. Excuse me a second. I am having a hard

time following you.

58 You list all of these direct noncost impacts in your January 24 report. Now, you are saying they were in the February 1, 1977, report. Show me the tables where they are at because I sure haven't seen them.

58 Mr. KLEIN. Let me repeat. The substantial production impacts -

58 Senator HATCH. Wait. What page are you reading from?

58 Mr. KLEIN. I am giving you page citations. These are on pages 12, 13, and 14.

58 Senator HATCH. Of the February 1 report?

58 Mr. KLEIN. Of the February 1 draft final report, starting in the middle of page 12 - we provide - it looks like 2 1/2 or 3 pages of the noncost impacts that we consider to be relatively adverse impacts in the alluvial valley floor provisions.

59 Mr. STAUFFER. By the way, just as an overview, the first summary chapter of the document is organized into a summary kind of thing. Then a summary of the cost impacts which ranges from page 4 to 9. And then a summary of the noncost impacts which ranges from 9 to 20.

59 Senator HATCH. You are talking about paragraph 2 on page 12; right?

59 Mr. KLEIN. Paragraph 2 and the following points that go through the middle of page 14. All of those are related to the noncost impacts of alluvial valley floor provisions.

59 Senator HATCH. That is fine. Except that I don't see any of these four or these five that I have just cited and that you cited in your January 24, 1977 report.

59 Mr. KLEIN. That relates to point one in the paragraph which was taken from the January 24. I can give you page citations on the other three or four.

59 Senator HATCH. They are not described there.

59 Mr. KLEIN. Substantial production impacts that could result in possible interpretation. The second point starts off, "Some words and phrases in H.R. 13950 are subject to varying interpretations. In the event that these words were given a very stringent interpretation - "

59 Senator HATCH. Show me your report.

59 Mr. KLEIN. The impacts of H.R. 13950 could range substantially higher.
To my way of thinking it is exactly the same thing.

59 Senator HATCH. In other words, you are saying that one sentence equals these five major impacts?

59 Mr. KLEIN. That equals only the first impact of those five.

59 Mr. STAUFFER. It equals the first of those five.

59 Mr. KLEIN. Those four lines were in lieu of a much shorter phrase.
I consider that more elaborating.

59 Mr. STAUFFER. And then on the text and tables below -

59 Senator HATCH. You are saying that makes paragraph A - paragraph one in your summary of major conclusions on January 24 where substantial production impacts that could result from possible interpretations of the alluvial valley provisions.

59 Mr. KLEIN. Right.

59 Mr. STAUFFER. That is right. We spent three pages in the summary on that.

59 Senator HATCH. I don't think that it reads the same way and I don't think it is nearly as stringent as your January 24 is. But go ahead.

59 Mr. KLEIN. I think we will -

59 Senator HATCH. In fact, I wouldn't even correlate them together.

59 Mr. KLEIN. The second clause in the first paragraph, first summary paragraph in the January 24 draft reads, "delays in permit due to inability to comply within established timetable and/or insufficient administrative funding."

59 We cited several examples of that.

59 Senator HATCH. Where are you reading that from?

59 Mr. KLEIN. This can be found in pages 17, 18 and 19 of the executive summary to the February 1 draft.

59 Most of that is related to the abandoned mine reclamation fund disbursement. If you look at page 18 -

60 Senator HATCH. You are saying that these are additional impacts to the ones that were listed on January 24?

60 Mr. KLEIN. No. These are the same impacts. It is in the summary presentation.

60 Mr. STAUFFER. Of the same impacts.

60 Senator HATCH. They sure don't read the same.

60 Mr. STAUFFER. Just more detailed.

60 Mr. KLEIN. We consider them in more detail.

60 Senator HATCH. On January 24 it was pretty well laid out in cryptic language exactly what the impacts were. You are saying that there are more than those five that we mentioned - that you mentioned in January 24, 1977?

60 Mr. KLEIN. That is one of the reasons we rephrased it. That is one of the reasons that the summary paragraph on the January 24 draft was modified - because the impression was given that there were only four or five possibly adverse impacts or unintended impacts of H.R. 13950.

60 Senator HATCH. The problem I am having is I think by expanding it into much greater paragraphs you haven't made it very clear that you still agree with your January 24, 1977 summary where it said there would be substantial production impacts, delays in obtaining permits, extensive litigation, unintended effects due to mismatches between the apparent intent and the actual wording - and, incidentally, that is a pretty important point in your January 24 and I don't think you make it in your February 1 and that is that the legislation is written so poorly that it is pretty tough to really understand the differences between the various paragraphs and there are unintended effects that are going to result.

60 Mr. STAUFFER. I think we point out in several cases in chapter 5 where we think that the legislation could have unintended effects. By the way, we got into a discussion with some of the commenters that how do we know what the intent was in the first place. So we had to rephrase some of the language around it essentially by saying if the intent was what it seems to be, it might not be achieved.

60 But we go into that in great detail in chapter 5.

60 Mr. KLEIN. Those are also summarized in fairly extensive detail in the summary of February 1 report. If you will turn to page 19.

60 Senator HATCH. Let me make a point on page 3 of your February 1 report. And that would be the third paragraph down.

60 There you say, in most cases, after saying in the January 24 report that there would be substantial impacts, substantial production impacts, you state "in most cases the intent of the provision would have little cost or production impacts," which is completely different.

60 Mr. STAUFFER. No; I don't think that it is.

60 Senator HATCH. You have got to admit it certainly -

60 Mr. STAUFFER. Let me finish, please, sir.

60 The reason that you point that out was the problem with that first paragraph. We had not adequately made the distinction between the cost impacts and the noncost impacts. Now, the sentence you read is in the section of our summary dealing with cost impacts. Those five specific points deal with the noncost impacts. The sentence dealing with the cost impacts we think we have shown to be correct through our analysis and that did not change. I don't think that paragraph changed between the two reports.

61 We can check on it.

61 Mr. KLEIN. Sir, if I may read - that sentence you read, Senator, says "in most cases, the intent of the provision would have little cost or production impact." That exact same sentence, word for word, is also in our January 24 draft.

61 Senator HATCH. Why isn't this other sentence which says there will be major impacts? It says there will be substantial impacts. That is the thing that I am upset about. That substantial production impacts could result and you leave that one out of your February 1 and I don't see how 3 days can cause you to conclude from substantial production impacts to almost none and then you leave out this.

61 Now, let me just make this point. Then you leave this out: "In most cases the intent of the" - and this is in your January 24 one - .

61 In most cases the intent of the provision would have little cost or production impact. However, the actual wording could result in unnecessary restriction, administrative, inflexibility and/or additional litigation.

61 Basically, this is all left out of your February 1 report.

61 Mr. STAUFFER. Let me go back to the first point. You say we left out substantial impacts; on page 12, in the middle of the page, underlined:

61 Some words and phrases of H.R. 13950 are subject to varying interpretation. In the event that these terms were given very stringent

interpretation, the impact of H.R. 13950 could range substantially higher.

61 That point is made. That point is right there. Now, concerning your second question. I didn't know what page you were reading from.

61 Mr. KLEIN. The sentence you said which was substantially left out that appeared in the January 24 - if I am correct on that. You are looking at page 3. There is a paragraph - "however, the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation."

61 Is that the sentence that you were reading that is left out? If so, the very first paragraph in the February 1 draft, the very first sentence of that paragraph says:

61 In addition, there are several other noncost provisions in H.R. 13950 in which the wording of the provision could result in additional restrictions, administrative inflexibility and/or delays.

61 Mr. STAUFFER. It is the same language.

61 Mr. KLEIN. I consider that almost exactly the same language.

61 Mr. STAUFFER. We just combined the first sentence with the third.

61 Senator HATCH. Let's go onto that particular point that you make in your February 1, 1977 summary. You say, however - and you just read several provisions in this bill - "are subject to varying interpretations. In the event that these terms are given a very stringent interpretation, the impacts could range substantially higher."

61 Now, that is the point contrasted. If you use the same paragraph over in the summary of major conclusions in January 24 and then list specifically all of the impacts that would occur, which you deleted out of the February 1 report and which was relied upon by O'Leary and Andrus in saying that there basically would be no impact.

62 And then today you testified that there would be additional impacts to the five that we mentioned - the substantial production impacts, delays in permitting, obtaining permits, extensive litigation, the difficulties in language in the bill because of mismatches that would result in ambiguity and extensive litigation, unintended effects that could occur and losses to the coal reserve banks.

62 Now, these are some of the things that bother me and they are just not made clear on the second report, which does appear to be seriously different from the first.

62 Let me change it and go to another situation here.

62 And, you know, rather than get into a word battle here, what I am trying to say is there are very strong differences between the two reports and we have people in major agencies saying that they have relied on the February 1 report that was considerably different from your January 24 report - and relied upon that in saying that we need this Federal strip mining legislation.

62 Now, I think the thing that is bothering me - if, in 3 days, many of the points made in the January 24, 1977 report changed from the February 1 report and they appear to be watered down.

62 Mr. STAUFFER. We do not think that any of the points were changed. The same points are there.

62 Senator HATCH. They are not there. And we are just about out of time.

62 Mr. STAUFFER. The only way we could do that is to say which point is not there and then let us try to point it out to you, why we think it is there.

62 Senator METCALF. Will the Senator yield to me for a moment?

62 Senator HATCH. Sure.

62 Senator METCALF. I just want to make one point.

62 The thing that started this whole inquiry was a question that Senator Hatch asked Mr. O'Leary and he pointed out that your report on January 24, 1977, said - and this is a quote - "for example, while a moderate interpretation of the alluvial valley floor provisions could affect four mines with an additional production in 1978 of 12 million tons, a "worst case" interpretation could impact up to 51 million tons of western production by 1978 and 211 million tons by 1985."

62 He read that to Mr. O'Leary and then he pointed out 7 days later or 8 days, on February 1, 1977, you said, "for example, while a moderate scenario - " you changed interpretation to scenario - "of the alluvial valley floor provisions could effect four mines with an additional production in 1978 of 12 million tons, a "high impact" interpretation of 25 million tons of western

production and 104 million tons by 1985."

62 Now, what Senator Hatch wants to know and what I want to know is in those 7 days what happened to 51 million tons of annual production.

62 Senator HATCH. Actually 100 and something.

62 Senator METCALF. 104 million by 1985.

62 Senator HATCH. 104 million by 1985.

63 Mr. STAUFFER. I thought I covered that in part of my prepared testimony.

63 Senator METCALF. Well, if it is covered in your prepared testimony -
the second point that I want to make before we leave, Senator, is that I just find it incredible that you say that in beginning a survey of this sort on the whole strip mining provision, you had not read President Ford's veto message.
n6

63 n6 See "Supplementary Exposition by ICF Inc." which appears on p. 69.

63 It would seem to me to be the starting point of any sort of a discussion of the impact of strip mining.

63 Now, I don't think that Secretary Andrus is at fault at all. He can believe or disbelieve any sort of a report, but when you start off and tell us today that you have not read the President Ford veto message, it just seems to me to be incredible - as the beginnig of a very thorough and far reaching report.

63 Mr. STAUFFER. I think Dan just whispered to me that he had read it. I have not and the reason I had not is I knew about the staff analysis that had been conducted in support of that message and I thought that I was familiar with them. And once again, I want to make the distinction that we try very hard to stay out of the political arena.

63 Senator METCALF. It isn't political when President Ford says it will cost so many jobs and you say in your report that it will have no substantial impact.

63 Senator HATCH. He said that it would cost 46,000 jobs, if my recollection is correct - and it has been a couple of months.

63 Mr. STAUFFER. I know that we had very different findings.

63 Senator HATCH. But the fact of the matter is your findings weren't so different in the January 24. n7

63 n7 See "Supplementary Exposition by ICF Inc." which appears on p. 69.

63 Well, let me just say this. Senator Metcalf has to go, but I would like to just say this to you fellows. I believe that you are competent and that you are business people. And I believe that you intended to do a good job in this report. I believe that.

63 I don't find any fault from the standpoint of your personal integrity except for one thing - and I am not meaning to impune your integrity - I think instead of being apolitical, instead of not allowing politics to enter into this thing, that is what happened here - is we have become very political and we have allowed Barry Flamm and Mr. Speyer and others who may have even been influenced by Judith Fletcher of the White House to come in here and influence semantic word changes and figure changes that I think are drastic.

63 You know on the section of the summary dealing with alluvial valley floor, you substitute a high impact scenario for a worst case scenario. In order to accurately reflect the data developed, in order to avoid bias and present an objective analysis, I would think that it would have made sense to include a moderate scenario, a high impact scenario and a low and worst case scenario instead of just leaving a worst case scenario. I think that we deserve to know. n8

63 n8 See "Supplementary Exposition by ICF Inc." which appears on p. 69.

63 Mr. STAUFFER. We do. We have three scenarios there.

6 0 . STAUFFER. We do. We have three scenarios there.

64 Senator HATCH.No; and then I am saying that in the final version of February 1st you proceed on the assumption that only 50 percent of the leases with the alluvial valley floor will be impacted. And your footnote to the worst case impact on page 5 of your February 1 report, you cite the problem of litigation, which you referred to previously in the January 24 version and I quote: "Although this production will not likely all be shut down, the potential for exhaustive litigation is quite high, which could, in turn, lead to substantial shortterm production."

64 Now, the January 24, the problem arises from litigation as a recurring thing. The potential is "quite high" to quote you.

64 And then it would seem to me that this is such a likely problem that it should justify not letting the worst case impact or scenario in summary.

64 Well, all I am trying to say is that your second report seems - it seems to me to be a clear deemphasis on the major impacts that are listed in your first report and I think that anybody who reads the two reports would arrive at that particular conclusion.

64 Let me just finish with this and then I think that we will just have to finish. I am concerned that people representing our contracting agencies - and indeed, the White House - have provided input relied upon by ICF and they have not seen fit to appear here.

64 You know, I requested that we have Barry Flamm and Kathy Fletcher here and I suppose Mr. Speyer should come in and they have put off, it seems to me, they have put off on you, on ICF the burden of explaining what appears to be - what appears to me to be some behind-closed-doors maneuvers.

64 Now, President Carter has promised us openness in these matters and it appears to me that you people have been unduly politically influenced in order to arrive at the changes and conclusions that you have.

64 And, again, I don't want to attack you personally. I think that that is something that happens when you deal only with the Federal Government and I think we really want to find out what is the truth here.

64 ICF, if it really cared, and EPA, if they really care - and I suggest they don't care - they care in one way and that is to have their will over everybody else's in society. They would have brought some outside, independent experts in here to assist you in this matter, so that it wasn't just all one-sided.

64 Now, you suggest that you have had some of that, but they would have made sure that there was enough money and enough information given to you so that you could present both sides of the picture. And I think, albeit, we have basically one side of the picture. n9

64 n9 See "Supplementary Exposition by ICF Inc." which appears on p. 69.

64 Now, I think that the numbers appear unchanged until political appointees with special interests suggested changes in the underlying subjects and although ICF suggests its report is apolitical, I think that it is interesting to note that the very political - the most political of all issues were changed in just a matter of a few days following the input of some very few political people.

64 And I appreciate Mr. Stauffer's responses, but I haven't yet resolved the basic problem and I think the credibility of the ICF strip mining report has to continue to remain suspect, and I think that as much as you have tried to do the job, I think that you have been influenced politically.

65 Let me give you another illustration. We have a water project that has been going on for 20 years - \$2 00 million have been spent. We are within 18 months to 2 years of completion of that project because there are environmental extremes - and I am talking about those who aren't true environmentalists, who want a true balance, they want their view at the expense of everybody else. And I think the Government is fooling them.

65 I think ICF - let's say, CEQ is fooling them. And I think that EPA is fooling them. They want their viewpoint over everybody else in America and I think that that is wrong and especially in something that is as important to us as the energy development of this country.

65 And the fact of the matter is in that particular situation out there in Utah, we find that some of these very same people play a part in the same scenario and that they are playing the part and all of these other environmental decisions around our society and that this country is being brought to its knees because of people like this who won't look at both sides.

65 And in all honesty, I don't think that you fellows have looked at both sides and I don't blame you. I blame you to a degree because I think the very thing you wanted to avoid - and that is politicizing your report - has occurred. And that is perhaps not knowing it on your part, but I think that that has occurred.

65 And I think that it has occurred because we have a couple of agencies that are putting their will over everybody else in society and that is what bothers me about it.

65 I am still not satisfied with it. I think that we ought to bring these people in and make them testify, too, and see just where this thing finally lands.

65 But I know that our time is up, Mr. Chairman, and maybe we could continue this over for a few days and maybe we could come to a conclusion on where we go from there.

65 I appreciate your testimony. I appreciate your coming. I appreciate

some of the information you have given. You have clarified some issues. I appreciate your sincerity and I think that you intended to make this a nonpolitical report and, unfortunately, my conclusion is it is very vague.

65 Senator METCALF. I am very pleased that you came. I want you to be provided with a transcript of this hearing and I want you to demand it if you don't get it in a couple of days and -

65 Senator HATCH. I agree.

65 Senator METCALF [continuing.] And go through and read your testimony and I noted that Mr. Klein at one time wanted to read out of his contract and I think that that paragraph in the contract should be included in the final testimony.

65 [The language follows:]

65 In Contract No. EQ6AC016, Clause 102 is entitled "Work Sequence and Reports," and reads in part:

65 "A preliminary final report * * * will be prepared and submitted by January 10, 1977 in 10 copies. The Contractor will meet with the Government's Project Officer promptly thereafter in Washington, D.C. to discuss the preliminary final report and to discuss the Contractor's further work under this contract. A draft final report for interagency reviews will be prepared by the Contractor and submitted by approximately January 24, 1977 in 18 copies. The Contractor will meet with the Government's Project Officer after reviewing comments which have been received to discuss preparation of a draft final report for distribution and other work under this contract. A draft final report for distribution will be prepared by the Contractor and submitted by approximately February 1, 1977 in 18 copies."

66 Senator HATCH. I certainly agree.

66 Senator METCALF. I want the staff to show you the part of the hearing record that came up when Senator Hatch first opened this question and if you have any further comments, you are perfectly welcome to supply them, both to me and a copy to Senator Hatch and for the record.

66 [Subsequent to the hearing Mr. Stauffer supplied the following:]

66 ICF, Inc., Washington, D.C., May 31, 1977.

66 Senator LEE METCALF, Chairman, Subcommittee on Minerals, Materials, and Fuels, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washinton, D.C.

66 DEAR SENATOR METCALF: During ICF's testimony on May 11, 1977, Senator

Hatch asked us questions regarding an interchange he had with Secretary Andrus and Administrator O'Leary during a hearing on S. 7 held February 7, 1977. In particular, he questioned us about their reliance upon our report in justifying their position, and in their reaction upon learning that a January 24th draft also existed. We were unable to respond to Senator Hatch's question at that time because we had not reviewed transcripts of that hearing.

66 Later in the hearing, you directed your staff to provide us a transcript of the February 7 hearing, and invited us to supply comments for the record. This letter presents our comments.

66 Having reviewed the testimony of Secretary Andrus and Administrator O'Leary, we find no statements regarding our report which were made by either gentlemen which would appear to distort or misrepresent our findings. We do note that Administrator O'Leary's remarks referred to the parts of our report discussing cost-related impacts, which we found to be not great. His remarks did not discuss the non-cost impacts, which we found to be potentially significant. We cannot determine from the transcript whether he would have discussed the non-cost impacts had Senator Hatch not shifted the dialogue to another subject.

66 However, we find very little reliance was made upon the report by either gentlemen. Secretary Andrus stated repeatedly that he had not seen the report. Administrator O'Leary stated he had seen the report, but referred to it only in a general way, and then only in response to a question by Senator Hatch concerning recent analyses.

66 The points concerning our report which were raised by Senator Hatch in the February 7th hearing are numerous. Our responses to these points have been exhaustively detailed in a memornadum to CEQ and EPA, in letters to Senators Metcalf and Hatch, and in our written and oral testimony on May 11, 1977. Accordingly, we see no need to belabor these points again. However, we have noted three instances in the May 11 hearing in which Senator Hatch's description of the February 7th hearing warrants additional comment. Each is discussed below.

66 1. Administrator O'Leary appeared to fully understand that the procedure ICF followed in developing its Draft Final Report is a standard procedure.

66 In the May 11 hearing. Senator Hatch described Secretary Andrus and Administrator O'Leary as appearing "absolutely shocked" when he pointed out differences we had made between drafts. Although the hearing record does not indicate personal reactions. it does appear to us that they understood thqnature of developing draft reports.

67 Secretary Andrus stated that he had not looked at the report, and therefore declined to comment. Administrator O'Leary stated that he did not

have the January 24th draft. Following a pledge to inquire about any "doctoring," he made a statement which indicated he fully understood the process used in developing draft reports

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

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

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

67 2. Administrator O'Leary did not suggest our report was a final report.

67 In the May 11 hearing, Senator Hatch stated that Administrator O'Leary attempted to cite our report as being a final report rather than a draft report:

67 Senator HATCH: "The thing that bothers me is that O'Leary held your - the final draft report, February 1st, up as real reason and really a final report justifying this federal strip mining bill. And that was his justification of it. And he had it up right there as really a final report and said this is the reason."

67 The transcript of the February 7th hearing shows that this was not the case, and that Administrator O'Leary clearly identified our report as a draft. In his first reference to the report, he stated:

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

67 Shortly thereafter, when Senator Hatch mentioned our January 24th draft, Administrator O'Leary responded:

67 Mr. O'LEARY: "I have the draft report of of February 1. We will see you get all of the material here."

67 3. Administrator O'Leary did not use our report as justification of a federal strip mining bill.

67 In the May 11th hearing, Senator Hatch implied that our report was the basis of Administrator O'Leary's justification of a federal strip mining bill:

67 Senator HATCH: "The thing that bothers me is that O'Leary held your - the final draft report, February 1st up as real reason and really a final report justifying this federal strip mining bill. And that was his justification of it."

67 We have closely examined the prepared statement of Administrator O'Leary, in which he affirms his support for federal legislation. Nowhere in his statement does he mention ICF, our report, or any data or test therein. It is only in response to Senator Hatch's question regarding new analyses that he makes reference to our report. Even then, he only makes general statements regarding its content, and does not cite our report as either supporting any particular bill or repudiating earlier analyses:

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

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

67 Thank you for this opportunity to supplement the record.

67 Sincerely yours, C. HOFF STAUFFER, Jr.

68 Senator METCALF. I want this to be not an adversary sort of thing, but a fact finding and an information gathering hearing. And so, in your best interest, you just get together with staff here and be sure that you see this material, the transcript and the others, and Senator Hatch and I will get together.

68 Senator HATCH. Right. And then I would invite you to submit materials to me that might alleviate my concerns and I will certainly modify my statements if you can alleviate them in the record. I want to be fair to you. I think I have tried to be fair to you. But I have got to admit that these things really bother me.

68 I have seen too much of it in the Federal Government lately. And, frankly, I think we have all got to work against what I consider to be overemphasis, it seems to me, by various segments of our society and the Government.

68 Now, I want to at this time, Senator, express my deep gratitude for you for calling this special hearing and giving us the opportunity to ask some of these questions and for your usually gracious way in trying to make sure that we get all the information in and that we be as clear as we possibly can. I want to be, too.

68 And let's you and I get together and make some determinations - yes, sir?

68 Mr. STAUFFER. One thing that might be helpful in the clarifying of some of these issues and perhaps the staff could work with us - is in our prepared testimony I think that we addressed each of the parts of the report that you have raised here today.

68 Senator HATCH. We will review them.

68 Mr. STAUFFER. And we tried to explain why we had done it and how we think that it still says the same thing. If you don't agree with that -

68 Senator METCALF. It might be helpful, Mr. Stauffer, if you read the transcript of this hearing, that you refer and provide both of us with additional copies of your prepared statement and refer to that part of the prepared statement that answers the question. n10

68 n10 Additional comments presented in "Supplementary Exposition by ICF Inc."

68 Senator HATCH. And I would be happy to review that when we have more time to reflect and chat with you.

68 If you would like to come to my office, we would be happy to do that. I think that we can resolve some difficulties here.

68 And there is one thing that I would like to point out just in closing that I feel needs a lot more emphasis and that is some of the impacts suggested

by President Ford, which I think are still there, and may-be even more drastically than he has suggested - and I find it a little bit surprising that some of them were not covered, but you might want to read his veto message and see if you have any views.

68 Senator METCALF. We do have to leave, Senator.

68 Senator HATCH. You bet. Thank you.

68 Senator METCALF.Thank you very much.

68 This hearing is adjourned.

68 [Whereupon, at 9:55 a.m., the hearing was adjourned.]

68 [Subsequent to the hearing Mr. Stauffer supplied the following:]

69 During testimony by ICF Incorporated before the Subcommittee on Public Lands and Resources on May 11, 1977, Senator Metcalf suggested that ICF review the transcript of proceedings and supply further comments where desired. This supplementary exposition presents our comments regarding statements made and questions raised during that hearing.

69 We feel that our report and our written and oral testimony show conclusively that our report was not "tampered with" or "doctored" in any way. The salient points, which we have demonstrated repeatedly, are the following:

69 The report was prepared in accordance with our contract, which specifically required draft reports and solicitation of review comments.

69 Any changes made during the review process were made by ICF.No changes were forced upon us by any government official or anyone else.

69 Any textual changes were made to improve readability or to impart a more neutral tone. No textual changes were made to obscure or distort substantive findings.

69 Any numerical changes were made on a sound analytical basis, and in all cases are fully documented. These numerical changes did not alter any conclusions which were drawn from the estimates.

69 The remainder of our comments here are organized into two parts. The first part addresses points and issues raised during the hearing, and summarizes and supplements the testimony. The second part makes a response to statements made during the hearing which appeared to reflect a misunderstanding of our report or procedures followed in developing our report.

69 ISSUES RAISED DURING THE HEARING

69 In our review of the hearing transcript, we have identified four issues which were raised by Senator Hatch in his questioning. Each is summarized below.

69 Involvement of Government Personnel

69 Senator Hatch posed numerous questions regarding the names and roles of the government personnel involved during the report review process. In particular, his concern appeared to be that during this review process, government personnel either "doctored" our report or unduly influenced us to make changes.

70 We believe our testimony conclusively repudiates this contention. It is clear that the review process followed is a common and effective process used in government and academia. The report schedule and review process had been arranged well in advance, and was fully understood by all agencies participating in the review. It was ICF, and no one else, who decided how to respond to each and every review comment.

70 Senator Hatch expressed particular concern that Ms. Kathy Fletcher from the White House staff may have influenced our report. To reiterate, at no time during the study did we see Ms. Fletcher, meet her, talk with her, write to her, or receive material from her. It is our understanding that she did talk with our clients. However, our clients never attributed any of their comments to her.

70 Senator Hatch also suggested that our report was one-sided because the information came largely from the government. This is not the case. In addition to our clients, ICF received review comments from five other federal agencies and one other consulting firm. We solicited oral and written information from officials in virtually every coal mining state. Three mining engineering firms provided input to our analyses. Data was collected from at least 19 western mine operators and 27 eastern mine operations. Numerous other exchanges of information were made with knowledgeable individuals in government, industry, academia, and public interest groups. Far from being a one-sided report, we believe that our efforts represent the most comprehensive, thorough, and open analyses ever made of federal surface mining legislation.

70 Alluvial Valley Floors

70 Senator Hatch posed several questions regarding the revision of the high end of the range of potential production impacts resulting from the alluvial

valley floor provisions. We believe that our report documentation, as well as our written and oral testimony, effectively shows that this change (1) was based on sound analytical reasoning, (2) was fully documented, and (3) did not alter the conclusions drawn from these numbers. Accordingly, we see no need to belabor these points.

70 We would, however, like to respond to Senator Hatch's assertion that this change was a last-minute change, after six to nine months of work. The implication here is that the "bottom line" had been known by our clients for months. This is not so. The first full draft report containing the alluvial valley floor findings was the January 24th draft. The January 10, 1977 draft to our clients did not include Chapter V ("Production and Reserve Base Impacts of Non-Cost Factors"), in which the alluvial valley floor findings are presented. This omission of Chapter V from the January 10 draft was necessary in order to transmit Chapters I-IV, which at that time were the primary focus of our efforts and our clients' concern, in a time that would permit review of that part of the report. Thus, although our data and methodology had been known and reviewed for some time, the "bottom line" shown in Chapter V was not available for review comments until January 24th. Thus, the comments received on this point were made shortly after it was available for review.

71 We are also concerned that Senator Hatch's remarks that the alluvial valley floor findings "pertain to the most critical part of our report" carry an adverse connotation - namely, that although no other numbers were refined, these "most critical" numbers were. We can understand that Senator Hatch believes these numbers are currently "the most critical." However, when our study began, a host of other numbers were viewed as equally critical. These included incremental production costs, production and employment losses due to cost increases, electricity rate increases, and impacts of steep slope provisions. We suggest that the alluvial valley floor findings may currently be viewed as "the most critical" only because these other issues (a) were addressed adequately in our report, and (b) were shown to have less uncertainty regarding their impacts than did the alluvial valley floor provisions. For better or worse, during the course of our study, we and (we believe) our clients viewed the alluvial valley floor issues as subsidiary to the cost, production, and employment impacts associated with the reclamation requirements. This is not to say that we disagree that the alluvial valley floor issues are currently critical. Rather, we wish to put these issues in the perspective of the other issues that were also viewed as being "critical" prior to the distribution of our report.

71 First Summary Paragraph

71 A substantial part of the hearing was devoted to detailing the reasoning behind a rewording of our first summary paragraph. An implication was made that the rewording was an effort to "weaken" or omit relevant findings. Our testimony described in detail that this change was made in order to (1) balance the opening of the summary and not create a lack of parallelism by mixing general with specific points, and (2) avoid giving the impression that those were the only specific impacts, when really there are more.

71 In order to better prove our point, it is useful to reprint the relevant text from both drafts. In the January 24th interagency review draft, the first paragraph under the "Summary of Major Conclusions" reads:

71 "The findings of this analysis indicate that the cost-related impacts due to H.R. 13950 are generally not great. These cost impacts are not likely to significantly affect national coal production, coal consumption, coal prices, employment, or electricity prices. However, there are numerous provisions in H.R. 13950 not directly related to costs which could create major difficulties. Such impacts include (1) substantial production impacts that could result from possible interpretations of the alluvial valley provisions, (2) delays in permitting due to inability to comply within established timetables and/or insufficient administrative funding, (3) extensive litigation resulting from ambiguous and undefined terms, (4) unintended effects due to mismatches between the apparent intent and the actual wording, and (5) losses to the coal reserve base."

72 In the February 1 Draft Final Report, this paragraph is reworded and presented as the following two paragraphs:

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

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

72 As a background note, the Executive Summary is organized into three sections. The second section summarizes the cost-related impacts, and the third summarizes the impacts not related to costs. The first section is in essence a summary of these other two summary sections. The initial paragraphs shown above

are the initial paragraphs of this "summary of summaries," and attempt to state in a few sentences the essence of this 500+ page report.

72 The first reason for rewording these paragraphs as shown was to achieve a more balanced introduction to our findings. Specifically, it was noted that while the first part (relating to cost impacts) was expressed in general terms, the second part (relating to non-cost impacts) expressed specific points. Reviewers noted that the approach lacked balance and parallelism, and the specific points were too detailed to present at the very outset.

72 In response to what we considered valid criticism, we reworded this to read as two general conclusions. In making this change, our intent was to be clear and to impart a neutral tone. Since all of the specific points cited in the January 24th draft are still cited in the Summary and in the body of the report, we certainly do not consider our conclusions to be weakened or watered down in any way.

72 The second reason for rewording these paragraphs was to avoid misleading the readers into thinking that these five specific points were in fact the only potentially adverse impacts, when actually there were several more. This concern for possibly being misleading seems to have been borne out during the hearing when Senator Hatch, after citing material prepared by his staff, raised the following question:

72 Senator Hatch:

72 "You are saying that these are additional impacts to the ones that were listed on January 24 . . . In January 24th it was pretty well laid out in cryptic language exactly what the impacts were. You are saying that there are more than those five that we mentioned - that you mentioned in January 24, '77?"

73 Mr. Klein:

73 "That is one of the reasons we rephrased it. That is one of the reasons that the summary paragraph on the January 24th draft was modified, because the impression was given that there were only four or five possibly adverse impacts or unintended impacts of H.R. 13950."

73 By rewording this paragraph in more general terms, our intent was to express to the reader that there were potentially adverse impacts, but not that there were only five. In fact, over one-half of the Executive Summary discusses

the impacts of these provisions not related to cost (pages 3, 9-19). In addition, some reviewers disagreed that the specific points we had chosen to cite in that initial paragraph were really the most important points we had developed. By not imposing our own ranking criteria at the very beginning, we hoped to avoid unnecessary influencing of the reader.

73 The charge that this rewording in effect deleted substantive findings cannot be substantiated. As noted before, this paragraph was only an introduction to a "summary of summaries." Any points mentioned there are still raised in the remainder of the "summary of summaries," in the section of the Executive Summary dealing with non-cost impacts, in the chapter summaries, and in the main body of the report. To illustrate, the five specific points mentioned in the January 24th draft are referenced elsewhere in the Summary of the February 1 Draft Final Report (as well as being discussed in full in the main body of the report) as follows:

74	Phrase in 1/24/77 Draft Summary	Page #'s in 2/1/77 Summary	Example in 2/1/77 Summary
moderate alluvial	"substantial production impacts that could result from possible interpretations of the alluvial valley floor provisions"	3, 12-14, 19	". . . while a scenario of the valley floor provisions could affect four mines with an additional production in 1978 of million tons, a high impact interpretation could impact up to 25 million tons of western production by 1978 and 104 million tons by 1985." (pg. 3) "In order for existing mines to meet the deadlines established obtaining permits, it would be necessary for operators to begin collecting data to meet requirements before requirements have even been proposed." (pg. 3) "In addition there are several other non-cost provisions in H.R.
for	"delays in permitting due to inability to comply with established timetables and/or such insufficient administrative funding"	18, 19	in which the wording of

"extensive litigation
resulting from ambiguous
and undefined terms" 3, 19

to
raised
impacts

interpretations,

apparent
"unintended effects due to
mismatches between the
apparent intent and the
actual wording" 3, 14, 19

between

to

"losses to the coal
reserve base" 3, 13, 15, 16, 17
[See Table in Original]

the provisions could
result in additional
restrictions,
administrative
inflexibility, and/or
delays." (pg. 3)
" . . . several aspects
of the bill appear to
merit further
consideration. The
characteristic common

all of the issues

here is that the

of the bill could be
exacerbated due to
varying

which in some cases
differ from the

intent (as reflected in
the statutory language
and Committee Report)."
(pg. 19)

"The reserve impacts of
H.R. 13950 could range
between 8.1 and 24.0
billion tons, or

1.9 and 5.5 percent of
total reserves. These
impacts are equivalent

between 5.9 and 17.6
percent of strippable
reserves." (pg. 3).

75 Sentences Left Out

75 During the hearing, Senator Hatch stated that we had left out an
important sentence in our February 1 draft:

75 Senator Hatch:

75 "Now, let me just make this point. Then you leave this out: "In most
cases the intent of the" - and this is in your January 24th one - "in most
cases
the intent of the provision would have little cost or production impact.
However, the actual wording could result in unnecessary restrictions,
administrative inflexibility and/or additional litigation." Basically, this
is
all left out of your February 1st report."

75 In order that there be no confusion on this point, the first part of that paragraph in the January 24th report reads (on page 3):

75 "In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could have effects quite different from the apparent Congressional intent. In most cases, the intent of the provision would have little cost or production impact. However, the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation."

75 In the February 1 Draft Final Report, this text is reworded (on page 3) as:

75 "In addition there are several other non-cost provisions in H.R. 13950 in which the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays. In most cases, the intent of the provision would have little cost or production impact."

75 In our view, there is very little difference between the two, and the assertion that the content was "left out" of the February 1st draft is unsupported. The reason the third sentence was "left out" was that it was combined with the first sentence. The third sentence in the January 24th draft was ". . . the actual wording could result in unnecessary restrictions, administrative inflexibility, and/or additional litigation." The first sentence of the February 1 draft contains ". . . the wording of the provisions could result in additional restrictions, administrative inflexibility, and/or delays." We believe the two sentences of the February 1 draft say the same thing as the three sentences of the January 24th draft.

75 The reason we revised this paragraph was to avoid reference to the "apparent Congressional intent." Reviewers noted that it was presumptuous of ICF to proclaim what the Congressional intent actually was. Further, it was pointed out that since H.R. 13950 did not pass in either house of Congress, the bill itself was not a reflection of Congressional intent. Accordingly, we sought a rewording which would convey the point that the literal wording could have unintended effects, while avoiding the phrase "Congressional intent." Elsewhere in the Summary and in Chapter V, we made frequent use of the phrase "apparent intent (as reflected in the statutory language and Committee Report)."

76 RESPONSE TO STATEMENTS MADE IN THE HEARING

76 The above sections clearly show that the specific points raised during

the hearing are in fact easily explainable, fully documented, and analytically sound. We can see no way in which they can seriously be construed as evidence of "tampering" or "doctoring."

76 In this section, we would like to make note of other statements made during the hearing which appear to reflect a misunderstanding of either our report or our testimony.

76 President Ford's Veto Message

76 During the hearing, an impression was given that we were not familiar with the analysis used to justify President Ford's veto of H.R. 25. This is not so.

76 The misimpression was created by a statement that we had not read the veto message. By this, we were making reference to the actual statement President Ford made when he vetoed H.R. 25. We had not read this particular statement because we knew it was basically a summation of the staff analysis.

76 We are extensively familiar with the staff analysis of H.R. 25. ICF has spent over 100 man-hours in analyzing and critiquing this analysis. All of the issues covered in that analysis are considered in our report. Hence, our not having read the veto message (which did not contain any information not found in the staff analysis) does not in any way imply a lack of familiarity with the analysis of H.R. 25.

76 Numerical Changes

76 In two instances during the hearing, Senator Hatch suggested that the February 1 Draft Final Report differed from the January 24 interagency review draft in several aspects. The differences he cites are incorrect in that the findings are the same in both drafts.

76 In one instance, Senator Hatch says that the January 24 draft agrees with the H.R. 25 analysis "in more stringent terms" than the February 1 draft with respect to production, cost of energy, unemployment, and litigation. As shown below, there are no changes in any of these parameters between drafts:

77	January 24 Draft	February 1 Draft
Production		
1978 net production curtailments	7-22 million tons (page 8) 8)	7-22 million tons (page 8)
Cost of Energy		
Coal price increases		
Appalachia	\$1.00/ton (pg. 8)	\$1.00/ton (pg. 8)
Central West	\$1.00/ton (pg. 8)	\$1.00/ton (pg. 8)
Elsewhere	\$0.50/ton (pg. 8)	\$0.50/ton (pg. 8)

Electricity price increases: (pg. 9)	1% (pg. 9)	1%
Unemployment (net direct employment impacts)		
1978	max. 1,400 (pg. 3)	max. 1,400 (pg. 3)
1979 and after	0 (pg. 3)	0 (pg. 3)
	cited throughout but not	cited throughout but
not		
Litigation	quantified	quantified

77 In another instance, Senator Hatch implied that our estimates of employment impacts had changed:

77 Senator Hatch:

77 "(President Ford) said (H.R. 25) would cost 46,000 jobs . . . "

77 Mr. Stauffer:

77 "I know that we had very different findings."

77 Senator Hatch:

77 "But the fact of the matter is your findings weren't so different in the January 24th."

77 There was no change made to this paragraph between drafts. In both drafts, the exact wording on page 3 reads as follows:

77 "The net direct employment impacts (i.e., lost jobs due to production curtailments minus new jobs due to increased reclamation) in 1978 could be a loss of about 1,400 jobs in surface mining in Appalachia, if the net production curtailments were 22 million tons. If the curtailments were lower, the net direct employment impacts would be lower. However, additional jobs could be created in both government and industry to implement the legislation and conduct the studies required for permit applications."

78 It is important to note that between our January 24 and February 1 draft, there were no changes in the numerical estimates of any of the cost and related economic impacts. As noted before, this covered four of the five chapters in the report. As regards the non-cost impacts in Chapter V, numerical changes were made only in portions of two sets of numbers. In both cases, the underlying data and assumptions are fully documented, and the numerical change did not change the conclusions which were drawn from those estimates.

78 Specification of Scenarios

78 In reference to our summary of impacts from alluvial valley floor provisions, Senator Hatch suggested that ICF should have used scenarios to depict a range of impacts rather than a single interpretation:

78 Senator Hatch:

78 "In order to accurately reflect the data developed, in order to avoid bias and present an objective analysis, I would think that it would have made sense to include a moderate scenario, a high impact scenario and a low and worst case scenario instead of just leaving a worst case scenario. I think that we deserve to know."

78 Mr. Stauffer:

78 "We do. We have three scenarios there."

78 Senator Hatch:

78 "No."

78 We note that our analysis develops (and reports in the summary) production and reserve base impacts under low, moderate, and high scenarios. As our report notes:

78 "Production and reserve base impacts were estimated for three scenarios - low, moderate, and high impacts. These different scenarios were developed to reflect future regulatory uncertainty, judicial interpretations, and data uncertainty. The moderate impact scenarios were developed to reflect (1) what we believe would happen if the bill was interpreted consistent with the apparent intent (as reflected in the statutory language or Committee Report), and (2) our best judgments based on existing data. Low impact scenarios reflect data uncertainty and regulatory flexibility to meet the standards of the Act. High impact scenarios are based upon very stringent interpretations and data assumptions which tend to exacerbate the impacts."

78 Further, the estimates of alluvial valley floor impacts made under the low and moderate scenarios did not change at all between drafts.