

BRIEFING, JUNE 3, 1975

Legislative History

June 3, 1975 veto justification briefing

Following is the June 3, 1975 Surface Mining Veto Justification briefing before the House of Representatives Sub-Committee on Energy and the Environment. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

**SURFACE MINING VETO JUSTIFICATION BRIEFING
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT AND THE SUBCOMMITTEE ON MINES AND MINING OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES**

JUNE 3, 1975, Serial No. 94-23

TUESDAY, JUNE 3, 1975

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

1 The subcommittees met, pursuant to notice, at 9:45 a.m., in the caucus room, 345 Cannon House Office Building, jointly chaired by Hon. Morris K. Udall and Hon. Patsy Mink presiding.

1 Mr. UDALL. This is a joint hearing of the House Interior Committee Subcommittees on Energy and Environment, which I have the honor to Chair; and Mines and Mining, which is chaired by the distinguished gentlewoman from Hawaii, Mrs. Patsy T. Mink.

1 At the time we scheduled these hearings, we also invited some members of the Senate Interior Committee who had worked on this legislation. We are delighted to have with us this morning Chairman Metcalf of the Subcommittee on Minerals, Materials, and Fuels, who is Floor manager of this legislation on the other side, and the distinguished Senator from Arkansas, Mr. Bumpers. We are happy to have both of you here with us this morning.

1 Mrs. Mink and I called these hearings about 2 weeks ago in an attempt to enlighten the country and Members of the Congress on the basis for the Presidential veto on the surface mining legislation.

1 We have with us here this morning the distinguished Secretary of Commerce, Rogers Morton. We have Mr. Zarb, the Administrator of the Federal Energy Administration. Mr. Zarb, if you will identify your backup experts with you so we will have a cast of characters before we

begin.

STATEMENTS OF FRANK G. ZARB, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION; JOHN HILL, DEPUTY ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION; ERIC ZAUSNER, ACTING DEPUTY ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION; TOM FALKIE, DIRECTOR, BUREAU OF MINES, DEPARTMENT OF INTERIOR; RAYMOND PECK, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF COMMERCE; AND ROGERS C. B. MORTON, SECRETARY OF COMMERCE

1 Mr. ZARB. Mr. Chairman, on my extreme left is Eric Zausner and John Hill. To the extreme right, Dr. Tom Falkie, Director of the Bureau of Mines. To his left, Ray Peck, who is now General Counsel, from the Office of General Counsel, Department of Commerce.

2 Mr. UDALL. Do you have some further backup people to call on if necessary? I have a longer list from the White House.

2 Mr. ZARB. We do, Mr. Chairman. I don't have a list here in front of me. They are seated behind us three rows deep; Alvin Cook, Director of the Economic Analysis, FEA; Dan Jones, Office of Coal, FEA; Jim Paone, Bureau of Mines, Department of Interior; R. A. Pense, Bureau of Mines, Department of Interior; R. Hadley, USGS; Jack Reed, USGS; W.R. Keefer, USGS; Dan Colby, Bureau of Mines, Department of Interior; George Miller, Bureau of Mines, Department of Interior.

2 Mr. UDALL. Very well. I will begin with a series of questions which I hope might set the stage for questions by the other members. Following that, I propose to yield to Senator Metcalf. I understand, Mr. Zarb, you have a time problem this morning. We had intended to go into the afternoon to resume at 2 o'clock in the event we do not finish this morning. From the indications I have had from other members of the joint subcommittees, I rather suspect that we will not be able to conclude this morning. But let us move along and see how far we can get.

2 Mr. ZARB. May I just point out, Mr. Chairman, that those that are with us, the Secretary and I think this morning, are the senior people who put together the interagency review of the bill and comparing the extensive branches/analysis with respect to its impact.

2 So if the Secretary and I have to leave later this morning - and we both have commitments downtown - John Hill, who is my deputy, will have all of the backup background which I think the committee requires.

2 Mr. UDALL. Let's see how far we can get. We will discuss that at a later point in the morning.

2 In the veto message, the President gave us four principal reasons for disapproving H.R. 25, and they were that up to - and I emphasize up to - 36,000 Americans were going to lose jobs; that utility bills would be increased; that the Nation would become more dependent upon foreign oil; and that coal production would be unnecessarily reduced at a time when we need increased production.

2 Is this a fair summary of the four major reasons the President gave?

2 Mr. ZARB. Yes, sir, that is fair.

2 Mr. UDALL. It was your advice in part, I take it, that, if the bill were to become law, it would cut back jobs, reduce production, make us dependent upon foreign oil, and drive up the price of electricity. That is your position here today?

2 Mr. ZARB. Mr. Chairman, that summarizes in general terms some of my views and the views of my agency; yes, sir.

2 Mr. UDALL. All right.

2 Then as I understand it, the administration proceeded somewhat in this fashion to reach these conclusions. First, a number of assumptions were made about the effects of various provisions of the bill. That is, the effect the bill would have on mining on steep slopes; the effect it would have on mining on alluvial valley floors; the effect of the bill on small mining operations, et cetera. Then these assumptions were used as a basis to project how much coal could not be mined if the bill were actually passed.

2 Have I stated that correctly?

3 Mr. ZARB. Well, I think I would like to just amend that slightly before I agree to it. While we looked at what could not be mined, we also calculated what we likely could mine during that period of time. So total production was part of the analysis.

3 Mr. UDALL. Based on your assumptions and logic, the administration projects that if this bill passes in the first full year of implementation of the act, that is, in 1977, the range of coal production losses that could occur - coal that could not be mined that otherwise could be mined -

would be at least 40 million and up to 162 million tons, and the top figure is the more likely figure. Is that correct?

3 Mr. ZARB. I think I would ask Mr. Falkie to answer that specific question, particularly with respect to the latter part of your statement.

3 Dr. FALKIE. This, the range you cited, was correct, Mr. Chairman. However, to determine which part of the range the production losses would be in would require much more legal interpretation of the bill. We are holding to the statement that that is the range in which the losses could occur.

3 Mr. UDALL. Is it not true that you emphasize the upward range, that you have been telling the American people that the likely loss is 162 million tons?

3 Dr. FALKIE. I don't recall us ever having said that the likely loss is any particular number. We have always emphasized the range.

3 Mr. UDALL. Is the lower range more likely than the upper range or are they equally likely?

3 Dr. FALKIE. We cannot answer that question because of the complexities and difficulties of interpreting the various parts of the bill.

3 Mr. PECK. Mr. Chairman, if I might add, in assessing the legal consequences of not only the bill as it was enacted, but the various versions of the bill as they came forward from the committees, we assessed and set forth in the various memorandums to the committees what we thought were the quantifiable losses. That is to say, those of which we were certain enough to assign numbers. Within that range in general, the low number represents the assumption that the most lenient interpretation will be given to any given provision of the bill and the high range the maximum.

3 But at each stage we have emphasized that in addition to those quantified losses, there will be additional but unquantifiable losses derived from parts of the bill for which we simply can't have any basis now for calculating.

3 Mr. UDALL. I don't want to quibble. This is a minor point. But in the veto message the President said actually resulting losses from H.R. 25 can run considerably higher because of ambiguities in the bill.

3 Mr. PECK. That is correct.

3 Mr. UDALL. You first established how much coal mining production was actually going to be lost. Then, using that as a basis, you projected and computed a loss of a number of jobs based on that production. So the production figure came first. Based on that, your formula used the number of miners it takes to produce a certain quantity of coal; then you projected the 36,000 job losses. Is this correct?

3 Dr. FALKIE. That is correct.

3 Mr. UDALL. You arrived at the 36,000 upward limit of jobs that would be lost?

4 Mr. ZARB. Mr. Chairman, could I borrow just a moment? I think it is important to just spend a few seconds in describing the context within which these questions were asked within the administration to calculate the necessary answers. It was not done in a vacuum or with respect to this bill alone, or with respect to coal production from strip mining alone. It was done within the total context of what is fairly clear to be a declining condition of U.S. production of energy and increased consumption and increased oil imports.

4 We then had to look at the impacts at all parts of the range and how they would treat our total energy condition as a nation.

4 When you put it in that context, and even if you look at that 40 million tons of coal and make a judgment as to how many additional barrels of oil would have to be imported, you get something of a different flavor than when you look at the impacts of this bill alone.

4 Mr. UDALL. I am coming to that, but I am trying to get to the very basic logic. You first figure 162 million maximum tons of lost production. Based on that, you say there will be up to 36,000 jobs lost.

4 Then the third step in the logic is that because you have loss in coal you will have to import up to 96 percent of the energy equivalent in foreign oil and you have to pay for that. Is this correct? That is the third step?

4 Mr. ZARB. That is correct.

4 Mr. UDALL. You put a dollar figure on that of \$8 billion for imports at that range?

4 Mr. ZARB. About \$7.9 billion was the high range, Mr. Chairman.

4 Mr. UDALL. So the validity of the job projections and validity of projections of imports of foreign oil rests on the validity of the assumptions of how much coal you are not going to be able to produce, correct?

4 Mr. ZARB. Right.

4 Mr. UDALL. If you are wrong about production, you are also wrong about jobs and also wrong about the \$7.9 billion cost to consumers, is that correct?

4 Mr. ZARB. I think it is fair to say that if we can demonstrate there will be no production losses as a result of the implementation of this bill those other numbers would probably have to be reevaluated.

4 Mr. UDALL. Then I am going to focus with what time I have left on production losses, because that is the key and I appreciate your concession on that point. When you determined that there is going to be up to 162 million tons of coal production loss, did your people actually go to specific mines and say, "What will this bill do to you at this mine?" Or were these calculations made here in Washington?

4 Mr. ZARB. I will ask Dr. Falkie to respond to that, Mr. Chairman.

4 Dr. FALKIE. Mr. Chairman, this calculation of production losses was based on actually I guess several years of work on the part of the Bureau of Mines. As the Federal Energy Agency became a reality, they participated in the production loss estimates along with several other agencies. It is a combined technical-legal estimate of production losses based on many, many factors.

4 When you say did we go out and look at and determine at individual mines, yes, that was part of it. We looked at ratios. We looked at past histories of production patterns with respect -

5 Mr. UDALL. Did you go to the field in connection with advising the President on the veto and making this projection? Did you determine that specific mines, in specific locations, in specific States would be shut down? Did you, or did you not?

5 Dr. FALKIE. There was much field survey work done by our people.

5 Mr. UDALL. Can you give me the name and address of any mine in any State that you can

tell us will be shut down as a result of this bill?

5 Dr. FALKIE. If the maximum interpretation of the bill is in effect, in other words, if the most stringent interpretation of certain parts of that bill is put into effect by the administrators of the bill, or by the courts, there will be some mines that will be, in our opinion, practically shut down.

5 Mr. UDALL. My question was: Can you give me the name and address of a single mine that is going to be shut down because of the passage of the bill; yes or no?

5 Dr. FALKIE. Yes, we can in our opinion.

5 Mr. UDALL. Would you provide those for us today?

5 Dr. FALKIE. We will provide a list of mines that, in our opinion, would be affected by the bill. n1

5 n1 This list was never provided the Committee even after repeated requests.

5 Mr. UDALL. In regard to a significant portion of the tonnage loss you attribute to small mines and mines on steep slopes, as I understand it, your projection was that 20 percent of the small mines and 20 percent of those mines on steep slopes would be totally closed down and would be unable to produce any coal at all, and that the remainder would be severely impacted; is that correct?

5 Mr. PECK. Sir, I believe the 20-percent figure was an estimated production loss that included not simply mine closures, but reduced production as a result of the application of those standards.

5 I might point out that in the calculations as is noted in Dr. Falkie's letter, there is no duplication between the figure attributed to small mine closures and the figure attributed to the steep slope provisions. But in terms of the total production, that 20 percent is the figure in Dr. Falkie's letter; yes.

5 Mr. UDALL. Let me get to something more central.

5 Is it not an inherent, basic, fundamental assumption of your calculation that if a small miner or a miner on steep slopes could not mine under this law, that in no case would that miner go to another location where he could comply with the law and mine new, additional coal? Isn't that

an inherent fundamental assumption behind your figures?

5 Dr. FALKIE. On our maximum set of assumptions that is one of the assumptions made.

5 Mr. UDALL. What you are telling us is that in a nation where we have 137 billion tons of strippable coal in different States that has not been touched, some 297 billion tons of coal than can be deep mined, you say that some particular mine in some place in this country that is closed down represents a production loss and not a ton of this coal would be regained by someone going to a slope where he can mine?

5 Mr. STEIGER. Would the Chair yield?

5 Mr. UDALL. Not at this time.

5 Mr. STEIGER. We have a procedural problem which we can resolve, Mr. Chairman. It is obvious we are going to be depending upon the technical people here to respond to your questions. Mr. Zarb, and I understand Mr. Morton, have got a problem. I wonder, Mr. Chairman, if we could permit Mr. Zarb to make an expression that will be responsive to your letter, to your and Mrs. Mink's letter, then allow him to proceed?

6 As you know, he has a serious conflict. His statement, as I understand, is very brief.

6 Mr. UDALL. I was going to be very brief and I am nearly through. I wanted to get some fundamental assumptions on which the calculations were made. Then I will yield to the other members.

6 Mr. STEIGER. Mr. Chairman, I appreciate that.

6 Mr. MORTON. Maybe I can help you with the answer to your question, Mr. Chairman?

6 Mr. UDALL. Yes.

6 Mr. MORTON. Over the long pull, 5 years, 10 years down stream, the disruptions can be overcome in what we are talking about. But in the short term, until all of the real estate transactions are made that would permit a small miner to move from one area to another, you are going to have this dip in production and this difficulty. It happens to come at a very critical time as far as our overall energy situation is concerned and as far as our economy is concerned.

6 Nobody is arguing the fact that these reserves are not in the ground. Nobody is arguing the fact that these reserves cannot in large part be mined through surface mining techniques. But what happens if you have a hard interpretation of this bill is that you will have an interim period, a very difficult period to quantify the 3, possibly 5 years in which you will have a dip in production and loss of equipment.

6 Mr. UDALL. I personally would challenge that, particularly with regard to these small mines. They open them up every week, every month. I would also call attention to the fact that we have phasein procedures where adjustments and variances can be made while the operator is learning to comply with the new standards. It is completely unacceptable to me to suggest to all of these 1,500 miners that they are not going to be able to find new sources of coal. All of them have projections ahead where they are getting ready for a new minesite when they finish up an old one.

6 Mr. MORTON. If you talk to the fellows that run the property you will find they don't have, in many cases, these additional properties under lease or ownership. It will be a difficult transition.

6 I think that is what the real difficulty is in this. Everybody wants a good reclamation bill. It is a question of getting from here to there without having a really severe blow against the economy and against our energy production; also, against the possibility or probability of a very sharp increase in the price of coal during the period that we are trying to convert from oil to coal.

6 Mr. PECK. Mr. Chairman, a major problem we have had with this particular question and this particular issue has also been the extremely complicated permit application procedures and the difficulty in interpreting the provisions of this act, insofar as they apply to an existing as opposed to a new mine.

6 The fact is that rapid opening and closure of mines will be prevented in our judgment by a hard application of the provisions of this bill.

7 Mr. UDALL. Let me go to that, because this is central.

7 Throughout the veto message and throughout what has been said here already this morning are some assumptions that I challenge. Let me give them to you because I think you will have to

agree that you have made these assumptions, and the President made them in the veto message that was written for him.

7 Do you not assume that reaching this figure of 162 million tons of production loss, that inspectors in the field are going to be arbitrary and capricious, have you not assumed that?

7 Mr. PECK. No, sir. As a matter of fact, at least some of the changes made during the course of the progress of this legislation have been directed toward the authority of the inspector to issue a cease and desist order and the authority of the inspector to be overruled in the short term.

7 Our concern is not so much that, as it is with the fact that under this bill, enforcement actions will not be determinable with finality by either State or Federal regulatory agencies but rather by the courts.

7 Mr. UDALL. Do you not assume in that connection that every time you open a new mine there is going to be a lawsuit? To get the 162 million, don't you have to assume that every time a new mine is opened there will be a new lawsuit?

7 Mr. PECK. No, sir.

7 Mr. UDALL. That every time the judge will misapply the law and every time the Government will lose - isn't that inherent?

7 Mr. PECK. The first and third of those questions are probably answered "yes." We do assume with respect to lawsuits only that this is a particularly sensitive area that will trigger more lawsuits than one might expect under other environmental legislation, under other similar citizen suit provisions.

7 With respect to the Government losing the lawsuits, that is a prospect that depends upon the merits of the individual case. But with respect to the court's misapplying the law, we are not in a position at this point to be able to say what the law is. So we have to assume that a court could go either way.

7 Mr. UDALL. Secretary Morton touched on this a moment ago. Throughout the veto message and in your appearance so far this morning, you are talking about the regulatory authority making erroneous interpretations of the act, taking harsh views of the act? Who is

going to administer this, Stanley Hathaway or the Sierra Club? Isn't it going to be administered by the Interior Department?

7 Mr. MORTON. And the courts.

7 Mr. UDALL. And you assume the courts will always go wrong?

7 Mr. MORTON. No. As you know, Mr. Chairman, we have been through this together for a long time. It is a question of time, and production is a product of time and delays. Take the pipeline, for example; a long delay.

7 Mr. UDALL. Didn't the courts make the right decision in the pipeline finally?

7 Mr. MORTON. Yes. It was not a question of the decision being right or wrong. It was the time it took to make it. We have many sittings, sittings of other than mines, that you are familiar with, that are taking a long time because they are in the courts. We would assume there would be a certain number of lawsuits. I think that assumption is pretty well founded. I was a defendant in over 5,000 lawsuits.

8 Mr. UDALL. You do not get the 162 million ton loss unless there is a lawsuit every time you open a mine and unless the Government loses every case.

8 Mr. MORTON. We are talking about a range, and somewhere in that range is the most likely figure for the loss.

8 Mr. UDALL. Let me pursue this citizen suit business more, Mr. Zarb, if I may.

8 On January 16, there was a letter sent to the President signed by Mr. Zarb. Russell Train, Administrator of EPA, and by Rogers C. B. Morton, who was then Secretary of Interior.

8 In that letter three officials told the President that while the bill approved by the last Congress contained a number of deficiencies, most of these were of secondary importance.

8 Your veto - that is the December veto - was addressed principally to adverse coal production impacts, inflationary impacts, and administrative uncertainty. We believe that five amendments, if adopted, will result in acceptable surface mining legislation in terms of impact on energy supply and the environment.

8 Let me go to the end of the letter. At the end of the letter you suggested to the President that if you could get adjustment made on these five points, the bill would be satisfactory and could be signed.

8 The first one of those was modification of the prohibition against stream siltation. I put it to you that in the conference report in section 515(b), the language on point No. 1 was clarified so as to avoid the interpretation feared by the administration. Is that not a fact?

8 Mr. PECK. No, sir; it is not.

8 Mr. UDALL. Why not? We did not change the siltation requirement?

8 Mr. PECK. Yes, sir; you did. But you did not change it enough, and you changed it in a way that, read in conjunction with the legislative history and interpretations of the Federal Water Pollution Control Act amendments, could have well produced the same result that we had anticipated in advance in making that objection to the original language.

8 If you would care to discuss the specifics -

8 Mr. UDALL. I thought we gave you 95 percent of what you asked for. If we didn't then we have a difference of interpretation.

8 Mr. PECK. I suppose we would take 95 percent of the \$1 60 million loss.

8 Mr. UDALL. Item two, modification of the surface, of the prohibition against hydrological disturbances. I would ask you did we not in the conference report, section 515(b), modify what you referred to as the absolute requirements objected to by the administration?

8 Mr. PECK. No, sir; you did not. Our concern with that problem as it has been expressed several times in conferences with the committee is this: As the bill is now drafted, there is an absolute requirement upon a permit applicant to affirmatively demonstrate that there will be no adverse hydrological effects.

8 In addition, if there is a challenge to the permit application, the bill expressly places the burden of proof in that challenge upon the applicant.

9 So the question is not so much what is the adverse hydrologic effect against which we are all interested in protecting.

9 Mr. UDALL. But your objection went to what you called an absolute requirement, and we modified it.

9 Mr. PECK. No, sir; I am afraid it is our judgment that it is still virtually absolute. Certainly insofar as the question of the overall impact on the bill is concerned, it is as near absolute as the original language.

9 Mr. UDALL. Your third objection was clarification and limitation of the scope of citizen suits. I put it to you that we limited the scope of the citizen suits so that you had to have a valid legal interest and some little old lady in Toledo with a typewriter couldn't hold up the opening of a coal mine.

9 Mr. PECK. That depends upon what a valid legal interest is. A valid legal interest is anybody using the resources. If that was the intent of the committee, then it could have been put into the statute or conference report -

9 Mr. UDALL. We finally adopted the language suggested by the administration in that regard and you are not satisfied yet?

9 Mr. PECK. No, sir; there were two points made by the administration with respect to the citizen suits. The first question was whether an action would lie directly against the operator as opposed to against the regulatory authority where an operator is proceeding in full compliance with the terms and conditions of his permit. That was, in fact, adopted.

9 The second objection, however, and it forms the basis for our assumptions that lead to the high range, is that a citizen suit will still lie to compel determination by the courts and not the regulatory authorities of how the bill will be interpreted. That objection remains valid and that objection is the basis for our high assumption.

9 Mr. UDALL. You are going to get some argument on that from my friends here at the table. It simply isn't true.

9 The fourth item was -

9 Mr. MORTON. Maybe -

9 Mr. UDALL. The fourth item was a provision for executive authority. You wanted the executive authority, the Interior Department to have the unlimited authority to define ambiguous

terms. Any time the Secretary of the Interior thought a provision or act of Congress was ambiguous you could redefine it. We did not give you that one; right?

9 Mr. PECK. That is correct, sir, but our suggestion and the force behind our recommendation on that amendment went beyond the characterization you just expressed.

9 Mr. UDALL. You did not have a single vote in the committee, on either side, either party, House or Senate to give the administration the power to reinterpret acts of Congress.

9 Mr. STEIGER. I will remind the chairman -

9 Mr. UDALL. I will retract that statement.

9 Your fifth suggestion against an acceptable strip mining bill was that a substantial reduction of the mined land reclamation fee from 25 cents and 35 cents a ton, did we not in conference reduce the fee on underground production 15 cents a ton from 25?

9 Mr. PECK. Yes, sir. But you raised the other surface mine fee from 25 to 35 cents.

10 Mr. UDALL. No, it was 35 cents last year. It was 35 cents in the House this year and in the Senate this year.

10 Mr. PECK. It depends on how the various -

10 Mr. UDALL. Did we not adjust that?

10 Mr. PECK. There was some adjustment; yes, sir.

10 Mr. UDALL. Let me ask you one other question, then I will turn to Senator Metcalf.

10 Wouldn't it be nice, you see these are just projections, you are guessing we are going to lose all this coal and I am guessing we are not going to lose any at all and you are probably going to gain production. Wouldn't it be nice if we could have an experiment somewhere, take a State somewhere and pass a tough law like this and have 2 or 3 years of experience under that law and see how it comes out? Would that not settle it?

10 Mr. PECK. It would depend upon how tough the law is, sir. There are a number of States which have over the last year or year and a half enacted legislation which, in part, duplicate the reclamation and performance standard requirements of this legislation. None, however, approach the application and permit granting requirements and procedural mechanisms involved in this

legislation. But yes, it would be good.

10 Mr. UDALL. Let me tell you flatly that Pennsylvania has a tougher law than this one. They have had it in effect for many years and tell us how much production losses you have had in the State of Pennsylvania and how in heaven's name do you reconcile that experience up there?

10 Dr. FALKIE. Mr. Chairman, first of all I would, from a technical standpoint, have to suggest that I might disagree with you that Pennsylvania's law is as tough as this one.

10 First of all, there is no question that Pennsylvania has a good law. They have done a good job of enforcing it. They have done a good job of reclaiming. But there are some major differences between the Pennsylvania law and the law, or act, we are working on here today. One of them being this whole area of permit application and procedures connected with the act.

10 The second one, and probably more important, would be the business of being able to grant variances which this act apparently does not do. We have some charts that I would like to show you, some production trends, both in Pennsylvania and some other States that have laws that tend to approach the general direction of this one.

10 Mr. UDALL. We are going to have to have a disagreement here. You think the Pennsylvania law is not as tough as this law and I think it is tougher. I guess we are going to have to have a disagreement.

10 Mr. HILL. I think that is a key point though that should not be overlooked, Mr. Chairman. That the Pennsylvania law has a number of key provisions which allow the State regulatory authority to grant variances, or exemptions, or requirements of the act, particularly to small miners.

10 Mr. UDALL. We don't have variance language in this bill.

10 Mr. HILL. As we read the act these are set Federal standards, if you meet them, you mine, if you don't meet them, you don't mine.

10 Mr. UDALL. You are telling us we have no variance provision in this bill?

11 Mr. PECK. No, sir; there is one variance, there are two actually. It deals with mountain top mining and head of the hollow fill.

11 In terms of the problems faced by the small miners, it is our estimate that the impact and utility of such a variance will be extremely limited. I might add that the administration's request for variances were made under very stringent environmental conditions and were variances from only a limited number of the set requirements of the act. There was no intent either on the part of the administration, or of draftsmen of the administration legislation, to create wholesale variances. But the essential question is whether the State regulatory authority has the power to grant such a variance, because if the State authority does not have it, then the courts cannot create it. It is our problem that, faced with the complete absence of a variance, for instance, from the down slope spoil placement requirement, even the courts can't help out.

11 Mr. UDALL. I was curious how you were going to get around this Pennsylvania experience.

11 Let me throw back at you this one point then I will quit.

11 In the letter that Mr. Zarb, and Russell Train, and Secretary Morton sent to the President on January 16, you listed five changes that needed to be made in order to have an acceptable bill. You did not have a variance provision in there at all on January 16, did you? That was not one of the key important defects of the bill.

11 Mr. PECK. No, sir; but it was one of the items identified by the President in the transmittal of this legislation on February 6.

11 I remind the chairman that the letter of January 16 was not from the President, it was to the President.

11 Mr. UDALL. He had the same advisors that he had when he vetoed this bill in May.

11 Mr. HILL. When he sent forward his new bill, Mr. Chairman, it had been considerably expanded as to the number of changes that would be necessary to make this an acceptable bill.

11 Mr. UDALL. I yield.

11 Mr. MORTON. I just want to make sure the record is clear on one thing. Even with the five changes, if the five changes had taken place completely, we do not feel that they did, maybe this is the area of disagreement in points of view. Still, there were a lot of features about the bill

that certainly worried us over in Interior from an administrative point of view. I never thought we would get a perfect bill, a simple reclamation bill.

11 I understood all of the interests that would prevent that, but I certainly was willing to swallow some of the difficulties with the administration if we could have had a bill with those five changes completely incorporated into the bill. Then we would have had, it would be a tough one to administer, it will be a tough one for the Director of the Bureau. I think it will be a tough one for our legal department as well as the Department of the interior, the Secretary as a whole.

11 Mr. UDALL. The gentlewoman from Hawaii.

11 Mr. STEIGER. Would the gentlewoman from Hawaii yield?

11 Mr. Chairman, I would like to renew my request once more. As the Chair recalls, Mr. Zarb's and the President's Chairman of the President's Council on Energy, Mr. Morton, they are here at the Chair's request. I have no problem with what the Chair is trying to do and I think it is probably proper. But I do think we are entitled to hear from Mr. Zarb who, with the chairman's assistance is here. He has prepared a position which the Chair, I think, ought to hear and he does have a problem which the Chair is aware of.

12 I think, if nothing else, simple courtesy would dictate that we inject a little reason and logic into this at this point.

12 Mr. UDALL. I would be happy to look at Mr. Zarb's statement, but this whole hearing was set up to attempt to analyze the veto message, the reasons behind it, get the calculations and assumptions that were made and not to take the time of the joint subcommittees for the reading of statements.

12 Mr. STEIGER. Then, Mr. Chairman, I suggest then that Mr. Morton and Mr. Zarb be excused, if you are going to be directing your technical questions. What you are after is the basis of the way these decisions were arrived at.

12 Mr. MELCHER. Mr. Chairman, I would have to object to that. The President has been advised -

12 Mr. STEIGER. I do not yield either. I do not address my request to the gentleman from Montana. I address it to the Chair. It is a fairly simple request, Mr. Chairman. I will say it

again.

12 Mr. UDALL. Mr. Zarb?

12 Mr. ZARB. I appreciate your courtesy, Mr. Steiger. We certainly would forego the statement, if you would hopefully accept it for the record and get to the questions that the committee members would like to address to Secretary Morton and I before we have to leave. That would certainly be all right with us.

12 Mr. UDALL. Without objection, the full statement will be printed in our record. I personally would be happy to look at it.

12 [The prepared statement is as follows:]

12 PREPARED STATEMENT OF FRANK G. ZARB, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION

12 Mr. Chairman, it is a privilege to be with you today to discuss the reasons why the President believes that enactment of H.R. 25 would be contrary to the National Interest.

12 I especially welcome the opportunity because I fully support the objective that you, Congresswoman Mink and others have of setting the record straight on the impact that H.R. 25 could have on this Nation's economy and overall energy situation. Quoting from your May 23 letter to your colleagues in the House:

12 "A number of Members who had formerly supported the bill were concerned with the assertions that enactment of the legislation would result in the loss of thousands of jobs, drive up electric utility bills, and preclude the production of millions of tons of coal."

12 "Those of us who are close to the development of this legislation are certain that these charges cannot be substantiated - our support would be irresponsible if they could be - and during the next two weeks we will be attempting to set the record straight."

12 I believe that these hearings will set the record straight. The facts and figures that will be presented during these hearings will demonstrate that the responsible, if perhaps not the politically popular, course has been taken.

12 I would stress, at this point, our willingness to evaluate and discuss with you any estimates of adverse effects that the Committee or its staff may have developed which are different from

ours. The experts that I have here with me today are those responsible for developing the Administration's estimates, and they are available not only to answer questions regarding our estimates, but also to examine any estimates you may have.

13 John A. Hill, Deputy Administrator of the Federal Energy Administration, did his work for his BA degree and his Ph. D. studies at Southern Methodist University. He has worked on energy and environmental matters in the Environmental Protection Agency and the Office of Management and Budget before taking his present post. As Associate Director at OMB, he was responsible for interagency coordination, budgeting and overall management of all Federal programs in Natural Resources, Energy and Science. He has continued his leadership of the interagency group working on strip mining and related programs since coming to FEA.

13 Eric R. Zausner, Deputy Administrator-designate of the Federal Energy Administration, has a BS in electrical engineering from Lehigh, and an MBA from the Wharton School of the University of Pennsylvania. He has worked on energy and environmental matters in the Council on Environmental Quality, the Department of the Interior before coming to the Federal Energy Administration. Prior to his nomination as Deputy Administrator, he served as Assistant FEA Administrator for Policy and Analysis, and led the Executive Branch efforts that culminated in the Project Independence Report and in subsequent national energy policy analyses.

13 Thomas V. Falkie has served as Director of the U.S. Bureau of Mines since 1974. He received extensive training in engineering, having received a B.S., an M.S., and a Ph. D. in mining engineering from Pennsylvania State University. Prior to joining the Government as Director of the Bureau of Mines, he served for five years as Head of the Department of Mineral Engineering at Penn State. In addition, Dr. Falkie has served as arbitrator of the Joint Industry Health and Safety Committee of the Bituminous Coal Operations Association and the United Mine Workers of America and as a consultant to the United Nations on Mining Economics and Mine Management.

13 Raymond A. Peck, Jr., is a lawyer with LL.B. and LL.M. degrees from New York University, where he was a Root-Tilden Scholar. After five years of private practice in New

York City, he joined the Government in 1971 as an attorney advisor in the Department of Commerce. Since that time he has worked exclusively on environmental and energy matters for the Departments of Commerce and Treasury, and specifically on surface mining legislation.

13 I have every confidence that we can explain the adverse effects of the bill so that you and your colleagues will have a firm basis for casting your vote on June 10 to sustain the President's veto.

13 I would like to make several preliminary points before turning to a detailed review of the Administration's impact estimates and the methodologies used in determining those estimates. Of primary importance is the fact that our loss estimates only relate to impacts on small mines and expected impact of restrictions relating to steep slopes, aquifers, siltation and alluvial valley floors.

13 Our estimates do not cover:

13 First, losses that could result from provisions of the bill that simply cannot be quantified because no one can predict how they might be implemented or enforced. Provisions in this category include the authority to designate areas unsuitable for mining, surface owner consent, and State control over Federally-owned coal.

13 Second, losses that would result from litigation that could be necessary to resolve ambiguous features of the bill and its legislative history. Ambiguous language breeds litigation, and forces the courts to legislate. With different opinions from different district courts, subject to review by 11 different circuit courts of appeal, and ultimately the Supreme Court, definitive resolution of uncertainties can take years.

13 Past history - the case of the Trans-Alaska Pipeline, for example - demonstrates how long these periods of confusion can last.

13 More recent history - the case of the "non-significant deterioration" language of the Clean Air Act, for example - demonstrates what can happen when a court feels compelled to apply the more rigid possible interpretations of ambiguous language - interpretations that may be far more inflexible than the Congress would have intended if the particular circumstances before the courts had been presented to the legislative draftsman. We cannot afford to rely on the courts to

thrash out these problems which should, in the first place, be resolved at the legislative, not the judicial, stage.

13 Thus, it is important to recognize that our estimates of losses of 40 to 162 million tons of coal attributable to H.R. 25 are not all-inclusive. It is clearly impossible for the Administration - or anyone else - to provide numbers to go with many such features of the bill. But we can state categorically that they can only increase these losses and their corresponding impacts on jobs, consumer costs, and vulnerability, not decrease them.

14 We also have not attempted to quantify adverse impacts of the bill, such as the impact on coal miners' health and safety - human considerations that cannot be equated to barrels of oil or tons of coal. No one gets black-lung in a strip mine, and the injury rate in strip mines is less than half what it is underground.

14 A final preliminary point that I must make this morning relates to the charge that the Administration is willing to tolerate continuation of the environmental abuses that have accompanied surface mining activities in the past. That, simply, is not the case.

14 The previous Administration first submitted legislation to impose minimum Federal standards on surface mining in 1971. Since then, on countless occasions, in testimony, in correspondence and in conferences with members and staff of this and other Committees and Subcommittees, we have stressed our commitment to a balanced view of the compelling environmental and energy considerations involved in the surface mining of coal.

14 As recently as February 6, 1975, the President transmitted to Congress proposed surface mining legislation. In submitting that legislation, he specifically identified the areas of difference between the previously vetoed bill, S. 425, and our proposal. He stressed the overwhelming importance of these differences in terms of lost coal production, unemployment and other adverse economic impacts.

14 Because of the gravity of our energy situation, and its implications for the future of all Americans, these differences must be resolved as soon as possible - and resolved on a basis of knowledge, not emotion, a basis of responsibility and cooperation not partisanship and politics.

14 We have worked long and hard to come up with an accurate analysis of H.R. 25 and a fair assessment of its potential impact. But we recognize - as we hope each of you does - that there are legitimate areas of disagreement among responsible individuals - both within the Administration and within the Congress. I would say once again that the Administration stands ready to work with Congress to resolve these differences. But we must avoid coming together in an arena of confrontation. We must meet on the higher ground of cooperation and conciliation.

14 IMPORTS, VULNERABILITY AND H.R. 25

14 You all know the magnitude and scope of this Nation's energy problem. Even under the most optimistic circumstances - assuming Congressional enactment of the President's entire legislative program and crude oil price decontrol - we will still be importing about five million barrels of oil per day in 1985. With no action on our energy program, we will be importing more than half the oil we consume, or more than 12 million barrels per day.

14 No matter what projections are used, one thing is clear: we will have to greatly expand coal production in the next ten years. This expansion must occur steadily during this period if our 1985 goals are to be reached. Coal will be needed in new and existing powerplants, for direct burning in some areas, and in a growing synthetic fuel industry. In the long-run, coal will be one of the most essential elements for conversion to liquids and gases for industrial and utility use.

14 If the strong national energy program proposed by the President were enacted by the Congress, we might be able to accept the losses of coal production that would result from this bill. Without such an energy program we cannot.

14 The President's conservation and domestic supply actions would substantially reduce our need for imported oil, whereas H.R. 25 would increase it. The loss of even 40 million tons of coal per year - the low end of our estimate spectrum - could increase imports by more than 450,000 barrels per day. And, at the high end, lost production could mean more than 1.8 million barrels a day in increased oil imports because of H.R. 25 alone.

14 An increase of imports of this magnitude would have to come from insecure foreign sources - where still higher prices are already being discussed and where the danger of an

embargo remains very real. Even at current prices, such an increase in oil imports to make up for the lost coal would require consumers to export an additional \$1.9 to \$7 .8 billion a year for their energy. These extra costs would do nothing to reduce the Nation's vulnerability; they would be incurred, in fact, as a result of actions that would actually increase our vulnerability.

15 Viewed in this context, the Administration believes that this bill would preclude the possibility of achieving true balance among important national objectives for energy, our economy, our environment and our national security. It has been called an "anti-energy" bill, but its negative impact is much broader than that.

15 I would now like to address some of the specific provisions of H.R. 25 and our assessment of its impact.

15 H.R. 25 AND PRODUCTION LOSSES

15 On May 23, 1975, Dr. Thomas Falkie, Director of the Bureau of Mines, submitted to Chairman Metcalf of the Senate Subcommittee on Minerals, Materials and Fuels an analysis of the adverse impact that we predict would result if H.R. 25 were to become law. I understand that copies of this material have been distributed to members of the Subcommittee, but I would like to submit it at this time for the record.

15 In general, the low range of our estimates represents the adverse impact we expect if the bill were interpreted loosely, that is, if its provisions were interpreted in ways that would minimize production losses, economic costs and mine closures. The high range of estimates represents those losses that we would expect if a strict, literal interpretation and vigorous implementation were given to each provision.

15 In brief, we have estimated that from 40 to 162 million tons of annual coal production would be lost during the first full year of implementation. Losses would occur in three general categories:

15 Reduced production or closures of small mines;

15 Delays or prohibitions arising from the steep slope siltation and aquifer protection provisions; and, most important perhaps,

15 Bans on mining operations which would affect alluvial valley floors.

15 Each of these areas is identified in Dr. Falkie's submission to Senator Metcalf, and he is here today prepared to discuss them in more detail. I will now touch briefly on each of the three categories in which losses would result.

15 Small mines

15 In preparing our estimates for small mines, we have classified as "small" those mines with annual production of 50,000 tons or less. As noted by the Council on Environmental Quality in its report to Congress in 1973, at that level of production, a mine's capital availability, cash flow and technical resources are limited. As a result, operators of this size would simply not be able to bear the front-end costs of applying for and obtaining permits to mine, and would have great difficulty meeting the increased reporting requirements under H.R. 25.

15 Faced with this inability to obtain a permit and the difficulty of meeting those requirements, many such mines would be required to close. Our estimate is that at least 40%, and possibly all of projected production from small mines would be precluded under H.R. 25, with principal impact in the East. As the Council on Environmental Quality pointed out, such mines account for as much as 56% of production in the Appalachian states. I might also note here that these losses attributed to small mines, which I have just mentioned, are not included in the loss estimates that I will be discussing during the remainder of my testimony.

15 Steep slopes, siltation and aquifer protection

15 With respect to provisions concerning steep slope, siltation and aquifer protection, we have estimated losses ranging from seven to 44 million tons in the first full year of implementation. Strict interpretation and application of H.R. 25's steep slope provisions alone would result in loss of production from virtually every mine operations on slopes in excess of 20 degrees - loss totalling from seven to 25 million tons.

15 Much of this loss is, in our view, unnecessary. With appropriate environmental restrictions, authority to grant some variances from the absolute requirements of H.R. 25 could be allowed, greatly reducing production losses without danger to the environment.

15 The aquifer protection provided by H.R. 25 is also set forth in near-absolute and ambiguous terms. Consequently, a literal interpretation of these provisions could result in termination of all

production near aquifer-fed water sources. We estimate that nine million tons of actual and projected production is subject to such an interpretation. Allowing individual operations to accommodate individual circumstances at individual mine sites could greatly reduce the losses that these provisions might entail, without serious negative environmental effects.

16 Earlier versions of this legislation prohibited absolutely any increase in normal siltation levels during or after mining operations. Congress recognized the impossibility of achieving this result and modified the siltation provisions of H.R. 25 accordingly.

16 However, a serious problem still remains. As now drafted, the bill would require operators to use any technology that exists and that could prevent siltation. Such a requirement is unrealistic. It could require operators to apply technology that, although theoretically available, would be prohibitively expensive, to prevent even relatively insignificant siltation. Here again, the bill's lack of flexibility could result in mine closures where environmental concerns could, in fact, be accommodated with continued production of the Nation's coal resources.

16 Alluvial valley floors

16 Finally, we estimate that the various provisions of H.R. 25 related to alluvial valley floors would cost us from 11 to 66 million tons of coal production during its first full year of implementation.

16 It should be noted that what we are dealing with here is a possible ban on the mining of coal in certain areas. We are not dealing only with reduced production levels, or closures of mines which might afterwards be reopened. We are talking about locking away billions of tons of coal - placing it permanently off-limits for any and all surface mining. And our experts tell us that in virtually all of the geological areas involved, surface mining is the only feasible method of extraction. Thus, the effect of these provisions will be permanent losses, both of production and of reserves.

16 As I suggested earlier, the fairly wide range of these estimates derives from the fact that our lawyers are unable to predict how regulatory authorities or courts would interpret H.R. 25 and its legislative history.

16 We cannot say, for example, whether a court would conclude that an area such as the Powder River Basin is "undeveloped range land," and thus not subject to the bill's prohibitions, or whether it would consider such an area to be "potential" framing or ranching land and thus off-limits for surface mining. Under the first interpretation, a great proportion of the Powder River Basin would be covered by the exclusion and open for mining. Under the latter interpretation, our experts tell us that a virtual ban on the mining of great Western coal deposits could result.

16 This question, although critically important, cannot be answered on the face of the bill. Nor does its legislative history solve the problem.

16 But this is only one difficulty of many in interpreting the language of H.R. 25. In addition, it would prohibit mining that would have an adverse effect on some actual or potential farming or ranching operations that are themselves located on such floors. The impact of this language is even more difficult to assess. Proper interpretation would depend upon the individual geologic and hydrologic conditions of a given proposed operation. H.R. 25 places the burden of proving the absence of any such adverse impact upon the applicant for a permit. Proving a negative is always difficult, and, under H.R. 25, the negatives which must be proved could present insurmountable hurdles for an applicant.

16 Based upon all of these considerations, we estimate a production loss attributable to alluvial valley floor provisions ranging from 11 to 66 million tons and a reserve loss at least 1000 times greater - that is, a loss of from 17 to 66 billion tons of coal, permanently locked into the ground.

16 Our experts have reviewed these figures in detail. They have made on-site inspections and have analyzed closely the provisions of the bill. We consider these loss estimates, in fact, to be conservative.

16 RELATIONSHIP OF PRODUCTION IMPACTS TO OTHER NATIONAL CONCERNS

16 In addition to these concerns, there is the very broad concern that the President has expressed; We must move with extreme caution as we seek to balance our national objectives. If we take away from our domestic energy supplies, we must know precisely how much we are subtracting, what the impact will be on consumers, industry and our Nation's economy, and how

our environmental and foreign policy objectives will be affected. And we must find ways to balance our priorities so that no sector of our Nation bears a disproportionate burden. If we do not take such an approach, our economy, the welfare of America's citizens, and our national energy situation will deteriorate.

17 H.R. 25 AND COSTS TO CONSUMERS

17 If one combines the higher costs of imported oil use to replace lost coal - the \$1.9 to \$7 .8 billion I mentioned earlier - with the higher market costs of the remaining coal that would be mined, during the first year of the bill's implementation, total additional consumer costs could range from \$2.4 to \$5 .6 billion. The price effects of lost production and strict limitations on capacity expansion on spot market price for coal itself would be immediate, sharp and substantial. Coal users would be bidding against one another for limited supplies of coal. Its price would quickly jump to that of residual fuel oil, taking into account the higher cost of handling and burning coal. Our experts estimate that the spot price could increase by \$12 to \$18 per ton, for an annual additional cost to consumers of \$1 .6 to \$2.4 billion.

17 In more meaningful terms, this \$2 .4 to \$5 .6 billion total would constitute the equivalent of increases in the cost of electricity of between 3.4% and 8%, increases in the Consumer Price Index of between 0.16% and 0.38%, and increases in average household budgets of between \$34 and \$80.

17 H.R. 25 AND UNEMPLOYMENT

17 Not only would American consumers pay more, if H.R. 25 were to become law, many thousands would lose their jobs. Basing our calculations on the loss of 36 tons per day per man, we calculate that direct job losses could affect between 5,000 and 20,000 coal miners. And for each 10 miners' jobs lost, a minimum of an additional eight jobs would be lost in other sectors of the economy dependent upon the mining industry. Applying this factor to projected production losses and manpower efficiency rates applicable to such losses, we have concluded that from 9,000 to 36,000 jobs would, in fact, be lost as a result of implementation of H.R. 25.

17 Again, these numbers are conservative, and would increase as we experienced production losses that have not been quantified.

17 Two other specific points should be mentioned in this regard.

17 First, we would expect this resulting unemployment to be concentrated in certain areas and to be especially severe in Appalachia. New jobs created nationwide in reclamation efforts could not offset these regional disparities. As indicated by data in the CEQ report, some counties in Appalachia - which have suffered through years, not months, of depression, not recession - could, in fact, be devastated by H.R. 25.

17 Second, to the extent that reclamation activities funded by H.R. 25 would create jobs, they would do so only at the expense of other jobs and any actual offset would be illusory. The reclamation fee would withdraw significant funds from the economy and reduce employment elsewhere accordingly. To the extent that expenditures of those funds lagged, there would be a direct recessionary impact.

17 It has been suggested that the shift to underground mining would create more jobs and offset unemployment of surface miners. However, as the Council on Environmental Quality has pointed out, long lead-times and major capital outlays are required to open or expand underground mines. As a result, any offset from this source would be years away.

17 Moreover, the skills required for surface mining are drastically different from those required for underground mining. Substantial retraining of surface mine personnel would be required before they could work in deep mines.

17 H.R. 25 AND OTHER NATIONAL GOALS AND CONCERNS

17 Besides the detrimental impact that H.R. 25 would have in terms of consumer costs and unemployment, it would severely distort the development of the coal industry and, consequently, limit the further contributions that the industry could make to our national productivity and security.

17 Underground mining is inherently less efficient in terms of mineral removal and manpower utilization. Thus, the costs of such mining, relative to productivity, is substantially greater than those of surface mining operations.

17 Still another dimension of the problem lies in what H.R. 25 would mean for other national priorities. One year ago Congress passed, and the President signed, the Energy Supply and

Environmental Coordination Act.

18 The Administration is firmly committed to carry out Congress' ESECA mandate, which aims at increasing coal use in certain power plants and other major fuel-burning installations. Under the provisions of that law, we can do so in a way that still protects our environment. But to carry out that law, we must have the coal to burn. That means more coal production, not less. We believe the Congress shares our commitment to carry out the ESECA, but I must add that if H.R. 25 were to become law coal conversion under ESECA could be seriously impaired.

18 And, while substantial progress in underground mine safety has been made, the fact remains - as I mentioned earlier - that underground mining is more dangerous than surface mining and involves more than twice the risk of accidents and injuries associated with surface mining.

18 Mr. Chairman, I consider this only a brief outline of the objections and problems which compelled the President to veto H.R. 25. Many additional issues could and should be discussed if our efforts here today are seriously concerned with responsible action. We must consider realistically:

18 To what extent would the states, in fact, designate land areas unsuitable for mining?

18 To what extent could H.R. 25 allow frivolous petitions for such designations to create additional obstacles to the granting of mining permits?

18 To what extent would the states be able to implement programs within the narrow time constraints of the bill, and how much time would an operator have to bring an existing operation into line with the terms and conditions of a new permit?

18 How many operations presently being planned would be classified as "new" instead of existing operations, and therefore be subject immediately to the more stringent standards set forth in the bill?

18 To what extent would the owners of surface lands overlying Federal coal deposits simply refuse to allow the mining of coal belonging to the Nation?

18 To what extent would production be halted or reserves locked up by the bill's "water replacement" provisions?

18 To what extent would the states use this law to prevent development of Federal coal reserves on Federal lands within their borders?

18 To what extent would small mines be forced to close or sell out to large companies that are able to bear increased capital and operating costs? And is such an incentive to market concentration desirable?

18 To what extent would the bill affect Clean Air Act objectives by precluding low-sulfur coal production?

18 Mr. Chairman, these questions are obviously not frivolous; they cannot be ignored. Each derives from ambiguities or uncertainties in the language of the bill or in its legislative history, and any or all could present questions of public policy and national security at least as grave as those issues that I have covered in this statement. In our view, the Nation simply cannot afford to run the risks inherent in a regulatory program as important, and as uncertain, as that embodied in H.R. 25.

18 To date, no comprehensive energy program has been enacted. No legislation has been passed that would significantly curb consumption. No legislation has been passed that would assure the development of other domestic resources - resources to offset the coal production that would be lost because of H.R. 25. No recognition has been given to the progress made by the individual states as they have moved to implement surface mining regulations.

18 This Nation cannot afford to reduce the availability of our one abundant domestic energy resource until and unless we have another to replace it. We cannot continue the past practice of making piecemeal decisions and calling them policy.

18 Coal is the only major domestic resource upon which we can rely as a secure source of energy in the coming decades. This bill would have a direct and immediate impact on its availability.

18 We firmly believe that environmental concerns can be balanced with energy needs - without the uncertainties so clearly present in H.R. 25 and without the burdens that it would so clearly place on American workers and American consumers and the Nation as a whole. We beg Congress to proceed with that task - to take the responsible course and to sustain the President's

veto.

19 Mr. UDALL. Mrs. Mink.

19 Mrs. MINK. Thank you, Mr. Chairman.

19 Pursuing the line of inquiry that the chairman has started this morning, I think it is fair to say that in reading and analyzing the veto message that the whole basis for the veto lies in the accuracy and dependability of the loss of coal production estimates which were given to this committee and to the Congress.

19 Taking the coal loss production figures, and then calculating how many man-hours are required for that coal, you calculated the number of employees that would have to be laid off, and you calculated the amount of energy loss for the country that would have to be transposed to oil imports. This was the basis of the whole veto message.

19 This being the case, and I have heard no contradiction of my analysis of this veto, then the crux of the matter is your analysis of loss production. It seems the heart of the criticism we are making this morning is that in assessing the coal loss production, you failed to take into account, in you recommendations to the President, the fact that the coal production could be shifted to other lands with no loss of total national coal production.

19 Let me give you one illustration of a point that I have in mind.

19 There are 533 outstanding Federal coal leases. These leases now cover a total of 278,000 acres and contain an estimated 16.1 billion tons of coal. To put this reserve in perspective, this coal, if produced today at a rate of production that would be appropriate, we would have a 27-year supply of production.

19 It seems to me that it is the fault of the Interior, fault of the administration for failing to make these coal leases operative. If the policy of the administration is to convert to coal in order to meet the energy requirements of this country and to be less dependent upon oil imports, it seems to me clear that the coal that has already been let, already been leased over the years, rather than being permitted to be held in speculation, could very well be put into production under the terms of H.R. 25 without any coal losses whatsoever, without any time lag, without any further evaluations because these 533 leases are in existence.

19 I would be very pleased to hear any of the panel's comments with regard to this coal production and how it could easily be achieved by using the coal resources we already have under lease.

19 Mr. MORTON. Let me be the first to respond, then I think the Director of the Bureau should respond. Most of these leases are on public lands in the West. All of them are. If these leases were brought into full production, say within the next year, we would make a mountain of coal on the surface of the ground. We do not have the transportation systems in this part of the world, this part of our country, to transfer that coal economically to using systems.

19 We are, as you know, moving toward an orderly coal leasing policy that will incorporate, hopefully, the improvement of the right kind of transportation systems and the right kind of using systems to utilize these leases. The big coal production loss that would be incurred would be more in the historical coal producing areas. There is no question about the 16 million tons and the many, many other millions of tons of coal applicable to surface mining in the West. But coal is a systems oriented resource. You have to mate the production of coal, the transportation of coal, with the usage of coal.

20 To bring those 16 million tons into production immediately would be folly. It could not be done in short order.

20 I think much more detail can be supplied by the Director on this subject, but we looked into this one time and time again. We have a lot of problems. This is a multiple use resource, the public lands. A great feeling that some of the surface ownership should be totally protected.

20 The policy for doing this is beginning to evolve.

20 Mrs. MINK. Mr. Secretary, if I may be permitted to interrupt, I am not addressing my question to the reserves that have not yet been leased. My question goes to those leases that have already been issued on the assumption that coal would be produced from these lands which are owned by the people of the United States. However, they have been allowed to remain in the hands of speculators and no production has been forthcoming.

20 If the administration is going to come before the Congress and give us estimates of 40 to

162 million tons of coal losses and attribute the range of figures between strict or lenient enforcement of the bill before us, is it not also a responsibility of the administration to make sure that existing Federal leases produce coal in order to meet the energy requirements of this country; and, if so, there would be no coal loss production whatsoever and no further dependence upon oil imports, and every single person wanting to be involved in coal production could be so engaged, if not some additional thousands.

20 Mr. MORTON. I wish it was that simple. Previous administrations have seen fit not to put stipulation requirements in coal leases. We are the first administration that ever did. And these are all leases. As the gentlemen on both sides of you, the legal problems in recasting the profile of these leases, it is a very difficult thing. We have tried. During my tenure as Secretary of Interior, I leased no additional coal, for virtually 4 years, because I felt that this particular problem had to be resolved. But the loss of coal production and the economic problems of it, admittedly, are in a time frame of the next 3 or 4 years. I think we have got to be very careful not to assume that we can suddenly get that 16 billion tons of coal reserve that is under lease on the public lands into production with our present transportation systems, and burning systems. It just cannot be done.

20 We cannot convert a substantial number of our boilers to coal from oil or gas with those reserves without a tremendous increase in production in the historical areas that produce coal.

20 Mr. HILL. I would like to add to that if I may. I think you have to take a look at this, the lands that have been leased and the program under which they were leased. I would like to point out several key factors on that.

20 One: They were leased at a time when oil prices were very low, and no one was going to make the investments either for mining equipment or large investments for the transportation equipment in the East, when oil prices were that low.

20 Second: These are only leases. There have not been permits granted for the mining of these areas. That is another step we have to go through.

21 Third, previous leasing policies of other administrations were such that we ended up with a checkerboard effect on these leases out in the West. Most of those leases turned out to be fairly

small plots of land that are uneconomic and it is going to take some period of time to put them together into economic units for which they can come in and get permits.

21 Keep in mind these are long leadtime matters, both the capital investment of the mine which comes after putting the checkboards together, plus the time required to go East, where there will be some of the biggest impacts of H.R. 25.

21 Mrs. MINK. I would like to point out that the memorandum sent to the committee by the Bureau of Mines' Director indicates that in arriving at the high estimate of 162 million, the largest factor component in that estimate is not the mining activities of the East, to which you have alluded, but the western strip mining situation.

21 So I find your response quite unsupportable by even the statements made by the Bureau of Mines.

21 May I go to my next inquiry?

21 Dr. FALKIE. Mrs. Mink, I think that there are perhaps some misconceptions on what is going to happen with coal in this country. The Project Independence report on the coal task force which I chaired arrived at a number of somewhere between 1.1 and 1.2 billion tons of coal as a target for 1985. We used the basic numbers from that in this study here. They have been revised somewhat, brought up to date, because those other estimates were made over a year ago.

21 Mrs. MINK. What basic study are you referring to?

21 Dr. FALKIE. The coal task force study of Project Independence which I chaired.

21 There are two points. One is that the coal production increases are not all going to come from the West. There are going to be coal increases in the East, too, if, in fact, we remove the constraints to coal production both on the supply and demand side.

21 The second thing is that not all of the increases are going to come in surface mines. Some will be in underground mines as well.

21 Regarding your question about leases meeting requirements, there are two types of problems we looked at from the technical standpoint. One is the problems connected with bans, possible bans that this act appears to project.

21 Second are the technical, legal, economic problems. Any leases would have to meet those requirements in the same way as any other area we looked at.

21 The third point, and this is probably the most important point, we know now that if you went out to order a large piece of mining equipment, you would be given a delivery time of some 5 years plus time for assembly. That 5 years is into 1979, 1980. The leadtime for starting new mines, both underground and surface, has increased. This is one of the real constraints which is part of our problem. It is also one of the constraints to moving from area to area that you have asked about.

21 Mrs. MINK. Is not the equipment which a coal operator is currently using to strip in one area, if they are not permitted to use it in that area, usable in another area to which they move so that they will not need any more leadtime to buy new equipment?

22 Dr. FALKIE. Well, it is not that easy, Mrs. Mink. First of all, these leases, some of them are spread out by a considerable number of miles. Just moving this equipment would take time.

22 Mrs. MINK. Overnight we saw a shift of coal production from the East to the West, so that currently there is 50 percent of our national coal production coming from the West.

22 So it seems to me that in arriving at your coal loss production figures you did not take into account the increased productions that could be possible under the bill with the lands that have already been leased out in the West. It seems to me your have totally neglected that area. I do not wish to get into an argument. There are so many other questions I want to ask.

22 Dr. FALKIE. I want to correct one fact. Fifty percent is not a correct number. We have those numbers here. Coal production in the West is considerably less than 50 percent at the present time.

22 Mrs. MINK. Fifty percent of the strip mine coal in the country is out in the West. I do not think you can deny that.

22 Dr. FALKIE. We are strip mining around 300 million tons and we are producing approximately 90 million tons from the West at the present time.

22 Mr. UDALL. The Chair would ask our guests here to refrain from applause. The

committee can proceed in a more orderly way.

22 Mrs. MINK. It appears that we have a number of coal operators in the room, Mr. Chairman. Their big concern in coming to Washington, as I recall, was the question with respect to return to approximate contour.

22 In sending your comments with regard to coal production losses and giving the basis for the veto, you mention that there would be a coal production loss with respect to small mines, of 22 to 52 million tons. In analyzing this loss of the small mines, you made mention of two issues, the bonding and permit applications. And that because of the requirements under H.R. 25, regarding bonding and permit applications, you felt it was beyond the capability of these small mines.

22 Did the Bureau conduct a study to arrive at that conclusion, and if so, may the committee have a copy of that study?

22 Dr. FALKIE. Mrs. Mink, we looked at it from many standpoints. The estimated production from mines producing less than 50 million tons per year is about 60 million tons for 1977. The FEA conducted a survey of the Appalachian States and got estimated loss figures from some of the State agencies. We looked at some of the trends and some of the effects. This gets back to answering your - some of the questions that were posed earlier.

22 In Tennessee, West Virginia, Ohio, and Pennsylvania, there was, in fact, a production drop after these surface mine laws were enacted. We are not about to sit here and say that the entire production drop was due to the Surface Mine Act, but the trends are there. They eventually started to recover. This is what is shown on this chart.

22 The second type of thing we looked at is the pricing situation. This shows the Pennsylvania problem that you talked about. The act was passed in 1971. You can see what is happening to the price. In fact, there was a drop. Again, we are not saying that this drop was entirely due to the strip mining law. Then it came back up, the price projected exponentially at the same time.

23 We also looked at what is happening to prices. As you know, the prices have gone up quite dramatically. But since December of last year, spot prices have been coming down and the contract prices have been going up.

23 Mrs. MINK. Will you answer my question as to whether there is or is not a study and if the committee may or may not have a copy of it?

23 Dr. FALKIE. There is a study and obviously the committee may have a copy.

23 Mrs. MINK. Could we have that by noon today?

23 Dr. FALKIE. We have the study summarized in a form that you could have today.

23 Mrs. MINK. Could we have a copy of the study itself in addition to the summary?

23 Dr. FALKIE. We have, Mrs. Mink, as you know, we have sent you material in the past. I cannot remember the exact date. But some of the descriptive material that describes the study. We have submitted that.

23 Mrs. MINK. My question is: May we have the study?

23 Dr. FALKIE. Yes, you may. n1

23 n1 Appendix I includes the portions of the study provided the committee by Dr. Falkie.

23 Mrs. MINK. May we have that today?

23 Mr. HILL. We will also make available a study done by the Council on Environmental Quality in 1973 for Senator Jackson which reaches precisely the same conclusion. n2

23 n2 Appendix II includes those excerpts from the CEQ study to which reference is made.

23 Mrs. MINK. With respect to the impact on permit applications and bonding?

23 Mr. HILL. For small miners, that is correct. That was done in relation to a bill that had many less requirements on the small miners than H.R. 25. So I think it would be useful to look at that report, also.

23 Mrs. MINK. Since you made reference to Senator Metcalf, I will yield to comments from the Senator on the point just made.

23 Senator METCALF. Thank you.

23 The study, as I recall, that you prepared for the Interior Committee, my subcommittee, and presented to the chairman of the committee, Senator Jackson, was not at all the kind of study you

describe, it was entitled a study on a permanent ban on mines and mining, and the impact of a permanent ban, isn't that correct?

23 Mr. PECK. No, sir. May I read from the title of that study?

23 Senator METCALF. OK.

23 Mr. PECK [reading]. "Coal, Surface Mining, and Reclamation, an Environmental, and Economic Assessment of Alternatives. Prepared at the Request of Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, United States Senate, by the Council on Environmental Quality."

23 At page 61 this precise question is addressed.

23 Senator METCALF. Now I did not ask you to take material out of context. I just suggested that the study you propounded and presented to the committee from which you are citing was a study on overall impact. You read the title and it was a study on overall impact.

23 Mr. PECK. That is correct, sir.

23 At page 61 it addresses the financial problems of small mines.

23 Mr. MELCHER. On page 62?

24 Mr. PECK. I am sorry. I am wrong. It was the wrong page. The economic discussion is on page 62, not page 61.

24 Senator METCALF. You had to go 60 pages before you found any impact on small mines.

24 Mr. MELCHER. Mrs. Mink, we are very grateful -

24 Mr. PECK. Mr. Chairman, one of the authors of that study is here.

24 Senator METCALF. We are very grateful for the opportunity to appear here.

24 May I ask your indulgence to let one of my colleagues on the committee have the floor for 2 or 3 minutes because he does have another engagement.

24 Mrs. MINK. I yield.

24 Senator BUMPERS. I want to thank the Senator from Montana for allowing me just a couple of minutes. I have about four or five questions to direct to Mr. Falkie. Many of these questions can be simply answered yes or no because I am really curious as to these figures.

24 How I vote on overriding or sustaining, if it ever gets to the Senate, is going to depend on what I think is the validity of these figures.

24 I would like to ask you first of all, were your projections on coal loss, production loss, based on present production trends, or what you had projected last year in your Project Independence?

24 Dr. FALKIE. We took the Project Independence numbers and projected what we think will be produced. I have numbers but since you are out of time we will not go through them to show you what the basic numbers are in the study.

24 Senator BUMPERS. My point is this: It is not a loss of present production, you are simply saying this is a loss of what you would have anticipated?

24 Dr. FALKIE. That is correct.

24 Senator BUMPERS. That would also affect your projection on loss of jobs, would it not? In other words, if you are projecting not a loss of present production but some anticipated production in the future, your loss of jobs will necessarily come, your projections on loss of jobs would also be something that was anticipated, not a loss of jobs presently in existence?

24 Dr. FALKIE. I have a little problem with that logic. The answer is yes, the loss of jobs is related to the production loss. But a loss of jobs is a loss of jobs.

24 Senator BUMPERS. But it is a loss of anticipated jobs, a loss of jobs that would have been created had this bill met the administration criteria.

24 Mr. PECK. Senator, the question might be misleading. Project Independence had included current production and estimated increases in that production. The job market loss calculated from updating that number, therefore, includes losses from existing jobs and jobs that would have come into being had that estimated increase in production occurred.

24 Senator BUMPERS. Thank you very much. That is a direct response to the question.

24 Did you take into consideration in computing your job loss any additional jobs that would be required to come into existence because of the reclamation requirements?

25 Mr. HILL. I will answer that. We did take that into consideration. The jobs for

reclamation would largely, primarily, in fact, be created as a result of the reclamation fee which would be on surface mined coal. There will be some jobs created, particularly in regions or areas where there are a lot of old surface mines, as a result of the reclamation. That would be a long process.

25 Our estimates show they will certainly be less, significantly less than the jobs lost in mining.

25 I might add another factor. Since those jobs are created by the tax, jobs somewhere else in the economy are being lost because that money is not somewhere else creating employment. So in a national economic accounting kind of system, there would be no net creation of jobs from the Reclamation Act.

25 Senator BUMPERS. Will the study to which Mrs. Mink referred show how you calculated all those figures?

25 Mr. HILL. We have provided all of our assumptions and the basis for our calculations several times. We will be glad to make those available again, Mr. Bumpers.

25 Senator BUMPERS. I would appreciate it.

25 Two final questions. How much coal is presently being mined in this country from alluvial-valley floors? Let me tell you what your report says. It says 45 million tons.

25 Dr. FALKIE. That is correct. We are projecting somewhere in the neighborhood in excess of 80 million tons in the first full year. Of course, we have not gotten into the alluvial-valley floor situation, but that basic number is correct.

25 Senator BUMPERS. I was curious here. How can you show on the top side of your projection 66 million tons of production will be lost in alluvial floors when we are only producing 45 million tons now?

25 Dr. FALKIE. It also includes, of course, the effects on alluvial-valley floors, but it is projected into 1977. So it is based on 1977. As we gather new numbers, more and more tons are projected to be mined from areas that would bear the impact of these provisions of the bill.

25 So we feel that we are, at least on the lower end of our estimate, being conservative on this.

25 Mr. HILL. Our estimate does -

25 Senator BUMPERS. Is that what your projections were based on, 1977? This does not take place until 1979, does it?

25 Dr. FALKIE. No, the first full year of implementation would be 1977-78, but if we did carry it on to another year the loss calculations would be greater because the production would be greater.

25 Mr. HILL. I think it is also important to note here, Mr. Bumpers, that if there is going to be expanded mining on the alluvial-valley floors, according to our projections - those plans are being made now. They are pretty far along in terms of the preparations necessary. I think our estimate has a great deal of validity.

25 Senator BUMPERS. Let me ask one other question.

25 Did you take into consideration the price increases in coal, either through increased - let me put it another way. Did you take into consideration any improved technology in the production of coal in the future, and did you take into consideration any incentives to produce additional amounts of coal, if the President has his way on getting the \$3 fee on imported oil?

26 Mr. HILL. We looked at a number of estimates. I think the key is in any extra incentives that may come from higher prices on coal, and we would like to present a paper to show that the higher price of oil would not raise coal prices unless we have a substantial drop in coal production. That would be a very long leadtime kind of response elasticity, or your coal supply is very elastic.

26 So we are talking about the next 2 to 5 years in the context of this bill. So any of those assumptions about better technology, elasticity or response to increased prices will be beyond the period of time which is the focus of our concern.

26 Senator BUMPERS. I do not want to encroach upon the generosity of my colleague from Montana further. I wish I had time to pursue some of the questions further. I would like to say here that in Secretary Morton's testimony before the House of Representatives, this committee, the Interior, his statement was - this is regarding jobs for reclamation - he said, "Mr. Seiberling, there will be a net gain in employment from a good reclamation bill because reclamation is going

to require capital investment. It is going to require a work force. So we should have a net gain in employment."

26 Mr. MORTON. We should have had a bill that would give us that, too, in my opinion. Unfortunately, we did not have that kind of bill.

26 Senator BUMPERS. I thank the chairman.

26 Mr. UDALL. We have a time problem here. Let me suggest the following procedure. I understand Mr. Zarb and Mr. Morton would like to leave. Mrs. Mink tells me she has one more question, and I have mutiny on my hands on my north side unless we give them some time here. So one question by Mrs. Mink. Then I will give Mr. Steiger the floor.

26 Mrs. MINK. This is just a follow-up question.

26 The follow-up question was that I was asking Dr. Falkie with regard to a study which would support his claim that small mines would be affected by the bill's provision on bonding and permit applications. The response was that there was a study and reference was made to the CEQ study which was prepared for the Senate Interior Committee.

26 May I request that in providing this study to the committee that the page reference be provided which makes reference to the effect of bonding and permit applications on small mines which would justify an estimated loss of 22 to 52 million tons?

26 Thank you, Mr. Chairman.

26 Mr. UDALL. Mr. Steiger.

26 Mr. STEIGER. Thank you, Mr. Chairman.

26 Mr. Zarb, this rather extraordinary meeting has come about really because of a conviction on the part of the Chair people of this joint committee that the administration caved in to pressures from the coal companies and utility companies and manufactured some figures.

26 I think it would be appropriate, Mr. Zarb, if you address that, if you would, because I am aware of the fact that the administration very logically would have preferred to not veto this bill since the clear political profit was on the side of not vetoing it. As a matter of fact, in my opinion, it was a rare demonstration of courage on the part of the President and your own operation that recommended the veto.

27 Would you give us the basis of not point A and point B, but your own action in attempting to pursue the effects of this bill on the economy and the energy supply?

27 Mr. ZARB. Mr. Steiger, this gets somewhat away from the statistical balance. I would just take a brief minute to describe the events leading up to the President's final decision. You are quite right in saying that we at the energy agency really wanted to find a reason to approve this bill and get on with our life. It is clear that we do not need this kind of difficulty with people who are concerned with environmental questions.

27 We have many, many more issues of a similar nature that we have to develop, to negotiate and work out in the future.

27 It was, it seemed to me, in our best interests to find substantial reasons to recommend approval of the bill. We did ask those professionals who have backgrounds in this area to do the staff work.

27 The Bureau of Mines is a long-standing organization of the Federal Government, and Dr. Falkie has been there, I think, since 1974 as Director, as well as our people, as well as the economic people, developed data which demonstrated that there was a very, very good chance that we were going to have a substantial coal cutback based upon implementation of this bill.

27 Now, it is argumentative to the extent that the numbers would be high or low. Most everyone indicated and acknowledged that there would be a coal penalty. But not always was there a willingness to articulate what the projected coal penalty would be over the next 3 years, as Secretary Morton said. We looked at the projected range and, of course, that was distressing.

27 Whenever you have a range between 40 to 162, that is hardly conducive to make a good judgment. But we determined that based upon possible interpretation of the various provisions, that is what could occur.

27 What concerned us even more were four or five other provisions put forward by the attorneys that looked at it. That indicated we are not even predicting the kind of penalties that might accrue to us.

27 Mr. Chairman, members of the committee, I want you to know we want to work out a

surface mining act that will achieve reclamation and will get our energy produced, and at the same time stop any erosion of our environment; not only with respect to this area but the clean air and clean water.

27 We can in good conscience stand up and say the bill will not be effective in terms of its energy penalty when the numbers clearly indicate that possibility is so real in the light of what is happening in domestic production of increased imports. So after looking at all of the staff work we did come to the reluctant conclusion this bill would not be helpful to our energy problem at this moment in time.

27 Secretary MORTON. Could I just add one thing. I think it is not generally understood by the public, the people in general, to get from here to there, to a reasonable posture for energy independence, it will be necessary to virtually double the use of coal in the next decade. That is the keystone of anybody's program: We must double the use of coal in our utilities and in many other areas where coal is applicable and if we inhibit that during this decade we take great energy risks, I think, for our society.

28 Mr. STEIGER. Well, on the subject of variances, as I read this bill, for the small mine operator to qualify in the two areas you mentioned, he must respond or he must be able to comply with 19 separate tests.

28 Now, I find that, that is on page 41 of the printed bill, we start by saying that under the rules of the application for the permit, the applicant must demonstrate that whatever the variance is, will be compatible with adjacent land usages, obtainable according to data, assured of investment and necessary public facilities, supported by commitments from public agencies where appropriate, and so forth. There are 19 of them.

28 Now, did you consider the probability or improbability of the small miners' being able to comply with those 18 tests in your analysis as far as lost production?

28 Mr. PECK. Yes, sir, we did. That was part of the analysis of the costs of the small miner for this bill and the necessity for the miner, the way the bill operates, to incur that cost as a front end load on this operation.

28 In other words, before he can plan the operation, before he can obtain it, he must submit a

reclamation plan which shows the subsequent postmining uses and this applies even for the variances involved. So it is not just the fact there are these 19 variances specific detailed requirements, and I must admit, I have not counted them, it is the fact that all of these requirements must be complied with by the small miner, or for that matter, by any miner, at the time he makes the application. It is that capital requirement, that major outlay of money, that the small miner just does not have in our view. So, yes, that was calculated in the front-end costs of the small miner that would force either a mine closure, or in some cases, the sellout to a large miner, and further concentration of the market in large companies.

28 Mr. STEIGER. We really have a time problem. I am going to yield to the chairman to try to resolve it in some way, but I do know that Mr. -

28 Mr. UDALL. I do not know what the meeting is. I thought this was critical, too.

28 Mr. Melcher tells me he would like 5 minutes.

28 Would it be agreeable to grant Mr. Melcher 5 minutes?

28 Mr. MELCHER. Thank you, Mr. Chairman.

28 Mr. ZARB. Mr. Chairman, we could add just our schedule to stay at least until 11:30, if that would be helpful.

28 Mr. UDALL. That would be helpful. I must announce we have to be out of this room we have scheduled at about 12:30, and we will try to reconvene in the regular committee room this afternoon, but we only have this reserved until 12:30 today.

28 Mr. MELCHER. Secretary Morton and Mr. Zarb, it is entirely possible that you have received inaccurate information and that your inaccurate information has provided the basis for recommending to the President a veto.

28 In one instance, the possible production loss was listed as upwards to 160 million tons, and of that, 66 million tons was attributable to the section in the bill dealing with alluvial valley floors.

28 I do not know whether the two of you are aware the alluvial valley floor only deals with the land questioned at 100 meridian but that is the bill and the mines that are now operating there that have been listed as operating on alluvial valley floors include seven which are not on alluvial

valley floors.

29 Secretary Morton?

29 Secretary MORTON. I have got the production, the western production.

29 Mr. MELCHER. Do you have that in front of you?

29 You will see a list of mines, some of which are marked as operating on alluvial valley floor.

29 Secretary MORTON. Dr. Falkie, you understand I only have 5 minutes.

29 Dr. FALKIE. Yes, OK. There are other aspects of this legislation which put restrictions on the alluvial-valley floor provision.

29 Mr. MELCHER. Doctor, I understand that very well.

29 You and I and Mr. Peck and Mr. Udall and members of this committee probably understand most of what is in that bill but I do not know that Mr. Zarb and Secretary Morton do; however, they are the conduit to the President for all of the information from which were drawn conclusions for recommending a veto.

29 Secretary MORTON. Let me straighten the record out on that, Congressman.

29 The President has been exposed to large meetings in which all of the technical people here have been either there or represented there.

29 This was not a judgment that was made solely by myself and Frank. It was made after a tremendous amount of analytical exposure on the part of the President himself because, as Frank said, this is one that no President wants to veto.

29 Mr. MELCHER. We would like to assist the President in developing an energy policy, but we find it very difficult when we give them a strip mine bill which is part of the keystone for developing an energy policy in 1974 and again in 1975, and he vetoes part of our best efforts.

29 I want to go over the alluvial-valley floor section and the projections made, based on what I know to be inaccurate information in arriving at 66 million tons of possible loss in the first year of the operation of the bill.

29 There are nine mines listed in the West alluvial-valley floors in Dr. Falkie's information. Seven of those are not on the alluvial valley floor.

29 They include the Black Mason Mine in Arizona, the Nava in Washington, the Western Energy at Colstrip, Mont., in my own county, the Westmoreland Mine which is next door to my own county, the Decker Mine at Decker, Mont., which is moved off the alluvial valley floor and now operating up in the hills, the Arch Miner Mine in the Anne Basin, Wyo.

29 There are two listed of those nine - the Bellaire Mine and the Wilde Mine near Gillette, Wyo. - on the alluvial valley floor. Only those two. So that part of the information that has been presented by Dr. Falkie and all of the rest of the people, including Mr. Salisner, Mr. Zarb, who put all of the information into this vast study, that part of it is inaccurate and, therefore, we question how much other inaccuracies there are. The two mines listed in Wyoming, on the alluvial valley floor were projected by false and inaccurate information in denoting that the alluvial valley floor section would remove from possible strip mining in the entire Powder River basin 43 percent of that area's coal or 23 million tons.

30 Highly inaccurate - yet it is information that has been presented as part of this study that has been talked about here.

30 Now, Mr. Zarb and Secretary Morton, I referred to the Powder River basin in Wyoming and after considerable discussion with the Interior Department as to how much of the Powder River basin in Wyoming and Montana could conceivably be included under this section dealing with the alluvial valley floor in our bill, at the last day of the conference in the last 10 minutes of that conference, I received this answer, that approximately 97.3 percent of the total agricultural land in the Powder River basin is not alluvial valley floor. That leaves 2.7 percent of that area under land which could be conceivably construed as alluvial valley. So the 2 percent that is indeed on the alluvial valley floor in Wyoming leaves a vast area to get out of the way of the alluvial valley floor.

30 Mr. PECK. The answer to your previous question is, first that this bill does more than ban mining in the alluvial valley floor.

30 Second -

30 Mr. MELCHER. This bill, Mr. Peck, does not ban mining in the alluvial valley floor. It is entirely clear, it does not.

30 Mr. PECK. I said it does more than ban mining in the alluvial valley floors. I am sorry, but it does ban mining. The 97.3 came from the local office of the Bureau of Land Management. It is an average derived from two calculations, Campbell County and Sheridan County.

30 Mr. MELCHER. That is correct and they project it for the rest of the area.

30 Mr. PECK. That is correct; and the assessment, not of the alluvial valley but of undeveloped rangeland in Campbell County used in that calculation was 100.9 percent, that is to say nine-tenths of a percent more than the entire county was considered to be excluded from the operation of this provision.

30 Mr. MELCHER. Mr. Peck, are you aware of the northern Great Plains resources program?

30 Mr. PECK. Yes, sir.

30 Mr. MELCHER. That it is a Federal-State cooperative program?

30 Mr. PECK. Yes, sir.

30 Mr. MELCHER. Of the 89 million acres in Fort Union overlying the Fort Union coal deposits, they are estimating that 2 percent are involved with the alluvial valley floors.

30 Mr. PECK. Again sir, I would have to point out much of the confusion that has occurred, not only with respect to communications to the committee but with respect to the bill and with respect to the Congress report, derives from both differing definitions of what the alluvial valley means and differing interpretations of what this bill prohibits.

30 This bill prohibits some surface mining in the alluvial valley floors and certain mining off of the alluvial valley floors which will have the effect on the alluvial valleys.

30 Mr. MELCHER. Mr. Peck, and I hope Mr. Zarb and Secretary Morton are taking this in.

30 Mr. Peck, the administration bill has the same language on the alluvial valley floors and the same language which we put in the bill.

30 Mr. PECK. I beg your pardon. The definitions of the alluvial valley floors are identical, but the provisions that operate to ban mining there, that is, to prohibit the issuance of a permit, are very much different.

31 Mr. MELCHER. Well, Mr. Peck, the definition is identical and your misinterpretation, or whoever's, resulting in misinterpretation within the administration to project a loss of 66 million tons of coal per year was based on a misinterpretation of something that did not exist.

31 Mr. PECK. Mr. Congressman, if the Congress report said 97.3 percent of the Powder River Basin is going to be allowed to be mined, it would have included 100 percent of Campbell County, 100.9 percent of Campbell County; surely parts of which no one would want to mine.

31 The point I am trying to make is the operative language of section 510(b)(5), the provisions respecting hydrology and the definition of alluvial valley floors, plus the confusing language contained at page 81 of the conference report, add up to such a tangle that someone has said that long after the last barrel of oil has been imported, lawyers will still be retiring on interpreting it. That is our problem.

31 Mr. MELCHER. Regardless of what the lawyers will do, Mr. Peck, regardless of what lawyers will do to arrive at a figure of 66 million tons projected loss from one section of the bill, the alluvial valley floors projection is completely inaccurate.

31 It is by far more than what is being mined now in the West on anything that would be construed as near the alluvial valley floors.

31 Of the nine mines that you have listed as being on the alluvial valley floors, only two are.

31 Mr. PECK. Well -

31 Dr. FALKIE. I am afraid in our professional judgment I will have to disagree with that.

31 I did not list all of the mines. We will have to take a look at what you have there but there are one or two on there that I have seen and would definitely have to take exception with you on and if you would like, I could go through our presentation of how we determined.

31 Mr. MELCHER. Mr. Peck, we used the best available information we could get from the USDA on what would be construed as alluvial valley floors and how you would project that in the West because that is what we are talking about, it is only in the West, it is west of the 100 meridian.

31 The USGS people, our staff people, our own career people are refuting and contradicting your figures which is a sad commentary on how information flows through channels up to Mr. Zarb and Secretary Morton to advise the President. He has been advised with inaccurate information.

31 Mr. PECK. Mr. Congressman, on the specific question you raised with respect to the USGS, there has not been any inaccuracies, there has not been any misinterpretations and we are prepared to discuss the question in detail.

31 Mr. MELCHER. Mr. Peck, the USGS cannot back up your statements of the projected loss of 66 million tons, the USGS cannot back up your statements that these nine mines are on alluvial valley floors.

31 They will confirm what I have said and you may ask Mr. Hadley if he is present in the room to come up here.

31 Mr. PECK. Sir, we have discussed it at great length. The USGS never made any projections as to production loss.

32 What the USGS was asked to estimate or to identify on maps was a specific definition on an alluvial valley floor narrower than that contained in this bill's prohibitions.

32 Those estimates, those maps are valid, they are accurate and they are technically correct, and we are prepared to defend them to the very last square mile. Insofar as the specific mines are concerned, I am afraid I will have to defer to Doctor Falkie's judgment, that your characterization is not accurate.

32 Mr. MELCHER. Well, Doctor Falkie, which of those mines I have listed would you put on the alluvial valley floor?

32 Dr. FALKIE. I would think, I would like to have benefit from my counsel for a second.

32 Mr. MELCHER. Is Mr. Hadley here?

32 Dr. FALKIE. There is some concern, Mr. Melcher, on my part about advising the legislative record with my opinions.

32 Mr. MELCHER. Dr. Falkie, is Mr. Hadley here?

32 Mr. PECK. He is in the Department of Interior, prepared to be here on 15 minutes notice.

32 Mr. UDALL. We will recess when we finish this morning until 1:30 in the committee room. If you could have him here, we might want to pursue that and also we would like to have Mr. Keefer at that time.

32 Mr. PECK. I was going to suggest Mr. Klepper and Mr. Keefer.

32 Mr. UDALL. And Mr. Jack Green also.

32 Before we excuse Mr. Zarb and Mr. Morton, the two of you could maybe help me get some peace of mind with two things involved.

32 We have shed a lot of tears for poor people who will be unemployed by this bill and yet the United Mine Workers and the AFL-CIO who represent many of the people if not most of the people who work in the mine support the bill.

32 Are they wrong? How do you reconcile that? I have not been able to understand that.

32 Mr. ZARB. I cannot and will not characterize the reasons for support. I do not know whether the formal endorsement of these organizations, if you say there is, I will stipulate to the fact that there is. There are obviously reasons for their support, this judgment. Only they know or perhaps you know.

32 I will ask this. There has not been hardly anyone in this entire program right from the beginning who has been willing to say that they would not, there would not be a coal deficit of some size during the first 3 years.

32 No one has made that statement.

32 Mr. UDALL. I have made it. I have made it everywhere I go. In my judgment, under this bill, we can produce, we can double the production of coal in the next 10 years and I have spent 4 years of my life helping to put it together.

32 Mr. ZARB. In the next 3 years, would you say there would be no coal disruption?

32 Mr. UDALL. No, there would be a net increase largely because we have removed the uncertainty and investments could be made and mines could be opened up.

32 Let me ask you this finally.

32 Secretary MORTON. On your first question, Mr. Chairman, one of the things that may be influential in this is that most of the United Mine workers are underground and are in mines that are not surface mines.

33 There is another large area of mining where in the smaller surface mines, miners are not members of the union and this could have an influence.

33 Mr. UDALL. I find it strange that the representatives of people who work in the mines would not be more interested in the preservation of their jobs than some people in Washington.

33 Mr. Zarb, let me ask you this. On November 19, it has been increased I believe the way these estimates have gone up and down. We had finished the old bill; it was all signed and sealed except for surface owners' consent and we were deadlocked on that for weeks.

33 On November 19, the estimate of the first full year of production losses, a minimum of 16 million and maximum of 105 million. On April 22, when we finished the conference report this year, we have watered down the bill and we have loosened up the performance standard, indeed to the extent that Mrs. Mink and myself and others were unfairly attacked by the environmental groups for having given away a tough provision. We have watered down the bill; we have met 17 of 28 objections that the administration made, and you sent us back a new estimate, and the low was not 18; the low had gone up to 68, and the high was not 105; it had gone up to 162. So with the weaker bill your production loss estimate had increased by 54 percent.

33 Can you enlighten me on how that came about?

33 Mr. HILL. I would like to comment, Mr. Chairman, on your reference to the bill prior to the Christmas recess. Those estimates were on the basis of that bill, and preliminary estimates. Between that time and the time we finished up the present bill, we had firmed up those estimates and they were all hard.

33 It was those higher estimates we firmed up and we made the lower estimates as a result of a few of the changes in HR. 25, which is now in the present status.

33 I think Mr. Falkie could give you the exact reasons as to why the changes, from the last November estimates.

33 Mr. UDALL. I wanted to find out from Mr. Zarb and Secretary Morton why these estimates, why in heaven's name the estimates would go up when the bill was weakened during that period of time, and I take it from you, Mr. Morton, and Mr. Zarb, you have no answer.

33 Mr. ZARB. Mr. Chairman, to say we rely heavily on only technical analysis every step of the way I think is an unfair statement, but I would go a step beyond.

33 One of the things that has bothered me right through this process is being unable to really calculate what the potential coal penalty would be. Each step of the way, in each set of analysis, there was that prevailing asterisk. And as you follow on the asterisk to the bottom of the page, it says depending on how the courts rule on this provision, on that provision or on that provision, so even when we got up to a range as broad as 40 up to 162, those responsible for totaling the calculations indicated there were some provisions they simply could not quantify.

33 I think that has a great deal to do with a lot of what we talked about here this morning, the fact that the precise nature of many of these determinations has not been nailed down specifically.

33 I do not know why that is. I do not know why it is an impossibility in legislation of this nature, but our people have not been able to calculate firmly what our potential liability will be to the point that, in the last analysis and I would like to leave this with you on the record, when we went through it and we looked at the 40 to 162 million ton potential, there was some in the staff system that said those are low numbers, that they could easily construe a scenario, based upon four or five positions as outlined in my statement, where those losses could be even higher.

34 Now, Mr. Chairman, I have not been able to, through either the Department of Interior counsel or through any other series of counsel, receive assurances that the original calculations could be interpreted one way or another, because of rather loose definitions that would prevail, and I think that perhaps is the reason.

34 Mr. UDALL. I have promised the Secretary and Mr. Zarb that we would release them at 1:30.

34 Do you have a quick question, Mr. Kazen, or could your question be directed to the

technical people?

34 Mr. KAZEN. I would like the Secretary and Mr. Zarb to be in on this.

34 One of the reasons the President gave for vetoing the bill was that consumers would pay higher costs, particularly for electrical bills. Mr. Chairman, all of us have been getting mail from home about the high cost of utilities at this particular time. I would want no part of any bill that would raise utility rates any higher. My question is: What in this bill would raise the cost of electric bills?

34 Secretary MORTON. Obviously, we are moving from an oil to coal generation for electric power as quickly as we can. If this bill restricts the amount of coal as compared to demand, it is going to escalate the price of coal. It is just a simple economic fact.

34 What we would like to do is have ceiling pressure on the whole coal usage field so we can go from oil generation to a coal generation without going through the arbitrary level of energy pricing.

34 Mr. KAZEN. Now, in following up with that, the statement says the provisions permitting the Federal Government to pay private landowners 80 percent or more of the cost of reclaiming previously mined land, leaving title to the land in private hands, could provide windfall profits at the expense of coal consumers.

34 Would someone explain that particular statement?

34 Mr. HILL. I think the key is in the reclamation program. The Federal Government reimburses landowners for previously mined land.

34 That is land for which they received a royalty for the production of coal, and already achieved substantial value from that.

34 Now, we will shoulder up to 80 percent of the costs of reclaiming which will upgrade the value of that land to the current landowners. Not only will they get the benefit of the previous royalties, they will have the reclamation costs paid for which is another benefit. And the third benefit is that the land is more valuable as a result of the Federal Government coming in.

34 Mr. KAZEN. What would you estimate would be the outlay of dollars for this particular program?

34 Mr. HILL. I do not have an estimate. It is hard to tell, depending in some cases on what the use of the reclamation fund would be put to.

34 As you know, in the act, there are seven or eight different things that funding can go to apart from reclamation, so that would be a function of how much actually went into the reclamation, into dams, highways, streets, and so forth, whatever.

35 Mr. UDALL. Mr. Kazen, thank you.

35 Senator Haskell, did you want to ask a question?

35 Senator HASKELL. I really had questions, probably for the technical people.

35 Mr. UDALL. Probably we could come back.

35 Senator HASKELL. I don't think either Secretary Morton or Mr. Zarb have much knowledge, unless it was Mr. Zarb that said there was no elasticity in coal.

35 Were you the one that said that?

35 Mr. ZARB. That was a statement by Mr. Hill, but I do share in that.

35 Senator HASKELL. Well, since Mr. Zarb does share in that, then I would like to discuss it with him a little bit.

35 Mr. Zarb, my impression is that in 1973, which is pre-OPEC embargo, the average cost of per ton utilities was \$9.25, and that in 1975, which is of course post-OPEC embargo, the average cost is \$10.

35 Now, I don't know whether you share those figures, but would you agree with those figures?

35 Mr. ZARB. They sound generally correct; yes, sir.

35 Senator HASKELL. That would occur to me to be considerable price elasticity, somewhere in the neighborhood of 100 percent.

35 At the same time, one of the things that concerns me, Mr. Zarb, is that according to Mr. Carlson, who testified in February, before the Senate Interior Committee, the worst case of this bill as has been introduced, would cost the eastern small operators something in the neighborhood of \$1.30. The average cost added to strip mining is \$0 .65.

35 Now, it would occur to me that the cost of this bill, when you consider the escalation and

the price, and then the magnitude of \$9, , an increase in maximum costs of \$1 .30, that the cost could well be absorbed, probably should be absorbed, by the operators, so I find a little difficulty in the position taken on price.

35 Mr. ZARB. May I comment on the question of elasticity?

35 Senator HASKELL. Yes.

35 Mr. ZARB. That was in response to a series of questions with respect to the elasticity price of coal, not to the price escalation of coal.

35 The notion we put forward is that as coal went up in price, the elasticity point to reduce consumption was not as reachable as in many other products.

35 Secretary MORTON. Go over that again please. I missed it.

35 Mr. ZARB. The elasticity point, the elasticity factor in coal, if it were within the range of numbers, as they change, there would be a reduction as price went up. As a result, there would be a reduction in the supply to price part of the equation. We are saying that that did occur, and we did not go any further. It is an unofficial thing that the Council-of-Economic Advisors did for us, and it does not have a lot of depth, but they did suggest that with a curtailment in production, that -

35 Senator HASKELL. We will get to the curtailment of production later.

35 I think my definition of price elasticity is that price goes up in accordance with the demand of the product.

35 Now, if you are using different definitions, then that is something else, but let me make one more point, and maybe Mr. Zarb, you are the one to ask this, Mr. Chairman, if I might ask one more question, the first year of implementation as I see it is 1978 of the bill.

36 Would you be correct in that, Mr. Zarb?

36 Mr. ZARB. I am sorry. I was listening with my other ear.

36 Senator HASKELL. I know, it is tough. I tried to do that too.

36 My interpretation of the bill is the first year of effectiveness is 1978, 30 months?

36 Mr. PECK. Thirty months is maximum. We have assumed 1977 will be the first full year.

It is 20 months to get a permit, and there are various timetables set forth in the bill, so it is difficult to say just when with respect to any -

36 Senator HASKELL. Let me ask you, I think I was discussing this with Mr. Zarb.

36 Anyway, let us assume even if it is the middle of 1977, 36 months is what is the figure that takes place in my mind.

36 What we are talking about is future jobs, and we are not talking about the net increase in jobs due to reclamation.

36 You folks write that off in some manner; you do it in some way, but you do write off the net increase in jobs; but what is bothering me is you are projecting something in the future; you are projecting too much costs, but I think the cost could easily be absorbed, as I point out, and you are projecting a loss of jobs, not taking into consideration the increased jobs, and then you also have, as Mr. Melcher pointed out, certainly three of the mines you listed as losing production from them; then thereby losing jobs in his own district, he sees them in his own eyes; you list them as lost jobs; and I really do have great trouble with the figures that you have presented here today, but I realize this is not the question.

36 It is a speech, I should apologize, but I have very great difficulty, and particularly when the gentlemen over here in charge of the Bureau of Mines, in response to the chairman's question, says yes; he does know a few mines that might be closed down under the work assumptions.

36 What I would like you to do, Mr. Peck, Mr. Falkie, I think you did say some existing mines might be closed down by the bill, did you not?

36 Dr. FALKIE. Yes, I did.

36 Senator HASKELL. What I would like you to do is submit the names of those mines for the record, because I think we would want to examine those, we want to examine the factual basis, as you or I arrive at these conclusions, and I would like to see the specific mines in the record today that have been closed down.

36 Can you do that?

36 Senator METCALF. Mr. Chairman, if the gentleman will yield, we want this material submitted, and we want it when we reconvene this afternoon.

36 Senator HASKELL. Yes, that would be what we want.

36 Dr. FALKIE. We are prepared to discuss at length -

36 Senator HASKELL. I am not prepared for discussion. I want the names of the mines that will be closed down. I want to see on what facts you built this on.

36 Dr. FALKIE. We have the facts.

37 Senator HASKELL. And you will submit them for the record?

37 Dr. FALKIE. Yes. n1

37 n1 This list was not submitted. See appendices for submitted materials and related correspondence.

37 Mr. HILL. I think I will have to object as to whether we will name specific mines, and refer this to counsel.

37 Senator HASKELL. I am asking Mr. Falkie to submit the names of those of specific mines for the record.

37 Secretary MORTON. I would like to check with counsel on that too. I think there is a question of preempting a condition of a business by saying it will close down.

37 Senator HASKELL. What you are doing is basically preventing any real factual material from getting into the record.

37 Secretary MORTON. We do not want to do that either. We would like you to have a look at the work, examine the way we did it, and your big problem there in closing down, is a lot of these small mines close one property and open another property, the company may operate several small properties, and what you are talking about is not closing down a total mining company, but you may be closing down several of its properties, and I think this has to be very carefully handled, and I think you would want it handled that way too if you were a coal miner.

37 Senator HASKELL. What I am asking is for Mr. Falkie to submit the properties that will be closed down, because we have to make independent judgment of how good you folks are at estimating, and that is why I am asking this.

37 I yield the rest of my time.

37 Mr. UDALL. Mr. Roncalio, one quick question.

37 Mr. RONCALIO. I happen to come from one State that contributes 75 percent of the coal you are talking about.

37 Mr. Secretary, last fall we were a short distance away from this bill, in the writing of the law, and we in the House said we will make changes, and you said if we change it, the President will sign the bill, but we lost it for time, time ran out on us, and the bill was pocket vetoed.

37 At the risk of very harsh criticism from environmentalists, we allowed the mining act to be loosened, the language on the alluvial valley floors, we softened citizen suits, but there was still no cooperation from the President of the United States.

37 You are not going to agree to anything. The point is that we now see so clearly is there is to be no bill on mining. That is what the people think is happening under this sad matter. What we give, we still end up getting a veto on.

37 Mr. UDALL. There will not be any bill, unless the coal companies approve of it.

37 Mr. RONCALIO. That is correct, and I cry for you. We should have had a bill.

37 Mr. UDALL. Mr. Seiberling?

37 Mr. SEIBERLING. Mr. Secretary, on page 72 of your testimony to this committee on February 18, if I may have your attention, please, on page 72 of your testimony before this committee, on February 18 of this year you made the following statement, "Today we are not restricted on the use of coal by coal production. We are restricted on the use of coal by limited facilities for bringing up coal. It is demand restricted or market restricted commodity."

38 Now, I wonder if you would like to clarify those words in any respect before we proceed?

38 Secretary MORTON. Well, you contract for coal, most of the coal that is produced is contracted for before it is produced, and goes specifically into a certain transportation role, into a certain system for combustion.

38 That is, in that sense, it is demand restricted. It is demand oriented. As opposed to petroleum, which is very flexible, it can be readily moved around all over the country, and a

specific barrel of oil, based on its specifications can find a market at any time for its use, whereas a specific ton of coal, it is usually directed, because of transportation limitations, because of transportation, and so on, it has to fit into the system.

38 Mr. SEIBERLING. Well, what you are saying also, that the demand for coal is the limiting factor at the present time?

38 Secretary MORTON. Yes, the demand for coal is always the limiting factor. Unless we can improve the demand, develop more systems that can use coal in our utilities, and in other ways, where coal is an appropriate fuel, such as the mandatory conversion program, we are not going to have the coal production that we need in terms of meeting our energy requirements. We have to pull it all together at the same time, and we do need new facilities to move it, transportation capable of moving it, and obviously mines to produce it.

38 Mr. SEIBERLING. On page 87 of the same testimony, a portion of the colloquy, you said you assumed we would get a good bill, and I submit in the context you were talking about H.R. 25, and I would like to read to you a few more lines from that colloquy, and get your comments on that.

38 I had raised the point that the unemployment compensation sections of the bill, which incidentally we have since eliminated, were not necessary, and I made this statement to the effect of that.

38 This bill, in my view, has been so worked over that it seems to me that the number of people who are going to be unemployed as a result of this bill is almost zero. Maybe some others could quarrel with that, but that is at least it is going to be extremely small - that there is not really any need for it.

38 Namely unemployment compensation provisions.

38 Secretary MORTON. I do not think there is either. I would think that Congress must -

38 Mr. SEIBERLING. There will be a net gain in employment. A good reclamation bill, because reclamation is going to require capital investment, it will require a work force, so we will have a net gain.

38 That was all with respect to this bill.

38 Secretary MORTON. In respect to obviously the reclamation aspect of it, because if you have a good reclamation bill, I think you will have a net gain.

38 Mr. SEIBERLING. To read a couple more lines, I say, "Especially if we have a nice reclamation fee.

38 "Secretary MORTON. If we have an adequate reclamation fee."

38 Mr. Secretary, I figured "25 cents and 35 cents a ton is a rather modest fee." That was the end of that colloquy.

38 Now, in the President's veto message, we have the statement that the tax provision would be excessive and unnecessarily increase the price of coal, and I wonder, in the light of that colloquy, about an adequate reclamation fee, how that is reconciled with the statement by the President, that this is an excessive fee.

39 Secretary MORTON. I think the economic impact of the proposal obviously was developed by an economic analysis by the Council of Economic Advisors, and by the economic part of the FEA. They are more competent certainly than I am, to measure economic impacts, and I do not have any problem admitting that I was wrong.

39 I think that the major price impact is going to be because the systems for using coal are going to develop faster than additional coal production, and we are going to have a severe pricing problem.

39 Mr. SEIBERLING. Mr. Secretary, are you aware that the price of coal today is being determined, not by the cost of production but by market forces, particularly the increase in the price of oil, and that the price has risen almost threefold in the last 2 or 3 years, and that the operator's profits have risen astronomically as a result?

39 How can we say that adding 35 cents a ton to the cost of strip mining coal is going to have any effect on the market price of coal, when the price is astronomically higher than the cost of production?

39 Secretary MORTON. It will be the limiting of production, and the curtailment of supply that will force the price up. I am not arguing the point that 35 cents a ton will have any major effect on the price of coal.

39 Mr. UDALL. I have committed myself to terminating at this time, gentlemen.

39 Mr. ZARB. Mr. Chairman, it is important that this further dimension of the issue get in the record. The Congress mandated the FEA to order the conversion of utilities from oil to coal, under certain circumstances, and with certain directives.

39 For some months after I took office the Congress asked me why we had not after almost a year, used that authority.

39 We have recently put that authority into use much to the chagrin of many utilities, and many Members, but the point is that we are placing a demand on coal.

39 Now, when we do that, if in our calculation - and I agree we have a disagreement with respect to Mr. Morton - but if in our calculation, we are reducing the available supply over the same period we are increasing demand, when we are increasing the price at some extraordinary rate, because all of the difficulties you articulated.

39 That is a consumer cost increase, that will accrue, if that is the event that will take place.

39 Mr. SEIBERLING. Do you agree that the 35-cent fee will have no effect on the production of coal?

39 Mr. ZARB. Mr. Seiberling, I agree with that. I will stipulate to that point.

39 Mr. RUPPE. Mr. Chairman, can you give us a minute?

39 I just want to take 1 minute. As these hearings terminate, the hearings have been held so that the majority has been able to question the witnesses, and the minority has not had equal time, and I regret that the hearings are not really calculated to encourage the minority support for the override vote when the legislation comes to the floor.

40 I say that regretfully because I will vote to override, but I do not think the hearings are really geared this morning to elicit the minority support, and I think it will give some credence to the suggestion made that this perhaps is a political contest, and unfortunately it is not related to what I consider a very worthwhile piece of legislation.

40 Mr. SEIBERLING. The hearings are not over. We are merely accommodating the Secretary.

40 Mr. UDALL. Mr. Zarb, could you come back this afternoon? Other members want to ask questions.

40 Mr. ZARB. Mr. Chairman, I just reshuffled my schedule. If it is all right, I would like to stay another half hour to get it done with. I have to be downtown at 1:30, but if we can do something between now and then, I have cleared everything else up to that point.

40 Mr. UDALL. Are there any members of the minority side that have not had a fair show?

40 Mr. RUPPE. I yield to Mr. Skubitz.

40 Mr. SKUBITZ. We started at 9:45; it is now 12 o'clock. Mr. Steiger has had 3 minutes.

40 Is that what the chairman considers fair time, and will that be the distribution of time this afternoon?

40 Mr. UDALL. I do not think my friend from Kansas can ever say that at a meeting I presided over there has not been a fair distribution of time.

40 These hearings are a special case. Those who support the bill wanted to know the basis of the calculations by which we are going to lose all of this coal production, so the chairman has deliberately allocated the time to the proponents of the bill.

40 I am prepared to hold hearings this afternoon, tonight, and tomorrow, so the members of the minority can feel they have had a proper share of time.

40 Mr. Zarb said he can stay a little longer. I am now going to the minority to ask questions.

40 Mr. Ruppe?

40 Mr. RUPPE. Mr. Chairman, I might say, as far as I can remember, the Chair has always been very fair in allocation of time, perhaps with the presence of these distinguished men, we in the minority should be given the opportunity to have their expertise as well.

40 Mr. Zarb, I have had the opportunity to gain from the slight delay in my addressing my question to read your statement. On page 11, you indicate that in the case of a number of small mines, they simply do not have the cash flow to afford the technical resources, to perhaps afford the expertise that would be necessary at times in submitting an application for permission to mine.

40 As I recall, the small mining coal prices have risen substantially more than the prices of the major mines - those that are on long-term contracts.

40 My understanding would be that small mines have been able to increase their prices substantially more than was suggested by my colleague from the Senate a few months ago.

40 It is hard for me to understand, in view of the quadrupling of prices, why they could not afford the administrative costs for filling out the permits you suggested.

41 Dr. FALKIE. The pricing situation rose to a peak increase in terms of what the delivered prices of coal was, both from the contract market and from the spot market. In recent months the spot market prices have been going down.

41 Mr. RUPPE. What are they now, compared to a year and a half ago?

41 Dr. FALKIE. I have the figure from the Federal Power Commission, on delivered prices, something like in excess of \$15 for the long-term contracts, and something around \$2.5 for the spot market, and these are still going down.

41 This is February delivered prices to the Federal Power Commission, data that is collected from the electric steam power fire plants.

41 Mr. RUPPE. The prices are up over a year and a half ago, prior to the oil embargo.

41 Dr. FALKIE. Yes.

41 Mr. RUPPE. Have they doubled, tripled, what would they be?

41 Dr. FALKIE. I would guess in the order of being doubled. I do not have the number with me.

41 Mr. RUPPE. How can you say the small mines would go out of business, because they simply could not afford the cost of filling out a permit application?

41 Mr. ZARB. Mr. Ruppe, the cost of filling out the forms is, according to my information, only part of the total exposure of the capital investment required. You do have to make a judgment, as to whether those mines would continue in operation, faced with that capital investment. And there is a further point. We know it in virtually every business that we regulate, there is a point beyond which you squeeze out marginal production.

41 Mr. RUPPE. Have you squeezed out marginal production under the Pennsylvania law in the last year and a half; have any operators who are operating in Pennsylvania and Ohio, say subsequent to the oil embargo, found that the Ohio and Pennsylvania mandates, precluded them, even with the higher post embargo price for staying in business?

41 Dr. FALKIE. As this chart has shown, there was a definite drop of production in Ohio.

41 Mr. RUPPE. I am speaking of the Ohio production, which was prior to the oil embargo, was it not? Subsequent to that time, has any time that is in business after the oil embargo, had to, because of stringencies of filling out the form, not been able to stay in business in Ohio and Pennsylvania?

41 Dr. FALKIE. There is more than just filling out the forms, Mr. Ruppe. It is a matter of availability of equipment, availability -

41 Mr. RUPPE. I have a limited amount of time. I read your statement, Mr. Zarb. As a result, operators would simply not be able to bear the front end costs of applying for and obtaining a permit to mine? They would have great difficulty in meeting the increase?

41 I cannot conceive of the small operators, because of reporting requirements, because of application requirements, with the high price of coal as it is today, not being able to stay in business.

41 Mr. HILL. The spot market price is coming down.

41 Mr. RUPPE. I know it is coming down. It has come down from what?

41 Mr. HILL. In December of 1974, it was \$2 8 a ton. In January of 1975, it was \$25 a ton, in February 1975, - so it has come down.

42 Now, the small operator is less efficient. He has higher costs than the larger operator, so I am comparing differences between the spot mining and -

42 Mr. RUPPE. He does have a higher price too. The big operators are under long-term contracts with lower prices.

42 Mr. HILL. That is correct, but in the case of Ohio and Pennsylvania, I think one of the features of those two State laws, in fact all of the State laws we have looked at, there are special provisions and variances just for small miners that are not in this bill, and we think that reflects

the fact that some States also made judgements in some of these heavy requirements, all of these requirements, when in fact there is substantial damage -

42 Mr. RUPPE. Do the Pennsylvania and Ohio laws require similar identification?

42 I want the Department of Interior. They administered the bill. I want the Department involved who say they can manage this bill.

42 Mr. ZARB. Mr. Hill is from the Federal Energy Administration.

42 Dr. FALKIE. The answer to your question is that the Pennsylvania and Ohio laws are considerably more lenient in regard to the front end part that we are talking about, No. 1, and, No. 2, the Pennsylvania and Ohio laws are considerably more lenient with regard to variances.

42 Mr. RUPPE. We are talking about the initial application requirements, and if you could send us a letter outlining them it would help us very much.

42 Dr. FALKIE. I would like to submit to you, for the record, if you wish, an analysis of the comparison of all of the State laws, with this particular proposed legislation that we are working on now. I think it will show you, in a qualitative way what the differences are.

42 Mr. RUPPE. Mr. Zarb, I have a few minutes left, on page 13, getting to a more technical subject, you indicated in your third paragraph that the bill would require operators to use any existing technology. It could require operators to apply technology, although only theoretically available.

42 Now, it is my understanding in reading the conference report on page 38, there would have to be measures undertaken to minimize disturbances to the hydrological balance by having the operators prevent disturbances to the extent possible, that is, to make them use the best technology currently available, so I would suggest that I have some difficulty with your testimony because you state that they have to use any existing technology and I believe the language says to the best extent possible.

42 Also, you say theoretically available technology, and I believe it is currently available.

42 We are on the subject of semantics; is not that substantially different than what your testimony would indicate to the average layman?

42 Mr. ZARB. I guess it comes down to our definition and the word "theoretical," whether that is an economic judgement or not.

42 Mr. RUPPE. Theoretical and current. You would identify those two as the same?

42 Mr. ZARB. Theoretical in that context seems to me that our interpretation may have created the problem you described.

42 Mr. RUPPE. As I recall, fusion is theoretically possible, but not currently available. I do not believe anybody would suggest that they are synonymous.

43 Mr. PECK. As a lawyer, could I speak?

43 Mr. RUPPE. Not from your department, please.

43 You can take a phrase that says currently available, and say this means theoretically available. They are logically different interpretations, and I cannot believe the Bureau of Mines would read both interpretations the same way.

43 Mr. HILL. Mr. Ruppe, it means any technology currently available to prevent the siltation problem.

43 Whether or not that is economical does not appear to be an available test under the law.

43 In fact, in our own proposed amendment, we asked for a practicability test, and that was rejected in the act itself.

43 Mr. RUPPE. It says to the extent possible, does it not?

43 Mr. HILL. It does say to the extent possible, as to whether or not the technology would fit that geological situation, but we had specifically asked for this economic test, and did not get it.

43 Mr. RUPPE. I understand Mr. Zarb has an urgent request to be elsewhere, and I prefer to hold my questions for someone else.

43 Mr. UDALL. Mr. Steelman?

43 Mr. STEELMAN. We have been around and around over the past 3 years and we have had various technical questions, and a number of us have been involved in this process, but I think the vast majority of our colleagues still have to decide whether to sustain or override.

43 On the bottom line, I would have to ask two basic questions: Whether or not it is a reasonable thing to require operators to do as the bill directs, because I do think that we have taken a middle ground here, or do we follow our distinguished colleague from West Virginia who says to abolish all strip mining, allow just underground mining? We also have others that say let us go on as usual, but I think we have come up with a reasonable middle ground, which allows mining of coal, but also has strict standards.

43 I think the economic impact really represents the bottom line for most of our colleagues.

43 I find myself in agreement with George Meany, and that is not usual. Over the years, where there was the remotest possibility of any adverse economic impact to the membership, he is the first one down here, or at least those who represent him are, to say do not pass this bill. But they formally endorsed this legislation and I would say especially given the kind of economy we are dealing with now, it is very difficult to understand how this could represent a decline in employment, and still be endorsed by the AFL-CIO.

43 Now, why in the world would George Meany and the United Mine Workers come up here and formally endorse this bill if that was so?

43 You say it will represent a loss of 36,000 local jobs.

43 Mr. ZARB. We went through that line before, and I will repeat what I responded with before, Mr. Steelman.

43 In looking at the bill from the energy standpoint we had to base our judgment on the facts put before us. I have no idea why -

43 Mr. STEELMAN. Now, the question is, who put the facts before you, and, I think this complements the line of questioning by our colleagues earlier, who is putting the facts before you?

43 Mr. ZARB. Well, let me answer your first question, before we get to the second. It is clear from our standpoint, from the FEA standpoint, we are looking at the energy equation, and it is also our observation that not everybody does that always, when we have one piece of legislation, one discipline versus another.

44 We came to the conclusions based on an interagency analysis, it was not only energy and

FEA people, it was the Department of Interior Bureau of Mines, Office of Management and Budget, Commerce, Treasury, all of those people involved, that developed the set of facts for us to base our judgment upon.

44 We did not start with a judgment that we ought to find a way not to sign the bill. We started in reverse. I tried to find a way to approve this.

44 It was clear before us, that this would have an economic impact in a number of dimensions. It would reduce supply at a time when capacity was important, because we are in the business right now, today of mandating conversion from one fuel to another.

44 We will be in court, with that, I am sure, because people will complain that we have cut the potential availability of long-term contracts.

44 We have to fit both sides of the equation together, and that is our job, so we called the shots the way we saw them.

44 Mr. SEIBERLING. I would like to ask Mr. Zarb if they consulted with the Department of Labor in determining what the job effects of this would be, since that is the Department that is supposed to be expert on this.

44 Mr. HILL. Yes, they were. We had a number of meetings on the problem of the unemployment calculations. The basic work that was used in the development of the unemployment figures, relating to the level of production losses that we estimated, was based on some work done by the Department of Commerce, the economic people, and the professor from West Virginia University, who is a substantial nationwide authority on output methods, and we used basically his formula, even though there were some studies that projected higher unemployment, we used his basic studies.

44 Mr. SEIBERLING. In other words, the Department of Labor was not involved in making the calculations?

44 Mr. HILL. They were at the task force meetings that we had.

44 Mr. STEELMAN. Could you furnish us with the names of the Department of Labor people who were present?

44 Mr. HILL. We would do that.

44 Mr. STEELMAN. My understanding is they were not involved in making the calculations.

44 Mr. HILL. They were at the meetings.

44 Mr. STEELMAN. What this means then, is that the agency within the executive branch which traditionally would have been the advocate regarding employment aspects, along with the unions, was not consulted.

44 Mr. HILL. Mr. Steelman, we used the studies of the Department of Commerce. They had done some of these studies. They historically have put out studies relating to unemployment in a lot of the areas. I do not think the Labor Department has ever done any particular studies in this area, thought we did go to the authorities.

44 Mr. STEELMAN. The point is, however, when you are citing statistics, the credibility of the source, of course, is always open to question and I have great respect for the Department of Commerce, but I would also say you should also consult others. Not just let the agency whose historical role has been as an advocate for big business. Let me ask one final question. Most of us on this side of the aisle, most Republicans pride ourselves in our devotion to the free market concept, and I certainly pride myself in that devotion, and part of that devotion to a free market economy is that the cost of goods should reflect the true costs, economic costs as well as social costs involved in protecting the public health and safety.

45 Now, we had a witness here yeaterday from our agency, Mr. Clayman, and he was arguing with respect to the nuclear problem, that all costs should be internalized in the product. Yet you say the exact opposite with respect to coal, that is we should not internalize reclamation costs by the imposition of reclamtion fees.

45 Now, it seems to me there is a clear social cost here, that would have to be paid someday out of the Treasury, if we are going to reclaim these lands. Unless we do it by this reclamation fee. There seems to be some inconsistency here in the testimony.

45 Mr. HILL. I do not think there is any inconsistency. I think it is a general rule that the administration has consistenly argued that costs should be reflected in the environmental kind of considerations in the product, and the output of any goods and services, even though the Congress has gone differently than that in the past.

45 That has been the administration's consistent position.

45 I think in the case of the surface mining bill, it is our judgement, there are costs in H.R. 25, which are for what is required to be, far in excess of what is required to reclaim the land, and we need to bring some of those costs down, and still have an adequate reclamation.

45 I do not think everybody on record is against reclamation.

45 Mr. STEELMAN. What would be a reasonable reclamation fee, would it be 25 cents?

45 Mr. HILL. I think the 35-cents fee is not a major turning point, or it should not be in terms of the impact that this bill would have on production, and what that applies to, the 35-cent fee would be lost, it would be inconsequential if it were lost.

45 Mr. PECK. If I might inject a note, I think it is important to make the distinction between reclamation of ongoing operations, and the reclamation of orphan lands.

45 The 35-cent fee we are talking about is an excise tax in substance. It is enacted on coal which is being mined now, and presumably passed on to the customers of that coal, to reclaim orphan lands which have been destroyed by strip mining in the past.

45 Now, it was the administration's position that an appropriate reclamation fee was indeed a social cost, acceptable and desirable, and the administration's bill provided for that. The difficulty was when the interagency task force reviewed the amount of land required to be reclaimed, and the possible rates of expenditure, we were concerned that that fund could be spent in realistic reclamation contracts.

45 It was determined that the 35-cent fee from the very beginning of the date of enactment was too much and too soon, so the original administration proposal was for a lesser amount, with a scaling, so that the amount would increase over time, as reclamation activities increased.

46 The amount of the fund, which we calculate for the first full year of production, under this bill, is \$109 to \$1 58 million, which we cannot possibly spend. To the extent that this money is retained in the Treasury and not spent, it has a recessionary impact, it creates no jobs, and is simply another tax imposed on today's customers for the last generation of users.

46 Mr. STEELMAN. Let me make one final point, and I will yield the rest of my time to my friend from Ohio.

46 The only alternative as far as this orphaned land is to go to the general Treasury. Either we have been in the present condition, either we funnel in a reclamation fee, or we go to the general Treasury. I know from the Office of Management and Budget, if we did this, we would not get the time of day, so either we go through it this way, or we leave it the way it is.

46 Mr. PECK. The President has not opposed the concept of the reclamation fee. It was the amount and timing of the fee.

46 The administration's own legislation had such a fee and provided for such a fund.

46 Mr. RUPPE. Mr. Hill, you indicated the FEA does not support this legislation.

46 Has your department at any time supported any or expressed their support for any surface reclamation legislation?

46 Mr. HILL. We are a fairly young agency.

46 Mr. RUPPE. So your memory would be reasonably fresh.

46 Mr. HILL. FEA was created after the whole surface mining was going on, but I know Mr. Zarb, myself, and Mr. Zausner have consistently argued that we need surface mining reclamation.

46 Mr. RUPPE. Have you ever supported in any meeting, any Congress, any bill, any administration?

46 It is my understanding that the FEA has always been against a bill.

46 Mr. HILL. That is not correct.

46 Mr. RUPPE. You have consistently supported legislation?

46 Mr. HILL. Yes.

46 Mr. PECK. We did support it.

46 Mr. RUPPE. I never heard the Department of Commerce at any time get up and support a bill.

46 Mr. UDALL. The Chairman proposes to recess in just a moment until 1:30.

46 Mr. STEIGER. I would just like to explain for the edification for the record, if nothing else, the basis of Mr. Meany's support, and the United Mine Workers support.

46 I suspect the witnesses -

46 Mr. UDALL. You are a spokesman for them?

46 Mr. STEIGER. Absolutely. This is something of a shock to you, I know it was to Mr. Meany, the fact is that the United Mine Workers structure is made up of 12 divisions in the areas of the country.

46 On the vote as to whether or not to support the Surface Mining Reclamation Act, the vote was 5 to 4, because of three of the divisions, 5 to 4 in our position.

46 Those who opposed it had a significant number of surface miners in their membership. Those who supported the bill, where membership consisted largely of underground mines, and, in most instances, whose wages were geared to the price of coal. It is a fairly simple equation, if the price of coal goes up, the wages go up.

47 If there is a shortage of coal, there will be an increase in the price of coal, therefore, there will be an increase in wages. In order to guarantee the support of the mine workers, they brought in the three Canadian districts and asked them to vote. Since they are not under the regulations or the mandate of this bill, they had not been contributing to the increase in the cost of coal, because their wages would also have gone up, so they supported the bill.

47 That is the way they ended up on the issue, whatever the figure would result in, the 7 to 5 vote.

47 Mr. UDALL. Except that the mine workers are not part of Mr. Meany's -

47 Mr. STEIGER. I understand that. Mr. Meany has an obvious objective interest, and this was a very reasonable way to support the mine workers, so it seems to me there should not be any mystery as to why they have supported this measure, and I would hope we would not substitute the judgment of the United Mine Workers, or Mr. Meany, when we evaluate the specifics of this legislation.

47 Mr. SKUBITZ. I think I would also like to point out that the United Mine Workers membership is composed of 75 percent below ground operators and only 25 percent above

ground.

47 Mr. UDALL. Mr. Seiberling?

47 Mr. SEIBERLING. The Department of Interior's estimate of the cost of reclaiming all of the orphaned lands was \$9 billion, and on that basis, the fee that is included in this bill at the current rate of production would take about 90 years to reclaim all of the orphaned lands. Even if we assume an increase as projected by the Department, it would take about 60 years. So I do not see how the Department could take the position that this fee is excessive. Of course, a 10-cent-a-ton fee would take probably a couple of hundred years. I just put that in the record.

47 I would also like to put in the record that Professor Miernyk's study, which was cited by Mr. Morton, was done on the abolition of strip mining, not the regulation, and, incidentally, his conclusion was that if we abolished it entirely, there would be an increase in jobs, because deep mines employ more people than strip mines for the same amount of production.

47 Mr. UDALL. We will reconvene at 1:30 in the Interior Committee room of the Longworth Building.

47 [Whereupon, the hearing was recessed at 12:20 p.m.]

47 AFTERNOON SESSION

47 Mr. UDALL. The subcommittee will come to order.

47 Do you have your troops here?

47 Mr. HILL. Ready to go, Mr. Chairman.

47 Mr. UDALL. We asked before lunch for the presence of Mr. Jack Reed, Mr. Hadley, and Mr. William Keefer.

47 Are they here?

47 Mr. HILL. They are all here.

47 Mr. UDALL. Will these gentlemen please stand up.

48 At the request of several subcommittee members I am going to administer the oath to these professional witnesses, not because of any doubts about their integrity, but because it has been suggested that they may need this additional protection since questions will be asked of them. Will each of you raise your right hand?

48 [Whereupon, Mr. Reed, Mr. Hadley, and Mr. Keefer were duly sworn.]

48 Mr. PECK. Mr. Chairman, in view of the fact the witnesses have been sworn, may I introduce the Deputy Solicitor of the Department of Interior, as counsel for the witnesses?

48 Mr. UDALL. Yes, you may.

48 Mr. PECK. This is Mr. David Lindgren.

48 Mr. UDALL. Mr. Melcher?

48 Mr. MELCHER. Mr. Reed and Mr. Hadley will please come forward.

48 Mr. HILL. Mr. Chairman, I might like to ask a few question, if I can, before we start. I would like to ask if we would have an opportunity for Mr. Falkie to go through a very brief presentation of our production loss estimate. I think that would be very useful. It would be a summary of the report we are providing, but I think it would be a very useful thing to do, so that we could think about the entire methodology that was used. I do not think it would take very long.

48 Mr. MELCHER. Mr. Chairman, I would suggest that we do that after we get through with Mr. Reed and Mr. Hadley, or perhaps that would be in order, but we have been waiting -

48 Mr. UDALL. We will give you that opportunity.

48 Mr. SEIBERLING. Mr. Chairman, do you know whether any of the minority members plan to be present?

48 I would hope we would not have the claim later that they were not able to participate.

48 Mr. UDALL. They were advised of the hearing, and under the committee rules, we are within our rights to proceed.

48 Were phone calls made to all minority members?

48 I suggest that be done now, and that we go ahead and proceed.

48 STAFF MEMBER. The meeting was announced.

48 Mr. UDALL. To fully protect ourselves, I suggest we call each member.

48 Mr. Melcher?

48 Mr. MELCHER. You are Mr. Reed?

48 Mr. REED. Yes.

48 Mr. MELCHER. And Mr. Hadley is to your right?

48 Mr. REED. Right.

48 Mr. MELCHER. Mr. Reed, I believe on the 14th of April you attended the meeting in Mr. Udall's office and several other employees of the Department of Interior staff to discuss the impact of the bill's provisions, regarding the alluvial valley floors.

48 Now, if that is the case, was it not a fact that at that time you were projecting the worst set of circumstances you could conjecture as to how much of the loss there would be in full production, due to that provision in the bill?

48 Mr. REED. Yes, sir; we attended that meeting according to my records on the 14th in Mr. Udall's office, with several members of the committee staff and of the Geological Survey, and of the Bureau of Mines.

49 The meeting was specifically to discuss two overlays which the Geological Survey prepared at the request of Mr. Kraft of the Senate committee staff, in response to a specific question about the effects - the worst possible effects, as you worded it - of the wording of S. 7 as it then stood on strippable coal, specifically in the Powder River basin.

49 Mr. MELCHER. Now, in doing that, it is my understanding you talked about whether colluvial soil was involved.

49 Mr. REED. Yes, sir.

49 Mr. MELCHER. And I wonder why.

49 Mr. REED. The reason for that?

49 Mr. MELCHER. Yes; since it was not anywhere in the bill?

49 Mr. REED. Yes, sir; the reason was, could somebody read the exact wording of the alluvial valley floor provision in S. 7, as it stood at that time?

49 Mr. MELCHER. Were you dealing with the definition, Mr. Reed?

49 Mr. REED. Yes, sir.

49 STAFF MEMBER. "Alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

49 Mr. REED. The reason we brought up the question was as follows: We presented at that meeting, I believe to Mr. Crane of the committee staff two paragraphs from the Glossary of Geology published by the American Geological Institute.

49 One of these indicates that under one usage of the word alluvial, colluvial deposits may be included under the term, general term alluvial.

49 Mr. MELCHER. Mr. Reed, that definition, is that not the same definition, word for word, used and recommended by the administration's bill?

49 Mr. REED. I am not cognizant of the exact wording of the recommended bill.

49 Mr. MELCHER. Would I be advised by staff; I believe it is the exact wording.

49 Mr. CRANE. Yes, sir.

49 Mr. MELCHER. It is the exact wording. So your concern at this April 14 meeting was on the possible interpretation that upon review some doubt was cast on what the language meant - the definition meant?

49 Mr. REED. Yes, sir.

49 Mr. MELCHER. And you were not aware it was the same language that had been recommended many months prior to that time by the administration bill?

49 Mr. REED. No, sir; I was not. In fact I am not aware of the recommended administration bill.

49 Mr. MELCHER. Now, in going over its interpretation, you had already arrived at it, but in reviewing it for the satisfaction of the committee staff, had you not read the committee report that accompanied the bill?

49 Mr. REED. Sir, I am not aware of the various documents that customarily evolved during the work on the bill of this sort.

49 The committee report, as I understand it, is this document that I have here; maybe somebody could tell me whether this is the document to which you refer.

50 Mr. MELCHER. No, that is the conference report. The committee report would have accompanied the bill.

50 Mr. REED. I have now read the committee report.

50 Mr. MELCHER. Well, after you discussed your interpretation and your fears with the committee staff on April 14, in Mr. Udall's office, was it not a fact that you agreed that your projection was based on a very unreasonable interpretation of this section of the bill.

50 Mr. REED. Yes, I did indeed agree.

50 Mr. PECK. Excuse me.

50 What projections?

50 I did not hear the witness.

50 Mr. MELCHER. The loss of production, I believe the figure you were using at that time was 28 million tons loss of production.

50 Mr. REED. Sir, I do not believe any figures which the Geological Survey presented ever referred to loss of production. They referred to loss of reserve.

50 Mr. MELCHER. Well, let us put it this way. You have to map out for the Bureau of Mines to arrive at a figure. You mapped out the area, but after reviewing the language with the staff, you did agree, is it not true, that including colluvial soils in the identification of the definition was unreasonable.

50 Mr. REED. Yes, we did.

50 Mr. MELCHER. And, therefore, because of that, that would then change your mapping drastically, would it not?

50 Mr. MELCHER. It would in fact narrow it down to a very small area, as compared to where you started.

50 Mr. REED. In fact there were two maps discussed at that meeting, and we have been discussing one of them.

50 The other one showed something on the order of 3 percent of the area of the Powder River basin, so the second one -

50 Mr. MELCHER. So the 3 percent of the Powder River basin then would be the interpretation that you arrived at, which was the intent of the bill?

50 Mr. PECK. Mr. Chairman, may I clarify again, we are talking about the definition in

section 601 of the administration bill, is that correct?

50 Mr. MELCHER. I will get to you later on, but we will now use Mr. Reed.

50 Of course we are talking about the definition. We do not need to be reminded of that, and the map, the two maps that you referred to, Mr. Reed, one of them would include colluvial, and this would be in the larger areas.

50 The second one would be limited to the alluvial valley, and that was the very narrowly defined area on the map, and about 3 percent of the Powder River basin?

50 Mr. REED. That second map, if I may clarify a little bit was using a wording, which a group of professional people at the Geological Survey were suggesting to the Senate committee, as a possible wording, and that wording, I believe, you have copies of those maps with you, sir?

50 Mr. MELCHER. We are aware of the wording.

50 Mr. REED. The second one referred to a wording, which I quote here, I believe, that we were suggesting, was never in the bill, in which alluvial valley floors were taken to mean, the flood plains and channels underlaid by unconsolidated stream laid deposits, holding perennial streams, where water availability is sufficient for subirrigation or flood irrigation agriculture activities, and I call your attention specifically to perennial streams.

51 Mr. MELCHER. Yes, and we are aware of that, which is identified on this documents as B.

51 Mr. REED. Yes, sir.

51 Mr. MELCHER. In contrast to A, which was more closely identified with the language that is in the Senate bill, and which was in the bill recommended by the administration.

51 Mr. REED. Yes, sir, I think that is now clear.

51 Mr. MELCHER. Is that correct, Mr. Hadley?

51 Mr. HADLEY. Yes, sir.

51 Mr. MELCHER. On the documents that were discussed on that day, and which were later discussed with Senator Hansen and Senator Metcalf, and I believe in correspondence there was an accompanying document that listed a number of mines in the West, and bearing in mind the

alluvial floor section only refers to mines west of the 100th meridian, and some of these were identified as being in the area of the alluvial valley floors, which would be covered by the definition of the House or Senate bill.

51 Mr. LINDGREN. Would it be possible, if there is reference to documents, where documents are to be discussed by witnesses, that those documents be sufficiently identified for the record, so there could be no question whatever about which documents the witnesses are in fact discussing.

51 Mr. MELCHER. This document is entitled "1974 Coal Production" based on the interpretation of the language in H.R. 25, and it is dated April 15, 1975. n1

51 n1 See Appendix, pp. 227-29.

51 Does that identify it sufficiently, counsel?

51 Mr. LINDGREN. Yes.

51 Mr. MELCHER. On this document there are a number of mines at the left, they were mining at that time, and are mining today, that are identified on this document on the alluvial valley floors.

51 Mr. Hadley, are you familiar with the Black Mesa Mine in Arizona?

51 Mr. HADLEY. I know where it is, but I have never been there.

51 Mr. MELCHER. Are you advised whether it is on the alluvial valley floor?

51 Mr. HADLEY. I could not really say.

51 Mr. MELCHER. The Navajo Mine?

51 Mr. HADLEY. I am familiar with that, and I have been there.

51 Mr. MELCHER. Would you identify that as being on the alluvial valley floor?

51 Mr. HADLEY. No, sir.

51 Mr. MELCHER. You categorically say it is not on the alluvial valley floor.

51 Mr. HADLEY. It is not on the alluvial valley floor, as far as I am concerned.

51 Mr. MELCHER. The Western Energy Mine at Colstrip, Mont.?

51 Mr. HADLEY. I am not that familiar with that mine to say one way or the other.

51 Mr. MELCHER. Have you been at the Westmoreland Mines at Sarpey Creek?

52 Mr. HADLEY. Yes, sir.

52 Mr. MELCHER. Is that on the alluvial valley floor, as described in H.R. 25?

52 Mr. HADLEY. No, sir, I don't think it is.

52 Mr. MELCHER. Let the record show that these mines are really listed here as being on the alluvial valley floor.

52 Mr. LINDGREN. Did that question go to the definition in H.R. 25?

52 Again, what definition is the Congressman using for purposes of asking the question, as to whether or not this witness' opinion is that they are on the alluvial valley floor -

52 Well, the point is -

52 Mr. MELCHER. I identified this as H.R. 25.

52 Do you understand the question, Mr. Hadley?

52 Mr. HADLEY. Yes, sir, but I am not sure I understand what document you are talking about. I don't think I am familiar with that document.

52 Mr. MELCHER. Pass the document down to the floor.

52 Is counsel for Mr. Hadley attempting to infer that the definitions are different between the several bills?

52 Mr. LINDGREN. Mr. Melcher, I am attempting to infer nothing. I am just concerned, inasmuch as these witnesses have been sworn, that there be no question whatsoever as to what definition is being used at any particular moment.

52 Mr. MELCHER. Let the record show that the definitions in any of these bills are the same, but that document refers to H.R. 25.

52 Mr. UDALL. Could I interrupt just a moment.

52 We have a large group outside trying to come in. Unless there is some objection, I will move some of the press to the lower table, and leave the upper level to the members of both sides. That will free up some seats for some of the spectators that want to get in.

52 Members of the working press may take the seats up here.

52 While I am interrupting, Mr. Melcher, it might be wise, in view of the criticism this morning, to get some kind of understanding on the division of time.

52 The Chair would propose, as a suggestion, that we proceed in the usual order of 10 minutes' interrogation. Is that agreeable?

52 Ten minutes for each member, and the Chair will list the members in order as to their arrival, as we customarily do, and since we did not impose this on Mr. Melcher, we will give him another 8 minutes or so.

52 Mr. MELCHER. That is very agreeable to me, Mr. Chairman.

52 Mr. Hadley, you have identified two mines listed, the Navajo mine near Farmington, N.Mex.

52 Can you find that mine on there?

52 Mr. HADLEY. Yes.

52 Mr. MELCHER. All right, and it is listed in this document as being on the alluvial valley floor.

52 From your own knowledge, that is not on the alluvial valley floor under the definition as provided in H.R. 25 or the Senate bill, or the administration proposal.

52 Mr. LINDGREN. Mr. Chairman, if I may interrupt, I do not believe that document identifies that mine as being on the alluvial valley floor.

52 Mr. HADLEY. If these represent no production on the alluvial valley floor, then the Navajo mine is not on the alluvial valley floor?

53 Mr. MELCHER. Pardon me, Mr. Hadley, do you not understand what that chart refers to?

53 Mr. HADLEY. No, sir; I do not.

53 Mr. MELCHER. The X's in the last column identifies production on the alluvial valley floor.

53 Mr. LINDGREN. Mr. Chairman, I do not believe the document so identifies it, but I believe there are other witnesses that could do that.

53 Mr. MELCHER. I believe we have to interrogate counsel.

53 Counsel, will you refer to the last page of that document?

53 Mr. PECK. Mr. Chairman, could I suggest somebody from the Bureau of Mines?

53 Mr. MELCHER. Could you refer to the last page. n1

53 n1 Page 229 of Appendix.

53 What is in the total, 45.1 under estimated production of alluvial valley floor mean?

53 Mr. LINDGREN. I believe there is a footnote, it states "estimated production based on H.R. 25 as amended. A strict interpretation of burden of proof, that no alluvial valley floor," and so on.

53 May I ask if there is a specific question in the committee's mind, I would like to state there are witnesses here willing to address the meaning of this document, how it was prepared, what it references, and so forth.

53 These are technical witnesses, from the Department, who are capable of answering a number of the Congressman's questions, but I do wish to make certain inasmuch as this is sworn testimony, that there is a clear understanding in the witness' mind exactly what they are being asked to respond to.

53 Mr. MELCHER. Counsel, I believe the document speaks for itself. It is very clear, as the column states, activity on the alluvial valley floor, a million tons.

53 The footnote that you have read may further clarify that, but it is what we are asking about, whether or not these mines are located on the alluvial valley floor.

53 Mr. PECK. Mr. Melcher, if you look at the total of the last page, does that not add up to the indicated total?

53 Now, independent of that, this is the question we got into this morning. The language of the bill would proscribe mining in areas other than the alluvial valleys, and the areas that you are discussing here are precisely those kinds of areas which in the judgment of the Bureau of Mines would suffer production loss because there would be an adverse effect on the alluvial valley floors.

53 It does not relate to the definitional section of the bill alone, but to the operative language

of the bill, which prohibits mining where there would be an adverse effect on these kinds of areas.

53 Mr. MELCHER. Mr. Peck, either the X's mean on the chart that they are on the alluvial valley floor or it means that they are not on the alluvial valley floor.

53 Mr. PECK. No, sir. But I did not do the document. Maybe we could have someone who is familiar with the document, and I would say they could identify specifically what it refers to.

53 Mr. MELCHER. Does anybody care to identify that, whether the X's mean on or off.

53 Mr. FALKIE. The X's mean that in the judgment of our professional people these mines are either on the alluvial valley floor or can adversely affect the alluvial valley floor, or the hydrology, so it is the whole package.

54 Mr. MELCHER. They are to indicate that their mines would have an effect on the alluvial valley floors so we agree on that.

54 We will proceed, Mr. Hadley. We have identified two that are listed here as being on the alluvial valley floors, that are -

54 Mr. LINDGREN. Mr. Chairman?

54 Mr. STEIGER. He is just restating what has been said. Mr. Chairman, as long as the witnesses are under oath, and that is an introduction to a question, a misstatement of what has been said, is contained in the question. I must object to that.

54 Mr. MELCHER. Mr. Hadley, tell us in your own words, whether or not the Navajo mine near Farmington, N. Mex., is on the alluvial valley floor.

54 Mr. HADLEY. To my knowledge, it is not.

54 Mr. MELCHER. You do know the mine?

54 Mr. HADLEY. I have been there, yes.

54 Mr. MELCHER. Thank you.

54 Now, the next one that you seem to have some knowledge is the Westmoreland mine, at Sarpey Creek, Mont.

54 Tell us in your own words, is it or is it not on the alluvial valley floor?

54 Mr. HADLEY. To the best of my knowledge, it is not.

54 Mr. MELCHER. You have that on the location?

54 Mr. HADLEY. Yes.

54 Mr. MELCHER. The Decker mine at Decker, Mont.?

54 Mr. HADLEY. It is not now on the alluvial valley floor.

54 Mr. MELCHER. The Arch Minerals mine in the Hanna Basin of Wyoming, are you familiar with that?

54 Mr. HADLEY. I am not too familiar with that mine, no, sir.

54 Mr. MELCHER. You do not know of your own knowledge?

54 Mr. HADLEY. No.

54 Mr. MELCHER. But three of the mines listed, nine in total of your own knowledge, and having been to the sites, you know they are not located on the alluvial valley floor.

54 Mr. HADLEY. Right.

54 Mr. MELCHER. Mr. Hadley, do you have any information that any of the three mines that you have identified as not being on the alluvial valley floor would have an adverse affect on the hydrology involved with that alluvial valley floor that may be anywhere in the vicinity?

54 Mr. HADLEY. The mining would have an adverse affect on the alluvial valley floor?

54 Mr. MELCHER. From your knowledge, any of the three mines that you have identified, do you know that continuation of mining there would have an adverse affect on the hydrology of the area?

54 Mr. HADLEY. I really don't know, sir.

54 Mr. MELCHER. Would you have any reason to suspect that it would have any adverse affect on the hydrology of the alluvial valley floor somewhere in that area?

54 Mr. HADLEY. I don't know, sir.

54 Mr. MELCHER. Well, would you have any reason to suspect such?

54 You answered no, or you cannot give an answer?

54 Mr. LINDGREN. I believe the question was answered.

55 Could the reporter please read that back?

55 Mr. MELCHER. Please read it back, the question and answer.

55 [Whereupon, the reporter read back the last question and answer.]

55 Mr. MELCHER. Your answer is you do not know?

55 Mr. HADLEY. Yes.

55 Mr. MELCHER. You have no reason to suspect such?

55 Mr. HADLEY. No.

55 Mr. MELCHER. Mr. Hadley, the alluvial valley floor is not well understood. The interpretation, and we must try to understand the definition that was read, perhaps it would be well for our record if we asked you to home in on this subject.

55 Tell me, as a professional hydrologist, do you find that definition ambiguous?

55 Mr. HADLEY. No, sir, I do not.

55 Mr. MELCHER. Do you find it subject to a wide range of interpretation?

55 Mr. HADLEY. I did not hear your question.

55 Mr. MELCHER. Would you find the definition to be subject to a widening range of interpretation?

55 Mr. HADLEY. I don't think so, sir.

55 Mr. MELCHER. Would you under any circumstances find that definition inclusive enough to cover colluvial deposits?

55 Mr. HADLEY. No, sir.

55 Mr. MELCHER. Well, then, it seems apparent, Mr. Hadley, that you as a professional hydrologist, would be able to correctly identify what areas, which mines, might be interfered with or might be affected, by this section of the bill, and as a professional hydrologist you have found three mines that are listed of the nine, that you know, and have visited, and can assert affirmatively are not on the alluvial valley floor, and, furthermore, that you have no knowledge that mining at those locations would adversely affect the hydrology of the adjacent alluvial valley.

55 I think you have been a most helpful witness, and I think it does point out the factual information that was gathered in this basic document that we have referred to, to arrive at what affect the bill might have on the alluvial valley floor was not based on the expertise and the knowledge you possess, but was based on some inaccurate information.

55 Thank you, Mr. Chairman.

55 Mr. UDALL. Mr. Steiger?

55 Mr. STEIGER. Thank you, Mr. Chairman. I think the record ought to reflect that what we have just had is a reassertation of one professional's opinion and I suspect that Mr. Melcher would be the first to agree that there is not unanimity on very much of this bill as regards either definition or the lack of definition.

55 I do not share Mr. Melcher's connotation, and the information as being erroneous, because of disagreement within the Interior Department as regards the ambiguity or lack of it, of the alluvial valley floor definition, but it makes me even more disappointed at Mr. Melcher's approach, he referred to the April 19 letter to him, in which the administration's objection to name and address by the conference is made very clear. If the words excluding deposit, contributory streams, after the word deposit, then it was felt the bill, the alluvial valley definition would be less erroneous, as regards the administration.

56 We did not add those words, and I suspect that is the basis of whatever designation the x 's, and I do not have the document before me, I suspect that is the basis of that.

56 If I am making an erroneous supposition, I would like to know.

56 Mr. FALKIE. We looked at the alluvial valley floor provisions from the standpoint of what could be interpreted as alluvial valley floor, and geologists do have a different interpretation. I think I can show you this from a sketch I have taken from a geological textbook. Second, we looked at not only what mines are on the alluvial valley floor itself, but what potential nearby mines might have for affecting the hydrology of the area, and of the alluvial valley floor itself.

56 As soon as we get the chart, I can point this out. I would have to say that I would disagree with Mr. Hadley's answer to the question posed by Mr. Melcher, but I do not think the question

was really a broad enough one that he could give a good professional answer, in the first place, with regard to say the Decker Mine, because we have maps showing that the Decker Mine does have alluvial valley floors running right down through it, under the narrowest of definitions.

56 Mr. MELCHER. Mr. Chairman, I must insist that the gentleman's remarks identify the Decker Mine at the time he is referring to, because it was true the Decker Mine was on the alluvial valley floor, and it has now moved off of it.

56 Mr. UDALL. Mr. Steiger has the time.

56 Mr. FALKIE. That depends on your definition of alluvial valley floor, but your question was, is it on the alluvial valley floor.

56 Part of it is mined out. There is another alluvial valley running through it, that is not mined out. I would like to show you an item taken from a geological textbook, and this is a broad type of interpretation, that some geologists could give to alluvial valley floors.

56 Obviously Mr. Hadley does not agree with that interpretation. Now, you asked about how we determine the effect. We look at the effect on not only the meandering stream, whether it is intermittent or permanent, we look at what effect on this whole area a mine might have under a very tight interpretation of the alluvial valley floor provision. We look at the hydrology.

56 The problem with the alluvial valley floor provision, as we see it, is that it would not be able to provide positively that it was not going to have a permanent effect under the alluvial valley floor provision, and we look at this as well.

56 There is also the matter of the lowering of the water tables. Here is a hypothetical example, using the narrowest definition of alluvial valley floors in yellow, and using the cross section of that particular area, as shown here.

56 Now, under the very narrow interpretation, this would be the area affected. The yellow area would be the area affected by the definition in the act.

56 Well, we looked at the possibility of what effect on the rest of the area mining might have, if in fact you mine the area that is the alluvial valley floor, and we also looked at the effect of moving the mining equipment to another area, on the ratios of overburden, on possible delays on

getting equipment to move that additional overburden, so it is the whole picture, it is not one narrow definition of alluvial valley floor that we looked at, but it is the possibility of a broad definition, and it is the possibility of what effect mining could have on the alluvial valley floor that we looked at in our analysis.

57 Mr. STEIGER. This morning you described the election of the United Mine Workers which was held, my numbers were incorrect, and I wish the record to reflect the correction.

57 The numbers involved, because each United Mine Workers Mining district consists of two members, one an international member, and one a district member, and there are 24 votes involved in the outcome of any board action.

57 The final vote was 12 to 11, of all of the directors involved, which I believe Mr. Miller, the President of the United Mine Workers casting the deciding vote, supporting the legislation.

57 The significant thing is that the Canadians did support the legislation in total, even though they were not involved in it, and if they had not voted, of course only the American districts in the United States have been involved, then the United Mine Workers would have opposed this measure, and I am also advised that Virginia District 28, a Virginia district has just completed an election within a matter of days.

57 And that election, the two district representatives from that district were the incumbents, were voted out of office, by the membership of the district, and the issue was the support of the Surface Mining Act, and they were supporters of the Act, they had been replaced by nonsupporters, with the assumption, that if the other district directors remained the same, the assumption, is the vote, if it were taken now, it would not support the legislation.

57 However, be that as it may, some emphasis was placed on the likelihood that there really were not going to have any jobs lost, because the United Mine Workers support of the bill, I suspect that is not a good basis to make a judgment, as to whether or not there will be any jobs lost.

57 Mr. Hill, I wonder if we could have a description, an explanation of the impact, of the estimation of the production of impact overall of the bill, rather than just taking it section by

section, because I think if we attacked this thing on a section-by-section basis, we will lose the actual compilation exercise you went through, so I wonder if you might like to address that?

57 Mr. HILL. I would like to ask Mr. Tom Falkie to run through the specific impacts as they relate to the Alluvial Valley Floor provisions and others, and his brief statement of methodology, how that was arrived at.

57 Mr. UDALL. There is less than 2 minutes remaining on Mr. Steiger's time so please do it as quickly as possible.

57 Mr. FALKIE. We will not be able to do it in 2 minutes, but we will make do with the time we have, with the time that is available.

57 Mr. STEIGER. Mr. Chairman, I ask unanimous consent my time be extended by 2 additional minutes, and I guarantee I will not state one more syllable.

57 Mr. UDALL. Any objections?

57 You have 4 minutes.

58 Mr. STEIGER. First, very quickly, where is the production reserves of the United States, and as you can see, a considerable amount of them are west of the Mississippi.

58 It is generally low in sulfur content, but there is also a considerable amount of low sulfur coal in the east.

58 I wanted to talk about productivity because it has an impact on the employment calculations, and see what the productivity trends are in surface mines. Last year there was a productivity of something like 35 tons per man-day, and in underground mining, it is underground the order of 11 1/2 tons per man-day, and the trend in underground mining is clear. Surface mining has just taken a dip. We used 36 tons per man-day in calculating our production, our employment impact, and I want to point out that in my opinion, this is a conservative number for several reasons. One is it does not include clerical employees. Two, it does not include a ripple effect within the company, and also, in Dr. Miernyck's study, he used a factor that was larger for surface mines than the one we used.

58 Now, the potential problem areas with this bill, can be summarized from an engineering

standpoint, as possible production losses, possible reserve losses, possible consumer cost increases, which John Hill will address, the job loss impact, any energy impact from the overall energy policy and the economic impact in terms of trade deficit and lower productivity.

58 This is what we came up with in terms of a summary of potential production losses in the first full year of implementation, based on projection of 685 million tons per year. Our ranges of course are there because of the great difficulty in interpreting the language of the bill, both from an engineering and a legal standpoint. The high part of that range includes very strict interpretation including a broad interpretation on the alluvial valley floor situation that you mentioned, the steep slopes, siltation, and aquifers (7 to 44 million tons) and, of course, the alluvial valley floor provision, is 11 to 66 million tons.

58 I would like to make one comment in all fairness to Mr. Hadley. I was not aware of, and I do not think the Geological Survey made a production impact study. They did look at reserves, and they did not look at production impact, and I think that should be clear.

58 Now, there is some confusion apparently.

58 Mr. UDALL. You have about 1 minute.

58 Dr. FALKIE. I will not be able to make any presentation of our numbers, but I think the basic numbers are important, so I will go over the basic numbers.

58 Mr. SKUBITZ. Mr. Chairman, I will yield 2 of my minutes.

58 Mr. UDALL. Mr. Skubitz yields 2 of his minutes.

58 Dr. FALKIE. OK.

58 The 1973 production was 592 million tons. It rose to 601 million tons. We projected that, using ratios, up to 685 million tons for 1977, of which 350 would come from surface mining, including a considerable amount in the east.

58 I want to point out one thing, that as to any newer projections, as the numbers come in from the western part of the country, the numbers now appear to be conservative. If we had to make this production estimate today, we would estimate more production for that particular year, from the northern Great Plains area and from the western area in general. This would have a larger impact on our production numbers, but I don't think that is a particularly fair thing to do at this

time.

59 Now, what we did look at, in a qualitative way, was the potential production impact that we could not quantify. One of these was the citizens' suits possibility.

59 We have no idea what that will cost in terms of production. Designation of lands unsuitable to mining - we have no idea what that will cost. The surface owner protection provisions if somebody refuses to allow mining. We talked about ambiguous terms, the possible interpretations by court and regulatory authorities as well. We did look at this in general, and some other parts of the bill, some of the hydrologic provisions, the anthracite language, which was just called to my attention and as to which the conference report confuses us now.

59 Possible State actions with respect to Federal lands. With the States, you have an override on Federal lands. We have not attempted to quantify any of these.

59 Now, we did look at the production west of the 100th meridian, and with no legislation, we estimate this as some 95 million tons to be mined in 1977, 73 million tons with the minimum loss, and 29 million tons with maximum loss under those loss ranges which we showed previously.

59 We also looked at the eastern small mines, and we projected that about 60 million tons without this particular legislation, would be produced. With the maximum loss we would project a very drastic decrease in production to some 8 million tons, and with a minimum loss, to some 38 million tons.

59 We also looked at the employment impact based on this. We looked at the direct and indirect employment projected for 1977 without H.R. 25. Direct employment would be 43,000 people, and the indirect, using the 0.8 multiplier, would be 34,000. We used the multiplier on direct employment based on the tonnage loss we calculated. We came out with a direct and indirect jobs loss of up to 36,000. This is the maximum, and we should have shown a range on here, but it is the maximum. The range is somewhere between 9,000 and 36,000 people.

59 We also looked at reserve losses, and this is particularly important to the long-term future of the energy picture of the country.

59 Mr. UDALL. The gentleman's time has expired.

59 Dr. FALKIE. Well, we calculated a reserve range, using the same type of analysis as on production, and this is the range that we calculated.

59 I have not had a chance to dig into the details like I wanted to.

59 Mr. STEELMAN. If the gentleman needs 2 more minutes, I would be glad to yield.

59 Dr. FALKIE. I think 2 minutes would not do justice, so I will stop here.

59 Mr. UDALL. Before I go to Mr. Seiberling, I want to raise this point. This morning, Mrs. Mink requested a study of the CEQ report regarding impact of bonding and application procedures on small mines. You indicated you would give that.

59 Dr. FALKIE. I gave a study to Mr. Norm Williams earlier this afternoon. n1

59 n1 Appendix I.

60 We did not reference any page, however. It was not clear that that was requested.

60 Mrs. MINK. The staff turned these documents over to me. There is no page reference in the CEQ study anywhere. It is what I consider to be backup data done in preparation for these hearings and does not comply with my request for a study which led to the conclusion that small mines would be affected as indicated in your letter to the committee. There was no accompanying page reference to the CEQ report which you mention in answering my question this morning. So, I make the same request, Mr. Chairman.

60 Mr. PECK. I believe the request was made with respect to my testimony earlier this morning. I did not reference the CEQ report with respect to bonding and permit. I referenced the CEQ report generally.

60 Mrs. MINK. I am sorry, Mr. Chairman. I do know exactly to whom I addressed my question. The question was to Dr. Falkie and he answered by saying that all the information I needed could be found in the CEQ report. He even made page references which would answer my question. I could not find such source material in the CEQ report; therefore I ended my turn by making specific my question to Dr. Falkie and renewed my request for information.

60 Mr. PECK. Mr. Chairman, the page reference in the CEQ report which deals with the question of performance bonds and the relative value required of them under State law, is page 37, page 38, and page 39. It also deals with other materials as well.

60 The material that dealt with the financial capability, which is set forth as problems of small mines, appears at pages 61 and 62. I am sorry, pages 59 through 62. n2

60 n2 Appendix II.

60 Mrs. MINK. Mr. Chairman, I wish to know whether those are the page references, and I ask that these pages be inserted in the record. They do not respond to the question at all regarding bonding and permit applications.

60 Mr. SEIBERLING. I would add that chapter 3 which covers the pages in question, is entitled "Impact of Slope Angle Prohibitions on Coal Production and Reserves."

60 As far as I can determine on a quick rereading of that chapter, the chapter is dealing with prohibitions on mining above 10 or 20 degrees slope and has nothing to do with the kind of provisions we have in this bill.

60 Mr. HILL. If I may, I was the one who first introduced the CEQ study this morning. I introduced it as a document that I studied that had been done which talked about the problem of small mines, not just in dealing with permits or with bonds but the problems of small mines, mining companies, within a full range of the requirements. I think if they have difficulty dealing with narrower provisions in the CEQ study, we would argue they would have more difficulty dealing with the tougher provisions now in H.R. 25. That was the context in which I first introduced the CEQ study.

60 Mr. SEIBERLING. Do you agree that the bill which was vetoed does not contain prohibitions against mining on slopes above 15 degrees?

60 Mr. HILL. That is correct.

61 Mr. SEIBERLING. But the content of the discussion in the chapter you referred to is dealing primarily with prohibitions, and not with requirements of reclamation. So, I do not really see that it is particularly relevant to the bill before us. Even though it does discuss the problems of small mines, it is in a totally different context. That is my comment on it and I would like to

yield 1 minute to the gentleman from Montana.

61 Mr. MELCHER. Thank you for yielding.

61 Dr. Falkie, in your last chart you trotted out this bit, this argument that language definition which is identical in all the bills, going to preclude a lot of mining in the West. Then to back that up, because the definitions are identical, you go to the effect that mining might have on hydrology and say if there was any effect on it, that that would prevent mining in that area. The language I refer you to says that in granting the permit application for approval of the permit that there has been a finding made that the proposed operation has been designed to prevent significant irreparable offsite damage to the hydrologic balance.

61 That certainly does not jibe with what your conclusion was. Based on the definition, based on what the actual situation is at the mines, I can understand how you can put one inaccurate fact on another and add it up to a lot of tonnage. You defended the Decker Mine in Montana as being one that was involved on alluvial valley floors. I can understand why the operator of the Decker Mine is scared about a national bill, although the national bill treats him just the same as the Montana law in many respects because people like you, I suspect, have been circulating this information which has gone out nationwide, that there is real tight restriction here that is going to put people out of business.

61 You may have fooled Decker, I do not know whether they are still fooled or not but I do not believe you will fool Western Energy because they have reviewed the bill and signed off on it and they are one of those mines listed.

61 Nor, do I believe you have fooled the Westmoreland, the people operating the Sarpy Creek Mine there in my part of Montana because they also have reviewed it carefully and do not draw any of the conclusions you do which I think are extremely erroneous.

61 Mr. STEIGER. Mr. Chairman, I think there must be some rule of the committee that would protect the witness from that kind of abuse based on the kind of unsubstantiated assumptions my friend from Montana has made.

61 Mr. MELCHER. I will make a point of order. I do not abuse the witness.

61 Mr. STEIGER. Dr. Falkie is perfectly capable of taking care of himself, but the gentleman

from Montana has said the miners are afraid of this bill because Dr. Falkie has been circulating false information.

61 Mr. Chairman, obviously Mr. Melcher has nothing to base that on but his own instincts and I do not think the witnesses deserve that kind of treatment.

61 Mr. UDALL. The Chair would have to rule that members of the committee are entitled to express their opinions in the course of discussion. Sometimes those opinions are harsh, and I have heard them on both sides in previous times. I happen to think personally this is the most dishonest set of calculations I have seen on all my years in the committee. I think they set out to give the highest losses - the highest reserve losses - they could get. They went to any lengths that any interpretation of the bill could imply.

62 Mr. MELCHER. I must respond. I did not use the term "dishonest."

62 Mr. UDALL. I did.

62 Mr. MELCHER. I am not drawing that conclusion but I did use the term "inaccurate" and they certainly are inaccurate and Dr. Falkie and others have disseminated inaccurate information. If that abuses the witness, it is high time the witnesses have had the truth spoken to them.

62 Mr. UDALL. The time is in the control of Mr. Seiberling.

62 Mr. SEIBERLING. How much time do I have?

62 Mr. UDALL. You have 4 minutes left. You did not lose time because of Mr. Steiger's point of order or the outburst that I made.

62 Mr. SEIBERLING. Thank you, Mr. Chairman.

62 Now, on that point I would like to ask Mr. Falkie, or who is here from the FEA, what is your name?

62 Mr. HILL. Mr. Hill.

62 Mr. SEIBERLING. Mr. Hill, if you are familiar with a report entitled "Predicted Coal Production Losses, H.R. 25, S. 652, and S. 7" prepared for the Office of Coal, Federal Energy Administration by the Energy and Environmental Analysis, Inc. of Arlington, Va., dated March 1975, are you familiar with that study?

62 Mr. HILL. I am familiar with that. I will not call it a study. We can talk about that if you

like. I am familiar with it.

62 Mr. SEIBERLING. Whatever you want to call it. It is something that consultants to the FEA prepared, is that correct?

62 Mr. HILL. What was your question, sir?

62 Mr. SEIBERLING. Is this prepared by consultants to the FEA for the FEA?

62 Mr. HILL. That report came back in response to a request for proposals to the FEA group. We asked EEA if they had any interest in doing an assessment of the production impacts of those bills as a contract study. They did not reply as to whether or not they wanted to do the contract study. They volunteered the information back that you see there but it was not a contract study.

62 Mr. SEIBERLING. In any event it was prepared and you have it, correct?

62 Mr. HILL. It was prepared on a quick turn-around basis and they did not do the full-blown study we initially asked them to do.

62 Mr. SEIBERLING. It exists, does it not?

62 Mr. HILL. That is correct, sir.

62 Mr. SEIBERLING. It shows on page 10 thereof, an estimate of production losses from H.R. 25 of a minimum of 27 million tons per year and a maximum of 32 million tons per year which compares with the Department's estimates prepared after the veto of 40 million and 162 million tons per year.

62 Percentages are 4 to 5 percent in the consultant's study and 6 to 24 percent of total production in the Department's study prepared after the veto. I am simply submitting that and will ask if you have any other comments. Otherwise, I will pass on to something else.

63 Mr. HILL. I would like to put in the record if I may, a request that we made to EEA for a comprehensive study, plus the study you refer to which is certainly less than comprehensive, since we never sat down and had the contractor session where you lay out the scope of work and methodology.

63 We do have an analysis of that letter back to us. I would not call it a study, which explains

the difference. They used different interpretations of certain provisions of the act. They used different definitions in their report than ended up in the act.

63 They treat some things as cost items and not as production loss items which, in the minds of people more familiar in mining, mean that the cost would be prohibitive and would result in production loss.

63 Mr. Sansom's firm as far as I know did not take the time to go out and do those assessments to draw those same kinds of conclusions.

63 Mr. SEIBERLING. On December 16, 1974, at page S2611 of the Congressional Record, Senator Fannin, who opposed this bill and still does, put in a study apparently done by the Department of Interior based on the assumptions you now say you base them on, that showed total unemployment resulting from the legislation of 11,124 and production loss of 50 million tons per year. I wonder whether you are familiar with that study?

63 Mr. HILL. No, I am not. What was the date of that?

63 Mr. SEIBERLING. It was put in the Record on December 16, 1974 by Senator Fannin.

63 Mr. UDALL. The gentleman has 1 minute remaining.

63 Mr. SEIBERLING. Are you familiar with that study?

63 Mr. HILL. Not personally. I know there were a number of studies done prior to the Christmas recess of the Congress, that as I mentioned earlier this morning were firmed up after the final language of the bill was adopted.

63 Mr. SEIBERLING. Were any studies done that showed higher production losses than the losses you show with the current study you are now using?

63 Mr. HILL. We have been on these numbers and methods since about January, Mr. Seiberling.

63 Mr. SEIBERLING. That is the maximum loss you show?

63 Mr. HILL. What we showed on the charts awhile ago, yes, sir.

63 Mr. SEIBERLING. You are not interested in the ones that show less at the present time?

63 Mr. HILL. I think the people that did those came back to us, Mr. Seiberling, at a later point

in time and said that through further work and analysis, their estimates were now higher.

63 Mr. UDALL. The gentleman's time has expired.

63 Mr. Pettis.

63 Mr. PETTIS. Mr. Chairman, may I yield my time to the gentleman from Arizona?

63 Mr. UDALL. You may do anything you wish.

63 The gentleman from Arizona will be recognized for 10 minutes.

63 Mr. STEIGER. Thank you, Mr. Chairman.

63 Mr. HADLEY and Mr. Keefer -

63 Mr. REED. I am Mr. Reed. Mr. Keefer is in the audience.

63 Mr. STEIGER. I want Mr. Reed. You were sworn, correct?

63 Mr. REED. Yes, sir.

64 Mr. STEIGER. Were either of you gentleman advised of your rights prior to the administration of the oath as all good criminals are supposed to be?

64 Mr. REED. No, sir.

64 Mr. STEIGER. I take it you have counsel of choice in company with you, is that correct?
You are represented by counsel, is that correct?

64 Mr. REED. Yes, sir.

64 Mr. STEIGER. Counsel of your choice?

64 Mr. REED. Our counsel is from the Department of the Interior.

64 Mr. STEIGER. I did not ask you that. Is counsel acceptable to you?

64 Mr. REED. Yes, sir. I am answering all of these questions.

64 Mr. STEIGER. I assume Mr. Hadley will speak up if he disagrees. I will address this to Mr. Hadley.

64 Mr. Hadley, when did you meet with Mr. Udall or members of the minority staff, approximately? What dates if you can recall and how recently and the number of times?

64 Mr. HADLEY. I met with Mr. Crane of Mr. Udall's office, I believe, it was sometime in February, late February or early March.

64 Mr. STEIGER. Only the one time?

64 Mr. HADLEY. I met with him 2 years ago.

64 Mr. STEIGER. In context with this bill?

64 Mr. HADLEY. No, just the one time.

64 Mr. STEIGER. Was Mr. Reed with you then?

64 Mr. HADLEY. No.

64 Mr. STEIGER. Was Mr. Keefer with you then?

64 Mr. HADLEY. Yes, sir.

64 Mr. STEIGER. How was that particular meeting arranged? Do you recall how you happened to meet with Mr. Crane?

64 Mr. HADLEY. Mr. Crane met with me in my office in Denver. He called me up and came to Danver.

64 Mr. STEIGER. Did he show you any identification - I assumed he approached you with the idea of finding some acceptable language for the bill, was that the basis?

64 Mr. HADLEY. Yes, sir.

64 Mr. STEIGER. Do you recall any other purpose of the meeting that was stated at that time?

64 Mr. HADLEY. No, sir. We discussed the language of the alluvial valley provision in the bill.

64 Mr. STEIGER. Had you met with anybody else from the committee staff or members of the staff in the last 10 days prior to this hearing?

64 Mr. HADLEY. No, sir.

64 Mr. STEIGER. Were you contacted by them during that time?

64 Mr. HADLEY. No, sir.

64 Mr. STEIGER. Thank you.

64 I have a question. I guess, Dr. Falkie, maybe you could help me with this, or maybe Mr. Peck can be most responsive with the kind of specific rhetoric I am looking for.

64 With regard, Mr. Peck, to the anthracite exemption of Bethlehem Steel, is there anything to your knowledge, regarding the character of anthracite that ought to exempt it from this bill if, indeed, it would be appropriate to include bituminous - would it be appropriate to include anthracite?

65 Mr. PECK. As a technical question, sir, I would have to defer to Dr. Falkie.

65 Mr. STEIGER. Dr. Falkie would be most responsive.

65 Dr. FALKIE. The anthracite mine situation is considerably more complex than most bituminous mining. It is in a very highly complex geology area. It is in folded seams. It is mined by a slightly different method than bituminous, but it is coal. There is a difference in geology.

65 Mr. STEIGER. Does the difference in geology mean that the surface is less disturbed and therefore reclamation requirements are not necessary?

65 Dr. FALKIE. No, I could not honestly say that.

65 Mr. STEIGER. Is the difference in geology such that the specific requirements in the bill would be impossible to comply with and still continue to mine anthracite?

65 Dr. FALKIE. I think there would be a great deal of difficulty complying with some of the provisions of the act, for the anthracite producers.

65 Mr. STEIGER. The same, you said, with the bituminous with regard to specific requirements of the act, the ability to comply? In other words, would it be fair to say that, while anthracite has a unique geologic location, the uniformity of the standards might be just as onerous for some bituminous products?

65 Dr. FALKIE. Yes. This is reflected in our production loss estimates in the wide range. There are obviously some varying geographical and geological characteristics in there because mining on a steep slope is different from mining on a plain in the northern Great Plains. I don't know whether that answers your question but that is the way we look at it.

65 Mr. STEIGER. That has been my feeling, since I agree with you in answering my question. We talked this morning about the difficulty of small mines complying with applications. I have the feeling we left the record with the idea that the simple filling out of the applications was a

problem. As I recall, the requirements for small operators in the filing of applications involves boring, mapping, and plans of a very extensive nature. When you made the assumption that small mines, some small mines, would be unable to bear that cost, were those requirements what you had in mind?

65 Dr. FALKIE. Yes, partially. I think there are a number of things that would impact the small mines to a greater or lesser extent. One is increased production costs, which was discussed this morning. We talked about the bonding and permit requirements, and the front-end costs. I think we mentioned somewhere along the line possible lack of readily available technical expertise to do all the detailed underground mapping, test boring, and hydrologic studies and so forth that are required.

65 We looked at the additional equipment required to handle overburden if we went to, say, a slightly altered method of mining, the possibility of a shortage of drilling equipment to do the coring that is required; we checked this out with some of the drilling equipment people, the requirement that bonding be held for 5 years.

65 Mr. STEIGER. Dr. Falkie, were you ever given instructions, either explicitly or implicitly, that you were to make this bill appear as bad as possible through your discovery and data accumulation?

65 Dr. FALKIE. Absolutely not.

66 Mr. STEIGER. Mr. Peck, were you involved in the accumulation of the data in this process, or analysis of the bill?

66 Mr. PECK. Some of it; yes, sir.

66 Mr. STEIGER. Were you ever either implicitly or explicitly advised to make this bill distort the numbers or give the negative aspects of this bill?

66 Mr. PECK. Absolutely not, sir. As a matter of fact, if I could add, to the contrary; we sent people back to the adding machines to verify as often as possible and in as many ways as possible the kinds of estimates we were coming up with.

66 Mr. STEIGER. Mr. Hill, were you ever, either implicitly or explicitly given the instructions to make this bill appear as bad as possible?

66 Mr. HILL. No, sir; I was not, just to gather the facts and do the best estimates we could.

66 Mr. STEIGER. To your knowledge was your immediate superior, Mr. Zarb, ever given instructions -

66 Mr. HILL. To my knowledge he was not, sir. I am sure if he had been asked that he would have reacted rather violently.

66 Mr. UDALL. Mr. DeLugo.

66 Mr. DELUGO. I yield to my friend from Ohio.

66 Mr. UDALL. We will come back in 10 minutes and resume the hearing.

66 [A short recess was taken.]

66 Mr. UDALL. The gentleman from Ohio is recognized for 10 minutes. I wonder if he would yield 1 minute to me.

66 Mr. SEIBERLING. I would yield to the chairman.

66 Mr. UDALL. Dr. Falkie and Mr. Hill, in light of the statement I made earlier today, I still am unable to understand why anyone in his right mind would place all of the strain and unreasonable interpretation on every section of this bill when the Interior Department was going to administer the bill. Who was it you thought was going to make these asinine interpretations - such as your assumption that 93 percent of the valley that was not alluvial would somehow be affected or some fool would conceivably assume it would be affected - who did you think was going to interpret and enforce the bill?

66 Mr. HILL. I think, Mr. Chairman, that as we looked at these estimates, one of the first things we had to do was look at some of the particular provisions of the act. I think alluvial valley floors is a very good example of that. In this interagency group that worked on this from last September 4, including people from OMB, EPA, Interior, Commerce, and Treasury, all over, there were a number of differing possible interpretations of some of those provisions that were clearly possible. That was the opinion of the various counsel.

66 Mr. UDALL. Of all the plausible interpretations, or likely interpretations, it seems from every one of those things you have set forth on an absurd collection of charts, that you take the most unlikely interpretation possible.

66 Mr. HILL. That is where we came up with the range, Mr. Chairman, the low range as we said earlier was sort of the loosest interpretation. The high end of those ranges was the most difficult. We had legal interpretations, that spanned the full range from loose to very tight.

66 Mr. UDALL. I don't want to use Mr. Seiberling's time, but my question was, Who did you assume was going to be writing the regulations and enforcing the bill?

67 Mr. HILL. Some of it, I think was, certainly, the Secretary of the Interior. But where we have these problems in the act, we assume the courts were going to be interpreting those provisions and also the regulations that flowed therefrom. When you get into areas like the Clean Air Act, for instance, nonsignificant deterioration, that word never appears anywhere in NEPA. But that is what NEPA requires. That was a very stringent interpretation and we have had a number of those. So we had to assume that the courts would be making these interpretations.

67 Mr. UDALL. All right. Mr. Seiberling, I thank you.

67 Mr. SEIBERLING. Thank you, Mr. Chairman.

67 I would like the record to show that the anthracite exemption in the final bill that the administration submitted to the conference committee is identical to that in the conference report. Therefore, Dr. Falkie's efforts it seems to me, to raise a possible problem with respect to the anthracite portion is really of no relevance here because the two sections are identical. In addition, the application requirements differ between the administration bill and the conference report only on hydrologic data and allow a waiver, but for small mines only, where the data is not necessary.

67 Finally, the bond requirements are the same in all material respects, except we put in the additional requirement that the siltation bond could not be finally released until all the siltation requirements had been proven over a period of 5 years.

67 Mr. PECK. Could I speak to those because they get to the heart of our problems with this bill?

67 Mr. SEIBERLING. If you will do it briefly, because I do not have unlimited time.

67 Mr. PECK. Yes, sir.

67 With respect to the anthracite provision, the language of the statute is the same, but the language of the conference report implies circumstances, which, in our judgment, make anthracite no longer exempt insofar as, for instance, the State of Pennsylvania is concerned. Insofar as the hydrology is concerned, our problem with those requirements has been the affirmative placement of the burden of proof upon the applicant, not the nature of the requirements. In each of the States, for instance, Ohio is one of the States that has particularly stringent requirements in terms of what has to be shown, the burden of proof is not on the applicant, and the front-end cost of developing all the studies necessary is not on the applicant. So our concern has been that the applicant must affirmatively demonstrate the absence of an adverse effect in order to get a permit, or else the authority has no jurisdiction to issue a permit.

67 Mr. SEIBERLING. We are getting down to some awfully fine points here. Now, with respect to this statement about 36,000 unemployed possibly resulting from this bill, the United Mine Workers advises me that there are currently only 36,140 workers in the entire surface mine industry. It seems to me that this is stretching a point, to say the least. I understand the rationale about the downstream effects and all that, but that gets into some sort of speculation. I will say that the same arguments were made when we passed the Coal Mine Safety Act Amendments in 1969, when Pennsylvania passed its tough strip mining law. Every time the industry got up and said, "Oh, if you do this you will put us out of business."

68 Ralph Hatch, the president of Hanna Coal Co. at the time I was visiting the surface mines in Ohio with Governor Gilligan, made the statement that if Ohio passed its strip mining law, 6,000 miners in Ohio would be put out of work, and his company would go out of business in Ohio. And within a few weeks after the law was passed he was applying for a license to move the Gem of Egypt across Interstate 70 so he could open a new mine on the other side. So we have heard this story over and over again, gentlemen. And I think it demeans the administration to lend itself to that kind of argument. I would like also to add that, according to calculations that I have made, that the reclamation fee provisions alone will add 2,727 jobs, if the amount of the fee is only \$1.09 million, your low estimate; and 2,950 jobs if it is the high estimate. I wonder if you would care to comment.

68 Mr. HILL. I think that is very close to our estimates. We estimated that in Appalachia, for example, where most of the small miner and steep slope impact would be, the result, most of your unemployment, unemployment we think could run as high, the job losses resulting from the bill, run as high as 20,000, that there would be several thousand people put back to work in the reclamation effort. Keep in mind, you have taken that money to pay their salaries and for the equipment and everything for the reclamation effort out of the economy somewhere else where it is not going to be creating any jobs. It will add some specific relief to the production losses and unemployment impact in West Virginia, say, or in Virginia. But it will be much smaller than the losses there. Whatever relief you pick up in the reclamation effort you are going to be losing somewhere else in the economy because you have only taken that money from one place and put it somewhere else.

68 Mr. SEIBERLING. I understand that. I am a college graduate. But it is most likely to come out of the profits of the operators which at the present time are quite high.

68 The TVA has made an estimate that the total production and reclamation costs under this bill, following the standards of this bill, would be under \$9 a ton. At the present time they are paying an average of \$15 5 a ton for contract coal. Of course, on the spot market they are paying two and three times that much.

68 The same is true of utilities. Ohio Edison and Cleveland Electric Illuminating and so forth in terms of what they are paying on the spot market. So the cost of reclamation is going to come out of the profits of the coal companies. I agree that money is coming out of the economy somewhere but it is also going into the economy if it employs people to do reclamation. It is rather significant to me that the UMW study - and they are certainly interested in jobs for miners - states, and I am reading, that:

68 When viewed in the context of the industry's development pattern and announced new mine options, the maximum possible unemployment resulting from small surface mine closings is more than eliminated by new employment resulting from new mining development. That is over and above the reclamation fees.

68 Mr. HILL. I would like to see their study. I might add, if the committee has any studies that would indicate there would be no production losses we would also like to look at those.

69 Mr. SEIBERLING. I will ask UMW if they will make that available.

69 Dr. FALKIE. I would like to, if I may, mention a couple of numbers so that perhaps some things can be straightened out. In 1974 there were approximately 43,000 people employed in surface mining in this country. We projected that out to 1977. This is direct employment now. The direct employment loss, on the upper range as we have explained, is 20,000. So that we cannot confuse direct employment with total employment.

69 Mr. SEIBERLING. Are you talking about the reduction in the present level, or a lower rate of increase?

69 Mr. UDALL. The gentleman's time has expired. You can answer briefly.

69 Dr. FALKIE. We are talking about both, really.

69 Mr. SEIBERLING. Can you separate the two and provide us with the figures?

69 Dr. FALKIE. No, the number stands - the confusion is indirect versus direct. That is the point I meant to straighten out.

69 Mr. UDALL. Mr. Skuzitz is recognized for 8 minutes.

69 Mr. SKUBITZ. Thank you, Mr. Chairman. I would like to be notified at the end of 7 minutes so I can yield.

69 Mr. UDALL. The gentleman will be notified.

69 Mr. SKUBITZ. Personally, I am very much interested in strip mining legislation. Perhaps more so because I was born and raised in a coal mining town and took my place at age 16 beside my father in the mine. Thank God I had a father and mother who insisted that I go to school. After so many years, I finally got out of college. After graduating from college, I taught 15 years in coal mining counties of Kansas - Crawford and Cherokee Counties. I saw 55,000 acres of land raped because of the action of the coal operators with no law to stop them or force them to reclaim the soil. So when I came to Congress, I was quite interested in strip mining legislation.

69 Thirteen years ago I became a member of this committee and a member of the Mining

Committee because I was interested in strip mining legislation. But the thing that bothers me about this bill today - and I have supported it, I voted for it out of conference. I think the timing is terrible - I have listened to the debate which is supposed to take into consideration facts. I think Mr. Udall summed it up pretty well when he said, "You are guessing that we are going to lose all this coal and these jobs, and I am guessing that we aren't going to lose any."

69 You know, the thought came to mind after I heard Mr. Udall make that statement, who do I want to follow if they are wrong; Mr. Udall or you?

69 Mr. UDALL. I have an answer.

69 Mr. SKUBITZ. So the issue as I see this is what damage will really be done if no law is passed at all at this moment, even though we have 21 States that have laws on the books. In one case, as Mr. Udall pointed out, Pennsylvania has a tougher law than the proposed bill. I know my own State has a similar piece of legislation on its books. So we get into a debate here of "tis so and taint so."

69 Most of the questions I wanted to ask have already been asked. But I would like to ask this question. Will you specifically point out the ambiguities in this bill which threaten production?

70 Mr. PECK. If I could address that, Mr. Skubitz.

70 Mr. SKUBITZ. All right.

70 Mr. PECK. The specific items that were referred to by Dr. Falkie in his presentation under potential production impacts not quantified were citizen suits, designation of lands unsuitable for mining, surface owner protection, ambiguous terms, anthracite, and State actions.

70 Specifically, our concern over citizen suits is the concern that has been underlying much of the discussion, that it will not be the regulatory authority that will have the power to implement this bill. Part of the rationale for the administration's amendment which would have expressly given the Secretary of the Interior the authority to define terms was the expectation that those terms, by virtue of the Federal statutory authority, would be binding upon State courts and binding upon the regulatory authorities that would be using them. So that, as we come to ambiguous language, we would be able to define our way around it.

70 Under designation of lands unsuitable for mining, our concern is this. As the bill now stands, any person may petition at any time that any given area be designated unsuitable for mining. This could occur before or after an application for permit has been filed. Once that petition has been filed and an action triggered to study the land, no permit can be issued for at least a year.

70 With respect to surface owner protection, our position has been to prevent only two things. To prevent an absolute veto in the hands of the surface owners who took under homestead acts, where the mineral rights were reserved to the States; and to prevent extreme windfalls.

70 The administration bill would have allowed existing law to continue to prevail in each of the States.

70 Under ambiguous terms, I think we have already hit at least two of them. We have the anthracite question - whether the conference report has successfully removed the exclusion for anthracite mining. Under the provisions with respect to alluvial valley floor, there is a parenthetical exclusion for undeveloped rangelands. We don't know what that means and more importantly, we don't know whether that language is still subject to the application of the test of whether potential or existing ranching or farms could be conducted. The study that apparently was the basis for that exclusion, if that criteria is used, would exclude from the alluvial valley prohibition virtually all of the Powder River Basin, far more than anybody would want excluded, and in fact exclude from the prohibition, and thus allow mining in areas where even the most rigorous proponents of mining would not wish to go in.

70 With respect to State and Federal lands, it is provided that where Federal lands are within the territorial boundaries of a State, the Federal lands must conform to State programs. Does that include a State ban? There was colloquy on the floor of the Senate between two Members which indicated that the answer to that question was "yes," that a State could in fact by operation of its program ban mining on Federal lands of Federal coal. Colloquy was to the contrary on the House floor. In either event, what would happen if a State were to propose a ban that was not contained in its program?

70 With respect to water rights, we had a situation in which as it stands now the Government

is in the situation of requiring specific performance, delivery of water. We do not see how that could possibly be done by an operator, and some variance from that kind of a requirement, or some provision for obtaining appropriate consent or compensation should be expressly written in the act.

71 Mr. UDALL. The gentleman's time has expired.

71 Mr. SKUBITZ. I ask to be allowed to proceed for 3 minutes.

71 Mr. UDALL. Objection? None.

71 You are recognized.

71 Mr. SKUBITZ. There has been a lot of talk about alluvial valley floors. How broad was this GS study? Did it go to existing Federal leases?

71 Mr. HADLEY. This study was on selected leases in the eastern and western Powder River basins, and it only included the alluvial valley floors on Federal leases.

71 Mr. SKUBITZ. Thank you.

71 You made reference, Mr. Peck, about the difficult burden of proof. What do you refer to?

71 Mr. PECK. That, again, sir, is one of the underlying problems that causes many of the others, and in fact amplifies them. Under the bill, three provisions, for instance, with respect to the alluvial valley floors prevail.

71 There is the definition of the alluvial valley floors, the prohibition on mining on alluvial valley floors, but then there is the express language in section 510(b) that no permit can be issued unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available that, and then follow all of the application requirements. The question is, in our minds, what happens if, on a challenge, a question such as was raised here with respect to the Decker Mine is presented? How does the applicant affirmatively prove the absence of an adverse impact? With respect to the Decker Mine it is our information that when mining was occurring on the alluvial valley floor there was substantial drawdown in wells as much as half a mile away. The very existence of that fact would raise a presumption in the event of a challenge to the permit application which the applicant simply couldn't bear.

71 These are not unreasonable interpretations. As recent a statute as the Federal Water Pollution Control Act has come very close to this kind of interpretation. We are very concerned about it. This is the siltation problem, as well. Right across the board we are concerned that these provisions will in fact have maximum impact.

71 Mr. SKUBITZ. This morning Mr. Zarb and Mr. Morton rather surprised me when they indicated that a 35-cent tax on coal was nothing, would not raise the price of coal. I have seen wheat go up a penny but the price of a loaf of bread went up 5 cents. I am not so sure they know what they are talking about. I would like to point out to you that an acre-foot contains about 1,800 tons of coal in my State. That means if you have a 3-foot vein of coal that is 4,500 tons of coal. So reclamation fee of 35 cents means the operator is paying \$1,890 into the reclamation fund to recover or reclaim that acre of land.

71 You go into Mr. Melcher's State and I understand they have veins of coal from 60 to 80 tons. If you take 60 times 180, 60 to 80 feet, I mean, 60 times 1,800 will give you 108,000 tons of coal in each acre. Then you come up with \$37,800. It seems ridiculous to me that we are going to collect \$37,800 to reclaim an acre of coal and say that that is not going to raise the price of coal; unless, of course, as this bill provides, you are going to build schools and public buildings and roads and what have you with money that is labeled reclamation money.

72 Mr. UDALL. The gentleman's time has expired.

72 Mr. HILL. May I just amplify on Mr. Morton's remarks this morning for a minute, Mr. Chairman? I think what Mr. Morton meant was that in terms of the consumer costs and the higher energy costs of this bill, the 35 cents a ton is not the major consideration. Our estimates show that the consumer cost on energy price effects would be on the order of the magnitude of 2.4 billion at the long range of the production impacts to 5.6 billion. This is an interaction, this is what happens to the coal prices and the substitution of foreign oil for coal. What he was saying was that in the context of this potential \$5 billion to \$6 billion cost impact of this bill, 35 cents for the reclamation fee is not that significant. In your particular case, it certainly is.

72 Mr. SKUBITZ. Certainly it will raise the price of fuel to the consumer and utility, all of which would be passed on to the consumer, isn't that correct?

72 Mr. UDALL. Mr. Santini is recognized for 10 minutes.

72 Mr. SANTINI. Thank you, Mr. Chairman.

72 Addressing my question to the issue involved here, I suppose FEA would be the agency then to respond. I believe it is generally conceded that coal consumption is demand limited and not production limited.

72 Mr. HILL. For the last several years that has been the case. The constraints of the Clean Air Act and limitations have created demand constraints. But as we move into the implementation plans, as they go into effect, and people begin to install precipitators, demand constraints will be less severe than they have been for the last several years. It is true that demand would not be what it was in the absence of the Clean Air Act.

72 Mr. SANTINI. Have you made any quantitative examination of the extent to which production capacity exceeds demand today?

72 Mr. HILL. Yes, you are there talking largely about the surge capacity. You do not open a major mine without contracts for the coal from that mine. So there is not, in that sense, any excess production in terms of the large mining operations. Where you pick up additional short term coal supplies are from particularly, I guess, the small mine operations that open up very small mines. This is what we call the surge capacity. There is some surge capacity in large mines, both on surface and underground; but it is not that significant. They try to keep that as small as they can and just produce the coal they have contracts for.

72 Mr. SANTINI. Then there has been no precise study of the extent to which the capacity to produce exceeds the existing demand?

72 Mr. HILL. I think that there have been studies on this issue. I will be glad to go back and look at them. If my memory serves me correctly, however, the coal supply capacities pretty well are geared to current demand and to expected demand; and the long leadtime investments are not made until there is new demand on the horizon. So we operate very close to supply and demand equilibrium in the coal supply business.

72 Mr. SANTINI. What was the cost of production, for example, in 1970?

72 Mr. HILL. The cost of production? Tom, do you have cost-of-production numbers?

73 Dr. FALKIE. I do not have the precise cost-of-production numbers for underground or surface mining for 1970 with me. I think it is fair to say it has increased appreciably in the last 4 years.

73 Mr. SANTINI. Could you roughly estimate that figure, Doctor?

73 Dr. FALKIE. I would say for surface mining in 1970, very roughly the cost of production would be somewhere between \$5 and \$10 a ton. And for underground mining, somewhere between \$1 0 and \$1 5, possibly upward, per ton. Those are very, very rounded-off numbers. We could get some roughted-out numbers for you, if you want. That will give you an idea of the ballpark around that time. Since that time I would say that the production costs for surface mining in the East, would probably range from \$8 a ton on up. In the West it would be lower, maybe anywhere from \$4 a ton on up.

73 Mr. SANTINI. Do you have precise figures on cost of production in 1974?

73 Dr. FALKIE. We do not have precise figures because the cost information is not available to us. We could develop an estimate.

73 Mr. HILL. I think the cost will vary from mine to mine depending upon the particular geology of the setting, the size of the equipment that will be required, the life of the mine, and how long you are going to be able to amortize your capital cost. It is very hard to come up with these kinds of estimates. We have been trying to do it on the Outer Continental Shelf.

73 Mr. SANTINI. Then you are saying today that none of your computations include any cost-of-production figures?

73 Mr. HILL. That is correct.

73 Dr. FALKIE. We have taken cost of production into consideration, but not precisely - we have not collected cost information in our data collection system from mines. So when you ask if it is precise -

73 Mr. SANTINI. Is that not a rather critical question in assessing just who is or is not going to go out of business and weighing that against the existing market price and attempting to determine the impact of this legislation?

73 Dr. FALKIE. Yes.

73 Mr. SANTINI. If you do not have precise figures on what the cost to produce coal is -

73 Dr. FALKIE. We do, but not precisely, so that we could say this is the cost of production for the whole country. We do not have that. We have already said that the delivery cost by contract purchasing is in the neighborhood of \$1 5.71. That is delivered costs for powerplants, for steam electric powerplants.

73 Mr. SANTINI. What is the source of information for that particular figure? And are you not giving to me the selling price rather than the cost of production?

73 Dr. FALKIE. This is the Federal Power Commission report for steam electric plants in the continental United States having 25 megawatts or greater capacity.

73 Mr. HILL. That is the national average of both surface and underground coal used in steam plants. That is the average of what they paid for the coal.

73 Mr. SANTINI. Then that particular figure represents the sole cost figure that was included in your calculations of existing cost of production?

74 Dr. FALKIE. No, it does not. We have many interim studies on cost estimates. We have models which develop costs. We have field personnel who have wide experience with costs. We have many angles from which to approach the cost picture. But we do not have a precise number that we can say that is the overall cost for underground mining in the country or surface mining.

74 Mr. HILL. It is important to note, too, that that is the cost of the coal at the utility boiler tip. That is not a figure you could relate to cost of production at the mine mouth. That is the price that utilities paid for the coal delivered to their State for burning.

74 Mr. SANTINI. What then was the profit margin in 1970?

74 Mr. HILL. I do not have the exact profit margin figures for 1970.

74 Mr. SANTINI. How about 1974, what was the profit margin?

74 Mr. HILL. I do not have that either, really, available. We do not collect, as we do with the oil industry, information systematically on the profit margins of the coal industry.

74 Mr. SANTINI. Is this not a valid consideration in assessing exactly what is going to be the

impact of this legislation? The administration estimates 22 to 52 million tons of small mines production losses, steep slope production losses of 27 to 44 million tons, and alluvial valley losses of 66 million tons. In each of these assessments the law is one factor, economics is the other. In order to assess the cost of H.R. 25 to the consumer the profit statistic must be considered.

74 Mr. PECK. At the risk of getting myself in even more trouble over the CEQ report, on page 62 there is an analysis of profitability from an unpublished study conducted for the Appalachian Regional Commission which reviews large, medium and small surface mines in eastern Kentucky, giving the number of companies, the number of mines, average production, average fixed assets, average total assets, average before tax profits, after tax return on sales, after tax cash flow on sales and average return on assets. This is part of the analysis that, again, I indicated earlier as demonstrative of the financial difficulties of these small mines. I do not purport to offer it as evidence that it is representative of the industry or certainly of a larger mine; but that is the kind of a study you are asking about. I honestly do not know whether any exist of the scope you are talking about.

74 Mr. UDALL. While we are on that, as I recall from this morning, somebody down there was going to furnish us this afternoon with a list of the names and addresses of 200 or 300 mines that were going to be closed. Did we get that?

74 Mr. HILL. We do not have, Mr. Chairman, a list of the mines per se that are going to be closed.

74 Mr. UDALL. Didn't somebody tell me this morning you could get the names and addresses?

74 Mr. HILL. We raised a question regarding them. We are still having counsel downtown check it out. Whether or not it would be correct to make a regulatory decision now regarding these particular mines, whether or not they are going to be closed, that will be the decision of the regulatory authority. We are checking that out though and we will get back with an answer. But we do have a 1973 study of small mines where we studied a number of situations and assessed whether or not those would be in compliance with certain kinds of provisions.

75 Mr. UDALL. You estimated that a fifth of all the small mines, and steep slope mines, were going to be closed down. Based on that the President vetoed the bill. We would like the names of one or two of them.

75 Mrs. MINK. I was going to say, Mr. Chairman, in response to my question in this morning's session, I specifically recall that the information requested was going to be provided. At that point the counsel to the Department intervened saying they would have to check it out, whether such a list could be provided the Committee. At no time was it indicated that no such list was in existence. Am I to understand now that there is no list at all?

75 Mr. HILL. We do not have a list of all the, say, 3,000 to 4,000 small mines with an estimate of whether or not they are going to be open or closed. We do have mines we went out and studied in our 1973 small mine study effort and from that study have drawn judgments about their capacity to meet the financial requirements imposed by that act.

75 But in terms of a specific list like was referenced here a while ago, we do not. These are small mines, moved from location to location. It has more to do with the financial capacity of the mining company than with a particular mining site, per se. I think if we were to produce such a specific list it would probably be out of date almost as soon as we got it here because a lot of those mines would have been closed and moved on to others. But their financial capacity would not have changed in making that switch.

75 Mr. SEIBERLING. Would the gentleman yield?

75 Mr. UDALL. We have to keep in order on the time.

75 Mr. SEIBERLING. Would the gentleman yield just while we are on that point?

75 Mr. UDALL. Mr. Steelman is recognized for 10 minutes. Would you yield briefly to Mr. Seiberling?

75 Mr. STEELMAN. Yes.

75 Mr. SEIBERLING. Mr. Hill referred to the 1973 study. But in 1974 the rate of profit for the coal industry went up 181 percent. That is for the industry as a whole. Some of the large companies went up 500. Westmoreland went up 1,200 percent. So I do not think that 1973 study is up to date.

75 Mr. UDALL.Mr. Steelman.

75 Mr. STEELMAN.I yield 1 minute to my colleague from Kansas.

75 Mr. SKUBITZ. Mr. Chairman, you asked about closing mines. I understand Gulf Oil is pulling out its shovels in my district right now. That is one example. No. 2, the average you spoke of -

75 Mr. SEIBERLING. The bill is not in effect.

75 Mr. SKUBITZ. I know but we are going out because of the cost squeeze on coal today. That gives you an idea of what is happening. You can't speak of averages, Mr. Santini, for this reason, because what is the average cost could very well squeeze all of the marginal mines completely out of existence. This is the very reason we passed special legislation in order to exempt the operators from price control and allocations, simply because they could not exist under the existing price they were getting for oil. So we took them out from under. Here is a group, 10 barrels or less that are producing 40 percent of the oil in this country. Thank you.

76 Mr. STEELMAN. Mr. Chairman, I think the final consideration for many Members of Congress is going to be this economic question, particularly the unemployment matter. The President cited, as the first of his reasons for the veto, 36,000 unemployed that would result from this act. I spent some time on the executive side before I got elected to Congress. If this President operates like former Presidents, when he has a decision to make like this, especially a far reaching one, he gathers together people who can work up the kind of information he needs to make these decisions. I take it from testimony this morning he did that here. He had a task force of some kind. You have been through production losses and this sort of thing, and you have made mention several times of the unemployment which would be caused by this.

76 Now, I want to pursue the line of questioning that I tried to develop this morning about what role the Commerce Department played and what role the Labor Department played, as well as the role of whomever else you may have called upon to give you figures as to unemployment. If I could just briefly again ask you, who served on the task force, how often did you meet, and whom did you depend upon for the unemployment statistics that you cited to us here?

76 Mr. HILL. I think the best way way, Mr. Steelman, to cover that is to go back. We have been doing unemployment kind of assessments back into last September and October related to production losses matters.

76 Mr. STEELMAN. Who is we?

76 Mr. HILL. Involved in that were FEA, Interior, Commerce, Labor, Treasury, EPA. I think the other thing I would like to point out is that this task force is working on a full range of issues. Within that task force each group, or a particular group would have responsibility for a piece of the study and would interact with a group and defend their conclusions and changes would occur. The typical kind of give and take that would come when the challenges would be made, and there were many.

76 Mr. STEELMAN. Did the Labor Department sign off on these projections?

76 Mr. HILL. I don't know if the Labor Department - what do you mean by the Labor Department? I don't think Secretary Dunlop actually said "I agree with these estimates."

76 Mr. STEELMAN. How about the Bureau of Labor Statistics?

76 Mr. HILL. I couldn't speak to that either. We are providing a list of the names of the people from Labor that were there. The major work that was used for the unemployment projections was the work of Professor Miernyk at the University of West Virginia, as I indicated this morning. His is not only in terms of national economic studies, but with particular focus on West Virginia and the mining industry. The work done by the Department of Commerce in 1971 on this issue, it might have been in the late sixties, actually came up with a slightly smaller multiplier than Professor Miernyk did. But it was the judgment of the group that Miernyk's work probably was valid.

76 CEQ in their study came out with a higher employment multiplier.

76 Mr. STEELMAN. Whose figure is the 36,000?

76 Mr. HILL. I think you would have to say that that figure is the combined output of this task force. We all agreed that we should use an average of 36 tons per day. You could have used a different number but the task force essentially - eventually resolved on that. We agree on 220 man-days, or 225. We agreed to use the employment multipliers of Professor Miernyk. When

you agree to those basic assumptions then you just plug the numbers in and it came out.

77 Mr. PECK. If I might clarify part of the question that arose this morning. When you are talking about the Department of Commerce you are talking about the statistical analysts that develop input-output models and that historically for the Government have been doing so. There was Labor representation on the task force. Some of the assumptions with respect to the dimensions of offset were specifically questioned, but in terms of the multiplier, the 1.8 factor, it was the consensus of everyone, including the Labor Department, to the best of my recollection, that this was a valid national factor which took into account the higher productivity per man hour per man-day in the West and the lower productivity in the East.

77 Now, subsequent to that analysis the Bureau of Mines looked at those figures very carefully and are convinced that they are conservative to say the least, because they reflect an overemphasis, or I guess an underemphasis on the surface mine factor of it. So that a higher multiple might well have been chosen and validly defended. But the 1.8 factor is a fairly standard, common multiplier to determine the correct effect.

77 Mr. UDALL. Will the gentleman yield for a quick comment?

77 Mr. STEELMAN. Yes.

77 Mr. UDALL. I have been sitting here all day, Mr. Peck, and wondering, in my experience around here the Commerce Department rarely plays any kind of major role in these resource questions. The President has the CEQ, EPA, Interior, he has FEA. But here is a man from the Commerce Department, the spokesman for big business, dominating a large part of our discussion. Is there any significance to that?

77 Mr. HILL. Are you referring to Mr. Peck or Mr. Morton?

77 Mr. UDALL. Mr. Peck.

77 Mr. HILL. I would not, myself, be willing to accept Mr. Peck as an expert on input-output models and these unemployment multipliers. I think we have sufficient staff in FEA to assess the validity of the Miernyk model.

77 Mr. UDALL. It is very strange to me that Mr. Peck plays such a role in this resource decision.

77 Mr. HILL. I don't think he played a role in doing the unemployment. He was part of the task force but that task force was covering a number of issues, not just unemployment.

77 Mr. STEELMAN. The statement was made by you this morning, Mr. Peck, that the Commerce Department had the major input on these unemployment statistics. In response I said that historically the role of Commerce has been one of advocacy. That is like asking the Corps of Engineers how to preserve wetlands. I want to know quantitatively, specifically, what role the Labor Department played.

77 I have served on executive branch task forces before and Commerce is always there to advocate whatever role big business has in the particular question. We always depended upon Labor to speak to Labor's viewpoint. Did you call the AFL-CIO, did you ask them? Apparently they reached a different conclusion. They are supporting the bill. They must not think it will cause unemployment.

78 Mr. PECK. I think I inherited most of my role here today by longevity. I have been dealing with this piece of legislation since 1971 when the administration sent it up, 4 years.

78 Mr. STEELMAN. What were you doing before you were General Counsel of Commerce?

78 Mr. PECK. I was in private practice in New York. I am on the staff of the General Counsel's Office of the Commerce Department.

78 Mr. UDALL. Did you ever represent any coal companies or electric utility companies?

78 Mr. PECK. No, nor have I spoken with anybody from the industry, either now or during the deliberations of the interagency task force we are talking about. When I say spoken with someone from the industry I mean about the substance or impact of the legislation. I had one argument about whether or not the Administrative Procedures Act would apply. That was 2 1/2 years ago. It was by telephone and took 5 minutes. My participation has been as an attorney and as a legislative analyst and without any regard for specific or general industry considerations.

78 Mr. STEELMAN. The chairman informed me I have less than a minute remaining so I would just like to say that this is a critical point in this whole consideration, that is, how the

decision was arrived at. In this case, form does become substance. A substantive decision has been made by the President to veto this legislation based on certain assumptions given to him. If the assumptions were good it is a good decision and he should be complimented. But if those assumptions were bad, and I suspect they were bad, given the input here, I would like to ask, Mr. Chairman, that we formally request from whomever the task force chairman is, I haven't asked that question, is that Mr. Morton? Who headed up the task force?

78 Mr. HILL. Mr. Carlson and myself.

78 Mr. STEELMAN. Could I then, Mr. Chairman, ask Mr. Hill, acting in his capacity as cochairman to furnish the committee a written statement on the methodology, on who had input, how often they met, who they asked for specifically for the Labor statistics?

78 Mr. SEIBERLING. How about who was present?

78 Mr. HILL. We can provide that. I would like to amplify on one further point. The people we were working with from the Commerce Department were not from the promotional side of that department. They were from the economic research service and the materials research service. These are the people that do the national income accounts, the GNP projections, unemployment projections connected with GNP. It is not the Department of Labor that does those kinds of analyses, and it was using the same kinds of analysis used in the national income accounts by the Department of Commerce. I would admit they have been wrong. Usually it turned out to be worse in the past than what they predicted. But that is the group that is responsible in Government for doing these national income account studies, projections of GNP, unemployment, and so forth. That was the group we were dealing with from there.

78 Mr. UDALL. Mr. Tsongas is recognized for 10 minutes.

78 Mr. TSONGAS. Thank you, Mr. Chairman.

79 I would like to thank you for coming here. Those of us who are new to Washington have to be indoctrinated as to how decisions are made. I think we have learned a lot today. Do you have Mr. Zarb's statement before you?

79 Mr. HILL. Yes, I do.

79 Mr. TSONGAS. If I could direct your attention to page 17, the first line after the paragraph

entitled "HR 25 unemployment." Not only would American consumers pay more if HR 25 would become law, "many thousands would lose their jobs." Now, it was determined this morning that what we were talking about was future jobs, not present jobs.

79 Mr. HILL. Some of the people who currently are involved in surface mining would be a part of the larger mix in terms of the future jobs.

79 Mr. TSONGAS. But the public face the administration provided in terms of the veto was jobs. And the figures used and the figure projected, even regarding my State which is not involved in mining to any extent whatsoever, is 36,000 jobs, correct?

79 Mr. HILL. Correct.

79 Mr. TSONGAS. That was a clear basis for the veto.

79 Now, the bill that the administration sent up here, the projection was that the loss of production would be between 33 million and 80 million tons. Is that right?

79 Mr. HILL. Correct.

79 Mr. TSONGAS. What would the loss of jobs be under your bill?

79 Mr. HILL. We could run that calculation from the low end and high end.

79 Mr. TSONGAS. I have run it for you - 7,400 and 18,000 jobs under 80 million tons. So the concern is not loss of jobs, the concern is the quantity of jobs that would be lost. So the administration is standing four square for the loss of 18,000 jobs; is that right?

79 Mr. HILL. I don't think that is correct. I think in the President's veto message on this particular bill he indicated at the time he submitted his own version of the surface mining bill he had every expectation that Congress would enact a comprehensive national energy policy, and that losses that we sustained here in coal could be made up both through stringent and strict conservation measures and through measures to increase supply. As we have gone through this session of the Congress, our judgment is we are not very close to having that confidence in the national energy program.

79 Mr. TSONGAS. Are you saying you are backing off support of your own bill?

79 Mr. HILL. That is not what I am saying.

79 Mr. TSONGAS. Well, do you support the bill you people sent up here?

79 Mr. HILL. In the context -

79 Mr. TSONGAS. Yes or no. It is your own bill.

79 Mr. HILL. If we were to send up a bill today given the present energy situation, I think we would send up a different bill.

79 Mr. TSONGAS. So you do not support the bill you sent up here?

79 Mr. HILL. I would not want to indicate I have the authority to make that kind of call in terms of the White House. But we certainly would have to make a number of major changes in light of our energy and economic situation.

80 Mr. SEIBERLING. Is it not correct that the President's energy program would result in a reduction of 400,000 jobs? The oil tariff increase and deregulation?

80 Mr. HILL. I did not see an estimate of that nature. I will be glad to check it out.

80 Mr. SEIBERLING. The concern about jobs turns on, or is different depending upon whether you are for against legislation, or regulation.

80 Mr. HILL. I don't think that is the case. I think the President's energy program - there was nothing in there in terms of his conservation program to use less energy which would have created less supply. His program, the higher taxes and prices, would have reduced consumption, but that has a totally different impact on the economy and unemployment situation than a bill which reduces supply. We are reducing consumption at the end point, not the availability of the various fuels. So you have to be very careful.

80 Mr. TSONGAS. If I might have my time back. The difference between H.R. 25 and the administration bill on the low end of the range is between 9,000 jobs and 7,400 jobs, which is a marginal difference. The difference between 18,000 jobs and 36,000 jobs is the upper range. I wanted to establish that. Do you know what the date of the President's veto of the strip mining bill was?

80 Mr. HILL. It was a week ago today. Yes, a week ago today, May 20.

80 Mr. TSONGAS. Do you know the date of the President's veto of the emergency jobs bill?

80 Mr. HILL. No, I do not.

80 Mr. TSONGAS. You didn't consult with him on that, which was 1 million jobs?

80 Mr. HILL. I did not consult with him, no.

80 Mr. TSONGAS. The second point is production. Is it not true that some of the limitations of production involves unrelated things like transportation systems, even if you doubled the coal produced in the West you could not get it to the East because of the lack of railway capacity?

80 Mr. HILL. If you were to double - first of all you could not double coal production in the West in the next several years. But if you assumed that you could, you would not be able to move all that coal East in that period of time. It would take a substantial buildup of the transportation network.

80 Mr. TSONGAS. Exactly. Is it not also true that there is a limited capacity to convert to coal in the existing industrial complex unless we completely repeal the Clean Air Act?

80 Mr. HILL. I don't think that is the case.

80 Mr. TSONGAS. The limitation, given the Clean Air Act, on the capacity

80 Mr. HILL. I do not think so. In fact, in the Democratic energy program put forward their estimates showed we could go to 1.4 billion tons of coal by 1985 and stick with the Clean Air Act. So that is a substantial increase in production under the Clean Air Act.

80 Mr. TSONGAS. But there is a limited capacity - capacity to convert obviously has its limits like anything else, which is a force that comes to bear on the potential of production; does it not?

80 Mr. HILL. I think that is correct, but that capacity changes over time.

80 Mr. TSONGAS. Isn't the third measure in terms of production, equipment as you were describing, and one of the problems you would have with drilling is the equipment to do the drilling. Don't we also have a problem in terms of the equipment available for the mine interest and mining industry? Those three limitations, transportation, capacity to convert, and equipment, I do not find in Mr. Zarb's statement. I think in terms of fairness to the larger issue those things

should have been mentioned as well.

81 Mr. HILL. I think those are assumed under our estimate of coal production in 1977. Production is rising. It is higher in 1974 than it was in 1971 and clearly on a track toward 685 million tons a year in 1977. I think that has to assume that the equipment and transportation links are going to be there. We think it is. It was on the basis of that level of production that we did our estimates in our corresponding job impact statement.

81 Mr. TSONGAS. The third issue is consumer costs.

81 On page 16, reference is made to the increased cost to the consumer of both coal and electricity. Was that not also a consideration for the \$1 import tariff that would bitterly impact New England?

81 Mr. HILL. I would like to talk about that a minute if I may. This cost impact is connected with reducing supply, which in our mind buys us nothing. We could have the environmental protection of this bill without that major short-term reduction in supply. So it is a hard cost to pay. In the President's program, that is a program aimed at trying to discourage the importation of oil, with which the exported dollars amount connected there is quite large. Keep in mind the President also proposed putting all of those taxes right back into the economy, not keeping them out of the economy.

81 Mr. TSONGAS. If the concern over consumer prices predominates, in terms of oil imports you could achieve exactly the same result by an import quota system, so it is not a predominant consideration, cost to the consumer.

81 Mr. HILL. If you would -

81 Mr. TSONGAS. Could I finish my question? I have had 10 minutes since 10 o'clock this morning. Now in 1972 the cost of coal apparently was \$7.66 a ton. Right now it is approximately \$18 a ton. Profits have gone up, as was stated earlier, 181 percent over the last year. What have you people done in terms of protecting the consumer over the increased cost of the coal the last few years if you are so concerned with the cost to the consumer?

81 Mr. HILL. Well, I - we do not - are not generally involved in FEA in the consumer area. We have a lot of consumer inputs.

81 Mr. TSONGAS. I couldn't agree more with that last statement.

81 Mr. HILL. I don't think it is the statutory mission of FEA to move in the area of consumer protection.

81 Mr. TSONGAS. A final point. The letter by Kent Frizzell to Mr. Lynn recommends that the bill be signed, from the office of the Secretary of the Interior. Obviously, he came to the same conclusion some of us came to. Who else in the grand task force, that advised the President, advised him to sign the bill and who advised him not to sign the bill?

81 Mr. HILL. Mr. Tsongas, the advice of the President's advisers, members of his Cabinet agency, is a matter of Executive privilege. I do not think it would be appropriate to indicate who voted for what.

82 Mr. TSONGAS. If it is not inappropriate I would like to put it in the record, if it is all right, the letter to Mr. Lynn, at least one recommendation which has leaked to the real world -

82 Mr. STEIGER. Reserving the right to object, in order for that document to be in the record, that fact that, it was a two page letter, which contained all but two pages of concern about the bill. The bottom line said, "Given the political situation," or some such language, the reference was to the fact that Mr. Hathaway was then being held hostage on the Senate committee. As long as that appears in the record the letter may appear in the record. I suspect if Mr. Frizzell was to be called in here, placed under oath with a lie detector, whatever else you had in mind for him, he would respond the same.

82 Mrs. MINK. No further objections.

82 The letter will be inserted in the record at this point.

82 [The letter follows:]

82 OFFICE OF THE SECRETARY, Washington, D.C., May 10, 1975.

82 HON. JAMES LYNN, Director, Office of Management and Budget, Washington, D.C.

82 DEAR MR. LYNN: This responds to your request for the views of this Department with respect to H.R. 25, an enrolled bill entitled "The Surface Mining Control and Reclamation Act of 1975."

82 Although the Interior Department has serious reservations about the potential effects of the bill, it recommends that the President approve the bill.

82 The bill is basically similar to S. 425 which was passed by the 93rd Congress, although not approved by the President. While Congress did not adopt all amendments recommended by the Administration, some changes have been made, including partial or total revisions in the provisions dealing with citizen suits, reclamation fees, special unemployment provisions, stream siltation, hydrologic disturbance, and anti-degradation.

82 However, some objectionable features remain. For example, the alluvial valley floor and hydrologic provisions are particularly vague and confusing. The Secretary is not given enough authority in defining ambiguous terms. Provisions dealing with such matters as steep slopes, surface owner consent, prohibition of mining in National Forests, and enforcement timing are still troublesome.

82 DISADVANTAGES OF THE BILL

82 ENERGY IMPACTS

82 The bill would not help our efforts to reduce our country's reliance on high cost foreign oil. Based on a projection of 685 million tons of coal production, the bill could cause potential coal production losses in the range of 40-162 million tons in the first full year of implementation; by contrast, projected losses under the Administration's 1975 bill would be in the range of 33-80 million tons. This range of estimated loss includes only those provisions for which an estimate can be developed. Although this loss could be reduced over time, any incremental losses in production would have to be made up substantially by increased oil imports.

82 Some of the prohibitory provisions in the bill could cause a lockup of 20 to 70 billion tons of valuable coal reserves. The estimated U.S. coal reserve base is 434 billion tons.

82 Events during the past several days cause further concern about the relationship of this bill to the President's stated goals for national energy self-sufficiency.

82 For the second time in 14 months, the U.S. Geological Survey sharply lowered its estimates of how much oil and natural gas in the U.S. remains to be discovered. This finding gives additional emphasis to increased coal production as a major key to such energy self-sufficiency.

82 The FEA plan for converting utilities to coal (and thereby both same domestic oil and gas and cutback foreign oil consumption) is encountering opposition in part because of uncertainty about the availability of adequate coal supply. The conversion program would require an additional 48 million tons of coal per year.

83 These developments make even more disturbing the fact that our dependence on foreign oil is apparently even greater than it was before the Arab embargo. Thirty-eight percent of the oil we now use is from foreign sources - up from 35% dependence in 1973.

83 The current outlook for favorable Congressional action on the comprehensive energy proposals still before Congress is not good. Hence, unnecessary restrictions on coal production would be even more damaging to the Nation's energy goals.

83 The current outlook for favorable Congressional action on the comprehensive energy proposals still before Congress is not good. Hence, unnecessary restrictions on coal production would be even more damaging to the Nation's energy goals.

83 COST/ECONOMIC IMPACTS

83 The conference bill could cause costs for surface mined coal to increase by \$0.50 to \$1 .50 per ton. The weighted average FOB price for surface mined coal was about \$1 1 per ton in 1974; this price is expected to be somewhat higher in 1975. The cost for underground mined coal will rise slightly because of the reclamation tax and some expenses needed to comply with the sections of the bill dealing with underground mining. In other words, costs to the consumer, mostly in the form of increased electricity costs, would exceed \$3 00 million per year. In addition, administrative costs for States and the Federal Government are estimated to be around \$9 0 million for the first year plus the cost of any unemployment benefits.

83 Job losses attributable to the bill could be significant, and the Appalachian region could have a disproportionate share of any loss.

83 The bill favors larger operators over smaller ones.

83 An intent is to encourage relatively greater underground coal mining, which will result in higher costs, lower reserve recoveries and inherently greater hazards to workers.

83 ADMINISTRATIVE/LEGAL IMPACTS

83 Legal problems and administrative and litigation delays will result from the bill's ambiguous language.

83 ADVANTAGES OF THE BILL

83 The proposed bill offers many advantages and improvements including:

83 The issue of Federal regulatory legislation for coal surface mining would finally be settled.

83 The bill goes a long way toward assuring tough reclamation standards and enforcement in all States.

83 The bill takes into consideration regional factors, such as steep slopes in the East and water availability in the West.

83 When the bill is fully implemented, no coal will be surface mined unless the mined out areas are adequately reclaimed.

83 The bill contributes to the overall national goal of environmental quality.

83 The bill provides authority for reclaiming the scars of some past mining on so-called orphan lands.

83 The bill also allows authority for using abandoned mine reclamation funds for other purposes connected with the infrastructure needed to support expanding mining activities in new and old areas.

83 Although the Department has adequate authority to adopt regulations for coal mining and reclamation on Federal lands, this legislation should reduce opposition to any redemption of leasing of Federal coal.

83 CONCLUSION

83 This legislation still contains some problem areas and features that the Department does not agree with, and the potential effects of the bill on the energy/economic situation could be serious. Nevertheless, considering the four years of work that has already gone into the bill and considering its substantial positive environmental benefits and the fact that some legislation is desirable, the conclusion of the Department is that the overall circumstances dictate that the bill be signed.

83 Sincerely yours,

83 KENT FRIZZELL, Acting Secretary of the Interior.

84 Mr. TSONGAS. Could I have consent to read the two lines of conclusion?

84 Mrs. MINK. The gentleman may have the opportunity to rebut.

84 Mr. TSONGAS. Conclusion states as follows:

84 This legislation still contains some problem areas and features the Department does not agree with; potential effects of the bill on the energy economic situation could be serious. Nevertheless considering the 4 years of work that has already gone into the bill and considering its substantial positive environmental benefits and the fact that some legislation is desirable, the conclusion of the Department is that overall circumstances dictate the bill be signed.

84 Mrs. MINK. The Chair recognizes the gentleman from Oregon, Mr. Weaver, for 10 minutes.

84 Mr. WEAVER. Thank you, Madam Chairman.

84 Mr. Hill, what has happened to coal prices in the last couple of years? Do you have data there?

84 Mr. HILL. I have data. I quoted it this morning. I forget exactly where it is. We had both contract prices and spot market prices. Spot market prices did go up last year during the period of the impending and actual strike. But they are starting to come back down. If we look at contract purchases, December of 1973, \$9 .19 a ton. This is a national average paid by utilities. This is the price they paid. December 1974, \$14.20 a ton. January 1975, that figure is \$1 4.57. In February of 1975, \$15.71. On the spot market they were \$1 3.34 in 1973 and rose to \$31 1.05 in December of 1974. That was during the period of the coal mine strike. January 1975, they fell back off a little bit to \$28.12 after the strike was over. Now they are down to \$2 5.93.

84 Mr. WEAVER. Last figures were spot and the others were average contract?

84 Mr. HILL. That is right.

84 Mr. WEAVER. Have your economists figured out why the prices rose?

84 Rm. HILL. I think there are a number of reasons. They are very hard to separate out. First of all, the cost of capital has risen dramatically during that period and people are paying more significantly for their capital.

84 Mr. WEAVER. You say they are paying more for their capital?

84 Mr. HILL. Yes.

84 Mr. WEAVER. Does the coal company operate in a fairly free market or is it a cartel like situation?

84 Mr. HILL. No, I think the coal industry is generally a competitive industry. I think it is probably one of the most competitive of all the energy -

84 Mr. WEAVER. As an economist wouldn't you say that had to do with how much it cost to produce coal?

84 Mr. HILL. I think the general reflection of the market price should be a general reflection of the cost of producing that coal plus a reasonable return.

84 Mr. WEAVER. In a free market? I did not realize that is how a free market worked. I thought a free market worked on supply and demand. I come from a lumber producing region and right now we are selling lumber for less than it costs to make because it is a free market.

84 Mr. HILL. But if the supply is greater than demand somebody is going to sell their coal for less. It keeps driving the price of the coal -

85 Mr. WEAVER. Right. We have had a price rise now. I wonder why it rose.

85 Mr. HILL. I was trying to talk about that. We have had a tremendous increase in the cost of capital. There has been a major increase in the cost of labor.

85 Mr. WEAVER. Didn't we establish a free market is based on supply and demand? You are talking about cartels, aren't you? Where you set your own price? The only way you can set your own price is if you have control of the market, is that not correct?

85 Mr. HILL. That is correct.

85 Mr. WEAVER. In the free market, supply and demand control price. Isn't that simple economics?

85 Mr. HILL. That is basically correct, yes.

85 Mr. WEAVER. Then let's not talk about capital cost.

85 Mr. HILL. You asked me why it went up.

85 Mr. WEAVER. I would assume it would either be increased demand or decreased supply.

85 Mr. HILL. It would but you have to interrelate the cost of actually producing the coal. Nobody is going to produce coal for less than they can sell it for in the market. If those costs keep rising, the general prices have to rise along with it.

85 Mr. WEAVER. Was there an increase in demand?

85 Mr. HILL. There has been an increase in demand for coal over the last several years.

85 Mr. WEAVER. Has that been caused by other factors, other than people began to like coal?

85 Mr. HILL. I think it is a number of factors. I do think it has to do with continuing progress on meeting the environmental standards and requirements and installation of equipment such as precipitators.

85 Mr. WEAVER. That caused increased demand?

85 Mr. HILL. More people are using coal, correct.

85 Mrs. MINK. You may proceed.

85 Mr. WEAVER. Is there any relationship between the price of coal and the price of oil?

85 Mr. HILL. I think that generally speaking, the economists that have looked at this issue have concluded that the relationship is not a direct relationship. It is clear in my mind as a professional judgment that coal production and coal utilization did lag for many years because the cost of oil was so low.

85 Mr. WEAVER. With the cost of oil -

85 Mr. HILL. It is incorrect to go from that to say that at \$1 2 oil, coal prices are going up to that level. Our analyses and studies show that oil does not attract coal prices as a magnet, unless you have a situation where your supply and demand get into a serious disequilibrium.

85 Mr. WEAVER. Your basic position is that coal is in a free market, highly competitive and

the reason it has gone up in price is because the costs of producing it have gone up? That is basically your position? I am a builder not an economist, but I will send them to my freshman college economics professor to see if he agrees with that thesis. Would you answer this question then? How much more will the President's deregulation of oil cost the American consumer than will this strip mining bill if enacted?

86 Mr. HILL. I forget the exact number on that. I will be glad to supply that for the record, in terms of the total cost. It would add a total of about a nickel a gallon, the deregulation aspects of that. Keep in mind we did propose a major windfall profits tax to go along with that decontrol and to rebate the full amount of the decontrol back to the consumer. While he would be facing higher prices he would still have rebated to him the amount of money that had been taken away in changing the relative price of oil to everything else in the economy.

86 Mr. WEAVER. When the President proposed a tax rebate, he proposed that it be tied into his increased oil costs, right?

86 Mr. HILL. That is correct. Our energy rebate taxes totaled \$30 billion.

86 Mr. WEAVER. We have already passed a tax rebate bill so is that argument not moot now?

86 Mr. HILL. I would hope not. We would still like to see our taxes and rebate provisions of those taxes be enacted into law. Keep in mind the enacted rebates are just a 1-year rebate, for economy stimulation.

86 Mr. WEAVER. So you say the President's deregulation of oil is going to cost the consumers quite a bit more but you do not know quite how much?

86 Mr. HILL. We have the estimate on that. The deregulation of old oil, the deregulation of new gas, the \$2 excise tax on oil and \$2 import fee on oil and 37 cents excise tax on natural gas would be \$30 billion total. \$1 2 billion of that was related to the windfall portion of the decontrol of old oil. But the full \$3 0 billion would be rebated back to the economy, to consumers.

86 Mr. WEAVER. Can you explain why the President is willing to raise prices to the consumer on one form of energy but is somehow or other concerned on another form of energy

about the price rise?

86 Mr. HILL. Yes. I think the thrust of the President's energy program is to reduce our dependence upon foreign oil. That is a dependency we find particularly troublesome.

86 Mr. WEAVER. How does his deregulation of old oil reduce our dependence?

86 Mr. HILL. It works two ways. First of all, prices do go up and you get your conservation effects of less demand at the higher prices. Second, it puts a maximum supply response into the business of producing, developing new fields, and producing new fields. So you increase your supplies. By reducing demand, increasing your supply, both of which come out of decontrol, you can reduce the amount of oil you are having to take from the world market. Now, the key to that is, given the fact that it is a price approach, you do not want the consumers to be worse off, you rebate to them in the President's program the full amount. In this particular bill we are looking at consumer costs generated not by reducing demand, but by reducing supply. That has a much more pernicious kind of impact. Not only does it raise our oil imports but you get the extra consumer costs thrown in.

86 Mrs. MINK. The time of the gentleman has expired.

86 The Chair recognizes Mr. Ruppe for 10 minutes.

86 Mr. RUPPE. I yield 1 minute, no more, to my distinguished proponent of the veto, Mr. Steiger.

86 Mr. STEIGER. Thank you.

86 I want the record to reflect, gentlemen, with regard to ambiguity, one of the most dramatic examples, that could not have been available to you in your decisionmaking process, during the course of the conference committee dialogue from the record of both the House and Senate reflected that the House viewed the language in the bill as meaning that Federal authority would prevail on Federal lands. The Senate viewed it as the fact that State authority would prevail over Federal lands where there was a conflict. In the discussion of the conference it was decided that, yes, that is how both Houses viewed it but let's leave it up to the courts to decide it and press on to something more important. That is a specific example of ambiguity which I think is repeated many times in the bill. I thank the gentleman.

87 Mr. RUPPE. I would like to ask someone from the Interior Department how they view the effect of Pennsylvania legislation on the small operators and the conditions under which they operate in that State. I ask this because I had someone check today with Mr. Guckert, director of surface mining operations in Pennsylvania. I understand they have a strong law. I understand also, however, that they have had a great deal of inquiry concerning applications for new mining permits. In fact, he is quoted as saying "they are driving us crazy," by people wanting to come into the business.

87 They are indeed getting an enormous number of mining applications. How does that square with your concern over the fact that you believe the small operators will be driven out of business?

87 Dr. FALKIE. Our projection on numbers takes into consideration this potential increase in production from small mines without this bill, as we presented it before on the charts. I would only point out, Mr. Ruppe, that there are, in our opinion, at least two major areas of significant difference between this particular bill and the Pennsylvania bill.

87 One of them deals with the variances that can be granted by the State of Pennsylvania to the operators, almost throughout the bill. I am looking to try to find the wording in the bill that gives this variance. There are terms in there that appear throughout.

87 The second has to do with some of the front-end type things that would have to be done in applying for a permit. I want to put on the record that I happen to come from Pennsylvania, and I think they are doing a good job in both the law and in enforcing the law. But I don't feel this particular Federal act, at least from a technical standpoint, is anywhere near Pennsylvania's law.

87 Mr. RUPPE. Could you in the next few days give us an indication, recognizing it takes a certain amount of study to go into any detail regarding the differences, regarding the differences in the variance procedures and differences in the procedural requirements of the legislation.

87 Mr. PECK. Mr. Ruppe -

87 Mr. RUPPE. I will take the Interior Department - Commerce for fishing and Interior for mining. In 1972 for example, 22 million tons were mined. Last year my understanding is that

between 36 and 38 million tons were mined. It appears to me that we can have firm reclamation legislation and we can have an expansion of mining. With the present price structure on the spot market, we also offer incentives to the small operator who sells on the open market that I would guess would be unparalleled in recent years within that industry. So if there is a difference between the variance procedures or the application procedures, Pennsylvania as compared with the Federal law, I think we really ought to have them because I think that would be a fair test of the real differences, if any, between the two pieces of legislation.

88 Dr. FALKIE. Yes. Mr. Ruppe, earlier in the day we presented a check list on the differences of the various State laws with this particular law. I will submit this again. I would like to mention, too, that much has been said about the steep slope things. Our numbers show that steep slopes make up probably 5 percent or less of the mining in Pennsylvania. I would like to get back to the statement I was trying to make before. There are words, "unless modified or waived by the Department for cause" in the Pennsylvania statute. This kind of philosophy exists throughout the whole Pennsylvania law and the various other State laws.

88 Mr. RUPPE. I understand. Perhaps you are correct. I am not suggesting you are not. I really would like it if the Bureau of Mines would give us the language differences in the law and how it has been applied because the variances may be in the law in Pennsylvania, in which case, in substance the law would be different. They also may or may not be applied in practice. I have seen Pennsylvania's reclamation results and I grant that in seeing two or three instances, it is not enough to draw a general analogy as to how the bill is administered. But I would like from you how the carrying out of the specific variance procedures or carrying out of legislation that has better application procedures has actually worked to the advantage of the small miner in Pennsylvania because the statistics in that State show that he has stayed in business. He is mining more coal, and obviously living within the requirements of the statute.

88 Dr. FALKIE. I will supply an analysis of the differences for you.

88 Mr. RUPPE. How much of the mining undertaken by the small, 50,000 ton a year or less, miner, is actually undertaken on steep slopes? Do you have that?

88 Dr. FALKIE. It varies by State.

88 Mr. RUPPE. That is probably where the small miner is being hit the hardest, is it not?

88 Mr. HILL. We separated out the small miner impact from the steep slope impact. The steep slope impact relates to mining operations of 50,000 tons a year or more. If they are small miners operating on steep slopes they are not double counted there.

88 Mr. RUPPE. You did indicate that somewhere between 40 percent and 100 percent, I believe, of the small operators would likely go out of business under this legislation, is that correct?

88 Dr. FALKIE. Not the operators. That was tonnage impact.

88 Mr. HILL. Impact on the tonnage from the small miners.

88 Dr. FALKIE. The number you are looking for varies anywhere from 5 percent to, I would say, 70 percent. I will have to look up that number. We have that number you are asking for.

88 Mr. RUPPE. I read on page 11 of Mr. Zarb's testimony. Maybe I am taking it out of context from what we are discussing. It is stated: "Our estimate is that at least 40 percent of all the projected production from small mines would be precluded under H.R. 25, with principal impact in the East." I thought that meant that 40 to 100 percent of small mine production would be lost under the bill.

89 Dr. FALKIE. Production, yes.

89 Mr. PECK. Not companies out of business necessarily.

89 Mr. RUPPE. I am sorry. Production of small mines. If they are all under 50,000, they are all relatively the same size, aren't they?

89 Dr. FALKIE. There is a technical difference because some mines may own others.

89 Mr. RUPPE. Is that because of the law? What percent of these 40 to 100 percent would be because of the bill and its general ramifications, or because of peculiarities this bill has for those operating on so-called steep slopes?

89 Dr. FALKIE. The figures you are asking for are something like this. Ohio has approximately at least in 1971, 29 percent of its small mines operating on steep slopes. West Virginia, around 70. Tennessee, in excess of 70 percent on steep slopes.

89 Mr. RUPPE. Is that the percentage of coal mines or the percentage of operators?

89 Dr. FALKIE. I don't have that number with me. You are asking me how many of the small miners, maybe I should form this in the form of a question, how many of the small miners are mining on steep slopes?

89 Mr. RUPPE. Yes, right.

89 Dr. FALKIE. I will have to get that number for you.

89 Mr. PECK. At page 50 through 52 of the infamous CEQ report, Appalachia is discussed in just those terms by varying slope degrees ranging from 0 to 25, plus. So that is the kind of report that you are looking for.

89 Mr. RUPPE. I have trouble figuring out where the 40 to 100 percent of production is lost. I don't know if it is lost on steep slopes or it is lost because of the bill. I cannot put my finger on it because Pennsylvania's experience has been contrary to that. The only significant difference as far as I can see is the fact that Pennsylvania undoubtedly has more steep slopes.

89 Dr. FALKIE. There are differences throughout the whole Pennsylvania bill. As I said, we have had a checklist submitted. I will submit a further analysis for you.

89 Mr. RUPPE. How the checklist compares on the application requirements.

89 Mr. UDALL. We have an important vote on. I regret having to continue these hearings but I want to make sure all the members of the subcommittee are satisfied.

89 I will leave you in Senator Metcalf's tender care for the next few minutes. I suspect we will have you out of here by 5:30.

89 Senator Metcalf will take over.

89 Senator METCALF. Thank you very much.

89 This is a House hearing, and the hearing was set up and established by members of the two subcommittees of the House to inquire as to whether or not the figures presented by Mr. Zarb, in his press conference, and the President, in his veto message, were accurate. In order to get my opinion here on a proper level, I want to say that Mr. Peck is absolutely wrong, and falsely testified this morning when he said the citizens suit was not as suggested by the administration.

Where is Mr. Peck?

89 Mr. PECK. Right here, sir.

90 Senator METCALF. We adopted the citizens' suit provision exactly as the administration suggested. We even put in language that moved the Sierra Club against Morton, against my objection. It was my opinion that we should just strike out the whole citizen suit provision and rely on the Sierra Club against Morton. But it was the administration's position that we should try to move that. Isn't that correct?

90 Mr. PECK. Yes, Senator. If the record shows this morning that I indicated to the contrary, I certainly want to either amend it or elaborate on it by what I am saying now. What I intended to express was this. The concept of the citizen suit provision gave us two problems. The first problem was in fact fully amended, I think first on the Senate side. What we asked, which was the deletion of the phrase "or of the provisions of this act" was fully accommodated - that is absolutely correct and I had not intended in any way to imply the contrary.

90 Senator METCALF. Actually, had there been no provision in the bill with respect to citizen suits you would still be in here talking about law suits and so forth, would you not?

90 Mr. PECK. Very likely, and that relates to the second problem. As a matter of fact one point a year and a half or so ago someone suggested that the citizen suit provision of the bill be made exclusive, so as to require the commencement of citizen action against an operator or against the regulatory authority only pursuant to the provisions of this bill, because the provisions have limited the general concept of standing to sue to a person aggrieved. Other provisions of law have been expanded so far that the differences between a citizen suit provision and a general citizen's standing to sue becomes one more of procedure than substance. But I would add before we go any further, there are still limitations under Sierra Club against Morton, the Mineral King case, and the kinds of citizen suits that we are concerned about in terms of this bill would tend to be minimized by straight application of the standing to sue principles exclusive of the statutory provision. I have in mind particularly the ERDC cases against the EPA, for instance, which did not plead the citizen suit provisions of the Federal Water Pollution Control Act, but relied on general standing under the Mineral King case.

90 Senator METCALF. For many, many years I have been an advocate of citizen suits, of allowing citizens to come in and have a standing in court on propositions such as presented by this bill or Environmental Protection Agency and so forth. But after Sierra Club against Morton, I, over on the Senate side, and in conference, just shrugged it off and said let's knock the whole section out and rely on that. The administration came in and said it wanted this definition. And that it would like a little modification of Sierra Club against Morton, which we provided. Isn't that correct?

90 Mr. PECK. Yes, sir. I might say we share, the administration shares the view that the operation of the citizen suit provisions not only in environmental legislation, but of the general standing to sue concepts as expanded by the Supreme Court have performed a valuable function. Our sole concern was to prevent the commencement of harassing or frivolous suits brought solely for the sake of obtaining a temporary restraining order that could shut down production. We were not against the concept of a citizen's right to sue, and its appropriate relationship to the existence of standards set by administrative agencies and in circumstances where, as a result of either budget or administrative discretion, no one has brought a case of alleged violation to the attention of the regulatory authority, or the authority has not chosen to act. It is merely appropriate to have the citizen do so in the court. That has been the administration's position.

91 Senator METCALF. They are going to do so whether or not the bill passes, aren't they?

91 Mr. PECK. That is right, yes.

91 Senator METCALF. I noticed when I read Mr. Zarb's statement, he made some suggestion that there was no way to predict what the court would do with some of the language of this bill. Are you telling us that there is a way to predict what the court will do with the language of the administration bill, for example?

91 Mr. PECK. At several critical instances, the administration bill was designed so as to eliminate some ambiguities. Just recently under the Water Pollution Control Act a circuit court of appeals invalidated an agreement between the EPA and the AEC. It was clearly within the intent of the language of the Water Pollution Control Amendments. It would have assigned jurisdiction

between the agencies with respect to effluent limitations placed upon radioactive material. It would have been a right result. The court invalidated the agreement because the language of the act said on its face simply that EPA shall issue permits period. The court held that meant EPA and no one else. So our purpose in drafting the administration bill was to make as clear as possible the intent of the statute. In a couple of different areas there are major differences between the House and Senate versions and the -

91 Senator METCALF. We are not talking about the House and Senate versions. We are talking about the conference committee version.

91 Mr. PECK. I understand. I meant to say there were major differences and so on.

91 Senator METCALF. Yes.

91 Mr. PECK. We think there still remained those kinds of differences. That was why in the administration-proposed legislation the Secretary of the Interior was expressly authorized to define terms. There was no intent in that authorization to change the thrust of the statute. But there was an intent to create an opportunity for an interpretation that would give certainty, that would bind other courts or other regulatory authorities and in fact, to give us an ability in advance of determining what losses would be, as I think was stressed in Mr. Zarb's testimony. We do not know what the operation of the "unsuitable for mining" provision will be. We do not know whether, or what definition or what test will be applied by the courts as to existing financial commitments. It is a critically important question whether a mine is to be considered a new mine or an existing mine. Those kinds of questions we would have given the Secretary of the Interior the authority to clarify by rulemaking which would thereafter be binding.

91 Again, it was an intent to express not something contrary to either what courts would prefer, or justice, but to create predictability by the clearest possible drafting of the statute.

92 Senator METCALF. Mr. Peck, I have been a lawyer for a while. I do not know, either, what the court would do. I have never had the arrogance to say that, if we passed a certain type of legislation, the court will decide it one way or the other. The only time I have ever known what a court would do was when I was a member of the court, and I knew what one member of

that court would do after hearings and decisions. But I think this is the kind of thing you bring in. You say, well, we don't know. I don't know what the court would do with the administration bill, and you don't either.

92 Mr. PECK. That is exactly right and that is why we have ranges in our estimates.

92 Senator METCALF. So we should have no legislation, is that what you are saying?

92 Mr. PECK. No, sir. We should make the legislation as tight and clear

92 Senator METCALF. That is exactly what we tried to do. I may have read a different line of cases than you did. But I came to the conclusion after reading those cases that we resolved these questions just as tightly as we could. And we made our decisions after 4 years of consideration. Decisions were based on court language, on lawyer like language, and it astonishes me that after 4 years of consideration, Mr. Peck, open hearings before both the House and Senate, open conference, all at once you come in in the last 10 days and suggest that there are ambiguities in this bill that cannot be resolved except by giving the Secretary authority to resolve those ambiguities.

92 Mr. PECK. Senator, without any question during the course of both deliberations, deliberations on both sides of the Congress, there were in fact many changes made which were ameliorative, I think the President has recognized that.

92 Senator METCALF. Look, we looked out over the administration representatives and saw nods and approvals and asked, well, would this be satisfactory? And we were assured that it would be satisfactory. Now, after all those years and all those open hearings, all at once we find out we are going to lose 36,000 jobs which I think were just pulled out of the air. We are going to destroy the coal mining industry, which I for one, do not want to destroy. I think coal is the solution to some of our energy problems. I just do not understand where we got all these things.

92 Mr. PECK. Again, Senator, we are talking about differences of opinion which are most clearly exemplified by the ranges, the assumption being that the worst possible interpretation would be given to justify the high range, the most charitable assumption or interpretation given

for the low range. The administration has over the course of the past year to my knowledge sent up, I believe eight specific detailed pieces of correspondence raising many of the questions that I have raised. To my knowledge I don't think any of these are new. I had not meant to imply that the authority to define ambiguous terms was a cure-all. It was the best we could do faced with the language of S. 425, and the strong desire on everybody's part to use that as a vehicle to create workable legislation. If we have failed in our legal judgment, that remains a disagreement among lawyers; but it surely is an honest disagreement being raised not at this time, and not intentionally, for the first time.

93 Senator METCALF. I do not want to put this hearing on disagreement among lawyers. As to argument about various interpretations of the court, you know that the committee did its best to analyze cases and try to determine what the court might do with these. And that is the only thing that lawyers can do. But the economic problems that you suggested we should turn to are problems that give me a great deal of concern. Again, we had hearings on the bill last year, in the last Congress. We had, I think, the first committee in the Senate that opened its hearings to open attendance. That was the Interior Committee. In the course of all those hearings we had attendance from not only the administration, but from everybody. The House of Representatives did the same. Then we had hearings in this Congress on the bill, and we had hearings in the House of Representatives. Then we had open conferences. It wasn't until after I had signed the bill, and I signed as Acting President of the Senate, and sent the bill down to the President of the United States, that we all at once found out there would be 36,000 jobs lost. In all the 4 years that we considered this bill, in all the time it was debated back and forth, on the floors of the House and Senate, we never had that figure, or any figure on the number of jobs. How did you arrive at that figure in the 10 days the President had, 10 legislative days the President had the bill before him, but did not arrive at it in all the time that the bill was before the Congress?

93 Mr. HILL.Senator, I think that issue was addressed. We provided estimates last fall of some of the production losses and related unemployment -

93 Senator METCALF. Secretary Morton said there would be an increase in jobs.

93 Mr. HILL. I think, sir, he indicated this morning that, in his mind, he was talking about the longer term, 1980, and beyond. But in the near term in our mind there would be production losses which would translate into job losses, not only for the people doing the mining but for the fact that that energy supply was going to be replaced by foreign oil. The job of producing that oil would be created somewhere else. We did provide some of these estimates back in November and December. We worked on them, some of the studies we did last year came due in late December. And we continued to work on these studies since January. On our end of the street there has never been any dearth of information analysis. We have been looking at production losses, unemployment and other aspects for over a year. I know a lot of this information has been steadily and regularly provided as this bill was discussed.

93 Senator METCALF. You will recall during the course of the bill, Senator Randolph, on the floor of the Senate supported a proposition that there should be special unemployment compensation provisions for people who lost jobs as a result of the passage of this legislation. And we adopted that in the Senate. It was the administration's position that that should be stricken from the bill, is that not correct?

93 Mr. HILL. That is correct.

93 Senator METCALF. It was the administration's position that it should be stricken from the bill because there would not be any special unemployment as a result of the bill.

94 Mr. HILL.No, Senator, the reason we requested that be stricken was twofold. One, we considered it a very serious precedent to put in a provision creating an unemployment compensation fund for people affected by that program. Believe me, from the work we have done with the airline industry and their fuel problems over the last several years, I can see, given that regulatory program, them coming in saying you did it for the miners, do it for pilots. We consider that a very serious precedent.

94 Second of all, in terms of the unemployment compensation per se, it was our position that a reasonable bill would not have some of these particularly heavy impacts in the short term and create the unemployment. But we did not want to accept a bill that would in our minds, and then turn around and provide unemployment compensation. I think it is a matter of our judgment that

people would rather be working than getting a check from the unemployment office.

94 Mr. SEIBERLING. Would the gentleman yield?

94 Senator METCALF. I certainly will. I am a guest here so I will yield, my friend.

94 Mr. SEIBERLING. The very colloquy that I and Senator Bumpers read into the record took place between me and Secretary Morton on February 18 in this very room and was in response to a discussion about the unemployment compensation provisions of the bill. Mr. Morton and I both agreed it was unnecessary. It was in that context that he said that this bill will actually result in an increase in jobs. That was the thrust of the discussion. So for the Administration now to come back here and say the opposite it seems to me is just undermining your credibility.

94 Mr. HILL. I think what Mr. Morton said this morning was that he was talking about the long-term situation, say by 1980, when all the adjustments have been made to this particular bill, that there would be expanding jobs over time. We predict, ourselves, when coal production goes up, and we project that it will, that there are going to be more jobs. Our concern is in the short time. We have unemployment running 12 to 15, 20 percent in many parts of Appalachia. We have an energy situation that is deteriorating. To move into a bill that accepts some short term, 2 to 3 year kind of major job losses in some of these areas is difficult, even though those will be made up over the long term and people out West, there will be more jobs out West, perhaps. They may not be in West Virginia. So I think Mr. Morton further alluded to the fact this morning that he did not consider himself an expert on some of the economic workings of these things. I think he was referring to the long term.

94 Mr. SEIBERLING. Let me just read some more of this colloquy starting on page 85 of the transcript:

94 Mr. SEIBERLING: Just on the last point, Mr. Secretary, just to clarify the Administration's position, as I understand the Administration's position, that the laws with respect to unemployment compensation and retraining benefits, and so forth, take care of the problem and it is not necessary to have a special law for this particular industry?

94 Secretary MORTON: "I cannot speak for what legislation other departments have before

them" and he mentioned the Department of Labor and H.E.W., but he said, "As far as he was concerned, we should try to keep the legislation clean and directed toward the prime problem."

95 Then I said, here again I am quoting:

95 I must say that I think this crept into the bill because originally 4 years ago when Mr. Heckler introduced his bill to ban strip mining there was a very serious problem, obviously, because half of our coal was mined through strip mining.

95 I suggested an addition to the bill which is, in substance, the same as this section of this bill, but now that this bill has been in my view so worked over that it seems to me the number of people who are going to be unemployed because of this bill is almost zero * * * there is not really any need for it.

95 Mr. Morton said he didn't think there was either. He said:

95 There will be a net gain employment * * * because reclamation is going to require capital investment. It is going to require a work force.

95 Then we went on to discuss what was a reasonable reclamation fee. So I do not see how anyone could say the Secretary didn't tell us in effect that there was no need for the unemployment compensation feature, not just because he thought other laws would take care of it but because he thought there wasn't going to be any significant unemployment.

95 Mr. HILL. I was not here during that day. I don't know the context in which the discussion took place. I do know that when we were working on the administration's bill that we submitted in March that the unemployment provisions were considered objectionable because of the precedential nature of those provisions. While the reclamation program would generate jobs in Appalachia, it would be much less than the jobs that will be lost from H.R. 25.

95 Also, to pay for those jobs would require taking money from the economy elsewhere, which will further take away the jobs from somewhere else. You are really just moving jobs around. You are not getting a net gain when you use a tax or fee to do this.

95 Mr. SEIBERLING. I can only say for myself that if I had not had the confirmation of my own belief, from the Secretary himself, that this bill will create a net gain in employment, I

would not have agreed to take that section out of the bill. I would have fought taking it out. I think it is too late to come in and reverse the position after leading us down that path.

95 Senator METCALF. I concur.

95 Do I still have the time?

95 Mrs. MINK. Yes; you have the time under House rules.

95 Senator METCALF. Having sat in this hearing room for 8 years, it is nostalgic to be back. I was unable to get back in until just a few minutes ago, as you know, Mr. Hill, but I understand you have considered that the President would have vetoed his own bill; is that not correct?

95 Mr. HILL. I do not think that is the case, Senator. The question was asked of me if we still agree with our own bill.

95 Senator METCALF. Are you the one that made the concession?

95 Mr. HILL. I said if we were submitting the bill today, given our economic situation and energy situation, it would be very different.

95 Senator METCALF. You would have recommended veto of the President's own bill?

95 Mr. HILL. I would recommend we send up another bill today, given our overall energy policy situation, yes.

96 Senator METCALF. Mr. Zarb, in his press conference, admitted that the President's bill would create a loss of 80 million tons of coal; is that not correct?

96 Mr. HILL. 33 million to 80 million is the estimate, Mr. Metcalf.

96 Senator METCALF. No; he said 80 -

96 Mr. HILL. That is the top. That compares to the 162.

96 Senator METCALF. He had a flat statement of 80 million at the press conference.

96 Mr. HILL. That was the high range.

96 Senator METCALF. And he conceded that the President's bill might have resulted in a higher amount of coal being withdrawn from the market than H.R. 25; is that not true?

96 Mr. HILL. If he assumed -

96 Senator METCALF. I had the press conference this morning. I do not have it here but I am going to put it in the record, if I may.

96 Mrs. MINK. Without objection, so ordered.

96 [The press conference follows:]

96 THE WHITE HOUSE PRESS CONFERENCE OF FRANK ZARB, ADMINISTRATOR,
FEDERAL ENERGY ADMINISTRATION

96 Mr. NESSEN. The President has made his decision on the strip mining legislation. The decision is to veto it.

96 There will be no filing until this briefing is over.

96 Now, the official veto message has not gone up and when it does go up, we will obviously give you copies of it, but it has not gone yet.

96 Question. He has not signed it yet?

96 Mr. NESSEN. That is correct.

96 In the meanwhile, because tomorrow is a travel day and we would either have to do the briefing very early in the morning or after we got back, I thought as a convenience since we have announced the decision that Frank ought to talk to you today about why the decision was made. So, you can go ahead and write your stories saying the President has decided to veto it and will send the message up there shortly.

96 Question. Today?

96 Mr. NESSEN. It is just not clear yet when he is going to send it.

96 Frank will explain to you why.

96 Mr. ZARB. The message has to go by tomorrow midnight, that is the last day.

96 Just a few words and then I will answer your questions.

96 The President reviewed very carefully the impacts of the current legislation on energy economy and as it relates to its environmental benefits. He was impressed by a number of things that I think might be useful to go over here.

96 It is clear from everyone's standpoint that this legislation would cause some unemployment. It is our calculation that up to 36,000 people can be put out of work in the first year, or so, of

operation, and while there are those who might have different estimates, there is no one - even the proponents of the bill - who says that this bill will not cause unemployment. Certainly, at this point in our economic cycle, additional unemployment is not a beneficial result.

96 We estimate that coal production could be reduced from 40 to 162 million tons, the range which I have given you before -

96 Question. Annually, you mean?

96 Mr. ZARB. Annually. At the high end of the scale, that could mean 25 percent of our total current production. Now, that doesn't include some of the ambiguous, or vague, provisions which we cannot quantify.

96 It does include estimates on some, but certainly not all, of them.

96 Question. Why is there such a wide range there?

96 Mr. ZARB. Principally because of the ambiguities that we attempted to estimate. I will give you the ones that we did.

96 The small mines that will be put out of business we were able to come a fairly decent projection of that. The Alluvial Valley floor, the fact we are able to do that; the restrictions on the saltation hydraulic impact, we estimated that; the steep slope restrictions, particularly with respect to Appalachia, we were able to come to some reasonable estimates there. There were at least three other major areas where vague provisions could not be estimated in terms of impact.

97 I want to point out a few things for background. I think this is awfully important.

97 We have calculated first-quarter domestic production of oil to be about 8.5 million barrels a day. That is down from 9 million barrels a day, first-quarter of last year.

97 We have dropped a half million barrels a day in our domestic production.

97 You heard yesterday, I think, Senator Mansfield describe the fact that the Congress has a long way to go in finalizing energy legislation. The Senator said that the President has more than met the Congress halfway and he was not too optimistic about having permanent energy legislation in place.

97 That has to be considered in the light of any energy-oriented legislation. I think you can see the reason why.

97 Secondly, the indications that we have discussed earlier about the increase of imported oil in terms of price seems to me has been further substantiated in the last week or two. Not only have the Canadians increased their natural gas prices by 60 percent, or announced that intent by the end of the year, but the Shah yesterday was rather clear in the plans of the cartel on an ongoing basis.

97 So, we have a situation of continued decline of domestic production. We have the inability to achieve a legislated answer to our energy problem, certainly one that does not appear to be forthcoming over the near term in the face of increasing imports and higher prices for those imports.

97 Tie that to the unemployment that would be created by this legislation. The coal which would be lost would be replaced by additional imported oil.

97 Just two other numbers. Since 1971, 21 States which account for over 90 percent of total surface mined coal have either enacted new legislation or strengthened their existing laws. It does not appear that those changes, over the last three years, have been calculated in constructing the latest legislation which was sent to us.

97 Question. How many states was that?

97 Mr. ZARB. Twenty-one States, which account for more than 90 percent of all surface mined coal have either enacted new legislation or strengthened their existing laws.

97 In the final number, before we get to your questions, we calculated that if we do nothing - the Congress does not act or we are not successful in achieving any of our administrative measures to conserve oil and bring on additional supplies - that we would nearly double oil from the Mideast between now and the end of 1977.

97 If the outer limits of this range of coal reduction was reached during this same period - now keep in mind that some of the vagaries, if they went against us, could increase that outer limit even further - but if that 162 million tons was reached that would have the effect of nearly tripling our imports from the Mideast during that same period of time.

97 Having looked at all of the issues, including the fact, as I have said, that we do not have a national energy program in place that relates to all of the other elements of both conserving and developing additional resources, the President came to the conclusion that it was in the national interest at this time not to approve the surface mining legislation.

97 Now, can we have your questions?

97 Question. What is your chance, Mr. Zarb, of sustaining the veto this time?

97 Mr. ZARB. Our early indications are that there is sufficient strength to sustain a Presidential veto in the House of Representatives.

97 Question. Does the President favor any surface mining legislation at all?

97 Mr. ZARB. The President sent up a bill in February, and for the most part, it had the elements of a bill that would be satisfactory to us. Even that bill had a penalty, but keep in mind two things that were somewhat different.

97 When that bill went forward, there was some reasonable expectation that at this moment we would be looking at the possibility of a comprehensive piece of legislation in the total energy area having been completed. That certainly is not the case.

97 Question. Is part of the reason then, Mr. Zarb, of what you are saying that because the Congress has not come forward with the total energy plan, that the President felt that it was necessary to veto this bill? Is that part of his reason for vetoing?

98 Mr. ZARB. I think we have to include that as one of the things he has considered. His bill resulted in a loss of a maximum of 80 million tons. However, it was a lot more precise, and in our view would have moved toward the lower end of the range that we calculated at that time.

98 If a national energy program was in place, and if we were already underway in reducing our consumption levels of oil, and if we were already underway in putting those measures into place to get additional production between now and 1980, then perhaps this bill might have been examined differently.

98 It was not the sole reason. It clearly was one factor and a number of factors, including the high unemployment and the increase of prices to consumers, particularly utility consumers who

buy what we consider to be often times unnecessary and uneasy restrictions.

98 Question. Mr. Zarb, the last time you briefed us here on this bill, you were asked by someone here whether the Administration's position was fair, and you said we got a fair assumption. Is that statement that you have made that 21 States which mine 90 percent, does that suggest now that you don't want a Federal bill?

98 Mr. ZARB. No, I don't think so. We certainly still believe that a Federal bill is in order, and we will be more than happy to go back to work with the Congress. However, in looking at the status of what has happened since February until today, it seems clear to me at least that much of the history, the three years of history that have gone into the product that we now look at, ignores the fact that the 21 States have in fact moved on their own to provide environmental restrictions and improvements with respect to surface mining.

98 It is clear that when you look at it in that context and look at a Federal law, which will lay over a new Federal bureaucracy with new Federal costs and new Federal regulations, unless you consider what has occurred during that three-year period, you are legislating public policy that is not in the best interest of what you are trying to do.

98 Question. Mr. Zarb, did you consider those laws in those 21 States generally adequate as to the laws themselves and their enforcement in those States?

98 Mr. ZARB. I would say that - can I give you a general answer to a general question - generally yes, the trend has been toward substantially improving the environmental standards and the direction is clearly there.

98 In some States, they take great pride in what their legislation has produced over the last two years and even in Texas, which I understand doesn't have a reclamation bill, they take some pride in the track record that they have produced.

98 Question. Mr. Zarb, how can you say that is adequate in the West, where about half the land is Federally owned where those State laws don't apply?

98 Mr. ZARB. I think what we should have done in the first place will now be done. The Department of Interior has been in the process of promulgating Federal regulations with respect to surface mining on Federal lands, and they will be instructed to go forward with that and

complete that exercise and have those published within the very near term, within a matter of a month or so.

98 Yes, ma'am.

98 Question. How would it affect the electric companies who have planned to convert from oil to coal? How will it affect them since Cleveland Electric eliminated -

98 Question. Question?

98 Mr. ZARB. The question is, how will it affect the conversions from oil to coal in those utilities who have planned such conversion.

98 It is clear to us that over the next three years or so this legislation will make it less easy for those conversions to take place, especially in certain pockets of the country. Thereby, those utilities would have to remain on a higher priced oil and the consumer would pay the price of imported or higher priced oil.

98 Consumer costs have to be a factor here. They will go up with surface mining legislation. If they go up to the extent that they are buying improvements, that may not be required or are indeed duplicative or unnecessary, then consumers are paying a higher price for improvements they don't need.

98 Question. On the subject of Western coal on Federally owned lands, the Senate Interior Committee has scheduled a mark-up session for Wednesday morning, I believe it is, on a bill sponsored by Senator Metcalf and supported by Senator Jackson, among others, for a freeze on further Federal leasing of coal lands until there is an effective surface mining bill passed.

99 What is your reaction to this?

99 Mr. ZARB. This is related to Federal plans, particularly?

99 Question. Yes.

99 Mr. ZARB. Well, my reaction is if the Senator's concern is to see that we have promulgated certain standards to protect the environment and to insure reclamation on Federal lands, that we will accomplish that by promulgating the necessary Federal regulations from the Department of Interior and that the long process of legislation would not be required.

99 I am assuming that the Senators will agree that our regulations achieve the objectives that they agree to.

99 I don't think we can afford to think in terms of freezes or moratoriums on energy sources while certain things occur that need to occur. It seems to me that the nature of our problem is so severe that we ought to be thinking in terms of producing domestic energy and at the same time insuring that these necessary safeguards are promulgated.

99 Question. Mr. Zarb, my memory may be faulty, but it seems to me that the last time we had this veto, the Administration said that the previous strip mining measure would have been unfair to certain producers. I have not heard you use that term "unfair" this time. Was that cleared up to your satisfaction in this new bill?

99 Mr. ZARB. No. I am glad you asked the question. The net impact of this bill over the near term will be to put a good number of small, independent miners out of business. Now, just about everyone associated with the bill agrees that that will be the outcome because they cannot nearly afford to live up to the standards and will be inclined to shut their mines and leave the market place. This is particularly true in Appalachia and that is where the highest degree of unemployment occurs.

99 If you consider that that is unfair, as I do, then use that term. I consider it a lot more severe than unfair. It just feeds a deteriorating situation so that our energy picture can be even further worsened over the next year over what we expect it to be without surface mining legislation.

99 Question. The Secretary has said this will have the net effect of creating jobs. Where do you differ with him?

99 Mr. ZARB. I am not sure except that I have heard the Secretary and we have talked about the reclamation jobs that put people to work, actually, on reclamation assignments.

99 It is my view, and I think his as well, that many of those reclamation activities are already underway. Perhaps, if you will look into the 1978, 1979, 1980 period, you might be able to structure the work force a little differently showing that some of the miners might indeed be re-employed.

99 I am not sure what they do in this interim period and my concern - and I have said this to you before - relates to the increased vulnerability of this Nation over the next three years.

99 Question. Is the 36,000 figure a net figure?

99 Mr. ZARB. You say a net figure. The number can be debated and has been debated as to whether it is 36,000, 46,000 or 26,000. I would say it is a net figure for the first year of operation.

99 Question. Mr. Zarb, can you tell us how the agencies lined up? I mean, was it the same this time as last time with Interior in favor of the bill on balance and CEQ and -

99 Mr. ZARB. The last time you asked me that question, I refused to tell you how they lined up.

99 Question. No. I didn't ask it.

99 Are you going to refuse to tell us now?

99 Mr. ZARB. Just go into a separate category. The President did visit with a number of his advisers and take comments from both sides of the equation, both the pros and the cons.

99 Question. Mr. Zarb, was the vote in the Energy Resources Council seven to six in favor of that veto?

99 Mr. ZARB. That answer to that question is no.

99 Question. Why were you unable to have a veto message on time?

99 Mr. ZARB. The veto message is under preparation and is to be approved by the President. It is a question of the final language being approved.

99 The reason I am here is because Ron felt it would be a discourtesy to do this in your absence tomorrow.

100 Question. Do you expect to have the veto sustained on the Hill?

100 Mr. ZARB. Do I expect that? I personally expect that, yes.

100 Question. Can you tell me, please, what motive do you think the members have for sending you much the same bill a second time knowing full well your objections to it?

100 Mr. ZARB. You know, the legislation has been in the process of development for over

three years. It is clear that there is a great big time investment going way back to 1971 - that is four years. Many people feel that this time investment should ultimately result in legislation similar to the legislation that we started.

100 Environmental improvement is a goal that nearly everyone can associate with, including myself. It seems to me, however, that when the members look again at the unemployment created, at the increase in oil vulnerability and how many barrels additional oil we will need to import just to support this legislation, and we calculate that for every 50 million tons of coal, our extra oil imports have to be in the range of 50 million tons, 215 million barrels a year.

100 When they see that, and when they calculate the extra cost to their consumers, and look at the complexity and the vagaries within the law, and how long we are going to be in court trying to determine what the Congress really meant on this provision or that provision, I think they will see their way clear to sustain the President.

100 Question. Are you saying, then, that the Congress is just stubbornly sending you a bid bill the second time?

100 Mr. ZARB. No.

100 Question. A technical point. Since Congress is supposed to go out on recess at the close of business Thursday for their Memorial Day vacation, is there any time limit involved as far as how long they have to override this veto? In other words, if they are going to do it, do they have to do it before the close of business Thursday?

100 Mr. ZARB. The answer is, this session of Congress so that they can wait as long as it pleases them.

100 Question. Mr. Zarb, about two weeks ago, Senator Jackson sent a letter to the President saying would you please have someone tell me where these magic figures come from 40 to 162 million tons, and I have not seen the answer, which is up in his office, but I think it was signed by you in which you said, "Your letter to the President has been referred to me," and so forth, and you didn't give him the back up.

100 Is there any back up?

100 Mr. ZARB. There is about three years of back up. Most of the data is being developed by

the Bureau of the Mines and they fine-tune their systems as we go along. It is clear that when you look at a bill so complicated with so many general terms, that you have to make some estimates as to how the courts will ultimately rule on this question or that question so you come out with a rather wide range.

100 I think another point which is at least interesting - and in going over these numbers again, which I did do, in trying to see if a better determination or a more precise estimate can be made - I asked whether the proponents of the bill or the supporters of the bill who acknowledge that there will be a coal loss, acknowledge that there will be unemployment and acknowledge that there will have to be an increase in the price of coal, and thereby, a higher price to the consumers, whether those supporters had calculated, themselves, how much coal shortage there would be, how much unemployment there would be, and how high the price of coal would be.

100 There are some numbers, I understand, with respect to the increase in price of coal, but I have not been able to find numbers on the other two categories.

100 Question. Mr. Zarb, I have forgotten exactly when the President said he would have to impose the second dollar and the third dollar on the oil imports if Congress didn't act. Can you refresh my memory?

100 Mr. ZARB. The question relates to the second dollar and the third dollar of tariff on oil imports. The President said that he would be looking at the situation within 30 days which gets us into the June 1 period, give or take some days, that he will be making his determination on that question.

100 Question. You had some testimony on the Hill today that seemed to indicate that the President's message on decontrolling old oil was imminent. Is that going to happen this week?

100 Mr. ZARB. It is imminent, but I am not sure it will happen this week.

100 Question. The decision has been made to go ahead and send up your own program, though, and not wait for the Congressional.

101 Mr. ZARB. The President directed us to go ahead. We had our hearings and I took a good deal of the hearing material home with me over the weekend, and came back with a number

of questions which I want resolved and we will be working on it this week.

101 Whether or not it is completed sufficiently to have up there this week remains to be seen, but it will go.

101 Question . Mr. Zarb, there were some people saying around here late last week that there was a new feeling of confidence in the White House following the Cambodian venture, that this would carry over into the legislative process even on the domestic matters up on the Hill.

101 Is that really esoteric thinking or does that really figure in your decisions or your recommendations and the President's decision, that sort of thing, that it has increased his clout up on the Hill and therefore, you have a better chance of getting this bill?

101 Mr. ZARB. If you ask that question with respect to my personal frame of mind, I will answer it candidly because I cannot speak for the views of others and what goes into their thinking.

101 There is little question in my mind but what our energy situation is seriously deteriorating on a day-by-day basis, that we are going to wake up in a middle of a more severe crisis some six or 12 months from now and that will prompt all of the activity that we are asking for right now, if we don't get it now.

101 When I looked at this bill, and re-looked at it, and asked questions and asked staff analysis and had discussions with my own staff, I honestly looked for a reason to agree that we could accept this bill in the face of our energy problem because, being in favor of environmental legislation is not a bad position for an energy person to be in.

101 I tried awfully hard, but I had to come to the conclusion that this bill, which so seriously affects our coal production at a time when our total domestic production of oil is declining, at a time when we are not legislating an answer to our total energy issue, and thereby making us more vulnerable.

101 I come to the conclusion that the people who are paying the price, unfortunately, are the American consumers because, as we increase our imports between now and 1977, and the cartel increases its prices, the people that are going to pay the bill are the American consumers.

101 So, if you don't share with me the question of national security or the threat of embargo and its international blackmail implications, then share with me, please, the history of the last year where oil import prices have gone up four times, and we have every indication that they are going to go up further in the years to come.

101 We cannot visit that kind of disservice to the American people even in the light of a noble objective such as this one.

101 Question. A follow up to the Cambodian question. I guess the answer was no.

101 Mr. ZARB. From my standpoint, one had no relationship to the other.

101 The PRESS. Thank you, Mr. Zarb.

101 Senator METCALF. Now, then, there are two propositions here. The President says that, tearing sheets off the calendar, of course, that Congress had not passed any of his energy bills.

101 We informed, at least I did, I informed Secretary Morton that the first priority was the strip mining bill. The Interior Committee went to work on the strip mining bill in the Senate and the Interior Committee went to work on the strip mining bill in the House. We considered all of the propositions which were presented by the administration and we considered all the propositions presented in opposition to the bill that the President had pocket vetoed and we removed some, we accepted some and we rejected some and sent another bill down.

101 Now, that was the first part of the President's energy program the Congress had the opportunity to act on. Yet, the President says:

101 Well, because you haven't given the utilities, you haven't taken away from the utilities regulatory agencies the right to regulate rates in section 7 of the energy bill and you haven't deregulated natural gas and you haven't done any of those things that will cost billions of dollars to the consumer, I am going to veto this bill.

102 Is that not what he said?

102 Mr. HILL. Well -

102 Senator METCALF. What did he say when he was tearing pages off the calendar?

102 Mr. HILL. One point of fact before I tell you what I think he said.

102 Natural gas deregulations would have less than a third the consumer impact than the surface mining bill.

102 Senator METCALF. That is absolutely not true, Mr. Hill. Natural gas deregulation would have three times the impact of this bill that we are considering, H.R. 25.

102 Mr. HILL. Our estimates show on the consumer impact -

102 Senator METCALF. What is that, Mr. Peck?

102 What is that law in Latin that we say? When you're wrong -

102 Mr. PECK. I will have to plead nolo contendere.

102 Mr. HILL. I think what the President was saying was that the Nation's energy situation is serious. Our domestic production is declining regularly and imports are rising. Natural gas curtailments are looming much larger this next year than the previous year and he sent to the Congress a program which will not only reduce demand but would actually increase supply, the full price effects of which would be fully rebated to the American consumer. And that that program or any comparable program which will achieve those same objectives of reducing our importations of foreign oil and do it in a fair and equitable way to the consumer, any program meeting those tests, has not come back.

102 It is troublesome to him and to the rest of the advisers that our situation continues to deteriorate, particularly with the Middle East situation, the discussions of potentially higher prices that we are starting to hear.

102 I think the President is saying we need to get on with the business of a national energy policy.

102 Now, in his statement on the veto of H.R. 25, he clearly refers to the fact that this bill, the first thing he has gotten from the Congress is a bill that takes away from supply. But that is a very difficult thing to accept right now until we see what is really going to solve our energy problem, which is reducing demand and increasing supply.

102 When you put it all in that context, it becomes a very troublesome proposition.

102 Senator METCALF. Mr. Hill, I am from a committee that has jurisdiction over the Outer Continental Shelf, currently engaged in trying to determine the legislation that we will have on

offshore drilling.

102 That was the second priority. We had strip mining as the first priority. I am also, on a committee which is considering the giveaway the administration wants to offer the utilities which the attorney general of Michigan says would completely offset the tax rebate and just channel the tax rebate into the utilities so that they would increase the benefits they have.

102 All of these are part of the so-called energy program.

102 Some of the President's proposal is that we remove or control local regulatory agencies and just make automatic - don't shake your head.

102 You know very well that that is the President's program. The President's program is automatic accelerated rate increases, isn't it?

103 The President's program provides for, in section 7 of his bill, title 7, provides for almost castration of the State regulatory agencies and a Federal takeover. And you know that just as well as I do, Mr. Hill.

103 Mr. HILL. Senator, that title requires State utility regulatory commissions to -

103 Senator METCALF. Requires. Let us underscore that.

103 Mr. HILL. To include in their ratemaking procedures construction work in progress, cost of environmental equipment -

103 Senator METCALF. All of which is just a big ripoff for utilities.

103 Mr. HILL. I don't think we ask the the regulatory rate authority of the State utilities be suspended.

103 Senator METCALF. The State of Montana says you can't pass that through automatically.

103 You are going to say, "Look, big brother here is going to take away from the power of the regulatory agencies of the State of Montana," and say when the rates go up you have to automatically increase the rates, aren't you?

103 Mr. HILL. That is not what title 7 says. It says where you are setting your rates, these factors have to be included in the rate base. We do not tell them what the rate of return ought to be.

103 Senator METCALF. Mr. Hill, I have an invitation to you right now to appear before my subcommittee and to testify on title 7.

103 Mr. HILL. I think I am coming up there shortly, Senator. It looks like its going to be fun.

103 Senator METCALF. I am glad you are the person who is going to defend it.

103 Mr. HILL. I may find a stand-in.

103 Senator METCALF. But my whole point today is that Congress received the President's energy proposals. We are considering them one by one. The first one by agreement was the strip mining legislation.

103 Mr. HILL. I don't know who the agreement was made with in terms of priorities. I mean our priorities were clearly the 13 titles of the President's program and the tax package that we worked with Ways and Means on developing.

103 Senator METCALF. I see. I am glad to note that the President sets congressional priorities. It is nice to know where the priorities come from.

103 Mr. HILL. I said agreement. We agreed. I just said I don't know who agreed. We have a different set of priorities.

103 Senator METCALF. I talked to Secretary Morton. I didn't have a chance to talk to him this morning. Secretary Morton has been very cooperative as a Secretary. He agreed with me in the last Congress that there be no leasing unless Congress had a fair chance to pass a strip mining bill. He kept that agreement. I do not consider there is any continuing agreement in this Congress because I think that he leaned over backwards. He kept it over and above the agreement that we had. He is so cooperative that you got rid of him down there at the administration and boosted him up to Commerce. I talked to him and I said now, we are concerned and our committee is concerned with our Outer Continental Shelf, offshore drilling. In another committee I am concerned with title 7 of the President's bill, but my primary concern and the first priority is to continue hearings and discussions of the strip mining bill, and he said, "Well, you have to set your own and determine your own priorities."

104 Now, if President Ford stands up and says, "Look, I don't care what you do on strip

mining. Pass me title 7," which will cost the consumer billions of dollars.

104 That isn't what Congress is about, is it, Mr. Hill?

104 Mr. HILL. I don't think he said pass me title 7 which will cost the consumer billions of dollars. We do not request that State regulatory authorities suspend their authority to set rates.

104 Senator METCALF. 60 or 70 -

104 Mr. HILL. He was concerned I think initially on action on the shortterm program. To get imports down over the next several years -

104 Senator METCALF. You have already acted on it.

104 Mr. HILL. We have not acted on it at all, Senator.

104 Senator METCALF. You have already increased the price.

104 Mr. HILL. We would like to have a better program to go with. I don't think anyone in the administration thinks that \$2 tariff we have on is the best approach to this problem. It's just the only one to move on the program unless we can get a full blown program.

104 Senator METCALF. I have taken too long. This is a House hearing.

104 I am delighted that I had an opportunity to appar. I am glad that I had an opportunity to listen in. I am grateful to the two chairmen of the subcommittees who called me here. I had not intended to take as much time as I have.

104 I feel very strongly about this bill. Just as Congressman Udall and Congresswoman Mink have suggested, I spent 4 years on the bill.

104 Again, I will say to Mr. Peck, you know they have a slogan, "Beware of the lawyer with one book." Well, I am it, the Congressman with one bill.

104 I just cannot justify the administration's position, when, over the years, my committee and my staff have been available to everybody in the administration to talk about every proposition and every proposal in this legislation, to come in after we have had open hearings, open discussion, open debate, and bring propositions that are completely foreign to anything that was printed either by the administration or by anybody either in opposition or for the bill, except for maybe Mr. Bagge, who says that he does not want any coal mining legislation.

104 I suspect it is the position of the administration that no matter what we do insofar as coal

mining legislation is concerned, it will run into an administrative detour.

104 This is a matter of considerable importance in the next few days as far as I am concerned.

I have talked to Mr. Hathaway about this. He says, well, he is going to issue some regulations and some restrictions and these, too, are going to have the same economic impact that this bill would have.

104 I suspect that when he tries to issue those regulations and restrictions and reclamation orders that he will run into the same opposition that we are running into with you, Mr. Hill, and with the Federal Energy Agency and have absolutely nothing as far as restoration or reclamation is concerned.

104 I will regret very much that you are just going to abandon America to the exploiters and coal miners who will exploit the West.

105 When you talk about 21 States, you are not talking about the coal that we own as the Federal Government and you are not talking about the Congress' responsibility to its public lands. When you are talking about the laws of 21 States you are talking about the laws that have the impact on State-owned land or private land within those States; but most of this, especially in my area, is Federal law. The States have no control over the mining or reclamation or restoration of that Federal coal, I am concerned about the destruction of the land forever and ever.

105 I invite you to go out to Montana and see what coal dredgings have done to us.

105 Mr. TSONGAS. I wanted to address a question to the Senator. Those of us who have just arrived here begin a learning process. One of the most instructive sessions for me was when I sat in this room on the land use bill and heard Secretary Morton, who was one of the first people to be concerned about this and did a lot of good work on this, come up before this committee and argue against it. It is the kind of thing that makes you pause and try to understand what happens up on the Hill.

105 The vote on the strip mining bill was 293 to 115, much more than the two-thirds needed to override. As I understand it, the reason we did not vote the other day is because we did not think we had the vote, which means a lot of people changed their minds.

105 There are only two reasons people would change their minds. Either they did not know what they were voting for the first time, which of course is not the case in the House of Representatives, or second, that the change was dictated by partisan or other reasons, as opposed to some objective criteria that dictated the vote the first time. That has been a surprise.

105 Is it any different over where you are? Can we look to the Senate for leadership in holding to one's convictions on this issue?

105 Senator METCALF. I sat for 8 years on this committee. I never got as high as you are.

105 Mr. TSONGAS. I am down there.

105 Senator METCALF. I have a great deal of respect for the work that Mrs. Mink, Mr. Udall, and all you people and others have done on this bill. I do not think there is any Senate leadership. There are a few of us in the Senate who have worked long and hard and are concerned about the Western impact on this legislation. I am going to suggest when the coal mine leasing bill comes up, that we put in some regulations as far as public land use is concerned.

105 I really did not want to get into the kind of argument that I got into with Mr. Peck because I read probably the same cases he did and ran down the same information he did and came to a different conclusion. That is what lawyers do, and that is what lawsuits are about.

105 Mr. PECK. May I say, Senator, it was not only a pleasure, it was an honor. We just don't agree, that's all.

105 Senator METCALF. We do not agree at all. But as lawyers we come to different conclusions, and we throw it up to Mr. Burger and his people, obviously, to make their decision.

105 What I am principally concerned about as a Senator from Montana, a parochial interest, is mining on the public lands. The only people who can determine how we mine and whether we have to reclaim that land are the Members of Congress. These legislators who pass these 21 laws Mr. Zarb is talking about have jurisdiction over the State lands, and they have jurisdiction over private lands. But out West more than 50 percent of the lands are public lands. Most of this coal is over there on public lands.

106 If we do not pass any legislation at all, we will have open hunting season for exploitation and destruction of public lands. That is what bothers me more than anything else.

106 If Mr. Hathaway will issue the kind of regulations that we have written into this bill, then Mr. Zarb is going to come up and say, "Well, it has the same economic impact and the same destructive purposes" and will lock up coal that he thinks should be immediately available for energy right now.

106 Mr. SEIBERLING. Will the Senator yield?

106 Senator METCALF. I would be delighted to yield.

106 Mr. SEIBERLING. There is an old saying that I recall when I was a Wall Street lawyer - which may surprise some people around here - "Money flees uncertainty."

106 I do not see, if the administration is really interested in promoting the development of, expeditiously, our coal resources, particularly those on public lands, I would think they would prefer to settle even for a bill with which they disagreed than for this continued state of suspension when there is no law or no regulation, no certainty as to even what the Congress is going to do.

106 If I were considering investment, I do not think I would invest in a big new coal mine unless I knew what the rules were going to be. To me it is just rationalizing after the fact for these people to come in and make that kind of argument.

106 The real fact is that they want a bill that suits the wishes of the coal mining industry and the utility companies, or no bill at all. That is really the situation we are in. I think it is a sorry state of affairs.

106 Mrs. MINK. The Chair would like to request of my colleagues if they have any further questions of the witnesses at this time?

106 If not, the Chair would like to propound a few. I realize there is a roll call vote on the floor, but in the interest of concluding these hearings. I will remain. I realize we have kept the witnesses here for a considerable length of time, but since I have not had an opportunity to present these questions and would like to take this opportunity I will forego voting on this amendment.

106 It has been pointed out by responses to a number of questions that have been asked this afternoon, regardless of the major points that are contained in this collection of pages that were submitted to counsel on my subcommittee, along with other material that we have, that one of the objections to H.R. 25, and which led to the calculation of the production loss figures for small mines, had to do with application requirements. The explanation material you submitted begins by saying:

106 The following methodology was employed: Analysis of the major categories of anticipated potential loss, one, small mining, and examination of large cross section of surface coal mines producing less than 50,000 tons per year and located principally in the East resulted in a determination that their ability to comply with the provisions of the bill relating to bonding and permit applications was inheritantly limited since an initial outlay of some 6 to 12 thousand was required.

107 Then you say because of the lag of technical experience available to small mining companies, requirements for collection of extensive baseline hydrologic data and maps and so forth, put this beyond the capability of these small mines.

107 Now, in H.R. 25 I note, and I am going into detail on this one point to be illustrative of other areas, but on the point that was raised with regard to permit applications, I have examined both bills, H.R. 25, and the administration bill, and I find that provisions are identical. The bill the administration sent down asking the Congress to enact it into law in the February following the December veto contains identical provisions with regard to baseline hydrologic data, test borings, strata characteristics and all the rest of the items you enumerate as beyond the capability of small mines.

107 To pursue the point that the gentleman from Massachusetts proceeded on earlier, is this committee and the Congress to conclude that now your advice to the administration and President is that because of that section of the bill which the administration itself sponsored in February is a reason for your veto?

107 Mr. PECK. Madam Chairman, Mr. Hill spoke directly, more directly, to the question.

107 Mrs. MINK. I'm asking Dr. Falkie. I'm sure he has examined this in detail. I have a copy of the memorandum which he signed, to the chairman of this committee, dated May 23, in which he makes the same observations on page 2 of his letter and addendum. So I'm assuming that Dr. Falkie is also familiar with this report which he handed to the counsel of my subcommittee today, and those are the exact words contained in his letter. So I'm sure Dr. Falkie can respond to that inquiry. Does he or does he not now support the provisions of the administration bill?

107 Dr. FALKIE. I think, Madam Chairwoman, I would go along with what John Hill said. What I understand that he said is that if we had the opportunity to send up a bill within the overall context of the energy and economic picture, we, meaning the administration, of course, it would be different from the one sent up in January or February or whatever the date of that bill was.

107 Mrs. MINK. With respect to surface mining requirements and regulations, what circumstances have changed since February 1? Any?

107 Mr. PECK. Madam Chairman, the language is different if looked at from the four corners of the bill, and in respects which make very great differences as far as we are concerned. Insofar as the bill sent up by the administration is concerned, for instance, just to pick an example, in section 410(b)3, we have inserted language, "to the maximum extent practicable" to prevent irreparable off-site impact. That is not language which occurs in H.R. 25.

107 Mrs. MINK. I'm advised by counsel that you are not reading from the sections which I mentioned, 407 of the administration bill, application requirements which I am assuming from both your detailed memorandum and the letter of Dr. Falkie that that is what you are alluding to when you say that the permit application requirements are so onerous that it is beyond the capability of small mining operators. Both provisions are identical in the administration bill and in the bill, H.R. 25.

108 Mr. PECK. I'm sorry, the application requirements contained in section 407 include the carrying of the burden of proof that the reclamation requirements of the bill will be met. It is in those reclamation requirement provisions that the administration bill makes material changes that minimize the thrust of the permit application procedures.

108 Mrs. MINK. You are again making reference to the approval or denial procedure which is found in 410. I make reference to section 407, which is the application requirements, which is what is mentioned in the statement submitted to the committee today and which is referenced in the letter by Dr. Falkie.

108 Mr. PECK. Again, Madam Chairman, you can't look at just one section.

108 Mrs. MINK. We have to take the section piecemeal. I'm taking the permit application and propounding the question whether in fact it is not identical to H.R. 25 and whether Dr. Falkie could or could not tell this committee whether he is repudiating support of the administration's identical language by outlining as an objection to H.R. 25, one of the major anticipated losses under H.R. 25, which are identical, I repeat, to the administration bill.

108 Mr. PECK. Without a detailed word-by-word comparison, it would not surprise me in the least if they were identical, because in preparing the administration legislation we made every effort to make the minimum number of changes to the vetoed bill that would enable us to predict with certainty what the production loss would be.

108 Mrs. MINK. My question then to Dr. Falkie is, given the assumption that the section I referred to, section 407, has identical application requirements, in the bill H.R. 25, to the administration bill, what in the four months have transpired to make you recommend that this section (b) be one of the major points of objection in support of a veto?

108 Mr. PECK. Madam Chairman -

108 Mrs. MINK. I have addressed this question to Dr. Falkie, and I would request that Dr. Falkie respond, since it is his letter which highlighted this fact to the committee. I would like Dr. Falkie to respond. You may supplement whatever he says, but, Dr. Falkie, may we have the benefit of your judgment?

108 Dr. FALKIE. Yes, I would be pleased to give you my judgment. Essentially, my judgment is the same as John Hill's. That we, if we were sending up a bill today and if I had something to do with sending up a bill today, it would be different than the one sent up in February, or January.

108 Mrs. MINK. With respect to applications requirements, how would it be different?

108 Dr. FALKIE. I would allow for variances among other things, and I would have to go back through the administration's bill. Most of our recent analysis have been in the last few weeks on this bill, on the act that was passed by the Congress.

108 Mr. PECK. May I direct your attention to the proviso in the administration's bill, section 507(b) (11), which does not appear in the H.R. 25, and which is concerned with precisely the critical question we have cited again and again?

108 It reads:

109 Provided that the regulatory authority may waive the requirements of this paragraph in whole or in part if adequate data is already available to the authority.

109 That is precisely the fronted load burden we say a small miner will have difficulty meeting. What we are saying is that if the authority, either through the Bureau of Mines, the Bureau of Land Management, or other applicants already have gathered or supplied sufficient information, then this proviso allows this burden to be lifted from the small miner.

109 That is just one example. Most of the changes that have been made between the Administration bill and this bill relate to the other sections.

109 Mrs. MINK. If you will permit, our committee report covers this point adequately. There is no exemption from the collection of the data; by the very language of the Administration bill, the data has to be collected. It is only if the regulatory authority has the data, then there need not be a duplicative effort on the part of the mining company.

109 This is clearly provided for in our own committee report. The important point is that the data which is required to be submitted and collected must somehow, by the miner, himself, or the operator, himself, or the regulatory authority be made available before the application requirement can be met.

109 I do not think there is any denying that. Let me move on other forms.

109 Stream siltation requirements and hydrology. My examination of the administration bill, 415(b) (10) (b), as well as 507(b) (11), contain identical language. The differences are miniscule, Dr. Falkie. Are you now suggesting to the committee that with the miniscule language change of

the "maximum extent practicable," in our bill, "to the extent possible, using the best technology available," that had that language change concurred with the administration bill that this objection which was raised in your study and letter to the committee, that you would not have included that as one of the substantial reasons for the veto?

109 Dr. FALKIE. Our production loss estimates and other work on H.R. 25 were done in the complete context of the bill, as were the estimates several months ago done on the complete context of the administration's bill. We would have to continue to look at these bills in the complete context.

109 I feel, as previous witnesses have said, that because of the overall situation with regard to energy and the economy, that the bill the administration would introduce today would be considerably different than that which was introduced several months ago.

109 Mr. PECK. I do not want to presume upon the time of the previous witness or the Chair by raising another particular point. But I happen to know the background of that particular change.

109 The Federal Water Pollution Control Act sets forth two separate standards. One practicable, and one available.

109 There is a world of difference between them, and the precise question is whether the relative cost and benefit of the control technology, as opposed to the environmental benefits to be obtained, will justify the imposition of any given technology. So what the Chair has referred to as miniscule, I must beg leave to disagree. It is not miniscule, and the legislative history of the Federal Water Pollution Control Act Amendments of 1972 make precisely this point, and with great clarity. We are very much concerned that something which is theoretically available, as the phrase I think was discussed this morning, a technology which may in fact exist, but which would be prohibitively expensive in comparison to the amount of siltation to be removed, not be required so that a mine either close down or have to install this prohibitive technology. What we were looking for was some cost-benefit analysis.

110 H.R. 25 and the discussion that occurred in this committee room on this point rejected that approach. It is a very significant point.

110 Mr. SEIBERLING. Would you yield on that?

110 Mrs. MINK. Yes, I will yield.

110 Mr. SEIBERLING. Would you find it acceptable if we inserted the word "commercially" in front of the word "available"?

110 Mr. PECK. No, sir. "Commercially" was put in somewhere. The point is not the existence of the technology, itself. The point is the relationship between the cost of the technology and the benefit to be obtained.

110 There will be inevitably high prices prototype technologies developed right across the board.

110 Mr. SEIBERLING. Prototype technology is not commercially available.

110 Mr. PECK. If by commercially available we mean economic considerations, that was precisely the point of discussion here.

110 Mr. SEIBERLING. If it is being marketed by a supplier.

110 Mr. PECK. It could still be prohibitively expensive in any rational analysis of the environmental benefit to be obtained. If so, the miner might not be able to afford it.

110 All we wanted to do was allow that judgment to be made.

110 Mr. SEIBERLING. I suppose there is a rule of reason that applies to interpretation of every statute and regulation.

110 Mr. PECK. If this were a new statute, that might be the case, but the history of the Water Pollution Control Act made this a particularly important condition.

110 As I seem to recall, I think I was present on the day that was discussed with respect to H.R. 25.

110 Mr. SEIBERLING. The history of the mining industry which involved murder, dynamiting of homes, generations of raping the land and ripping off the public, with absolutely no social responsibility whatsoever, makes it necessary to write very, very tough legislation.

110 The minute you put in "economically available" or "economically" or "practicable", then you open the door up. When you see the kind of pressure the mining industry has been able to bring to bear on this administration and Members of this Congress, you can see the kinds of

pressure that would be put on a regulatory agency.

110 Ohio has a tough bill, but the mining industry has dictated who was going to be on the enforcement agency. That is what we are up against around here.

110 Mr. PECK. I am not unsympathetic

110 Mr. SEIBERLING. I question whether you are really very sympathetic with what we are trying to do.

111 Mr. HILL. I would like to add one thing. I do not feel as a member of the administration that I have had any pressure put on me.

111 Mr. SEIBERLING. Oh, you have not. But the Members of Congress have had unmerciful pressure put on them, particularly the Republican Members. I heard one Republican from Ohio when we postponed the bill say, "Oh, my God. Another 2 weeks of telephone calls."

111 Mr. HILL. You mentioned in your previous comment that the administration had this pressure. I personally have not felt it. I know Mr. Zarb has not.

111 Mr. SEIBERLING. You are not in the political -

111 Senator METCALF. Even I have experienced some of the pressure and some of the utilities of American have called me and suggested perhaps that this would increase the cost. So when they talk to me about it, it indicates that the pressure is going to be put on a lot of people who are not as resolved about the passage of the bill as I.

111 Mr. SEIBERLING. I think in my short period of less than 5 years in Congress I have never seen, in my experience, the kind of lobbying efforts that have been put in on this.

111 Mrs. MINK. Going back to the citation in the scattered sheets made available to the subcommittee with regard to small mines, it says that an examination of a large cross section of surface mining producing less than 50,000 tons per year and located principally in the East, resulted in a determination, and so forth.

111 Again, may I inquire of you, Dr. Falkie, when did this examination of a large cross section of surface mine producing less than 50,000 tons occur?

111 Dr. FALKIE. This has been a continuing evaluation, at least since I have been with the

Bureau of Mines, and I am sure before that. There was also work done by the Federal Energy Administration working in the States, with the States. This whole evaluation has gone on continuously for some time.

111 In other words, any time there was language changes or any time there was a significant change in the wording, reports came out, there were continual evaluations going on. I have been with the Bureau of Mines since February 1974. I know they have been going on since then, at least.

111 Mrs. MINK. Could you give us a numerical breakdown of the large cross section of surface coal mines that you examined with respect to the impact of this bill on bond and permit applications and where these small companies were generally located and the States in which they are conducting their business?

111 Dr. FALKIE. Yes, we have already promised we would have an analysis of the small mine n1 -

111 n1 See Appendices I and III for the only material submitted during or after the hearings.

111 Mrs. MINK. Do you have a member of your staff here that conducted this examination in the room now?

111 Dr. FALKIE. This was done by many, many staff members in the Bureau of Mines and in the Federal Energy Administration.

111 Two of the staff members who have worked on this whole study are here with us and have been here all day.

111 Mrs. MINK. Perhaps they can be requested to answer this question. It is just a generalized question. I realize we have asked for detailed information from you earlier. But I would like to have at least for the record today, what the general response to this inquiry would be with respect to where the large cross section of mines came from short of identifying the owner.

112 Dr. FALKIE. We can give you the States that are impacted.

112 Mrs. MINK. May I call upon the staff member who has been putting this report together?

112 If you will stand and identify yourself by name and position.

112 Mr. PAONE. My name is Paone. Bureau of Mines; mining engineer.

112 The States, in decreasing order where the production loss was noted were Kentucky, No. 1; Pennsylvania, No. 2; followed very closely by Virginia, and very closely by West Virginia. Other States were Tennessee, Ohio, and Alabama.

112 Mrs. MINK. On what basis was this list determined? Was it on the basis of the number of small mineowners producing less than 50,000 tons, or based on their inability to meet bonding and permit application requirements?

112 Are you just giving me a list of the States in the order of the number of small operators, or are you giving me a list which was the end product of your examination of a large cross section of surface mines who could not, and for whom it was beyond the capability to meet the bonding and permit application requirements?

112 Mr. HILL. Let me speak to that.

112 Mrs. MINK. Mr. Paone, if I might address the question to him, I might inquire what this list means. How did you obtain this list, and what does it reflect?

112 Mr. PAONE. This list includes more than just permit application requirements. They were just one item in assessing the loss of small mines.

112 We did this by contacting State agencies. We contacted State associations who have familiarity with the operations, surface mining operations in these States. We contacted some of the mining companies, themselves, to confirm some of the mining costs and problems they may incur. The list I gave was a compilation of the overall effects on the small mining companies.

112 Mrs. MINK. To what extent did you make specific examination, if any, on the bonding and permit application?

112 I am trying to take this point-by-point in each of the areas that made up your gross figures for coal loss production from small mines. I have to assume that the paragraph which was submitted here in your study, that examination was in fact conducted on a large cross section with respect to bonding and permit applications.

112 Now I am told that you did not make a particularized survey with respect to each of the criteria, but you just took a generalized view.

112 How does H.R. 25 affect the companies? Is that an accurate summary of your statement?

112 Mr. PAONE. Not necessarily. Many of these companies and State agencies are familiar, under the performance of these small mining companies, with their own State laws when they are enacted, so we do have some experience. I do not think any mining company can tell us today what their permit costs would be.

112 They can make estimates based on cost for each analysis, number of analyses required per acre. They can make some estimates on bonding costs, costs of bonding money, and on and on. They can make an engineering assessment of what these will be. But we do not know what the real costs will be that we will end up with, because some of the information required detailed geologic information. We do not know of any State that requires the extent of the detailed geologic information as required by this bill, the mapping, and so forth.

113 Dr. FALKIE. I might also add, cost estimates on a per-acre basis range, just for that part of the bill, all over the ball park. Anywhere from \$1,000. I have even seen them as high as \$6,000 an acre in only a 5,000-ton-per-acre piece of property.

113 I am not saying I agree with the \$6,000 figure by any stretch of the imagination, but that could be a significant cost, just that part of the bill.

113 Mr. HILL. I would like to add one thing, if I may. That is on the concept of small mines. We have used historically a small mine as a mine producing less than 50,000 tons of coal a year. That firm operating at that level has certain kinds of cash flow, it has certain kinds of capital, financing availability. None of these are optimum in any sense. They are small compared to what the larger companies have. I think there is a good analogy to the small mine and its general economics, that we know very well, in the Emergency Petroleum Allocation Act, where we have the small refiner, and the Congress and administration agreed that a refiner operating at less than 175,000 barrels a day was not efficient.

113 It did not have good lines of capital and credit available. It had to use higher cost parts and components and had less unit output to spread it over.

113 So the EPAA, Emergency Petroleum Allocation Act, made all kinds of provisions to

soften the burdens, and special subsidies for their small refiners, as did the old oil import program.

113 A small mine operation of 50,000 tons a year is a similar kind of economic entity. When you begin to assess some of the costs we have gone through, one of them, itself, may not be prohibitive in any given situation. But when you look at them all, they may not be able, in our judgment, a good number of them will not be able, to carry the full burden.

113 The refiners are not able to do that, and we give them hundreds of millions of dollars of subsidy a year in this country. This is the same kind of economic entity.

113 Mrs. MINK. Have you conducted any case studies with reference to this particular issue of the impact of the bonding and permit applications which is a very sizable production loss on your list, 22 million to 52 million tons? Is there a case study that you can provide the committee?

113 I address this question to Mr. Paone.

113 Dr. FALKIE. Mrs. Mink, I want to emphasize that in looking at the small mine problem you have to look at the whole picture. The permit and bonding application section is a significant part. But there are many other aspects.

113 In going through our analyses, we repeatedly looked at the whole picture, including the possibility that you would need additional equipment to handle overburden, shortage of drilling equipment for use in core drilling, that the drilling manufacturers tell us may occur and the whole picture as outlined to you.

114 Mrs. MINK. Mr. Paone, my question was, Was there a case study made of a sample of mines that fall under the category of small mines to test out the cost figures which you ascribe to the bonding and permit application section?

114 Mr. PAONE. We made an engineering assessment on what the bonding and permit application requirements would be by going down through the list of requirements of that particular provision. We did this on the basis of knowing how much it cost to drill a foot of ground, how much it cost to make sample calculations, the number of samples that might be required, how much geologic data, the cost of consultation from a geologist, how many hours

would be required to do the subsurface mapping, mapping requirements, and so on.

114 We assessed in our best engineering manner the costs that would be incurred under this bill. That is what we did.

114 To put it on a mine-by-mines basis, or case, we have not done that because the mines vary so much in the number of acres and geology. We did reduce it down to small mines and larger mines. Now, the per unit cost in a large mine was much less than the per unit cost for a small mine. They depreciate that cost. Over what the Senator said, 100,000 tons an acre, it would be much less per unit.

114 But on a small mine operation where, in the East, you may obtain 5,000 tons per acre, the cost would be considerably higher on a per unit basis. We have done that kind of a study.

114 Mrs. MINK. So your response to my question is that you did not conduct a case study in order to corroborate the conclusions of this summary document which you submitted to the committee. You simply made your assumptions and applied them to the numbers of small operators that were in existence in these various States.

114 Mr. PAONE. These would apply to any type of operation -

114 Mrs. MINK. What data did you use for determining how many small mine operators there were in each of the States?

114 Mr. PAONE. The Bureau of Mines collects data on all mined commodities, including coal. It comes in by size of mining operation, by mineral commodity and location, and so forth.

114 Mrs. MINK. What was the date of this information that was provided to you by the Bureau of Mines? When was the data collected?

114 Mr. PAONE. It was 1973, I believe.

114 Mrs. MINK. Is it the same information that was testified to earlier as the information that was supplied to the CEQ in their 1973 report?

114 Mr. PAONE. We had later data than that. We had estimates for 1974.

114 Mrs. MINK. You had estimates for 1974 which were used to determine where the mine sites were located?

114 Dr. FALKIE. To determine the numbers -

114 Mr. PAONE. To determine the number of mines.

114 Mrs. MINK. And where the mine sites were located?

114 Mr. PAONE. That is correct.

114 Mrs. MINK. Could you give us that breakdown in terms of the three leading States that you listed - Kentucky, Pennsylvania, and Virginia, from that book which we have not been able to obtain?

114 Mr. PAONE. They do not appear in this book. This is data we probably should distribute to the public, number of mines by State and size.

115 Mrs. MINK. I am talking about this examination of this large cross section of mines you undertook in order to determine production loss. Could you tell us the number of mines you used in each of these States to arrive at your conclusion that all but 8 million tons would be lost under the estimated figures which you have prepared and submitted to the committee? You said by 1977 there would be a total production of 60 million, the loss would be 52 million. You only have 8 million left.

115 My question is, How did you arrive at this loss figure that, in essence, is destroying every single mine operator producing less than 50,000 tons except for whoever is producing the 8 million, since we are unable to get any of the figures?

115 Mr. PAONE. We can give you a list of the number of mines by State that we considered for the study. n1

115 n1 This material was never furnished the committee.

115 Mrs. MINK. Yes. When can we have that information? Is it unreasonable to request that we have this information by 9 o'clock tomorrow morning?

115 Mr. PAONE. If I can get back to the office at an early hour, you probably could.

115 Mrs. MINK. Well, 9:30 tomorrow morning.

115 Mr. PAONE. Thank you.

115 Mrs. MINK. We would request the information of the list used in your cross-sectional

survey in order that we may try to understand how you derived the estimates of 22 million to 52 million tons loss without a case study and without going to the field and without making a site check which regard to the estimates that you have used.

115 It has been also pointed out that, with respect to the citizens' suits requirements, again the provisions of 520, of H.R. 25, are identical to the provisions in the administration bill, section 420. Again I ask, Dr. Falkie, is he now saying that, in his view, he could not support the administration's section 420 with regard to citizens' suits?

115 Dr. FALKIE. I am going to give you the same answer, Mrs. Mink. That is, if the administration were sending a bill up today, and if I had any technical input to it, it would certainly not be the same bill that was sent up in February.

115 Mrs. MINK. I have heard that. I am asking you now about a specific section. I am trying to breakdown my perception of this radical change of position. Do you, in view of your total statement with regard to the bill which I have to accept at its face value - I am asking you the pointed question with regard to citizens' suits - do you repudiate the administration language contained in section 420 of the administration bill which is identical with 520 of our bill?

115 Dr. FALKIE. Mrs. Mink, I have sat here and listened to back-and-forth discussions among the lawyers about the complexities of the legal aspects of this bill. I would only say that I prefer to look at the bill from a technical standpoint, with legal advice, of course, in its full context. I would defer to our legal authority for comments on that particular section.

115 Mrs. MINK. In other words, you have no opinion on whether you do or do not support the language of citizens' suits in the administration bill?

115 Mr. PECK. Madam Chairwoman, we have been through this, and this particular issue, this particular section, previously.

116 Mrs. MINK. I understand that. But it is a very important section because it has been alluded to so often as one of these unquantifiable defects of H.R. 25 which is going to cause all of these problems for the administration. I merely wanted to emphasize that this is the same language which is contained in the administration bill, and I want a precise answer from Dr.

Falkie, whether he was repudiating the administration bill and this point too.

116 Mr. PECK. Madam Chairwoman, Dr. Falkie is not an attorney. As Senator Metcalf and I discussed before -

116 Mrs. MINK. We only have the benefit of a reply from Dr. Falkie in which all of these provisions are cited. We have to assume that they are made in consultation with counsel in the Department. I appreciate the fact that maybe he cannot answer my question, so I will move on.

116 Mr. HILL. May I add one thing? I think the reason it is in the list is not to state that that is an objectionable defect of H.R. 25, but it is rather, there to indicate that we have taken the provisions, a few key ones, and done estimates of production losses and repeated economic effects. We think it is important to point out that these may not be the only effects of this bill.

116 Depending on what happens in citizens' suits and this other list of things, there will likely be more. But we are not making, we are not trying to argue that it was those provisions. We are just trying to say there are other effects.

116 Mrs. MINK. I am simply trying to get the position of the experts who though the sections that I mentioned are basically identical, that now advised the President to veto our bill, whether it was because, even they do not even support their own bill and that this is why they recommended a veto. I am trying to put this situation in its proper perspective, so let me get to the next question which was not answered by Dr. Falkie.

116 What are these changed circumstances which now lead you to the conclusion in joining Mr. Hill that the administration bill could not be supported? If you were to recommend the bill, it would be different?

116 Mr. SEIBERLING. Since the first of May, actually.

116 Mrs. MINK. All right, counsel tells me that was the last day they were advised that the administration still supported its own bill and wanted its bill enacted. What occurred in the last several weeks? What changed circumstances are we unaware of in this committee that you are aware of that now make it necessary for you to repudiate the administration bill?

116 Mr. HILL. I think the changed circumstances are very clear. Congress went on its Memorial Day recess without any action on a bill to reduce, that would move to reduce this Nation's vulnerability. I know a number of the President's advisors indicated to him that the prospects of the Congress doing that once they returned were less than 50-50

116 Mrs. MINK. I would like to point out that the veto occurred before we went out on recess.

116 Mr. HILL [continuing]. That he would not have a bill on his desk that would reduce imports by 2 million barrels a day by 1977, that that bill would not be on his desk before recess. That judgment was made in early May. It turned out to be correct.

117 It was a further judgment that the prospects of getting that are still very remote. The President, who has to look at the total situation, not just strip mining, but at everything else that is going on in the energy situation, in the economic situation, both internationally and at home, was faced, in my mind, at least with a clearly different objective circumstance in May than he was in February when his own bill was put together. He had high hopes for a national energy program then.

117 Mrs. MINK. I find this discussion most interesting because I am led to the conclusion that it is really not our bill that was being objected to, but it was simply a political effort on the part of the White House to try to harass the Congress to get out another bill totally unrelated to the legislation we are considering today, and in the process thereby, to completely negate the importance that he had, himself, attributed to this legislation in his message to the Congress.

117 So I find this discussion today very illuminating. I hope that the American people will have an opportunity to learn the truth, that the bill that was vetoed was not vetoed for any of its provisions, but merely as a political tactic on the part of the White House. And that in the process we are going to see our environment destroyed, because I see no future possibility of our committee engaging upon a useless debate for a bill when, in 30 days, for some unforeseen political justification, we have a change of position and even the administration bill is repudiated. I find that absolutely unacceptable.

117 Mr. Seiberling.

117 Mr. SEIBERLING. Is it your position that, if the Congress should pass an energy bill acceptable to the President, that then he would be willing to accept this bill, or the administration's bill on strip mining?

117 Mr. HILL. It is the position of the administration that we do want a good reclamation bill, surface mining reclamation bill. We have talked here today about some of the changes that would both tighten some of the definitions, for example relating to alluvial valley floors, and which would remove some of the impact, initial impact on some of the small miners. And that if we could have a national energy program with some of these changes in the surface mining bill, we firmly believe we can have a good surface mining bill.

117 Mr. SEIBERLING. My question really calls for a yes or no answer. Would you recommend adoption of the administration's latest version of the strip mining bill if the Congress passed an energy program acceptable to the President?

117 Mr. HILL. I would give very serious consideration, if we had the full blown energy program, to going back to Mr. Zarb and saying, all right, even if we are getting close to the energy program -

117 Mr. SEIBERLING. Let's say that -

117 Mr. HILL. Let's finish up. Let's do the entire energy picture.

117 The Congress is getting close on supply and demand. Let's establish in that context of where they are coming out, a good surface mining reclamation program, yes.

117 Mr. SEIBERLING. In other words, you cannot positively say that you are prepared to support the last version of the administration's strip mining bill, even if the Congress met the President's requirements on energy?

117 Mr. HILL. Speaking personally for a minute, I had trouble myself with some of the provisions of the administration bill. But I think it is - we would have to trade that off in terms of the overall national energy policy.

118 Mr. SEIBERLING. I practiced law for about 25 years and had a lot of experience with negotiations. I have had experience with people who, every time you met their objections, always upped the ante. That is exactly what we seem to be facing here.

118 Mr. PECK. Mr. Seiberling, a moment ago we were left with the impression, I am afraid, on the record, that there has been an overnight change in the administration's position. When S. 425 was pocket vetoed, a memorandum of disapproval was transmitted to the Congress. The administration bill was prepared, and a very detailed analysis of the differences between S. 425, the vetoed measure, and the administration's proposal was submitted. I do not think there is a single issue that we have discussed here today that has not been raised over the course of the past year or 18 months in numerous correspondence from more than one executive branch agency. So I think it is inaccurate for the record to reflect or imply that this is a sudden decision on issues which have suddenly materialized between two identical bills. But as to the substance of your question, in the very first testimony given by the administration before the Congress by Administrator Zarb, he specifically referenced surface mining. He specifically expressed the hope that he would be able to recommend signature of a bill.

118 As far as I know, that position remains as stated in the record at that time. This bill has been around way too long.

118 Mr. SEIBERLING. That is one statement that I completely agree with.

118 I am rather interested to see in Mr. Zarb's written statement on page 7:

118 I would say once again that the Administration stands ready to work with Congress to resolve these differences. But we must avoid coming together in an arena of confrontation. We must meet on the higher ground of cooperation and conciliation.

118 After two vetoes, I find that a little bit hard to take. The Congress has compromised with the administration. Because they have not gone 100 percent of the way with the administration's position does not seem to me to make it any less of a compromise. But when you veto a bill, you have confrontation. These words are just hollow, empty words, and so are the other words we have just heard retracting the position that was stated quite flatly a few minutes ago, that the administration has made a change in its position because the Congress has not passed an energy program. I am sorry.

118 Mrs. MINK. Senator Metcalf wanted to ask a question.

118 Senator METCALF. Mr. Hill, Mr. Zarb said that 21 States have passed legislation more

or less controlling surface mining. He pointed out that this was some satisfaction of control of surface mining, is that correct?

118 Mr. HILL. Yes. I think what he was saying was that, if the bill goes into effect tomorrow, some of the difficulties of the past are not going to be all created in spades. Take a State like Texas. It has no law. Yet all surface mining is being done under probably some of the most controlled reclamation -

118 Senator METCALF. I am delighted to have you bring Texas in, which does not even have a Public Service Commission.

118 Mr. HILL. They have very good surface mining reclamation programs by the surface mining operators there.

119 Senator METCALF. They published ads suggesting that it would cost a tremendous amount to the utilities if we passed this bill. That is not what I wanted to ask you.

119 There is not anything in those 21 States that will control Federal land, is there?

119 Mr. HILL. That is correct. We believe we have the authority already to promulgate regulations.

119 Senator METCALF. But you have not done anything.

119 Mr. HILL. Those regulations have been out for comment for some period of time, and we are working on them now.

119 Senator METCALF. I have lived in a State where there has been coal mining and surface mining ever since I was able to walk. I can remember when I was in the legislature in 1937, and we tried to do something about the coal strip mining in Congressman Melcher's district. We did not do anything about it because it was Federal land. If this bill does not pass there is not any control over Federal land; is that correct?

119 Mr. HILL. Unless the Secretary of the Interior -

119 Senator METCALF. And the Secretary of the Interior, to me, has already said amen to the Presidential veto. He says that if we have these regulations on Federal land, the economic impact will be such that he will not promulgate those regulations; is that not right?

119 Mr. HILL. I do not think that conclusion has been drawn at all.

119 Senator METCALF. If he does promulgate such regulations and they do have economic impact, then Secretary Hathaway will not be Secretary of the Interior even as long as Secretary Hickel was, will he?

119 Mr. HILL. I think it is -

119 Senator METCALF. Which is meaningless.

119 Mr. HILL [continuing]. Regulations that have maximum economic impact.

119 In my view a good regulation is one that balances and insures that the things that are required for reclamation are there.

119 Senator METCALF. The Constitution, Mr. Hill, gives to Congress the responsibility for the regulation of the public domain; is that not correct?

119 Mr. HILL. That is correct.

119 Senator METCALF. The only agency that can pass legislation as far as regulation of mining or other exploitation of the public domain is the Congress. If there is not a bill here, regardless of what happens in the 21 States, this administration, which ducks and bobs every time the utilities want it to, can do anything it wants about mining of public lands in the public domain.

119 Mr. PECK. I am not sure that is accurate, Senator. I would hate to be bound by it because it has been a long time since I looked at the law. I know the administration has proposed amendments that would impose strict reclamation requirements. I know under the mining law of 1892 -

119 Mrs. MINK. For the record, no administration bill has been submitted in the 94th Congress to amend the Mineral Leasing Act.

119 Mr. PECK. I am sorry, excuse me.

119 Dr. FALKIE. The Secretary, generally, to my knowledge, Senator, does have some authority to promulgate regulations. We do not have authority to pass laws.

120 Senator METCALF. My point is that no matter what happens in the 21 States, you continue to itemize, which have passed legislation - Pennsylvania, Montana, others - some of it

relatively strong, some of it not quite so strong, no matter what happens in any one of those States, we cannot have any strip mining control of the public domain unless Congress acts on a bill such as this strip mining bill.

120 Mr. PECK. Again, Senator, I am sorry, I do not think that is accurate because it is my recollection that the public land laws control access on such terms and conditions as the Secretary may impose - and that is the basis for the regulations which are currently in the Federal Register for comment.

120 Again, I also want to add that in the cost analysis of this bill, I want to emphasize again that the cost of reclamation, that is to say, the cost of preventing environmental degradation during the process of mining, is only one, and a relatively small part, of the overall costs of the bill.

120 The numbers have already been set forth in the record, but I do not think it necessarily follows that because this bill has been vetoed, any action by the Secretary of the Interior to promulgate regulations governing mining on Federal lands would either be impossible or would involve the same cost parameters and, therefore, be inconsistent with the veto.

120 Senator METCALF. Anyway, we are agreed, are we not, that, despite the fact that the States have gone forward with regulation of surface mining on State lands, and private lands within the jurisdiction of the States, the only way in which we could get control and jurisdiction over the public domain and the lands belonging to the Federal Government is for Congress to act?

120 Mr. PECK. Subject to the caveat that I think Congress has already so acted with respect to the mining law. And so, I think we have the authority now in the executive branch.

120 Senator METCALF. Thank you.

120 Mrs. MINK. Mr. Melcher.

120 Mr. MELCHER. Mr. Peck, it is my understanding that after we have had a colloquy with Mr. Reed and Mr. Hadley and Dr. Falkie, that you made some observations again on the alluvial valley floor.

120 Just so I am sure that I have not missed anything, are you stating that in the vetoed bill there were more than three places dealing with the alluvial valley floors?

120 Mr. PECK. No. I think I stated there were three.

120 Mr. MELCHER. There were three?

120 Mr. PECK. There is the definition section, the reclamation requirements and permit application requirements.

120 Mr. MELCHER. The definition section being the same as the administration bill.

120 Mr. PECK. That is correct, sir, yes.

120 Mr. MELCHER. So you are not quibbling too much over what the meaning of that is.

120 Mr. PECK. That is correct.

120 Mr. MELCHER. The reclamation requirement which definitely states the alluvial valley floor is not to refer to undeveloped range lands, you seem to find some means of quibbling over that, but I think the language speaks pretty well for itself. So that would be pretty much out.

121 Then you choose, I understand, to repeat what you had earlier stated this morning, that the language on page 32, subsection (3), of the conference report which says that the proposed operation must be designed to prevent significant irreparable offsite damage to hydrologic belts, reading into that language some sort of vague terminology that would put mining companies in the West at a loss to understand how they would comply with the bill. Is that a fair assessment of your statement?

121 Mr. PECK. I hope not, sir. That was not what I intended to say.

121 Mr. MELCHER. What did you intend to say?

121 Mr. PECK. I was referring, when I discussed the ambiguity concerning alluvial valleys, I was referring to subsection (5) on that page.

121 If I might take a moment and elaborate on that, subsection (5), which is part of the permit application proceedings, places the burden on the applicant to demonstrate, to prove to the regulatory authority that, and this is really the heart of the disagreement that appeared on the face of the discussion of what the USGS has been saying previously, the definition of terms, what

exactly was on those maps and so on, this section says that the applicant must demonstrate that the proposed coal mining operation would not have, and here is the language which has caused the difficulty, "a substantial adverse effect on alluvial valley floors." That is what Dr. Falkie was trying to elucidate with the maps.

121 The point is this language does not simply prohibit mining on alluvial valley floors. It prohibits mining which would affect alluvial valley floors, whether or not the mining itself is on the floor.

121 Now, in terms of the discussion previously and the maps that were displayed by the U.S. Geological Survey, that was a critical point of distinction. The Survey, as I understand the request that was made of them, was asked to define in the narrow terms contained in subparagraph 27 of the definitions section, alluvial valley floor. They did so and they are correct.

121 But that is not the scope of what this bill provides with respect to mining and with respect to such floors.

121 The substantial adverse effect language broadens the area, the geographical area under certain geological circumstances -

121 Mr. MELCHER. Well, Mr. Peck, if that is all it says, that paragraph, I could follow your line of argument. But you very well know that in the same sentence the condition of the farming has to be done where it is irrigated -

121 Mr. PECK. If I may please, sir, I would like to go on to those other words because I do not think we have really focused on the thrust of this section. It is the heart of the disagreement on the alluvial valley problem.

121 The language of this section then goes on, "on alluvial valley floors where the farming can be practiced in the form of," then we come to another word, "irrigated," not "flood irrigated," which follows, but in addition to naturally subirrigated, "irrigated." Remember, we are not talking at this point about the economic viability of irrigation. One of the expressions that came up during the course of the discussion of this among lawyers was, suppose somebody wanted to run a garden hose from New Jersey, regardless of the cost. The -

122 Mr. MELCHER. Well, Mr. Peck, I am not going to belabor this with nonsense. I really

think your garden hose is a little bit of nonsense. But I am going to go on because we do have votes on the floor. I am going to pursue the point now, Mr. Peck. The irrigated, flood irrigated or naturally subirrigated hay meadows or other crop lands seem to me to speak for themselves.

122 I want to reiterate what you and others have said today, that it takes large capital investments for these mining operations in the West, and it takes several years for planning. It takes some time to get the machinery. If it were true, your line of reasoning right now, if it were true that that is the way courts would be likely to interpret it, or any State administrator would be likely to interpret it, or the Secretary would be likely to interpret it, every mining operation that you people listed and that I read into the record would have been clamoring to have that clarified in the conference. That was not the case at all.

122 Three of the nine mine sites you people listed as being on alluvial valley floors and adversely affected by this bill, and their loss of those of tonnage, their productivity lost, were in my area. Only one of those three found any likelihood of the construction that you just have given us for that section of the bill.

122 Mr. PECK. But, sir, the only purpose of our elaborating on that was to say if even one out of three think that way, we have to assume it as the maximum range of loss.

122 Mr. MELCHER. The one out of three that thought of that, I dare say, found when he discussed it with the administrator of Montana State law, that he would not be so affected. I do not know. He did not come back. I asked him to discuss it with the administrator of Montana State law, the very section we are dealing with. He did not come back to me, but the other two did. They could not construe it as you have described it. I think you have an unreasonable construction of it. I do not think the administrator of the State or the Secretary would find that same construction.

122 In doing so, you are belaboring again some vague term not readily understood. By vague term, I mean -

122 Mr. PECK. Ambiguous term, sir?

122 Mr. MELCHER.No, vague term, as far as the public is concerned, when you mentioned alluvial valley floor. They do not know what you are talking about. They assume you do.

Therefore, if you tell them that the alluvial valley floor section would knock out their mine, they are probably going to believe you.

122 Dr. FALKIE. My impression is that some of those operators that you mentioned are really not sure at all what kind of interpretation is going to be given to these provisions.

122 Mr. MELCHER. You know, we could go on and on on this point, but it is clear that when you circulate information that purportedly would knock out 40 percent of all the strippable coal reserves in the Nation, it is a pretty serious charge.

122 Mr. PECK. I think so, sir. And if I could go for one more second, the parenthetical exclusion which follows the language we have just been discussing would, according to the environmental impact statement for the Powder River Basin, allow the mining of every square foot of Campbell County. Surely that cannot be what the conferees intended.

122 Mr. MELCHER. I think that sounds a little bit preposterous.

123 Mr. PECK. That is what "undeveloped range land" meant to the people who said 97.3 percent of the Powder River Basin would be excluded from this ban. That is what it meant because that is how they reached the calculation.

123 Mr. MELCHER. If the entire area were being reviewed for undeveloped range lands, and the entire area overlies a seam of coal that is thick enough to mine, then that is exactly what they should set out to do. But, Mr. Peck and Dr. Falkie, the protection of the water, the avoidance of upsetting the hydrologic belts, the avoidance of interfering with the water that serves these alluvial valley floors which is so extremely important in the West must be determined before the mining commences. That is why Western Energy and Westmoreland, and, I dare say, Decker, now, too, want to be damned sure that they know ahead of their mining operation, because if they do disturb that water belt, there are extremely serious and costly circumstances that will develop from that. They will be liable for those losses. They must know ahead of time.

123 There are many areas in Montana, Wyoming, and North Dakota that could be mined, we know, without disturbing the hydrologic belts. We are saying in this bill, mine those areas. That is all. That is extremely important.

123 Dr. FALKIE. Mr. Melcher, we could not agree with you more on your assessment of the importance of water to the West. We also think that mining in the West is important to our overall energy picture. We feel that the operator is put in a position of providing positively things that cannot be proved positively. This was taken into consideration in our estimates all the way through.

123 In fact, Mr. Melcher, in your summary here of the impact of H.R. 25, attachment No. 1, the first item you have is the loss of 685 million tons of coal that could be produced if there were no bill. Yes, the production you would have if there were no bill. You would project that type of production loss.

123 Mr. MELCHER. Now, we find in Project Independence that we are talking about anticipated production of 755 million tons.

123 Dr. FALKIE. That is correct. We have revised those numbers from Project Independence. Those Project Independence numbers were done over a year ago.

123 Actually, the higher the production is, the higher the production loss estimate will be. So I think we are being conservative.

123 Mr. MELCHER. I do not understand, then, why you gave us the 685-million-ton figure first, and then the 755-million-ton this afternoon.

123 Dr. FALKIE. Because I was trying to prove a point, and I never did get to the chart because of the time limitations. I was trying to show some trends in that section chart. I want that in the record, that that chart on Project Independence was meant to show trends to the point that production would have to increase from both surface and underground mining from both the East and the West. That was the purpose for having that chart which we never had time to get to.

123 Nevertheless, it is there on the record.

123 Mr. SEIBERLING. Gentlemen, I have, I hope, some very simple factual questions which will permit a simple answer. What is your current estimate as to the additional cost you think this will add to the price of coal, the cost of mining coal in terms of dollars per ton?

124 Mr. HILL. Are you referring to the full H.R. 25, or what?

124 Mr. SEIBERLING. I am referring to the full bill as passed by the conference in both Houses, including the reclamation fee. The average cost per ton.

124 Mr. HILL. We estimate that the impact of H.R. 25 on energy prices would be basically twofold.

124 Mr. SEIBERLING. Can you just answer my specific question, dollars and cents per ton added to the cost of mining coal?

124 Mr. HILL. 2.4 million to 5.6 million will be the increase in the price of the energy.

124 Mr. SEIBERLING. I do not concede there will be any increase in price. I am talking about the additional incremental costs of mining coal.

124 Can you give me the cost?

124 Mr. HILL. I cannot give you the incremental cost of mining coal as a result of this bill. I doubt if we will know that figure for 10 or 12 years, once we have gone through a full range of different kinds of reclamation requirements and test requirements.

124 Dr. FALKIE. Mr. Seiberling, we did some estimating, and we estimate that on the average somewhere in the neighborhood of 60 to 80 cents a ton would be added to the cost of mining coal, plus the provision for the reclamation fee.

124 Mr. SEIBERLING. That is in line with the previous estimates we got. I believe we had a maximum figure at one point from the administration, an estimate of \$1.15 a ton.

124 Dr. FALKIE. The maximum would be larger than that.

124 Mr. SEIBERLING. It would still be 95 cents to \$1.15, on the average. So that is still within the ballpark, \$1.15 a ton. Is that about right as an average?

124 Dr. FALKIE. That would be about the average cost.

124 Mr. SEIBERLING. If you multiply this cost times the total production for strip mines, and you take 60 percent of that and divide it by 24,000, which is the average cost per man-year on mining jobs, it will give you a figure in terms of the number of jobs that this additional cost represents. I will not bore you with the figures. Well, I will. At \$1.15 a ton and a production of 300 million tons, using that formula, you come up with an increase in jobs of 9,000.

124 In other words, 9,000 additional jobs would be generated by the additional work that this bill would require and the additional work that the reclamation fee would support. That assumes that you have 300 million tons of strip mining production. So, while you may disagree with the particular formula, what it adds up to is that this will produce that additional number of jobs, assuming no decrease in production.

124 Dr. FALKIE. I have great difficulty in understanding the formula that you use. It somehow or other does not sound right to me.

124 Mr. SEIBERLING. According to the Department of Commerce's own figures, 60 percent of the amount spent in mining is attributable to labor. And \$2 4,000 is the average cost per man-year to keep one person employed in a surface mine.

124 So if you take 60 percent of the figure you get by multiplying the production by \$1.15 a ton, you come out with the figure I have given you.

125 I would be interested if you would take a look at that and give us, later, your reaction to that figure.

125 Dr. FALKIE. I would have to take a look at that overall calculation. I must confess it is tough to follow.

125 Mr. HILL. We would be glad to do that, Mr. Seiberling.

125 Mr. SEIBERLING. I am sorry Mr. Skubitz has left, because he was a little bit confused about the cost of the reclamation fee in terms of the fact that it was based on per-ton rather than per-acre assessment.

125 But I have some rather interesting figures from the Bureau of Reclamation of the State of Ohio which indicates that Ohio Power Co., in its ads against this bill, is claiming that it will cost them \$2 a ton to reclaim land under this bill.

125 On that basis it would cost \$6 ,000 to \$8 ,000 an acre, based on the tonnage they are getting from their strip mine. Yet, in their bonding permits in Ohio, they claim that the reclamation cost is only \$2,000 to \$3 ,000 an acre. Either they are exaggerating their costs in their ads, or they are understating them in their applications for bonds.

125 The point I am making is that the cost per acre goes down as the tonnage that you get from

an acre goes up. Where, in the West, you have these huge thicknesses, let us take a 40-foot-thick seam, you are talking about, when you get into the reclamation fee, an average fee of about 7 cents a ton.

125 So when the President talks about the fee being excessive, I find it difficult to believe. I just have the feeling that he does not really understand exactly how the impact of it hits a coal mine operation.

125 Even in Ohio where you have seams averaging about 5 feet, you are talking about over \$100,000 per acre, \$150,000 an acre in terms of what they are now getting for the coal that they are taking from those seams. You are adding about \$3,000 in terms of the reclamation fee.

125 So again, assuming those general figures are correct, how do you come up with excessive costs in terms of the value of the coal being extracted?

125 Mr. HILL. I do not think the focus on the size of the fee, 35 cents, or 25 cents, or 10 cents, is excessive in terms of the potential costs that it may mean to the consumer of energy. Our discussions regarding the size of that fee that we had, I think, prior in time to the bill vetoed last December, was that you could reclaim all of the orphaned lands in the United States with a lower fee.

125 Mr. SEIBERLING. In how many years?

125 Mr. HILL. It was our view that the reclamation fee ought to go to the reclamation of orphaned lands. It was our concern that a larger fee would in fact end up being spent on a lot of other items that were not related to the reclamation of these orphaned lands.

125 The authority is clearly provided in the bill. We think those other issues should be taken care of -

125 Mr. SEIBERLING. Are you aware that the bill limits the use of the fee to reclamation of coal mine lands except where there are no longer coal mine lands to be reclaimed, in which case they can use it for restoration of other lands?

125 Mr. HILL. That is right, it takes away the ceiling.

125 Mr. SEIBERLING. It is limited to the reclamation in principle.

126 Mr. HILL. Initially it is. But I think there will be some areas over some period of time

that will be able to use this money for something else.

126 Mr. PECK. There is also the 50-percent limitation, sir. Of the fee collected, 50 percent must be spent in the State where it is collected, and may not be spent elsewhere.

126 Mr. SEIBERLING. It seems to me you get down to quibbling about pretty small things, because on the Department's own estimation of \$9 billion to restore the orphaned lands, how many years do you think it would take to do that with a 10-cent-per-ton fee?

126 Dr. FALKIE. I want to correct that impression, and I am going to have to go back and find out where the \$9 billion came from. But I do believe that the \$9 billion includes not only orphaned lands, but damage from acid mine water and damage from underground subsidence as well.

126 So there is a significant amount of damage from these other areas that would have to be corrected. So it is not only orphaned lands.

126 I am going to have to go back and check the significance of that.

126 Mr. HILL. I think it is clear that while most members of the administration have liked a lower fee, that the size of the fee was not something that was paramount in their minds in assessing this bill from the point of a veto.

126 Mr. SEIBERLING. I am glad to hear that. The CEQ report which has been cited earlier, page 30, brings out that coal can be produced by surface mining in Appalachia for 75 cents to \$2 .50 per ton less than by underground mining. Therefore, the competitive position of surfacemined coal will not deteriorate even at the highest range of reclamation costs.

126 Of course, if you average that out at about \$1 .50 a ton, that is still a differential that is higher than the cost of \$1 .15 a ton in this bill as far as surface mining is concerned on the average.

126 I would like to ask you whether you have any figures as to the average cost that the Coal Mine Safety Act amendments added to the cost of mining deep-mined coal. Have you figures on that?

126 Dr. FALKIE. We have figures on productivity reduction that has occurred in the coal industry in the period since 1969.

126 There has been approximately a 25-percent decrease in productivity in underground mining since that time. Not all of this is due to the Coal Mine Health and Safety Act, but some of it is.

126 There has been no definitive study on what percentage of that productive loss is due to the act. There are other factors that have contributed to this productivity drop.

126 New people entering the industry, the learning curve, and training has something to do with it, and some other factors.

126 So we do not have a definitive study that gives the cost increases due to the Coal Mine Health and Safety Act. There have been some things done in the literature on that.

126 Mr. SEIBERLING. Do you feel the Coal Mine Health and Safety Act amendments were, on the whole, desirable?

126 Dr. FALKIE. The general tone of the Coal Mine Health and Safety Act was most certainly desirable.

126 Mr. SEIBERLING. In view of the present energy problems, if we were considering those amendments adopted in 1969, today, would you recommend against adopting?

127 Dr. FALKIE. I would have to go back through each amendment and make an evaluation before I could make a judgment.

127 Mr. SEIBERLING. Since they have a lowering effect on productivity, would you not recommend -

127 Dr. FALKIE. No, I would only recommend changes in the Coal Mine Health and Safety Act for things that could be technologically proved to be weak in the act.

127 Mr. SEIBERLING. But you would not in effect recommend abandoning the effort to improve coal mine safety, even if it had an adverse effect on production?

127 Dr. FALKIE. Absolutely not. The Bureau of Mines was founded in 1910 primarily as a safety-type agency. Its responsibilities have changed some since that time. We still have it in our Organic Act.

127 Mr. SEIBERLING. Preserving the surface of the land and reduction of productivity of our soil has a lower priority, as it probably should.

127 Dr. FALKIE. No, that is not what we are saying, Mr. Seiberling.

127 Mr. PECK. I will.

127 Dr. FALKIE. We are clearly on the record, my speeches and everybody else's, that strong surface mine regulation is a desirable thing for this country.

127 Mr. PECK. Mr. Seiberling, in fact, even the very early administration bills drew that distinction and allowed, for instance, administrative cease and desist orders to issue forth with in the event of threat to the public safety. So, yes; we do recognize a different weight in the balance.

127 Mr. SEIBERLING. I realize the way we seem to operate in this country. Eventually, when we start running short of food, then we will try to reclaim a lot of these lands where we have burred the top soil. In the meantime, it does not matter.

127 Is that the position of the administration?

127 Mr. PECK. No, sir; and, again, I emphasize our concern with this bill is not the reclamation requirements, but the other issues which we have discussed.

127 No one here is in favor of seeing night come to the Cumberlands again.

127 Mr. SEIBERLING. That is an interesting elaboration of your position. I would like to ask you something about the leadtime.

127 On page 18 of Mr. Zarb's statement, the bottom of the page, and at the top of page 19, he says:

127 * * * long leadtimes and major capital outlays are required to open or expand underground mines. As a result, any offset from this source would be years away.

127 Could you tell me what the current leadtimes are for heavy strip mining equipment?

127 Dr. FALKIE. Yes, I can.

127 If you went out to order a drag line today, you would probably get delivery promised in the last quarter of 1979. Then there would be an erection period after that. So it is at least a 5-year period.

127 Mr. HILL. It takes about 12 months to assembl the equipment.

127 Mr. SEIBERLING. About a 6-year total before it is operating?

127 Dr. FALKIE. Between 5 and 6 years; right.

127 Mr. SEIBERLING. And I wondered how that compares with the leadtime for opening a new underground mine.

127 Dr. FALKIE. The equipment in underground mining would probably be slightly shorter, probably on the order of 3 to 5 years. But the overall time from the time of beginning of planning of the mine and getting the State permits and so forth, I would guess anywhere from 3 to 6 years would be needed for an underground mine.

128 Mr. SEIBERLING. So as a matter of fact, it takes just as long to open a new big strip mine as it does to open an underground mine.

128 Dr. FALKIE. Yes, today. Until the supply constraints can catch up with the demand for this equipment.

128 Mr. SEIBERLING. I wonder how that jibes with Mr. Zarb's statement about the long leadtime on opening up underground mines so you cannot offset future possible strip mine production that you may forego by -

128 Mr. HILL. I believe he says the production we would lose under H.R. 25 could not immediately be made up by switching to deep mines because of long leadtimes there.

128 Mr. SEIBERLING. We are talking, as I understand it, mainly about future production when we talk about any effect on reducing production.

128 Mr. HILL. We are talking about production in 1977. The production we will see in 1977 is already being planned for today. The plans have already started. If there are now areas in the planning to be mined, and there are, that cannot be mined, you are not going to be able to just quickly switch over and go somewhere else.

128 Mr. PECK. I might point out, sir, that if a mine has to close as a result of this bill, the equipment does not disappear. So the analogy between the leadtime to open a new mine and to open an underground mine is not really the point that was made in Mr. Zarb's statement.

128 Mr. SEIBERLING. Do you have figures as to how many underground mines not now operating could be reopened if it became economical to do so?

128 Dr. FALKIE. Many of the underground mines that are closed, of course, are mined out. I do not know whether we have a number on that figure. There may be a few marginal mines which are closed which could be opened, but even then it would take a considerable amount of time to rehabilitate these mines and get equipment, put them back into production.

128 Mr. SEIBERLING. I have seen figures from your Department that show how many mines are operating on a one or two shift basis and could go to a two or three shift basis, which would obviously increase their rate of production.

128 Dr. FALKIE. I think the number, and I do not know where those figures are coming from and how recent they are, I think we would have to take a look at the numbers you have. I would be pleased to examine those numbers and see whether they are still valid because in today's situation the excess capacity in terms of shifts is just not that great.

128 Mr. SEIBERLING. I get the impression from Mr. Zarb that you have not taken a look at that in your evaluation of the possible shift from strip to underground mining.

128 Dr. FALKIE. We have looked at it, and it is my opinion that the amount of excess capacity in the industry right now is very small.

128 Mr. HILL. Excess capacity in this industry is very expensive, and it is not something you want to maintain. So I would imagine that the competitive pressures keep it very, very small.

129 Mr. SEIBERLING. I understood that part of it was because until the recent recession it was hard to get labor for a lot of underground mines. A lot of the people had moved to Detroit and other places where they got higher pay, and now the flow is going the other direction.

129 Dr. FALKIE. For the short and intermediate term, the availability of skilled manpower could be a problem for the coal industry. Skill levels are important to consider when making that statement.

129 Mr. SEIBERLING. That is true.

129 Can you supply us with some figures on that, as to just how much slack there is in the underground industry? I think that is particularly important in view of Mr. Morton's statement

that coal production was demand limited rather than production limited at the present time.

129 Mr. HILL. I think that is, though, in terms of the much higher bounds. We estimate that by 1985 we will see about 1.2 billion tons of coal.

129 As I indicated earlier, the domestic estimate is as much as 1.5 or 1.4 billion. Over the long term it is not demand limited - has been demand limited in the 1950's and 1960's, from a variety of economic forces in the 1950's, and environmental forces in the 1960's.

129 As people begin to install the various technologies and take the various steps to meet the air pollution control requirements, demand will go up. I think what Mr. Morton was saying, in the absence of these things, coal would be used at a much higher rate. Today's coal market is in equilibrium in terms of supply and demand, basically.

129 Mr. SEIBERLING. I would just like to make a couple of other observations, and you may comment on them, if you wish.

129 The statement was made earlier that production went down in certain States after strip mining legislation was adopted. I believe Pennsylvania, and Ohio, and West Virginia were cited.

129 West Virginia's bill is so weak that it is almost a farce, whereas Ohio has a very stringent law. Certainly, Pennsylvania does, too. Yet, I have figures which show, and I got them from the Bureau of Mines' Mineral Year Book covering strip mining, which showed that in Ohio in 1971 production was 38,560,000 tons. In 1972 it was 34,698,000 tons. In 1973 it was 29,140,000 tons.

129 That was a drop of 10 percent approximately between 1971 and 1972. In 1972 the bill took effect, around the middle of the year.

129 In 1973 there was a drop of about 15 percent, between 1972 and 1973. I am told by the Ohio Reclamation Agency that that was partly due to other things such as shortages of explosives and wildcat strikes and the like.

129 But in West Virginia I have the following figures from the Bureau of Mines. In 1971 strip mine production was 25,821,000. In 1972 it was 22,080,000. In 1973 it was 19,791,000.

129 That is a drop of about 15 percent between 1971 and 1972, and 10 percent between 1972 and 1973. So in those 2 years you had a total drop of 25 percent in both West Virginia and in Ohio, production of strip mined coal.

129 Yet in the State of Ohio you had a much stronger law than in West Virginia. The only reason I am citing this is because it seems to me that to compare Ohio and West Virginia in terms of their laws is comparing apples and oranges. Yet the very same trend took effect in both States.

130 As a matter of fact, if you take the national figures, there was a drop nationally in those 2 years. I wonder if you have any comment on that.

130 Dr. FALKIE. I do not know whether we have submitted these for the records, but I would like to submit these charts for the record and go back to the chart I was using earlier and emphasize one point. We did not say that all of these losses were due to surface mining. We merely pointed out the trends in the production after the surface mining legislation was passed in each State. n1

130 n1 See Appendix VI.

130 Mr. SEIBERLING. I am glad you clarified that because there was an implication that one was the result of the other.

130 Mr. PECK. I thought someone earlier today pointed out that money flees uncertainty. There certainly could have been some of that.

130 Mr. SEIBERLING. But the law was then passed, so there was no uncertainty.

130 Mr. PECK. It depends on how certain the law was, which has consumed a good part of our time this afternoon, sir.

130 Mr. SEIBERLING. There is no law that could pass, except one that just said, "Be nice, boys," that would not create some uncertainty; is that not true?

130 No, I guess we could have a total ban. That would create certainty.

130 Mr. PECK. There is no question the Ohio law is one of the best that I, at least, have read. Its most recent amendment in 1974, I believe it is, makes it one of the best.

130 The West Virginia law has been in existence, our charts show 1971.

130 A real quick rundown on the checklist would support the theory that it is not as stringent, certainly, as the Ohio law or Pennsylvania law.

130 Mr. SEIBERLING. I am going to ask one more question, then I guess that will greatly relieve you gentlemen, too, because I am going to depart to the floor of the House.

130 Are you aware that both in Pennsylvania and Ohio laws, there are citizens' suits provisions?

130 Mr. PECK. Yes, sir. However, they are different.

130 Mr. SEIBERLING. They are different. They do have provision for citizens' suits?

130 Mr. PECK. Yes, sir; and we did a lot of examination of that, particularly. What we are talking about is section 1513.13 of the Ohio Act that first appeared in the version that was passed in 1972. There are several significant differences.

130 Mr. SEIBERLING. Without going into the differences, because I am going to have to run, I will stipulate that there are differences and that they are significant. But there is provision whereby citizens can challenge a particular operation or challenge the enforcement agency carrying out the law, correct?

130 Mr. PECK. Yes, sir; and it goes to the point of the amendment made in accord with our recommendation on H.R. 25, because the action is brought against the chief of the bureau, not directly against the operator.

130 Mr. SEIBERLING. But in neither State, I am informed, has there been any citizen suit under either law.

130 Mr. PECK. Well, sir, there are no damages, nor any provision for temporary injunctive relief. So incentive to sue is not present, as it is under this legislation.

131 Mr. SEIBERLING. You have to have an interest to collect damages in H.R. 25. You have to have an interest in recovery.

131 Mr. PECK. There has to be a showing of damages, but there are also attorney fees and expert witness fees, in effect underwriting the citizen's litigation.

131 Mr. SEIBERLING. You have fees under the Pennsylvania, Ohio law, too.

131 Mr. PECK. I must admit I am not familiar in detail with the provisions.

131 Mr. SEIBERLING. The important thing is that there has not been a huge rash of lawsuits. In fact, there have been none. I think that goes to the point made about unquantifiable loss of production from action by the courts and citizen suits, because it is not apparently as much of a problem in practice as it might seem in theory.

131 Mr. PECK. Again, in attempting to estimate the losses, presence of the citizens' suit provision required us to assume that the worst possible case would be adjudicated, and that is the range we had to draw on.

131 Mr. SEIBERLING. On that note I adjourn the hearing and thank you very much gentlemen. I am sorry to have to put you through this ordeal.

131 [Whereupon, the hearings were adjourned at 7:05 p.m.]

APPENDIX NO. I

133 III. PRODUCTION LOSSES (BACKUP DATA AND INFORMATION)

133 Small mines.

133 Steep slopes.

133 Alluvial valley floors.

133 Other unquantifiable loss (list what and why).

133 EXECUTIVE SUMMARY

133 PRODUCTION LOSSES

133 I. General

133 A. Estimates were necessarily based on certain assumptions.

133 1. Losses are shortfalls from adjusted Project Independence projected gains (projected production=685 million tons).

133 2. Some parts of estimates are based on relative 1974/1975 price levels of coal.

133 3. Assumed prevailing mining methods and technology.

133 4. Other supply and demand constraints may have a significant effect on increased coal production.

133 5. Rate at which productive system recovers will depend on time it takes industry to recover, which is limited in the short range.

133 II. Projected Production Losses

133 A. Total Losses.

133 1. Total Losses from three categories is 40-162 million tons.

133 2. Categories are: (a) small mines (22-52); (b) steep slopes, aquifer, siltation (7-44); (c) alluvial valley floor (11-66).

133 B. Methodology.

133 1. Small mines.

133 a. Estimated production from mines producing less than 50,000 tons per year is 60 million for 1977.

133 b. FEA conducted a survey of the Appalachian States and got an estimated loss of 52 million tons. Information was obtained from (1) the State regulatory authorities, (2) State reclamation associations and (3) companies whose figures were verified by 1 and 2 above.

133 c. Minimum figure of 22 based on engineering judgment that 60 percent of the 52 million tons could be mined and would not be lost.

133 d. 22-52 million tons represents 37-87 percent of projected small mine production (60 million tons).

133 e. Small operators would be impacted by the following:

133 (1) Increased production costs.

133 (2) Bonding and permit application requirements would cause a front end cost of 6 to 12 K.

133 (3) Lack of technical expertise readily available for deriving various application data including hydrologic data, detailed underground maps, test borings, analysis of strata characteristics, detailed mining and reclamation plans and assessment of hydrologic impact.

133 (4) Additional equipment required to handle overburden in using haul back methods required because of no spoil on the downslope.

133 (5) Shortage of drilling equipment.

133 (6) Requirement that portion of bonding be held at least 5 years after last year of vegetation.

133 (7) Control of siltation including additional sediment control structures, drainage ditches, and water treatment facilities.

133 2. Steep slopes, aquifers, and siltation loss are 7-44 million tons.

133 (1) Steep slope losses are 7-25 million tons.

133 (a) Based on steep slope mining from mines greater than 50,000 tons per year.

134 (b) Projected production from such mines for 1977 is 68 million tons. Losses of 7-44 million tons are 10-35 percent of 68.

134 (c) FEA survey of small mines relating to steep slope provisions was taken into consideration. Also Ohio, West Virginia, and Tennessee production trends were considered. After strong State laws in these States were enacted, production decreased 20-30 percent.

134 (d) Operators would have trouble with the following:

134 (i) No variances, other than mountaintop mining.

134 (ii) No terracing.

134 (iii) No placement of spoil on downslope except initial cut.

134 (iv) Additional equipment needed for haulback or block-cut methods would be difficult to get quickly.

134 (e) Engineering judgment based on (c) and (d) above used to determine that 10-35 percent loss of 68 million tons would occur.

134 (2) Aquifers (loss is 0-9 million tons).

134 (a) Approximately 90 million tons were considered as base production not being affected by other loss categories.

134 (b) Engineering judgment of FEA and BOM personnel that up to 10 percent could be affected.

134 (c) Reasons are the following:

134 (i) Ground water hydrology may be disrupted whenever coal mining takes place.

134 (ii) Where coalbed serves as aquifer, interruption of aquifer could lower water, including wells.

134 (iii) Water quality may be changed.

134 (iv) Requirement of consent of water rights owners may further reinforce tendency toward strict interpretation of hydrologic features of the bill.

134 (v) Losses would depend greatly on interpretation of regulatory authorities and courts.

134 (3) Siltation (loss is 0-10 million tons).

134 (a) Based on engineering judgment of BOM and FEA personnel.

134 (b) Reasons are the following:

134 (i) Difficult for the operator to "affirmatively demonstrate" that he could comply with preventing additional contributions of suspended solids.

134 (ii) Sedimentation must be measured accurately prior to mining. Difficult to measure accurately and even if possible sedimentation during the first year may be higher than that measured due to natural causes and it would be difficult to prove it was not due to mining.

134 (iii) Difficult for some operators to economically construct additional diversion ditches, impoundment structures, and water treatment facilities required.

134 (iv) 515(b)(10)(c) requires removal of large siltation structures after revegetation and stabilization. This may not be of permanent nature.

134 3. Alluvial valley floors.

134 a. Estimated production west of 100th meridian is approximately 95 million tons in 1977.

134 b. Losses estimated at 11-66 million tons.

134 c. Many ambiguous terms such as significant, potential, and substantial.

134 d. Minimum 11 million tons loss was determined by:

134 (i) Examining three key factors (1) area now under intensive agricultural usage (including

farming and hay meadows); (2) undeveloped rangelands and; (3) potential farming and ranching areas. These areas are uncertain on a National basis.

134 (ii) Considered coal actually under an alluvial valley floor.

134 (iii) If some of these mines could move to other areas which would be difficult, minimum loss could be 11 million tons. If none of these mines could move, minimum loss would be 24 million tons.

134 (v) Movement would require availability of reserves in areas not affecting A.V.F., equipment expansion, new mining and reclamation plans and in some cases, new permits.

134 (vi) According to Bucyrus-Erie for 60 cubic yard dragline delivery date would be fourth quarter 1979 plus 1 year for assembly.

134 (e) Maximum loss (66 million tons) based on the following:

134 (i) Assumed that any affect on hydrologic function of A.V.F. from tributaries, or ground water would preclude mining.

134 (ii) A.V.F. are dependent on small intermittent tributaries as well as major drainages with perennial stream flow.

135 (iii) When such streams and their water are affected by mining, the runoff into A.V.F. is also affected which is prohibited.

135 (iv) 66 million tons is based on projected percentage to 1977 from estimated amount affected in 1974.

135 4. Unquantifiable losses.

135 (1) Designation of Areas as Unsuitable for Mining.

135 (a) Current operations not affected.

135 (b) Long term production could be affected depending on areas not designated.

135 (2) Surface owner protection.

135 (a) Amount of Federal reserves under private surface is approximately 14.2 billion tons.

135 (b) Some of this will be lost depending on the number of owners who will give consent.

135 (c) Because of restrictions on the amount of compensation allowed number of owners giving consent may be limited.

135 (3) Permit application requirements.

135 (a) Affect an operators producing more than 50,000 tons per year.

135 (b) Acquisition of an analysis of application data required could have some effect on these mines.

135 (4) Consideration of State laws and effects.

135 (a) Effects on production in three States was examined. (Due to passage of their own laws, Ohio, West Virginia, and Tennessee.)

135 (b) Reasons for these States being used:

135 (i) Have stronger laws than other States which come closer to H.R. 25 standards.

135 (ii) Have been in effect long enough to show production trends.

135 (c) Ohio-surface production increased every year for the past 10 years up to and including the year preceding Surface law (38.6 million tons). Effective date - April 1972. Production for 1973 was 29.6 million tons. Decrease - 23 percent.

135 (d) West Virginia - Gradual increase in surface production up to the year preceding effective date of law (27.7 million tons). Production in 1973 - 19.9 million tons. Decrease - 28 percent.

135 (e) Tennessee - Again gradual increase up to 5.7 million in the year preceding effective date of law (March 1972). 1974 production was 4.3 million tons. Decrease - 25.

135 (f) No certainty that drops were entirely due to laws, however, there are no other apparent reasons.

135 (g) These laws are still less restrictive than H.R. 25.

135 (i) Do not require all of application data.

135 (ii) Many more variances.

135 (iii) Do not require complete elimination of highwalls in many cases. Allow terracing.

135 (h) These States have large portion of surface mining on steep slopes. 1971 figures are:

135 (i) Ohio - 29 percent.

135 (ii) West Virginia - 72 percent.

135 (iii) Tennessee - 77 percent.

135 (iv) Pennsylvania not included.

135 (v) Steep slopes are a very small portion (25 percent) of surface mining within State.

135 (vi) Pennsylvania law has many variances and it does not appear that 1971 law changed many of the restrictions relating to steep slopes.

135 PROJECTED PRODUCTIONS FOR 1977

135 1. Small Mines producing less than 50,000 tpy. (60 million tons projected).

135 Small mine production is estimated for 1974 at approximately 50 million tons. An increase of approximately 3-5 million tons per year was assumed over the next 3 years thereby bringing 1977 production up to approximately 60 million tons.

135 2. Steep slope production (110 million tons projected).

135 Steep slope production was derived by projecting the steep slope production of 1971 (80 million tons) as derived in the 1973 Report prepared by the Council on Environmental quality on coal surface mining and reclamation. It was assumed that production from these areas would increase at a rate of approximately 5 million tons per year thereby reaching an estimated production in 1977 of 110 million tons.

136 3. Steep slope production from mines producing more than 50,000 tpy. (68 million tons projected).

136 By obtaining from personnel within the Appalachian States, familiar with surface mining within each State, an estimate was obtained showing that approximately 70% of surface coal from mines producing 50,000 tons per year or less was being mined on steep slopes in 1974. This 70% was projected to 1977 which gives a small mine-steep slope production of 42 million tons. Subtracting the 42 from 110 million tons projected total steep slope mining gives 68 million tons of projected steep slope mining at mines producing more than 50,000 tons per year in 1977.

136 4. Production West of 100th Meridian (95 million tons projected).

136 Production West of the 100th meridian was derived by examining those mines in production at present and using the predicted expansion at these mines to determine the 1977 production. Arizona excluded.

136 5. Total Surface Production (350 Million tons projected).

136 Projected production of total surface mining was derived from the project independence Report (Business as usual case as adjusted).

136 PRODUCTION LOSSES

136 A. GENERAL

136 Interior and F.E.A. estimates of production losses have necessarily been developed on assumptions that bear substantially on predicting the actual impact of surface mining legislation. Principal among such considerations are the following:

136 1. Losses are shortfalls from adjusted Project Independence projected gains. Losses are asserted as amounts by which coal production will fall short of projected increases in production called for by the Project Independence Report (Business as usual case as adjusted). Interior used a figure of 685 million tons as the amount of projected production in the first full year of implementation. This compares with 1974 production of 601 million tons and estimated 1975 production of 625 million tons. Project Independence projections are subject to other factors such as clean air restrictions, delivery system constraints, demand limitations and altered energy price projections. The estimates of production could fluctuate due to changes in these factors.

136 2. Some parts of the estimates are based on relative 1974/1975 price levels of coal. A basic uncertainty in production levels results from uncertainty as to coal price levels and other energy price levels. Higher coal prices than the constant relative prices assumed in the Interior analysis could mean more coal production and lower relative coal prices could mean less production. This is particularly important since the estimates of increased costs resulting from the bill are in the range of \$.50 to \$1.50 per ton.

136 Weighted Average Price for surface mined coal f.o.b. mine averaged about \$11/ton in 1974, and for all coal averaged about \$1 5 per ton. Prices for longterm coal contracts have been

rising although spot contracts are declining. If prices of competing energy sources increase, then over time of an unknown length, this suggests that cost increases can be passed on with smaller production losses than have been estimated.

136 3. Losses are based on assumption of prevailing mining methods and technology. Technological improvements in both surface and underground mining methods could marginally diminish production losses over some period of time.

136 4. Other supply and demand constraints may have a significant effect on increased coal production. Coal production is affected by the cumulative effects of supply and demand constraints such as transportation, manpower, availability of equipment, clean air and other environmental requirements, and coal user demand. Of these, the Clean Air Act and limited coal user demand may constitute more serious long run limitations on coal production than surface mining legislation.

136 5. Time. In addition to the factors discussed above, the rate at which the productive system recovers and moves toward the Project Independence desired levels is dependent on the time which it will take for the industry to adjust and deal with the problem presented in the bill. This makes difficult any estimates of the coal industry's recuperative efforts beyond the first full year of complete implementation. In the short range (which could extend through the first 5 years), the industry's recuperative ability would be severely limited. But over time, the industry's ability to adopt to requirements of surface mining legislation would improve. This is not to say that production will not increase but rather that the makeup tonnage will be difficult to achieve over the short run. It should also be noted that potential losses that could result from prohibitory provisions in the proposed legislation would reduce the production base rate for the longer range.

137 B. PROJECTED PRODUCTION LOSSES FROM H.R. 25 AS PASSED

137 Based on these assumptions, an assessment of the final language of H.R. 25 indicates estimated potential production loss figures of from 40 to 162 million tons for the first full year of implementation. These losses occur as a result of the bill's impact in three major areas for which the impacts are shown as follows:

| | |
|---|--------|
| a. Small mines | 22-52 |
| b. Steep slopes, siltation, and aquifer provisions | 7-44 |
| c. Alluvial valley floor provisions | 11-66 |
| Total | 40-162 |

137 Additional unquantifiable losses could result from other provisions, including ambiguous terms, the designation of lands unsuitable for mining, and the surface owner protection provisions. A lack of technical manpower and equipment available and vagaries regarding permit application requirements may further hamper production.

137 The following methodology was employed in the analysis of the major categories of anticipated potential losses.

137 1. Small Mines: An examination of a large cross section of surface coal mines producing less than 50,000 tons per year and located principally in the East resulted in a determination that their ability to comply with the provisions of the bill relating to bonding and permit application was inherently limited since an initial outlay of from \$6,000 to \$12,000 would be required.

137 These mines being more sensitive to changes in costs of production than larger companies would be particularly impacted by the permit application requirements in Section 507 and the reclamation plan requirements in Section 508 of H.R. 25. Because of the lack of technical expertise available to the small mining companies, the requirements for collection of extensive baseline hydrologic data, for preparing detailed underground maps, for test boring and analysis of strata characteristics, for the preparation of detailed mining and reclamation plans, and for the assessment of mining impact upon the hydrologic balance would be beyond the capability of many of these small mines.

137 Susceptibility of small mines to increased costs is further aggravated by the permit bonding requirements in Sections 509, 515, and 519 of the bill. Although the minimum bonding requirement of \$1 0,000 is in line with West Virginia's present requirement, it is higher than that in the other Appalachian States, the area containing the majority of the small mine operators.

The requirement that a portion of the bond be retained for at least 5 full years after the last year of revegetation work could diminish the small operator's ability to obtain a bond and would tie up funds that might otherwise be invested in capital expenditures for further expansion of production.

137 Also impinging upon the small operator's mining costs would be the cost of additional equipment required to handle overburden in compliance with the steep slope requirements of Section 515(d). This increased cost would vary with the mode of equipment acquisition selected by the individual operator - outright purchase, time purchase or lease equipment - to suit the particular mining operation.

137 Control of siltation and water treatment requirements of Section 515 would increase operating costs for small mines. The additional diversion ditches, sediment control structures and water treatment facilities could inhibit production, particularly if large siltation structures must be constructed and then removed later without significantly decreasing water quality and significantly increasing sedimentation.

137 In some cases, the small operator's capacity to absorb the increased cost of production resulting from implementation of this bill is limited. Characteristically, the small mine is operated on small acreages not economical to mine by large companies. In some cases, the coal is owned by a large company which pays the small operator to mine at a fixed contract fee per ton on limited acreages that the company would not mine itself. The fixed fee arrangement limits the capability of the operator to respond to cost increases because all operating expenses, including mine payroll, is paid from this fee.

138 In deriving these potential losses, personnel from the Federal Energy Administration examined seven Appalachian States where the greatest impact would occur. The loss figures came from three sources: (1) State Agencies - Offices of Mined Land Reclamation; (2) State Associations - Mined Land Reclamation Associations; (3) Mining companies - reliable corporations whose information could be substantiated by No. 1 and No. 2 above. The figures resulting from this survey are in the following table. The estimated possible production loss is approximately 52 million tons. It was estimated by Bureau of Mines and F.E.A. personnel that

under favorable interpretations by the regulatory authorities that as much as 60 percent (30 million tons) of this estimate could be produced without loss. Therefore, the range of losses derived for small mines was put at 22-52 million tons. This loss is approximately 37-87 percent of the expected production (60 million tons) during the first full year.

138 2. It is estimated that the losses from the category of steep slopes, siltation and aquifers would range from 7-44 million tons. This figure can be separated as follows: Steep slopes (7-25 million tons), aquifers (0-9 million tons) and siltation (0-10 million tons).

138 (i) In estimating potential production losses from steep slope restrictions, the total amount of surface projected production to be derived from slopes greater than 20 degrees was examined. This figure was conservatively estimated to be 110 million tons for the first full year of implementation and was arrived at by projecting the production from steep slopes derived by the Council on Environmental Quality in 1973. By obtaining estimates of steep slope production from small mines it was possible to separate out the production on steep slopes from mines producing more than 50,000 tons per year. Therefore, estimated losses from this category are only from larger mines which will have a total projected production of approximately 68 million tons in the first full year. The estimated loss of 7-25 million tons is approximately 6-23 percent of the total estimated steep slope production (110 million tons) and approximately 10 to 35 percent of projected steep slope production from mines larger than 50,000 tons per year (68 million tons).

138 The provisions in H.R. 25 relating to steep slopes require all highwalls to be completely eliminated and makes no allowance for terracing or placement of spoil on the downslope, other than for the first cut. Federal Energy Administration personnel examined various Eastern States where steep slope mining is prominent and solicited opinions from the State regulatory authority Agencies and reclamation organizations of what the expected effect of such provisions could be.

138 The Bureau of Mines personnel also examined production trends in several Appalachian States which have strong surface mining laws relating to steep slope mining. Results from this examination indicated decreases in production, after enactment of these laws, ranging from approximately 20 to 30 percent. These results supported the information obtained from the

States by Federal Energy Administration personnel. Based on sound engineering judgment and the experience of our personnel familiar with mining in Appalachia, and taking into consideration the above factors, an estimate of the possible losses, resulting from steep slope mining at mines producing more than 50,000 tons per year, of approximately 10 to 35 percent was derived (7-25 million tons). This loss can be attributed to delays in equipment procurement due to influx of demand for equipment necessary for block-cut or haul-back techniques of overburden handling, and time involved in obtaining and training additional personnel necessary for operating this additional equipment. Also attributable are reduced productivity inherent in managing movement of additional on site equipment used in the overburden handling techniques that would be required on these steep slope operations.

138 (ii) In assessing possible production losses from aquifer protection provisions, of the projected production of 90 million tons it was estimated that at worst up to 9 million tons or 10 percent of the projected production could be abandoned because of the inability of some operators to affirmatively demonstrate that the recharge capacity of the minesite could be completely restored to premining conditions.

139 Section 515(b)(10)(D) specifically states that the operator must restore the "recharge capacity of the mined area . . .," in addition to minimizing disturbances to the hydrologic balance at the minesite and associated offsite areas and to the quantity and quality of associated water. The ground water hydrology of a coal-bearing area may be disrupted whenever coal is mined either by underground or surface methods. Whenever the coalbed and associated shales that may serve as an impenetrable barrier to ground water are disrupted, the ground water hydrology is affected by allowing the water to drain to lower strata. Also where the coalbed serves as an aquifer, interruption of the aquifer in sufficient extent may lower wells dependent upon such sources for supply. In addition, water quality may be changed if backfill material contains significant amounts of soluble minerals not present in the aquifer. Riparian rights as well as State water pollution regulations may affect reserves when major aquifers could be affected by mining operations. Water rights on a property may be separate and distinct from the mineral or surface estate and the requirement of obtaining the consent of water rights owners may further

reinforce a tendency toward strict interpretation of hydrologic features of the bill.

139 Using the above as a guideline, experienced Bureau of Mines and Federal Energy Administration personnel judged to the best of their capabilities that as much as 10 percent (approximately 9 million tons) of projected production from areas other than those considered under other categories of losses could be lost. This amount would depend greatly on the interpretation of the regulatory authorities and the courts. Under favorable interpretations it is estimated that there may be no effect on production in this area.

139 (iii) Losses due to siltation requirements could range from 0-10 million tons during the first year of implementation. Again, this estimate was based on engineering judgment by Bureau of Mines and F.E.A. personnel. Under provisions of H.R. 25 in Section 515(b) (10) (B) operators would be required to "prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area above natural levels under seasonal flow conditions." It could be difficult, if not impossible, for an operator to "affirmatively demonstrate" that he could comply with this provision because of the uncertainty and inability to accurately measure natural runoff levels under seasonal flow conditions. Even though an operator might obtain an average measurement of such flow prior to mining, the year he is actually mining may be a year of unusually high natural runoff and sedimentary flow. If this were to be the case, it would be difficult for an operator to show that high sedimentation was due to natural causes and not due to the mining operation. In addition, some production could be lost because of the inability of some operators to economically construct the additional diversion ditches, impoundment structures and water treatment facilities which would be required to effectively control siltation and acid mine drainage.

139 Section 515(b) (10) (C) requires the removal of large siltation structures after revegetation and stabilization. While this is possible in many cases, frequently large siltation structures are intended to be of a permanent nature and removal would cause sudden surges of sedimentation which would be unacceptable. Additionally, sedimentation would be produced from the disposal area in which the materials forming the removed structure and impounded silt are deposited and would continue until the surface could be sufficiently stabilized by a vegetative cover. Such

siltation could continue for some time due to the structural instability of the classified clayey fractions of the silt removed from behind such impounding structures.

139 Alluvial valley floors: Losses resulting from provisions relating to alluvial valley floors would range from 11 million to 66 million tons during the first full year of implementation. To arrive at a possible loss of 66 million tons, surface mine production data were collected for 1974 production west of the 100th meridian west longitude. This amounted to 57 million tons. Based on a mine-by-mine analysis it was judged that approximately 38 million tons or approximately 68 percent of this production was mined from alluvial valley floors as defined in the bill or was being mined in areas that could adversely affect alluvial valley floors. By projecting the ratio of 1974 production from such areas to projected production for the first full year of implementation, a resulting potential loss of approximately 66 million tons was derived. Production forecasts, obtained from contracts and company reports, forecast 83 million tons of strip coal from the Northern Great Plains by 1977, of which 40 million tons will be from 13 mines in Wyoming, 36 million tons from 5 mines in Montana, and 8 million tons from 5 mines in North Dakota. Conservative forecasts in other States would bring total projected production up to approximately 95 million tons. Arizona was excluded because of little or no effect on alluvial valley floors.

140 The possible minimum loss figure of 11 million tons attributable to the alluvial valley floor provision was determined by examination of actual mining operations and application of three key factors in the language of the Act: (1) the area that is now under intensive agricultural usage (including farming and hay meadows) (2) the amount of undeveloped rangeland and (3) potential farming and ranching as defined in H.R. 25. Each of these factors involves some uncertainty and cannot be clearly determined on a national basis, but is based on our assessment and our best professional judgment.

140 Determination of the coal production affected by the alluvial valley floor provisions of the bill is subject to many interpretations. From an engineering viewpoint, there are contained within the language many ambiguous or difficult-to-define terms such as "significant," "substantial," and "potential," and it is impossible to develop a precise minimum figure. One figure, the lowest, is the coal production lost if only that coal actually under the alluvial valleys

which have been developed for agriculture production is used. If the proposed legislation were enacted such mining operations would stop, and production, if it were to continue, would have to be shifted to areas adjacent to the alluvial valleys. Some present mining operations have no such areas to mine and all other mines were they to be required to change the area of production will be faced with radical changes and production problems. These will include a new plan for mining, in many cases a new permit application, increased stripping ratios, and different, larger, or accelerated equipment requirements. If the mines stopped by these provisions were to be removed from production for the first year (not a remote possibility) the minimum effect on production could be 24 million tons. Assuming that some of this production was maintained at mines having suitable reserves and at a reduced rate, it is estimated 11 million tons of production would be lost.

140 Production would not be entirely lost in some cases if some mines were able to move from the alluvial valley floor to upper benches. However, this would require a major equipment expansion due to the increased cover. Many of the present mines do not have the larger equipment necessary to handle the thicker overburden, and the long delay (5 years) in receiving such equipment, would cause insurmountable production delays and outright losses.

140 A restrictive interpretation of the legislative language would decrease the amount of coal production dramatically. The hydrologic function of alluvial valleys is dependent on the tributary streams and ground water draining into the perennial stream flows but on small intermittent tributaries. These include the canyons and the coulees that extend into the mining areas. When such streams and their water sheds are disturbed by mining, the runoff to the alluvial valleys is affected and consequently the hydrologic function of the valley, which is prohibited in the statutory language. Using this criteria much of the mining and reserves west of the 100th meridian would be impacted. Enclosed is a table showing 1974 total production and estimated production on or affecting alluvial valley floors.

140 4. Unquantifiable Losses.

140 (a) Designation of Areas Unsuitable for Surface Coal Mining. - Although not presently quantifiable due to the lack of knowledge about the propensity of the respective authorities

enumerated in Section 522 to enforce the provisions of that Section, it must be recognized that possible losses of production could occur. While current operations would not be affected, long term production could be affected should strippable coal reserve areas readily accessible to existing transportation facilities be designated unsuitable for surface coal mining. Such areas could include those areas in the East with growing suburban areas where land use planning would affect coal reserves, fragile lands or aquifer containing areas and recharge areas in the West, and Midwest, and slip-prone steep slopes in the Appalachian States.

140 (b) Surface Owner Protection. - The provisions of Section 714 that apply to privately owned surface areas overlying Federal coal deposits would not have an immediate effect on production from existing operations. The effect of the application of these provisions, however, in the long term would be to inhibit production from such lands should agreement not be reached to adequately compensate the surface owner for his losses. The inclination for a surface owner to accept a maximum allowable compensation of \$100 per acre would be minimal.

141 Therefore, the productivity of public coal reserves under private surface ownership could be seriously curtailed. Future revenue to the State and Federal Government from royalties derived from production from such reserves would be reduced accordingly as production of such coal so situated declines. Revenue from increased taxes would be required to support State and Federal programs presently supported by royalties paid by operators mining these reserves.

141 (c) Permit application requirements. - The inhibiting effect of extensive permit application requirements on operators that produce more than 50,000 tons annually must be recognized also as a potential source of production loss. Permit application submission, review and approval patterns would be disrupted with consequent delays in production. Acquisition of baseling data, acquisition and analysis of test borings, development of cross sections and other subsurface data, and development of hydrologic data required for the permit application and for development of the reclamation plan require time that delays initiation of the mining operation.

141 Evidence can be seen further in the effects on production of strong surface mining laws by examining several States which have passed such Acts. Taken as examples are Ohio, West

Virginia, and Tennessee, all of which have comparative strong surface mining legislation which have been in effect for several years.

141 The Ohio reclamation law, which was revised and put into effect in April 1972, appears to have had a severe effect upon surface production. In the 10 years preceding the enactment of the Ohio legislation, production from surface mining increased every year. Production for the year preceding the effective date of the legislation was approximately 38.6 million tons. Production then gradually dropped to 29.6 million tons in 1973. This reflects a decrease in production of approximately 23 percent.

141 West Virginia's law was effective as of March 1971 at which time surface production since 1961 had shown gradual increases from 8.5 million tons up to 27.7 million tons for the year preceding the effective date of enactment. Production then dropped to 19.9 million tons in 1973 which is a decrease of approximately 28 percent.

141 Production in Tennessee also gradually increased up to 5.7 million tons in the year preceding the State's reclamation law which became effective in March 1972. Production then dropped off to an estimated 4.3 million tons in 1974. This is a decrease of approximately 25 percent.

141 While it cannot be stated with certainty that production decreases in these States were due entirely to the impact of the individual reclamation acts, it is clear that these laws did have a severe effect.

141 It should also be pointed out that while these State laws are very strong and in many aspects are up to or near the standards of H.R. 25, they are also less restrictive in some areas. For instance, Ohio has a variance which allows terracing; West Virginia does not require elimination of highwalls in all cases and in none of these laws are there the stringent permit application requirements and preplanning which are required in H.R. 25 which we feel could have a devastating effect on small mines.

141 Pennsylvania, while it is considered as having a relatively strong law, as close to the standards of H.R. 25 as Ohio, West Virginia, and Tennessee, does not have the relatively significant portion of steep slopes present in the other three States. In addition, the provisions of

the 1971 Pennsylvania law relating to steep slopes do not seem to be much more stringent than in previous Pennsylvania legislation.

142

—
—
*5*1974 COAL
PRODUCTION AND
ESTIMATED
ALLUVIAL VALLEY
PRODUCTION
BASED ON
INTERPRETATION
OF LANGUAGE IN
H.R. 25
5[Million
tons]

| | | Estimated coal | Estimated strip | Estimated |
|---|-------------------|----------------|-----------------|------------|
| valley | | production | production | production |
| State company | Mine | | coal | alluvial |
| Colorado n2 | | 7.0 | 3.7 | 3.4 |
| Annex Coal Co | Annex No. 2 strip | x | x | |
| Cannon Coal Corp | Corley Strip | x | x | |
| Peabody Coal Co | Nucla | x | x | |
| Mid-Continent Coal & Coke Co | Coal Basin Strip | x | x | |
| Energy Fuels Co | Energy No. 1 | x | x | x |
| Do | Energy No. 2 | x | x | x |
| Peabody Coal Co | Seneca | x | x | x |
| The Pittsburgh & Midway Coal Mining Co. | Edna Strip | x | x | x |
| Kerr Coal Co | Marr No. 1 | x | x | |
| Montana | | 14.1 | 13.6 | 10.1 |
| Decker Coal Co | Decker | x | x | x |
| Divide Coal Mining Co | Storm King | x | x | |
| P M Coal Co | P M Strip | x | x | |
| Square Deal Coal Co | Square Deal | x | x | |
| John H. Schoonover | Coal Creek Strip | x | x | |
| Knife River Coal Co | Savage | x | x | |
| Western Energy Co | Rosebud No. 6 | x | x | |
| Peabody Coal Co | Big Sky | x | x | x |
| Westmoreland | Sarpy Creek | x | x | x |
| New Mexico | | 9.7 | 8.8 | 7.4 |
| The Pittsburgh | | | | |

| | | | | |
|---|---------------------------|------|------|------|
| & Midway Coal Mining Co. | McKinley | x | x | x |
| Sundance Coal Co | Sundance | x | x | |
| Western Coal Co Utah | San Juan | x | x | |
| International, Inc | Navajo | x | x | x |
| Kaiser Steel Corp | West York Canyon Strip | x | x | |
| North Dakota Virgil Smith | Arrowhead | 7.4 | 7.4 | 3.2 |
| Bardid Div., NL Industries, Inc | Smith-Ullman | x | x | |
| Knife River Coal Mining Co | Gascoyne | x | x | x |
| Baukol-Noonan, Inc | Larson (Noonan) | x | x | x |
| Sprecher Coal Mining Consolidation Coal Co | Sprecher Glenharold | x | x | |
| Knife River Coal Mining Co | Beulah | x | x | x |
| The North American Coal Corp | Indian Head | x | x | x |
| Baukol-Noonan, Inc | Center | x | x | |
| Dickinson Coal Mining Co | Binek Strip | x | x | |
| Husky Industries | Husky Strip | x | x | |
| Consolidation Coal Co | Velva | x | x | |
| GEO Resources Inc | Nelson Strip | x | x | |
| Utah | | 6.9 | 0 | 0 |
| Washington | | 3.9 | 3.9 | 3.9 |
| Black Prince Coal Co | Black Prince Strip | x | x | x |
| Washington Irrigation & Development Co | Centralia Strip | x | x | x |
| Wyoming | | 20.6 | 19.9 | 10.8 |
| Amax Coal Co | Belle Ayr | x | x | x |
| Wyodak Resources Development Corp | Wyodak | x | x | x |
| Arch Minerals Corp | Seminole No. 1 | x | x | x |
| Do | Seminole No. 2 | x | x | x |
| Rosebud Coal Sales Co | Rosebud No. 4-A Strip | x | x | |
| Resource Exploration & | Rimrock Nos. 1 | | | |

| | | | | |
|-----------------|---------------|------|------|------|
| Mining | and 2 | x | x | |
| | East Antelope | | | |
| Best Coal Co | Strip | x | x | |
| Pacific Power & | | | | |
| Light Co | Dave Johnston | x | x | |
| The Kemmerer | | | | |
| Coal Co | Elkol | x | x | |
| Do | Sorenson | x | x | |
| Big Horn Coal | | | | |
| Co | Big Horn | x | x | x |
| Welch Coal Co | Welch | x | x | |
| Pacific Power & | | | | |
| Light Co | Jim Bridger | x | x | |
| Total | | 68.7 | 57.3 | 38.8 |

142 n1 Estimated production based upon H.R. 25 as amended. A strict interpretation with burden of proof upon the mining company that no alluvial valley Sediments nor the surface or underground water into those alluvial sediments will be adversely affected.

142 n2 Mining on dip slopes are interpreted to adversely affect the alluvial valley sediments.

APPENDIX NO. II

143 overburden is less than 10 ft. in depth or less than 10 acres/year will be affected. In Montana, the permit is called a "reclamation contract," which gives the State the additional enforcement option of suing for breach of contract. Montana also requires that the Department of State Lands prepare an environmental impact statement, pursuant to the Montana Environmental Policy Act, for each reclamation contract (reclamation plan) that covers a major coal mining operation. Illinois has a similar requirement in its surface mining law, under which permit applicants are required to prepare a statement of environmental effects that the Department of Mines and Minerals must consider before issuing a permit. Maryland requires both a general operator's license and a permit for each mining operation. In general, the operating permits are issued (or renewed) annually. In Maryland. Montana, Pennsylvania, and Wyoming, however, the operating permit is valid for the life of the operation. North Dakota issues permits for a three-year term.

143 The permit application ordinarily must be accompanied by a wide variety of information as well as one or more mining, drainage or reclamation "plans". Most of the States surveyed

require that a reclamation plan accompany the permit application. The notable exceptions to this requirement are Alabama, Colorado, North Dakota, and Wyoming. Alabama requires a "statement" of the intended reclamation program, but the law does not require that it be approved. North Dakota requires the reclamation plan to be submitted in the December following the issuance of a permit. Operators in Wyoming are required only to submit an annual reclamation report, although they may submit a plan which, if approved, becomes the basis for all reclamation requirements. There are substantial differences among the States as to the content of the reclamation plan.

143 New permit and plan requirements have been added by several States over the past several years. The new regulations of Kentucky, Pennsylvania, and Tennessee, adopted in the past three years, require either a separate drainage (water discharge) permit or an erosion and silt control plan that must be approved before the issuance of a surface mining permit. The Virginia law, as amended in 1972, requires the operator to submit a plan of operation discussing his proposed method of mining operation, including the expected impact on the environment, along with drainage and reclamation plans.

143 All the States require a fee to obtain a permit. These fees are generally a fixed amount of \$50 to \$250 per acre. The proceeds in Maryland, Pennsylvania, Tennessee, Virginia, and Wyoming go to a special State fund to be used for reclaiming abandoned lands. Maryland and West Virginia assess a separate reclamation charge of \$30/acre and \$60/acre, respectively, which is devoted to the reclamation of abandoned or "orphaned" mined areas. Ohio's new law, enacted in 1972, levies a Severance Tax of 4 cents per ton of coal which is deposited in the State's general fund to be used for environmental protection activities of the State and for the reclamation of land affected by strip mining.

143 Of the 16 States surveyed, only seven have requirements for a general public notice of intent to surface mine or for holding public hearings on surface mining activities. Tennessee requires a public notice in a newspaper of general circulation in the county of proposed operation. Both West Virginia and Montana require the application to be published as a legal advertisement in the county of operation. In West Virginia, written protests may be filed within

30 days. Pennsylvania's regulations require that the pending application be published in the monthly Pennsylvania Bulletin at least 15 days before a strip mining permit is issued. Illinois requires the operator to file his conservation and reclamation plan with the county governing body for its recommendations on future land use, and the plan is available for public inspection at the county offices. Indiana's Natural Resources Commission reviews permit applications in public meetings, and Maryland holds monthly public hearings to review such applications.

144 Performance Bonds

144 To assure compliance with State regulations and completion of required reclamation work, all of the States surveyed require the filing of a performance bond. For most of the States the bond is \$100 to \$600 per acre, with a required minimum amount of \$1 000 to \$2 000 per mining operation. Maryland law provides for a separate revegetation bond of \$50- \$125 per acre, in addition to a regrading bond of \$4 00 per acre. The actual reclamation costs for a particular project can be much greater than the maximum bond allowed under most State laws, depending on the type of mining and reclamation techniques. Only the Colorado, Ohio, Pennsylvania, Tennessee, and Wyoming laws which establish no maximum bond limitations are sufficiently flexible to allow bond amounts to be set by reference to the estimated costs of reclamation. In each of these States except Tennessee, the law explicitly requires the bond to be based on estimated reclamation costs. Under the new Ohio law, performance bonds of \$800-\$3000 per acre are being required.

144 Substantive

144 It has been recognized for nearly a decade that the most severe adverse environmental effects occur or are caused during the mining operation itself, although such effects may continue for an extended period of time after the mining operation has ceased. The greatest adverse environmental impacts from bench cuts, removal of vegetation, and soil disturbance occur during the mining operation. Some of the greatest impacts on water quality occur during mining, and a major cause of failure of revegetation has been the presence of highly acidic and other non-organic material unearthed during the mining (and reclamation) process. In spite of this realization, the necessary controls were essentially non-existent in the early 1960's.

144 Prior to the mid-1960's the Appalachian States had very few requirements for the abatement of pollution and siltation during the mining operation. For example, Maryland and West Virginia had no statutory provisions at all. Kentucky had only minimum provisions that required covering the pit being mined, burying acid producing material under adequate fill, and sealing any breakthrough of acid water creating a "hazard." Only Pennsylvania required the operator to have a drainage permit for the mining operation. None of the States during the early 1960's had any restrictions on bench width and the replacement of overburden as they relate to slope angle.

144 Since the mid-1960's, however, there have been significant changes in several States' statutes that are designed to prevent the adverse environmental consequences of surface mining. The States of Pennsylvania, Kentucky, Maryland, Tennessee, and West Virginia have adopted mine drainage and/or bench width limitations to reduce sedimentation, acid mine drainage, landslides, and aesthetic blight.

145 Drainage

145 The States of Kentucky, West Virginia, Pennsylvania, and Maryland have established minimum acceptable standards for mine drainage. Pennsylvania regulations allow no discharge of mine drainage with a pH content of less than 6.0 or greater than 9.0, or with an iron content of greater than 7 milligrams liter. Kentucky and West Virginia have similar stipulations, requiring the construction of facilities such as collection basins, silt dams, and water diversion measures prior to the commencement of mining and maintenance of these facilities in working order during the mining process. Maryland requires the prevention of avoidable pollution and maintenance of facilities to divert surface water from the mining operation. Maryland also requires that a 50-foot barrier be left between the mining operation and any permanent stream. Few States require maintenance of water-impounding facilities after reclamation is completed.

145 The foregoing discussion of drainage requirements is essentially limited to provisions in the surface mining laws. Drainage problems are also covered by State water quality laws and by the Federal Water Pollution Control Act.

145 Bench Width

145 The States of Kentucky, Tennessee, West Virginia, and Maryland restrict, in relation to slope angle, the allowable bench width and the placement of overburden. These limitations, designed primarily to prevent landslides and excessive erosion, apply in areas where the slope of the ground originally covering the coal seam exceeds 15 degrees (12 degrees in Kentucky). As seen in Table 2-1 the maximum width of the solid bench produced by the first cut varies substantially among the States. The mining operation must be conducted so that no overburden from second or subsequent parallel cuts is placed beyond the solid bench. These requirements reportedly have resulted in substantial reductions in the frequency and severity of landslides.

—
—

*2*TABLE 2-1. -
MAXIMUM BENCH WIDTH
DIMENSIONS IN
KENTUCKY, WEST
VIRGINIA, MARYLAND,
AND TENNESSEE

(FIRST CUT ONLY)

| | Maximum bench width |
|---|------------------------|
| Maryland and West Virginia: Slope in degrees: | |
| 15 | 250 |
| 20 | 150 |
| 25 | 120 |
| 30 | 100 |
| 33 | 60 |
| 33 plus | n(1) |
| Kentucky: Slope in degrees: | |
| 12 to 14 | 220 |
| 15 to 18 | 170 |
| 19 to 20 | 155 |
| 21 | 140 |
| 22 | 130 |
| 24 | 110 |
| 25 | 100 |
| 26 | 90 |
| 27 | 80 |
| 28 n2 | 60 |
| 29 to 30 n2 | 55 |
| 31 to 33 n2 | 45 |
| Tennessee: Slope in degrees: | |
| 15 to 18 | 125 |

| | |
|------------|------|
| 18.1 to 20 | 106 |
| 20.1 to 22 | 94 |
| 22.1 to 24 | 82 |
| 24.1 to 26 | 71 |
| 28 plus | n(1) |

145 n1 No fill bench allowed.

145 n2 Only auger mining is permitted over 27 degrees. be a demand for about 36,000 underground miners, almost triple the number of surface miners displaced.

146 Some portion of the displaced surface miners would probably find employment in underground mines. However, surface miners are operators of earthmoving equipment. Their skills are more common to heavy construction than to underground mining. Because of the dissimilarity of surface and underground mining, a surface miner would generally require about the same training as any new underground worker. The few jobs common to surface and underground mining, such as for electricians and mechanics, would require little additional training.

146 Because of the skill requirements and the danger of accidents, many States require that new underground employees be accompanied by an experienced miner for the first 6 months or year (12). With the high employee turnover rate (approximately 18 percent) and the high absentee rate (approximately 20 percent), even more people would be required (13). And this is in addition to the manpower required to meet growth in coal demand - 71 percent by 1985 (14). Hence, even if all the surface miners could be shifted into deep mining, many additional people would still be needed, necessitating a greatly expanded recruitment and training program.

146 There are differences of opinion on how difficult it would be to recruit such a large number of underground miners. Underground mining is a noisy, dirty and dangerous job, but pays high wages. It does appear likely, however, that there will be shortages of supervisors at the foreman level. Another manpower constraint of lesser magnitude may be the lack of engineers with experience in underground mining, particularly if underground mining is to expand greatly in the near future.

146 The economic implications of a shift from surface to underground employment are discussed in Chapter 4. Appendix H details the occupational health and safety impacts of such a shift in employment.

146 SUBSTITUTION OF OTHER SURFACE PRODUCTION FOR SURFACE PRODUCTION ON STEEP SLOPES

146 Physical Availability

146 The regions in central Appalachia where contour mining on steep slopes predominates have very little production from surface mines on slopes below 15 degrees. (See Tables 3-3 and 3-4). Although there are some reserves underlying less steep slopes in southern West Virginia and northeastern Tennessee, there appears to be virtually no coal reserves on the less steep slopes in eastern Kentucky and western Virginia. Thus, only a fraction of the mining activity precluded by a steep slope limitation could be physically accommodated on less steep slopes in central Appalachia.

146 Table 3-11 summarizes the potential for surface mining on less steep slopes if surface mining is prohibited on slopes of over 15 degrees. The potential for mining on less steep slopes is estimated by contrasting the longevity of current reserves underlying less steep slopes if all mining on steep slopes were in fact shifted to these reserves. For example, in northeastern Ohio (EA 68), current reserves on slopes of less than 15 degrees would last about 60 years regardless of whether they absorbed the production that would be prohibited on steep slopes. Similarly, the rest of northern Appalachia (EA 11, 64, 65, and 66) and southern Appalachia (EA 45, 48, and 49) also have sufficient reserves to absorb a shift.

147



*5*TABLE 3-11 -
IMPACT ON
STRIPPABLE RESERVES
FROM A SHIFT FROM
STEEP SLOPES TO
LESS STEEP SLOPES

| | Production | Years | Years | Years |
|--------|---------------|---------------|---------------|---------|
| for | lost on steep | remaining for | remaining for | surface |
| mining | | | | |

| steep recover production slope | slopes with 15h slope prohibition (million tons per year) | steep slope mining at current production levels | below 15 surface mining at current production levels of production | if less slopes all loss by limitation |
|---|---|---|---|---|
| 11. Williamsport, pa 27.4 | 2.81 | 0.8 | 41.0 | |
| 66. Pittsburgh. pa 27.8 | 15.10 | 3.9 | 42.3 | |
| 63. Cleveland. Ohio 59.6 | 6.20 | .3 | 594.9 | |
| 64. Columbus. Ohio 44.1 | 9.03 | 5.8 | 165.3 | |
| 65. Clarhsburg. W. Va 63.2 | 7.64 | 15.4 | n(1) | |
| 57. Huntington. W. Va.-Ashland, Ohio 17.8 | 25.45 | 64.6 | 264.9 | |
| 53. Lexington. Ky 0 | 15.56 | 17.8 | 0 | |
| 51. Bristol. Va 0 | 10.01 | 31.4 | 0 | |
| 50. Knoxville. Tenn 8.0 | 11.60 | 15.3 | 252.9 | |
| 49. Noshville. Tenn 141.7 | 0 | 0 | 141.7 | |
| 48. Chattanooga. Tenn 25.6 | .46 | 11.7 | 45.2 | |
| 45. Birmingham. Ala 13.0 | 4.42 | 6.0 | 23.2 | |

147 n1 No mining on slopes below 15 degrees now.

147 The major problem of shifting to less steep slopes would exist in central Appalachia. Both in eastern Kentucky and Virginia (EA 53 and 51), there are no strippable coal reserves underlying less steep slopes. In southern West Virginia, northeastern Kentucky, and northeastern Tennessee (EA 50 and 52), the impacts of such shifts on existing reserves below 15 degrees seem large relative to current levels of mining.

147 Even in areas where there are coal reserves on less steep slopes, it is also likely that

mining these reserves will not substitute entirely for the displaced production. Mining economics may lead to the exploitation of reserves outside the impacted areas. Capital and, to a lesser extent, mining equipment are highly mobile. Other areas may have considerably greater potential for expanding their surface mining operations. For example, although eastern and western Kentucky each produce about 33 million tons of surface mined coal annually, the western part of the State has significantly less steep slopes (most under 20 degrees), thus allowing the development of large, efficient area mines.

147 In northern and southern Appalachia, there appears considerable potential for shifting surface mining production from steep to less slopes. In central Appalachia, however, there appears very little potential for such a shift; reserves on the less steep slopes just do not appear adequate.

147 Technical Constraints

147 Although lack of reserves is not a problem in many areas, other constraints do exist. There is some equipment incompatibility. Contour mining on steep slopes is characterized by small operators using small draglines, shovels, or front-end loaders. As slopes become less steep, a technique more akin to area mining is used, and a larger operation becomes economically more desirable. The smaller front-end loaders and draglines used on steep slopes are not optimally suited for the most economic production on less steep slopes. Nevertheless, mining of less steep slopes might not necessitate abandoning this equipment. Rather, the smaller equipment might be used until it is depreciated, when it might be replaced by larger equipment.

148 Fabrication and delivery of larger equipment, costing hundreds of thousands of dollars or more, depending on size, sometimes requires a lead time of 2 years (15). Further, because this equipment has such large material handling capabilities, it requires considerable peripheral equipment - loaders, trucks, bulldozers, etc. The necessary capital may not be available to many of the smaller contour mining operators, now working steep slopes.

148 Another constraint to increased surface mining on less steep slopes, particularly in northern and southern Appalachia, is that such mining would have to compete with current land uses. Flatter land often supports agriculture as well as more intense local development. In

moving to less steep slopes, coal mining may displace relatively valuable land uses, at least temporarily, thus incurring additional costs.

148 Problems of Small Mines

148 Shifts of surface mining to less steep slopes may be constrained not only by physical availability and equipment but also by economic instability of the operators forced out of the steep areas. In many industries, it is the small companies that are least able to adapt to adverse market changes or changes in the way they must operate. This statement may also be true of the surface coal mining industry.

148 Of the approximately 5,600 surface and underground coal mines in operation in the United States in 1970, almost 4,000 produced annually 50,000 tons or less (16). Of these, 3,726, or 93 percent, are located in Appalachia (17). Many of these, however, are underground mines. Table 3-12 points up the importance of the small surface mine in this region.

—
—

*4*TABLE 3-12 -
IMPORTANCE OF SMALL
SURFACE MINES, 1971

| State | Number of surface mines | Percent of total surface mines which are small n1 | Percent of total surface mine production from small mines n1 |
|---------------|-------------------------|---|--|
| Kentucky | 878 | 75 | 18 |
| Ohio | 267 | 52 | 7 |
| Pennsylvania | 584 | 71 | 23 |
| Tennessee | 108 | 53 | 21 |
| Virginia | 315 | 87 | 56 |
| West Virginia | 426 | 62 | 19 |
| Maryland | 45 | 78 | 31 |

—
—

148 n1 Produce less than 50,000 tons per year.

148 Source: U.S. Department of the Interior. Bureau of Mines, Division of Fossil Fuels."Coal - Bituminous and Lignite in 1971." Washington, D.C.: Department of the Interior, Sept. 27, 1971, pp. 16-18.

148 For several decades, the number of small coal mines (both surface and underground) has

been declining, although their contribution to total coal output has been relatively constant as the average small mine has grown larger (18). Between 1967 and 1971, however, the number of new small surface mines rose rapidly - increasing about 50 percent and keeping pace with the larger surface mines (19).

149 Small mines appear less economic than larger mines and tend to enter the coal industry rapidly when prices are high and perhaps to drop out just as quickly under adverse conditions. An analysis conducted for the Appalachian Regional Commission by Mathemation, Inc., confirms the relatively less stable position of smaller companies. The data in Table 3-13 relate to 40 companies in eastern Kentucky of the 302 surface mining operators active in the State in 1971. Nonetheless eastern Kentucky is characteristic of steep slope areas, and the sample data may indicate relative economic viability of small firms elsewhere in Appalaehia. As indicated in the table profits before taxes average over 10 times higher for large firms than for small ones. Similarly, the average proilit margin on sales is over 6 percent for large firms but below 1 percent for small ones. Returns on equity and liquidity ratios (the ability to pay current dbts with current assets) are also less favorable for smaller companies. It should be noted that the average production from a small operator is 79,000 tons per year, still relatively large. Of the 40 studied, the 8 smallest appear even less profitable, averaging a loss of almost \$8,000 annually (compared to an average profit of \$2 4,000 for all small firms in the survey) (20). Further, the smallest firms show current debts exceeding current assets by a factor of almost seven.

—
—

*6*TABLE 3-13. -
ECONOMIC VIABILITY
AS A FUNCTION OF
COMPANY SIZE, A
SAMPLE OF EASTERN
KENTUCKY SURFACE
COAL MINES

| fixed | Average | Average |
|-------------------|------------|------------|
| of | production | assets |
| Size | (tons per | (thousands |
| Average total | year) |] |
| assets (thousands | | |
| of] | | |

| | | | | |
|-----------------|----------------|---------------|---------------|---------|
| Large | 11 | 59 | 913.000 | |
| \$834 | | | | |
| \$ 1,347 | | | | |
| Medium | 17 | 53 | 271.000 | |
| 584 | | | | |
| 858 | | | | |
| Small | 15 | 37 | 79.000 | |
| 237 | | | | |
| 237 | | | | |
| | Average before | Average after | Average after | Average |
| return | tax profits | tax return on | tax cash flow | on |
| | (thousands of | sales | on sales | on |
| assets | | (percent) | (percent) | |
| Size |] | | | |
| (percent) | | | | |
| Liquidity ratio | | | | |
| Large | \$307 | 6.33 | 25.9 | |
| 20.0 | | | | |
| 1.3 | | | | |
| Medium | 107 | 4.19 | 24.1 | |
| 8.4 | | | | |
| .9 | | | | |
| Small | 24 | .92 | 17.5 | |
| 4.1 | | | | |
| .9 | | | | |

—
—

149 Source: Unpublished data and analysis by mathematica, Inc., Princeton N.J., for the Appatachian Regional Commission, based on data provided by Department of Revenue, Commonwealin of Keatucky, 1973.

149 Not all small firms are financially unsound or are unable to adjust to changes such as slope limits. Their numbers have increased and, although profits are low, they do have a positive cash flow. However as a group they will have more trouble adjusting to restrictions because of gencrally higher costs of production and low capitalization. Perhaps most important may be their inability to pass on increased costs because they operate within a price ceiling set by the larger, more efficient coal companies.

APPENDIX NO. III

JUNE 5, 1975.

150 Dr. THOMAS V. FALKIE, Director, Bureau of Mines, Department of the Interior, Interior Building, Washington, D.C.

150 DEAR DR. FALKIE: During the course of the joint subcommittee hearings of the presidential veto of H.R. 25 which were held on June 3rd, I specifically requested three additional items of information from you.

150 According to the transcript of the hearings, the requested materials were:

150 1. The study done by the Bureau analysing coal production losses which were presumed to result from enactment of H.R. 25, in terms of impacts of permit application and bonding provisions upon small mines.

150 2. In connection with this study, Mr. John Hill of the Federal Energy Administration mentioned another study done by the Council on Environmental Quality in 1973 for the Senate Interior Committee. Later in following up on this matter, I asked that you provide the Subcommittee with this CEQ study, with page references to the effect of bonding and permit application requirements on small mines.

150 3. In the afternoon session, there was a discussion of the methodology used in arriving at the coal production loss figures for small mines. During this discussion I asked that you supply the Subcommittee with a list of the number of small mines which were likely, in your professional opinion, to be adversely affected by the application of the permit application and bonding requirements of H.R. 25, so that all but 8 million tons of the projected 60 million tons production would be lost in 1977.

150 As of noon today, we have received portions of the first item. We have not received the referenced CEQ study. We received a list of small mines in the Eastern U.S. which would presumably suffer production losses. However, there is no explanation of how these figures were arrived at, beyond reference in a footnote to "samples of approximately five operating mines". We have no idea what this refers to and have no additional data to elucidate.

150 I take a most serious view of the delay in responding fully to my requests. If it is true, as you have consistently maintained, that all these studies were completed prior to the President's decision to veto H.R. 25, how is it that the material in question cannot be readily assembled and submitted on time? One is led to wonder if some of this research is being done after the fact, or is nonexistent.

150 This Subcommittee cannot carry out an effective evaluation of your coal production loss figures for small mines without access to this type of material. It is outrageous that we have not received promptly and fully the information which we need to make such an evaluation.

150 Although I was assured that a similar instance of long delay in the submittal of information regarding Federal coal leasing was not to be blamed on the Bureau of Mines, I am now questioning whether this was not in fact the case. I must therefore reiterate my request and insist that you deliver this material forthwith.

150 Very truly yours,

150 PATSY T. MINK, Chairperson, House Subcommittee on Mines and Mining.

150 U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF MINES, Washington, D.C., June 4, 1975.

150 HON. PATSY T. MINK, Chairman, Subcommittee on Mines and Mining, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

150 DEAR MRS. MINK: Enclosed is material in further response to questions raised during hearings held on H.R. 25 on June 3, 1975.

151 We are assembling additional material, in the format requested by you, which was requested during the testimony and which will further amplify our previous statements. We expect to be able to furnish this supplementary information shortly.

151 Sincerely yours,

151 THOMAS V. FALKIE, Director.

151 Enclosures.

*7*EASTERN U.S.
 MINES PRODUCING
 LESS THAN 50,000
 TONS PER YEAR

| State | 1973 n1 | 1977 - estimated |
|---|---|--|
| | Number of mines Production Estimated production loss tons n2 | Number of mines Production Production n3 |
| *2*1977 - maximum | | |
| Estimated number of mine closings n2 | | |

| | | | |
|---------------|------------|------------|-------|
| Alabama | 32 | 580,000 | 60 |
| 1,328,000 | | | |
| 50 | 1,123,000 | | |
| Kentucky | 632 | 9,942,000 | 950 |
| 21,033,000 | | | |
| 900 | 18,337,000 | | |
| Ohio | 107 | 2,109,000 | 60 |
| 1,329,000 | | | |
| 50 | 1,144,000 | | |
| Pennsylvania | 656 | 13,884,000 | 520 |
| 11,513,000 | | | |
| 500 | 10,191,000 | | |
| Tennessee | 38 | 862,000 | 150 |
| 3,321,000 | | | |
| 120 | 2,427,000 | | |
| Virginia | 318 | 6,532,000 | 500 |
| 11,020,000 | | | |
| 480 | 9,790,000 | | |
| West Virginia | 309 | 6,003,000 | 470 |
| 10,406,000 | | | |
| 450 | 8,988,000 | | |
| Total | 2,092 | 39,912,000 | 2,710 |
| 60,000,000 | | | |
| 2,550 | 52,000,000 | | |

—
—

151 n1 Coal - Bituminous and Lignite in 1973. Bureau of Mines (prepublication information).

151 n2 Mine closings represent both new mines not yet on line but anticipated to be in production by 1977 and also present operating mines (1973).

151 n3 Tonnage losses based upon projections arrived at from samples of approximately 5 operating mines in each State in addition to information from State reclamation agencies and State reclamation associations.

151 U.S. DEPARTMENT OF THE INTERIOR, GEOLOGICAL SURVEY, Reston, Va., June 9, 1975.

151 Hon. PATSY T. MINK, Chairperson, House Subcommittee on Mines and Mining, House Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

151 DEAR MRS. MINK: During the recent hearings of the Geological Survey before the House Subcommittee on Interior and Related Agencies of the Committee on Appropriations, several questions were raised regarding the data collection and information exchange activities of

the Geological Survey, Bureau of Mines, and other agencies. Because of the scale, complexity, and sensitivity of the issues surrounding data systems and their continuing importance to the Federal Government's minerals and energy programs, we are forwarding a copy of a paper entitled, "Government Minerals Information Collection and Analysis - A Systems Approach by the Bureau of Mines and the Geological Survey," which was provided to the Committee.

151 Over many years, the Geological Survey (established 1879) and the Bureau of Mines (established 1910) have demonstrated a unique ability to effectively coordinate their diverse technical expertise over the broad field of mineral data collection, analysis, and dissemination, in meeting their prescribed resource roles.

151 This information capability is enhanced by their success in maintaining a highly-skilled and technically-supported cadre of nationally recognized scientists and engineers in the minerals field and the cooperative interaction between their staffs in the execution of their specific missions.

151 Increasing complexity, magnitude, and range of the types of data, coupled with need for faster processing requirements, have led to greatly increased use of new computer technology to store, retrieve, and manipulate it. The production of meaningful resource/reserve and supply/demand information relies upon the integrity of the data and upon the application of scientific and engineering competence provided by both the Bureau of Mines and Geological Survey.

151 Should you desire to discuss this subject and the paper in greater detail, we would appreciate the opportunity to meet with you at your earliest convenience.

151 Sincerely yours,

151 V. E. McKELVEY, Director, Geological Survey.

151 THOMAS V. FALKIE, Director, Bureau of Mines.

152 JUNE 17, 1975.

152 Dr. THOMAS V. FALKIE, Director, Bureau of Mines, Department of the Interior, Interior Building, Washington, D.C.

152 DEAR DR. FALKIE: This will acknowledge receipt of a letter, dated June 9, 1975, signed

by you and Dr. V. E. McKelvey, Director of the Geological Survey, together with miscellaneous material regarding the information collection and analysis role of the Bureau of Mines and the Geological Survey. You stated that this material is being sent in response to questions raised at the June 3rd joint subcommittee hearings on the President's veto of H.R. 25, the Surface Mining Control and Reclamation Act of 1975.

152 Neither your letter nor the accompanying material appear to have any direct relevance to my June 5th letter addressed to you, in which I made reference to three specific categories of information which had been requested at the hearings and which in my opinion are necessary in order to substantiate the coal production loss estimates forming the basis of the President's veto of H.R. 25. The material you have just turned over to me is either descriptive information or minerals resource data which has been generally available for some time. There is no clue as to precisely how you calculated the impacts of various provisions of H.R. 25 upon small mines or other surface mines, in support of the President's coal production loss estimates.

152 In my June 5th letter, I wondered why the relevant documents could not be submitted promptly to the Subcommittee on Mines and Mining, as they were supposedly the result of studies completed before the President's veto took place. Since you have once more failed to produce such evidence of any bona fide objective analysis and studies of the adverse impacts of certain provisions of H.R. 25 on certain mines, I must conclude that these analyses and studies do not exist.

152 You may recall that at the outset of the June 3rd hearings Chairman Udall established in an exchange with Mr. Zarb that justification of the President's veto rests upon the validity of the alleged coal production loss figures of between 40 to 162 million tons of coal in 1977.

152 In the absence of the analyses and studies to which I have alluded, it would appear that the President's veto message has not been and cannot be substantiated.

152 Very truly yours,

152 PATSY T. MINK, Chairperson, House Subcommittee on Mines and Mining.

152 U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF MINES, Washington, D.C., June 17, 1975.

152 Hon. PATSY T. MINK, Chairperson, Subcommittee on Mines and Mining, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

152 DEAR MRS. MINK: This responds to your letter to me dated June 5, 1975, concerning information requested by you during the hearings on June 3, 1975, on the Presidential veto of H.R. 25. Your letter was first received in the Bureau of Mines June 10, 1975, and has just now come to my personal attention.

152 I am fully aware of the importance of responding as promptly and comprehensively as possible to Congressional requests for information. In my letter to you of June 4, 1975, sent the day after my testimony during the hearing, I believed I had provided you with most of the specific information you requested on a priority basis.

152 To complete my response now, however, I am submitting the information you requested in point one of your letter, a summary study of the "front end" permit application requirement and bonding costs which we used in part in estimating potential small mine production losses. Because of the interest shown by the subcommittees in this specific information, this matter has been examined in greater detail and more up-to-date information from contractors incorporated. The results of this additional information which further substantiates our estimates has been incorporated in the enclosed more detailed document, "Potential Case History: Small Appalachian Strip Mine."

152 In response to point two, I am enclosing the study referred to during the hearings, "Coal Surface Mining and Reclamation," prepared by the Council on Environmental Quality for the Senate Interior and Insular Affairs in 1973. Pages 37-38 discuss (then) existing State bonding and permit application requirements. Pages 61-63 contain information relating to the financial ability of small mines to meet additional requirements.

152 In response to point three, I provided you with a listing of small eastern mines which could be adversely affected by the application and bonding requirements of H.R. 25. I understand that the Federal Energy Administration will be forwarding you additional information on this matter.

152 Sincerely yours,

152 THOMAS V. FALKIE, Director.

152 Enclosures.

152 PERMIT APPLICATION REQUIREMENT COSTS

152 Preparation of more detailed maps and plans by professional engineer - estimated cost - \$3,000 to \$6,000 depending upon the use of field crews at \$300 to \$400 per day for surveying work.

152 2. Services of professional geologist - estimated cost - \$1,000 to \$2,000 based upon \$200 per day for field and/or geologic map preparation.

152 3. Drilling costs - \$900 to \$2,450 - These costs are based upon a 10 acre tract with one drillhole per acre, \$3 to \$3.50 per foot of hole, and 30 feet to 70 feet of overburden.

152 4. Analyzing coal samples - estimated cost - \$960. This cost based upon 10 samples at \$96 per submitted sample and includes a proximate analysis, an ultimate analysis, and an ash fusion analysis.

152 5. Analysis of portions of the overburden and analysis of the immediate underlying strata for acidity and leaching - estimated cost - \$400. This cost based upon 10 overburden analyses and 10 underlying strata analyses at \$20 per sample.

152 6. If analyses of coal, overburden, or underlying strata would indicate a need for a more detailed analysis, a general scan for trace elements and analyses for metals and/or metallic compounds would cost from \$450 to \$500 per sample.

152 BONDING COSTS

152 Surety company bonding, with bonds issued for 5 years, would cost the operator approximately 1 percent annually. The minimum bond of \$10,000 in H.R. 25, Sec. 509-a, would cost \$500 and a \$50,000 bond would cost \$2,500 for the 5-year period.

152 POTENTIAL CASE HISTORY: SMALL APPALACHIAN STRIP MINE

152 In Appalachia, a small company was formed to engage in the coal stripping industry with plans for producing approximately 25,000 tons per year. The operator had the opportunity to lease a 50 acre tract of land containing one coalbed that appeared to average 36 inches in thickness. At 100 percent recovery, it would require almost five acres of coal to supply the

desired annual tonnage. The outcrop of this coalbed was located along a hillside about 250 yards from a small valley stream in an area that had not been previously mapped to any extent of fine detail. In addition to obtaining the mining equipment necessary to produce the desired tonnage, the operator would need to consider the cost of fulfilling the permit application requirements which also would require an initial outlay of money prior to mining.

—
—

Items which the prospective operator must consider before making permit application

Cost estimates for -
20 degrees slope 15 degrees slope

1. Preparation of detailed maps of 50 acre tract by professional engineer. This would entail a field crew coming

into area and locating boundaries of this tract and locating other physical features required by this act (H.R. 25). Field crew would lay out location of test holes (1 hole per acre) on approximately 200-ft centers. Data obtained in field would be transferred to enlarged 7 1/2-mi quadrangle topographic maps and all other engineering maps or plans required by this act will be prepared. Field crew costs are estimated at \$300 to \$400 per day.

\$3,000 to \$6,000

\$3,000 to \$6,000.

2. Since operator must submit hydrologic data with his application the services of a professional geologist would be required for geologic mapping of the area and preparation of other maps or plans to meet hydrologic requirements. Geologists' services estimated at \$2 00 per day. Since fulfillment of act's requirements in

regard to obtaining geologic information from the test borings could necessitate the presence of a geologist during the drilling, these estimated costs may go higher.

\$1,000 to \$2,000

\$1,000 to \$2,000.

3. Drilling costs - Services of outside drilling contractor would be required: Cost estimated at \$3 to \$3 .50 per foot of hole and drilling for 1st 10-acre tract which would furnish a 2 year's supply of coal. Holes would be drilled 100 and 300 ft from crop line with 5 holes drilled at each distance. On a 20 degrees slope, the depth of 1 set of 5 holes would

be roughly 36 ft plus 3 ft of coalbed plus 3 ft of strata under the coal for a total of 42 ft. The depth of the other set of holes would be roughly 109 ft plus 3 ft of coal bed plus 3 ft of strata under the coal for a total of 115 ft. The total footage of these 10 holes on a 20 degrees slope would be approximately 785 ft. On a 15 degrees slope, similarly placed holes would have an average depth of 33 ft and 86 ft respectively with a total footage of 595 ft. In addition a subsurface monitor well must be drilled near the perimeter

of permit area to a depth of 200 ft below the coal bed (see illustration)

\$2,355 to \$2,747.50 - 10

\$1,785 to \$2,082.50 -

test borings, plus \$600 to test borings, plus \$6

\$7 00 - Monitor well.

to \$700 - Monitor well.

4. Analyzing coal specimens obtained from test borings. For the 1st 10-acre tract set of 10 test borings, a minimum of 10 coal specimens should be obtained. The number

of specimens submitted could be higher if any other coal bed more than 12 ins. thick is encountered during the drilling operation. These costs are estimated at \$96 per submitted specimen and includes, a proximate analysis, an ultimate analysis, and an ash fusion report. An analysis for phosphates would be extra and cost approximately \$15 per specimen. These costs do not include costs of getting specimens to a laboratory.

\$960 - Proximate, ultimate, and fusion, plus \$150 - phosphates equal \$1,110.

\$960 - Proximate, ultimate, and fusion, plus phosphates - \$150 equal \$1,110.

5. Analysis of portions of the overburden and analysis of the immediate underlying strata for

acidity and leaching. These costs are estimated at \$20 per specimen and are based upon a minimum of 10 overburden and 10 underlying strata analyses. These costs do not include costs of getting specimens to laboratories.

\$400

\$400.

6. If regulatory authorities required a more detailed analysis of coal, overburden, or underlying strata, a general scan for trace elements and analyses for metals and for metallic compounds would cost from \$450 to \$500 per sample. Based upon the possibility of 30 samples.

0 to \$15,000

0 to \$15,000.

7. Analysis of water samples. These costs are estimated at \$5 to \$6 per sample and do not include getting them to the laboratory. Some laboratories and engineering firms will supply pickup man at \$90 per day. Cost estimate based upon 20 samples and

1 pickup per week for 4 weeks.

\$360 - Pickup

\$360 - Pickup.

152 These costs should be considered as only preliminary and subject to a number of variables. For instance, drilling costs are based on air drilling and if it were decided that core drilling would be necessary for some or all of these test holes, the cost per foot of hole drilled would rise to \$6.00 to \$10.00. Another example of change would be if it were necessary to establish water flow points and obtain data for a year previous to applying for a permit. This could increase the number of water samples and labor costs associated with their collection and pickup. Any indepth analysis of these water samples would also result in much higher costs. For the example mines, a geologist's service would be needed for 5 to 10 days and any variation of this time span could raise or lower these costs. Generally it is not expected that trace element or metal analyses would need to be obtained.

152 U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF MINES, Washington, D.C., June 24, 1975.

152 Hon. PATSY T. MINK, Chairperson, House Subcommittee on Mines and Mining, House Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

152 DEAR MRS. MINK: This is in response to your letter of June 17, 1975, in which you acknowledge receipt of a letter of June 9, 1975, cosigned by myself and Dr. V. E. McKelvey, Director of the Geological Survey, and assert that I had stated that it was being sent in response to questions raised at the June 3, 1975, joint subcommittee hearings on the President's veto of H.R. 25.

152 The letter of June 9, 1975, to which you refer, containing material regarding the information collection and analysis roles of the Bureau of Mines Geological Survey, was originally drafted to answer questions which arose during a meeting of the House Subcommittee on Interior and Related Agencies of the Committee on Appropriations, and was sent to you principally as a courtesy copy. It was not intended to address the questions you raised at the June 3 hearings, and contains no statement of mine that it was meant to do so. Probably you refer to a

brief letter I addressed to you on June 4, 1975, in which I forwarded some material in response to questions raised by you at the hearings the previous day and indicated that additional material would be forthcoming. This additional material was contained in my own letter to you of June 17, 1975, which you apparently had not received when you drafted your letter. I hope my letter of June 17 has removed any misunderstanding.

155 Sincerely yours,

155 THOMAS V. FALKIE, Director.

155 JUNE 26, 1975.

155 Dr. THOMAS V. FALKIE, Director, Bureau of Mines, Department of Interior, Interior Building, Washington, D.C.

155 DEAR DR. FALKIE: Thank you for your letter of June 24th clarifying an earlier letter of June 9th signed by yourself and Dr. V.E. McKelvey, Director of the Geological Survey. Apparently there was some confusion due to the fact that our letters crossed.

155 I now understand that in your letter of June 17th you attempted to respond to my request for further information relating to the joint subcommittee hearings held on June 3rd. You have attached to that letter three items of information: (1) a breakdown of permit application requirement costs; (2) a "potential case history" of a small Appalachian strip mine; and (3) a copy of a CEQ study prepared for the Senate Committee on Interior and Insular Affairs in 1973. These items, and not those submitted with your June 9th letter, are relevant.

155 I nevertheless find myself once more at a loss to comprehend your intent because you have not yet produced what I would regard as an objective economic analysis completed prior to the President's veto of H.R. 25. Pages 61-63 of the CEQ report (to which you refer) contain generalized, out-dated statements regarding the comparatively poor capability of small Appalachian mines. By your own admission, your breakdown of permit application requirement costs and your case history were both completed after the hearing and therefore cannot be said to comprise working papers on which the President's estimates of coal production losses were based. But, what is more to the point, in neither instance have you presented a picture of the cash flow situation of small mines; you have not shown how costs of permit requirements of H.R. 25

would compare with other costs of the operator; nor have you shown based on these data, how the permit application costs would prove to be insupportable for the operator of the small mine.

155 I am suggesting that this is the type of analysis which should have been carried out in advance of the President's veto of H.R. 25. If you expect the President's coal production loss figures attributed to the effect of the bill on small mines to be taken seriously - and especially so regarding figures attributed to impacts of the bill's steep slope, aquifer and siltation requirements - this type of analysis is essential. It is not enough to refer to a general study carried out by CEQ in 1973 when the profitability of the coal industry had not reached the unprecedented heights which is now apparent.

155 In the absence of a respectable analysis, how can you possibly verify loss figures for small Appalachian mines which you claim would suffer severe adverse consequences? If you cannot demonstrate the manner in which, in a given number of instances, the operator would be unable to withstand additional costs imposed by various provisions of H.R. 25 selected for attention in the President's veto message, then I fail to see how the loss estimates can possibly be justified.

155 We have been accumulating evidence that coal operators are making exorbitant profits. A case in point is contained in the recent remarks of TVA Chairman A. J. Wagner before the Tennessee Valley Public Power Association, charging that coal producers are making \$15 to \$20 per ton in excess profits, resulting in an average increase of the cost of coal since 1970 amounting to 220 percent (Congressional Record, June 4, 1975). We have Dr. William Miernyk of the Regional Research Institute in West Virginia, adamantly maintaining that the bill will have no significant coal production loss or job loss impacts in West Virginia, where according to your own estimates, small mine and steep slope losses would be severe.

156 To disprove these and other authorities who support the need for enacting H.R. 25, it is imperative that the Bureau of Mines reveal reliable, well-delineated, and competently-researched economic studies which were completed as the basis for the President's coal production loss estimates. In all the material which you have submitted to me during and since the June 3rd hearings, I have seen not a shred of evidence that any such studies exist. All we have to go by is

a generalized, out-dated CEQ study; a case history and cost breakdown contrived after the fact; columns of figures purporting to show the numbers of affected mines and tonnages of coal; and a statement of working assumptions with data apparently derived from those assumptions solely on the strength of telephone conversations with selected state agencies, strip mine associations and coal operators, all of them unquestionably biased against the bill. Nowhere do I find one single competent analysis which I could hold up and say, "Here it is - this clearly shows what the economic impacts of certain provisions of H.R. 25 would be on certain surface mine operators."

156 I am therefore forced to conclude, once again, that the President's coal production loss figures have not been and cannot be substantiated by the Bureau of Mines, by the Geological Survey, or by the Federal Energy Administration. This being the case, it follows that the President's veto of H.R. 25 is invalid and must be rejected by any test of reason and judgment.

156 Very truly yours,

156 PATSY T. MINK, Chairperson, House Subcommittee on Mines and Mining.

156 U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF MINES, Washington, D.C., July 11, 1975.

156 Hon. PATSY T. MINK, Chairperson, Subcommittee on Mines and Mining, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

156 DEAR MRS. MINK: This responds to your letter dated June 26, 1975, concerning the production loss figures upon which the President relied in part in vetoing H.R. 25.

156 We believe your conclusion that the coal production loss estimates have not and cannot be justified is unwarranted and that we have substantiated our figures during the many months of analysis prior to the President's veto, in the hearing of June 3, 1975, and in subsequent responses to your requests.

156 With regard to the detailed economic analysis of small mines to which you refer, it should be recognized that in 1973 there were over 2,000 small mines in Appalachia producing 50,000 tons of coal or less. These mines produced approximately 40 million tons, an average of about 20,000 tons per mine. A detailed economic analysis of each of these mines' financial ability to

absorb the additional costs (especially front end costs) would have meant an examination of the financial situation of every one of these mines. This information would have been difficult to acquire because of its extensive and sensitive nature, involving an effort in terms of time and cost which we feel would have been disproportionate to the results obtainable. For this reason, a selected sample of the small mine sector was used instead. Based on this sample, the information available to us from many sources, and the experience of many engineers in the Bureau of Mines and the Federal Energy Administration, an engineering estimate was made.

156 It should also be kept in mind that the immediate economic impact was only one factor used in determining the production impact on the small mines. Other factors which were considered included: (1) ability to obtain hydrologic information and control any hydrologic impact; (2) lack of technical expertise readily available for deriving the various application data; (3) shortage of drilling equipment; (4) additional equipment required to handle overburden because of the no spoil on the downslope restriction; (5) complete removal of the highwall; (6) control of siltation; and (7) retainage of a portion of the bonding for at least 5 years after last year of vegetation.

156 One extremely crucial factor in the whole analysis was the wording in H.R. 25 which required that operators affirmatively demonstrate, prior to getting a permit, that certain things would or would not occur.

156 In regard to your reference to recent remarks by Chairman A. J. Wagner of the Tennessee Valley Authority (TVA) to the effect that "excess profits" of \$15 or \$20 a ton had been paid by TVA to coal producers during the height of the 1974 coal price rise, we note that the "excess profits" alluded to were apparently based on a delivered purchase price of "more than \$30 a ton." We are informed by TVA personnel that only about 5 million of the approximately 51 million tons of coal purchased during the period of 1974 and early 1975 was at a price of "more than \$30 a ton." The average price during that period reportedly was \$22 to \$23 a ton.

157 Reference has also been made to Dr. William Miernyk who has maintained that there would have been no production or job losses in West Virginia in case of enactment of H.R. 25. However, it should be pointed out that Dr. Miernyk's analyses are based on the assumption

that underground mining could absorb any losses. We have repeatedly stated our belief that this is not possible during the first full year of implementation because of the long leadtimes (from 4 to 7 years) needed for expanding existing operations and opening new mines to accelerate underground production. Transfer of coal surface mining personnel to underground mining could not be rapidly effected either, as in many cases quite different skills are required in the two types of mining and considerable manpower retraining would be necessary. While we have never indicated that overall coal production could not recover, nor that underground mining could not eventually absorb part of surface coal production losses, it is uncertain as to the length of time that such a transition would take. This transition would depend in large part on the future price of surface mined coal, which may not in the long run maintain its present level relative to underground mined coal or to other energy sources. This price uncertainty would probably play an even more important role in the ability of the small surface mine operator to cope with the additional cost requirements of national coal surface mining regulation. Dr. Miernyk's multiplier was used for determining potential indirect employment losses, and there has been no suggestion by him that this multiplier is not valid.

157 In view of the above and other factors, we cannot agree that the President's veto of H.R. 25 was invalid.

157 Sincerely yours,

157 THOMAS V. FALKIE, Director.

APPENDIX IV

158 SENATE STAFF ANALYSIS OF THE ADMINISTRATION'S JUSTIFICATION OF THE VETO OF H.R. 25

158 SUMMARY

158 When President Ford vetoed H.R. 25 on May 20 he claimed that it would restrict coal production, increase our dependence on Mid East oil, raise consumer prices and increase unemployment.

158 Analysis of the materials justifying this move prepared by the Administration after the President's veto and testimony at the June 3 hearing on the veto message revealed that these claims are false. The key points of this analysis are summarized as follows:

158 Federal Energy Administration and the Department of the Interior would recommend a veto of the President's own bill. They have apparently accepted the National Coal Association's position that we should rely on state laws for surface mining control. However, in the past enforcement of state laws has been notoriously lax, and in any event, they do not regulate the surface mining of 40% of the nation's coal, which is owned by the Federal government;

158 Production loss estimates are based on highly unlikely and admittedly unrealistic interpretations of H.R. 25. All other estimates, costs, job losses, oil imports, are based on these faulty production loss estimates; and

158 Despite widespread coal and utility industry propaganda to the contrary - propaganda echoed by the President - H.R. 25 will not cause any significant increase in electric bills.

158 At the June 3 hearings the Administration admitted that Congressional estimates of the cost of reclamation (including the reclamation fee) were correct. These costs will average about \$1.00 per ton.

158 In view of the fact that the average price of coal has doubled in the last 18 months, and coal industry profits have risen even faster, there is no reason why these costs should not be absorbed.

158 But even if the coal and utility industries insist on passing all the cost on the consumer, it will only be approximately 35c per month for the average user of surface-mined coal-fired electricity. And this is less than 30% of electricity.

158 The Administration refuses to assume that the coal industry can adjust by first full year of implementation (1978), despite a three year phase in period and the vast extent of U.S. coal reserves. This assumption runs counter to Administration testimony that small mines go in and out of production so rapidly that they were unable to furnish the Congress with a meaningful list of mines allegedly impacted by the bill. It also ignores the fact that there is considerable surge capacity within the industry.

158 All Administration feared losses - including jobs - are only during a three or four year period beginning in 1978, which is the first possible full year of implementation, and not 1977,

as used by the Administration: According to FEA, the 1977 date used in May of 1975 assumed enactment in January 1975.

158 The Administration does not indicate in its methodology any netting out of production losses which overlap, as between small or steep slope mines, for example.

158 The Administration denies that additional jobs will be created by the reclamation programs provided in H.R. 25. The President claimed that enactment of H.R. 25 could result in loss of between 9,000 and 36,000 jobs. The Administration witnesses stated that a substantial portion of this estimate was based on studies done by Dr. William H. Miernyk, of West Virginia University. But, Dr. Miernyk, the only non-government expert cited by the Administration, has totally repudiated the Administration's claims of job losses. Dr. Miernyk has stated that H.R. 25 will not lead to any loss of jobs whatsoever. Furthermore, when compared to the unemployment projected under the President's energy program - 600,000 - any impact of H.R. 25 pales into insignificance.

159 The President focused heavily in his veto message on the notion that H.R. 25 would increase U.S. dependence on Mid East oil. Yet production losses due to the bill - if any - will affect utilities. These burn imported residual oil from Venezuela and the Caribbean - not Mid East crude.

159 DETAILED ANALYSIS

159 Total production loss estimates

159 The production losses projected by the Administration range from 6-24 percent of a projected total production in 1977 of 685 million tons. In one instance they estimate that 350 million tons of this is expected to be stripped; on another occasion, the estimate is 330 million. No explanation is given for this discrepancy. According to the Administration, those losses will occur because of provisions in the bill dealing with small mines, steep slopes, siltation, aquifers and alluvial valley floors. The Administration claims there is no doublecounting between estimated production losses in each category.

159 One is lead initially to question the Administration's figures for a number of reasons. 1. The projected production figure they use is 685 million tons, which is 70 million tons lower than

the base case, business-as-usual projection made in Project Independence, but no explanation is given for the discrepancy. 2. The projected losses are for 1977, while the first full year of implementation cannot possibly be until 1978, and more likely not until 1979, since there is a 36 month phase-in period for full implementation of the bill. Furthermore, losses are assumed to continue only for three years, and to disappear thereafter. Yet no estimates are given for losses in 1978-82. 3. No explanation has ever been given of the methodology used to avoid doublecounting production loss estimates between small mines and mines on steep slopes, although most small mines are on steep slopes; or between production losses projected due to protection of aquifers and alluvial valley floors, although again there is considerable overlap between the two.

159 4. The Administration's estimates are based on the assumption that through 1980, there will be no relocation of mines and that production lost because mining at one location becomes too costly or is prohibited under the Act, will not be replaced by production at a mine in a site more suitable to mining. (In earlier estimates, however, they assumed 20% of last surface production would be made up in deep mines.)

159 They further assume that no excess capacity will exist in the industry which could be used to maintain production by additional shifts or increasing working hours. Yet such capacity exists. As a case in point, prior to the national coal strikes called by the United Mine Workers when their contracts expire, production has increased markedly as consumers stockpile coal. For example, production increased approximately 10 million tons in October, 1974 over midsummer levels in anticipation of the November 1974 strike. In 1971, the same phenomenon was observed. It is thus unrealistic to assume that no production lost because of H.R. 25 could be replaced for three years.

159 5. The broad range of the Administration's loss estimates indicates a significant lack of certainty on the part of those making the estimates. The discrepancy of 400 percent between the low and high cost ends of the production loss estimates implies a methodology for quantification which is at best exceedingly imprecise. And, as was brought out in hearings before the House and Senate Interior Committees, such was indeed the case. The upper range of losses in

particular is predicated on highly unlikely and admittedly totally unreasonable interpretations of the bill's provisions.

159 While the total impact of the bill is derived from the production loss estimates, these estimates themselves are based on the anticipated impact of certain provisions of the bill, listed above. Yet at no time has the Administration been willing (or able) to relate specific requirements of the bill to specific anticipated production losses. One would therefore infer that the estimates are not based on careful analysis.

159 Production losses from small mines

159 The Administration contends that implementation of H.R. 25 will reduce production from small mines by 40-100% in 1977 (although actually full implementation would not occur until 1 or 2 years later). They give no explanation of why this range was chosen or to what provision of the bill these losses were attributable. Nor, apparently, do their projections take account of the long and continuing decline in small mines' share of total production, which would reduce anticipated losses in this category in 1977. Again, these loss estimates, which range from 22-52 million tons, are predicated on the assumption that none of this production will be otherwise replaced. The Congress was initially informed that these estimates were based on a broad cross sectional analysis of small mines. Yet, further Congressional inquiry into the methodology used to derive these figures eventually resulted in the admission that a few mine operators, mine operator associations and inspectors in 6 states were asked by telephone what impact they thought the bill would have on small mines. The production loss estimates are apparently actually based on the casual responses to these inquiries.

160 Production losses from steep slopes

160 Although a large percent of small mines are located on steep slopes, the Administration's methodology does not net out the overlap between the two in making its production loss estimates. It is therefore virtually impossible to ascribe much validity to either figure. The Administration ascribes production losses on steep slopes to "some loss of productivity" ranging from 6-23%, but the reasons why a loss of productivity is assumed are never stated. Furthermore, numerous studies have been made available to the Congress which indicate that ongoing mining

operatios in W. Virginia, Pennsylvania and Kentucky, which are already meeting the steep slope reclamation standards of H.R. 25, have actually increased their productivity, largely by minimizing earth moving requirements. The Administration's analysis apparently took no notice of such studies. Finally, the Administration's estimates assume no relocation of mines to more suitable sites. Yet, when asked to furnish Congress with a list of small and steep slope mines, the Bureau of Mines said such mines were constantly relocating and shifting their operations, and it was impossible to maintain an up-to-date list of them.

160 Siltation

160 The Administration estimates that up to 10 million tons could be lost because of siltation control requirments. However, since such provisions are already incorporated in most state laws, it is difficult to comprehend why production losses should be anticipated, if H.R. 25 is implemented, and the Administration does not elucidate.

160 They do say some areas perhaps could not be mined unless permanent siltation structures were built to prevent post mining sedimentation. This ignores the requirement in the bill that all disturbed areas must be stabilized and revegetated after mining, thus negating the need for retention of siltation structures. However, given their assumption that mine operations will not relocate elsewhere, this might contribute to the estimated production loss. But again, no explanation is given.

160 Aquifers

160 As in the case of small and steep slope mines, the Administration's methodology does not provide for netting out of their production loss estimates related to protection of aquifers and protection of alluvial valley floors, which contain aquifers. They estimate that up to 9 million tons of planned production near an aquifer-fed water source could be abandoned under extreme interpretations of the bill. However, the bill focuses on protecting the recharge capacity of aquifers and not aquifer-fed waters. So the Administration's estimate would appear to be based on a misinterpretation of the rquirements of the bill.

160 Production losses on alluvial valley floors

160 Given the definition of alluvial valley floors in the present bill, the Department of the

Interior estimates that no more than 2.7 percent of the land in the Powder River Basin (the major Western coal area) would be affected by the bill. Given the vast amounts of coal west of the 100th meridian, the impacted area is therefore relatively insignificant.

160 In contrast, the Administration's estimates of potential coal losses on alluvial valley floors ranges from 11-66 million tons. These estimates, however, are based on a number of fallacies and misinterpretations of the bill. For example, the definition of alluvial valley floors in the bill specifically and explicitly excludes undeveloped rangelands. Yet the Administration includes undeveloped rangelands as part of the area where they consider coal production might be inhibited by implementation of H.R. 25.

161 In addition, although the present bill contains no ban on mining on alluvial valley floors, the Administration's maximum estimate of production losses under the bill (66 million tons) is identical to their estimate of production losses if mining were banned on alluvial valley floors. Thus, presented with two entirely different sets of parameters and assumptions, they did not change their estimates of potential production losses.

161 Finally, members of Congress have had discussions with the Administration about the methodology by which they arrived at their production loss estimates for alluvial valley floors. Representatives of the Administration explained that their estimates did not represent a range of potential or even probable losses, but at times were based on assumptions that are entirely unrealistic.

161 For example, the alluvial valley floors covered by the bill are those where "farming can be practiced in the form of irrigated, flood irrigated or naturally subirrigated hay meadows or other crop lands." The Administration admitted that its high estimates were based on an assumption that the Courts might interpret the word "irrigated," to mean that if someone could run a garden hose from New Jersey to a Western alluvial valley, it would make the area subject to the alluvial valley requirements of the bill. The high side of the Administration's projections therefore assume that all alluvial valley floors are covered by the special provisions of H.R. 25. It was further explained that, as long as any one person could so interpret a provision, that interpretation however improbable, was incorporated into the maximum estimates of production losses. It is

interesting that this discussion was almost immediately preceded by insistence on the part of the Administration that practical economics should be considered in all interpretations of the bill.

161 FURTHER LOSS ESTIMATES

161 It is obvious from the foregoing that the Administration's estimates of production losses attributable to H.R. 25 are generally unfounded and highly questionable. It is, in fact, more likely given the long phase-in period of the bill and the vast extent of U.S. coal reserves, that no production losses will occur. Yet the Administration uses these doubtful estimates as the cornerstone for all other Administration estimates of the impact of the bill emphasizing at all times the maximum adverse potential effects of implementing H.R. 25. From these dubious production losses they extrapolate employment losses, increased oil imports, fuel costs and consumer costs, and coal reserve losses.

161 Employment impacts

161 The Administration's estimates of the employment impacts of H.R. 25 are extrapolated directly from their highly dubious estimates of losses in coal production. These impacts would occur, if at all, when the production losses, if any, took place - in the first full year of implementation of the Act. The first full year of implementation is not 1975; it is 1978.

161 The Administration's estimates are, at the low end, a direct job loss of 5,000 resulting from a production loss of 40 million tons.

161 The maximum production loss, 162 million tons, translates, in Administration methodology, into a direct job loss of 20,000.

161 In addition to this, the Administration assumes eight non-mining jobs will be lost for each ten mine job losses. This assumption is drawn from the work of Dr. William Miernyck who was cited by the Administration as an expert on coal input-output analysis. Dr. Miernyck has flatly stated that H.R. 25 will not cause any job losses whatever. Nevertheless, using these figures the Administration estimates a total employment impact of 9,000 to a maximum of 36,000 for the most extreme production loss estimate. Also, in fact, even without H.R. 25, they project a decline of some 4,000 surface mines by 1977 despite increased production.

161 Despite earlier statements by leading spokesmen, the Administration is not willing to admit that employment will increase as a result of H.R. 25 because of increased requirements for reclamation. In fact, the incredible claim is made that, because abandoned mine reclamation would be financed from a tax on production, a job would be lost elsewhere in the economy for each job created by the program. This view, of course, implies a total uselessness for any tax-supported public works project from the point of view of employment. Using this logic, one would also be forced to claim that the building of U.S. Interstate Highway System did not constitute a stimulus to employment. Yet, the President has recently supported a \$2 million public service job program.

162 By 1978, the earliest possible full year of implementation of the bill, the civilian work force will be well over 100 million. The employment impacts which the Administration claims will result from H.R. 25, if they materialize at all, will constitute between .01 and .04 percent - one and four one hundredths of a percent of the 1978 work force. The Administration's concern over very uncertain prospects for a very small level of unemployment in 1978 are scarcely matched by its concern for the staggering unemployment actually being experienced in 1975 and which is forecast for 1976. The Administration's energy tariff and price decontrol proposals attempt to ration energy supplies by increasing energy prices. These price increases are inflationary, and they pose a severe threat to recovery from the current recession. Eric Herr, of Data Resources, Incorporated, a firm specializing in economic analysis and forecasting which is an important supplier of economic information and analysis for the FEA, testified before the Senate Interior Committee on February 12, that "assuming that the Federal Reserve does not fully accommodate the President's program, but rather increases the money supply at only a six percent to eight percent annual rate, the damage to the economy (from the President's program) would be substantial. . . . The unemployment rate would be raised by 0.3 percentage points by the end of this year (1975) and by 0.7 percentage points in 1976, increasing unemployment in the year 1977 by 660,000 persons."

162 The Administration's deep concern over the possible loss of jobs in 1978 is totally hypocritical when measured against its insistence on the implementation of a program in 1975

which is virtually certain to guarantee unemployment in 1975 and 1976 for hundreds of thousands more Americans.

162 Only a day after the hearings at which Administration witnesses expressed alarm over the alleged 9,000 to 36,000 job loss impact in 1978 of H.R. 25, an FEA spokesman was quoted saying that the impact of 7,000 to 14,000 persons unemployed in 1975 and 1976 as a result of the Administration's energy program would be "insignificant." (The Administration maintains that these "insignificant" figures are the proper measure of increased unemployment from the energy tax, tariff and price decontrol proposals of the President.)

162 Perhaps the final and most obvious irony of the Administration's contentions concerning the employment impacts of H.R. 25 is the fact that the UMW and the AFL-CIO - the labor unions which represent U.S. surface miners - have expressed formal support for the bill, and have urged its passage. (The AFL-CIO is in strong opposition to the President's energy pricing proposals.)

162 Oil imports

162 The most important chain of reasoning leading to the veto of H.R. 25 - in the view of the Administration - is the contention that

162 (1) coal production will be lost as a result from provisions of this legislation; and

162 (2) that this loss will require increased oil imports and higher dependence on insecure Mideastern producers.

162 There is no claim that coal production losses will persist - only that they will characterize the first three-to-four years of implementation of the Act. Thus the time interval of potential concern - and it is the only period for which there could be concern - is the period from 1978 to 1980. This year, 1975, and in 1976, and in 1977, during the phase-in period for H.R. 25, the legislation can have no significant negative effect on domestic coal production. Therefore there can be no short term increase in oil imports during 1975-1977 as a result of H.R. 25 either. The nation has over 30 months to prepare for the impact of the bill.

162 If it is granted for the sake of argument that surface coal production losses will in fact occur in the period beyond 1977 - and this is far from certain - how will these losses be made

up?A March 25 memo, made available to Congressional staff by Thomas V. Falkie, Director of the Bureau of Mines, estimated that 20 percent of production losses attributable to H.R. 25 would be made up from increased production in underground mines. By the time Mr. Zarb was ready to testify before the Senate and House Interior Committees, the Administration had changed its mind and was maintaining that none of the alleged lost production from surface mines would be made up in underground mines or in other surface mines.

162 However, this is precisely what will happen if there is a demand for coal and a coal mine is shut down somewhere for any reason. Operators of other mines will attempt to capture this business - because it is a profitable business - by adding additional shifts, extending shifts, etc. These other mines will be able to produce the extra coal to the extent that it is available and to the extent they can anticipate the unsupplied demand. In the case of the alleged potential impact of H.R. 25, both conditions would seem to be filled.

163 But suppose - for the sake of argument - that some switching to oil does take place. The U.S. will then import more residual fuel oil. The Administration's pre-veto analysis did not distinguish between crude oil and residual fuel oil. In fact it is the latter which is burned in electric utilities and most of this fuel is currently imported. Only 7-9 percent of the output of U.S. refineries is residual fuel oil. Imported residual fuel oil comes overwhelmingly from the Caribbean and from Venezuela. It is based primarily on Venezuelan and Nigerian crude oil. Neither of these countries has expressed any interest in embargoing the United States. In fact, during the 1973-74 embargo, residual fuel imports held to a curve which tracked 1972 and 1973 figures for comparable months - allowing for conservation and warmer weather during the 1973-74 winter. No embargo-induced dip is apparent for residual fuel imports, such as was evident in the case of crude oil imports. There is a very good reason for this: we import a substantial amount of crude oil from the Arabs, but almost no residual fuel oil.

163 According to the Petroleum Industry Research Foundation, during the postembargo June - October, 1974 period the U.S. imported less than 2 percent of its residual fuel oil from Arab countries. Over 86 percent came from the Caribbean and Latin America.

*3*U.S. RESIDUAL FUEL IMPORTS, JUNE-OCTOBER PERIOD

| | 1973 | 1974 |
|-----------------------------|---------|------|
| Origin: | | |
| Arab | 29.6 | |
| 20.0 | | |
| Other Eastern Hemisphere | 200.9 | |
| 95.3 | | |
| Canada | 114.8 | |
| 51.8 | | |
| Caribbean and Latin America | 1,174.4 | |
| 1,075.2 | | |
| Total | 1,519.7 | |
| 1,242.3 | | |

163 Source: Petroleum Industry Research Foundation.

163 The danger the U.S. faces from an Arab embargo is an interruption in crude oil imports for U.S. refineries. The principal refined products affected by such an embargo are the principal products of U.S. refineries - motor gasoline and distillate fuel oil. Residual fuel oil availability would be only very weakly affected by even the most successful future embargo.

163 Thus the Administration's concern over the alleged impact of H.R. 25 in increasing U.S. dependence on foreign oil can not relate to a concern over insecurity supply in the event of an embargo. The utility industry will not be significantly affected by a reduction in crude oil imports from Arab nations.

163 The only concern of the utilities is the price of their fuel. This cannot be a great Administration concern, however, in view of its proposal to add at least \$1 .80 per barrel to the price of imported refined petroleum products. Translated to the Btu equivalent in coal utility boiler fuel, this would represent an increase in coal prices of almost \$6 .30 per ton - an impact which is at least six times any conceivable impact of the reclamation fees and reclamation costs associated with H.R. 25.

163 Impact on electric utility bills

163 The Surface Mining Control and Reclamation Act of 1975 - H.R. 25 - will cause only a very slight increase in the price of electricity generated from coal. According to the Edison Electric Institute, the average consumer uses less than 700 kilowatt hours per month. The

increased electricity costs due to the reclamation of strip-mined land will amount to one to two percent - less than 35c per month to the bill of residential consumers whose electricity depends on surface-mined coal. For electricity generated using coal mined underground, the increase in price will be negligible. Costs for power generated by other fuels will not change.

163 Generally speaking an increase in the price of coal of \$1 .00 per ton translates into an increase of one twentieth of a cent - 0.05c - per kilowatt hour of electricity. On the average, residential consumers in the U.S. now pay approximately 3.0c per kilowatt hour for electricity, according to recent reports of the Edison Electric Institute.

164 H.R. 25 will add at most \$1 .00, on the average, to the price of surface-mined coal. This includes the reclamation fee - much less actually for lignite - and operators may have to pay up to \$0 .50 per ton on new production to cover costs of reclaiming land damaged by their own operations. Administrative costs will add a few pennies more to the price per ton.

164 Surface-mined coal constitutes approximately one-half of U.S. coal production. The fee assessed by H.R. 25 on the remaining underground production is \$0 .15 per ton. This fee will have a negligible effect on the price of electricity produced using deep-mined coal.

164 Thus the cost impact of reclaiming land damaged by strip-mining in the past and to restore the land to be disturbed to mine the coal supplies required for the future is approximately a nickel for every 100 kilowatt hours of electricity, less than 35c per month for the average user and approximately \$1.30 per month for an all-electric home.

164 Coal company profits

164 Electricity rates and coal prices have soared over the past year as energy prices were pulled up by the steep rise in the price of imported and domestic crude oil. These increases have hit consumers hard and have swollen the profits of coal companies. According to data compiled by the Congressional Research Service, major coal companies have seen their earnings increase by over a thousand percent in 1974.

-
—

*5*COAL COMPANY

EARNINGS
 5[Dollar
 amounts in
 millions]

| | 3d quarter 1973 | 3d quarter 1974 | Increase 1973-74 | Percent increase |
|-----------------------|-----------------|-----------------|---------------------|---------------------|
| Consolidation coal | \$0.2 | \$15.0 | \$14.8 | 7,850 |
| Island Creek Coal | -.9 | 35.2 | 36.1 | n(2) |
| Pittston | n1 3.1 | 27.5 | 24.4 | 790 |
| Westmoreland Coal | 1.0 | 12.8 | 11.8 | 1,240 |

164 n1 Loss.

164 n2 Infinite.

164 Source: Congressional Research Service.

164 Average coal prices

164 The average price of coal delivered to electric utilities doubled in 1974 over 1973 in response to the nearly three fold increase in price of the residual fuel oil which utilities purchased. The chart (not printed) attached shows the dramatic rise in both coal and oil prices per million Btu and the relative magnitude of a \$1 .00 per ton coal cost compared to these increases. It is totally ridiculous to assert that H.R. 25 will produce rises in electricity costs similar in any way to the increases of the past year. Relief from high electric rates can only come from a lowering of oil prices - a policy the Congress favors and the Administration opposes.

164 Coal is used to produce approximately 45 percent of the electricity consumed in the United States. According to the most recent data released by the Federal Power Commission, the average price of coal to electric utilities in February 1974 was \$1 7.71 per ton. Spot purchases are reported by FPC to average nearly \$2 6.00 per ton, while the price of a ton of coal purchased on long-term contracts averages \$15.71. Coal produced from underground mines is selling at \$1 9.43 per ton on the average. The comparable figure for surfaced-mined coal is \$16.64.

164 In October, 1973 prior to the embargo, the average price paid for coal by electric utilities was \$9.34 per ton. The spot price, \$1 1.24 per ton, was only slightly higher, and the contract

price, \$8 .86 per ton, only slightly lower. At that time, coal mined underground sold for \$10.58 per ton and surface-mined coal sold for \$8 .62 per ton.

164 Industry and utility views

164 The dramatic increase in coal prices paid by utilities since late 1973 has followed the nearly three-fold rise in the price of heavy fuel oil. This increase, stimulated by the OPEC cartel, permitted coal operators to charge prices which averaged nearly ten dollars a ton more than pre-embargo levels. Isolated spot purchases were even higher, in the \$40 to \$60 per ton range for coal which sold for \$8 per ton a year ago. A brochure prepared for the National Rural Electric Cooperative Association entitled "Why Electric Rates are Going Up" indicates that NRECA expects to pay nearly \$28.00 per ton for coal in 1975. These rapid price increases are unrelated to the cost of producing coal.

165 Given the coal industry's profit margins, it is ridiculous to assume that the industry cannot absorb the entire cost of H.R. 25 - 50c-\$1.50 per ton, for surface-mined coal. In most cases this is considerably less than 10% of the present price of coal.

165 As coal prices have been rising continually over the past 30 months, few complaints were heard from coal producers or even utilities. No attempt was made to reduce coal prices and nothing was said about the cost to the consumer of the soaring coal costs. Now, however, when producers face a minor cost-related increase rather than a net gain in profits, the industry has mounted a major propaganda campaign to exaggerate the potential burden the consumer may bear - particularly in the form of higher electric bills - because of H.R. 25. The inconsistency is glaring.

165 Much misleading information is being circulated by utilities about the cost of H.R. 25. A typical example of such deceptive propaganda is a press release put out by Southwestern Electric Power Co. of Shreveport, La. This release states that the bill cost its consumers \$125 million for coal to be purchased under two contracts "at some future date". (The company now burns no coal at all.) What the company neglects to point out is that this cost (if and when it occurs) will be spread out over a 25 year period.

165 One of the planned contracts will be for lignite mined in Louisiana and Texas. SWEPCO

estimates the reclamation fee for the lignite at 35c/ton although the bill set a limit for the fee on lignite at 5% of the value of the coal (usually \$1 -3 ton) and thus the fee would be 5-15c/ton. The 125 million total cost of the bill is thus considerably overstated. The company also neglects the fact that, for the lignite mined in Louisiana, one half of the fee is retained by the State. Yet even with all of these over-estimated costs, the increased cost to the SWEPCO consumer resulting from H.R. 25 is \$4 .97 million a year, or 4/100ths of a mil (.04 mils) per kilowatt hour, or \$3.36 per year for a household using 700 kilowatts a month.

165 A more realistic presentation of increased consumer costs would be to show the cost of the bill on an annual and per kilowatt hour basis. Also, it would be more accurate to set the reclamation fee for lignite at 15c/ton (assuming \$3 .00/ton coal) or less. This would, of course, decrease the total cost to the consumer by \$1.44 million a year, or \$36 million over a 25 year period.

165 The administration's analysis of consumer costs

165 If the propoganda on H.R. 25 being offered by the coal producers and electric utilities is misleading, the Administration's "analysis" of the consumer cost of H.R. 25 breaks new ground in ex post facto justification of a political position.

165 The fact sheet accompanying the President's veto message on H.R. 25 suggests that the legislation was rejected because if it became law "consumers would pay higher costs - particularly for electric bills - when consumer costs are already too high."

165 The President's use of this rationale for rejecting H.R. 25 is just astonishing. This Administration has been threatening the Congress for four months with what it calls an "energy program." The foundation and central feature of this program is embodied in the Administration's contention that the proper solution to energy problems must involve higher energy costs for consumers and higher profits for energy companies.

165 This is what the proposal to add \$1 , \$2 and finally \$3 to the tariff on imported oil is all about. This is what the decontrol of domestic crude oil and the deregulation of natural gas is all about. This is why the President proposes excise taxes of \$2 per barrel on domestic crude oil production, and 37c per mcf on domestic natural gas. This is why the Administration's "Energy

Independence Act" calls for faster and more complete incorporation of electric utility costs, including the costs of construction in the monthly electric bills for consumers.

165 The increased costs of the program which the Administration intends to implement without any new Congressional authority amounts to \$3.3 billion on an annual basis. The Administration maintains that these costs are necessary, and that the Congress ought to permit them to be imposed. Moreover, the Administration has proposed legislation for Congressional action which would raise the \$3.3 billion annual cost of energy for U.S. consumers by at least \$10 billion more.

165 In view of these proposals and the Administration's repeated claims that high prices are the proper stimulus to conservation, the veto of legislation to control surface mining and reclaim damaged lands on grounds that it will raise energy costs is totally hypocritical.

166 What is the cost impact of H.R. 25? The fee imposed by the legislation averages approximately 25c per ton on all U.S. coal production. The reclamation costs will average perhaps 50c per ton when spread over all production. The administrative costs are at most a few pennies per ton. The total added cost of reclamation, estimated by the Administration, amounts to approximately \$300 million dollars annually, to be imposed in 1978 and thereafter.

166 The Administration has proposed, and is insisting on enactment of, an energy program which will raise energy costs by at least 100 times this amount to be implemented this year.

166 In 1974 the average price of coal at the mine on a national basis increased by 76%, from \$8.50 per ton to \$15.00 per ton. Without comment from the Administration the price of average coal rose by \$6.50 per ton. On the spot market, where many electric utilities make their coal purchases, prices have increased by as much as \$20 per ton. None of these increases have gone into reclamation of strip-mined land. They have gone into the pockets of coal producers. All this has been acceptable to this Administration. Responsible legislation which reclaims the land at a cost of at most \$1 per ton is not.

166 The fact sheet submitted by the Administrator of the Federal Energy Administration,

Frank Zarb, to the Senate and House Interior Committees on June 3 estimated consumer costs of H.R. 25 at \$2.4 to \$5.6 billion annually.

166 These estimates are based on highly dubious assumptions. It is also implied that H.R. 25 will cause higher prices and increased imports now in 1975 - instead of in 1978 when the full impact of the bill would actually be felt. To obtain the Administration's cost figures, it is necessary to assume:

166 (1) That coal production will fall 40 to 162 million tons short of demand because of the provisions of H.R. 25;

166 (2) That no added coal production from surface or underground mines operating in 1978 in compliance with H.R. 25 will replace this "lost" production;

166 (3) That all "lost" coal production will be replaced by imported oil; and

166 (4) That, in response to a shortage of coal spot-market prices will rise by \$12 to \$1 8 dollars per ton.

166 The first two assumptions are questionable for a number of reasons discussed elsewhere. The third assumption clearly depends on the first two. The fourth assumption, that coal prices will rise by \$12 to \$1 8 per ton to the oil equivalent level is interesting in view of the Administration's repeated claims that President Ford's energy program, while increasing oil prices, will not affect the price of coal.

166 In fact, coal spot prices increased by \$15 per ton in between October 1973 and February 1975. This price increase for coal occurred in direct response to the tremendous rise in the price of imported oil. In fact, the price of coal has at this time reached an equilibrium with oil at a price significantly below Btu equivalency. There is no evidence that, without a further increase in oil prices, coal prices will again rise towards the \$40- \$4 2 which represents Btu equivalents with residual fuel oil. There is no question then, that coal prices do follow trends in oil prices. The Administration is now attempting to use this fact to grossly exaggerate the effects of H.R. 25. But because oil is a cleaner and more convenient fuel to burn than coal, the total cost of burning coal to utilities, including transportation and pollution control, will generally be higher. Hence the delivered price of coal is not ever likely to rise to the Btu equivalent price of oil. Thus it is

unrealistic to assume anything like a \$12- \$1 8 per ton coal price increase because of the enactment of H.R. 25, particularly in the absence of a further major increase in the price of oil. The FEA's consumer cost estimates are thus totally without foundation.

166 Coal reserve losses

166 The Administration estimates that as a result of H.R. 25, some 17.9 - 73.4 billion tons of coal reserves would be "locked up". They claim that these estimates were derived from the estimate of production losses. However, there is in fact no direct relationship between coal production and reserves and the Administration has provided no explanation of the methodology used to make such a derivation. Nor do they explain the reason for their estimate that 14.2 billion tons of coal could be locked up by the surface owner consent requirements of the bill. Also, with respect to alluvial valley floors, representatives of the U.S. Geological Survey told the House and Senate Interior Committees in sworn testimony that the reserve loss estimates were made first, and the production losses derived later.

167 Nevertheless, insofar as it is true that the reserve losses are extrapolated from the production estimates, they must be considered highly dubious, since the Administration's projections of potential output losses are, as noted earlier, exceedingly questionable.

167 Furthermore, these reserve loss estimates are predicated on the assumption that if certain reserves are closed to surface mining, they are inevitably lost. This totally ignores that fact that much of this coal can still be mined by underground mining methods, and is therefor not "locked up". The reserve loss estimates are thus greatly overstated.

167 Finally, the U.S. has some 434 billion of demonstrated recoverable coal reserves, enough to last more than 500 years. Even if one were to accept the Administration's worst possible estimate, we would experience a loss of about 17 percent of our total reserves, leaving more than 400 years' worth of reserves available for mining.

APPENDIX V

168 United States Department of the Interior

168 BUREAU OF MINES WASHINGTON, D.C. 20240

168 April 15, 1975

168 Memorandum

168 To: Staff Assistant for Congressional Affairs

168 From: Director, Bureau of Mines

168 Subject: Production loss figures due to surface mining legislation

168 This responds to a request on April 14, 1975, from Majority Counsel members of the House Interior Committee during a meeting on, the same date with the Staff Assistant for Congressional Affairs and personnel from the Bureau of Mines, Geological Survey, and Federal Energy Administration (FEA). During this meeting the Majority Counsel requested information concerning a detailed recount of production loss figures provided by the U.S. Department of the Interior over the past year with special emphasis on production losses which might occur due to provisions in the legislation concerning alluvial valley floors.

168 On July 30, 1974, the Bureau of Mines made a thorough analysis of H.R. 11500, as amended, with emphasis on the impact on coal supply (Enclosure 1). From this analysis a table of potential production losses was derived and forwarded to the Director of the Bureau in a memorandum dated August 9, 1974 (Enclosure 2). In a memorandum dated November 20, 1974, additional information was forwarded to the Assistant Secretary - Energy and Minerals (Enclosure 3). Until this time the Bureau did not consider the language dealing with alluvial valley floors to be a critical issue. However, on December 6, 1974, the Bureau prepared another table which included a statement noting that there would be additional losses due to alluvial valley floors and other provisions, but that these figures were nonquantifiable or unavailable at the time (Enclosure 4).

168 After new bills were introduced into both the House and U.S. Senate (S. 7 and H.R. 25) and were amended and reported by the U.S. Senate and House Interior Committees, personnel of the Bureau of Mines and FEA jointly derived potential production loss estimates attributed to H.R. 25 and S. 7 as amended in Committee. Because of data provided by personnel of FEA reasonable estimates were generated for possible losses due to alluvial valley floor provisions. Other estimated losses were reduced due to modifying language of specific amendments in the respective committees. These jointly derived figures are given in Enclosure 5.

169 Memo. to Staff Assistant for Congressional Affairs, Subj:
Production Loss figures due to
surface mining legislation.

169 On March 18, 1975, the House of Representatives passed H.R. 25 with
several
amendments which brought the estimated potential production losses into
agreement with those
derived from S. 7 provisions. These losses were enclosed in a memorandum
dated March 19,
1975, to the Staff Assistant for Congressional Affairs (Enclosure 6).

169 On March 21, a reevaluation of the effect of alluvial valley floor
provisions was made by
Bureau of Mines and FEA personnel. After examination of individual mining
areas in the
Western States, production in these areas and reevaluation of revised
language on alluvial valley
floor provisions, a memorandum dated March 21, 1975, was sent to the
Assistant Secretary -
Energy and Minerals enclosing revised potential estimated production losses
for S. 7 and H.R. 25
(Enclosure 7).

169 With further reference to alluvial valley floor provisions, and as
requested by Majority
Counsel, there is enclosed an additional table which shows 1974 coal
production by State. Also
included is a list of individual mines in each State showing the mines which
are construed to be
lying on or affected by the alluvial valley floor provisions under the
language in H.R. 25 and S. 7
as passed by the House and U.S. Senate (Enclosure 8).

169 Director

170 An Analysis of H.R. 11500, As Amended, - Impact on Coal Supply By
Staff, Bureau of
Mines

170 Department of the Interior

170 Bureau of Mines

170 May 27, 1974

171

—
—

*2*TABLE OF CONTENTS
SECTIONS

PAGES

Scope and Objective of the Study

1

| | |
|---|-----|
| General Assumptions and Background Data | |
| 2 | |
| Surface Coal Mining Techniques | |
| 4 | |
| Area Strip Mining | |
| 4 | |
| Contour Strip Mining | |
| 4 | |
| Auger Mining | |
| 5 | |
| Mountaintop Mining | |
| 5 | |
| Potential Adverse Environmental Effects | |
| 6 | |
| Estimate of Impact on Coal Production | |
| 7 | |
| Interim Compliance | |
| 8 | |
| Restoration to Approximate Contour | 9- |
| 12 | |
| Restriction of Spoil on the Downslope | |
| 15 | |
| Mining on Federal Lands | |
| 17 | |
| Subsidence from Underground Mining | 18- |
| 19 | |
| Effect on Small Operators | 20- |
| 21 | |
| Disturbances to the Hydrologic Balance | 22- |
| 23 | |
| Comments on Other Provisions of HR 11500 | |
| 24 | |
| Time Table of Events to Implement HR 11500, As Amended | |
| 24 | |
| Actions of Operators | |
| 24 | |
| Actions of Secretary | |
| 24 | |
| Actions of States | 24- |
| 25 | |
| 172 | |
| TABLES | |
| PAGES | |
| Table 4. Effect of No Spoil on the Downslope of Steep Slopes | |
| 16 | |
| Table 5. Effect on Projected Production from Surface Coal Mines on Federal and Indian Lands | |
| 17 | |
| Table 6. Effect on Underground Mining Due to Subsidence | |
| 18 | |
| Table 7. Effect on Small Strip and Auger Mines | |
| 20 | |
| Table 8. Estimates of Fees According to Rank of Coal and Method of Btu Determinations | |
| 32 | |
| CHART | |

Chart A. Timetable of Events

26

173

SECTIONS

PAGES

| | |
|---|-----|
| Designation of Areas Unsuitable for Mining | 27- |
| 28 | |
| Effect on State Laws | |
| 29 | |
| Permit Application Requirements | 29- |
| 30 | |
| Prohibition of Mining in National Forests | |
| 30 | |
| Impoundments | 30- |
| 31 | |
| Citizens Suits | |
| 31 | |
| Reclamation of Past Mined Lands | |
| 32 | |
| a. Fee Provision, Orphan Lands | |
| 32 | |
| b. Past Mined by Operator | 32- |
| 33 | |
| Protection of Surface Owners Rights | 33- |
| 34 | |
| Special Bituminous Coal Mines | |
| 34 | |
| Amount of Strippable Coal Reserves | |
| 34 | |
| Establishment of Office of Surface Mining Reclamation and Enforcement | |
| 34 | |
| A Program for Non-Coal Mine Environmental Impact Control | 34- |
| 35 | |
| Surface Disposal of Coal Waste | |
| 35 | |
| Summary of Recommendations | 36- |
| 37 | |
| TABLES | |
| Table 1. Projected Coal Production | |
| 3 | |
| Table 2. Effect of HR 11500 on Mountaintop Mining | |
| 13 | |
| Table 3. Effect of HR 11500 on Thick Seam, Shallow-Overburden Mines | |
| 14 | |

—
—

174 An Analysis of H.R. 11500, As Amended, - Impact on Coal Supply by Staff, Bureau of Mines Scope and Objective of the Study

174 Annually, the Bureau of Mines conducts a comprehensive production survey of the bituminous coal and lignite industry. The most recent complete coal production statistics pertain

to the Calendar Year 1972. These data indicate that approximately 595 million short tons of bituminous coal and lignite were produced. Coal production from surface mining operations was 291 million tons or approximately 49 percent of the total mined product. This production came from surface mines located in Alabama, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia, in the East and Mid-continent mining areas, with a more rapid growth of surface mined coal production over the last 5-years being witnessed primarily in Montana, New Mexico, and Wyoming.

174 In a little over a decade the total production of bituminous coal and lignite from surface mining operations has grown from about 120 million tons (1960) to approximately 291 million tons or about 120 percent in terms of coal tonnage. However, the apparent percentage of surface mined product of the total production during that period grew only 8 percentage points or from 41 to 49 percent. These data indicate the importance of surface mining operations to the total production of coal in the various geographic areas of the United States.

174 The rapid growth of surface coal mining over the last two decades took place with little control being exercised to return the land to productive use. Some States have enacted legislation to control land restoration, however, these controls lack uniformity and often are no more than token efforts toward solution of the problems being encountered. More recently, marked efforts to minimize this assault on the environment have been taken with several States enacting rather stringent legislation to restore the land and surrounding environment.

174 The National environmental movement has incorporated land restoration and/or preservation as a societal goal. This action has resulted in introduction of several bills in Congress to address the problem at the Federal Government level and thereby, provide more uniform and appropriate legislation by the several States to regulate surface mining of coal.

174 This report has as its objective, the evaluation of the House of Representatives Bill 11500, as reported on May 30, with respect to present and projected coal supply in the United States and to indicate the impact that H.R. 11500, as amended, if passed in its present form, would have on coal production.

175 General Assumptions and Background Data

175 The impact that provisions of H.R. 11500, if enacted, may have on the surface mining of coal are related to several production periods and include, where feasible, delineation of that impact according to method of surface mining, physical land feature, and geographic area. Coal statistics in 1971 and 1972 were assumed to be representative of current production because the source of supply and method of recovery used in those years would be virtually the same. Estimates for subsequent years beyond 1977 reflect changes in sources of supply.

175 The coal production estimates for the years, 1975, 1977, 1980, and 1985 are taken from the projections made for the Interagency Coal Task Force in the Project Independence Blueprint program.

175 Coal production data and reserve information related to slope angle were taken from the report, "Coal Surface Mining and Reclamation," prepared for the Senate Committee on Interior and Insular Affairs by the Council on Environmental Quality.

175 The bill as written is subject to wide interpretation. This study attempts to define the effects of a wide range of interpretations and applications - ranging from very strict to very loose. This report was developed within the context of the language of the bill itself.

176

—

4
Table
1. -
Proje
cted
Coal
Produ
ction
n1
4 (
Thous
and
short
tons)
Year Deep Surface Total
1975 335,700 349,300 685,000
1977 360,990 394,010 755,000
1980 396,530 498,470 895,000
1985 458,870 641,130 1,100,000

176 n1 Corresponds to the "Business as Usual" scenario of Bureau of Mines working papers for the Interagency Coal Task Force, Project Independence Blueprint.

177 Surface Coal Mining Techniques

177 Surface mining of coal can be accomplished by one or more of four general methods of recovery: (1) area strip mining, (2) contour strip mining, (3) auger mining, and (4) mountaintop removal. Auger mining generally is employed with contour stripping to recover a higher percentage of the open coalbed, but would not be applicable to mountaintop mining. A brief description of these methods and their application are as follows:

177 Area Strip Mining.

177 This method is employed where the topography is flat or slightly rolling hills. A dragline is used to cut a trench, removing the materials (overburden) covering the coalbed. After the first cut has been made the coal removed, a second parallel cut is made with the overburden from the second cut being placed in the void left from the first cut. Successive cuts are made in a like manner until the coalbed is mined. The overall effect of area stripping, if no restoration is practiced is a final open cut with a remaining highwall and a spoil pile. Further, unless the existing top soil are segregated from the overburden removed and replaced the land may not readily support vegetation for years. However, if the land is graded properly and the top strata either replaced or treated to support vegetation, the land can be restored within a relatively short period to productive use.

177 Contour Strip Mining.

177 Contour stripping is employed in mountainous terrain or higher rolling hills where the coalbed has been isolated by glaciation or past erosion. Starting at the coalbed outcrop, a cut is made along the slope of the hillside to create a flat niche or "bench" upon which the earth moving equipment can operate to recover the coal. The first cut is placed on the downslope, with the severity of land affected depending largely on the steepness or slope of the hillside being mined. The coalbed is exposed in this manner until the highwall reaches a height that is limited by the

ability of the equipment to remove the overburden, thus, the grade or slope angle of the land governs the width of the bench and the amount of coal that can be exposed and mined on the bench. Following the removal of the coal from the bench. Following the removal to recover the exposed coalbed in the established highwall. That method is auger mining.

178 Auger Mining.

178 As previously indicated, auger mining generally is associated with contour stripping. Large horizontal drills or augers are placed in the exposed coalbed in the highwall and holes up to 5 or more feet are bored to depths of 500 feet or more to recover a greater percentage of the exposed coalbed. Also, this method can be used in coal outcroppings exclusive of other surface mining methods where coal cannot be safely mined by underground methods. Auger mining accounts for roughly 2.5 percent of the total production of bituminous coal and lignite mined.

178 Mountaintop Removal.

178 Mountaintop mining differs from contour mining in that all the overburden or the entire top of the hill or mountain above the coalbed is removed to expose the coalbed and recover the maximum amount of the entire coalbed. This method is a relatively new mining concept and had its origin with the advent of more advanced and larger surface mining equipment, thus, it is not used widely as yet, and is limited more to the larger operators as opposed to small operators, primarily due to equipment costs.

179 Potential Adverse Environmental Effects

179 Surface coal mining has not been assessed as a major source with respect to the overall air pollution problem. However, at the local level, airborne dust from daily operations as well as abandoned spoil piles, do contribute to air pollution. Generally, these are not serious enough to warrant much attention. With respect to land and water pollution, surface mining does pose a serious threat to the environment, if appropriate steps are not taken to negate such effects. It is an established fact that surface mining is at least a temporary assault on the environment. How severe, or conversely, how minimal, the residual effect surface mining will be is dependent to a large degree upon the method of mining utilized and the conservation measures practiced by the operator in the implementation of that method and, of course, to a greater measure what land and

water restoration practices are taken prior to, during, and after the actual mining operation.

179 Some of the more commonly assessed adverse effects of uncontrolled surface coal mining have been:

179 1. Deterioration of economic value of the land disturbed.

179 2. Unsightly unreclaimed land.

179 3. Destruction of original vegetation.

179 4. Stream pollution for acid water and silt.

179 The Department of the Interior reported that by 1965 more than 1.3 million acres of land had been disturbed by surface mining of coal. Further, the Department estimated the rate of growth of surface mined coal production would relate to approximately 46,000 - 50,000 acres that would be affected annually which would bring this figure to approximately 1.7 million acres by 1974.

179 Over 6 million acres have been undermined in the U.S. in extracting coal; sometime in the future all can cause land surface subsidence. Where subsidence has occurred, an almost impossible reclamation situation exists characterized by broken land, which continually caves, water losses, underground burning coal in many places, and other problems. Thus, surface subsidence from underground mining of coal is a far greater problem than disturbance of land areas due to surface mining and should be treated separately from effects of surface mining.

179 The increased future demand for coal coupled with immediate demand for coal to supply conventional coal markets will rely heavily on present sources of coal supplies and with production realized employing present mining methods. To entertain the thought that this Nation can afford to impede seriously the mining of coal by surface methods is a dangerous and precarious position. Likewise, those who do not recognize the wisdom of rehabilitation of the land affected by such mining operations are destined to hold an untenable position. The answer lies in an arbitrated position that recognizes the need for coal as a domestically secure raw energy fuel and the need for preservation of the environment within the bounds of economies of our societal needs.

180 A cursory examination of available background data and information relative to coal production by surface mining revealed that much of the detail needed to assess some of the provisions of H.R. 11500, is nonexistent. Only a few of the several coal producing States have legislation on the books which would approximate many of the provisions of H.R. 11500. Every effort was made to quantify the impact of implementation of the bill where data and experience warranted. This section of the report details by subject matter those losses which may be quantified.

180 For purposes of estimating potential losses of coal production the terms "Probable" and "Possible" are used in this report. These terms are defined as follows:

180 Probable - That loss in production that might be expected to occur according to applied judgment factors. Where interpretation of the bill's provisions vary, ranges from a maximum to a minimum loss, that may be likely to occur, are indicated.

180 Possible - That loss in production that conceivably could occur according to interpretation of the bill's provisions ranging from a maximum (very strict) to a minimum (very loose) production loss.

181 Interim Compliance

181 Our critique of the interim program outlined in Section 201 (Initial Regulatory Authority) has as its principal concern the timing of the various steps of required compliance.

181 Both the immediate necessity for all new operations to comply with the new requirements of the Act, and the four-month limit for existing operations to come into compliance, are not reasonable. State regulatory agencies will need a certain period of time to interpret the bill, and formulate compliance and enforcement policies or regulations. In some cases, applicable State law may require formal procedures extending several months. Many if not most new operations would be suspended during this interval. Where existing operations are operating under a "no-year" permit, operators may become unwilling to take normal steps, such as renewing, applying for extensions, or obtaining additional bonding, to extend their operations. There may also be a tendency for State regulatory agencies to delay taking action until they have had an

opportunity to study the Federal interpretation of the interim standards contained in the preliminary version of the regulations for the mandated interim Federal enforcement program: these probably will be published three or four months after date of enactment.

181 The recommendation is offered that new operations not be required to come under the interim standards for three months and that State regulatory authorities be obliged to act on applications for new permits within one month of submission. A parallel recommendation, that State regulatory agencies be compelled to state within two months their own interpretation of the interim regulations and that operations then have four months to come into compliance, also is offered.

181 In addition, it seems possible that several of the interim performance standards either separately or in conjunction, could cause significant difficulties, including marked production loss, during the interim period. These are the restrictions against placing spoil downslope on steep slopes, the requirement to restore mined land to approximate original contour, the apparent injunction against allowing subsidence, and the overall effect of H.R. 11500 on small operators. All of these are addressed elsewhere, but certainly some of their impact seems likely during the interim period before improved reclamation techniques and additional or new equipment becomes available.

182 Restoration to Approximate Contour.

182 This requirement presents particular problems as it affects mountaintop removal methods in southern Appalachia and thick-seam strip mining.

182 Restoration to approximate original contour is mandated in both the interim performance standards, Section 201(b)(2), and the permanent performance standards, Section 211(b)(2). This term is defined as follows:

182 "The term "approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated except that water impoundments may be permitted where the regulatory authority determines that they are

necessary or desirable for reclamation or public recreation uses."

182 Under the interim standards, however, exceptions are allowed to this standard if:

182 "The regulatory authority issues a written finding that one or more variations from these provisions will enable the affected land to have an equal or higher post-mining use and such use will be achieved within a reasonable time, is consistent with surrounding land uses and with local, State and Federal law and can be obtained only if one or more exceptions to the above provisions are granted."

182 (a) Mountaintop Removal

182 In itself, the above exception seems broad enough to permit mountaintop removal mining under the interim standards. In addition, the following proviso appears in the interim standards under a restriction on placing spoil downslope:

182 "That the regulatory authority may permit limited or temporary placement of spoil in a specified area of the downslope on steep slopes in conjunction with mining operations which will create a plateau with no highwalls remaining, if such placement is consistent with the approved postmining land use of the mine site."

183 (b) Thick-seam Area Strip Mining

183 In addition to the definition of approximate original contour and the broad exceptions allowed to it under the interim standards, the following proviso relating to thick-seam, shallow-burden strip mining appears in both the interim and permanent performance standards:

183 "Provided, that in surface coal mining which is carried out at the same location over a substantial period of time, where the operation follows the coal deposit vertically and the thickness of the coal deposit relative to the volume of the overburden is large and where the operator demonstrates that the overburden, giving due consideration to volumetric expansion, at a particular point on the mining site is insufficient or unavailable from other portions of the site to restore the approximate original contour, the operator at a minimum, shall backfill, grade, and compact (where advisable) in order to cover all acid-forming and other toxic materials, to achieve at least the angle of repose and to facilitate an ecologically sound land use compatible

with the surrounding region but not necessarily meeting the revegetation requirements of subsection (3)."

183 Despite the apparent intent of the proposed legislation here to exclude thick-seam, shallow-overburden strip mines from the requirement to restore to approximate original contour, the definition of the type of mine qualifying under the proviso does not appear to include the large Western area strip mines where operations are pursuing thick seams with relatively shallow overburden on a basically horizontal plane.

183 Barring inclusion under the above proviso, the status of thick-seam, shallow-overburden Western mines would seem to depend on the definition of approximate original contour and the possibility of exclusions under the interim or permanent standards.

183 If the phrase, "resembles the configuration of the land prior to mining," is construed to mean a relatively level area within the final areal pit, then present production would not seem to be in jeopardy. If, however, the phrase is synonymous with "original elevation," then most of the present surface coal production in Wyoming and part of that in southern Montana could be eliminated - an estimated 11 million tons. The general exclusion clause in the interim period is probably broad enough to include Western thick-seam, shallow-overburden mines. Given the nature of the land being mined and the land surrounding, however, these mines probably could not qualify for exclusion from the permanent performance standards.

184 The intent of this proviso appears to permit spoil placement on the downslope in connection with mountaintop mining. However, most current mountaintop mining practices go beyond "temporary" or "limited" placement of spoil downslope. Therefore, it is questionable if this wording would support such intent.

184 Under the permanent standards, however, this proviso does not appear, and exceptions are granted only "where an industrial, commercial, residential, or public facility development is proposed for a post mining use . . .," and if "the proposed development is deemed to constitute a higher or better economic or public use of the affected land, as compared with the premining use . . ."

184 Mountaintop removal methods are now in practice principally in eastern Kentucky.

According to a recent survey, approximately 75 percent of surface coal production in eastern Kentucky is now being extracted by mountaintop removal. In question, therefore, is an estimated 22 million tons of coal produced by mountaintop removal methods in Kentucky.

184 The most rigid interpretation of the language of Section 201 as it applies to mountaintop mining during the interim period would eliminate the use of this method of surface production. The most favorable (and likely) interpretation would leave virtually all of this type of mining unaffected.

184 Under the permanent performance standards of Section 211, the greater part of mountaintop removal mining would be banned. Very little of the eastern Kentucky land subject to this type of mining would seem to qualify for exceptions on the basis of being reclaimed to a higher or better economic or public use.

184 Because alternative techniques of contour strip mining are available to replace mountaintop mining, it is difficult to quantify the disruption that interference with mountaintop mining would occasion.

184 The problem of the possible restraints on mountaintop mining could best be eliminated by specific provision under both the interim and permanent performance standards for permanent head-of-the-hollow or valley-fill spoil placement.

185 With a most severe interpretation of approximate original contour, therefore, no production would seem likely to be affected during the interim period, although all would be effected afterwards. With a liberal interpretation of approximate original contour, no production would be affected either during the interim period or thereafter. An unquantifiable amount of production might, of course, remain unaffected under any circumstances if a suitable water impoundment could be planned for reclaiming the pit.

185 The potential problems of thick-seam, shallow-overburden Western mines could probably best be resolved by appropriate rephrasing of the proviso probably intended for them in both the interim and permanent performance standards.

5
 Table
 2. -
 Effect
 of
 H.R.
 11500
 on
 Mountaintop
 removal
 methods
 Minimum
 production

| Year (tons) | Projected production by mountaintop removal methods (tons) | Estimated production loss | | |
|----------------|---|---------------------------|---------|----------|
| | | Possible Maximum | Minimum | Probable |
| 1972 | 22,000,000 11,000,000 | 22,000,000 | 0 | |
| 1975 | 26,972,000 3,500,000 | 26,972,000 | 0 | |
| 1977 | 29,609,000 3,500,000 | 29,609,000 | 0 | |
| 1980 | 35,513,000 0 | 35,513,000 | 0 | n1 |
| 1985 | 43,882,000 0 | 43,882,000 | 0 | n1 |

186 n1 Assumed that by these years alternate strip mining techniques which would begin to replace mountaintop removal methods in (1976 and) 1977 would have completely replaced them at appreciably higher cost.

186 For the construction of this table it was assumed that mountaintop removal mining methods would continue to be largely confined to eastern Kentucky and would continue to account for 75 percent of eastern Kentucky surface production.

186 For the estimate of the "probable" figures on this table, it was assumed that mountaintop removal mining would not be banned by H.R. 11500 during the interim period but would be banned under the permanent performance standards. During 1975, it was assumed that some operators who had been practicing mountaintop removal mining would have withdrawn from mining because of the uncertainties of starting new operations with the technique, which might extend beyond 1977. During 1977, while alternate stripping technology would be in fairly wide

use at significantly higher cost, some operators would be finishing their last projects with mountaintop removal mining and withdrawing from mining.

187

—
—

5

Table
3. -
Effect
of
H.R.
11500
on
Thick-
Seam,
Shallow-
Overburden
Mines

| Year | Projected production (tons) | Estimated Production Loss (tons) | |
|----------|-----------------------------|----------------------------------|---------|
| | | Possible Maximum | Minimum |
| Probable | | | |
| 1972 | 12,460,000 | 12,460,000 | 0 |
| 0 | | | |
| 1975 | 31,591,000 | 31,591,000 | 0 |
| 0 | | | |
| 1977 | 43,161,000 | 43,161,000 | 0 |
| 0 | | | |
| 1980 | 66,719,000 | 66,719,000 | 0 |
| 0 | | | |
| 1985 | 101,867,000 | 101,867,000 | 0 |
| 0 | | | |

—
—

187 For the construction of this table, it was assumed that thick-seam, shallow-overburden mining would continue to take place mainly in the Powder River Basin in Wyoming and Montana, and that Powder River Basin coal would continue, as in 1972, to constitute 67 percent of projected Northern Great Plains strip coal production.

187 For the "probable" estimate, it was assumed that the key clause in H.R. 11500, which could exempt the Powder River Basin mines from the requirement to restore mined land to

approximate original contour would be interpreted to do so.

188 Restriction of Spoil on the Downslope

188 If State steep slope definitions currently in effect (20 degrees for Maryland, 28 degrees for Kentucky and Tennessee, 33 degrees for West Virginia, and individual permit review in Ohio and Pennsylvania govern the prohibition of spoil on the downslope) are permitted to stay in effect until the permanent steep slope definition of 20 degrees or less (a regulation possibility for some areas) become effective, only production from Alabama, Virginia, and possibly minor tonnages from other States would probably be affected in the interim period years of 1975 and 1977. To arrive at the maximum possible production loss for the interim years, it was assumed that all of the projected production from slopes of 20 degrees or more in Alabama and Virginia could be lost if strip mining on slopes of 20 degrees or greater was abolished due to this no spoil on the downslope provision. To arrive at the minimum possible production loss for these same years, it was assumed that strip mining regulations for Alabama and Virginia would be enacted or amended to be similar to adjoining States and thus result in no immediate loss in production. To arrive at the probable production loss due to this provision, it was assumed that for the interim years the effect would be similar to that experienced by other Appalachian States during the first operating year of their regulations, and was judged to range from 10 to 25 percent.

188 When the permanent standards become effective, the steep slope definition becomes 20 degrees or less. States with steep slope definitions of greater than 20 degrees will need to redefine their definitions and this will subject a larger quantity of projected production to the no spoil on the downslope provision. The effect could be especially severe upon the production of some of the low-sulfur coals of Appalachia. To arrive at the maximum possible production loss for 1980 and 1985, it was assumed that all of the projected production from slopes of 20 degrees or more would be lost due to cessation of strip mining on these slopes because of the no spoil on the downslope provision. To arrive at the minimum possible production loss, it was assumed that the mining operators would be able to completely handle this no spoil on the downslope provision by adapting mining techniques to totally eliminate the effect of this condition. To arrive at the probable production loss, it was assumed that the effects and range of production

loss for the interim period would be similar in 1980 and 1985.

188 All production projections for 1975, 1977, 1980 and 1985 were based upon the assumption that each of the various slope angle ranges would continue to supply the same percentage of the total production in Appalachia that was supplied in 1971. The 1971 production percentages were obtained from a Council on Environmental Quality study for Coal Surface Mining and Reclamation.

189

—
—
7
Table
4. -
Effec
t of
No
Spoil
on
the
Downs
lope
of
Steep
Slope
s

| Year | Total actual and projected strip and auger production (tons) | Projected production from steep slopes (20 degrees and up) (tons) | Estimated Production Loss (tons) | | | |
|--------------------|---|--|----------------------------------|---------|------------|---------|
| | | | Possible | | Probable | |
| | | | Maximum | Minimum | Maximum | Minimum |
| 1972 1,343,000 | 291,284,000 | 74,349,000 | 13,426,000 | 0 | 3,357,000 | |
| 1975 1,610,000 | 349,300,000 | 83,587,000 | 16,099,000 | 0 | 4,025,000 | |
| 1977 1,816,000 | 394,010,000 | 89,796,000 | 18,160,000 | 0 | 4,540,000 | |
| 1980 10,496,000 | 498,470,000 | 104,964,000 | 104,964,000 | 0 | 26,241,000 | |
| 1985 12,575,000 | 641,130,000 | 125,745,000 | 125,745,000 | 0 | 31,436,000 | |

*5*Table 5. - Effect on
 Projected Production from
 Surface Coal Mines on
 Federal and Indian Lands

| Production (Tons) | Year | Projected Production | Estimated |
|----------------------|------|----------------------|--------------------------|
| | | (tons) | loss Possible Maximum |
| Minimum | 1972 | 9,882,000 | |
| | 1975 | 55,220,000 | |
| 0 | | | |
| Federal | 1977 | 70,820,000 | 10,700,000 |
| 0 | | | |
| Lands | 1980 | 85,720,000 | |
| 0 | | | |
| | 1985 | N.A. n1 | |
| | 1972 | 8,719,000 | |
| | 1975 | 21,500,000 | |
| 0 | | | |
| Indian | 1977 | 34,300,000 | 12,800,000 |
| 0 | | | |
| Lands | 1980 | 43,900,000 | |
| 0 | | | |
| | 1985 | N.A. n1 | |
| Total | 1972 | 17,601,000 | |
| Federal | 1975 | 76,720,000 | |
| 0 | | | |
| and | 1977 | 105,120,000 | 23,500,000 |
| 0 | | | |
| Indian | 1980 | 129,620,000 | |
| 0 | | | |
| Lands | 1985 | N.A. n1 | |

189 n1 Not Available.

189 The actual production from surface coal mines on Federal and Indian lands was obtained from the U.S. Geological Survey, Conservation Division. The projected production was obtained from U.S.G.S. data which listed by State of origin to point of destination the actual tonnage under contract. Section 225 (Federal Lands) allows the Secretary 18 months to implement a Federal lands program. The time required for Secretarial action is speculative, but a one-year delay could preclude the mining of 23.5 million tons.

6
 Table
 6. -
 Effect
 on
 Under
 ground
 Mining
 Due
 to
 Subsidence

| Year | Projected Production (Tons) | Estimated Production Loss (Tons) | | | |
|------|-----------------------------|----------------------------------|---------|------------|---------|
| | | Possible | | Probable | |
| | | Maximum n1 | Minimum | Maximum n1 | Minimum |
| 1972 | 304,104,000 5,322,000 | 106,436,000 | 0 | 26,609,000 | |
| 1975 | 335,700,000 5,875,000 | 117,495,000 | 0 | 29,374,000 | |
| 1977 | 360,990,000 6,317,000 | 126,347,000 | 0 | 31,587,000 | |
| 1980 | 396,530,000 4,957,000 | 99,133,000 | 0 | 24,783,000 | |
| 1985 | 458,870,000 4,589,000 | 91,774,000 | 0 | 22,944,000 | |

191 n1 Assumes regulations in force.

191 Projected and actual underground production were obtained from Table 1 and the Mineral Industry Surveys' report, "Coal - Bituminous and Lignite in 1972." It was assumed for 1972, 1975 and 1977, that an estimated 35 percent of the coal mined by underground methods would be produced from mines with shallow cover and would be most severely impacted by subsidence control regulations. Mines with shallow cover were defined as those mines where the cover over the coalbed being mined ranges up to 300 feet. For 1980, it was assumed that only 25 percent of the coal mined by underground methods would be produced by shallow mines and for 1985, this shallow mine production was assumed to be only 20 percent. The expected decrease in production from shallow mines was based upon the following assumptions:

191 1. Further development of operating mines into deeper cover;

191 2. Decrease in availability of shallow coals due to historical exploitation;

191 3. Possible technological changes in strip mining overburden removal allowing maximum overburden removal limit to approach 300 feet;

191 4. Possible decrease in shallow bed mining due to subsidence interpretation of this law.

192 To arrive at the maximum possible production loss due to the anti-subsidence provisions of Section 212 and 704, it was assumed that the most extreme view would be that any coal mined from shallow beds could affect the surface and therefore the entire shallow mine production could be lost. To arrive at the minimum possible production loss due to subsidence, it was assumed that the percentage recovery by underground mining could be decreased enough to minimize the problems of subsidence by leaving larger pillars, driving narrower entryways, non-mining of selected areas, and other control methods. Although this would result in a greatly increased loss of recoverable reserves, the actual production loss would approach or be zero since it was assumed that the producing mining machinery or manpower would not be permitted to stand idle while an area was not being mined but would be producing coal in some other minable area of the mine. To arrive at the probable production loss due to subsidence, it was assumed that, while either one extreme or the other could be applied in some individual cases, in the overall view based upon judgment approximately from 5 to 25 percent of the maximum possible production loss would be lost.

192 Although subsidence can be caused by mining at any depth, this table considers only depths to 300 feet.

193

*7*Table 7. -
Effect on Small
Strip and Auger
Mines

| Year | Actual or Projected Strip and Auger Production (Tons) | | Estimated Production Loss (Tons) |
|------|---|----------------------|----------------------------------|
| | From Mines Producing | From Mines Producing | |
| | 1,000 or more | 1,000 to | |

| | Probable | | tons | 50,000 tons | Possible | |
|------|------------|-------------|------------|-------------|------------|---------|
| | Maximum | Minimum | | | Maximum | Minimum |
| 1972 | | 291,284,000 | 33,921,000 | | 33,921,000 | 0 |
| | 16,960,000 | 8,480,000 | | | | |
| 1975 | | 349,300,000 | 38,086,000 | | 38,086,000 | |
| 0 | 19,043,000 | 9,522,000 | | | | |
| 1977 | | 394,010,000 | 41,028,000 | | 41,028,000 | |
| 0 | 20,514,000 | 10,257,000 | | | | |
| 1980 | | 498,470,000 | 48,433,000 | | 48,433,000 | |
| 0 | 24,216,000 | 12,108,000 | | | | |
| 1985 | | 641,130,000 | 58,299,000 | | 58,299,000 | |
| 0 | 29,150,000 | 14,575,000 | | | | |

—
—

[See Table in Original]

193 Small strip and auger mines, in this instance, are defined as those mines where the annual production ranges from 1,000 to 50,000 tons. The small mine and the total strip and auger productions for 1972 were obtained from the Mineral Industry Surveys' report, "Coal-Bituminous and Lignite in 1972." The corresponding projected productions for 1975, 1977, 1980, and 1985 were obtained from Table 1. An assumed condition for these projected tonnages was a constant ratio between small mine and total production based upon 1972 production percentages. The projected small mine production for each coal supply area was calculated on these assumption and these productions were totaled to obtain the production for the entire country.

193 It appears that the data and bond requirements of Section 210, in regard to applying for a mining and reclamation permit, and other sections of this law, as well, will result in increased costs for all strip and auger mining operators and could result in a more decided impact on the small or marginal mine. To arrive at the maximum possible production loss due to the equipment and manpower requirements that would be needed to comply with this act, it was assumed that all of this production from these small mines would be lost because of prohibitive costs arising from added equipment and manpower needs. To arrive at the minimum possible production loss due to these added costs, it was assumed that none of this small mine production would be lost

because the mine operator would be able to fulfill his added equipment and manpower requirements and would be able to obtain the needed capital with the increased costs being absorbed by a relevant increase in the selling price of this product. To arrive at the probable production loss due to this act, it was estimated, using the past experience of States where strip mining laws have been enacted and effected, that while some mines would be closed and others would have decreased production, the overall effect for the country would be a probable production loss for this small mine category ranging from 25 to 50 percent.

195 Disturbances to the Hydrologic Balance

195 Provisions for minimizing disturbances to the hydrologic balance are contained in both the initial and in the permanent environmental protection performance standards of the bill. Although the permanent standards far surpass the initial standards by stating the methods to be used in achieving minimal disturbance to the hydrologic balance, areas of confusion still exist, the effects of which, vary with interpretation of both standards.

195 The initial standards, Section 201, specifically state that particular attention will be given to the aquifer recharge capacity of the mining area and to the protection of alluvial valley floors and stream channels, in addition to minimizing disturbances to the hydrologic balance at the minesite and associated offsite areas and to the quantity and quality of water entering surface and ground water systems. Included in the specific methods to be followed in the permanent standards to minimize the hydrologic balance are two provisions that are subject to interpretation: 211(b) (14) (D), restoring the aquifer recharge capacity of the minesites to approximate pre-mining conditions, and 211(b) (14) (E), preserving throughout the mining and reclamation process the hydrologic integrity of alluvial valley floors in the arid and semiarid areas of the country.

195 The ground-water hydrology of a coal-bearing area may be disrupted whenever coal is mined either by underground or surface methods. Whenever the coalbed and associated shales that serve as an impenetrable barrier to ground water are disrupted, the groundwater hydrology is affected by allowing the water to drain to lower strata. Also, where the coalbed serves as an aquifer, interruption of the aquifer in sufficient extent may lower wells dependent upon such sources for supply. In addition, water quality may be changed if backfill material contains

significant amounts of soluble minerals not present in the aquifer.

195 The hydrologic balance and aquifer protection features of the bill particularly impact future coal production in the West where water use and allocations are of critical concern. Riparian rights as well as State water pollution regulations may sterilize reserves when major aquifers may be affected by mining operations. Water rights on a property may be separate and distinct from the mineral or surface estate, further reinforcing a tendency toward strict interpretation of the hydrologic features of the bill.

195 It is recommended that those sections of the bill that call for minimization of damage to and preservation of the hydrologic balance be changed to specifically define what is meant or intended by these provisions. Also, because the authors of the bill probably intended protection of major flood plains when they call for protection of alluvial valley floors, regardless of their present proximity to now existing flood plains, it is recommended that, "alluvial valley floors," be deleted and "existing flood plains containing perennial streams that cannot be temporarily diverted in a manner that will not have long-term adverse environmental consequences . . .," be inserted in lieu thereof.

196 These changes would clarify the confusion that exists even among hydrologists as to what is intended by minimizing damage to or preserving the hydrologic balance and would eliminate confusion concerning which geologic areas of an alluvial nature can be mined. This latter point is particularly important where the ancestral alluvial valley floor is now perched above or may exist as terraces far above the present drainage level in an existing flood plain.

197 Comments on Other Provisions of H.R. 11500

197 Timetable of Events, Chart A H.R. 11500

197 (a). Actions of Coal Operator:

197 All existing operations (including projects committed before September 15, 1973) must comply with interim standards of Section 201 within 4 months of enactment (Section 201(c)). All new operations begun after enactment must meet interim standards (Section 201(b)).

197 An operator may continue under an existing valid permit for up to 36 months after

enactment if he submits an application for a new permit, complying with permanent regulations, and if his application is not acted upon by the regulatory authority (Section 201(g)). An operator must apply for the new permit within 18 months of enactment. This permit application must be acted upon by the regulatory authority, within 6 months of approval of the State program, or 36 months after enactment, whichever is sooner (Section 201(e)).

197 (b). Actions of Secretary of the Interior:

197 The Secretary must issue permanent regulations within 6 months of enactment, and hold at least one hearing (Section 202).

197 The Secretary must implement a temporary Federal enforcement program within 6 month of enactment (Section 201(f)), which provides for monitoring State interim efforts.

197 Twenty-four months after enactment, the Secretary will impose a permanent Federal program of regulation in States which have not submitted their own for approval (Section 203(e), 204(a)). This may be delayed until 30 months after enactment if the State submits a program for approval, which is ultimately disapproved at the end of the 6 months deadline (Section 203(b)), for the Secretary's action.

197 (c). Actions of the States:

197 Proposed programs may be submitted by the States to the Secretary for approval any time up to 24 months after enactment (Section 203(a)), such programs to be acted upon by the Secretary in 6 months (Section 203(b)). A State program that has been disapproved may be resubmitted by the State up to the 30 month deadline set by Section 203(c). This means that to be sure of avoiding a permanent Federal program, the State must submit a program no later than 22 months after enactment, in order to have two tries at approval for its State program. The proposed program must be acted upon by the Secretary in 6 months, and if it is disapproved, the State then has up to 2 more months to resubmit its program, no later than 30 months after enactment (Section 203(c)). The Secretary must act upon it within 2 more months, for a possible total of 32 months (Section 203(c)).

198 Moreover, Section 205 says that a State may submit a program for approval to the Secretary any time after a permanent Federal program is implemented (which could be any time

after 24 months), if it failed to get its State program submitted and/or approved before.

199 [See Illustration in Original]

200 Designation of Areas Unsuitable for Surface Coal Mining

200 The provisions of Section 206 do not have an effect on present surface coal mine operations nor on short-term production. They do have, however, a long range effect that is indeterminable on reserves of strippable coal. The degree of effect depends upon the propensity of the regulatory authority, particularly the States, to declare such areas. The areas of concern would be primarily fragile lands or aquifer containing and recharge areas in the West, agricultural lands in the Midwest, and steep slope areas in the Appalachian States. The degree of propensity for such designations would vary with public support for such administrative action. Therefore, quantification of coal resource losses due to application of Section 206 would be impossible without knowledge of the degree this Section will be applied, although the practical acknowledgment of possible large scale losses must be recognized.

200 Section 206 requires that an area shall be designated as unsuitable for all or certain types of surface coal mining operations if reclamation pursuant to the requirements of the Act is not demonstrated to be physically or economically feasible. Four discretionary criteria are established which would permit a designation of unsuitability if operations would: (i) be incompatible with Federal, State or local plans; or (ii) affect fragile or historic lands in which such operations would result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; or (iii) affect renewable resource lands where losses or reduction could occur in long range productivity of food or fiber products or water supply including aquifer and aquifer recharge areas; or (iv) affect natural hazard lands where life and property could be substantially endangered, including areas subject to frequent flooding and of unstable geology.

200 The largely discretionary nature of Section 206 provisions for designating lands unsuitable for surface coal mining on Federal lands or lands under the jurisdiction of the States would affect reserves and long-term production to an extent somewhat difficult to delineate until State and Federal land-use plans are developed. The effects of the criteria application for such designation

most difficult to discern are the areas of renewable resources and areas incompatible with Federal, State, or local plans. The other provisions, areas demonstrated to be physically or economically impossible to mine and areas of natural hazards, do not present insurmountable problems. With changes occurring in the economics of coal production and utilization, what may not be minable today, may be minable at a later date. Also, the prudent operator would not mine a natural hazard area unless the technology were available for profitable, safe production in such areas.

201 The vagaries in the land-use planning provisions, however, must be recognized to the extent that some lands will be designated as renewable resource areas or as having importance in future Federal, State, or local uses to meet specific objectives. Therefore, of the land area containing coal, it is possible that as much as 10 percent of these coal reserves would be sterilized by designation them as land unsuitable for mining. This estimated total land area containing coal measures could amount to some 45,860 square miles or some 1.3 percent of the land mass. Such designations would not inhibit present operations, nor permitted areas in effect at the date of enactment, but only those that are proposed following enactment of H.R. 11500.

201 The requirements contained in subsection (d) of Section 206, moreover, require the regulating authority, State or Federal, to prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal. In effect an "energy impact statement" would be required before an area could be designated as unsuitable for mining.

201 The applicability of Section 206 is reinforced by a Section 203 requirement that the State program to be submitted to the Secretary for approval by the close of 24 months after enactment before permanent regulatory authority can be assumed by the States shall incorporate a process for designation of lands unsuitable for surface mining.

201 Section 206 provisions require the Secretary to conduct a review of Federal lands according to the previously enumerated criteria to determine areas unsuitable for surface coal mining. After such determination, the Secretary would be required to withdraw such areas or

condition any mineral leasing or mineral entries to limit surface coal mining in such areas.

Present operations on such Federal lands would not be affected, but future operations would be affected to the extent that the Department exercises the options available - withdrawal of such areas from coal entries or limitations on coal leasing or entries.

202 Effect on State Law

202 Section 207 of the bill recognizes and supports the prerogative of the States to enact and enforce laws or regulations that provide for more stringent environmental controls for surface mining and reclamation operations than the baseline provisions of this proposed Federal law and subsequent regulations authorized thereby. The present diverse mix of State regulations to suit particular topographic, geologic, climatic, hydrologic and political conditions within each State would continue to exist to the extent that the particular States set standards above the baseline standards contained in this Act.

202 In effect, this provision recognizes the sovereignty of the States to enact legislation to govern matters within each individual State. The worst case scenario would be abolition of surface mining by a State for that entire State or, as in the case of West Virginia, for a portion of the State: West Virginia has legislation that prohibits surface coal mining in 22 counties.

202 The reasonable case scenario would consist of the baseline provisions of this bill prevailing in the States with particular provisions enacted by the States to suit conditions peculiar to each State. Thus, it is reasonable to expect that diversity of State provisions will remain, but with less range of difference than presently exist.

202 Permit Application Requirements

202 Several of the Permit application requirements, Section 210, seem likely to cause disruption in existing approval patterns, and consequently in interruption of production. These include particularly stipulations for test borings or core samplings, data on subsurface information, and an analysis of the potential hydrological impact of an operation. While the effect will be felt nationally, it will probably be the greatest in States where these requirements are not now in existence, and on small operators. In southern Appalachia where both of these conditions are particularly prevalent, this effect will probably be the most severe.

202 The requirement that the results of test borings or core samplings accompany a permit application will probably constitute a financial hardship for many small operators who have not previously been confronted with the relatively formidable costs of drilling. Nor is it clear that the detailed data gathered in this manner will be necessary in all cases for an operator to demonstrate to a regulatory authority that he has the ability to carry out his reclamation plan in an environmentally acceptable manner. Information obtained from routine prospecting operations with a bulldozer may be sufficient in many instances - particularly where comparatively small acreages are involved, to satisfy the data needs of both operators and regulatory authorities. Furthermore, a requirement to supply data from drillings or borings is likely, especially in steep terrain, to necessitate the construction of additional lengths of prospecting roads to move drilling rigs to appropriate sites above coal seams, thereby giving rise to unnecessary environmental disturbance.

203 Requirements for geological information likewise seem to go beyond that needed in many circumstances for determination and avoidance of potential environmental damage. For instance, no State is currently believed to be specifically requiring subsurface information from a professional geologist as part of a mining map or plan.

203 Stipulations for data on hydrology, including an assessment of the probable hydrologic consequences of a mining operation incorporating base line data, also seems inappropriate - not least in the more humid areas of the country where water supply is not severely limited. Specific requirements for the collection of sufficient data to show the quantity and quality of local water flow under year-round conditions could seriously slow or discourage permit application - particularly where small operations are planned.

203 The specifics of these and other permit application requirements might better be left to the individual regulatory authorities to determine on the basis of uniform, minimum guidelines issued by the Secretary of the Interior.

203 Prohibition of Mining in National Forests

203 Retention of the prohibition in Section 209 of mining on national forests would sterilize some 7 billion tons of reserves, an amount that must be recognized as having a sizeable

impact on the total near surface, easily minable reserves. This prohibition would not affect present operations; however, future operations would be prevented.

203 Impoundments

203 Provisions contained in Section 201(b)(5)(B) in the interim standards for surface coal mines, Section 211(b)(16) of the permanent performance standards for surface coal mines, and in Section 212(b)(4) of the standards for underground coal mines for the safe construction of coal waste slurry impoundments state that such structures, at a minimum, will be constructed with a margin of safety compatible with that of structures constructed under P.L. 83-566 (16 U.S.C. 1006). The standards developed under P.L. 83-566 apply to small earth-fill dams constructed for water control under the Department of Agriculture's Soil Conservation Service program and would not be entirely applicable to large-size coal waste slurry impoundments more than 25 feet in height.

204 Regulations for construction, maintenance and inspection of coal slurry waste impoundments are being developed in the Department of Interior's Mining Enforcement and Safety Administration, and, when promulgated, will be the standards coal mine operators will have to primarily adhere to, in addition to any such regulations developed under the authority of this bill. Therefore, it is counter productive to have such a provision in this bill that may counter or set different requirements for impoundment construction. It is suggested, therefore, that the applicability of P.L. 83-566 (16 U.S.C. 1006) is highly questionable, and that this standard be deleted from this bill.

204 Establishment of Right to Bring Citizens Suits

204 (a) As written, Section 223 permits anyone, anywhere, whether on the basis of actual valid legal interests or personal cause only, to bring civil action against the permittee, the Government, or the regulatory authority. This could result in total legal frustration in implementing the Act and in inhibiting continued coal mining activities. This section should be rewritten to carefully define and limit person who may institute civil action to those who can clearly demonstrate that actions of the permittee or governmental agencies have infringed on their physical well-being or pose an eminent danger thereto.

204 (b) This section permits any citizen of the United States, who is injured in any manner to bring action for damages against an operator who fails to comply with the provisions of this Act, or of any regulations, order, permit, or plan of reclamation issued by the Secretary. As written, should an operator determine that it would be in his best interest to terminate an operation after being directed by the Secretary to comply, then, an employee or any other citizen affected from the loss of jobs or income may bring civil suit against the operator for such loss. This section should be rewritten to exclude this type of damage and limit civil suits to personal injury and property damage.

205 Reclamation of Past Mined Lands

—
—

*7*Table 8.
- Estimates
of Fees
According
to Rank of
Coal and
Method of
Btu
Determinati
on

| Area supply Differenti area | Rank of coal | Average Btu (Dry) | Cents per ton | Average Btu (A.R.) | Cents per ton | al |
|-----------------------------------|-----------------|----------------------|------------------|-----------------------|------------------|------|
| 1 | Bit. | 13,610 | \$33.48 | 13,150 | \$3 2.35 | 1.13 |
| 2 | Bit. | 13,910 | 34.21 | 13,450 | 33.09 | 1.12 |
| 3 | Bit. | 12,930 | 31.80 | 11,870 | 29.20 | 2.60 |
| 4 | Lig. | 10,980 | 27.01 | 8,150 | 2 0.04 | 6.97 |
| 5 | Bit. | 12,770 | 31.41 | 11,630 | 28.61 | 2.80 |
| | Sub.-Bit. | 12,250 | 30.14 | 10,270 | 25.26 | 4.88 |
| | Lig. | 10,870 | 26.74 | 7,040 | 17.32 | 9.42 |
| 6 | Bit. | 13,130 | 32.30 | 12,390 | 30.48 | 1.82 |
| | Sub.-Bit. | 12,320 | 30.31 | 9,720 | 23.91 | 6.40 |
| 7 | Bit. | 12,390 | 30.48 | 11,820 | 29.01 | 1.47 |
| | Sub.-Bit. | 11,160 | 27.45 | 8,620 | 21.21 | 6.24 |

—
—

205 1 As Received.

205 a. Fee Provision, Orphaned Lands

205 Abandoned Mine Reclamation Title IV provides under Section 401(d) for the payment to the Treasurer of the United States by operators of surface and underground mines a reclamation

fee of 1.23 cents per million Btu's. The use of the reclamation funds is spelled out, but the basis for collection is unclear. Coal analysis is reported on both a Dry and an As Received (wet) basis. However, when coal is purchased on a heat basis, the As Received analysis is normally used. The above table depicts the differential between the Btu determinations.

205 b. Past Mined by Operator

205 As presently stated in Section 404, the mine operators shall eliminate continuing polluting discharges, mine or refuse bank fires, and conditions that present an imminent hazard to the environment or to the health or safety of the public, on mined lands where the mining operator has in the past conducted mining operations on or beneath the surface of the land and still hold mineral or other rights of such land. By July 1, 1977, all mining operators will have to be in compliance or be subject to procedures and penalties of Title II of the Act.

206 The responsibility of the operator should be extended to July 1, 1985 to permit adequate time to eliminate those burning waste banks; acid drainage sources; subsidence holes; open drifts, shafts and slopes; coalbed fires; and other hazards on lands that they have mined in the past and on which they retain mineral or surface rights. Although the public enjoyed the benefits of mining operations during their productive years, the public should not fall heir to the external social costs of the operations. This principle has been demonstrated in the Black Lung Benefits program and in the present Pennsylvania reclamation law that provides for reclamation of all abandoned mined land within the new permit area to the present-day standards.

206 Protection of the Surface Owner

206 Provisions of Section 709 provide for written consent of the owner of the surface estate, or a waiver by the owner before surface mining can commence on private lands where the mineral estate is in private ownership. Where the surface is in private ownership and the coal is owned by the Federal Government, the written consent of the owner or a document of acquiescence is required before mining can commence. Also, when the surface coal mine is likely to affect the hydrologic balance, the mine operator is required, as a condition of the permit application, to:

206 1. Obtain the written consent of all water rights holders who may reasonably be anticipated to be affected.

206 2. Provide evidence of capability to provide a substitute water supply at least equal in quantity and quality to these owners of water rights.

206 3. Obtain a bond to compensate water rights owners for reduction in water quantity and quality and for damages to the surface estate for any loss of productivity caused by a loss of water quantity or quality.

206 These provisions are particularly inhibitory to mining in the arid and semi arid areas of the Western States. Although they would not be applicable to present permits, any new permits to mine would be affected where the surface owner does not wish to transfer the surface rights to the mining operator or to give written consent to mine.

206 According to data provided in the Bureau of Land Management's Draft Environmental Impact Statement, Proposed Federal Coal Leasing Program, some 45 percent of the present Federal Coal Leases, or 350,009 acres of Federal coal presently under lease occur under privately held surface.

207 The original language of H.R. 11500 provided for bonding to reimburse the surface owner for damages when he had not given his consent or waiver to allow mining. This provision should be retained to permit production of coal belonging to the public.

207 Special Bituminous Coal Mines

207 Section 226 is superfluous because these mines would be covered under the provisions of Section 201(b)(2)(B) during the initial regulatory program and of Section 211(b)(8) of the permanent performance standards. This provision was specifically tailored to exempt the Kemmerer Coal Company's Sorenson mine in Lincoln County, Wyoming, from the reclamation requirements of Section 201 and 211.

207 Amount of Strippable Coal Reserve

207 Total coal (demonstrated reserve base) available for both surface and underground mining methods amounts to 433.9 billion tons, of which 136.7 billion tons are considered strippable and 297.2 billion tons require underground mining methods (includes auger reserves). By assuming an overall recoverability factor of 50 percent, recoverable total coal amounts to 217 billion tons, of which 68.4 billion tons are considered strippable. Based upon the reserves of strip coal, it is

essential to insure the existence of BOTH surface and underground mining industries, not only an underground mining industry as indicated in Section 101(d).

207 Establishment of Office of Surface Mining Reclamation and Enforcement

207 Provisions of Title V authorize the establishment within the Department of the Interior of an Office of Surface Mining Reclamation and Enforcement with the proviso that no authority, program or function in any Federal Agency which has as its purpose promoting the development or use of coal or other mineral resources, shall be transferred to the Office. This provision abrogates the Secretary of the Interior's executive responsibility for placing the authority for administration within any existing bureau or combination of bureaus within the Department.

207 It is recommended that the authority for placement of administrative responsibility be placed solely with the Secretary of the Interior. Then, the Secretary can assign this responsibility at his discretion within any existing bureau, any combination of existing bureaus, or with a new bureau.

207 A Program For Non-Coal-Mine Environmental Impact Control

207 Title VI provides: (1) authority for designating any area of Federal lands as unsuitable for any type of mining, underground or surface, for minerals and materials other than coal, and (2) authority for a study of all types of mining, surface or underground, to determine the type, nature, and location of mining practices that cause adverse environmental effects on public lands or waters, and the value, usage or enjoyment of private lands or waters. This study would determine, also, the types of regulations or controls necessary to assure obtaining needed minerals and energy fuels. This is to be completed within 18 months with the recommendations reported to Congress by the end of that time-frame.

208 Because this bill is primarily a coal bill, and the 18-month period is too short for a meaningful comprehensive study, it is recommended that Title VI be deleted from the bill.

208 Surface Disposal of Coal Waste

208 Section 201(b)(5)(A) in the interim standards for surface coal mines, Section 211(b)(17) of the permanent standards for surface coal mines, and Section 212(b)(3) of the standards for

underground coal mines provide for the environmentally safe disposal of coal wastes on the surface. These standards duplicate those contained in the regulations for surface disposal of coal waste that have been developed under the authority of the Federal Coal Mine Health and Safety Act of 1969. These provisions, therefore, are an unnecessary duplication of present regulations in force. It is recommended that these provisions be deleted from the bill.

209 RECOMMENDATIONS

209 The Bureau of Mines feels that strong but workable Federal coal surface mining control and reclamation legislation is needed. The following changes, based on the attached report, are therefore recommended to H.R. 11500:

209 1. Interim program. All time-frame requirements should be extended by a minimum of 90 days to facilitate adequate administration.

209 2. Designating lands unsuitable for surface mining. The procedure for designation of lands unsuitable should be improved and the bill should be amended to allow permit-by-permit approval of surface mining.

209 3. Underground mining. Because of the complexities of subsidence and other aspects of underground mining, special legislation is needed in this area; therefore, legislation pertaining to underground mining should be precluded from H.R. 11500.

209 4. Exclusion of surface mining in national forests and Federal lands. National forests should be left open for coal development under multiple use principles. The section on Federal lands should provide for the operation of new mines on new leases during the interim period during which the Secretary of the Interior would implement a Federal lands program.

209 5. Minimize hydrologic balance disturbance. Clarification of this section is recommended inasmuch as no standards or baseline data exist for hydrologic control or definition.

209 6. Non-coal mine environmental impact control. Non-coal mine regulations should be included only in conjunction with a full non-coal regulatory program and not be included in coal surface mine legislation H.R. 11500.

209 7. Protection of the surface owner. Recognizing the necessity for protection and

reimbursement of damages to the surface owner, it is felt that such rights are provided for under existing State and Federal legislation; therefore, surface owner protection section of H.R. 11500 should be amended to provide appropriate bonding requirements for protection of surface owners who do not own the mineral rights.

209 8. Application for permit. Sections of the bill require filing of information that is beyond the capability of the operator to develop on his own and may involve economic hardship to the operator in acquiring the expertise needed to meet provisions of the bill, including areas for which appropriate standards have not been established. With the exception of broad parameters applicable to the immediate permit area, determination of permit criteria should be established by the Secretary, after public hearings, and published in the regulations as dictated by Act.

210 9. Backfill to approximate original contour and backfill to approximate original contour on steep slopes. Clarification of interpretation of "original contour" is recommended so as to provide for mining of thick seams under relatively thin overburden and to further provide for acceptable reclamation under new techniques or technology of surface mining such as block cut or haul back methods.

210 10. No spoil on down slope on steep slopes. Current and emerging technology is ameliorating spoil on the down slope of steep slopes in several States. Therefore, it is recommended that this provision be applied on a permit-by-permit basis at the discretion of the regulatory authority.

210 11. Performance criteria. Inasmuch as standards for hydrologic balance have not been identified and other performance criteria inadequately assessed, it is recommended that the Secretary be permitted the flexibility of developing workable and effective performance criteria during the interim period.

210 12. Citizens suits. It is recommended that appropriate changes be made in the forums hearing cases especially with respect to judicial review to provide a reasonable avenue for citizens suits and yet limit judicial harassment of legitimate operators.

210 13. Reclamation fee. It is recommended that the fee provision indicate whether this fee be on an as received basis with respect to Btu content of the coal.

211 August 9, 1974

211 Memorandum

211 To: Director, Bureau of Mines

211 Through: Assistant Director - Mining

211 Deputy Director - MRED

211 From: Acting Chief, Division of Environment

211 Subject: Reassessment of H.R. 11500 on the impact of coal supply

211 This responds to verbal request on July 30 from your office (Dr. Morgan) for an up-to-date estimate of the loss in coal supply caused from H.R. 11500 as reported by the House on July 25.

211 Bureau staff engineers who analyzed H.R. 11500 in May have made a similar assessment of those portions of the bill considered to be detrimental to the Nation's coal supply. It is the consensus of the staff that several areas which previously concerned the Bureau have now been corrected by changes in the language of the bill. We no longer expect coal production losses from provisions pertaining to mountaintop mining, thick seam mining and subsidence from underground mining. However, in 1975 there could be losses of from 14 to 38 million tons from those dealing with spoil in the downslope and small surface mines. The enclosed table shows the results of our latest analysis for those areas that previously concerned the Bureau.

211 A complete updating of the May report will be forwarded to your office in the near future.

211 Thomas P. Flynn, Jr.

211 Enclosure

211 cc: AD - Mining

211 DD - MRED

211 Division of Environment

211 James Paone

211 T. P. Flynn

211 Files:MRED-Min-Env

211 EBM:RHCox:pel 8/2/74

211 Retyped EBM:RHCox:pel 8/6/74

211 Retyped EBM:RHCox:sk 8/9/74 *

212

—
—

*5*Possible Effects
of Selected
Features of H.R.
11500 on Coal
Production
5(Millions of
Tons)

| Selected Features | 1975 | | 1980 | |
|---------------------------------------|----------|------------------|----------|------------------|
| | Possible | Minimum Expected | Possible | Minimum Expected |
| Mountaintop Mining | 0 | 0 | 0 | 0 |
| Thick Seams, Shallow Overburden | 0 | 0 | 0 | 0 |
| Spoil on Downslope | 16 | 3 | 105 | 18 |
| Small Surface Mines | 38 | 14 | 48 | 18 |
| Subsidence from Underground Mining | 0 | 0 | 0 | 0 |
| Possible Overall Effect | 38 | 14 | 105 | 18 |

—
—

212 1 Assumes parts of Virginia and Alabama surface-mined coal production will be affected, and that in the interim other States will continue as now.

212 Please Note:

212 (a) The above figures are not cumulative.

212 (b) These figures do not include estimates for possible loss of production due to interpretation to lands unsuitable for mining, national forests, hydrological balance, Federal lands, surface owners' protection, and other provisions of the bill.

212 Please refer to report for discussions of these items.

212 Source: Bureau of Mines Department of the Interior A Report - An Analysis of H.R. 11500 as amended, Effect on Coal Production.

212 7/30/74

213 [*]

214

—

—

*5*Potential
Effects of Draft
Conference
Committee Report
(October 7, 1974)
on Coal Production
5(Millions of
Tons)

| Feature | 1975 | | 1980 | |
|--|----------|------------------|----------|------------------|
| | Possible | Minimum Expected | Possible | Minimum Expected |
| Spoil on downslope | 16 | 3 | 105 | 18 |
| Small surface mines | 38 | 14 | 48 | 18 |
| Potential overall effect of the above | 38 | 14 | 105 | 18 |

—

—

215 \$

216 United States Department of the Interior

216 March 7, 1975

216 (Bill Avery added * to tables - telephone call to Dr. Falkie 3/11/75)

216 Memorandum

216 To: Staff Assistant for Congressional Affairs

216 From: Director, Bureau of Mines

216 Subject: Assessment of potential impact on coal production of S. 7
and H.R. 25 as
amended

216 This responds to your request of March 6 to Acting Associate Director
- Mineral and
Materials Supply/Demand Analysis for our assessment of potential coal
production losses under
S. 7 as amended and reported by the Senate Interior Committee, and H.R. 25 as
amended and
reported by the House Interior Committee. The enclosed evaluations were made
in consultation
with personnel of the Federal Energy Administration. Because of the urgency
of the request,
these assessments were made without the assistance of the final amended texts
of these bills as
approved by the respective Committees, and without the supporting language of
the Committee
reports.

216 Director

216 Enclosures

216 cc: Federal Energy Administration (Dan Jones)

216 AS - EM (2)

216 Director's Reading File (2)

216 Joe Cooley

216 Acting Associate Dir. - MXSDA

216 Acting Associate Dir. - MXRD

216 AD - Mining

216 L. D. Norman

216 Richard Mote

216 R. A. Pense

216 G. Miller

216 J. Paone

216 Division of Environment

216 Files - MXRD-Min-Env.

217 [*]

218 [*]

219 United States Department of the Interior

219 BUREAU OF MINES WASHINGTON, D.C. 20240

219 March 19, 1975

219 Rec. March 24, 75

219 Memorandum

219 To: Staff Assistant for Congressional Affairs

219 From: Director, Bureau of Mines

219 Subject: Assessment of potential impact on coal production of H.R. 25
as passed by the
House of Representatives on March 18

219 This responds to your request of March 19 to Acting Associate
Director - Mineral and
Materials Supply/Demand Analysis for our assessment of potential production
losses under H.R.

25 as passed by the House of Representatives on March 18. The enclosed evaluation was made in consultation with personnel of the Federal Energy Administration. Because of the urgency of the request, this assessment was made without the assistance of the final amended text of H.R.

25. A copy of our similar assessment of potential production losses under S. 7 as passed by the U.S. Senate on March 12 is also included.

219 Thomas V. Falkie

219 Director

219 Enclosures

219 cc: Federal Energy Administration (D. Jones & F. Brokaw)

220

—
—
*5*Potential Production Losses Under H.R.
25 As Passed March 18th *
5(million tons annually)

| Year | First Full | | |
|--|---------------------------|-------------------|--|
| | Interim Period Minimum | Period Maximum | of Complete Implementation Minimum |
| Maximum | | | |
| Small mines | 11 | 22 | 22 |
| 52 | | | |
| Steep slopes, siltation, aquifers | 3 | 16 | 7 |
| 44 | | | |
| Other losses including alluvial valley floors | 1 | 12 | 11 |
| 21 | | | |
| Total | 15 | 50 | 40 |
| 117 | | | |

—
—
220 * The annual losses could vary even greater under certain interpretations of ambiguous provisions contained in the bill.

221

—
—
*5*Potential Production Losses Under S. 7
As Passed March 12th *
5(million tons annually)

| Year | First Full | | |
|--|--------------------|-------------------|--|
| | Interim Minimum | Period Maximum | of Complete Implementation Minimum |
| Maximum | | | |
| Small mines | 11 | 22 | 22 |
| 52 | | | |
| Steep slopes, siltation, aquifers | 3 | 16 | 7 |
| 44 | | | |
| Other losses including alluvial valley | | | |
| floors | 1 | 12 | 11 |
| 21 | | | |
| Total | 15 | 50 | 40 |
| 117 | | | |

221 * The annual losses could vary even greater under certain interpretations of ambiguous provisions contained in the bill.

222 United States Department of the Interior

222 BUREAU OF MINES WASHINGTON, D.C. 20240

222 March 21, 1975

222 Memorandum

222 To: Assistant Secretary - Energy and Minerals

222 From: Director, Bureau of Mines

222 Subject: Reevaluation of impact of revised language on alluvial valley floors in coal surface mining control legislation passed by the Congress

222 As requested, we have reexamined the data contained in our memorandum of March 19, 1975, to Staff Assistant for Congressional Affairs on assessment of potential impact on coal production of H.R. 25. Following a more complete study of the alluvial valley floor provisions in H.R. 25 and S. 7, we now conclude that with the changes made both in Committee and on the floor, the bill could have a very substantial adverse impact on coal production.

222 With reference to H.R. 25, the changes to which we refer include:

222 (1) the addition in Committee of subsections 510(b) (5) (B) and 510(b) (5) (C), which extend the areas to be protected beyond the alluvial valley floors to surrounding terrain;

222 (2) the modification on the floor of the phrase in subsection 510(b) (5) (A) "would not have a substantial adverse impact on" to "not adversely affect", which, according to its sponsor, would shift the burden of proving impact from those being affected;

222 (3) the key addition on the floor of the phrase in subsection 510(b) (5) (A) "or be located within", which effectively bans the operation of new mines or extended operations of existing mines under new permits within alluvial valley floors;

222 (4) the addition on the floor of the words in subsection 510(b) (5) (A) "or ranching" which extends the possible area of impact from just that where farming is practiced to all of alluvial valley floors; Memo. to Assistant Secretary - Energy and Minerals, Subj: Reevaluation of impact of revised language on alluvial valley floors in coal surface mining control legislation passed by the Congress

223 (5) the addition on the floor of the word in subsection (b) (5) (A) "pasturelands", and the deletion of the phrase "(excluding undeveloped range lands)", which has much the same impact as (4) above.

223 (6) the elimination on the floor of the phrase in subsection 510(b) (5) (A) "where such valley floors are significant to present or potential farming or ranching operations", which also according to its sponsor, would eliminate the necessity to prove significant damage.

223 Of all the above changes, number (3) would have by far the most adverse impact on production.

223 We believe that there will not be an immediate discernible impact on production during the interim period. But in the first full year of complete implementation, we believe that there would be an adverse impact approaching 66 million tons. This includes all of projected 1978 surface coal production from existing or new mines believed to be in alluvial valley floors in the States of Arizona, Colorado, Montana, New Mexico, North Dakota, Utah, Washington, and Wyoming. Enclosure 1 contains our new estimates of the total potential production losses from alluvial valley floor and other provisions of H.R. 25 as passed by the House of Representatives on March 18, 1975.

223 With reference to S. 7, we now conclude that while changes made both in Committee and

on the floor have ameliorated previous language somewhat, the bill could still have a significant adverse impact on coal production, particularly if rigidly interpreted. We believe that there will not be an immediate discernible impact on production during the interim period. But in the first full year of complete implementation, we believe that there would be an adverse impact affecting 11-66 million tons. Enclosure 2 contains our new estimates of the total production losses from alluvial valley floor and other provisions of S. 7 as passed by the U.S. Senate on March 12, 1975.

223 J. D. Morgan for Thomas V. F[*]

223 Director

223 Enclosures

224 Federal Energy Administration (Dan Jones & Fred Drokaw)

224 AS - EM (2)

224 Director's Reading File (2)

224 Joe Cooley

224 Acting Associate Director - MMSDA

224 Acting Associate Director - MMRD

224 AD - Mining

224 L. D. Norman

224 Division of Environment

224 R. A. Pense

224 G. Miller

224 J. Paone

224 W. Kelvie, Univ. of Relations

224 Richard Mote

224 Files - MMRD-Min-Env.

224 William Parks, MS

224 EBM:RAPense:clr 3-21-75

225

—
 *5*Potential Production Losses Under H.R.
 25 As Passed March 18 *
 5(million tons annually)

| Year | First Full | | |
|------------------------------------|--------------------|-------------------|--|
| | Interim Minimum | Period Maximum | of Complete Implementation Minimum |
| Maximum | | | |
| Small mines | 11 | 22 | 22 |
| 52 | | | |
| Steep slopes, siltation, acquifers | 3 | 16 | 7 |
| 44 | | | |
| Alluvial valley floors | 1 | 12 | 33 |
| 66 | | | |
| Total | 15 | 50 | 62 |
| 162 | | | |

—
 —
 225 * The annual losses could vary even greater under certain interpretations of ambiguous provisions contained in the bill.

226

—
 —
 *5*Potential Production Losses Under S. 7
 As Passed March 12 * (million tons
 annually)

| Year | First Full | | |
|------------------------------------|--------------------|-------------------|--|
| | Interim Minimum | Period Maximum | of Complete Implementation Minimum |
| Maximum | | | |
| Small mines | 11 | 22 | 22 |
| 52 | | | |
| Steep Slopes, siltation, acquifers | 3 | 16 | |
| 7%h44 | | | |
| Alluvial valley floors | 1 | 12 | 11 |
| 66 | | | |
| Total | 15 | 50 | 40 |
| 162 | | | |

—
 —
 226 * The annual losses could vary even greater under certain interpretations of ambiguous provisions contained in the bill.

*5*1974 Coal
Production and

Estimated
Alluvial Valley
Production
Based on
Interpretation
of Language in
H.R. 25.

| | | Estimated coal | Estimated strip | Estimated |
|-----------------|--------------|----------------|-----------------|-------------------|
| valley | | production | coal production | production |
| State Company | Mine | (Million tons) | (Million tons) | n1 (Million tons) |
| Arizena: | | 6.3 | 6.3 | 6.3 |
| Peabody Coal | | | | |
| Co. | Black Mesa | x | x | x |
| Colorado n2: | | 7.0 | 3.7 | 3.4 |
| | Annex No. 2 | | | |
| Annex Coal Co. | Strip | x | x | |
| Canon Coal | | | | |
| Corp. | Corley Strip | x | x | |
| Peabody Coal | | | | |
| Co. | Nucla | x | x | |
| Mid-Continent | Coal Basin | | | |
| Coal & Coke Co. | Strip | x | x | |
| Energy Fuels | | | | |
| Co. | Energy No. 1 | x | x | x |
| Energy Fuels | | | | |
| Co. | Energy No. 2 | x | x | x |
| Peabody Coal | | | | |
| Co. | Seneca | x | x | x |
| The Pittsburgh | | | | |
| & Midway Coal | | | | |
| Mining Co. | Edna Strip | x | x | x |
| Kerr Coal | | | | |
| Company | Marr No. 1 | x | x | |
| Montana: | | 14.1 | 13.6 | 10.1 |
| Decker Coal | | | | |
| Company | Decker | x | x | x |
| Divide Coal | | | | |
| Mining Co. | Storm King | x | x | |
| P M Coal Co. | P M Strip | x | x | |
| Square Deal | | | | |
| Coal Co. | Square Deal | x | x | |
| John H. | Coal Creek | | | |
| Schoonover | Strip | x | x | |
| Knife River | | | | |
| Coal Co. | Savage | x | x | |
| Western Energy | | | | |

| | | | | |
|-----------------|-----------------|------|------|------|
| Company | Rosebud No. 6 | x | x | |
| Peabody Coal | | | | |
| Co. | Big Sky | x | x | x? |
| Westmoreland | Sarpy Creek | x | x | x? |
| New Mexico: | | 9.7 | 8.8 | 7.4 |
| The Pittsburg & | | | | |
| Midway Coal | | | | |
| Mining Co. | McKinley | x | x | x |
| Sundance Coal | | | | |
| Co. | Sundance | x | x | |
| Western Coal | | | | |
| Co. | San Juan | x | x | |
| Utah | | | | |
| International | | | | |
| Inc. | Navajo | x | x | x |
| Kaiser Steel | West York | | | |
| Corp. | Canyon Strip | x | x | |
| North Dakota: | | 7.4 | 7.4 | 3.2 |
| Virgil Smith | Arrowhead | x | x | |
| Bardid Div., NL | | | | |
| Industries, | | | | |
| Inc. | Smith-Ullman | x | x | |
| Knife River | | | | |
| Coal Mining Co. | Gascoyne | x | x | x |
| Baukol-Noonan, | | | | |
| Inc. | Larson (Noonan) | x | x | x |
| Sprecher Coal | | | | |
| Mining | Sprecher | x | x | |
| Consolidation | | | | |
| Coal Co. | Glenharold | x | x | |
| Knife River | | | | |
| Coal Mining Co. | Beulah | x | x | x |
| The North | | | | |
| American Coal | | | | |
| Corp. | Indian Head | x | x | x |
| Baukol-Noonan, | | | | |
| Inc. | Center | x | x | |
| Dickinson Coal | | | | |
| Mining Co. | Binek Strip | x | x | |
| Husky | | | | |
| Industries | Husky Strip | x | x | |
| Consolidation | | | | |
| Coal Co. | Velva | x | x | |
| GEO Resources | | | | |
| Inc. | Nelson Strip | x | x | |
| Utah: | | 6.0 | 0.0 | 0.0 |
| Washington: | | 3.9 | 3.9 | 3.9 |
| Black Prince | Black Prince | | | |
| Coal Co. | Strip | x | x | x |
| Washington | | | | |
| Irrigation & | | | | |
| Development Co. | Centralia Strip | x | x | x |
| Wyoming: | | 20.6 | 19.9 | 10.8 |
| Amax Coal Co. | Belle Ayr | x | x | x |
| Wyodak | | | | |
| Resources | | | | |

| | | | | |
|-------------------------------|----------------------|------|------|------|
| Development Corp | Wyodak | x | x | x |
| Arch Minerals Corp. | Seminole No. 1 | x | x | x |
| Arch Minerals Corp. | Seminole No. 2 | x | x | x |
| Rosebud Coal Sales Co. | Rosebud #4-A Strip | x | x | |
| Resource Exploration & Mining | Rimrock Nos. 1 and 2 | x | x | |
| Best Coal Co. | East Antelope Strip | x | x | |
| Pacific Power & Light Co. | Dave Johnston | x | x | |
| The Kemmerer Coal Co. | Elkol | x | x | |
| The Kemmerer Coal Co. | Sorenson | x | x | |
| Big Horn Coal Co. | Big Horn | x | x | x |
| Welch Coal Co. | Welch | x | x | |
| Pacific Power & Light Co. | Jim Bridger | x | x | |
| Total | | 75.0 | 63.6 | 45.1 |

227 n1 Estimated production based upon H.R. 25 as amended. A strict interpretation with burden of proof upon the mining company that no alluvial valley sediments nor the surface or underground water into those alluvial sediments will be adversely affected.

227 n2 Mining on dip slopes are interpreted to adversely affect the alluvial valley sediments.

230 [See Graph in Original]

231 [See Graph in Original]

232 POTENTIAL PROBLEM AREAS

232 PRODUCTION LOSSES SMALL MINES, STEEP SLOPES, ALLUVIAL VALLEYS

232 RESERVES LOSSES ALLUVIAL VALLEYS, NATIONAL FORESTS, OTHERS

232 CONSUMER COST INCREASES MORE OIL IMPORTS, HIGHER COAL COSTS, HIGHER UTILITY RATES

232 JOB LOSSES DIRECT, INDIRECT, RELATED

232 ENERGY IMPACTS DELAY TO PROJECT INDEPENDENCE

232 ECONOMIC IMPACTS TRADE DEFICIT, LOWER PRODUCTIVITY

233 [See Graph in Original]

234 [See Graph in Original]
 235 [See Graph in Original]
 236 [See Graph in Original]
 237 [See Graph in Original]
 238 [See Graph in Original]
 239 [See Graph in Original]
 240

*7*Coal Production
 by Supply Region
 and Type of Mining
 7(MILLION TONS)

| | | *2*1973 Surface Underground | *2*1974 Underground | *2*1977 n1 Surface | Underground |
|--------------------------------|---------|-----------------------------------|------------------------|-----------------------|-------------|
| EAST | Surface | 142 | 233 | 158 | |
| 211 | | | | | |
| 154 | | 271 | | | |
| MIDWEST | | 101 | 56 | 105 | |
| 51 | | | | | |
| 118 | | 53 | | | |
| WEST | | 50 | 10 | 65 | |
| 11 | | | | | |
| 78 | | 11 | | | |
| Total | | 293 | 299 | 328 | |
| 273 | | | | | |
| 350 | | 335 | | | |
| Total Surface & Underground | | | 592 | | |
| 601 | | | | | |
| | | 685 | | | |

240 n1 Based on 1973 ratios.

240 1974 ratios would give 370 million tons of surface production and 315 million tons of underground (1974 ratios were not available when projections were made).

241 POTENTIAL PRODUCTION IMPACTS NOT QUANTIFIED

241 CITIZENS SUITS

241 DESIGNATION OF LANDS UNSUITABLE

241 SURFACE OWNER PROTECTION

241 AMBIGUOUS TERMS

241 INTERPRETATIONS BY COURTS AND REGULATORY AUTHORITIES

241 COMPLEX HYDROLOGIC PROVISIONS

241 ANTHRACITE

241 STATE ACTIONS WITH RESPECT TO FEDERAL LANDS

242 POTENTIAL PRODUCTION LOSSES

242 FIRST FULL YEAR OF IMPLEMENTATION

242 SMALL MINES 22-52 MILLION TONS

242 STEEP SLOPES, SILTATION, AND AQUIFER PROVISIONS 7-44 MILLION TONS

242 ALLUVIAL VALLEY FLOOR PROVISIONS 11-66 MILLION TONS

242 TOTAL 40-162 MILLION TONS

242 ADDITIONAL UNQUANTIFIABLE LOSSES FROM: DESIGNATION OF LANDS UNSUITABLE FOR MINING, SURFACE OWNER PROTECTION, AND VARIOUS AMBIGUOUS TERMS.

243 [See Graph in Original]

244 [See Illustration in Original]

245 [See Graph in Original]

246 [See Graph in Original]

247 [See Graph in Original]

248 POTENTIAL RESERVE-BASE LOSSES

248 NATIONAL FOREST 7.2-7.2 BILLION TONS

248 ALLUVIAL VALLEY FLOORS 10.7-45.5 BILLION TONS

248 OTHER PROVISIONS (HYDROLOGIC, SURFACE OWNERS, ACQUIFERS, ETC.) 0-20.7 BILLION TONS 17.9-73.4 BILLION TONS

249

*2*FY 1977 FEDERAL
 ADMINISTRATIVE
 COSTS n1
 Title III (301(a)
 n2 , 302(a),
 306(d)) \$34.0 million
 Administration
 (712(a) and 712(b)) \$30.0 million

| | |
|---|--|
| Research and Development (713(c)) | \$35.0 million \$99.0 million \$1 16.1 - |
| Title IV n3 | \$158.8 million |

249 n1 Assumes July 1, 1976, enactment.

249 n2 Assumes 35 State Mineral Institutes supported in 1977.

249 n3 Assumes a loss of 40-162 million tons of surface production.

*2*FY 1977 STATE
ADMINISTRATIVE
COSTS
Title III (301(a))

| | |
|----|----------------|
| n1 | \$14.0 million |
|----|----------------|

249 n1 Assumes 35 State Mineral Institutes supported in 1977.

250 [See Illutration in Original]

251 [See Graph in Original]