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TEXT: {E1361} HON. CARROLL HUBBARD, JR. OF KENTUCKY IN THE HOUSE OF REPRESENTATIVES

E1361 Wednesday, March 9, 1977

E1361 Mr. HUBBARD. Mr. Speaker, H.R. 2, the Surface Mining Control and Reclamation Act now being considered by the House Committee on Interior and Insular Affairs, provides many safeguards to prevent the scarring of our Nation's landscape by irresponsible surface mining practices. Unfortunately, H.R. 2, as it has been drafted, would outlaw a number of responsible practices which are essential to safeguard the continued existence of the coal industry in the Nation's largest coal producing State, my State of Kentucky.

E1361 I urge my House colleagues to consider the points raised in the following statement by Mr. Tom Duncan, president of the Kentucky Coal Association. His statement outlines the steps which should be taken to make H.R. 2 a better bill recognizing our energy needs as well as our environmental needs.

E1361 The statement is as follows:

E1361 STATEMENT OF TOM DUNCAN, PRESIDENT OF KENTUCKY COAL ASSOCIATION

E1361 The Kentucky Coal Association membership includes both surface and underground coal operators in both the Eastern and Western Kentucky coalfields.

E1361 You have been and will be presented with strongly conflicting views on the bill and on the need for federal legislation to regulate surface mining. We will limit ourselves to those aspects of

the bill that strike specially harshly at the Kentucky coal industry and on which we have a firm base of knowledge and experience, plus some parts of the bill that cause us deep concern because of vagueness, procedural questions, and the like.

E1361 But, first, we would point out a major underlying flaw in the concept of H.R. 2: It attempts to dictate mining practices rather than to set real environmental goals. If this philosophy had been followed rigidly by the regulatory agency in Kentucky, the industry would not have been allowed to develop the mountain-top removal method of mining which permits almost complete recovery of the coal and has resulted in some of the best reclamation, leaving the mined and reclaimed area in a much more useful condition than it was before mining began. It should be a fully authorized method, encouraged rather than permitted only under highly prejudicial variance provisions.

E1361 In this connection, we would urge the Committee to seek the opinion of landowners, particularly those in the steeper slopes of Eastern Kentucky, where level or gently rolling land is at a premium - and is almost non-existent above the flood-plain. It may be difficult for some to believe, but level land in a mountain business center such as Pikeville can rival land in Washington, D.C., in value. But the fact is that it is at such a premium that the federal government is spending millions of dollars to support a project to cut through a mountain and reroute a river and railroad in Pikeville.

E1361 We might add that the "highwalls" from this project are truly awesome, as are ones along many miles of federal highways in the mountains. But they are essential to improvements for the people in the area and are not considered eyesores by those enjoying these improvements.

E1361 Benches left from contour mining on steep slopes also provide level, stable land above the flood plain, land that is much more useful than the original mountainside.

E1361 And both these benches and the areas reclaimed by the mountaintop removal and hollow fill method provide a key element that usually would not be economically feasible without the recovery of coal - access. The haul roads built to transport the coal represent a major expense, but they offer good access to the reclaimed areas after mining is completed.

E1361 Certainly, not all these areas have been put to their highest use. It may be years before some are developed to their full potential. But the fact remains that many are being put to higher

uses, and the potential of almost all of them is much greater than is that of steep, inaccessible slopes. Again, we urge that you make an extensive study of the views of landowners, who in Kentucky often do not own the coal beneath the surface. Ask them how they would prefer their land be reclaimed. Their views should carry as much weight as those of the owners of land overlying federal coal.

E1361 Perhaps even more pertinent to the avowed purpose of H.R. 2 is that both the mountaintop removal method of mining and only reducing, rather than eliminating, highwalls on steep slopes are sound environmentally. In both cases, of course, the key factor is the proper placement, stabilization and revegetation of the disturbed material, which actually should be determined on a site specific basis. But that is exactly what the bill would prohibit with its requirement that steep slopes be restored to their approximate original contour. This can only lead to increased erosion, siltation and mineralization of streams. The justification can only be on the grounds of esthetics, and even that justification is questionable at best in light of the facts pointed out by the Division of Reclamation of the Kentucky Department for Natural Resources and Environmental Protection.

E1361 Incidentally, the Kentucky Coal Association agrees with the basic position taken by the Commonwealth on mountaintop removal and return to approximate original contour. We differ on some specifics and feel the Commonwealth has not followed the facts to their logical conclusion, but its statements on various elements of the bill merit your careful study. We have had bad mining practices and reclamation in Kentucky in the past, but we have learned from experience, research and innovation.

E1361 It would be irresponsibly shortsighted to fail to use this knowledge on a subject so critical to the nation's energy situation and absolutely vital to Kentucky's economy.

E1361 We have intentionally refrained from invoking the spectre of bankrupt coal operators, unemployed miners and general economic depression in an area whose sole major industry is coal. But even if one accepts the studies cited by advocates of H.R. 2 (and we would welcome the opportunity to debate the reasons we definitely do not), it is apparent that Kentucky will bear a major share of the burden of closedowns and severe disruptions of the industry because of our combination of huge reserves on steep slopes and a tremendous number of small and medium sized operators.

E1361 Our numerous smaller underground operators also will be especially hard hit by the bill's provision for covering all surface activities connected with underground mining. While it will be physically impossible in any event for increased underground production to make up the overall loss in surface production under H.R. 2 in the foreseeable future, it will be just as impossible for Kentucky even to maintain its present underground production if the provisions of H.R. 2 are applied as rigidly as other sections of the bill would indicate.

E1361 To cite only two points, the prohibition against placing material on the outslope and the requirement to restore steep slopes to approximate original contour would place impossible deterrents on developing many potential underground mines.

E1361 They must have level working areas near the mine mouth for equipment and facilities. Often the only way to obtain this space is to cut into the mountainside - and extend the bench with fill material on the outslope. Obviously the operator must stabilize the fill material for it to be useful. Once it is stabilized it would be foolhardy to require that, when operations cease, the material be disturbed again and placed so as to recreate a steep slope subject to severe erosion.

E1361 All this may bring the response that mining simply should be done somewhere else. But the fact is that coal must be mined where it is or not mined at all. If the aim is to hold environmental damage to a minimum and have the land left in a useful condition, we have no quarrel. But if that is the aim, we refer you again to our arguments on mountaintop removal and benches. And if the aim is simply to place added burdens and restrictions on coal operators, especially those in the steep slopes of Eastern Kentucky, we must say that the opportunity of mining "somewhere else" offers precious little comfort for those whose livelihoods are involved. In that connection, we would cite the fact that the requirement for return to approximate original contour applies only to so-called steep slopes - the very terrain where the practice is most harmful environmentally and least defensible on the basis of postmining land use.

E1361 On the procedural questions, the concept of land-use planning embodied in H.R. 2 is perhaps potentially the most dangerous element. Without debating the merits of landuse planning in general, we would point out that this particular effort would be directed specifically at determining only which areas would be "unsuitable" for coal mining - for a variety of vaguely stated reasons.

E1361 No other development would be so restricted, only coal mining, which obviously must be done where the coal is. Even more to the point is the fact that the entire permitting process contemplated by H.R. 2 is aimed at forcing the applicant to demonstrate in almost unbelievable detail that he can and indeed will reclaim the land. But under H.R. 2, even if he could demonstrate this, he could be denied that opportunity on grounds that the area involved has already been declared "unsuitable" for mining on the basis of standards that may have no logical connection with the developing technology of mining and reclamation.

E1361 Indeed, a Kentucky operator could not obtain a permit until the area has been designated as not "unsuitable" - the very thing the permitting process is supposed to accomplish.

E1361 The time implications of this designating process, various other procedures required and the threat of endless hearings, reviews and litigation probably are extremely significant in causing widely divergent predictions of the impact of the bill. It is one thing to calculate the cost of moving a cubic yard of material a given distance, although variables even in that can be amazingly complex. But it is an entirely different matter to estimate even roughly the potential cost of being unable to predict with any certainty whether a permit can be obtained in six months, a year or two years - and thus when the men, machines, transportation facilities and the like should be in place.

E1361 In Kentucky, the question of availability of hydrologists, geologists, soil scientists, etc., will make it impossible to set timetables on the completion of applications. The requirements for hydrological data alone will be beyond the capability of many operators - and far beyond the need of the regulatory agency. The Commonwealth recognizes that it, too, will find it difficult, at best, to obtain the professional and technical personnel required.

{E1362} } Inordinate delays are the only predictable outcome. As we read the bill (and we admit there seem to be as many interpretations to various parts as there are readers - and perhaps even those who haven't read it), there is no time limit set for action on an application for a permit unless there is a protest. That, plus the various studies required and the land-use designation process mentioned above, would leave the applicant in limbo. While some operators already in the industry, perhaps even a few smaller ones, may be able to cope with the process (or at least will be forced to

try by sheer necessity for economic survival), the only real incentive for anyone to enter the industry would be greatly inflated coal prices. That unfortunate development could easily occur under H.R.

2.

E1362 We have seen all too recently what shortages can do to prices. And, while the Kentucky Coal Association believes the best interest of the industry and the nation would be served by a stable market producing a reasonable profit over the long term, it is not difficult to understand the thinking of an operator, fearing he will be legislated or regulated out of business, whose main interest is a quick return. But even those operators with the resources to deal with the requirements of the bill and continue operating over the long term must in simple prudence build into their cost calculations ample provision for the delays and uncertainties found throughout the bill.

E1362 If it is countered that regulations to be issued in connection with the bill will correct these problems, we would answer that harsh experience has taught us that the direct opposite is much more likely. But even if the intent is to clear up such matters through regulations, would it not be much better, surely safer, to state procedural guidelines clearly and specifically in the bill itself? A baffling contradiction is that the bill is rigid in matters dealing with mining and reclamation, where developing technology and vastly differing conditions from site to site dictate flexibility, and yet it is often vague or contradictory in dealing with procedural matters, where the standards should be clear and precise. It is this type of thing which makes H.R. 2 a bill to prohibit mining, at least in many areas, rather than to regulate mining.

E1362 Although we have dwelt mainly on the situation in Eastern Kentucky, because the bill's approach to steep slopes makes its potential impact much more traumatic there, especially in view of the number of small and medium sized operations, the procedures and studies required will be just as burdensome in Western Kentucky. And in Western Kentucky, where the coal's sulfur content is high, production has been decreasing steadily even without H.R. 2. The response, again, may be that the coal should be mined "somewhere else." But the fact is that we have in place the structure, the manpower, skills and machinery, to produce a vast amount of energy critical to the nation's economy - with no way to move that capability "somewhere else" at a whim.

E1362 Kentucky produces more than one-fifth of the nation's coal, although production dropped

to approximately 140,000,000 tons last year from more than 144,000,000 tons in 1975. We are capable of producing much more. Given the right governmental and market climate, we can expand production steadily and strongly for many, many years to come. And we can do it in an environmentally responsible manner, leaving the land in a more useful condition than before mining. But many of our operators will be unable to cope with provisions of H.R. 2 that actually are peripheral to that goal. Their production, which represents a great portion of the entire coal industry's surge capacity, will be sorely missed, particularly in times of an unexpected increase in demand, such as came during the OPEC oil embargo.

E1362 The temptation may be to say that other states will make up for Kentucky's production loss. That, of course, is little consolation to us. And we would doubt the validity anyway. Although many points in H.R. 2 seem aimed punitively at Kentucky, it obviously will have detrimental effects elsewhere. We have not discussed the problem and conditions outside the Commonwealth because there are others much more knowledgeable on those matters. On the other hand, we feel secure in saying that we in Kentucky know much more about our problems and conditions than do others who would take a brief look, or none at all, then prescribe a cure-all. They and those who would impose burdens on Kentucky's coal industry in an effort to gain a competitive advantage would do this nation, as well as us, a great disservice.