

Legislative History

Congressional Record May 18, 1977

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123 CONG.REC. S7867

May 18, 1977

{S7867} AMENDMENT NO. 280

S7867 (Ordered to be printed and to lie on the table.)

S7867 AOC VARIANCE

S7867 Mr. FORD. Mr. President, the amendment that I am submitting here is the same

amendment considered by the Energy and Natural Resources and which failed adoption by two

votes.

S7867 The amendment speaks for itself. S. 7 as written and reported, requires return to

approximate original contour in every instance where mining is undertaken on slopes in excess of 20

degrees. The requirement may well be the most valid in most cases, but my amendment gets to the

point that the bill should not in absolute terms state that return to approximate original contour is a

requirement, the only requirement, with validity in each and every case.

S7867 My amendment proposes a variance procedure from this absolute requirement. The

amendment sets our strict procedures that must be followed together with the specifications for post

mining use. Local planning agencies are brought into the process in the determination that the

variance would result in equal or better post mining uses than would return to approximately

original contour. The amendment requires that permits must be reexamined within 3 years and the

development has to be proven to be proceeding in terms of the plan.

{S} 7868 Mr. President, I ask unanimous consent that my amendment be printed in the

RECORD.

S There being no objection, the amendment was ordered to be printed in the RECORD, as

follows:

S AMENDMENT No. 280

S On page 235, between lines 3 and 4, insert the following:

S "(d) (1) Each State program may and each Federal program shall include procedures pursuant to

which the regulatory authority may permit variances for the purposes set forth in paragraph (3) of

this subsection.

S "(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a

variance from the requirement to restore to approximate original contour set forth in subsection

415(b) (3) or 415(c) (2) of this section may be granted for the surface mining of coal where the owner of the surface requests in writing, as a part of the permit application, that such a variance be granted so as to render the land, after reclamation, suitable for an agricultural, industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.

S "(3) (A) after consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use, and "(B) designed by a registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

S "(4) In granting a variance pursuant to this subsection the regulatory authority shall require that all other requirements of this Act will be met.

S "(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

S "(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively

demonstrates that the proposed development is proceeding in accordance with the terms of the

approved schedule and reclamation plan."

S and on page 235, line 4, by renumbering "(d)" as "(e)"

S AMENDMENT NO. 281

S (Ordered to be printed and to lie on the table.)

S SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 - S. 7

S Mr. ABOUREZK. Mr. President, today I am submitting an amendment to S. 7 which would

conform the Senate bill with the House bill by clarifying that surface owner consent provisions of S.

7 do not apply to Indian lands. This provision was adopted by consent on the floor in the House. It

would guarantee that Indian tribes would not be prevented from having access to the coal underlying

land whose surface rights are owned by non-Indians. Denial of such access by a surface owner

would violate the trust agreements by which Indian tribes were guaranteed subsurface rights by the

Federal Government. The rights of surface owners in these cases would be governed by applicable

local laws.

S I ask unanimous consent that the text of the amendment be printed in the RECORD.

S There beign no objection, the amendment was ordered to be printed in the RECORD, as

follows:

S AMENDMENT No. 281

S On page 305, delete lines 19-21 and insert a new section 515(f) to read: "This section shall not

apply to Indian lands."

S AMENDMENT NO. 282

S (Ordered to be printed and to ie on the table.)

S Mr. HART submitted an amendment intended to be proposed by him to the bill (S. 7), supra.

S AMENDMENTS NOS. 287 AND 288

S (Ordered to be printed and to lie on the table.)

S Mr. DOMENICI submitted two amendments intended to be proposed by him to the bill (S. 7),

supra.

S AMENDMENT NO. 289

S (Ordered to be printed and to lie on the table.)

S Mr. HEINZ. Mr. Rresident, I intend to offer an amendment to S. 7, with my distinguished

colleague from West Virginia, Senator JENNINGS RANDOLPH. This amendment will permit the

establishment of a Coal Research Institute in each State with an interest in this matter. I ask

unanimous consent that the amendment be printed in the RECORD.

S There being no oboection, the amendment was ordered to be printed in the RECORD, as follows:

S AMENDMENT No. 289

S After Section 515 ending on page 305, line 24, insert the following new title:

S TITLE VI-STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

S AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

S SEC. 601. (a) There are authorized to be appropriated to the Secretary of the Interior sums

adequate to provide for each participating State \$200,000 for fiscal year 1978, \$3 00,000 for fiscal

year 1979, and \$4 00,000 for each fiscal year thereafter for five years, to assist the States in carrying

on the work of a competent and qualified coal mining and coal resources and research institute, or

center (hereinafter referred to as "institute") at one public college or university in the State which has

in existence at the time of enactment of this title a school of mines, or division, or department

conducting a program of substantial instruction and research in coal mining and coal preparation

and related research or which establishes such a school of mines, or division, or department

subsequent to the enactment of this title and which school of mines, or division or department shall

have been in existence for at least two years. The Advisory Committee on Coal Mining and Coal

Resources and Research, as created by this title, shall determine a college or university to have an

eligible school of mines, or division, or department conducting a program of substantial instruction

and research in coal mining, coal preparation and related research wherein education and research in

these engineering fields are being carried out and wherein at least four full-time permanent faculty

members are employed: Provided, That -

S (1) such moneys when appropriated shall be made available to match, on a dollar-for-dollar

basis, non-Federal funds which shall be at least equal to the Federal share to support the institute;

S (2) if there is more than one such eligible college or university in a State, funds under this title

shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid to

one such college or university designated by the Governor of the State;

S (3) where a State does not have a public college or university with an eligible school of mines, or

division, or department conducting a program of substantial instruction and research in coal mining,

coal preparation and related areas, said advisory committee may allocate the State's allotment to

one private college or university which it determines to have an eligible school of mines, or division,

or department as provided herein.

S (b) It shall be the duty of each such institute to plan and conduct and/or arrangement for a

component or components of the college or university with which it is affiliated to conduct

competent research, investigations, demonstrations, and experiments of either a basic or practical

nature, or both in relation to coal mining, coal preparation (including anthracite) and to provide for

the training of engineers and scientists through such research, investigations, demonstrations, and

experiments. Such research, investigations, demonstrations, experiments, and training may include,

without being limited to; exploration; the extraction; processing; development; production of coal

resources; coal mining and preparation technology; supply and demand for coal; conservation and

best use of available supplies of coal; the economic, legal, social, engineering, recreational,

biological, geographic, ecological, health and safety, and other aspects of coal mining, coal

preparation, and mineral reclamation from coals, having due regard to the interrelation on the natural

environment, the varying conditions and needs of the respective States, to coal mining and coal

preparation research projects being conducted by agencies of the Federal and State governments, and

other institutes.

S RESEARCH FUNDS TO INSTITUTES

§ SEC. 602. (a) There is authorized to be appropriated annually for seven years to the Secretary

of the Interior the sum of \$15,000,000 in fiscal year 1978, said sum increased by \$2,000,000 each

fiscal year thereafter for six years, which shall remain available until expended. Such moneys when

appropriated shall be made available to institutes to meet the necessary expenses for purposes of:

§ (1) specific coal mining, coal preparation and related research and demonstration projects of

industrywide application, which could not otherwise be undertaken, including the expenses of

planning and coordinating regional coal mining, coal preparation and related research projects by

two or more institutes, and

§ (2) research into any aspects of coal mining, coal preparation and related problems related to the

mission of the Department of the Interior, which may be deemed desirable and are not otherwise

being studied.

§ (b) Each application for a grant pursuant to subsection (a) of this section shall, among other

things, state the nature of the project to be undertaken, the period during which it will be pursued,

the qualifications of the personnel who will direct and conduct it, the estimated costs, the importance of

the project to the Nation, region, or State concerned, and its relation to other known research

projects theretofore pursued or being pursued, and the extent to which it will provide opportunity for

the training of coal mining, coal preparation engineers and scientists, and the extent of participation

by nongovernmental sources in the project.

{S} 7869 (c) The Secretary shall, insofar as it is practicable, utilize the facilities of institutes

designated in section 301 of this title to perform such special research, authorized by this section,

and shall select the institutes for the performance of such special research on the basis of the

qualifications without regard to race or sex of the personnel who will conduct and direct it, and on

the basis of the facilities available in relation to the particular needs of the research project, special

geographic, geologic, or climatic conditions within the immediate vicinity of the institute in relation

to any special requirements of the research projects, and the extent to which it will provide

opportunity for training individuals as mining engineers and scientists. The Secretary may designate

and utilize such portions of the funds authorized to be appropriated by this section as he deems

appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral

fellowships.

S (d) No grant shall be made under subsection (a) of this section except for a project approved by

the Secretary of the Interior and all grants shall be made upon the basis of merit of the project, the

need for the knowledge which it is expected to produce when completed, and the opportunity it

provides for the training of individuals as mining engineers and scientists.

S (e) No portion of any grant under this section shall be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

S FUNDING CRITERIA

S SEC. 603. (a) Sums available to institutes under the terms of sections 301 and 302 of this title

shall be paid at such times and in such amounts during each fiscal year as determined by the

Secretary, and upon vouchers approved by him. Each institute shall set forth its plan to provide for

the training of individuals as mining engineers and scientists under a curriculum appropriate to the

field of coal mining and coal preparation engineering and related fields; set forth policies and

procedures which assure that Federal funds made available under this title for any fiscal year will

supplement and, to the extent practicable, increase the level of funds that would, in the absence of

such Federal funds, be made available for purposes of this title, and in no case supplant such funds;

have an officer appointed by its governing authority who shall receive and account for all funds paid

under the provisions of this title and shall make an annual report to the Secretary on or before the

first day of September of each year, on work accomplished and the status of projects underway,

together with a detailed statement of the amounts received under any provisions of this title during

the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary. If any

of the moneys received by the authorized receiving officer of any institute under the provisions of

this title shall by any action or contingency be found by the Secretary to have been improperly

diminished, lost, or misapplied, it shall be replaced by the State concerned and until so replaced no

subsequent appropriation shall be allotted or paid to any institute of such State.

§ (b) Moneys appropriated pursuant to this title shall be available for expenses for research,

investigations, experiments, and training conducted under authority of this title. The institutes are

hereby authorized and encouraged to plan and conduct programs under this title in cooperation with

each other and with such other agencies and individuals as may contribute to the solution of the coal

mining, coal preparation and related problems involved, and moneys appropriated pursuant to this

title shall be available for paying the necessary expenses of planning, coordinating, and conducting

such cooperative research.

§ DUTIES OF THE SECRETARY

§ SEC. 604. (a) The Secretary of the Interior is hereby charged with the responsibility for the

proper administration of this title and, after full consultation with other interested Federal agencies,

shall prescribe such rules and regulations as may be necessary to carry out its provisions. The

Secretary shall furnish such advice and assistance as will best promote the purposes of this title,

participate in coordinating research initiated under this title by the institutes, indicate to them such

lines of inquiry as to him see most important, and encourage and assist in the establishment and

maintenance of cooperation by and between the institutes and between them and other research

organizations, the United States Department of the Interior, and other Federal establishments.

S (b) On or before the 1st day of July in each year after the passage of this title, the Secretary shall

ascertain whether the requirements of section 303(a) have been met as to each institute and State.

S (C) The Secretary shall make an annual report to the Congress of the annual expenditures, and

work of the institutes in all States under the provisions of this title. The Secretary's report shall

indicate whether any portion of an appropriation available for allotment to any State has been

withheld and, if so, the reasons therefor.

S AUTONOMY

S SEC. 605. Nothing in this title shall be construed to impair or modify the legal relationship

existing between any of the colleges or universities under whose direction an institute is established

and the government of the State in which it is located, and nothing in this title shall in any way be

construed to authorize Federal control or direction of education at any college or university.

S MISCELLANEOUS PROVISIONS

S SEC. 606. (a) The Secretary of the Interior shall obtain the continuing advice and co-operation of all agencies of the Federal Government concerned with coal mining and coal resources and related research of State and local governments, and of private institutions and individuals to assure that the programs authorized in this title will supplement and not duplicate established coal mining, coal preparation and related research programs, to stimulate research in otherwise neglected areas, and to contribute to a comprehensive nationwide program of coal mining, coal preparation and related research, having due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this title, in addition to any direct publication of information by the institutes themselves.

S (b) Nothing in this title is intended to give or shall be construed as giving the Secretary of the Interior any authority over coal mining, coal preparation and related research conducted by any other agency of the Federal Government, or as repealing, superseding, or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with coal mining, coal preparation and related research.

S (c) Contracts or other arrangements for coal mining, coal preparation and related research work

authorized under this title with an institute, educational institution, or nonprofit organization may be

undertaken without regard to the provisions of section 3684 of the Revised Statutes (1 U.S.C. 529)

when, in the judgment of the Secretary of the Interior, advance payments of initial expense are

necessary to facilitate such work: Provided, That authority to make payments under this subsection

shall be effective only to such extent or in such amounts as are provided in advance by appropriation

Acts.

S (d) No research, demonstration, or experiment shall be carried out under this Act by an institute

financed by grants under this Act, unless all uses, products, processes, patents, and other

developments resulting therefrom, with such exception or limitation, if any, as the Secretary may

find necessary in the public interest, be available promptly to the general public. Nothing contained

in this section shall deprive the owner of any background patent relating to any such activities of any

rights which that owner may have under that patent. There are authorized to be appropriated such

sums as are necessary for the printing and publishing of the results of activities carried out by

institutes under the provisions of this Act and for administrative planning and direction, but such

appropriations shall not exceed \$1,000,000 in any fiscal year: Provided, That no new budget

authority is authorized to be appropriated for fiscal year 1977.

S CENTER FOR CATALOGING

§ SEC. 607. The Secretary shall establish a center for cataloging current and projected scientific research in all fields of coal mining and coal preparation. Each Federal agency doing coal mining, coal preparation and related research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for public use a catalog of coal mining, coal preparation and related research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of Government, colleges, universities, private institutions, firms and individuals as may make such information available.

§ INTERAGENCY COOPERATION

§ SEC. 608. The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal coal mining and coal preparation and related research and provide for interagency coordination of such research, including the research authorized by this title. Such coordination shall include -

(a) Continuing review of the adequacy of the Government-wide program in coal mining, coal

preparation and related research;

(b) identification and elimination of duplication and overlap between two or more agency

programs;

S (c) identification of technical needs in various coal mining, coal preparation and related

research categories;

S (d) recommendations with respect to allocation of technical effort among Federal agencies;

S (e) review of technical manpower needs and findings concerning management policies to

improve the quality of the Government-wide research effort; and

S (f) actions to facilitate interagency communication at management levels.

S ADVISORY COMMITTEE

S SEC. 609. (a) The Secretary of the Interior shall appoint an Advisory Committee on Coal

Mining and Coal Resources and Research composed of -

S (1) the Director, Bureau of Mines, or his delegate, with his consent;

S (2) the Director of the National Science Foundation, or his delegate, with his consent;

S (3) the President, National Academy of Sciences, or his delegate, with his consent;

S (4) the President, National Academy of Engineering, or his delegate, with his consent;

S (5) the Director, United States Geological Survey, or his delegate, with his consent; and

S (6) not more than four other persons who are knowledgeable in the fields of coal mining, and

coal preparation and related research, at least one of whom shall be a representative of working coal

miners.

{S7870} (b) The Secretary shall designate the Chairman of the Advisory Committee. The

Advisory Committee shall consult with, and make recommendations to, the Secretary of the Interior

on all matters involving or relating to coal mining, coal preparation and related research and such

determinations as provided in this title. The Secretary of the Interior shall consult with, and consider

recommendations of, such Committee in the conduct of coal mining, coal preparation and related

research and the making of any grant under this title.

S7870 (c) Advisory Committee members, other than officers, or employees of Federal, State, or

local governments, shall be, for each day (including traveltime) during which they are performing

committee business, entitled to receive compensation at a rate fixed by the Secretary, but not in

excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under

section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of

sections 5703 and 5704 of title 5, United States Code, be fully reimbursed for travel, subsistence,

and related expenses.

S7870 AMENDMENT NO. 291

S7870 (Ordered to be printed and to lie on the table.)

S7870 Mr. CULVER (for himself, Mr. PERCY, Mr. ABOUREZK, Mr. HUMPHREY, Mr. BUMPERS, Mr. ANDERSON, and Mr. LEAHY) submitted an amendment intended to be proposed by them jointly to the bill (S. 7) supra.

S7870 Mr. CULVER. Mr. President, the Surface Mining Control and Reclamation Act of 1977 will be before the Senate in the near future. I strongly support the principles contained in this act and commend highly the dedicated effort that has gone into its development. I commend particularly, my colleague from Montana (Mr. METCALF) for his enduring commitment to this essential legislation.

S7870 There are many specific areas of concern that have arisen during the time that this issue has been before the Congress. Among these is the need to protect prime agricultural lands subject to surface mining so that those lands will be available to future generations at their full productive capacity. In order to help meet this need Senator PERCY and I, together with several others of our colleagues, intend to offer an amendment to the Surface Mining Control and Reclamation Act of 1977 designed to strengthen the provisions of this act, as they relate to prime farmland.

S7870 Briefly, our amendment would require that an applicant for a new permit to carry out

surface mining on prime farmland demonstrate, to the satisfaction of the regulatory authority in the

State, that land can be resored to its full premining potential in agricultural production. In addition,

the amendment directs the Secretary of Agriculture to carry out such research and studies as are

necessary to determine the broader impact of surface mining on agricultural production. The

Secretary is also directed to conduct research and experimentation aimed at edeveloping more

efficient and more effective methods of reclaiming farmland subsequent to mining.

S7870 While the current language of S. 7 provides substantial protections along the lines I have

outlined, we feel that this amendment is needed to assure that the standard by which reclamation

plans on prime farmland are judged is the applicant's ability and intent to restore the full agricultural

potential of the land. The current language contains no requirement that these plans show intent to

restore prime farmland to its former agricultural capability. In addition, the bill contains no

reference to prime farmlands and the special considerations that these vital lands demand.

S7870 Prime agricultural land is one of our Nation's greatest natural resources. The permanent

loss of this highly productive land severely undermines our future food production potential and

places greater pressures on our remaining agricultural resources. The rapid increases in the prices of

land, equipment, and fertilizer in recent years give us some indication of what that increased

pressure means in real terms.

S7870 I ask unanimous consent that a copy of the amendment, a copy of the definition of "prime

farmland" used by the Department of Agriculture, and a table prepared by the Office of

Management and Budget containing data of the location of our coal resources and potentially

strippable prime farmland be printed in the RECORD.

S7870 There being no objection, the material was ordered to be printed in the RECORD, as

follows:

S7870 AMENDMENT NO. 291

S7870 On page 208, between lines 21 and 22, insert the following:

S7870 (d) (1) Except to the extent otherwise provided for in paragraphs (2) and (3) of this

subsection, upon enactment of this Act, no application for a permit or revision or renewal thereof

shall be approved pursuant to this section unless the applicant demonstrates to the appropriate

regulatory authority that prime farmland does not comprise more than 10 per centum of the surface

area to be distributed pursuant to such applicant's mining plan. Such demonstration shall be based

upon soil maps and data verified for accuracy by the Secretary of Agriculture.

S7870 (2) Nothing in this subsection shall apply to any permit issued prior to April 1, 1977, or to

any revisions or renewals thereof.

S7870 (3) The appropriate regulatory authority may, after consultation with the Secretary of Agriculture, and pursuant to regulations hereunder by the Secretary of the Interior with the concurrence of the Secretary of Agriculture, grant a variance from paragraph (1) of this subsection if the operator demonstrates and the regulatory authority finds, on the basis of data relating to prime farmland comparable to those covered by the permit application, that the applicant can restore the land affected to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining.

S7870 (4) As soon as is practicable following the date of the enactment of this Act, but in no event later than twelve months following such date, the Secretary of Agriculture shall commence such research, experimentation and studies as are necessary to determine the impact of surface mining operations on agricultural production including the impact on agricultural lands both directly and indirectly affected by such mining and the most effective and efficient procedures for restoring the productive capacity of prime farmlands subsequent to any mining and based thereon, make appropriate recommendations to the Congress and the President within four years after the date of enactment of this Act.

S7870 On page 291, line 3, strike out the period and insert in lieu thereof a semicolon.

S7870 On page 291, between lines 3 and 4, insert the following:

S7870 (30) the term "prime farmland" shall have the same meaning as that previously prescribed,

or hereafter modified, by the Secretary of Agriculture on the basis of such factors as moisture

availability, temperature regime, chemical balance, permeability, surface layer composition,

susceptibility to flooding, and erosion characteristics, and as published in the Federal Register.

S7870 Prime farmland meets the following criteria:

S7870 1. The soils have an adequate moisture supply. Included are:

S7870 (a) Soils having aquic or udic moisture regimes. These soils commonly are in humid or

subhumid climates that have well distributed rainfall or have enough rain in summer that the

amount of stored moisture plus rainfall is approximately equal to or exceeds the amount of potential

evapotranspiration. Water moves through the soil at some time in most years.

S7870 (b) Soils having xeric or ustic moisture regimes and in which the available water capacity

is great enough to provide adequate moisture for the commonly grown crops in 7 or more years out

of 10.

S7870 (c) Soils having aridic or torric moisture regimes and the area has a developed irrigation

water supply that is dependable and of adequate quality. Also included are soils having xeric or ustic

moisture regimes in which the available water capacity is limited but the area has a developed

irrigation water supply that is dependable and of adequate quality. Counties in which there are soils

having these moisture regimes need to be surveyed to determine the areas in which a dependable

water supply of adequate quality has been developed.

S7870 (d) Soils having sufficient available water capacity within a depth of 40 inches (1 meter),

or in the root zone if the root zone is less than 40 inches deep, to produce the commonly grown crops

in 7 or more years out of 10.

S7870 A dependable water supply is one in which enough water is available for irrigation in 8 out

of 10 years for the crops commonly grown.

S7870 2. The soils have a soil temperature regime that is frigid, mesic, thermic, or hyperthermic

(pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have

a mean annual temperature higher than 32 degrees F (0 degrees C). In addition, the mean summer

temperature at this depth in soils with an O horizon is higher than 47 degrees F (8 degrees C); in soils

that have no O horizon the mean summer temperature is higher than 59 degrees F (15 degrees C).

S7870 3. The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1

meter) or in the root zone if the root zone is less than 40 inches deep. This range of pH is favorable

for growing a wide variety of crops without adding large amounts of amendments.

S7870 4. The soils have no water table or a water table that is maintained at a sufficient depth

during the cropping season to allow food, feed, fiber, forage, oilseed crops common to the area to be

grown.

S7870 5. The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter)

or in the root zone if the root zone is less than 40 inches deep, during part of each year the

conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage

(ESP) is less than 16.

S7870 6. The soils are not flooded frequently during the growing season (less often than once in

2 years).

S7870 7. The soils have a product of K (erodibility factor) X percent slope of less than 20 and a

product of I (soil erodibility) X C (climatic factor) not exceeding 60. That is prime farmland does

not include soils having a serious erosion hazard.

{S7871} } 8. The soils have a permeability rate of at least 0.06 inches (0.15 cm) per hour in the

upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is

less than 57 degrees F (14 degrees C); permeability rate is not a limiting factor if the mean annual

soil temperature is 57 degrees F (14 degrees C) or higher.

S7871 9. Less than 10 percent of the surface layer in these soils consists of rock fragments

coarser than 3 inches (7.6 cm). These soils present no particular difficulty in cultivating with large

equipment.

*6*STRIPPABLE

COAL AND

PRIME

FARMLAND

Strippable coal counties			Other available coal reserves (millions of tons)		
Total acres of prime farmland n1 (thousands)	Percent prime farmland n1 (average)	Prime farmlands potentially impacted by stripping n1 (thousands of acres)	Strip coal on Nonprime land n1, n2	Deep-mine coal reserves	
Alabama (10 counties)	1,700	27	459.0	129	1,798
Indiana (16					

counties)	1,600	46	736.0	937	8,948
Illinois (43					
counties)	9,400	63	5,922.0	4,838	53,441
Kentucky (38					
counties)	1,100	23	253.0	5,741	18,185
Maryland (1					
county)	50	13	6.0	86	901
Ohio (24					
counties)	1,000	15	150.0	3,057	17,423
Pennsylvania					
(22 counties)	1,500	17	255.0	854	22,788
Tennessee (17					
counties)	500	11	55.0	282	667
Virginia (4					
counties)	20	2	.4	755	2,833
West Virginia					
(37 counties)	500	5	25.0	1,575	34,377
Missouri (13					
counties)	2,000	37	740.0	1,733	6,073
North Dakota					
(20 counties)	7,700	43	3,311.0	10,328	N.A.
Montana (5					
counties) n4	700	7	49.0	34,668	65,834
Wyoming (7					
counties) n4	200	2	4.0	22,030	29,490

S7871 n1 Data derived from "Report of the Interagency Task Force on the Issue of a Moratorium

or a Ban on Mining in Prime Agricultural Lands," prepared by the Office of Management and

Budget, Soil Conservation Service, Bureau of Mines, Federal Energy Administration, and the

Environmental Protection Agency, February 1977.

S7871 n2 "Impact Of Proposed Moratorium On Surface Coal Production," R. Neil Sampson, Soil

Conservation Service, Apr. 26, 1977.

S7871 n3 U.S. Bureau of Mines.

S7871 n4 Prime lands in these States coincide largely with alluvial valley floors.

S7871 PROTECTING OUR PRIME FARMLANDS WITHOUT HALTING COAL
PRODUCTION

S7871 Mr. PERCY. Mr. President, Senator CULVER and I will present an amendment to S. 7,

the strip-mining regulation bill, which is designed to provide uniform standards of protection for

prime farmlands without eliminating the possibility for surface mining on such lands. A substantial

number of Senators will cosponsor this amendment and their names will be added to the amendment

tomorrow. I would like to answer, at this time, several of the most frequently asked questions about

this amendment:

S7871 First, how much farmland and how much coal production is affected by this amendment?

OMB estimates that, at most, 1.3 percent of our total coal production forecast for 1978 might be

affected by this amendment, which provides that new permits for stripping prime farmlands could be

granted by State authorities only when the applicant showed that the land would be restored to its

original productivity. If every applicant proves this to the satisfaction of State authorities, there will

be no loss of potential coal production at all. The coal companies claim that they can demonstrate

that they can return the land to full productivity. This amendment does not place any unreasonable

burden on them. And it does not apply to mining operations for which permits were granted before

April 1, 1977.

S7871 The same OMB study shows that 12 million acres of prime farmland in 14 major

agricultural States are potentially affected by strip mining, because they are underlain by strippable

coal reserves. These 12 million acres are a substantial share of the 28 million acres of prime land in

these 14 States.

S7871 However, I might add that strip mining is only one of several ways in which our prime

farmlands are being encroached upon. Urbanization takes a far higher annual toll of farmland than

strip mining. Indeed, the coal reserves of this country are so vast - and the fraction occurring under

prime farmland is so relatively small - we are really talking about a phenomenon that is confined to

only a few of our States. But for these few States, it is a most important problem.

S7871 Does the amendment reconcile the legitimate concern of protecting prime farmlands with

the legitimate need to increase coal production? I believe it does. It requires operators to

demonstrate that they can and will restore the land to full productivity after stripping. If no one can

meet this test - an unlikely prospect - we stand to lower coal production by at most 1.3 percent,

unless there is offsetting production on nonprime land. This is not an unreasonable cost to pay for

protecting our prime lands.

S7871 Does the amendment provide a workable definition of "prime farmlands"? Again, I believe

the answer is yes. It uses the definition that has been in use for some time by the Soil Conservation

Service, and this is an extremely detailed and precise statement. The Senator from Iowa has placed

the full text of the SCS definition in the record.

S7871 Finally, does this amendment constitute a "moratorium" on stripping prime agricultural

lands? Clearly, it does not. Some elements of our amendment were proposed several months ago by

the Secretary of the Interior, and were described by him as a "moratorium." But this term was

inaccurate. The administration proposal provided for case-by-case variances for new permits - and

grandfathered all existing permits for stripping prime farmlands. We have retained the case-by-case

variance procedure and the grandfather clause. But we have eliminated all reference to a

"moratorium," and we have written our amendment very carefully to indicate that we accept the coal

companies' own contention that they can restore prime farmlands to full productivity. What we

require is that they demonstrate - to the satisfaction of State regulatory authorities - that they can and

will do so before receiving any new permits. Although our amendment also provides for a detailed

study of restoring prime farmlands after stripping, this is not intended to inhibit State authorities

from granting new permits until the study is completed.

{S7890} Mr. METCALF. Mr. President, we are about to move S. 7, the Surface Mining

Control and Reclamation Act of 1977, into the final stage of its long and tortuous journey to

enactment. S. 7 has been reported out by the Energy and Natural Resources Committee, and I

confidently expect that when it shortly comes before the Senate for debate, my colleagues will join in

moving it to passage with all deliberate speed.

S7890 I have said it before and I now say it again: The Federal legislation embodied in S. 7 is

long overdue. Until Congress establishes a uniform system of minimum environmental protection

performance standards for the mining of all coal, whether that coal is private, State, coal, whether

that coal is private, State, Indian, or federally owned, this administration will find it next to

impossible to implement a national energy policy.

S7890 We all know coal is the kingpin of that policy. S. 7 will enable our coal industry to

proceed under an equitable set of guidelines to develop the capital and the technology necessary for

boosting the annual rate of production by two-thirds within the time period proposed by President

Carter.

S7890 Over the years, opponents of S. 7 have made many unfounded charges in their attempts to

confuse and delay the progress of this bill. Of all those charges, the strangest is the idea that the

States are now doing an adequate job of enforcing reclamation standards which are equal to or better

than the standards in S. 7, and consequently - so runs the argument - Congress should rely on State

regulatory authorities to carry on with only token Federal oversight.

S7890 In order to put this theory to the test, when it surfaced near the end of the last Congress -

following the unsuccessful attempt to override President Ford's veto of H.R. 25, the predecessor bill -

I had a questionnaire prepared. This questionnaire was sent to each of the States together with a

copy of the reclamation standards contained in the bill. I asked each State regulatory authority to

make its own assessment of the relative stringency of its laws and regulations vis-a-vis the

reclamation standards in the Federal bill. In addition, I requested information about the enforcement

capability of the State.

S7890 The results of this survey show conclusively that a very wide discrepancy exists among the

States on both accounts. Some States have laws which are every bit as tough - if not tougher - than

those of S. 7. Many States have well-trained, well-paid inspectors and a superior enforcement capability.

S7890 But clearly there are other States which are woefully deficient.

S7890 Even when a State may have taken steps to bring its laws into closer compliance with the

Federal standards of the bill, it often lacks many of the essential supporting legal provisions. For

example, it may not require performance bonds set high enough to enable adequate reclamation of

the mined site, if the operator should renege on his legal responsibility for reclamation and the State

has to pay to have the job done right.

S7890 It makes no sense whatsoever to give these States another 7 years or longer to come into

full compliance with the requirements of the Federal bill. Yet, this is what proponents of the

so-called exclusive State jurisdiction amendment would have us do. It makes absolutely no sense to

jettison the entire administrative, appeals, citizen participation, inspection, and other essential

enforcement mechanisms Congress has laboriously put together. Yet this is just what this

amendment would do. It would abolish the requirement that States wishing to exercise jurisdiction

must submit a comprehensive program for approval and supervision by the Secretary of the Interior.

S7890 To adopt this disastrous amendment would be to cheat all those who look to Congress to

assure enforcement of fair but stringent reclamation standards within a reasonable time period. In

my view, this amendment amounts to an abdication of congressional responsibility.

S7890 Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the

State-by-State survey of surface mining regulation which I have described, as prepared by the

Congressional Research Service. I urge support for the passage of S. 7, by all who share my belief

that it is time this National puts aside the wasteful years of uncertainty and strife regarding strip

mining, and buckles down to producing the coal we will need in ever-increasing quantity, coal

which must be dug from the Earth in an environmentally acceptable manner.

S7890 There being no objection, the summary was ordered to be printed in the RECORD, as

follows:

S7890 STATE SURFACE MINING LAWS: A SURVEY, A COMPARISON WITH THE PROPOSED FEDERAL LEGISLATION, AND BACKGGRUOND INFORMATION

S7890 (By Duane A. Thompson and David M. Lindahl)

S7890 SUMMARY

S7890 The effectiveness of State regulation of surface mining, as indicated in responses to a

uestionnaire sent by the Senate Committee on Energy and Natural Resources, varies greatly from

State to State. The results from the survey suggest that most requirements of the State laws are far less stringent than the proposed Federal regulations in H.R. 13950 would be. The survey also indicates that the relative weakness of these laws is further compounded in many cases by extremely lenient or even non-existent enforcement of the laws that do exist.

S7890 The usefulness of the Committee's survey is limited by the quality of the responses. which were varied. Some States provided prompt and complete answers as requested. A large number of states, however, including some that produce significant amounts of coal, made only token responses to the Committee's effort to obtain an accurate determination of the existing extent of state control of this problem. The coal mining industry has claimed that State laws are sufficient to prevent future mining abuses; environmentalists and others dispute this claim. So, an accurate understanding of the degree to which the States actually regulate surface mining appears essential to the resolution of the issue of whether or not Federal controls are needed.

S7890 Some States expressed interest in formulating a workable surface mining control and reclamation policy for the Federal Government and were grateful for the opportunity to provide input to the legislative process. Much of the information which was forwarded by the states was too complex to fit into the matrix and had to be footnoted for further explanation.

S7890 Some of the information requiring more detailed analysis was included in the text of the

report.

S7890 As shown in the matrices, virtually all of the states which have surface mining laws require

that mine operators first obtain permits before engaging in active mining. This concept appears

compatible with the requirements of the Federal bill, H.R. 13950 with which, the various states were

asked, by the Senate Energy and Natural Resources Committee through its survey, to compare their

respective laws. Even though the permit requirements are similar in most instances, procedures for

permits in H.R. 13950 are for the most part much more detailed than those of the states, the Ohio

law, being an exception. Ohio mining law is very similar to the Federal proposal and requires

detailed information from prospective mine operators.

{S7891} ABANDONED LANDS RECLAMATION PROGRAMS

S7891 Few of the states in the survey have implemented any programs of reclaiming land which

was mined prior to the passage of the State mining laws. Exceptions to this include Kentucky and

Virginia which have either directly appropriated money for such reclamation or have procured

money from other government agencies such as the TVA. Some of the other states have also

initiated programs to reclaim abandoned lands by using the proceeds from fines for noncompliance

or from permit application fees. Of the States that reported such programs, Kentucky had the largest

expenditures with approximately \$1 .5 million designated for reclamation of abandoned lands. A

large percentage of the coal-producing states which admitted having problems with abandoned lands

also indicated that the largest percentage of these lands either had been or were being left to be

reclaimed naturally.

S7891 MINE INSPECTORS

S7891 Mine inspection problems reported by the various states consisted of:

S7891 Inadequate number of mine inspectors for the number of mining operations under permit in

the state.

S7891 Inadequate professional training for surface mine inspectors.

S7891 Distance of the mine inspectors to the mines being inspected.

S7891 The inspection capabilities vary considerably from State to State. Some of the key

coal-mining states such as Kentucky have ratios of one inspector for 75 coal mines. Others, which

are not major coal producers, such as Kansas, have only one inspector for the entire state. In this

instance, one individual is responsible for the regulation of the total of 97 surface mining operations

in the State. In Georgia the ratio is one inspector to 85 mines, and in Idaho one to 362.

Pennsylvania, one of the most important coal-producing States, replied that it had an

inspector-to-mine ratio of between one to 50 and one to 100. Ratios such as these usually require

inspectors to devote much less time to the inspection of each mine at the cost of the thoroughness of the inspection.

S7891 For example, in the case of West Virginia, the law requires inspectors to inspect each mine at least once every two weeks, with the ratio of mine inspectors to mines in West Virginia being about one to 17.5, that law on the face of it could be hard to administer. An inspector has a difficult time inspecting one mine a day. Given a five-day work week, an inspector in two weeks would have to exert a rigorous effort to thoroughly review 10 mines; 17.5 mines would be that much more difficult. Such high ratios may be the result of inadequate funding for mine inspection in the various states; if true, the ratios could be alleviated by the implementation of Federal strip mine controls with their associated appropriations for mine inspection. In any case, if the demands for coal production projected by the FEA materialize between now and 1985, it is open to question whether the present mine inspection personnel can assume the additional workload that will be generated by the almost certain increase in the number of surface mines that will be opened.

S7891 Many State inspection officers have not had adequate training to detect reclamation problems. A large number of these officials are not graduates of mining engineering programs and, according to the States, lack training in other disciplines such as agronomy, forestry, hydrology, and geology, which are vital to adequate reclamation efforts. It should be noted, however, that many of

the enforcement officers that lack the technical training or have degrees in liberal arts are older and

have been with the enforcement agencies for many years and thus have much experience. The

States, however, appear to be hiring young field inspectors with more substantial backgrounds in

environmental sciences and actual mining experience.

S7891 The location of mine inspectors near the mines which they are to inspect was also

perceived as a problem. Such close proximity could result in the intimidation of mine inspectors

and their families by uncooperative operators; in some cases, substandard wages of the mine

inspectors could make them susceptible to favors from the mining industry.

S7891 CITIZEN COMPLAINTS

S7891 Many State mining laws do not have adequate mechanisms for the filing, consideration,

and disposition of citizen complaints related to coal surface mining. This is evidenced by the

disproportionately small number of operations that were either halted or modified as a result of

citizen complaints. With the exception of Kentucky and West Virginia, very few of the major

coal-mining states conducted hearings arising from such complaints. Although many of the

opponents of the Federal bills have complained that the review and hearings procedures in the bills

would be an unnecessary hindrance, the State suggestion reveals that some improvements in the

present state systems could be made. Of all of the States participating in the survey, Tennessee, South

Dakota, Montana, and Kentucky were the only ones which indicated tht a mining operation had

either halted or been modified as a result of a citizen complaint.

S7891 ENFORCEMENT

S7891 The survey also indicates that even when violations have been discovered a stte, fines

assessed were against the operators were small in size and in number. Kentucky, Montana, Ohio,

and Virginia were among the few States which have actully assessed fines against mine operators for

non-compliance with the law. One of the largest coal producers, West Virginia, indicated in the

survey that no fines or prison sentences had yet been imposed.

S7891 BONDING

S7891 The survey indicates that the most serious shortcoming of the state surface-mining laws

seems to be that of not requiring an adequate amount of performance bond to insure reclamation in

the event of forfeiture by the operator. Indiana, Virginia, Kentucky, Missouri, and Kansas reported

that the average amount of performance bond required of the mine operators would not cover

reclamation costs in the event that the State has to prform that reclamation itself or award a contract

to have the job done. In the case of Indiana, the State agency responded that it had not reclaimed

lands under forfeited bond because the costs exceeded the amount of the bond required of the

operator. Indiana indicated that the average amount of bond forfeited per acre under permit was \$2

68.05. When the State accepted estimates for the reclamation of the land, however, it learned that

the reclamation cost could range between \$2000 and \$4000 per acre, leaving a shortfall between \$1

700 and \$3 700 per acre in the amount of performance bond. Not all of the coal-producing States

have seen this discrepancy develop. Illinois and Ohio are two States that require apparently adequate

amounts of performance bonds, in the \$3 000/acre range; some of the other states require the

performance bond to be sufficient to reclaim the land, whatever the cost, by the state or by a third

party in the event of forfeiture by the operator. This is the same concept proposed by the H.R.

13950. In instances where the mining operation is carried on over a long period of time and where

contemporaneous reclamation is not required, it may be desirable to require a bond in an amount

sufficient to reclaim the affected areas at the end of the projected period for mining. The bond could

cover any increases in costs between the time the permit is granted and the actual reclamation is

started.

S7891 Regardless of the mechanisms used to require reclamation, a feature of the performance

bond which would give it more authority is that an amount to be set which is sufficient to motivate

the operators to completely reclaim the affected areas. The action of forfeiting performance bond in

all cases, therefore, should be less attractive alternative than incurring the cost of adequate

reclamation.

{S} 7898 In the RECORD of May 17, 1977, at page S7742, the text of Mr. ABOUREZK's

amendment No. 279, submitted in connection with the Surface Mining Control and Reclamation Act

of 1977 (S. 7), through inadvertence was not printed in the RECORD. In the permanent RECORD

the amendment will be printed following Mr. ABOUREZK's remarks on page S7743, as follows:

S On page 297, beginning with line 4, strike out all through line 9 on page 299, and renumber

succeeding sections accordingly.

S At the end of the bill, add the following new title:

S "TITLE VI - INDIAN LANDS

S "INDIAN LANDS PROGRAM

S "SEC. 601. Any Indian tribe on whole lands there are or may be conducted surface coal mining

operations may elect, in such manner as the Secretary may prescribe pursuant to section 603, to (1)

assume exclusive jurisdiction over the regulation of such coal mining operations and reclamation

operations pursuant to an approved Indian lands program, (2) have any such Indian lands program

administered by the Secretary, or (3) participate in the Indian lands study authorized by section 611

of this title. In no case, however, shall any election under clause (1) or (2) be construed as

precluding that tribe's participation in such study pursuant to section 611.

S "GRANTS TO TRIBES

S "SEC. 602.(a) The Secretary is authorized to make annual grants directly to any Indian tribe for

the purpose of (1) assisting such tribe in developing, administering, and enforcing an Indian lands

program under this title, and (2) enabling such tribe to realize benefits from the development of its

coal resources while protecting the cultural values of the tribe and the physical environment of the

reservation, including land, timber, agricultural activities, surface and ground waters, and air

quality.

S "(b) Any Indian lands program developed by any Indian tribe shall meet all provisions of this

Act and where any provision of any tribal code, ordinance, or regulation in effect upon the date of

enactment of this Act, or which may become effective thereafter, provides for environmental controls

and regulations of surface coal mining and reclamation operations which are more stringent than the

provisions of this Act or any regulations issued pursuant thereto, such tribal code, ordinance, or

regulation shall not be construed to be inconsistent with this Act.

S "INDIAN LANDS ENVIRONMENTAL PROTECTION STANDARDS

S "SEC. 603. On or before the expiration of the one hundred and eighty day period following the

date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register

regulations covering a permanent regulatory procedure for surface coal mining and reclamation

operations on Indian lands setting mining and reclamation performance standards based on and incorporating the provisions of title IV of this Act, and establishing procedures and requirements for preparation, submission, and approval of Indian lands programs. Such regulations shall be promulgated and published under the guidelines of section 401 of this Act.

S "APPROVAL OF PROGRAM

S "SEC. 604. (a) Each Indian tribe, on whose lands there are or may be surface coal mining operations, which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in title III of this Act, shall submit to the Secretary, on or before the expiration of the eighteen-month period following the date of the enactment of this Act, an Indian lands program which demonstrates that such tribe has the capability of carrying out the provisions of this Act and meeting its purposes.

S "(b) The Secretary shall approve or disapprove an Indian lands program, in whole or in part, within six full calendar months after the date such program was submitted to him, except as provided in section 506.

S "(c) If the Secretary disapproves an Indian lands program, in whole or in part, he shall notify the tribe in writing of his decision and set forth in detail the reasons therefor. The tribe shall have sixty days in which to resubmit a revised Indian lands program, or portion thereof. The Secretary shall

approve or disapprove the resubmitted program or portion thereof within sixty days from the date of resubmission.

S "(d) For the purpose of this title, and section 606 of this Act, the inability of an Indian tribe to take any action, the purpose of which is to prepare, submit, or enforce an Indian lands program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under this Act, or in the imposition of a Federal program. Regulations of the surface coal mining and reclamation operations covered or to be covered by the Indian lands program subject to the injunction shall be conducted by the Indian tribe pursuant to section 605 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of this section and section 606 again shall be fully applicable.

S "(e) The Secretary shall not approve an Indian lands program submitted under this section until he has -

S "(1) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of an Indian lands program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857);

S "(2) held at least one public hearing on th Indian lands program for the enrolled members of the tribe on its reservation;

S "(3) found that the Indian tribe has the legal authority, the qualified personnel, and sufficient funding necessary for the enforcement of the environmental protection standards; and

S "(4) found that the Indian tribe has established a process for the designation of areas as unsuitable for surface coal mining comparable to section 422 of this Act.

S "INITIAL REGULATORY PROCEDURES

S "SEC. 605. (a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining and reclamation operations on Indian lands after the date of enactment of this Act unless such person is in compliance with existing Federal regulations governing surface coal mining on Indian lands.

S "(b) Within six months after the date of enactment of this Act, the Secretary shall implement a Federal enforcement program which shall remain in effect on those Indian lands on which there are surface coal mining operations required to comply with the provisions of this Act, until an Indian lands program has been approved pursuant to this Act or until a Federal program has been implemented pursuant to this Act. The enforcement program shall be carried out pursuant to the

provisions of section 402(e) of this Act.

S "(c) All surface coal mining operations on Indian lands on which such operations are regulated

by existing Federal regulations which commence operations pursuant to a permit issued on or after

the date of enactment of this Act shall comply, and such permits shall contain terms requiring

compliance with, the provisions of subsections 415(b)(2), 415(b)(3), 415(b)(5), 415(b)(10),

415(b)(13), 415(b)(19), and 415(e) of this Act.

S "(d) On and after one hundred and thirty-five days from the date of enactment of this Act, all

surface coal mining operations on lands on which such operations are regulated by existing Federal

regulations which are in operation pursuant to a permit issued before the date of enactment of this

Act shall comply with the provisions of subsections 415(b)(2), 415(b)(3), 415(b)(5), 415(b)(10),

415(b)(13), 415(b)(19), and 415(e) of this Act, with respect to lands from which overburden and the

coal seam being mined have not been removed.

S "(e) Following the final disapproval of an Indian lands program, and prior to the formulation of

a Federal program pursuant to this Act, including judicial review of such a program, existing surface

coal mining operations may continue pursuant to the provisions of this section.

S "FEDERAL PROGRAM

S "SEC. 606. (a)(1) The Secretary shall prepare and, subject to the provisions of this section,

promulgate and implement a Federal program for an Indian tribe which has received grants pursuant

to section 602 of this Act, if such tribe -

S "(A) fails to submit an Indian lands program covering surface coal mining and reclamation

operations by the end of the eighteen-month period beginning on the date of enactment of this Act;

S "(B) fails to resubmit an acceptable Indian lands program within sixty days of disapproval of a

proposed Indian lands program: Provided, That the Secretary shall not implement a Federal program

prior to the expiration of the initial period allowed for submission of an Indian lands program as

provided for in clause (A) of this subsection; or

S "(C) fails to implement, enforce, or maintain its approved Indian lands program as provided for

in this Act.

{S} } 7899 "(2) If tribal compliance with section 604 requires action on the part of the tribal

council or tribal legislature, the Secretary may extend the period for submission of an Indian lands

program up to an additional six months. Promulgation and implementation of a Federal program

vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining

and reclamation operations taking place on lands within any tribal reservation or upon tribal lands

not in compliance with this Act. After promulgation and implementation of a Federal program the

Secretary shall be the regulatory authority. In promulgating and implementing a Federal program

for a particular tribe, the Secretary shall take into consideration the nature of that Indian tribal

reservation's terrain, climate, biological, chemical, and other relevant physical conditions.

S "(b) At any time prior to the approval of an Indian lands program so submitted, or the approval

of a resubmitted program, an Indian tribe may elect to abandon its efforts to develop and administer

its Indian lands program. Such tribe shall immediately notify the Secretary of such a decision and

return the unused portion of the moneys granted it pursuant to section 602 of this Act. Upon

notification of such intent, the Secretary shall immediately assume exclusive jurisdiction for the

regulation and control of surface coal mining and reclamation operations taking place on lands

within the tribe's reservation pursuant to subsections (c) and (d) of section 605 of this Act.

S "(c) In the event that an Indian tribe has an Indian lands program for surface coal mining, and is

not enforcing any part of such program, the Secretary may provide for the Federal enforcement, in a

manner comparable to the provisions of section 421, of that part of the Indian lands program not

being enforced by such tribe.

S "(d) In any case in which an Indian lands program is replaced by a Federal program, permits

issued pursuant to such approved Indian lands program shall be valid but shall be reviewable under

such Federal program. Immediately following the promulgation of a Federal program, the Secretary

shall undertake to review such permits to determine that the requirements of this Act are not being

violated. If the Secretary determines that any permit has been granted contrary to the requirements of

this Act he shall so advise the permittee and provide him a reasonable time to conform ongoing

surface coal mining and reclamation operations to the requirements of the Federal program.

S "(e) An Indian tribe, which has elected to have an approved Indian lands program, or has

received funds pursuant to section 602, and which has failed to obtain the approval of an Indian

lands program prior to the implementation of a Federal program in accordance with this title, may

submit an Indian lands program, at any time after such implementation, pursuant to section 604 of

this Act. Until an Indian lands program is approved as provided under this section, the Federal

program shall remain in effect and all actions taken by the Secretary pursuant to such Federal

program, including the terms and conditions of any permit issued thereunder, shall remain in effect:

Provided, That surface coal mining operations upon lands of a tribe which has elected to abandon its

efforts to develop and administer a program in accordance with subsection (b) of this section, shall

be regulated pursuant to subsections (c) and (d) of section 605.

S "(f) In any case in which a Federal program is replaced by an approved Indian lands program,

permits issued pursuant to the Federal program shall be valid but reviewable under the approved

Indian lands program: Provided, That the Federal permittee shall have the right to apply for an

Indian lands program permit to supersede his Federal permit. The tribal regulatory authority may

review such permits to determine that the requirements of this Act and the approved Indian lands

program are not violated. If the tribal regulatory authority determines any permit to have been

granted contrary to the requirements of this Act, or the approved Indian lands program, he shall so

advise the permittee and provide him a reasonable opportunity for submission of a new application

and reasonable time to conform ongoing surface mining and reclamation operations to the

requirements of this Act or approved Indian lands program.

S "ADMINISTRATION BY THE SECRETARY

S "SEC. 607. At any time, a tribe may select to have its program administered by the Secretary.

Upon such a request by a tribe, the Secretary shall immediately assume the responsibility for

administering the tribe's Indian lands program for that reservation.

S "PERSONNEL

S "SEC. 608. (a) Indian tribes are authorized to use the funds provided pursuant to section 602 of

this Act for the hiring of professional and technical personnel and, where appropriate, to allocate

funds to legitimately recognized organizations of the tribe that are pursuing the objectives of this

title, as well as hire special consultants, groups, or firms from the public and private sector, for the

purposes of developing, establishing, or implementing an Indian lands program.

S "AUTHORIZATION PRIORITY

S "SEC. 609. Of the funds made available under section 511(a) of this Act, first priority on \$3

,000,000 for each of the fiscal years shall be for the purposes of this title.

S "REPORTS TO THE SECRETARY

S "SEC. 610. Any Indian tribe which is receiving or has received a grant pursuant to section 602

of this Act, shall report at the end of each fiscal year to the Secretary, in a manner prescribed by him,

on activities undertaken by the tribe pursuant to or under this title.

S "INDIAN LANDS STUDY

S "SEC. 611. (a) The Secretary is directed to assist the Indian tribes in a study of the regulation

of surface coal mining on Indian lands which will achieve the purposes of this Act and recognize the

special jurisdictional status of these lands. In carrying out this study, the Secretary shall give grants

to the Indian tribes whereby such tribes may contract qualified institutions, agencies, organizations,

and persons to assist in completing the study. The study report shall include recommended changes,

if any, in the provisions of the Indian lands program set forth in this Act which, if enacted, would

further achieve the purposes of this Act. Any Indian tribe on whose lands there are or may be

conducted surface coal mining operations, and any tribe that has received financial or technical

assistance to develop, administer, or enforce an Indian lands program pursuant to this title, may

participate in this study, receive grants pursuant to this section, and incorporate into an existing

Indian lands program, approved by the Secretary, any recommendations resulting from such study.

S "(b) The study report required by subsection (a) of this section, together with drafts of proposed

legislation and the view of each Indian tribe which would be affected, shall be submitted to the

Congress as soon as possible but not later than January 1, 1979.

S "(c) On and after thirty months from the date of enactment of this Act, all surface coal mining

operations on Indian lands shall comply with requirements at least as stringent as those imposed by

sections 407, 408, 409, 410, 412, 413, 414, 415, 417, 418, 419, 421, and 422 of this Act, and the

Secretary shall incorporate the requirements of such provisions in all existing and new leases issued

for coal on Indian lands.

S "(d) With respect to leases issued after the date of enactment of this Act, the Secretary shall

include and enforce, in such leases, such terms and conditions, in addition to those required by

section 605(c) and (d) and subsection (c) of this section, as may be requested by the Indian tribe.

S "(e) Any change required by section 605(c) and (d) and subsection (c) of this section in the

terms and conditions and any coal lease on Indian lands existing on the date of enactment of this Act,

shall require the approval of the Secretary.

S "(f) The Secretary shall provide for adequate participation by the various Indian tribes affected

in the study authorized in this section and not more than \$7 00,000 of the funds made available for

such study shall be reserved for such purposes."

S On page 301, line 22 strike out "508" and insert in lieu thereof "611".

{S7972} Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following

the statements of the managers of the surface mining bill tomorrow, the distinguished Senator from

Alaska (Mr. STEVENS) be recognized to call up two amendments.

S7972 The PRESIDING OFFICER. Without objection, it is so ordered.

S7972 Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following Mr.

STEVENS, Mr. JOHNSTON be recognized to call up four amendments.

S7972 The PRESIDING OFFICER. Without objection, it is so ordered.

S7972 Mr. STEVENS. Mr. President, I am willing to state now that I will accept a time

limitation of 30 minutes on each of my amendments, if it is agreeable with the manager of the bill,

but I agree we should not seek that at this time.

{S7979} Mr. ROBERT C. BYRD. I think Mr. JOHNSTON has indicated also that he would be

willing to accept a time limitation on each of his amendments of 1 hour, but I will not seek that this

evening.

S7979 Mr. President, I suggest the absence of a quorum.

S7979 The PRESIDING OFFICER. The clerk will call the roll.

S7979 The second assistant legislative clerk proceeded to call the roll.

S7979 Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the

quorum call be rescinded.

S7979 The PRESIDING OFFICER. Without objection, it is so ordered.

{S7979} The resolution (S.Res. 169) waiving section 402(a) of the Congressional Budget

Act of 1974 with respect to the consideration of S. 7, was considered, and agreed to, as follows:

S7979 S.RES. 169

S7979 Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the

provisions of section 402(a) of such Act are waived with respect to the consideration of S. 7, a bill to

provide for the cooperation between the Secretary of the Interior and the States with respect to the

regulation of surface mining operations, and the acquisition and reclamation of abandoned mines

and for other purposes. Such waiver is necessary to allow for authorization of fiscal year 1977

funds for use by the Secretary of the Interior to assist State regulatory agencies to improve their

enforcement capabilities in line with the requirements of the interim implementation program

established in the Act.

S7979 Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the

resolution was agreed to.

S7979 Mr. STEVENS. I move to lay that motion on the table.

S7979 The motion to lay on the table was agreed to.

{S7893} Mr. JACKSON. Mr. President, the Senate is about to consider S. 7, the Surface

Mining Control and Reclamation Act of 1977.

S7893 Amendment No. 278 - the Coal Pipeline Act of 1977 - would add to the bill a new title 6

which would be identical to S. 707. S. 707 was referred jointly to the Committee on Energy and

Natural Resources and the Committee on Commerce, Science, and Transportation. No hearings

have been held on it. A related bill, S. 1492, the Coal Transportation Act of 1977 is pending before

the Committee on Commerce, Science, and Transportation. The chairman and ranking minority

member of that committee have written me a letter opposing amendment No. 278. I ask unanimous

consent that this letter be printed in the RECORD, together with a letter which I have received from

Andrew J. Biemiller, director, Department of Legislation, AFL-CIO, which strongly supports

enactment of S. 7.

S7893 There being no objection, the letter was ordered to be printed in the RECORD, as follows:

S7893 WASHINGTON, D.C., May 17, 1977.

S7893 Hon. HENRY M. JACKSON, Chairman, Committee on Energy and Natural Resources,

Washington, D.C.

S7893 DEAR SCOOP: It has come to our attention that an effort will be made to add S. 707, the

Coal Pipeline Act of 1977, to the comprehensive legislation dealing with strip mining during

consideration of that legislation on the Senate floor. We strongly believe that this would be a serious

mistake. As you know, S. 707 was referred jointly to the Committee on Energy and Natural

Resources and the Committee on Commerce, Science and Transportation. Amending the concepts

contained in S. 707 into the strip mining bill without hearings or consideration by either Committee

would force us to oppose the entire bill in order to consider those parts of the bill concerned with the transportation of coal.

S7893 S. 707 raises serious questions concerning the alternative means of transporting the

nation's energy. As you may know. S. 1492, the Coal Transportation Act of 1977, which touches on

many of the same issues addressed in S. 707, was recently introduced and it is our strong belief that

hearings should be held to consider both these bills along with any other similar legislation which

may be introduced. It is our hope that any legislation favorably reported will seek to assure that the

transportation regulatory and funding considerations relating to the transportation of coal will be

coordinated in such a manner as to produce the maximmm public benefit possible.

S7893 Sincerely yours,

S7893 WARREN G. MAGNUSON, Chairman.

S7893 JAMES B. PEARSON, Ranking Minority Member.

S7893 WASHINGTON, C.C., May 16, 1977.

S7893 Hon. HENRY M. JACKSON, U.S. Senate, Washington, D.C.

S7893 DEAR SENATOR JACKSON: The AFL-CIO has long supported legislation to regulate

strip mining. In endorsing this legislation, the most recent Convention of the AFL-CIO stated that

"America needs both energy and reclaimed land . . . and can have both through reasonable strip

mining legislation."

S7893 The Surface Mining Control and Reclamation Act of 1977, S. 7, we believe is reasonable

legislation to regulate strip mining. Recently reported by the Senate Energy and Natural Resources

Committee, the minimum standards for state strip mining and reclamation laws and other provisions

of the measure are designed to assure the continued orderly development of the nation's coal

resources while providing much needed protections against environmental devastation which for too

long has gone unchecked. Unlike opponents of this legislation, we in organized labor believe that

the twin objectives of environmental protection and energy development must be pursued

simultaneously. While helping to accomplish both of these goals, S. 7. contrary to past assertions,

rather than costing jobs will create new employment opportunities through the reclamation activities

required by this legislation.

S7893 In summary this legislation represents a balanced program to control surface mining in the

United States and as such it is a vital component of the nation's energy program. Only through

congressional approval of S. 7 can the nation be protected against the continued environmental

destruction of the past. We therefore urge your vote for passage of this important environmental

legislation and opposition to any weakening amendments.

S7893 Sincerely,

S7893 ANDREW J. BIEMILLER, Director, Department of Legislation.

Amdt. No. 280

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. FORD to S. 7, a bill to provide

{1} for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation of
{1} abandoned mines, and for other purposes, viz:

{1-1} On page 235, between lines 3 and 4, insert the
{1-2} following:

{1-3} "(d) (1) Each State program may and each Federal
{1-4} program shall include procedures pursuant to which the
{1-5} regulatory authority may permit variances for the purposes
{1-6} set forth in paragraph (3) of this subsection.

{1-7} "(2) Where an applicant meets the requirements of
{1-8} paragraphs (3) and (4) of this subsection a variance from
{1-9} the requirement to restore to approximate original contour

{1-10} set forth in subsection 415(b) (3) or 415(c) (2) of this
{2-1} section may be granted for the surface mining of coal where
{2-2} the owner of the surface requests in writing, as a part of the
{2-3} permit application, that such a variance be granted so as to
{2-4} render the land, after reclamation, suitable for an agricultural,
{2-5} industrial, commercial, residential, or public use (including
{2-6} recreational facilities) in accord with the further
{2-7} provisions of (3) and (4) of this subsection.

{2-8} "(3) (A) After consultation with the appropriate land
{2-9} use planning agencies, if any, the potential use of the affected
{2-10} land is deemed to constitute an equal or better economic
{2-11} or public use, and (B) designed by a registered professional
{2-12} engineer in conformance with professional standards established
{2-13} to assure the stability, drainage, and configuration
{2-14} necessary for the intended use of the site.

{2-15} "(4) In granting a variance pursuant to this subsection
{2-16} the regulatory authority shall require that all other requirements
{2-17} of this Act will be met.

{2-18} "(5) The regulatory authority shall promulgate specific
{2-19} regulations to govern the granting of variances in accord
{2-20} with the provisions of this subsection, and may impose such
{2-21} additional requirements as he deems to be necessary.

{2-22} "(6) All exceptions granted under the provisions of this
{2-23} subsection shall be reviewed not more than three years from

{2-24} the date of issuance of the permit, unless the permittee
{3-1} affirmatively demonstrates that the proposed development is
{3-2} proceeding in accordance with the terms of the approved
{3-3} schedule and reclamation plan.".

{3-4} On page 235, line 4, by renumbering "(d) as "(e)".

Amdt. No. 281

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ABOUREZK to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 305, delete lines 19 through 21 and insert a
{1-2} new section 515(f) to read: "This section shall not apply
{1-3} to Indian lands.".

: Amdt. No. 282

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. HART to S. 7, a bill to provide

{1} for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation of
{1} abandoned mines, and for other purposes, viz:

{1-1} Strike all of section 410(b)(5), page 207, lines 1
{1-2} through 21 and insert in lieu thereof:

{1-3} "(5) the proposed surface coal mining operation if
{1-4} located west of the one hundredth meridian west longitude,
{1-5} would -

{1-6} "(A) not be located within an alluvial valley
{1-7} floor, or

{1-8} "(B) not materially damage the quantity or
{1-9} quality of water in surface or underground water
{2-1} systems that supply these valley floors referred to
{2-2} in (A) of subsection (B) (5):

{2-3} Provided, That this paragraph (5) shall not apply to
{2-4} those surface coal mining operations located within or
{2-5} adjacent to alluvial valley floors which in the year preceding
{2-6} the enactment of this Act were engaged in the
{2-7} commercial production of coal or which had obtained
{2-8} prior to January 4, 1977, specific permit approval by

{2-9} the State regulatory authority to conduct surface coal
{2-10} mining operations within said alluvial floors.".

Amdt. No. 287

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. DOMENICI to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of
{1} surface mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 159, line 8, insert at the end of the line the
{1-2} following: "or for programs for the construction of public
{1-3} facilities in communities impacted by coal development".

Amdt. No. 288

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. DOMENICI to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of

{1} surface mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz: On
{1} page 137, a new subsection 429 as follows:

Amdt. No. 288

HEADER: TITLE IV

SUBHEADER: SEC. 429. EXCLUSIVE STATE REGULATION

(a) Notwithstanding any other provision of
{1-3} this Act, any State which has, on the date of enactment of
{1-4} this Act, an existing program regulating surface coal mining
{1-5} operations may elect to retain exclusive State jurisdiction
{1-6} over the regulation of surface coal mining and reclamation
{1-7} operations taking place on lands within the State by incorporating
{1-8} in State law standards which are equal to or more
{2-1} stringent than the Environmental protection performance
{2-2} standards of sections 415 and 416.

{2-3} (1) If a State so elects, it shall notify the Secretary
{2-4} within one hundred and thirty-five days after enactment of
{2-5} this Act. Pending final determination by the Secretary pursuant
{2-6} to this section (including judicial review), the State
{2-7} shall apply and insure compliance with subsections 402(a),
{2-8} (b), and (c).

{2-9} (2) Such environmental performance standards shall be

{2-10} incorporated into State law within twenty-four months after
{2-11} enactment of the Act.

{2-12} (3) The Secretary shall hold a public hearing in the
{2-13} State as soon after such standards are incorporated into State
{2-14} law to determine if the environmental performance standards
{2-15} are equal to or more stringent than the standards in
{2-16} sections 415 and 416.

{2-17} (4) If the Secretary finds that the State standards are
{2-18} not equal to or more stringent than the standards in sections
{2-19} 415 and 416, he shall recommend to the State what conforming
{2-20} changes are necessary and shall afford such State an
{2-21} appropriate period of time to enact conforming amendments
{2-22} but in no event shall such period exceed adjournment sine
{2-23} die of the next full session of the State legislature to occur
{2-24} after such finding. Such finding shall be reviewable in a trial
{2-25} de novo in a Federal district court in such State.

{3-1} (5) If such State fails within the prescribed time to
{3-2} submit acceptable amendments, the Secretary shall impose
{3-3} a program pursuant to section 403 or 404.

{3-4} (6) If the Secretary finds that State law is equal to or
{3-5} more stringent than the standards in sections 415 and 416,
{3-6} then the State shall retain exclusive jurisdiction pursuant to
{3-7} State law over all surface coal mining operations in such
{3-8} State except as follows:

{3-9} (A) For a period of four years after such determination,
{3-10} the Secretary shall take such actions as he
{3-11} deems appropriate to monitor State regulation. If within
{3-12} this period the Secretary determines after public hearings
{3-13} that the State is failing to effectively enforce State law
{3-14} with regard to the environmental performance standards,
{3-15} he shall impose a program pursuant to section 403 or
{3-16} 404 of this Act. Such determination shall be reviewable
{3-17} in a trial de novo in a Federal district court in such State.

{3-18} (B) Nothing in this section shall be construed to
{3-19} deny such States the effect of section 505(a) and (c)
{3-20} of this Act, nor the right to fully participate with respect
{3-21} to title III in the same manner as a State with an
{3-22} approved State program.

{3-23} (C) States, with cooperative agreements with the
{3-24} Secretary existing on the date of enactment of this Act,
{3-25} which elect pursuant to this section shall be permitted to
{4-1} continue to regulate surface coal mining and reclamation
{4-2} operations on Federal lands within the State pursuant to
{4-3} such agreements: Provided, That the Secretary has made
{4-4} the determination required by subsections (a)(6) and
{4-5} such agreements are modified accordingly: Provided
{4-6} further, That such existing agreements are modified to
{4-7} require compliance with the initial regulatory procedures
{4-8} of subsection (a)(1).

{4-9} (b) The Secretary shall retain his duties under sections
{4-10} 2(a), (2)(B) and 2(a)(3) of the Federal Mineral Leasing
{4-11} Act, as amended. Nothing in this section shall be construed
{4-12} as authorizing the Secretary to delegate to the States
{4-13} his duty to designate certain Federal lands as unsuitable for
{4-14} coal mining pursuant to section 422 of this Act, or to regulate
{4-15} other activities taking place on Federal lands.

Amdt. No. 291

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. CULVER (for himself, Mr.

{1} PERCY, Mr. ABOUREZK, Mr. HUMPHREY, Mr. BUMPERS,
{1} Mr. ANDEFSON, and Mr. LEAHY) to S. 7, a bill to provide
{1} for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface mining
{1} operations, and the acquisition and reclamation of
{1} abandoned mines, and for other purposes, viz:

{1-1} On page 208, between lines 21 and 22, insert the
{1-2} following:

{1-3} "(d) (1) Except to the extent otherwise provided for in
{1-4} paragraphs (2) and (3) of this subsection, upon enactment

{1-5} of this Act no application for a permit or revision or renewal
{1-6} thereof shall be approved pursuant to this section unless the
{1-7} applicant demonstrates to the appropriate regulatory authority
{1-8} that prime farmland does not comprise more than 10
{2-1} per centum of the surface area to be disturbed pursuant to
{2-2} such applicant's mining plan. Such demonstration shall be
{2-3} based upon soil maps and data verified for accuracy by the
{2-4} Secretary of Agriculture.

{2-5} "(2) Nothing in this subsection shall apply to any
{2-6} permit issued prior to April 1, 1977, or to any revisions or
{2-7} renewals thereof.

{2-8} "(3) The appropriate regulatory authority may, after
{2-9} consultation with the Secretary of Agriculture, and pursuant
{2-10} to regulations issued hereunder by the Secretary of the
{2-11} Interior with the concurrence of the Secretary of Agriculture,
{2-12} grant a variance from paragraph (1) of this subsection
{2-13} if the operator demonstrates and the regulatory authority
{2-14} finds, on the basis of data relating to prime farmlands comparable
{2-15} to those covered by the permit application, that the
{2-16} applicant can restore the land affected to a condition at
{2-17} least fully capable of supporting the uses which it was capable
{2-18} of supporting prior to any mining.

{2-19} "(4) As soon as is practicable following the date of
{2-20} the enactment of this Act, but in no event later than twelve
{2-21} months following such date, the Secretary of Agriculture

{2-22} shall commence such research, experimentation, and studies
{2-23} as are necessary to determine the impact of surface mining
{2-24} operations on agricultural production including the impact
{2-25} on agricultural lands both directly and indirectly affected
{3-1} by such mining and the most effective and efficient procedures
{3-2} for restoring the productive capacity of prime farmlands
{3-3} subsequent to any mining and based thereon, make
{3-4} appropriate recommendations to the Congress and the President
{3-5} within four years after the date of enactment of this
{3-6} Act."

{3-7} On page 291, line 3, strike out the period and insert in
{3-8} lieu thereof a semicolon.

{3-9} On page 291, between lines 3 and 4, insert the following:

{3-10} "(30) the term 'prime farmland' shall have the
{3-11} same meaning as that previously prescribed, or hereafter
{3-12} modified, by the Secretary of Agriculture on the
{3-13} basis of such factors as moisture availability, temperature
{3-14} regime, chemical balance, permeability, surface
{3-15} layer composition, susceptibility to flooding, and erosion
{3-16} characteristics, and as published in the Federal
{3-17} Register."

Amdt. No. 292

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. MELCHER to S. 7, a bill to provi

{1} for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface mining
{1} operations and the acquisition and reclamation of
{1} abandoned mines, and for other purposes, viz:

{1-1} On page 207, beginning with line 1, strike out all
{1-2} through line 21 and insert in lieu thereof the following:

{1-3} (5) the proposed surface coal mining operations, if
{1-4} located west of the one hundredth meridian west longitude,
{1-5} would -

{1-6} (A) not interrupt, discontinue, or prevent farming
{1-7} on alluvial valley floors that are irrigated or
{1-8} naturally subirrigated, but, excluding undeveloped
{2-1} range lands which are not significant to farming on
{2-2} said alluvial valley floors and those lands that the
{2-3} regulatory authority finds that if the farming that
{2-4} will be interrupted, discontinued, or prevented is of
{2-5} such small acreage as to be of negligible impact on
{2-6} the farm's agricultural production, or

{2-7} (B) not adversely affect the quantity or quality
{2-8} of water in surface or underground water systems

{2-9} that supply these valley floors in (A) of subsection

{2-10} (b) (5):

{2-11} Provided, That this paragraph (5) shall not affect those
{2-12} surface coal mining operations which in the year preceding
{2-13} the enactment of this Act (1) produced coal in commercial
{2-14} quantities, and (2) were located within or adjacent to
{2-15} alluvial valley floors or had obtained specific permit approval
{2-16} by the State regulatory authority to conduct surface coal mining
{2-17} operations within said alluvial valley floors.

Amdt. No. 289

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. HEINZ (for himself and Mr.
{1} RANDOLPH) to S. 7, a bill to provide for the cooperation
{1} between the Secretary of the Interior and the States with
{1} respect to the regulation of surface mining operations, and
{1} the acquisition and reclamation of abandoned mines, and for
{1} other purposes, viz: After section 515 ending on page 305,
{1} line 24, insert the following new title:

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH

INSTITUTES

SUBHEADER: SEC. 601. AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

(a) There are authorized to be appropriated

{1-5} to the Secretary of the Interior sums adequate to provide

{1-6} for each participating State \$200,000 for fiscal year 1978,

{1-7} \$300,000 for fiscal year 1979, and \$400,000 for each

{1-8} fiscal year thereafter for five years, to assist the States in

{2-1} carrying on the work of a competent and qualified coal

{2-2} mining and coal resources and research institute, or center

{2-3} (hereinafter referred to as "institute") at one public college

{2-4} or university in the State which has in existence at the time

{2-5} of enactment of this title a school of mines, or division, or

{2-6} department conducting a program of substantial instruction

{2-7} and research in coal mining and coal preparation and related

{2-8} research, or which establishes such a school of mines, or division,

{2-9} or department subsequent to the enactment of this title

{2-10} and which school of mines, or division or department shall

{2-11} have been in existence for at least two years. The Advisory

{2-12} Committee on Coal Mining and Coal Resources and Research,

{2-13} as created by this title, shall determine a college or university

{2-14} to have an eligible school of mines, or division, or department

{2-15} conducting a program of substantial instruction and research

{2-16} in coal mining, coal preparation and related research wherein

{2-17} education and research in these engineering fields are being

{2-18} carried out and wherein at least four full-time permanent

{2-19} faculty members are employed: Provided, That -

{2-20} (1) such moneys when appropriated shall be made
{2-21} available to match, on a dollar-for-dollar basis, non-Federal
{2-22} funds which shall be at least equal to the Federal
{2-23} share to support the institute;

{2-24} (2) if there is more than one such eligible college
{2-25} or university in a State, funds under this title shall, in
{3-1} the absence of a designation to the contrary by act of
{3-2} the legislature of the State, be paid to one such college
{3-3} or university designated by the Governor of the State;

{3-4} (3) where a State does not have a public college or
{3-5} university with an eligible school of mines, or division,
{3-6} or department conducting a program of substantial
{3-7} instruction and research in coal mining, coal preparation
{3-8} are related areas, said advisory committee may allocate
{3-9} the State's allotment to one private college or university
{3-10} which it determines to have an eligible school of mines,
{3-11} or division, or department as provided herein.

{3-12} (b) It shall be the duty of each such institute to plan
{3-13} and conduct and/or arrange for a component or components
{3-14} of the college or university with which it is affiliated to conduct
{3-15} competent research, investigations, demonstrations, and
{3-16} experiments of either a basic or practical nature, or both, in
{3-17} relation to coal mining, coal preparation (including anthracite),
{3-18} and to provide for the training of engineers and scientists

{3-19} through such research, investigations, demonstrations,
{3-20} and experiments. Such research, investigations, demonstrations,
{3-21} experiments, and training may include, without being
{3-22} limited to: exploration; the extraction; processing; development;
{3-23} production of coal resources; coal mining and preparation
{3-24} technology; supply and demand for coal; conservation
{3-25} and best use of available supplies of coal; the economic, legal,
{4-1} social, engineering, recreational, biological, geographic,
{4-2} ecological, health and safety, and other aspects of coal mining,
{4-3} coal preparation, and mineral reclamation from coals,
{4-4} having due regard to the interrelation on the natural environment,
{4-5} the varying conditions and needs of the respective
{4-6} States, to coal mining and coal preparation research projects
{4-7} being conducted by agencies of the Federal and State governments,
{4-8} and other institutes.

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

SUBHEADER: SEC. 602. RESEARCH FUNDS TO INSTITUTES

(a) There is authorized to be appropriated
{4-11} annually for seven years to the Secretary of the Interior the
{4-12} sum of \$15,000,000 in fiscal year 1978, said sum increased
{4-13} by \$2,000,000 each fiscal year thereafter for six
{4-14} years, which shall remain available until expended. Such

{4-15} moneys when appropriated shall be made available to institutes
{4-16} to meet the necessary expenses for purposes of:

{4-17} (1) specific coal mining, coal preparation and
{4-18} related research and demonstration projects of industrywide
{4-19} application, which could not otherwise be undertaken,
{4-20} including the expenses of planning and coordinating
{4-21} regional coal mining, coal preparation and related
{4-22} research projects by two or more institutes, and

{4-23} (2) research into any aspects of coal mining, coal
{4-24} preparation and related problems related to the mission
{5-1} of the Department of the Interior, which may be deemed
{5-2} desirable and are not otherwise being studied.

{5-3} (b) Each application for a grant pursuant to subsection
{5-4} (a) of this section shall, among other things, state the nature
{5-5} of the project to be undertaken, the period during which
{5-6} it will be pursued, the qualifications of the personnel who
{5-7} will direct and conduct it, the estimated costs, the importance
{5-8} of the project to the Nation, region, or State concerned, and
{5-9} its relation to other known research projects theretofore
{5-10} pursued or being pursued, and the extent to which it will
{5-11} provide opportunity for the training of coal mining, coal
{5-12} preparation engineers and scientists, and the extent of
participation
{5-13} by nongovernmental sources in the project.

{5-14} (c) The Secretary shall, insofar as it is practicable,

{5-15} utilize the facilities of institutes designated in section 301
{5-16} of this title to perform such special research, authorized by
{5-17} this section, and shall select the institutes for the performance
{5-18} of such special research on the basis of the qualifications
{5-19} without regard to race or sex of the personnel who will
{5-20} conduct and direct it, and on the basis of the facilities available
{5-21} in relation to the particular needs of the research project,
{5-22} special geographic, geologic, or climatic conditions within
{5-23} the immediate vicinity of the institute in relation to any
{5-24} special requirements of the research project, and the extent
{6-1} to which it will provide opportunity for training individuals
{6-2} as mining engineers and scientists. The Secretary may designate
{6-3} and utilize such portions of the funds authorized to be
{6-4} appropriated by this section as he deems appropriate for the
{6-5} purpose of providing scholarships, graduate fellowships, and
{6-6} postdoctoral fellowships.

{6-7} (d) No grant shall be made under subsection (a) of
{6-8} this section except for a project approved by the Secretary
{6-9} of the Interior and all grants shall be made upon the basis
{6-10} of merit of the project, the need for the knowledge which it
{6-11} is expected to produce when completed, and the opportunity
{6-12} it provides for the training of individuals as mining engineers
{6-13} and scientists.

{6-14} (e) No portion of any grant under this section shall be
{6-15} applied to the acquisition by purchase or lease of any land
{6-16} or interests therein or the rental, purchase, construction,

{6-17} preservation, or repair of any building.

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

SUBHEADER: SEC. 603. FUNDING CRITERIA

(a) Sums available to institutes under the

{6-20} terms of sections 301 and 302 of this title shall be paid at

{6-21} such times and in such amounts during each fiscal year as

{6-22} determined by the Secretary, and upon vouchers approved

{6-23} by him. Each institute shall set forth its plan to provide for

{6-24} the training of individuals as mining engineers and scientists

{6-25} under a curriculum appropriate to the field of coal mining,

{7-1} and coal preparation engineering and related fields; set

{7-2} forth policies and procedures which assure that Federal funds

{7-3} made available under this title for any fiscal year will supplement

{7-4} and, to the extent practicable, increase the level of

{7-5} funds that would, in the absence of such Federal funds, be

{7-6} made available for purposes of this title, and in no case supplant

{7-7} such funds; have an officer appointed by its governing

{7-8} authority who shall receive and account for all funds paid

{7-9} under the provisions of this title and shall make an annual

{7-10} report to the Secretary on or before the first day of September

{7-11} of each year, on work accomplished and the status of

{7-12} projects underway, together with a detailed statement of the

{7-13} amounts received under any provisions of this title during
{7-14} the preceding fiscal year, and of its disbursements on schedules
{7-15} prescribed by the Secretary. If any of the moneys received
{7-16} by the authorized receiving officer of any institute
{7-17} under the provisions of this title shall by any action or
contingency
{7-18} be found by the Secretary to have been improperly
{7-19} diminished, lost, or misapplied, it shall be replaced by the
{7-20} State concerned and until so replaced no subsequent appropriation
{7-21} shall be allotted or paid to any institute of such
{7-22} State.

{7-23} (b) Moneys appropriated pursuant to this title shall be
{7-24} available for expenses for research, investigations, experiments,
{7-25} and training conducted under authority of this title.

{8-1} The institutes are hereby authorized and encouraged to plan
{8-2} and conduct programs under this title in cooperation with
{8-3} each other and with such other agencies and individuals as
{8-4} may contribute to the solution of the coal mining, coal
{8-5} preparation and related problems involved, and moneys appropriated
{8-6} pursuant to this title shall be available for paying
{8-7} the necessary expenses of planning, coordinating, and conducting
{8-8} such cooperative research.

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSITITUTES

SUBHEADER: SEC. 604. DUTIES OF THE SECRETARY

(a) The Secretary of the Interior is hereby
{8-11} charged with the responsibility for the proper administration
{8-12} of this title and, after full consultation with other interested
{8-13} Federal agencies, shall prescribe such rules and regulations
{8-14} as may be necessary to carry out its provisions. The
{8-15} Secretary shall furnish such advice and assistance as will
{8-16} best promote the purposes of this title, participate in
coordinating
{8-17} research initiated under this title by the institutes,
{8-18} indicate to them such lines of inquiry as to him seem most
{8-19} important, and encourage and assist in the establishment and
{8-20} maintenance of cooperation by and between the institutes
{8-21} and between them and other research organizations, the
{8-22} United States Department of the Interior, and other Federal
{8-23} establishments.

{8-24} (b) On or before the 1st day of July in each year after
{8-25} the passage of this title, the Secretary shall ascertain whether
{9-1} the requirements of section 303(a) have been met as to each
{9-2} institute and State.

{9-3} (c) The Secretary shall make an annual report to the
{9-4} Congress of the receipts, expenditures, and work of the
{9-5} institutes in all States under the provisions of this title. The
{9-6} Secretary's report shall indicate whether any portion of an
{9-7} appropriation available for allotment to any State has been
{9-8} withheld and, if so, the reasons therefor.

: Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

SUBHEADER: SEC. 605. AUTONOMY

Nothing in this title shall be construed to
{9-11} impair or modify the legal relationship existing between
{9-12} any of the colleges or universities under whose direction an
{9-13} institute is established and the government of the State in
{9-14} which it is located, and nothing in this title shall in any way
{9-15} be construed to authorize Federal control or direction of
{9-16} education at any college or university.

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

SUBHEADER: SEC. 606. MISCELLANEOUS PROVISIONS

(a) The Secretary of the Interior shall obtain
{9-19} the continuing advice and cooperation of all agencies of the
{9-20} Federal Government concerned with coal mining and coal
{9-21} resources and related research of State and local governments,
{9-22} and of private institutions and individuals to assure

{9-23} that the programs authorized in this title will supplement
{9-24} and not duplicate established coal mining, coal preparation
{9-25} and related research programs, to stimulate research in otherwise
{10-1} neglected areas, and to contribute to a comprehensive
{10-2} nationwide program of coal mining, coal preparation and
{10-3} related research, having due regard for the protection and
{10-4} conservation of the environment. The Secretary shall make
{10-5} generally available information and reports or projects completed,
{10-6} in progress, or planned under the provisions of this
{10-7} title, in addition to any direct publication of information by
{10-8} the institutes themselves.

{10-9} (b) Nothing in this title is intended to give or shall
{10-10} be construed as giving the Secretary of the Interior any
{10-11} authority over coal mining, coal preparation and related
{10-12} research conducted by any other agency of the Federal Government,
{10-13} or as repealing, superseding, or diminishing existing
{10-14} authorities or responsibilities of any agency of the Federal
{10-15} Government to plan and conduct, contract for, or assist in
{10-16} research in its area of responsibility and concern with coal
{10-17} mining, coal preparation and related research.

{10-18} (c) Contracts or other arrangements for coal mining,
{10-19} coal preparation and related research work authorized under
{10-20} this title with an institute, educational institution, or
nonprofit
{10-21} organization may be undertaken without regard to
{10-22} the provisions of section 3684 of the Revised Statutes (31
{10-23} U.S.C. 529) when, in the judgment of the Secretary of the

{10-24} Interior, advance payments of initial expense are necessary
{10-25} to facilitate such work: Provided, That authority to make
{11-1} payments under this subsection shall be effective only to
{11-2} such extent or in such amounts as are provided in advance
{11-3} by appropriation Acts.

{11-4} (d) No research, demonstration, or experiment shall be
{11-5} carried out under this Act by an institute financed by grants
{11-6} under this Act, unless all uses, products, processes, patents,
{11-7} and other developments resulting therefrom, with such exception
{11-8} or limitation, if any, as the Secretary may find necessary
{11-9} in the public interest, be available promptly to the
{11-10} general public. Nothing contained in this section shall deprive
{11-11} the owner of any background patent relating to any such
{11-12} activities of any rights which that owner may have under
{11-13} that patent. There are authorized to be appropriated such
{11-14} sums as are necessary for the printing and publishing of the
{11-15} results of activities carried out by institutes under the
provisions
{11-16} of this Act and for administrative planning and direction,
{11-17} but such appropriations shall not exceed \$1,000,000 in
{11-18} any fiscal year: Provided, That no new budget authority is
{11-19} authorized to be appropriated for fiscal year 1977.

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

SUBHEADER: SEC. 607. CENTER FOR CATALOGING

The Secretary shall establish a center for

{11-22} cataloging current and projected scientific research in all

{11-23} fields of coal mining and coal preparation. Each Federal

{11-24} agency doing coal mining, coal preparation, and related research

{11-25} shall cooperate by providing the cataloging center

{12-1} with information on work underway or scheduled by it. The

{12-2} cataloging center shall classify and maintain for public use a

{12-3} catalog of coal mining, coal preparation, and related research

{12-4} and investigation projects in progress or scheduled by all

{12-5} Federal agencies and by such non-Federal agencies of Government,

{12-6} colleges, universities, private institutions, firms, and

{12-7} individuals as may make such information available.

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

SUBHEADER: SEC. 608. INTERAGENCY COOPERATION

The President shall, by such means as he

{12-10} deems appropriate, clarify agency responsibility for Federal

{12-11} coal mining and coal preparation and related research and

{12-12} provide for interagency coordination of such research, including

{12-13} the research authorized by this title. Such coordination

{12-14} shall include -

{12-15} (a) continuing review of the adequacy of the Government-wide
{12-16} program in coal mining, coal preparation,
{12-17} and related research;

{12-18} (b) identification and elimination of duplication and
{12-19} overlap between two or more agency programs;

{12-20} (c) identification of technical needs in various
{12-21} coal mining, coal preparation, and related research
{12-22} categories;

{12-23} (d) recommendations with respect to allocation of
{12-24} technical effort among Federal agencies;

{12-25} (e) review of technical manpower needs and findings
{13-1} concerning management policies to improve the
{13-2} quality of the Government-wide research effort; and

{13-3} (f) actions to facilitate interagency communication
{13-4} at management levels.

Amdt. No. 289

HEADER: TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH
INSTITUTES

SUBHEADER: SEC. 609. ADVISORY COMMITTEE

(a) The Secretary of the Interior shall

{13-7} appoint an Advisory Committee on Coal Mining and Coal

{13-8} Resources and Research composed of -

{13-9} (1) the Director, Bureau of Mines, or his delegate,

{13-10} with his consent;

{13-11} (2) the Director of the National Science Foundation,

{13-12} or his delegate, with his consent;

{13-13} (3) the President, National Academy of Sciences,

{13-14} or his delegate, with his consent;

{13-15} (4) the President, National Academy of Engineering,

{13-16} or his delegate, with his consent;

{13-17} (5) the Director, United States Geological Survey,

{13-18} or his delegate, with his consent; and

{13-19} (6) not more than four other persons who are

{13-20} knowledgeable in the fields of coal mining, coal preparation

{13-21} and related research, at least one of whom shall be

{13-22} a representative of working coal miners.

{13-23} (b) The Secretary shall designate the Chairman of the

{13-24} Advisory Committee. The Advisory Committee shall consult

{13-25} with, and make recommendations to, the Secretary of the

{14-1} Interior on all matters involving or relating to coal mining,
{14-2} coal preparation and related research and such determinations
{14-3} as provided in this title. The Secretary of the Interior
{14-4} shall consult with, and consider recommendations of, such
{14-5} Committee in the conduct of coal mining, coal preparation
{14-6} and related research and the making of any grant under this
{14-7} title.

{14-8} (c) Advisory Committee members, other than officers
{14-9} or employees of Federal, State, or local governments, shall
{14-10} be, for each day (including traveltime) during which they
{14-11} are performing committee business, entitled to receive
compensation
{14-12} at a rate fixed by the Secretary, but not in excess
{14-13} of the maximum rate of pay for grade GS-18 as provided in
{14-14} the General Schedule under section 5332 of title 5 of the
{14-15} United States Code, and shall, notwithstanding the limitations
{14-16} of sections 5703 and 5704 of title 5, United States
{14-17} Code, be fully reimbursed for travel, subsistence, and related
{14-18} expenses.