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THE WHITE HOUSE
WASHINGTON

February 23, 1976

TO: CHARLIE LEPPERT
FROM: GLENN SCHLEEDE

Advance copy.

file

THE WHITE HOUSE

WASHINGTON

February 23, 1976

MEMORANDUM FOR:

JIM CANNON

FROM:

GEORGE HUMPHREYS
GLENN SCHNEIDER

SUBJECT:

STRIP MINING LEGISLATION

BACKGROUND

- The President twice vetoed surface mining bills (S. 425, 93rd Congress; H.R. 25, 94th Congress). Efforts to re-enact similar such legislation are underway in both Houses.
- The Senate has passed S. 391, coal leasing bill, which contains provisions of H.R. 25, but applicable only to Federal lands.
- In the House, a move to attach all of H.R. 25 to the House version of the coal leasing bill failed in Committee by an extremely close vote (21-20-1), but Congresswoman Mink agreed to support in Committee an effort thereafter to re-enact H.R. 25 in the form of H.R. 9725, a virtually identical bill introduced by Congressman Melcher.
- The House Rules Committee warned Mrs. Mink when the coal leasing bill was taken up that the Rules Committee would find unacceptable and subject to point of order action by the conferees that resulted in inclusion of strip mining legislation for either Federal or Federal and non-Federal lands.

CURRENT STATUS

The House Interior Committee is ready to take up H.R. 9725 but failed on Wednesday, February 18 to get quorum. It is scheduled to begin consideration Tuesday, February 24, with five minute limit for debate on each amendment.

PROBLEMS

- There is the usual tactical choice of whether to try to amend H.R. 9725 or to eliminate its most serious defects or to try to keep it the same as the vetoed bills so as to strengthen the rationale for veto as necessary. As a practical matter, the Administration probably will have to support attempts to approve the bill.
- Apparently some members of the House minority and possibly the Senate minority -- do not believe they are getting clear signals from the Administration as to its position on strip mining legislation. A clear signal of strong opposition to strip mining legislation for Federal lands attached to the Senate coal leasing bill and to the Melcher bill or anything like it probably would strengthen the minority members' position and determination.

Frank Zarb and Secretary Kleppe met last week to discuss the subject and both concluded that there should be no compromise on the legislation and that they should work to keep the legislation from reaching the President's desk this year.

INTERIOR REGULATIONS

- New Interior regulations covering surface mining and reclamation on Federal lands have received favorable reviews from Administration and state representatives and also from congressional staff briefed thus far.
- Russ Peterson indicated satisfaction with the regulations before the Senate Interior Committee on February 16. Interior staff will be briefing Congressmen Steiger and Ruppe on February 23 and will try to follow this up with briefings on the House minority staff.
- The Interior regulations appear to provide the basis for argument that they handle adequately the surface mining and reclamation problem. With respect to Federal lands, they are supported by states, and together with state laws make Federal legislation unnecessary and premature.

RECOMMENDATIONS

1. As minimum, Charlie Leppert should give a clear signal to House minority that the Administration favors no compromise, would reject the legislation, and passage must be prevented.
2. Interior should be directed to continue detailed briefing of both majority and minority on regulations.
3. Consideration should be given to a meeting on strip mining legislation during which the President, Secretary Kleppe and Frank Zarb could give key minority members a strong signal that legislation is not desired this session. Members should include: Rhodes, Steiger, Ruppe, Skubitz, Fannon, and Hansen.

[March 1976?]
FILE

S U R F A C E M I N I N G

A N D T H E

H O U S E R U L E S

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~~WHY~~ A VOTE ON H.R. 9725 VIOLATES THE HOUSE RULES

For all the oral and written pains being taken to distinguish H.R. 9725 from the vetoed H.R. 25 (Surface Mining Act of 1975), the bills meet the test for being "of the same substance." Thus, a vote by the House on H.R. 9725 would violate section XLIII of Jefferson's Manual:

... a question once carried cannot be questioned again at the same session, but must stand as the judgment of the House; and a bill once rejected, another of the same substance cannot be brought in again the same session.

A side-by-side comparison of H.R. 9725 and H.R. 25 reveals but a few word differences and not a single deleted section. Both bills remain nearly 200 pages long with more than 40,000 words of text in each. The actual difference in language is, at best, cosmetic. The insignificance of the changes are spelled out in other views filed with this Report. Suffice it to say, at this point, that not a single issue, argument, or controversy raised by H.R. 25 is put to rest by H.R. 9725. The bill this Committee reports is a second consideration of the vetoed H.R. 25.

We believe the rule against "second consideration" has an important purpose. It is more than a limitation against those who would waste the time of the House in repeated agitations of the same question. It fixes the judgment of the House. If every question of close decision were permitted to be brought again, the judgment of the House would never be known.

Of course, a new Congress is not bound by the decisions of an earlier Congress. We agree that the next Congress could again examine the surface mining control issue as presented in H.R. 25 or H.R. 9725. But this Congress has decided against passing H.R. 25, or any other bill of the same substance, by sustaining the veto of H.R. 25. The judgment must be regarded as the will of the 94th Congress, and H.R. 9725 cannot be brought.

The test of what constitutes "of the same substance" is not without precedent. In 1856, the Speaker overruled a point of order against a bill allegedly "of the same substance" by finding that the one bill differed from the other "in the very material manner of wanting the proviso, which is the subject matter of controversy . . ." ¹ (emphasis added). As we have pointed out, H.R. 9725 has not eliminated any section of controversy from H.R. 25. Nearly all provisos are identical to H.R. 25, leaving the two bills "of the same substance."

We are aware of an instance in 1864 in which the Speaker observed that "a resolution which the House had laid on the table might not be presented again, unless one or two words were changed, to make it in fact a different resolution" ² (emphasis added). Proponents of H.R. 9725 believe this opinion (which was not a formal ruling) requires only a literal change in one or two words to defeat the test "of the same substance." We disagree. We believe the words, "to make it in fact a different resolution," govern the meaning of the Chair's opinion. We believe the Chair intended that a word or words changed must affect the meaning of the bill so as to make it different. Otherwise, if all that is required is cosmetic change, the rule against "second consideration" has no purpose. Such an interpretation is wrong because it renders a House Rule useless without a vote to repeal it.

Section XLIII of Jefferson's Manual applies, and H.R. 9725 is not in order. Its consideration in the 94th Congress would be a violation of the House Rules.

¹ See Section 3384, Cannon's Precedents, p. 295.

² See Section 3385, Cannon's Precedents, p. 295.

AREN'T WE IN A DIFFERENT SESSION OF CONGRESS?

The term "same session" in the Rule against second consideration means both years of the same Congress.

Rules of the House take precedent over the principles set forth in Jefferson's Manual. Therefore, even though Jefferson may have had separate sessions of the same Congress in mind when he wrote the Manual, House Rule XXVI governs the meaning of the phrase.

Rule XXVI and its historical usage has established rather well that bills carried over from one year to the next in the same Congress retain the same status. Only a new Congress begins with a clean slate. Thus a bill rejected once could not be considered again the following year of the same Congress.

The Rule retaining the "same status" for bills was first adopted in 1818 "in order to expedite public business by preventing the repetition of the labor of committees." (See Hind's Precedents, Vol. 5, Sec. 6727). The 160 year practice of the House since then is best set forth in Hind's:

"All business pending and unfinished in the House or in committee, or awaiting concurrent action in the Senate, at the end of a session, is resumed at the next session of the same Congress." Ibid.

The original language of the Rule concluded: "...shall be resumed and acted on in the same manner as if an adjournment had not taken place." Ibid.

HAS THE HOUSE REJECTED A SURFACE MINING BILL?

Yes. A bill is rejected when a veto is sustained. The House sustained the veto of H.R. 25, the Surface Mining Control and Reclamation Act of 1975, on June 10, 1975. Thus the bill was rejected, and H.R. 9725, which is of the same substance, may not be considered.

The Constitution requires a two-thirds vote of both Houses of Congress to pass a vetoed bill into law. A vote was taken and failed on the Surface Mining bill, therefore it is rejected in the same manner as if it had failed to receive a simple majority vote.

The Rule against second consideration does not, and should not, be construed to mean that "reject" requires a majority vote against a vetoed bill. Obviously the Constitution provides that in the case of vetoed bills, one-third plus one Members of either House can reject a vetoed bill.

SHOULD A POINT OF ORDER AGAINST H.R. 9725 BE WAIVED?

No. Setting aside the House Rules should be a rarely used procedure allowed only when the circumstances warrant an exception. What circumstances justify waiving the Rules so the Surface Mining bill may be brought again?

Are we less dependent on foreign oil?

Are we using less energy?

Has the President changed his mind?

Has the Congress changed its mind?

Is the economy substantially different now?

Do we have less need for coal?

Is the environment in imminent danger of being irreparably harmed? (To the contrary. More States have passed or strengthened their surface mining laws, and the Department of Interior has issued stringent regulations.)

There is no change in the circumstances, or the bill itself, which warrant setting aside the Rules of the House for a second vote on this issue. The judgment of the House should stand.

Free

[March 1976] A BILL OF THE SAME SUBSTANCE . . .

H.R. 9725 is virtually identical to the vetoed H.R. 25. Of the twenty-five major issues advanced by the Administration and left unresolved by the Conference Committee on H.R. 25, twenty-two remain in H.R. 9725 unchanged and stated in the identical language of H.R. 25. The other three major issues were not resolved by the minor changes in language found in H.R. 9725. The full text of each of the two bills compared below is 174 pages long. Only the major issues have been reproduced in this side-by-side demonstration. The remaining sections of the bills--more than two-thirds of the texts--are word-for-word identical.

Union Calendar No. 453

94TH CONGRESS
2^D SESSION

H. R. 9725

[Report No. 94-896]

A BILL

To provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

CONFERENCE REPORT

H. R. 25

A BILL

To provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

<u>MAJOR ISSUE</u>	<u>MODIFICATION TO H.R. 9725</u>	<u>PAGE</u>
1. Office of Surface Mining, Jurisdiction	No change	3
2. MESA Inspectors	No change	7
3. Conflict of Interest	No change	8
4. Matching Grants	No change	9
5. Reclamation Fee	Change in date	27
6. Interim Timing	Change in timing	28
7. Federal Preemption During Interim	No change	28
8. Delays, Designations as Unsuitable	No change	29
9. Alluvial Valley Floors	Change in language	31
10. Surface Owner Consent, Exploration	No change	32
11. Stream Siltation	No change	33
12. Replacement of Water Supply	No change	35
13. Hydrological Disturbances	No change	36
14. Impoundments	No change	37
15. Variance Provisions	No change	39
16. Underground Mining Limitation	No change	43
17. Citizens Suits	No change	44
18. Federal Preemption During Interim	No change	47
19. National Forests	No change	54
20. State Program Requirements	No change	55
21. Ambiguous Terms	No change	55
22. New Criteria, Designations as Unsuitable	No change	56
23. NEPA Requirements	No change	59
24. Contract Authority	No change	60
25. Surface Owner Consent	No change	61

1. MAJOR ISSUE: OFFICE OF SURFACE MINING, JURISDICTION

H.R. 9725

TITLE II—OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

CREATION OF THE OFFICE

Sec. 201. (a) There is established in the Department of the Interior, the Office of Surface Mining Reclamation and Enforcement (hereinafter referred to as the "Office").

(b) The Office shall have a Director who shall report directly to the Secretary and who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the ~~IDENTICAL~~ Executive Schedule under section 5315 of title 5 of the United States Code, and such other employees as may be required. The Director shall have ~~the~~ ~~ANGUANGE~~ responsibilities provided under subsection (c) of this section and those duties and responsibilities relating to the functions of the office which the Secretary may assign, consistent with this Act. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer the provisions of this Act. No legal authority, program, or function in any Federal agency which has as its purpose promoting the development or use of coal or other mineral resources or regulating the health and safety of miners under provisions of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742), shall be transferred to the Office.

H.R. 25

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- (c) The Secretary, acting through the Office, shall—
 - (1) administer the programs for controlling surface coal mining operations which are required by this Act; review and approve or disapprove State programs for controlling surface coal mining operations; make those investigations and inspections necessary to insure compliance with this Act; conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses and production of written or printed material as provided for in this Act; issue cease-and-desist orders; review and vacate or modify or approve orders and decisions; and order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto;
 - (2) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act;
 - (3) administer the State grant-in-aid program for the development of State programs for surface coal mining and reclamation operations provided for in title V of this Act;
 - (4) administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title IV of this Act;

H.R. 25

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 - (2) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act;
 - (3) administer the State grant-in-aid program for the development of State programs for surface coal mining and reclamation operations provided for in title V of this Act;
 - (4) administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title IV of this Act;

(5) administer the surface mining and reclamation research and demonstration project authority provided for in this Act;

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments, and other eligible agencies in the coordination of such programs;

(7) maintain a continuing study of surface mining and reclamation operations in the United States;

(8) develop and maintain an Information and Data Center on Surface Coal Mining, Reclamation, and Surface ~~Impacts~~ ^{IDENTICAL} Underground Mining, which will make such data available to the public and to Federal, regional, State, and local agencies ~~conducting~~ or concerned with land use planning and agencies concerned with surface and underground mining and reclamation operations;

(9) assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of the Act and, at the same time, reflect local requirements and local environmental and agricultural conditions;

(10) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of surface coal mining to section 522;

(5) administer the surface mining and reclamation research and demonstration project authority provided for in this Act;

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(10) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of surface coal mining pursuant to section 522;

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(11) monitor all Federal and State research programs dealing with coal extraction and use and recommend to Congress the research and demonstration projects and necessary changes in public policy which are designated to (A) improve feasibility of underground coal mining and (B) improve surface mining and reclamation techniques designed at eliminating adverse environmental and social impacts; and *IDENTICALLY LANGUAGE*

(12) perform such other duties as may be provided by law and relate to the purposes of this Act.

(e) The Office shall be considered an independent Federal regulatory agency for the purposes of sections 3502 and 3512 of title 44 of the United States Code.

H.R. 25

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2. MAJOR ISSUE: MESA INSPECTORS

H.R. 9725

Sec. 201 (d) The Director shall not use either permanently or temporarily any person charged with responsibility of inspecting coal mines under the Federal Coal Mine Health and Safety Act of 1969, unless he finds and publishes such finding in the Federal Register, that such activities would not interfere with such inspections under the 1969 Act.

IDENTICAL LANGUAGE

H.R. 25

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IDENTICAL LANGUAGE

3. MAJOR ISSUE: CONFLICT OF INTEREST

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Sec. 201. (f) No employee of the Office or any other Federal employee performing any function or duty under this Act shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment for more than one year, or both. The Director shall (1) within sixty days after enactment of this Act publish regulations, in accordance with section 553 of title 5, United States Code, to establish the methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning their financial interests which may be affected by this subsection, and (2) report to the Congress on March 1 of each calendar year on the actions taken and not taken during the preceding calendar year under this subsection.

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4. MAJOR ISSUE: MATCHING GRANTS

H.R. 9725

TITLE IV—ABANDONED MINE RECLAMATION

ABANDONED MINE RECLAMATION FUND

SEC. 401. (a) There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior.

(b) The fund shall consist of amounts deposited in the fund, from time to time, derived from—

IDENTICAL
the sale, lease, or rental of land reclaimed pursuant to this title;

IDENTICAL
(2) any user charge imposed on or for land reclaimed pursuant to this title, after expenditures for maintenance have been deducted; and

(3) the reclamation fees levied under subsection (d) of this section.

(c) Amounts covered into the fund shall be available for the acquisition and reclamation of land under section 405, administration of the fund and enforcement and collection of the fee as specified in subsection (d), acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 406, and for use under section 404, by the Secretary of Agriculture, of up to one-fifth of the money deposited in

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the fund annually and transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes. Such amounts shall be available for such purposes only when appropriated therefor; and such appropriations may be made without fiscal year limitations.

(e) The geographic allocation of expenditures from the fund ~~IDENTICAL~~^{LANGUAGE} reflect both the area from which the revenue was derived as well as the program needs for the funds. Fifty per centum of the funds collected annually in any State or Indian reservation shall be expended in that State or Indian reservation by the Secretary to accomplish the purposes of this title after receiving and considering the recommendations of the Governor of that State or the head of the governing body of that tribe having jurisdiction over that reservation, as the case may be: *Provided, however,* That if such funds have not been expended within three years after being paid into the fund, they shall be available for expenditure in any area. The balance of funds collected on an annual basis may be expended in any area at the discretion of the Secretary in order to meet the purposes of this title.

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OBJECTIVES OF FUND

SEC. 402. The primary objective for the obligation of funds is the reclamation of areas affected by previous mining; but other objectives shall reflect the following priorities in the order stated:

- (a) the protection of health or safety of the public;
- (b) protection of the environment from continued degradation and the conservation of land and water resources;
- (c) the protection, construction, or enhancement of public facilities such as utilities, roads, recreation and conservation facilities and their use;
- IDENTICAL LANGUAGE*
1. Development of lands and water to a suitable condition useful in the economic and social development of the area affected; and
- (e) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques in all areas of the United States.

ELIGIBLE LANDS

SEC. 403. The only lands eligible for reclamation expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act, and for which there is no continuing reclamation responsibility under State or other Federal laws.

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H.R. 9725

RECLAMATION OF RURAL LANDS

SEC. 404. (a) In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements, of not more than ten years with landowners (including owners of water rights), residents and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

(b) The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agri-

H.R. 25

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(b) The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agri-

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culture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, residents, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

(c) Such plan shall be incorporated in ~~an~~ ^{IDENTICAL} ~~language~~ agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

(d) In return for such agreement by the landowner, including owner of water rights, resident, or tenant the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant in such amounts and subject to such conditions as the Secretary of Agriculture determines are appro-

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(e) Such plan shall be incorporated in ~~an~~ ^{LANGUAGE} agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

(d) In return for such agreement by the landowner, including owner of water rights, resident, or tenant the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant in such amounts and subject to such conditions as the Secretary of Agriculture determines are appro-

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priate and in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner including water rights owners, resident, or tenant, or on not more than one hundred and twenty acres of land which has been purchased jointly by such landowners including water rights owners, residents, or tenants under an agreement for the enhancement of water quality or quantity on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving off-site water quality, off-site esthetic values, or other off-site benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

(e) The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would

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are appropriate and in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred twenty acres of land occupied by such owner including water rights owners, resident or tenant, or on not more than one hundred twenty acres of land which has been purchased jointly by such landowners including water rights owners, residents, or tenants under an agreement for the enhancement of water quality or quantity on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving off-site water quality, off-site esthetic values, or other off-site benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

(e) The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in

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be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

(f) Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

(g) The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

(h) In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Soil Conservation Service.

(i) Funds shall be made available to the Secretary of Agriculture for the purposes of this section, as provided in section 401 (c).

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the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

(f) Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or limitation on the production of such crop; or (2) surrender of such history and allotments.

(g) The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

(h) In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Soil Conservation Service.

(i) Funds shall be made available to the Secretary of Agriculture for the purposes of this section, as provided in section 401 (c).

Section 405(a) of H.R. 9725 allows the Secretary to reclaim abandoned lands without taking fee title. If the reclamation results in significant increase in the property's value, a lien against the property in the amount of the increase is established. H.R. 25 contemplated fee title in the United States before reclamation.

Language changes are underlined.

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ACQUISITION AND RECLAMATION OF ABANDONED AND
UNRECLAIMED MINED LANDS

SEC. 405. (a) (1) The Congress declares that the reclamation and, if necessary, acquisition of any interest in land or mineral rights in order to eliminate hazards to the environment or to the health or safety of the public from mined lands, or to construct, operate, or manage reclamation facilities and projects constitutes for the purposes of this title reclamation and, if necessary, acquisition for a public use or purpose, notwithstanding that the Secretary plans to hold the interest in land or mineral rights so reclaimed or acquired as an open space or for recreation, or to resell, if acquired, the land following completion of the reclamation facility or project.

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ACQUISITION AND RECLAMATION OF ABANDONED AND
UNRECLAIMED MINED LANDS

SEC. 405. (a) (1) The Congress declares that the acquisition of any interest in land or mineral rights in order to eliminate hazards to the environment or to the health or safety of the public from mined lands, or to construct, operate, or manage reclamation facilities and projects constitutes acquisition for a public use or purpose, notwithstanding that the Secretary plans to hold the interest in land or mineral rights so acquired as an open space or for recreation, or to resell the land following completion of the reclamation facility or project.

(2) The Secretary may acquire by purchase, donation, or otherwise, land or any interest therein which has been affected by surface mining and has not been reclaimed to its approximate original condition. Prior to making any acquisition of land under this section, the Secretary shall make a thorough study with respect to those tracts of land which are available for acquisition under this section and based upon those findings he shall select lands for purchase according to the priorities established in section 402. Title to all lands or interests therein acquired shall be taken in the name of the United States. The price paid for land under this section shall take into account the unrestored condition of the land. Prior to any individual acquisition under this section, the Secretary shall specifically determine the cost of such acquisition and reclamation and the benefits to the public to be gained therefrom.

(3) Within six months after the completion of any work to abate pollution caused by past coal mining operations herein contemplated on any privately owned surface property, the Secretary, or the appropriate regulatory authority pursuant to an approved State program, shall itemize the moneys so expended and may file a statement thereof in the appropriate county courthouse office for the filing of docu-

(2) The Secretary may acquire by purchase, donation, or otherwise, land or any interest therein which has been affected by surface mining and has not been reclaimed to its approximate original condition. Prior to making any acquisition of land under this section, the Secretary shall make a thorough study with respect to those tracts of land which are available for acquisition under this section and based upon those findings he shall select lands for purchase according to the priorities established in section 402. Title to all lands or interests therein acquired shall be taken in the name of the United States. The price paid for land under this section shall take into account the unrestored condition of the land. Prior to any individual acquisition under this section, the Secretary shall specifically determine the cost of such acquisition and reclamation and the benefits to the public to be gained therefrom.

(3) For the purposes of this section, when the Secretary seeks to acquire an interest in land or mineral rights, and cannot negotiate an agreement with the owner of such interest or right he shall request the Attorney General to file a condemnation suit and take interest or right, following a tender of just compensation awarded by a jury to such person. When the Secretary determines that time is of the essence

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ments in the county in which the land lies if the moneys so expended shall result in a significant increase in the property value. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land. The lien shall not exceed an amount determined by the appropriate Board, appointed as provided in the eminent domain code or similar such legislation, to be the increase in the market value of the land as a result of the corrections of the condition immediately the Secretary, or appropriate regulatory authority, has completed work, and the lien shall extend only to that portion of the premises directly involved in the work of the Secretary pursuant to this Act.

(4) If the Secretary, or the appropriate regulatory authority pursuant to an approved State program, makes a finding of fact that (1) a mine fire, refuse bank fire, stream pollution, or subsidence resulting from coal mining operations is at a stage where, in the public interest, immediate action should be taken; and (2) the owner or owners of the property upon which entry must be made to combat the mine fire, refuse bank fire, stream pollution, or subsidence resulting from coal mining operations, are not known, are not readily available, or will not give permission for the Secretary, political subdivisions of the State

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because of the likelihood of continuing or increasingly harmful effects upon the environment which would substantially increase the cost or magnitude of reclamation or of continuing or increasingly serious threats to life, safety, or health, or to property, the Secretary may take such interest or rights immediately upon payment by the United States either to such person or into a court of competent jurisdiction of such amount as the Secretary shall estimate to be the fair market value of such interest or rights; except that the Secretary shall also pay to such person any further amount that may be subsequently awarded by a jury, with interest from the date of the taking.

(4) For the purposes of this section, when the Secretary takes action to acquire an interest in land and cannot determine which person or persons hold title to such interest or after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1) of this subsection, reclaimed land may be sold to the State or local government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any

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or municipalities, their agents, employees, or contractors to enter upon such premises, then, upon giving notice by mail to the owner or owners, if known, or if not known, by posting notice upon the premises and advertising in a newspaper of general circulation in the area in which the land lies,
the Secretary, political subdivision of the State or municipalities, their agents, employees, or contractors shall have a right to enter upon the premises and any other land in order to have access to the premises to combat the mine fire, refuse bank fire, stream pollution, or subsidence resulting from coal mining operations and do all things necessary and expedient to do so. Such entry shall not be construed as an act of condemnation of property or of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises entered upon shall be chargeable against such lands and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however,* That this provision is not intended to create new rights of action or eliminate existing immunities.

(5) States are encouraged as part of their approved State programs, to reclaim abandoned and unreclaimed mined lands within their boundaries and, if necessary, to

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pay any further amount that may be agreed to pursuant to negotiations or awarded by a jury subsequent to the time of taking. If no person or persons establish title to the interest or rights within six years from the time of such taking, the payment shall revert to the Secretary and be deposited in the fund.

(5) States are encouraged to acquire abandoned and unreclaimed mined lands within their boundaries and to transfer such lands to the Secretary to be reclaimed under appro-

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acquire or to transfer such lands to the Secretary or the appropriate State regulatory authority under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this title but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this title, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1) of this subsection, reclaimed land may be sold to the State or local government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any land sold to a State or local government under this paragraph is not used for a valid public purpose as specified by the Secretary in the terms of the sales agreement then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

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(6) The Secretary shall prepare specifications for the reclamation of lands to be reclaimed or acquired under this section. In preparing these specifications, the Secretary shall utilize the specialized knowledge or experience of any Federal or State department or agency which can assist him in the development or implementation of the reclamation program required under this title.

(7) In selecting lands to be acquired pursuant to this section and in formulating regulations for the making of grants to the States to acquire lands pursuant to this title, the Secretary shall give priority to lands in their unclaimed state which will meet the objectives as stated in section 402 above when reclaimed. For those lands which are reclaimed for public recreational use, the revenue derived from such lands shall be used first to assure proper maintenance of such funds and facilities thereon and any remaining moneys shall be deposited in the funds.

(8) Where land reclaimed pursuant to this section is deemed to be suitable for industrial, commercial, residential, or private recreational development, the Secretary may sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such

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other regulations as he may promulgate to insure that such lands are put to proper use, as determined by the Secretary. If any such land sold is not put to the use specified by the Secretary in the terms of the sales agreement, then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

(9) The Secretary shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired to be reclaimed pursuant to this title are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of the lands once reclaimed.

(10) The Secretary shall utilize all available data and information on reclamation needs and measures, including the data and information developed by the Corps of Engineers in conducting the National Strip Mine Study authorized by section 233 of the Flood Control Act of 1970. In connection therewith the Secretary may call on the Secretary of the Army, acting through the Chief of Engineers, to assist him in conducting, operating, or managing reclamation facilities and projects, including demonstration facilities and projects conducted by the Secretary pursuant to this section.

(b) (1) The Secretary is authorized to use money in the

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regulations as he may promulgate to insure that such lands are put to proper use, as determined by the Secretary. If any such land sold is not put to the use specified by the Secretary in the terms of the sales agreement, then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

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(b) (1) The Secretary is authorized to use money in

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fund to acquire, reclaim, develop, and transfer land to any State, or any department, agency, or instrumentality of a State or of a political subdivision thereof, or to any person, firm, association, or corporation if he determines that such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons employed in mines or work incidental thereto, persons disabled as the result of such employment, persons displaced by governmental action, or persons dislocated as the result of natural disasters or catastrophic failure from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land ~~with~~^{IDENTICAL} or without monetary consideration: *Provided*, That, to the extent ~~that~~^{LANGUAGE} the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such person, firm, association, or corporation. Land development may include the construction of public facilities or other improvements including reasonable site work and offsite improvements such as sewer and water extensions which the Secretary determines necessary or appropriate to the economic feasibility of a project. No part of the funds provided under this title may be used to pay the actual construction costs of housing.

(2) The Secretary may carry out the purposes of this

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(2) The Secretary may carry out the purposes of this

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subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(3) The Secretary may provide, or contract with public and private organizations to provide information, advice, and technical assistance, including demonstrations, in furtherance of this subsection.

(4) The Secretary may make expenditures to carry out the purpose of this subsection, without regard to the provisions of section 403, in ~~any~~^{IDENTICAL} area experiencing a rapid development of its coal resources which ~~the~~^{SECRETARY} has determined does not have essential public facilities.
~~LANGUAGE~~

FILLING VOIDS AND SEALING TUNNELS

SEC. 406. (a) The Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Secretary, at the request of the Governor of any State, or the chairman of any tribe, is authorized to fill such voids, seal such abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the Secretary determines

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could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.

(b) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be expended in the respective States or Indian reservations under the provisions of section 401 (e).

(c) The Secretary may make expenditures and carry out the purposes of this section without regard to provisions of section 403 in such States or Indian reservations where requests ~~IDENTICAL~~ by the Governor or tribal chairman and only after all reclamation with respect to abandoned coal lands or coal development impacts ~~have~~ been met, except for those reclamation projects relating to the protection of the public health or safety.

(d) In those instances where mine waste piles are being reworked for coal conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purposes of this section.

(e) The Secretary may acquire by purchase, donation, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

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(e) The Secretary may acquire by purchase, donation, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

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FUND REPORT

SEC. 407. Not later than January 1, 1976, 1977, and annually thereafter, the Secretary shall report to the Congress on operations under the fund together with his recommendations as to future uses of the fund.

TRANSFER OF FUNDS

SEC. 408. The Secretary of the Interior may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

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5. MAJOR ISSUE: RECLAMATION FEE

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Sec. 401 (d) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the time, as determined by the Secretary, whichever is less except that this reclamation fee for lignite coal shall be at a rate of 5 per centum of the value of the coal at the mine, or 35 cents per ton, whichever is less. Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after January 1, 1977, and ending fifteen years after the date of enactment of this Act unless extended by an Act of Congress.

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(d) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that this reclamation fee for lignite coal shall be at a rate of 5 per centum of the value of the coal at the mine, or 35 cents per ton, whichever is less. Such fee shall be paid no later than thirty days after the end of each calendar quarter occurring after the date of enactment of this Act, beginning with the first calendar quarter (or part thereof) occurring after such date of enactment and ending ten years after the date of enactment of this Act unless extended by an Act of Congress.

6. MAJOR ISSUE: INTERIM TIMING

7. MAJOR ISSUE: FEDERAL PREEMPTION DURING INTERIM

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INITIAL REGULATORY PROCEDURES

SEC. 502. (a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are regulated by a State unless such person has obtained a permit from the State's regulatory authority.

(b) All surface coal mining operations on lands on which such operations are regulated by a State which commence operations pursuant to a permit issued on or after six months from the date of enactment of this Act shall comply, and such permits shall contain terms requiring compliance with, the provisions of subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act.

(c) On and after one year from the date of enactment of this Act, all surface coal mining operations on lands on which such operations are regulated by a State which are in operation pursuant to a permit issued before the date of enactment of this Act shall comply with the provisions of subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act, with respect to lands from which overburden and the coal seam being mined have not been removed.

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Sec. 502. (a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are regulated by a State unless such person has obtained a permit from the State's regulatory authority.

(b) All surface coal mining operations on lands on which such operations are regulated by a State 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 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act.

(c) 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 a State which are in operation pursuant to a permit issued before the date of enactment of this Act shall comply with the provisions of subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act, with respect to lands from which overburden and the coal seam being mined have not been removed.

8. MAJOR ISSUE: DELAYS, DESIGNATIONS AS UNSUITABLE

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Sec. 510 (b) No permit, revision, or renewal application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant that—

IDENTICAL

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 522 of this Act or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 522 (a) (4) (D) or section 522 (e) (unless in such an area as to which an administrative proceeding has commenced pursuant to section 522 (a) (4) (D) of this Act, the operator making the permit application demonstrates that, prior to the date of enactment of this Act, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit); and

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(b) No permit, revision, or renewal application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that—

IDENTICAL

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 522 of this Act or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 522 (a) (4) (D) or section 522 (e) (unless in such an area as to which an administrative proceeding has commenced pursuant to section 522 (a) (4) (D) of this Act, the operator making the permit application demonstrates that, prior to the date of enactment of this Act, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit); and

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Sec. 522 (e) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the locality ~~DENTICAL~~ of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

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(e) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the locality ~~DENTICAL~~ of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

9. MAJOR ISSUE: ALLUVIAL VALLEY FLOORS

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Sec. 510(b) (5) the proposed surface coal mining operations, if located west of the one hundredth meridian west longitude, would—

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

(B) not adversely affect the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b)(5):

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

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(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible.

10. MAJOR ISSUE: SURFACE OWNER CONSENT, EXPLORATION

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Sec. 512 (b) Each application for a coal exploration permit pursuant to an approved State or Federal program under the provisions of this Act shall be accompanied by a fee established by the regulatory authority. Such fee shall be based, as nearly as possible, upon the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The application and supporting technical data shall be submitted in a manner satisfactory to the regulatory authority and shall include a description of the purpose of the proposed exploration project. The supporting technical data shall include, among other things—

(8) a statement describing the right by which the applicant intends to pursue his exploration activities and a certification that notice of intention to pursue such activities has been given to the surface owner;

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(b) Each application for a coal exploration permit pursuant to an approved State or Federal program under the provisions of this Act shall be accompanied by a fee established by the regulatory authority. Such fee shall be based, as nearly as possible, upon the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The application and supporting technical data shall be submitted in a manner satisfactory to the regulatory authority and shall include a description of the purpose of the proposed exploration project. The supporting technical data shall include, among other things—

(8) a statement describing the right by which the applicant intends to pursue his exploration activities and a certification that notice of intention to pursue such activities has been given to the surface owner;

11. MAJOR ISSUE: STREAM SILTATION

H.R. 9725

Sec. 515 (b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to—

(10) minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after ~~surface~~
IDENTICAL coal mining operations and during reclamation by—

IDENTICAL LANGUAGE
(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

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(b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to—

(10) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after ~~surface~~
IDENTICAL coal mining operations and during reclamation by—

IDENTICAL LANGUAGE
(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

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Sec. 516(b) Each permit issued under any approved State or Federal program pursuant to this Act and relating to underground coal mining shall require the operator to—

(9) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated off-site areas and to the quantity of water in surface ground water systems both during and after coal mining opera-

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(B) conducting ~~surface~~ coal mining operations so as to prevent, to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

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(b) Each permit issued under any approved State or Federal program pursuant to this Act and relating to underground coal mining shall require the operator to—

(9) minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after coal mining operations and

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(B) conducting ~~surface~~ coal mining operations so as to prevent, to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

12. MAJOR ISSUE: REPLACEMENT OF WATER SUPPLY

H.R. 9725

Sec. 515(b) (10)(E) replacing the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from mining.

IDENTICAL LANGUAGE

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(E) replacing the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from mining;

IDENTICAL LANGUAGE

13. MAJOR ISSUE: HYDROLOGICAL DISTURBANCES

H.R. 9725

Sec. 515(b) (10) (F) preserving throughout the mining and
reclamation process the essential hydrologic functions
of alluvial valley floors in the arid and semiarid
areas of the country; and
IDENTICAL LANGUAGE

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(F) preserving throughout the mining and re-
clamation process the essential hydrologic functions
of alluvial valley floors in the arid and semiarid areas
of the country; and
IDENTICAL LANGUAGE

14. MAJOR ISSUE: IMPOUNDMENTS**H.R. 9725**

SEC. 515 (e) The Secretary, with the written concurrence of the Chief of Engineers, shall establish within one hundred and thirty-five days from the date of enactment, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in section 515(b)(13) and section 516(b)(5). Such ~~IDENTICAL~~ standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

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(e) The Secretary, with the written concurrence of the Chief of Engineers, shall establish within one hundred and thirty-five days from the date of enactment, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in section 515(b)(13) and section 516(b)(5). Such ~~IDENTICAL~~ standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to ~~engineering~~ and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for: review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

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Sec. 515 (13) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to subsection (e) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either ~~temporarily~~ or permanently as dams or embankments;

Sec. 516 (5) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to section 515(e), all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

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(13) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to subsection (e) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either ~~temporarily~~ or permanently as dams or embankments;

(5) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to section 515(e), all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

IDENTICAL LANGUAGE

15. MAJOR ISSUE: VARIANCE PROVISIONS

H.R. 9725

Sec. 515 (c) (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.

(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 ~~515(b)~~ (3) or 515(d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c) (4) (A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

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(c) (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.

(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 ~~515(b)~~ (3) or 515(d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c) (4) (A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

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(3) In cases where an industrial, commercial (including commercial agricultural), residential or public facility (including recreational facilities) development is proposed for the postmining use of the affected land, the regulatory authority may grant a variance for a surface mining operation of the nature described in subsection (e) (2) where—

(A) after consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use;

(B) the equal or better economic or public use can be obtained only if one or more exceptions to the requirements of section 515 (b) (3) are granted;

(C) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

- (i) compatible with adjacent land uses;
- (ii) obtainable according to data regarding expected need and market;
- (iii) assured of investment in necessary public facilities;
- (iv) supported by commitments from public agencies where appropriate;

H.R. 25

(3) In cases where an industrial, commercial (including commercial agricultural), residential or public facility (including recreational facilities) development is proposed for the postmining use of the affected land, the regulatory authority may grant a variance for a surface mining operation of the nature described in subsection (e) (2) where—

(A) after consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use;

(B) the equal or better economic or public use can be obtained only if one or more exceptions to the requirements of section 515 (b) (3) are granted;

(C) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

- (i) compatible with adjacent land uses;
- (ii) obtainable according to data regarding expected need and market;
- (iii) assured of investment in necessary public facilities;
- (iv) supported by commitments from public agencies where appropriate;

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(v) practicable with respect to private financial capability for completion of the proposed development;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

IDENTICAL LANGUAGE
(D) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

(E) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

(F) a public hearing is held in the locality of the proposed surface coal mining operation prior to the grant of any permit including a variance; and

(G) all other requirements of this Act will be met.

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(v) practicable with respect to private financial capability for completion of the proposed development;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

IDENTICAL LANGUAGE
(D) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

(E) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

(F) a public hearing is held in the locality of the proposed surface coal mining operation prior to the grant of any permit including a variance; and

(G) all other requirements of this Act will be met.

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(4) In granting any variance pursuant to this subsection the regulatory authority shall require that—

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

IDENTICAL LANGUAGE
(D) no damage will be done to natural water-courses;

(E) all other requirements of this Act will be met.

(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.

(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 applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

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(4) In granting any variance pursuant to this subsection the regulatory authority shall require that—

(A) the toe of the lowest coal seam mined and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

IDENTICAL LANGUAGE
(D) no damage will be done to natural water-courses;

(E) all other requirements of this Act will be met.

(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.

(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 applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

16. MAJOR ISSUE: UNDERGROUND MINING LIMITATION

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Sec. 516(b) (10) with respect to other surface impacts not specified in this subsection including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from ~~IDENTICAL LANGUAGE~~ to such activities, operate in accordance with the standards established under section 515 of this title for such effects which result from surface coal mining operation: *Provided*, That the Secretary may make such modifications in the requirements imposed by this subparagraph as are deemed necessary by the Secretary due to the differences between surface and underground coal mining.

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(10) with respect to other surface impacts not specified in this subsection including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 515 of this title for such effects which result from surface coal mining operations: *Provided*, That the Secretary may make such modifications in the requirements imposed by this subparagraph as are deemed necessary by the Secretary due to the differences between surface and underground coal mining.

17. MAJOR ISSUE: CITIZENS SUITS

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CITIZEN SUITS

SEC. 520. (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf—

(1) against any person including—

(A) the United States,

(B) any other governmental instrumentality *IDENTICAL LANGUAGE* agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of the provisions of this Act or the regulations promulgated thereunder, or order issued by the regulatory authority,

(C) any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this Act; or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this Act which is not discretionary with the Secretary or with the appropriate State regulatory authority.

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CITIZEN SUITS

SEC. 520. (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf—

(1) against any person including—

(A) the United States,

(B) any other governmental instrumentality or *IDENTICAL LANGUAGE* agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of the provisions of this Act or the regulations promulgated thereunder, or order issued by the regulatory authority,

(C) any other person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this Act; or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this Act which is not discretionary with the Secretary or with the appropriate State regulatory authority.

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(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing under oath of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator; or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this Act, or any rule, regulation, order, or permit issued pursuant to this Act, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice in writing under oath of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

H.R. 25

(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing under oath of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator; or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this Act, or any rule, regulation, order, or permit issued pursuant to this Act, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice in writing under oath of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

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(e) (1) Any action respecting a violation of this Act or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation to any party, whenever the court determines ~~IDENTICAL~~¹ award is appropriate. The court may, if a temporary restraining ~~order~~² or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under this or any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority).

(f) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including attorney fees) in an appropriate United States district court.

H.R. 25

(e) (1) Any action respecting a violation of this Act or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation to any party, whenever the court determines ~~IDENTICAL~~¹ award is appropriate. The court may, if a temporary restraining ~~order~~² or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under this or any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority.)

(f) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including attorney fees) in an appropriate United States district court.

18. MAJOR ISSUE: FEDERAL PREEMPTION DURING INTERIM

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ENFORCEMENT

SEC. 521. (a) (1) Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. When the Federal inspection

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ENFORCEMENT

SEC. 521. (a) (1) Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. When the Federal inspection

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results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a) (5) of this section.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program

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results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a) (5) of this section.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a

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or a Federal lands program, Federal inspection pursuant to section 502, or section 504 (b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, but such violation does not create an imminent danger to the health or safety of the public, or cause or can be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Secretary or his authorized representative, the Secretary or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a) (5) of this section.

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Federal lands program, Federal inspection pursuant to section 502, or section 504 (b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, but such violation does not create an imminent danger to the health or safety of the public, or cause or can be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Secretary or his authorized representative, the Secretary or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to subparagraph (a) (5) of this section.

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(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 502 or section 504(b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the Secretary or his authorized representative ~~IDENTICAL~~ find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Act or any permit conditions, or that such violations are willfully caused by the ~~PERMITTEE~~, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice

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(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 502 or section 504(b) or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the Secretary or his authorized representative ~~IDENTICAL~~ also find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Act or any permit conditions, or that such violations are willfully caused by the ~~PERMITTEE~~, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation which the notice or order applies. Each notice or order

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or order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs.

(b) Whenever the Secretary finds that violations of an approved State program appear to result from a failure of the State to enforce such State program effectively, he shall so notify the State. If the Secretary finds that such failure extends beyond thirty days after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this Act, the Secretary shall enforce any permit condition required under this Act, shall issue new or revised permits in accordance with requirements of this Act, and may issue such notices and orders as are necessary for compliance therewith.

(c) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other

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issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs.

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(c) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appro-

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appropriate order in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (A) violates or fails or refuses to comply with any order or decision issued by the Secretary under this Act, or (B) interferes with, hinders, or delays the Secretary or his authorized representatives in carrying out the provisions of this Act, or (C) refuses to admit such authorized representative to the mine, or (D) refuses to permit inspection of the mine by such authorized representative, or (E) refuses to furnish any information or report requested by the Secretary in furtherance of the provisions of this Act, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this Act. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended. Any relief granted by the court to enforce an order under clause (A) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

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(d) As a condition of approval of any State program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto.

IDENTICAL LANGUAGE

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(d) As a condition of approval of any State program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto.

IDENTICAL LANGUAGE

19. MAJOR ISSUE: NATIONAL FORESTS

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ec. 522 (e) Subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted—
IDENTICAL LANGUAGE

(2) on any Federal lands within the boundaries of any national forest except surface operations and impacts incident to an underground coal mine;

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(e) Subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted—
IDENTICAL LANGUAGE

(2) on any Federal lands within the boundaries of any national forest except surface operations and impacts incident to an underground coal mine;

20. MAJOR ISSUE: STATE PROGRAM REQUIREMENTS

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FEDERAL LANDS

SEC. 523. (a) No later than six months after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided*, That except as provided in section 710 the provisions of this Act shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program.

21. MAJOR ISSUE: AMBIGUOUS TERMS

The Administration's recommendation to provide explicit authority for the Secretary to define ambiguous terms was not adopted in either bill.

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FEDERAL LANDS

SEC. 523. (a) No later than six months after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided*, That except as provided in section 710 the provisions of this Act shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program.

22. MAJOR ISSUE: NEW CRITERIA, DESIGNATIONS AS UNSUITABLE

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TITLE VI—DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

DESIGNATION PROCEDURES

SEC. 601. (a) With respect to Federal lands within any State, the Secretary of Interior may, and if so requested by the Governor of such State, shall review any area within such lands to assess whether it may be unsuitable for mining operations for minerals or materials other than coal, pursuant to the criteria and procedures of this section.

(b) An area of Federal lands may be designated under this section as unsuitable for mining operations if (1) such area consists of Federal land of a predominantly urban or suburban character, used primarily for residential or related purposes, the mineral estate of which remains in the public domain, or (2) such area consists of Federal land where mining operations would have an adverse impact on lands used primarily for residential or related purposes.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the Secretary to seek exclusion of an area from mining operations pursuant to this section or the redesignation of an area or part thereof as suitable for such operations. Such petition shall contain allegations of fact with supporting evidence

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TITLE VI—DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

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(b) An area of Federal lands may be designated under this section as unsuitable for mining operations if (1) such area consists of Federal land of a predominantly urban or suburban character, used primarily for residential or related purposes, the mineral estate of which remains in the public domain, or (2) such area consists of Federal land where mining operations would have an adverse impact on lands used primarily for residential or related purposes.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the Secretary to seek exclusion of an area from mining operations pursuant to this section or the redesignation of an area or part thereof as suitable for such operations. Such petition shall contain allegations of fact with supporting evidence

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which would tend to substantiate the allegations. The petitioner shall be granted a hearing within a reasonable time and finding with reasons therefor upon the matter of their petition. In any instance where a Governor requests the Secretary to review an area, or where the Secretary finds the national interest so requires, the Secretary may temporarily withdraw the area to be reviewed from mineral entry or leasing pending such review: *Provided, however,* That such temporary withdrawal be ended as promptly as practicable and in no event shall exceed two years.

(d) In no event is ~~an~~^{IDENTICAL} land area to be designated unsuitable for mining operations under ~~this section~~^{LANGUAGE} on which mining operations are being conducted prior to the holding of a hearing on such petition in accordance with subsection (c) hereof. Valid existing rights shall be preserved and not affected by such designation. Designation of an area as unsuitable for mining operations under this section shall not prevent subsequent mineral exploration of such area, except that such exploration shall require the prior written consent of the holder of the surface estate, which consent shall be filed with the Secretary. The Secretary may promulgate, with respect to any designated area, regulations to minimize any adverse effects of such exploration.

(e) Prior to any designation pursuant to this section, the Secretary shall prepare a detailed statement on (i) the

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which would tend to substantiate the allegations. The petitioner shall be granted a hearing within a reasonable time and finding with reasons therefor upon the matter of their petition. In any instance where a Governor requests the Secretary to review an area, or where the Secretary finds the national interest so requires, the Secretary may temporarily withdraw the area to be reviewed from mineral entry or leasing pending such review: *Provided, however,* That such temporary withdrawal be ended as promptly as practicable and in no event shall exceed two years.

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(e) Prior to any designation pursuant to this section, the Secretary shall prepare a detailed statement on (i) the

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potential mineral resources of the area, (ii) the demand for such mineral resources, and (iii) the impact of such designation or the absence of such designation on the environment, economy, and the supply of such mineral resources.

(f) When the Secretary designates an area of Federal lands as unsuitable for all or certain types of mining operations for minerals and materials other than coal pursuant to this section he may withdraw such area from mineral entry or leasing, or condition such entry or leasing so as to limit such mining operations in accordance with his determination, if the Secretary also determines, based on his analysis pursuant to subsection 601 (e), that the benefits resulting from such designation, would be greater than the benefits to the regional or national economy which could result from mineral development of such area.

(g) Any party with a valid legal interest who has appeared in the proceedings in connection with the Secretary's determination pursuant to this section and who is aggrieved by the Secretary's decision (or by his failure to act within a reasonable time) shall have the right of appeal for review by the United States district court for the district in which the pertinent area is located.

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potential mineral resources of the area, (ii) the demand for such mineral resources, and (iii) the impact of such designation or the absence of such designation on the environment, economy, and the supply of such mineral resources.

(f) When the Secretary designates an area of Federal lands as unsuitable for all or certain types of mining operations for minerals and materials other than coal pursuant to this section he may withdraw such area from mineral entry or leasing, or condition such entry or leasing so as to limit such mining operations in accordance with his determination, if the Secretary also determines, based on his analysis pursuant to subsection 601 (e), that the benefits resulting from such designation, would be greater than the benefits to the regional or national economy which could result from mineral development of such area.

(g) Any party with a valid legal interest who has appeared in the proceedings in connection with the Secretary's determination pursuant to this section and who is aggrieved by the Secretary's decision (or by his failure to act within a reasonable time) shall have the right of appeal for review by the United States district court for the district in which the pertinent area is located.

23. NEPA REQUIREMENTS

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Sec. 702 (d) Approval of the State programs, pursuant to section 503 (b), promulgation of Federal programs, pursuant to section 504, implementation of the Federal lands programs, pursuant to section 523 of this Act, shall constitute a major action within the meaning of section 102 (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

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(d) Approval of the State programs, pursuant to section 503 (b), promulgation of Federal programs, pursuant to section 504, implementation of the Federal lands programs, pursuant to section 523 of this Act, shall constitute a major action within the meaning of section 102 (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

24. MAJOR ISSUE: CONTRACT AUTHORITY

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AUTHORIZATION OF APPROPRIATIONS

SEC. 712. There is authorized to be appropriated to the Secretary for the purposes of this Act the following sums; and all such funds appropriated shall remain available until expended:

(a) For the implementation and funding of sections 502, 552, 405 (b) (3), and 710 contract authority is granted to the Secretary of the Interior for the sum of \$10,000,000 to become available immediately upon enactment of this Act and \$10,000,000 for each of the two succeeding fiscal years.

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25. MAJOR ISSUE: SURFACE OWNER CONSENT

H.R. 9725

SURFACE OWNER PROTECTION

SEC. 714. (a) The provisions and procedures specified in this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques. In order to minimize disturbance to surface owners from surface coal mining ~~IDENTICAL~~ coal deposits, the Secretary shall, in his discretion but, to the ~~greatest~~ extent practicable, refrain from leasing such coal deposits for development by methods other than underground mining techniques.

(b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Leasing Act of 1920 (30 U.S.C. 201a), except that no award shall be made by any method other than competitive bidding.

(c) Prior to placing any deposit subject to this section in a leasing tract, the Secretary shall give to any surface owner whose land is to be included in the proposed leasing tract actual written notice of his intention to place such deposits under such land in a leasing tract.

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(c) Prior to placing any deposit subject to this section in a leasing tract, the Secretary shall give to any surface owner whose land is to be included in the proposed leasing tract actual written notice of his intention to place such deposits under such land in a leasing tract.

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(d) The Secretary shall not enter into any lease of such coal deposits until the surface owner has given written consent and the Secretary has obtained such consent, to enter and commence surface mining operations, and the applicant has agreed to pay in addition to the rental and royalty and other obligations due the United States the money value of the surface owner's interest as determined according to the provisions of subsection (e).

(e) The value of the surface owner's interest shall be fixed by the Secretary based on appraisals made by three appraisers. One such appraiser shall be appointed by the Secretary, one appointed by the surface owner concerned, and one appointed jointly by the appraisers named by the Secretary and such surface owner. In computing the value of the surface owner's interest, the appraisers shall first fix and determine the fair market value of the surface estate and they shall then determine and add the value of such of the following losses and costs to the extent that such losses and costs arise from the surface coal mining operations:

- (1) loss of income to the surface owner during the mining and reclamation process;
- (2) cost to the surface owner for relocation or dislocation during the mining and reclamation process;
- (3) cost to the surface owner for the loss of live-stock, crops, water or other improvements.

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(d) The Secretary shall not enter into any lease of such coal deposits until the surface owner has given written consent and the Secretary has obtained such consent, to enter and commence surface mining operations, and the applicant has agreed to pay in addition to the rental and royalty and other obligations due the United States the money value of the surface owner's interest as determined according to the provisions of subsection (e).

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- (2) cost to the surface owner for relocation or dislocation during the mining and reclamation process;
- (3) cost to the surface owner for the loss of live-stock, crops, water, or other improvements;

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(4) any other damage to the surface reasonably anticipated to be caused by the surface mining and reclamation operations; and

(5) such additional reasonable amount of compensation as the Secretary may determine is equitable in light of the length of the tenure of the ownership:
Provided, That such additional reasonable amount of compensation may not exceed the value of the losses and costs as established pursuant to this subsection and in paragraphs (1) through (4) above, or \$100 per acre, whichever is less.

IDENTICAL
 (f) All bills submitted to the Secretary for any such lease shall, in addition to any rental or royalty and other obligations, be accompanied by the deposit of an amount equal to the value of the surface owner's interest computed under subsection (e). The Secretary shall pay such amount to the surface owner either upon the execution of such lease or upon the commencement of mining, or shall require posting of bond to assure installment payments over a period of years acceptable to the surface owner, at the option of the surface owner. At the time of initial payment, the surface owner may request a review of the initial determination of the amount of the surface owner's interest for the purpose of adjusting such amount to reflect any increase in the Consumer Price Index since the initial determination. The lessee

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(4) any other damage to the surface reasonably anticipated to be caused by the surface mining and reclamation operations; and

(5) such additional reasonable amount of compensation as the Secretary may determine is equitable in light of the length of the tenure of the ownership:
Provided, That such additional reasonable amount of compensation may not exceed the value of the losses and costs as established pursuant to this subsection and in paragraphs (1) through (4) above, or \$100 per acre, whichever is less.

IDENTICAL
 (f) All bids submitted to the Secretary for any such lease shall, in addition to any rental or royalty and other obligations, be accompanied by the deposit of an amount equal to the value of the surface owner's interest computed under subsection (e). The Secretary shall pay such amount to the surface owner either upon the execution of such lease or upon the commencement of mining, or shall require posting of bond to assure installment payments over a period of years acceptable to the surface owner, at the option of the surface owner. At the time of initial payment, the surface owner may request a review of the initial determination of the amount of the surface owner's interest for the purpose of adjusting such amount to reflect any increase in the Consumer Price Index since the initial determination. The lessee shall pay such in-

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shall pay such increased amount to the Secretary to be paid over to the surface owner. Upon the release of the performance bonds or deposits under section 519, or at an earlier time as may be determined by the Secretary, all rights to enter into and use the surface of the land subject to such lease shall revert to the surface owner.

(g) For the purpose of this section the term "surface-owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who—

IDENTICAL LANGUAGE

- (1) hold legal or equitable title to the land surface;
- (2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and

- (3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent.

In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

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- (3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent.

In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

(h) Where surface lands over coal subject to this section are owned by any person who meets the requirements of paragraphs (1) and (2) of this subsection (g) but who does not meet the requirements of paragraph (3) of subsection (g), the Secretary shall not place such coal deposit in a leasing tract unless such person has owned such surface lands for a period of three years. After the expiration of such three-year period such coal deposit may be leased by the Secretary: *Provided*, That if such person qualifies as a surface owner as defined by subsection (g) his consent has been obtained pursuant to the procedures set forth in this section.

IDENTICAL
LANGUAGE

(i) Nothing in this section shall be construed as increasing or diminishing any property rights held by the United States or by any other land owner.

(j) The determination of the value of the surface owner's interest fixed pursuant to subsection (e) or any adjustment to that determination made pursuant to subsection (f) shall be subject to judicial review only in the United States district court for the locality in which the leasing tract is located.

(k) At the end of each two-year period after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the implementation of the Federal coal leasing policy established by this section. The report shall include a list of the surface owners who have (1) given

(h) Where surface lands over coal subject to this section are owned by any person who meets the requirements of paragraphs (1) and (2) of this subsection (g) but who does not meet the requirements of paragraph (3) of subsection (g), the Secretary shall not place such coal deposit in a leasing tract unless such person has owned such surface lands for a period of three years. After the expiration of such three-year period such coal deposit may be leased by the Secretary, provided that if such person qualifies as a surface owner as defined by subsection (g) his consent has been obtained pursuant to the procedures set forth in this section.

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(j) The determination of the value of the surface owner's interest fixed pursuant to subsection (e) or any adjustment to that determination made pursuant to subsection (f) shall be subject to judicial review only in the United States district court for the locality in which the leasing tract is located.

(k) At the end of each two-year period after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the implementation of the Federal coal leasing policy established by this section. The report shall include a list of the surface owners who have (1) given

their consent, (2) received payments pursuant to this section, (3) refused to give consent, and (4) the acreage of land involved in each category. The report shall also indicate the Secretary's views on the impact of the leasing policy on the availability of Federal coal to meet national energy needs and on receipt of fair market value for Federal coal.

(l) This section shall not apply to Indian lands.

(m) Any person who gives, offers, or promises anything of value to any surface owner or offers or promises any surface owner to give anything of value to any other person or entity in order to induce such surface owner to give the Secretary his written consent pursuant to this section, and any surface owner who accepts, receives, or offers or agrees to receive anything of value for himself or any other person or entity, in return for giving his written consent pursuant to this section, shall be subject to a civil penalty of one and a half times the monetary equivalent of the thing of value. Such penalty shall be assessed by the Secretary and collected in accordance with the procedures set out in subsections 518(b), 518(c), 518(d), and 518(e) of this Act.

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H.R. 9725

(n) Any Federal coal lease issued subject to the provisions of this section shall be automatically terminated if the lessee, before or after issuance of the lease, gives, offers or promises anything of value to the surface owner or offers or promises any surface owner to give anything of value to any other person or entity in order to (1) induce such surface owner to give the Secretary his written consent pursuant to this section, or (2) compensate such surface owner for giving ~~IDENTICAL~~ consent. All bonuses, royalties, rents, and other payments made by the lessee shall be retained by the United States.

(o) The provisions of this section shall become effective on February 1, 1976. Until February 1, 1976, the Secretary shall not lease any coal deposits owned by the United States under land the surface rights to which are not owned by the United States, unless the Secretary has in his possession a document which demonstrates the acquiescence prior to February 27, 1975, of the owner of the surface rights to the extraction of minerals within the boundaries of his property by current surface coal mining methods.

H.R. 25

(n) Any Federal coal lease issued subject to the provisions of this section shall be automatically terminated if the lessee, before or after issuance of the lease, gives, offers, or promises anything of value to the surface owner or offers or promises any surface owner to give anything of value to any other person or entity in order to (1) induce such surface owner to give the Secretary his written consent pursuant to this section, or (2) compensate such surface owner for giving ~~IDENTICAL~~ consent. All bonuses, royalties, rents, and other payments made by the lessee shall be retained by the United States.

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