The original documents are located in Box 23, folder "Strip Mining (2)" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

February 3, 1975

MEMORANDUM FOR: JACK MARSH
MAX FRIEDERSDORF

THRU: VERN LOEN

FROM: CHARLIE LEPPERT CL

SUBJECT: Strip Mining Bill

The House Interior Committee passed by a vote of 18 yeas, 10 nays and 1 present, the Meeds motion to provide that the Full House Interior Committee schedule two (2) days of public statements by the Administration in support of its position and recommendations on a strip mining bill.

The Committee will have before it H.R. 25 (S. 425 as passed the 93rd Congress and vetoed) for consideration and mark up. The Meeds motion also provided that the House Interior Committee report out the Strip Mining bill by February 27th.

The above information has been passed on to Glenn Schleede. Schleede advises that a strip mining bill will be transmitted to the Congress by Presidential letter with negotiations on the bill to be conducted by Secretary Morton and Leppert.

Do you agree with direct White House involvement in the negotiations?

APPROVE _____ DISAPPROVE _____

Schleede requests to be advised of your decision on the direct involvement of the White House in negotiations with the Hill on this bill.

cc: Bennett

Dates for hearings now scheduled for Feb. 18 + 20, 1975.

THE WHITE HOUSE

WASHINGTON

February 5, 1975

MEMORANDUM FOR: BILL KENDALL
PAT O'DONNELL

FROM: CHARLES LEPPERT CJL

SUBJECT: Strip Mining

Glenn Schleede informs me that the Strip Mining bill will probably go to the hill today.

I have asked and am having the Minority Members of the House Interior Committee briefed on the Administration's position on this bill today.

Schleede asked me to contact you with regard to setting up a briefing with Minority Senators on Senate Interior Committee today if possible. Can you set this up but talk to Schleede first.

THE WHITE HOUSE

WASHINGTON

February 6, 1975

Dear Mr. President:

Our Nation is faced with the need to find the right balance among a number of very desirable national objectives. We must find the right balance because we simply cannot achieve all desirable objectives at once.

In the case of legislation governing surface coal mining activities, we must strike a balance between our desire for environmental protection and our need to increase domestic coal production. This consideration has taken on added significance over the past few months. It has become clear that our abundant domestic reserves of coal must become a growing part of our Nation's drive for energy independence.

Last December, I concluded that it would not be in the Nation's best interests for me to approve the surface coal mining bill which passed the 93rd Congress as S. 425. That bill would have:

- Caused excessive coal production losses, including losses that are not necessary to achieve reasonable environmental protection and reclamation requirements. The Federal Energy Administration estimated that the bill, during its first full year of operation would reduce coal production between 48 and 141 million tons, or approximately 6 to 18 percent of the expected production. Additional losses could result which cannot be quantified because of ambiguities in the bill. Losses of coal production are particularly important because each lost ton of coal can mean importing four additional barrels of foreign oil.

- Caused inflationary impacts because of increased coal costs and Federal expenditures for activities which, however desirable, are not necessary at this time.

- Failed to correct other deficiencies that had been pointed out in executive branch communications concerning the bill.

The energy program that I outlined in my State of the Union Message contemplates the doubling of our Nation's coal production by 1985. Within the next ten years, my program envisions opening 250 major new coal mines, the majority of which must be surface mines, and the construction of approximately 150 new coal fired electric generating plants. I believe that we can achieve these goals and still meet reasonable environmental protection standards.

I have again reviewed S. 425 as it passed the 93rd Congress (which has been reintroduced in the 94th Congress as S. 7 and H.R. 25) to identify those provisions of the bill where changes are critical to overcome the objections which led to my disapproval last December. I have also identified a number of provisions of the bill where changes are needed to reduce further the potential for unnecessary production impact and to make the legislation more workable and effective. These few but important changes will go a long way toward achieving precise and balanced legislation. The changes are summarized in the first enclosure to this letter and are incorporated in the enclosed draft bill.

With the exception of the changes described in the first enclosure, the bill follows S. 425.

I believe that surface mining legislation must be reconsidered in the context of our current national needs. I urge the Congress to consider the enclosed bill carefully and pass it promptly.

Sincerely,

Gerald R. Ford

The Honorable Nelson A. Rockefeller
President of the Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

February 6, 1975

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Our Nation is faced with the need to find the right balance among a number of very desirable national objectives. We must find the right balance because we simply cannot achieve all desirable objectives at once.

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- Caused inflationary impacts because of increased coal costs and Federal expenditures for activities which, however desirable, are not necessary at this time.

- Failed to correct other deficiencies that had been pointed out in executive branch communications concerning the bill.

The energy program that I outlined in my State of the Union Message contemplates the doubling of our Nation's coal production by 1985. Within the next ten years, my program envisions opening 250 major new coal mines, the majority of which must be surface mines, and the construction of approximately 150 new coal fired electric generating plants. I believe that we can achieve these goals and still meet reasonable environmental protection standards.

I have again reviewed S. 425 as it passed the 93rd Congress (which has been reintroduced in the 94th Congress as S. 7 and H.R. 25) to identify those provisions of the bill where changes are critical to overcome the objections which led to my disapproval last December. I have also identified a number of provisions of the bill where changes are needed to reduce further the potential for unnecessary production impact and to make the legislation more workable and effective. These few but important changes will go a long way toward achieving precise and balanced legislation. The changes are summarized in the first enclosure to this letter and are incorporated in the enclosed draft bill.

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I believe that surface mining legislation must be reconsidered in the context of our current national needs. I urge the Congress to consider the enclosed bill carefully and pass it promptly.

Sincerely,

Gerald R. Ford

The Honorable
The Speaker
U.S. House of Representatives
Washington, D.C. 20515

SUMMARY OF PRINCIPAL CHANGES FROM S. 425 (S. 7 and H.R. 25)
INCORPORATED IN THE ADMINISTRATION'S
SURFACE MINING BILL

The Administration bill follows the basic framework of S. 425 in establishing Federal standards for the environmental protection and reclamation of surface coal mining operations. Briefly, the Administration bill, like S. 425:

- covers all coal surface mining operations and surface effects of underground coal mining;
- establishes minimum nationwide reclamation standards;
- places primary regulatory responsibility with the States with Federal backup in cases where the States fail to act;
- creates a reclamation program for previously mined lands abandoned without reclamation;
- establishes reclamation standards on Federal lands.

Changes from S. 425 which have been incorporated in the Administration bill are summarized below.

Critical changes.

1. Citizen suits. S. 425 would allow citizen suits against any person for a "violation of the provisions of this Act." This could undermine the integrity of the bill's permit mechanism and could lead to mine-by-mine litigation of virtually every ambiguous aspect of the bill even if an operation is in full compliance with existing regulations, standards and permits. This is unnecessary and could lead to production delays or curtailments. Citizen suits are retained in the Administration bill, but are modified (consistent with other environmental legislation) to provide for suits against (1) the regulatory agency to enforce the act, and (2) mine operators where violations of regulations or permits are alleged.

2. Stream siltation. S. 425 would prohibit increased stream siltation -- a requirement which would be extremely difficult or impossible to meet and thus could preclude mining activities. In the Administration's bill, this prohibition is modified to require the maximum practicable limitation on siltation.

3. Hydrologic disturbances. S. 425 would establish absolute requirements to preserve the hydrologic integrity of alluvial valley floors -- and prevent offsite hydrologic disturbances. Both requirements would be impossible to meet, are unnecessary for reasonable environmental protection and could preclude most mining activities. In the Administration's bill, this provision is modified to require that any such disturbances be prevented to the maximum extent practicable so that there will be a balance between environmental protection and the need for coal production.

4. Ambiguous terms. In the case of S. 425, there is great potential for court interpretations of ambiguous provisions which could lead to unnecessary or unanticipated adverse production impact. The Administration's bill provides explicit authority for the Secretary to define ambiguous terms so as to clarify the regulatory process and minimize delays due to litigation.

5. Abandoned land reclamation fund. S. 425 would establish a tax of 35¢ per ton for underground mined coal and 25¢ per ton for surface mined coal to create a fund for reclaiming previously mined lands that have been abandoned without being reclaimed, and for other purposes. This tax is unnecessarily high to finance needed reclamation. The Administration bill would set the tax at 10¢ per ton for all coal, providing over $1 billion over ten years which should be ample to reclaim that abandoned coal mined land in need of reclamation.

Under S. 425 funds accrued from the tax on coal could be used by the Federal government (1) for financing construction of roads, utilities, and public buildings on reclaimed mined lands, and (2) for distribution to States to finance roads, utilities and public buildings in any area where coal mining activity is expanding. This provision needlessly duplicates other Federal, State and local programs, and establishes eligibility for Federal grant funding in a situation where facilities are normally financed by local or State borrowing. The need for such funding, including the new grant program, has not been established. The Administration bill does not provide authority for funding facilities.

6. Impoundments. S. 425 could prohibit or unduly restrict the use of most new or existing impoundments, even though constructed to adequate safety standards. In the Administration's bill, the provisions on location of impoundments have been modified to permit their use where safety standards are met.

7. National forests. S. 425 would prohibit mining in the national forests -- a prohibition which is inconsistent with multiple use principles and which could unnecessarily lock up 7 billion tons of coal reserves (approximately 30% of the uncommitted Federal surface-minable coal in the contiguous States). In the Administration bill, this provision is modified to permit the Agriculture Secretary to waive the restriction in specific areas when multiple resource analysis indicates that such mining would be in the public interest.

8. Special unemployment provisions. The unemployment provision of S. 425 (1) would cause unfair discrimination among classes of unemployed persons, (2) would be difficult to administer, and (3) would set unacceptable precedents including unlimited benefit terms, and weak labor force attachment requirements. This provision of S. 425 is inconsistent with P.L. 93-567 and P.L. 93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. The Administration's bill does not include a special unemployment provision.

Other Important Changes. In addition to the critical changes from S. 425, listed above, there are a number of provisions which should be modified to reduce adverse production impact, establish a more workable reclamation and enforcement program, eliminate uncertainties, avoid unnecessary Federal expenditures and Federal displacement of State enforcement activity, and solve selected other problems.

1. Antidegradation. S. 425 contains a provision which, if literally interpreted by the courts, could lead to a nondegradation standard (similar to that experienced with the Clean Air Act) far beyond the environmental and reclamation requirements of the bill. This could lead to production delays and disruption. Changes are included in the Administration bill to overcome this problem.

2. Reclamation fund. S. 425 would authorize the use of funds to assist private landowners in reclaiming their lands mined in past years. Such a program would result in windfall gains to the private landowners who would maintain title to their lands while having them reclaimed at Federal expense. The Administration bill deletes this provision.

3. Interim program timing. Under S. 425, mining operations could be forced to close down simply because the regulatory authority had not completed action on a mining permit, through no fault of the operator. The Administration bill modifies the timing requirements of the interim program to minimize unnecessary delays and production losses.

4. Federal preemption. The Federal interim program role provided in S. 425 could (1) lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and (2) discourage States from assuming an active permanent regulatory role, thus leaving such functions to the Federal government. During the past few years, nearly all major coal mining States have improved their surface mining laws, regulations and enforcement activities. In the Administration bill, this requirement is revised to limit the Federal enforcement role during the interim program to situations where a violation creates an imminent danger to public health and safety or significant environmental harm.

5. Surface owner consent. The requirement in S. 425 for surface owner's consent would substantially modify existing law by transferring to the surface owner coal rights that presently reside with the Federal government. S. 425 would give the surface owner the right to "veto" the mining of Federally owned coal or possibly enable him to realize a substantial windfall. In addition, S. 425 leaves unclear the rights of prospectors under existing law. The Administration is opposed to any provision which could (1) result in a lock up of coal reserves through surface owner veto or (2) lead to windfalls. In the Administration's bill surface owner and prospector rights would continue as provided in existing law.

6. Federal lands. S. 425 would set an undesirable precedent by providing for State control over mining of Federally owned coal on Federal lands. In the Administration's bill, Federal regulations governing such activities would not be preempted by State regulations.

7. Research centers. S. 425 would provide additional funding authorization for mining research centers through a formula grant program for existing schools of mining. This provision establishes an unnecessary new spending program, duplicates existing authorities for conduct of research, and could fragment existing research efforts already supported by the Federal government. The provision is deleted in the Administration bill.

8. Prohibition on mining in alluvial valley floors. S. 425 would extend the prohibition on surface mining involving alluvial valley floors to areas that have the potential for farming or ranching. This is an unnecessary prohibition which could close some existing mines and which would lock up significant coal reserves. In the Administration's bill reclamation of such areas would be required, making the prohibition unnecessary.

9. Potential moratorium on issuing mining permits. S. 425 provides for (1) a ban on the mining of lands under study for designation as unsuitable for coal mining, and (2) an automatic ban whenever such a study is requested by anyone. The Administration's bill modifies these provisions to insure expeditious consideration of proposals for designating lands unsuitable for surface coal mining and to insure that the requirement for review of Federal lands will not trigger such a ban.

10. Hydrologic data. Under S. 425, an applicant would have to provide hydrologic data even where the data are already available -- a potentially serious and unnecessary workload for small miners. The Administration's bill authorizes the regulatory authority to waive the requirement, in whole or in part, when the data are already available.

11. Variances. S. 425 would not give the regulatory authority adequate flexibility to grant variances from the lengthy and detailed performance specifications. The Administration's bill would allow limited variances -- with strict environmental safeguards -- to achieve specific post-mining land uses and to accommodate equipment shortages during the interim program.

12. Permit fee. The requirement in S. 425 for payment of the mining fee before operations begin could impose a large "front end" cost which could unnecessarily prevent some mine openings or force some operators out of business. In the Administration's bill, the regulatory authority would have the authority to extend the fee over several years.

13. Preferential contracting. S. 425 would require that special preference be given in reclamation contracts to operators who lose their jobs because of the bill. Such hiring should be based solely on an operators reclamation capability. The provision does not appear in the Administration's bill.

14. Any Class of buyer. S. 425 would require that lessees of Federal coal not refuse to sell coal to any class of buyer. This could interfere unnecessarily with both planned and existing coal mining operations, particularly in integrated facilities. This provision is not included in the Administration's bill.

15. Contract authority. S. 425 would provide contract authority rather than authorizing appropriations for Federal costs in administering the legislation. This is unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Control Act. In the Administration's bill, such costs would be financed through appropriations.

16. Indian lands. S. 425 could be construed to require the Secretary of the Interior to regulate coal mining on non-Federal Indian lands. In the Administration bill, the definition of Indian lands is modified to eliminate this possibility.

17. Interest charge. S. 425 would not provide a reasonable level of interest charged on unpaid penalties. The Administration's bill provides for an interest charge based on Treasury rates so as to assure a sufficient incentive for prompt payment of penalties.

18. Prohibition on mining within 500 feet of an active mine. This prohibition in S. 425 would unnecessarily restrict recovery of substantial coal resources even when mining of the areas would be the best possible use of the areas involved. Under the Administration's bill, mining would be allowed in such areas as long as it can be done safely.

19. Haul roads. Requirements of S. 425 could preclude some mine operators from moving their coal to market by preventing the connection of haul roads to public roads. The Administration's bill would modify this provision.

The attached listing shows the sections of S. 425 (or S. 7 and H.R. 25) which are affected by the above changes.

LISTING OF PRINCIPAL PROVISIONS IN S. 425 (S. 7 and H.R. 25)
THAT ARE CHANGED IN THE ADMINISTRATION'S BILL

Subject	Title or Section S.425, S.7, H.R.25	Administration Bill
Critical Changes		
1. Clarify and limit the scope of citizens suits	520	420
2. Modify prohibition against stream siltation	515(b)(10)(B) 516(b)(9)(B)	415(b)(10)(B) 416(b)(9)(B)
3. Modify prohibition against hydrological disturbances	510(b)(3) 515(b)(10)(E)	410(b)(3) 415(b)(10)(E)
4. Provide express authority to define ambiguous terms in the act	None	601(b)
5. Reduce the tax on coal to conform more nearly with reclamation needs and eliminate funding for facilities	401(d)	301(d)
6. Modify the provisions on impoundments	515(b)(13) 516(b)(5)	415(b)(13) 416(b)(5)
7. Modify the prohibition against mining in national forests	522(e)(2)	422(e)(2)
8. Delete special unemployment provisions	708	None
Other Important Changes		
1. Delete or clarify language which could lead to unintended "antidegradation" interpretations	102(a) and (d)	102(a) and (c)
2. Modify the abandoned land reclamation program to (1) provide both Federal and State acquisition and reclamation with 50/50 cost sharing, and (2) eliminate cost sharing for private land owners	Title IV	Title III

Subject	S.425,S.7,H.R.25	New Bill
3. Revise timing requirements for interim program to minimize unanticipated delays	502(a) thru (c) 506(a)	402(a) and (b) 406(a)
4. Reduce Federal preemption of State role during interim program	502(f) 521(a)(4)	402(c) 421(a)(4)
5. Eliminate surface owner consent requirement; continue existing surface and mineral rights	716	613
6. Eliminate requirement that Federal lands adhere to requirements of State programs	523(a)	423(a)
7. Delete funding for research centers	Title III	None
8. Revise the prohibition on mining in alluvial valley floors	510(b)(5)	410(b)(5)
9. Eliminate possible delays relating to designations as unsuitable for mining	510(b)(4) 522(c)	410(b)(4) 422(c)
10. Provide authority to waive hydrologic data requirements when data already available	507(b)(11)	407(b)(11)
11. Modify variance provisions for certain post-mining uses and equipment shortages	515(c)	402(d) 415(c)
12. Clarify that payment of permit fee can be spread over time	507(a)	407(a)
13. Delete preferential contracting on orphaned land reclamation	707	None

Subject	S.425,S.7,H.R.25	New Bill
14. Delete requirement on sales of coal by Federal lessees	523(e)	None
15. Provide authority for appropriations rather than contracting authority for administrative costs	714	612
16. Clarify definition of Indian lands to assure that the Secretary of the Interior does not control non-Federal Indian lands	701(9)	601(a)(9)
17. Establish an adequate interest charge on unpaid penalties to minimize incentive to delay payments	518(d)	418(d)
18. Permit mining with 500' of an active mine where this can be done safely	515(b)(12)	415(b)(12)
19. Clarify the restriction on haul roads from mines connecting with public roads	522(e)(4)	422(e)(4)

[March 1975?]

ENVIRONMENTAL POLICY CENTER

324 C Street, S.E., Washington, D.C. 20003
(202) 547-6500

DISCUSSION OF THE COST-PER-TON OF COAL TO RECLAIM STRIP MINED LAND IS MEANINGLESS WITHOUT EQUATING THAT COST TO THE TOTAL COST OF RECLAIMING THE ACRE OF LAND FROM WHICH THE COAL WAS MINED. FOR INSTANCE, $2/TON RECLAMATION IN THE EAST ON A 5 FOOT COAL SEAM IS EQUAL TO ABOUT $16,200 PER ACRE, OR ABOUT 5 TIMES THE CURRENT COST OF RECLAMATION IN THE EAST USING THE HIGHEST ESTIMATES. WHEREAS, $2/TON IN THE WESTERN SUBBITUMINOUS COAL FIELDS OF MONTANA IS EQUAL TO $95,580 PER ACRE ON A TYPICAL 30 FOOT COAL SEAM.

FEET

	4	5	6	8	10
$1.00/ton	$6,480	$8,100	$9,720	$12,960	$16,200
$2.00/ton	$12,960	$16,200	$19,440	$25,920	$32,400
$3.00/ton	$19,440	$24,300	$29,160	$38,880	$48,600

FEET

	20	30	40	50	60
$1.00/ton	$31,860	$47,790	$63,720	$79,650	$95,580
$2.00/ton	$63,720	$95,580	$127,440	$159,300	$191,160
$3.00/ton	$95,580	$143,370	$191,160	$238,950	$286,740

FEET

	10	20	30	40	50
$1.00/ton	$15,750	$31,500	$47,250	$63,000	$78,750
$2.00/ton	$31,500	$63,000	$94,500	$126,000	$157,500
$3.00/ton	$47,250	$94,500	$141,750	$189,000	$236,250

(MORE)

IN DISCUSSING STRIP MINE RECLAMATION COSTS IT IS HELPFUL TO TRANSLATE THOSE COSTS USUALLY GIVEN IN DOLLARS-PER-ACRE TO A PER-TON COST. IN DOING SO, THE DENSITY OF THE COAL AND THE THICKNESS OF THE COAL SEAM ARE WHAT DETERMINES THE COST. THE FOLLOWING CHARTS ARE BASED UPON THESE DENSITIES:

LIGNITE - 1,750 TONS PER ACRE-FOOT OF COAL WITH 90% RECOVERY
SUBBITUMINOUS - 1,770 TONS PER ACRE-FOOT OF COAL WITH 90% RECOVERY
BITUMINOUS - 1,800 TONS PER ACRE-FOOT OF COAL WITH 90% RECOVERY

THE UNITS ARE IN CENTS-PER-TON.

BITUMINOUS COAL
THICKNESS OF COAL SEAM IN FEET

RECLAMATION COST/ACRE	4	5	6	8	10
$1,000	.15	.12	.10	.08	.06
$2,000	.31	.25	.21	.15	.12
$3,000	.46	.37	.31	.23	.19
$4,000	.62	.49	.41	.31	.25
$5,000	.77	.62	.51	.39	.31

SUBBITUMINOUS COAL
THICKNESS OF COAL SEAM IN FEET

RECLAMATION COST/ACRE	20	30	40	50	60
$1,000	.03	.02	.02	.01	.01
$2,000	.06	.04	.03	.03	.02
$3,000	.09	.06	.05	.04	.03
$4,000	.13	.08	.06	.05	.04
$5,000	.16	.10	.08	.06	.05

LIGNITE COAL
THICKNESS OF COAL SEAM IN FEET

RECLAMATION COST/ACRE	10	20	30	40	50
$1,000	.06	.03	.02	.02	.01
$2,000	.13	.06	.04	.03	.03
$3,000	.19	.10	.06	.05	.04
$4,000	.25	.13	.08	.06	.05
$5,000	.32	.16	.11	.08	.06

THE WHITE HOUSE

WASHINGTON

March 3, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

THRU: VERNON LOEN

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: Vote of House Interior Committee in Reporting Strip Mining bill

Attached is the vote of the House Interior Committee to favorably report H.R. 25, as amended, the Strip Mining bill.

Please note that the Committee adopted only two of the eight critical changes recommended by the President on this legislation. The changes adopted relate to the deletion of the unemployment provisions and the amount of the tax for mining of underground coal to be placed into the abandoned mine reclamation fund.

It is expected that the House will consider this bill within the next two weeks. It is now anticipated that the Senate will amend the House bill, the House will then accept the Senate amendments and send the bill on to the President without a conference between the Houses being involved.

Attachment

cc: Doug Bennett
Glenn Schleede

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

94TH CONGRESS

☒ Full Committee

☐ Subcommittee _____

Date 2-27-75

Roll No. 2

Bill No. H.R. 25 Short Title Surface Mining Regulations

Amendment or matter voted on: To favorably report H.R. 25 as amended

	YEAS	NAYS	PRESENT		YEAS	NAYS	PRESENT
Mr. Bauman		P		Mr. Risenhoover		X	
Mr. Benitez	P			Mr. Roncalio	X		
Mr. Bingham	P			Mr. Runnels		P	
Mr. Burton	P			Mr. Ruppe	X		
Mr. Byron		X		Mr. Santini	X		
Mr. Carr	X			Mr. Sebelius		X	
Mr. Clausen	X			Mr. Seiberling	X		
Mr. de Lugo	X			Mr. Skubitz	X		
Mr. Eckhardt	X			Mrs. Smith		X	
Mr. Howe	X			Mr. Steelman	X		
Mr. Johnson of Calif		P		Mr. Steiger		X	
Mr. Johnson of Colo	X			Mr. Stephens			
Mr. Kastenmeier	X			Mr. Symms		P	
Mr. Kazen		X		Mr. Taylor	X		
Mr. Ketchum		P		Mr. Tsongas	X		
Mr. Lagomarsino	X			Mr. Udall	X		
Mr. Lujan	X			Mr. Vigorito	X		
Mr. Meeds	P			Mr. Weaver	X		
Mr. Melcher	X			Mr. Won Pat	X		
Mr. Miller	X			Mr. Young NOT VOTING			
Mrs. Mink	X			Mr. Haley, Chairman	X		
Mr. Patman				Totals	29	11	

U.S. GOVERNMENT PRINTING OFFICE 47-263-b

THE WHITE HOUSE

WASHINGTON

March 4, 1975

Dear Governor Boren:

The President has asked that I thank you for your very thoughtful letter on the possible effects of Federal reclamation legislation to control mining. You may be assured that your view that such legislation is not necessary has been brought to the attention of Secretary Morton and members of the President's staff who are working on these matters.

Again, it was good to talk with you the other day and I hope that you will always feel free to call in the future in order to bring such matters to the President's attention.

With best regards.

Sincerely,

James H. Falk

James H. Falk
Associate Director
Domestic Council

Honorable David L. Boren
Governor of Oklahoma
Oklahoma City, Oklahoma 73105

STATE OF OKLAHOMA
OFFICE OF THE GOVERNOR
OKLAHOMA CITY

DAVID L. BOREN
GOVERNOR

February 24, 1975

The President
Washington, D. C. 20510

Dear Mr. President:

As the energy shortage continues and increases, much thought is being given to the mining of coal and the environment inasmuch as coal is the one fuel of which there is sufficient reserves for many years in the future.

Due to the effect of coal mining upon land and the environment, Congress has been considering reclamation legislation to control mining at the federal level. Many mining states have effective reclamation laws and do not feel that federal legislation is necessary. Oklahoma is one such state, with reclamation laws in effect since January 1, 1968, and in this connection I am enclosing a copy of House Resolution 1002, approved by the current session of the Oklahoma Legislature, for your consideration.

Sincerely yours,

David L. Boren

INFORMATION

THE WHITE HOUSE

WASHINGTON

March 14, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: STRIP MINING

Senate Action

The bill passed on Wednesday by a vote of 84-13 contains a few of the changes requested in the bill which you transmitted on February 6, 1975. Of the eight changes from last year's bill which were identified as critical to an acceptable bill:

- The citizen suit provision was narrowed as requested.
- The arbitrary restriction on location of impoundments was changed as requested.
- The absolute prohibitions against increased sedimentation and disturbing of hydrology were modified slightly but not as requested.
- The Senate rejected changes to:
  - specifically authorize the Secretary of Interior to define ambiguous terms.
  - remove special unemployment provisions.
  - allow mining in National Forests in certain circumstances.
  - reduce the 25-35¢ per ton tax on coal to 10¢ and limit the coverage of the reclamation fund to reclamation.

Of the 19 additional changes requested to improve the bill, 7 were accepted and 12 rejected.

Opponents of the bill in the Senate also succeeded in deleting from the bill a special exemption for anthracite mining in Pennsylvania -- a move designed to weaken the Pennsylvania delegation's support for the bill.

Interior and EPA have estimated that the adverse production impact of the Senate passed bill during the first full year of application will be 40 to 117 million tons (5 to 16% of

expected production), compared to 48-141 million tons estimated for the bill passed last year. These numbers cover only the impacts that can be estimated(e.g., restrictions on steep slope mining and on small miners). Impact could be larger if there are delays from extensive litigation or restrictive interpretations of the ambiguous provisions of the 160-page bill.

House Action

The most significant changes adopted by the House Interior Committee were (a) deletion of the special unemployment provisions, and (b) reduction of the tax on underground-mined coal from 25¢ to 10¢. House floor debate began Friday with no significant changes. Debate will continue Monday with final passage likely on Tuesday(March 18).

Administration Posture

Supporters of the bill in the Congress are posturing publicly that enough changes are being made to make the bill acceptable to you. The press, on the other hand, is reporting that the Senate bill is essentially the same as the one you vetoed.

It is too early to predict with any certainty the outcome of House floor or Conference committee action, but it is unlikely that the final product will be better than the Senate bill. The current assessment of the Congressional Relations Staff is that it will be difficult to sustain a veto.

Administration spokesmen are refraining from taking a position on the acceptability of the Senate bill.

If the final bill is close to the one passed by the Senate:

- I would expect agencies to line up essentially as they did on the bill you vetoed last December; i.e., Interior, EPA, CEQ and Agriculture for signing and OMB, Treasury and Commerce for veto. Frank Zarb's views will be especially important and he hasn't reached a conclusion.

- And if you decided to sign the bill, we probably can make the case that improvements in the bill are adequate.

- And if you decided to veto the bill, we would make the case on the basis of adverse production impact, inconsistency with the need to increase coal production(e.g., Democrats' energy plan calls for production of 1.37 billion tons by 1985, compared to your goal of 1.2 billion), and the need to import oil to replace lost coal -- and the related impact on dollar outflow, unemployment and higher electric bills.

ADMINISTRATIVE CONFIDENTIAL

3/21/75

STATUS REPORT ON STRIP MINING LEGISLATION

This is the latest assessment of the strip mining bills passed by the House and Senate.

Senate Action

Some helpful changes from last year's bill were made by the Senate. However, one serious problem with the Senate action has since come to light; i.e., the Senate bill combined with floor debate makes it clear that the Senate intends that Federally-owned coal lands will be subject to State law and regulation. If allowed to stand, this would be an undesirable precedent and could prevent development of Federally-owned coal in states establishing rigid requirements.

Interior Department considers this a serious problem. It is possible that the problem could be eliminated in Conference since the House has a much less restrictive view.

House Action

The bill passed by the House on March 14 by a vote of 333-86 is regarded by Interior and FEA as more rigid in several important respects than the bill you vetoed last year. The two most important are:

- Tightening considerably the restriction on mining in alluvial valley floors. Interior tentatively estimates that the new restriction will increase the adverse production impact by about 40 million tons in the first full year of the bills application and prevent access to substantial coal reserves in the west.

- Expansion of the scope of the reclamation fund to permit its use to pay costs of "socio-economic impact" related to any energy development -- not just strip mining. The Administration had requested that the fund be used only for reclamation of publicly owned orphaned strip-mined lands, and that it not cover either public facilities or privately owned lands.

With respect to the eight critical changes that were requested, the House bill:

- Eliminates the special unemployment provisions (retained by Senate).
- Partially eliminates absolute restrictions on increased stream sedimentation and impact on hydrology.
- Reduces the excise tax on underground-mined coal and some strip-mined coal (change rejected by Senate).
- Changes the arbitrary restriction on impoundments (dams) by making them subject to Corps of Engineers authority and standards (rather than accept our change as the Senate did).
- Rejected changes to:
  - narrow the scope of citizen suits (accepted by Senate).
  - authorize the Secretary to define ambiguous terms (Senate also rejected).
  - authorize mining in National Forests (Senate also rejected).

Interior's tentative estimate of the adverse production impact of the House passed bill is 62-162 tons (18 to 21%) in the first full year of its application. This compares to 48-141 million tons (6 to 18%) for last year's bill. As in the case of previous estimates, these cover only those impacts that can be estimated (e.g., restrictions on steep slope mining, impact on small mine operators). Impacts could be larger if there are delays from extensive litigation of restrictive interpretations of ambiguous provisions of the bill.

Conference

The conferees have not yet been appointed but probably will be next week.

It is too early to predict the probable outcome. If the best provisions from each bill are adopted by the conference, the bill will be better than the one vetoed last year.

ADMINISTRATIVELY CONFIDENTIAL

THE WHITE HOUSE

WASHINGTON

March 22, 1975

TO: JIM CANNON
JIM LYNN
FRANK ZARB
MAX FRIEDERSDORF

FROM: GLENN SCHLEEDE

SUBJECT: STATUS REPORT ON STRIP MINING LEGISLATION

- The attached paper is for your information.

- A detailed interagency substantive review of the bill is underway under OMB's leadership. This should provide the basis for identifying the most desirable features to push in Conference.

cc: Mike Duval

bcc: Dick Dunham
Jim Cavanaugh
Jack Marsh
Vern Loen
Charlie Leppert

3/21/75

ADMINISTRATIVELY CONFIDENTIAL

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[April 1975]

VIRGINIA SURFACE MINING & RECLAMATION ASSOCIATION, INC.

PROGRESS BUILDING PHONE 703-679-2849 NORTON, VIRGINIA 24273

TO ALL MEMBERS OF CONGRESS

The Surface Mining Control and Reclamation Act of 1975 (S.7 and H. R. 25) has been one of the most bitterly contested pieces of legislation in recent years. Virginia's coal surface mining industry, along with part or all of that in several other Appalachian states, will be virtually destroyed should either bill become law. It is neither a "control" bill nor a "reclamation" bill. It will decrease total employment, it will decrease total coal production, it will increase utility rates, and it will do little to improve the environment.

These are facts, not idle supposition.

Consider the following additional facts about this legislation:

1. Title IV creates a massive and expensive "Abandoned Mine Reclamation" program although many states---including Virginia---already have such programs.
2. The public notice, protest, public hearings and bonding provisions will make it almost impossible to obtain a permit or a bond release (Sections 507, 509, 510, 511, 512, 513 & 514.)
3. The reclamation requirements of Section 515 are so totally unrealistic for mountainous land that coal surface mining will be effectively banned in part of all of several Appalachian states. Section 515.(d) imposes even more stringent standards for slopes over 20 degrees. The "no spoil below the cut" provision 515.(d)(1) and the "approximate original contour" provision of 515.(d)(2) are impossible to meet in many cases.
4. Section 516 imposes the same reclamation standards on surface disturbances from underground mines as apply to surface mines.
5. The "citizen suit" provisions of Section 520 almost guarantee an endless string of harassment and nuisance lawsuits by professional environmentalists.
6. Section 522 permits entire areas of the various states to be designated as "unsuitable for surface coal mining."

These bills contain some of the most clearly discriminatory provisions of any legislation ever passed by Congress. For example:

1. Under its provisions for steep-slope reclamation (which are impossible to meet, in most cases). Pennsylvania and Ohio would suffer less than a 1% loss of surface coal production. Virginia, on the other hand, would lose 85% of its surface coal production.

2. Existing Alaskan surface mines may be exempt from the Act's provisons if such exemption will assure their continued operation.
3. Western coal lands may be given special exemptions to reclamation standards.

You should also be aware that every state which has any significant coal surface mining activity also has a coal surface mining law which its citizens deemed adequate. The often-heard cry that all states should be governed by the same law totally ignores differences of terrain, climate, coal quality, and desires of the local population.

Congress has also been repeatedly told that citizens are having their land mined without their consent. But, in fact, only Kentucky still honors the so-called broad form deed, and that practice is no longer actually followed there. In all other states, the consent of the surface owner and the mineral owner must be obtained before any mining takes place, and they must be adequately compensated.

And, Congress has heard that only three percent of our coal can be surface mined. This is absolutely untrue. When recoverable strippable reserves are compared with total recoverable reserves, it is apparent that not three percent, but 35% to 45% of the total recoverable reserves are strippable. Yet, the three percent number continues to be passed on as fact.

Every attempt at compromise on unreasonable features of these bills has been met with total resistance. Every time it appeared industry might be able, even at great expense and difficulty, to meet certain requirements, proponents of the bills quickly prepared another, more difficult, requirement. The result is a piece of legislation which will be fantastically expensive and difficult to administer, which will result in greatly reduced coal production, which will cause further massive unemployment in poverty-ridden Appalachia, and which will add greatly to the inflationary spiral.

The thousands and thousands of people from Alabama, Tennessee, Kentucky, Virginia, and West Virginia now marching in Washington to protest this legislation represent UMWA members, non-union workers of underground and surface mines, mine operators, business people, school teachers, and other citizens. They are well-informed on these bills, and they do not want them to become law. They are asking what price they must pay to satisfy the ill-conceived environmental demands of people who have never even seen our coalfields. They feel that these bills demand too much for what they offer in return.

[April 1975?]

THE WHITE HOUSE
WASHINGTON

456-2140

Zumwalt - ✓
Morton -
Wampler ← Duval ✓
Connor ←

Coal Miners / Ray Dotson
Wed. / Tom Adams

TIME: NOON - ARRIVE NW 11:45AM TO W.W LOBBY

PLACE: Roosevelt Room

NUMBER: 10-12

NAMES
ENTER NW GATE

Connors 6697
Rustand 7070

[April 1975?]

✓ Rustand.

Call Wampler.

Have someone

check with

Bill Wampler

re his request

for Strip mining

group mtg w/ TT

this week.

THE WHITE HOUSE

WASHINGTON

April 7, 1975

TO: ~~CHARLIE~~ LEPPERT

FROM: GLENN SCHLEEDE

FILE - STRIP MINING

THE WHITE HOUSE

WASHINGTON

April 3, 1975

MEMORANDUM FOR: BILL CASSELMAN/DICK PARSONS

FROM: GLENN SCHLEEDE

SUBJECT: Appalachian Coal Surface Miners Demonstration - April 8-10, 1975

Tom Adams of Congressman Wampler's office called to alert the White House to the plans of an Appalachian organization of surface miners to stage a demonstration against the surface mining bill. He indicated that current plans call for the following:

- The delegation will leave Wise County Virginia about midnight on Sunday April 6, arriving in the Washington area Monday afternoon. Current estimates are that there will be:

  .. 1,000 large coal trucks
  .. 20-30 buses
  .. about 7,000 people including union and nonunion miners, coal mine operators, equipment suppliers, and others who fear loss of Appalachian coal production.

  (Note: The estimate on the number of demonstrators and trucks sounds exaggerated.)

- The trucks will be parked in Alexandria near Cameron Station.

- The group has a permit for a downtown truck parade covering the period from 10:00am to 3:00pm on Tuesday, April 8. The expected route will be the 14th Street Bridge to Constitution Ave., 17th or 18th Street to Pennsylvania Ave. to and around the Capitol.

- 500 of the delegation will hold a meeting in the Cannon House Office Building Caucus Room with the Virginia delegation, Congressman Steiger and other House members on Tuesday, April 8, at 10:00am. Representatives of FEA, Interior, EPA, CEQ and the White House are being invited

to attend this meeting (but not to speak).

- The group has a permit for a peaceful demonstration at the West front of the Capitol on Tuesday and Wednesday were about 2,000 people are expected.

- Representatives of the group will try to meet with all members of the Congress that have voted for the surface mining bill and with all Senate-House Conferees.

Congressman Wampler has been in touch with Jack Marsh, seeking an opportunity for representatives of the delegation to meet with the President to present petitions. (That request is being handled by Jack Marsh and Warren Rustand.)

cc: Jim Cannon
Frank Zarb
Jack Marsh
Warren Rustand

THE WHITE HOUSE

WASHINGTON

April 8, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

THRU: VERN LOEN

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: Strip Mining Bill, Administrator of FAA job and Advance men in Congressional Districts

Sam Steiger asked again that you call John Rhodes and Paul Fannin and advise them that the President and the Administration have not made a final decision on the Strip Mining bill. He also asks that you advise them that it is still an open question as to what the President will do with the bill that comes out of the Conference Committee.

Bill Ketchum called you wanting to know why Stan Parris is not going to get the job as Administrator of FAA? Ketchum feels that the President and the Administration are not treating Stan Parris fairly and if Parris does not get the FAA job Ketchum thinks he's an excellent candidate for the Reagan forces to get hold of to head up the Reagan for President campaign in Virginia. He has talked with Parris and feels that somebody in the Administration ought to tell Stan what is happening.

Don Clausen in particular is extremely disturbed and mad about the San Francisco advance team's handling of the President's trip to Northern California and the geysers. Clausen complains that there was no contact with him by the advance men or the White House Congressional Relations staff to coordinate functions in the Congressman's District. As a result Clausen says the treatment his constituents got from the advance men was "downright amateurish and assinine and he is mad as hell about it and wants to go to the President about it." He further states that the portion of the trip in his area was "completely disorganized" and he feels "the President got hurt badly" by the treatment the press people from his Congressional District received.

Clausen then requested that the President send letters of apology to the press people in his district. I told Clausen that would not be fair to the President

because he did not directly deal with the people or cause the "confusion and harrassment" and I doubted very much if it would be possible to do that. I suggested maybe the Advance Office could apologize. Clausen did not like that response and asked who he could call in the White House to get this to the President. I suggested that he call you.

cc: Doug Bennett

EPS FORM 25
(01-74)

EXECUTIVE PROTECTIVE SERVICE

Enclosure A—1

FILE
STRIP MINING

To: Officer-in-charge
Appointments Center
Room 060, OEOB

Please admit the following appointments on Wednesday, April 9, 19 75

for Mike DuVal (Name of person to be visited) of Domestic Council (Agency):

Roosevelt Room

✓Cong Wampler

✓J. D. Nice Wander - VA
✓William H. Willis VA - [illegible]
✓Frank Horsman VA
✓B. V. Cooper VA
✓James A. Brown VA
✓Dean Jones - TENN
William Humphries - Ky
✓Ray Gibson - [illegible] - [illegible]
✓Joe Roberts - VA
✓Don Nicewander - VA
✓Leonard Womble - VA

Northwest Gate to West Wing Lobby at 11:45 a.m. where they will be met by Mr. Charles Leppert, Jr. x 2140

MEETING LOCATION
Building White House ~~216 OEOB~~
Room No. Roosevelt Room

Requested by Mike DuVal
Room No. 216 Telephone x 6560
Date of request 4/9/75

Additions and/or changes made by telephone should be limited to three (3) names or less.

DO NOT DUPLICATE THIS FORM.

APPOINTMENTS CENTER: SIG/OEOB – 395-6046 or WHITE HOUSE – 456-6742

4/9/75

ADMINISTRATION POSITION

Surface Mining Control and Reclamation Act of 1975

Issues to be Resolved at Conference

1. Alluvial Valley Floors
2. State Program Requirements
3. Citizens Suits
4. Stream Siltation
5. Hydrological Disturbances
6. Replacement of Water Supply
7. Ambiguous Terms
8. Reclamation Fee
9. Impoundments
10. National Forests
11. Unemployment Assistance
12. Matching Grants
13. Interim Timing
14. Federal Preemption During Interim
15. Surface Owner Consent
16. Surface Owner Consent, Exploration
17. Delays, Designations as Unsuitable
18. New Criteria, Designations as Unsuitable
19. Federal Program, Designations as Unsuitable
20. Office of Surface Mining, Jurisdiction
21. MESA Inspectors
22. NEPA Requirements
23. Variance Provisions
24. Preferential Contracting
25. Sales Requirements
26. Appropriations Authority vs. Contracting
27. Underground Mining Limitation
28. Anthracite Mines
29. Indian Lands
30. Conflict of Interest — missing

ISSUE	PROHIBITION OF MINING ON ALLUVIAL VALLEY FLOORS
Administration Position:	"(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 the valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of flood irrigated or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to present farming or ranching operations." [Section 410(b)(5)]
Senate Bill as Passed:	(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 croplands or haylands overlying alluvial valley floors where such croplands or haylands are significant to the practice of farming or ranching operations. [Section 510(e)(5)]
House Bill as Passed:	(5) The proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would--
(New: Added in House floor debate)	"(A) not adversely affect, or be located within alluvial valley floors, underlain by unconsolidated stream-laid deposits where farming or ranching can be practiced on irrigated or naturally subirrigated hay-meadows, pasturelands, or croplands; 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); or (C) not alter the channel of a significant watercourse which is identified as a stream fed by (1) a spring, other ground-water discharge, or surface flow that flows an average of two hundred and fifty gallons per minute or more during one hundred and twenty days or more per year; and (2) a drainage area which encompasses ten thousand acres or more when measured above the lowest point of impact on the water-course by the proposed surface coal mining operation, as determined by the Federal regulatory authority. [Section 510(b)(5)]

Proposed Status for Conference: We should make a strong effort for Senate language. New House language could prohibit all surface mining in or around alluvial valley floors. Support of Senator Hansen is important here.

Possible Fall-back: Seek narrow definition of alluvial valley floor, as is offered in House Committee report.

Rationale of Administration Position: The House version appears to substantially preclude all surface mining operations in or around alluvial valley floors. The bill could be interpreted to preclude mining in the Powder River basin. Recent Bureau of Mines projections are that from 33 to 66 million tons of production could be lost from existing and planned operations in the first full year of implementation of the bill under the House version.

The Bill could lock-up from 32 to 65 billion tons of strippable reserves, or over 1/2 estimated strippable reserves.

The absolute requirements of 510(b)(5)(A) of the House bill go beyond the carefully drafted environmental protection standards of section 515(b)(10), which recognize that some limited minimal controlled hydrological damage may occur during and after the mining operation, and require the operator to minimize disturbances to the quality and quantity of water in surface and ground water systems and to avoid channel deepening or enlargement.

Alluvial valley floors in the Western States deserve special protection and extraordinary safeguards. These areas are the breadbaskets of the region. However, the House version, section 510(b)(5) is far too restrictive than necessary -- making the bill unreasonable provides such safeguards.

ADMINISTRATION POSITION

REQUIREMENT THAT FEDERAL LANDS ADHERE TO STATE PROGRAM REQUIREMENTS

ISSUE	
Administration Position:	Would eliminate requirement. [Sec. 423(a)]
Senate Bill as Passed:	Adds language, "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." [Sec. 523(a)] In floor debate Senator Metcalf interpreted the provision to mean that State could prohibit Federal development of Federal lands.
House Bill as Passed:	Same language as Senate. [Sec. 523(a)] House has not taken same view on interpretation of language.
Proposed Status for Conference:	(1) Seek to delete last sentence of Sec. 523(a), quoted above. (2) Add sentence to Sec. 523(d), as follows: "Nor shall any approved State program be so construed or applied by the Secretary in regard to the Federal lands program as to constitute a complete prohibition of surface coal mining within the geographical perimeters of federally owned lands, unless such lands have been found by the Secretary to be unsuitable pursuant to Section 522." too close to fallback position (3) In any event, effort should be made to obtain legislative history which indicates a legislative purpose in conformity with the House view and contrary to the view expressed by Senator Metcalf.
Rationale for Administration Position:	Section 523(a) of S.7 and H.R. 25 should not be interpreted as providing for complete State control of surface coal mining of Federally-owned coal on Federal lands. Under the Administration's view Federal regulations promulgated by the Secretary of Interior would control the reclamation standards on Federal lands. The precedent of Federal control of Federal resources should be sustained. States [illegible] In any event coal development will be controlled by the protections offered in the new law.

ISSUE	CITIZENS SUITS
Administration Position:	Would modify provisions so that suits against mine operators are authorized only where violations of regulations or permits are alleged. [Section 420]
Senate Bill as Passed:	Adopted administration position. [Section 520]
House Bill as Passed:	No changes from original version: would allow suits against operators for violations of the Act. [Section 520]
Proposed Status for Conference:	We should make every effort to have the Senate version adopted. (Still a critical issue.)
Rationale for Administration Position:	The Administration agrees with the need for active citizen participation in the implementation of a surface mining control program. Citizen involvement will help assure that governmental actions are based upon complete information and are in compliance with the requirements of the Act. The Administration amendment would permit a suit to hold the mine operator accountable for violating requirements specifically applicable to him. The danger of permitting a suit against a mine operator for any violation of the Act is that he would be subject to suit where it is claimed that the regulations under which the operator is mining are not in accord with the Act. The whole concept of a permit is that it incorporates all of the requirements of the State or Federal regulations pertinent to the given mining operation, and, of course, in turn, the State or Federal regulations include all of the statutory requirements of the Act. It is fair to say, however, that past experience has demonstrated that regulatory agencies have not always properly interpreted the statutory mandates imposed on them by legislatures. But if a regulatory agency erroneously interprets and applies the law, the citizen suit cannot be [illegible] of the permit.

Extensive litigation of the many uncertain or ambiguous provisions of this new legislation could have serious production impacts. In such a situation, a citizen suit should be brought against the regulatory authority which is alleged to have improperly issued the regulation. If it is determined that the regulatory authority's action was not in accord with the law, the regulatory authority can correct its error through modification of regulations or permits.

The amendment does not in any way restrict a citizen's standing to sue in court. Section 520(d) permits the court to award litigation costs to the citizen, so we are not talking about throwing the citizen against the unlimited resources of the state. The amendment also does not restrict any rights of a citizen who is personally damaged as a result of surface coal mining operations.

The amendment also does not prevent a citizen suit directly against the operator if he is in violation of his permit or the regulations of the regulatory authority.

The amendment does not undercut the concept of citizen enforcement of the legislation, because in addition to citizen suits, ample opportunity for citizen involvement in promulgation of rules and regulations, approval of State programs, implementation of Federal programs, issuance and modification of permits, bond release, designation of lands unsuitable for mining, and mine inspections is provided.

ISSUE	STREAM SILTATION
Administration Position:	Would "prevent to the maximum extent practicable additional contributions of suspended solids. . . ." [Secs. 415(b)(10)(B) and 416(b)(9)(B)]
Senate Bill as Passed:	Would "prevent to the maximum extent possible using the best available technology, additional contributions. . . ." [Secs. 515(b)(10)(B) and 516(b)(9)(B)]
House Bill as Passed:	Would "prevent to the extent possible using the best technology currently available, additional. . . ." [Secs. 515(b)(10)(B) and 516(b)(9)(B)]
Proposed Status for Conference:	House version is preferable, of the two. The language is still somewhat troublesome in that it is unclear whether "best technology" connotes commercial availability. The Conference Committee should be urged to clarify that commercial availability was intended.
Rationale for Administrative Position:	To be sure that operations are not to be threatened with serious curtailments, then the statutory language must be interpreted to allow a certain degree of flexibility while still maintaining the environmental integrity of all watercourses which might be affected. The Administration's view would accomplish this by preventing any increase in the level of sediment to the maximum extent practicable. [It should be noted that the suggested language to the "maximum extent practicable" is not intended to imply that the least expensive control measures would necessarily satisfy this requirement.] The House version is preferable to the Senate's in that it provides for the best technology currently available. However, in either case strict interpretation of the House or Senate language presents obvious difficulties which could cause unnecessary production delays. The language should be clarified in legislative history to make it clear that "best technology" means commercially available. [illegible] flexibility [illegible].

At the present time there already exist effective means, such as diversion ditches and siltation ponds, which can be used to effectively control and reduce sediment outflow to a degree which would maintain the environmental integrity of existing watercourses.

ISSUE	PROHIBITION AGAINST HYDROLOGICAL DISTRUBANCES
Administration Position:	Would include language "designed to the maximum extent practicable to prevent. . ." [Secs. 410(b)(3); 415(b)(10)(B)] (E)
Senate Bill as Passed:	Uses language, "designed to prevent to the maximum extent possible using the best available technology. . ." [Secs. 510(b)(3); 515(b)(10)(B)]
House Bill as Passed:	Provides: ". . .designed to prevent irreparable offsite impacts to the hydrological balance. . .." [Sec. 510(b)(3)] and ". . .to the extent possible using the best technology currently available. . ." [Sec. 515(b)(10)(B)]
Proposed Status for Conference:	We should opt for the Senate language in view of the absolute terminology of Sec. 510(b)(3) in H.R. 25. House language would be difficult to meet in 510. Insertion of House language, found in 515, into 510 would also be desirable. We need also to work for a definition of "best technology" that includes commercial availability.
Rationale for Administration Position:	The Administration's position dealing with restrictions on offsite impacts on hydrologic balance are designed to eliminate difficulties arising from the mandatory directive to "prevent" irreparable offsite impacts. Nearly all mining operations will have some unpreventable impact on the offsite hydrologic balance, however temporary or minute. While most of this impact can be controlled, some minor, long-term effect will probably result. The concern that this effect may be determined to be "irreparable" constitutes the basis for the Administration's position. If strictly interpreted the House provision could prevent the issuance of virtually any permit. The Senate version is preferable in that it says "to the maximum extent possible using the best available technology," but in any event "best technology" should be clarified through legislative history to make it certain that commercial availability is intended. Strict interpretation of that terminology could be burdensome.

ISSUE	REPLACEMENT OF WATER SUPPLY
Administration Position:	No such provision.
Senate Bill as Passed:	"(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 source other than a subterranean stream channel where such supply has been affected by contamination, diminution, or interruption proximately resulting from mining;" [Sec. 515(b)(10)(E)]
House Bill as Passed:	Same as Senate. In addition, section 717, an entirely new section added on the floor, requires that wherever it appears likely that a proposed mining operation will adversely affect the water supply, a permit application must either contain the consent of water rights owners or show a willingness and capability on the part of the applicant to provide substitute water.
Proposed Status for Conference:	We should opt for the Senate water provisions, inasmuch as 717 is not included. In addition, with respect to 515(b)(10)(E) we should seek to add the word "substantially" before the word "affected," and/or seek to obtain some legislative history which shows an intention to require a substantial adverse effect on a user, rather than merely an effect on the water supply.
Rationale of Administration:	Section 515(b)(10)(E) and particularly section 717 of H.R. 25 are overly burdensome and restrictive. The issue of water quality and quantity both on- and off-site are adequately dealt with in section 515(b)(10)(A) through (D). A mine operator will have to demonstrate his ability to comply with these requirements prior to obtaining a permit.

affected water rights may be inconsistent with existing State law, could be administratively difficult to resolve, and could pose substantial problems of proof.

At a minimum the legislation should speak in terms of substantial effects on offsite water quality and quantity and provide for a money damages alternative in cases where that would provide substantial justice.

ISSUE	DEFINING AMBIGUOUS TERMS
Administration Position:	Would provide explicit authority in the bill for the Secretary to define ambiguous terms in the Act. (Section 601(b))
Senate Bill as passed:	Not adopted, but the Senate Report notes "that the Secretary has general rulemaking authority to define terms; the courts normally look to administrative interpretations of the law to resolve ambiguities."
House Bill as passed:	No provision
Proposed Status for Conference:	We should seek to obtain in Conference report language similar to, or reference to, Senate language.
Rationale for Administration position:	H.R. 25 does not specifically provide the Secretary with the authority to define ambiguous terms in the Act. As those definitions are made in the course of implementing the Act there is a great potential for delays in implementation and resulting unnecessary or unanticipated production losses due to litigation over those definitions. Section 601(b) of the Administration bill would precisely establish that the purpose of developing clarifying definitions is to "provide greater certainty in implementing and administering" the legislation. This provision would be a clear indication to the courts that the interpretations of the Secretary should be given great weight and that the judgment of the court should not be substituted unless the Secretary's interpretation is unsupported by substantial evidence on the record, considered as a whole.

ISSUE	RECLAMATION FEE
Administration Position:	Would provide for a fee of 10¢ per ton on all coal mined. [Sec. 301(d)]
Senate Bill as Passed:	Would provide a tax of 35¢ per ton on surface mined coal, 25¢ per ton of underground coal, or 10% of the value of the coal at the mine, whichever is less. Unchanged from earlier position. [Sec. 401(d)]
House Bill as Passed:	Bill retained 35¢ tax on surface mined coal but was modified to reduce the tax on underground coal to 10¢ per ton; or 10% of value of the coal at the mine (5% for lignite) whichever is less. [Sec. 401(d)]
	House version broadens use of fund to include certain collateral energy development costs. [Sec. 405(b)(4)]
Proposed Status for Conference:	Should opt for the House version. (except for energy development provision.)
Rationale of Administration Position:	The Administration does not believe there is a proven need for the higher 25¢ and 35¢ a ton reclamation fee that would be levied under H.R. 25 to reclaim orphan lands. It is further believed that it is not good economic policy to extract needed cash from the consumer and the money supply, especially in times like the present, faster or in greater quantities than necessary. The Bureau of Mines estimates that approximately 1,000,000 acres of orphan lands surface mined for coal now exist, mostly in the Appalachian region. However, not all of these acres are in need of reclamation. Approximately half of these acres have already stabilized and have assumed a timber and vegetation cover that is compatible to that area. Additional factors will reduce the total acreage which will have to be reclaimed. The practice of mountain top mining on abandoned contour mining sites for new mining. Such operations [illegible]

After the mountain top extraction process has been completed the abandoned high walls are eliminated and needed reclamation is accomplished in the process.

Based on estimates for 1975 production, 10¢ a ton could generate between $60 and $70 million dollars on an annualized basis. A doubling of production by 1985 will double receipts of this fund. To the extent that the amount of any such fee is passed on, it will increase the cost of energy and have at least a temporary inflationary effect. To the extent it is not passed on but absorbed by the producer, it will draw money from the economy and divert needed capital from needed future production. If experience establishes 10¢ does not generate a sufficient fund, Congress can subsequently increase the fee. During that interim period, a more accurate assessment of the acres to be reclaimed can also be made.

ISSUE	MODIFY PROVISIONS ON IMPOUNDMENTS
Administration Position:	". . . structures are located so as to minimize danger to the health and safety of the public if failure should occur." [Secs. 415(b)(13); 416(b)(5)]
Senate Bill as Passed:	Adopted Administration language. [Secs. 515(b)(13); 516(b)(5)]
House Bill as Passed:	Entire supervision of "design, location, construction, operation, maintenance, and abandonment" of impoundments and refuse piles is given to the Army Corps of Engineers. [Secs. 515(b)(13); 516(b)(5)]
Proposed Status for Conference:	Seek adoption of Senate language; prior problem of absolute terms solved; supervision of Army Corps of Engineers could be a problem.
Rationale of Administration Position:	It is the Administration's view that the requirements in subsection 515(b)(13), along with the language now adopted by the Senate, regarding the location of impoundments, present sound safeguards for the construction of impoundments without unduly restricting the placement of such structures. S. 7 retains language in subsection 515(b)(13) that imposes specific requirements that only the best engineering practices for design and construction be used in order to achieve the necessary stability with an adequate margin of safety to protect the health and safety of the public. It may also be noted that new regulations for waste impoundments to be promulgated by the Secretary of the Interior under the "Coal Mine Health and Safety Act of 1969" have now been formulated and are pending review of the final environmental impact statement before being published in the Federal Register. These regulations will offer strong safeguards for the construction of waste impoundments. The provision regarding the Corps of Engineers is preferable to the earlier absolute language but will introduce confusion and duplication in administration.

ISSUE	MODIFY PROHIBITION AGAINST SURFACE MINING IN NATIONAL FORESTS
Administration Position:	Modified prohibition to permit waiver by Secretary when multiple resource analysis indicates that such mining would be in the public interest. [Section 422(e)(2)]
Senate Bill as Passed:	No modification. [Section 522(e)(2)]
House Bill as Passed:	No modification. [Section 522(e)(2)]
Proposed Status for Conference:	Support Administration position.
Rationale for Administration Position:	Section 422(e)(2) of the Administration bill would permit the Secretary of Agriculture to waive the surface coal mining ban in specific areas of the national forests "if after due consideration of the existing and potential multiple resource uses and values he determines such action to be in the public interest." The waiver may only be made when the Secretary of Agriculture determines that it is in the public interest to do so, and surface coal mining so permitted would have to be done in full compliance with the high standards for mining and reclamation in the Act. Without the discretionary waiver provisions in the Administration bill, the flat prohibition of surface coal mining in the national forest would be inconsistent with established multiple use principles, and 7 billion tons of coal reserves would unnecessarily be locked up for future use in meeting our national energy requirements. This 7 billion tons of coal reserves constitute about 30% of the uncommitted Federal surface-mineable coal in the contiguous States. The Administration has no plans to lease surface mineable coal in the national forests, and the waiver provision of section 422(e)(2) in the Administration bill is not included in anticipation of coal leasing on these lands in the near future. However, it would be improvident at this time to foreclose [illegible] consistent with established multiple use principles.

ISSUE	UNEMPLOYMENT ASSISTANCE
Administration Position:	Would delete provision relating to unemployment assistance.
Senate Bill as Passed:	Provides that Secretary of Labor may make grants to states "to provide cash benefits to any individual who loses his job in the coal mining industry as a direct result of the closure of a mine" due to the enforcement of the Act. [Sec. 709]
House Bill as Passed:	Adopted Administration position and deleted provisions.
Proposed Status for Conference:	Work for House approach; (note that House unemployment provision was dropped in mark-up at instance of former proponent of position, Mr. Seiberling, who stated that idea was original developed for earlier legislation and wasn't necessary here.)
Rationale for Administration Position:	The Administration would delete unemployment assistance for the reasons set forth below: - It represents unfair discrimination between classes of unemployed. - The cause of unemployment could be difficult to determine and complicate administration of the Act. - The labor force attachment criteria are extremely weak. - The length of benefits is open-ended. - It would establish a very bad precedent -- other regulated industries would seek similar coverage. - It would be inconsistent with P.L. 93-567 and P.L. 93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. - [illegible]

ISSUE	MATCHING GRANTS TO STATES AND PRIVATE INDIVIDUALS FOR RECLAMATION OF MINED LANDS
Administration Position:	(1) Would provide for Federal-State cost sharing on acquisition and reclamation with maximum 50% Federal share and (2) would eliminate Federal cost sharing for private landowners. [Title III]
Senate Bill as Passed:	Provides for Federal cost sharing of up to 80% with private landowner for reclamation of rural lands, and for even larger % under certain circumstances; areas eligible increased from 30 acres to 100 acres; provides for up to 90% cost sharing with States for acquisition of abandoned and unclaimed lands. [Title IV]
House Bill as Passed:	Provides for up to 80% cost sharing with private landowners for reclamation, area eligible increased to 160 acres; up to 90% cost sharing for State acquisition program. [Title IV]
Proposed Status for Conference:	Continues to be a problem. Favor Administration position
Rationale for Administration Position:	Amendments relating to reclamation of private lands and adjustments in the matching formula will further reduce the need for the higher fee.

(1) The amendment would reduce the matching formula in those instances where a grant is made to a state for purchase of acres to be reclaimed, the reclaiming of such acres and for the filling voids and sealing tunnels. S..7 sets a 90% limit on the matching formula on the grants to states for purchase of lands to be reclaimed. This approaches total Federal funding of the acquisition, yet the reclaimed land remains in the ownership of the state. The Administration believes that the matching formula for purchase and reclaiming for lands owned by the states should be on a 50-50 basis. This will better assure that states receiving the benefits will have an active role in setting priorities for reclamation.

(2) The Administration opposes the use of funds to [illegible] windfall [illegible] to the private landowners who [illegible] maintain title to their lands while having them reclaimed at Federal expense.

ISSUE	REVISE TIMING REQUIREMENTS FOR INTERIM PROGRAM TO MINIMIZE UNANTICIPATED DELAY
Administration Position:	Timing requirements for interim program are tied to regulatory authority action, so as not to leave mine operators subject to close down due to administrative delays. [Sec. 402(a) and (b)]
Senate Bill as Passed:	Did not change with respect to interim compliance period of 135 days; adopted Administration position with respect to 30-month requirement for compliance with approved programs. [Secs. 502(a), (b) and (c)]
House Bill as Passed:	Same as Senate. [Secs. 502(a), (b) and (c)]
Proposed Status for Conference:	Interim period still a problem. Support Administration position.
Rationale for Administration Position:	The provisions of sections 502 and 506 of both bills could potentially cause the closure of ongoing mining operations simply because of the failure of the regulatory authority to complete action on a mining permit and without fault of the mine operator. Section 502(a), (b) and (c), require new and existing operations to comply with the interim standards pursuant to mining permits issued within certain timeframes. However, no duty is imposed on the regulatory authority to issue such permits, and this is particularly troublesome for existing operations which must comply with the interim standards within 135 days from enactment. If the regulatory authority does not revise existing permits within 135 days it would appear that an operation could be forced to close down. The Administration position avoids this problem by triggering the time for compliance to the receipt of the amended permit. Particularly in the case of existing operations, the regulatory authority is required to review and amend existing permits within 60 days from date of enactment and the operation is then required to comply with the interim standards within 120 days from the date of issuance of such permits.

ISSUE	FEDERAL PREEMPTION OF STATE ROLE DURING INTERIM PERIOD
Administration Position:	Would limit Federal enforcement role during interim period to situations which create imminent danger to public health and safety or significant environmental harm. [Secs. 402(b), 421]
Senate Bill as Passed:	No changes made; Senate report points out lack of state enforcement of its programs. [Secs. 502(b), 521]
House Bill as Passed:	No change made. [Secs. 502(b), 512]
Proposed Status for Conference:	Still a problem; note House committee report comment, "the intent of this provision is to place the Secretary in the role of monitoring State activity in the interim period and providing backup enforcement where appropriate." Should pursue adoption of position of this sort in Conference. Discussed in House Committee report
Rationale for Administration Position:	The primary governmental responsibility for developing, authorizing, issuing, and enforcing a surface mining program should rest with the States, and the thrust of Federal surface mining legislation is to assist the States in developing and implementing a program which will achieve the purposes of the legislation. The States should be included in the regulatory and enforcement procedures at the earliest practical moment. A Federal interim enforcement program, such as provided in both Bills could lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and discourage States from assuming an active permanent regulatory role, thus leaving such functions to the Federal Government. During the past few years, nearly all major coal mining States have improved their surface mining laws, regulations and enforcement activities. Under all 3 positions, the Secretary must implement an interim Federal program. S. 7 and H.R. 25 not only require [illegible] direct enforcement authority during the interim period. The Secretary's immediate enforcement powers under the Administration's position are limited [illegible]

violations the Secretary is authorized to request the State regulatory authority to take the necessary enforcement actions. If the State fails to act within ten days, however, the Secretary may order the violations corrected.

The Administration position would fully utilize the existing State regulatory system, eliminate overlapping and duplicating authority to the extent possible, and encourage the timely establishment of permanent State programs.

ISSUE	SURFACE OWNER CONSENT
Administration Position:	Surface landowner and other property rights would continue to be governed under existing law. [Sec. 613]
Senate Bill as Passed:	Remains unchanged; Secretary shall give preference to leasing for underground mining to maximum extent practicable; where surface mining anticipated, Secretary must obtain written consent of surface owner, and applicant must pay surface owner the value of his interest. [Sec. 717]
House Bill as Passed:	Same provision as Senate version. [Sec. 714] House Bill amended on floor to add new Sec. 717, which requires that where a proposed mining operation is likely to affect water supply or quantity, the applicant for a permit must either get the written consent of owner of water rights or show capability to provide substitute water.
Proposed Status for Conference:	Should push for Administration position and deletion of House 717.
Rationale of Administration Position:	The problems with Section 717 of S. 7 and 714 of H.R. 25 are multiple. The administrative burdens placed on the Secretary are numerous and complex to carry out. The impact these provisions would have on coal preference right holders could be substantial and they could result in significant windfall profits to holders of surface rights. Considerable expense would be added to Federal leasing and, in all probability, a vast amount of litigation would arise under acts mandated to the Secretary in S. 7. Further, this could lead to lock-up of needed coal. If a surface owner refuses to consent to permit mining on a tract of land that is in the path of an existing operation, not only could much coal be locked up, but an existing operation could be severely curtailed. The Administration objects to subsection (e) which a moratorium is imposed on the leasing of any coal deposits owned by the United States until February 1977. [illegible] could preclude the continued production from existing operations and prevent the start-up of new mines due to the inability to [illegible]

ISSUE	REQUIREMENT OF WRITTEN SURFACE OWNER CONSENT FOR COAL EXPLORATION PERMITS
Administration Position:	No provision.
Senate Bill as Passed:	Requires statement by applicant of right by which he intends to pursue exploration, and certification that notice of intention to pursue exploration has been given to surface owner. [Sec. 512(b)(8)]
House Bill as Passed:	Requires written consent of surface owners.
Proposed Status for Conference:	Prefer Senate provision inasmuch as it would more readily facilitate exploration.
Rationale of Administration Position:	House provision could permit many frivolous obstructions and either delay or prevent exploration of coal-bearing lands. At the same time, the Senate provision adequately protects surface owner rights under existing law.

ISSUE	ELIMINATE DELAYS RELATING TO DESIGNATIONS AS UNSUITABLE FOR MINING
Administration Position:	Would seek to assure that petitions for designating lands as unsuitable for mining are handled expeditiously, and provides for preliminary review of petition to avoid mining ban from frivolous petitions. [Sec. 410(b)(4); 422(c)]
Senate Bill as Passed:	Preliminary review not adopted. Adopted amendment which would require authority to render decision within 1 year, and if not done in 1 year, mining permits could be issued. [Secs. 510(b)(4); 522]
House Bill as Passed:	Does not adopt preliminary review. [Sec. 522]
Proposed Status for Conference:	Seek adoption of Administration position.
Rationale for Administration Position:	Section 510(b)(4) of S. 7 prohibits the issuance of mining permits in areas which have been designated as unsuitable for mining or in areas which are being considered for designation as unsuitable. The existence of the petition mechanism of section 522(c) brings into motion the problem of banning mining in areas under consideration for designation as unsuitable. As drafted, a ban of mining could arise upon the filing of a petition. Frivolous petitions under section 522(c) could thus tie up extensive areas for long periods of time pending administrative and judicial resolutions of the question of unsuitability. The Administration view avoids this problem. The petition mechanism of section 422(c) provides that as soon as practicable after receipt of a petition, the regulatory authority must review it to determine whether there is a substantial likelihood that the petition will be granted. If the regulatory authority makes such a determination, it formally orders the area in question to be under study. Section 410(b)(4) of H.R. 3119 then specifically prohibits the issuance of permits in areas designated as unsuitable for mining or in areas under study for such designation. This mechanism fully and adequately protects against the improvident granting of permits to mine areas where mining is inappropriate.

OTHER THAN COAL

ISSUE	NEW CRITERIA FOR DESIGNATING FEDERAL LANDS AS UNSUITABLE FOR MINING
Administration Position:	No additional provision.
Senate Bill as Passed:	No additional provision.
House Bill as Passed:	Adds categories of lands which may be designated "unsuitable": "where mining operations could result in irreversible damage to important historic, cultural, scientific, or aesthetic values, or natural systems, of more than local significance, or could unreasonably endanger human life and property." [Sec. 601(b)(3)]
Proposed Status for Conference:	Prefer Senate version: provision difficult to oppose, but wording is so broad and vague as to permit considerable uncertainty and broad possibilities for lands which may be proposed as unsuitable.

ISSUE	FEDERAL PROGRAM REQUIREMENTS: DESIGNATED LANDS
Administration Position:	No provision.
Senate Bill as Passed:	If a Federal program is implemented for a state the section dealing with designating lands unsuitable for mining shall not apply for a period of one year following the date of such implementation. [Sec. 504(a)(3)]
House Bill as Passed:	No such provision.
Proposed Status for Conference:	Senate provision desirable; provides flexibility for implementation of program.

ISSUE	OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT; HOUSE PROVISION PLACING OFFICE UNDER ASSISTANT SECRETARY, LAND AND WATER RESOURCES
Administration Position:	No such provision.
Senate Bill as Passed:	No such provision.
House Bill as Passed:	Adopted floor amendment, proposed by Mr. Seiberling, that would place Office of Surface Mining Reclamation and Enforcement under the Assistant Secretary for Land and Water Resources. [Sec. 201]
Proposed Status for Conference:	Support Administration position.
Rationale for Administration Position:	Discretion should be left in the Secretary to assign responsibility to whichever Assistant Secretary he deems most appropriate. The provision could lead to unnecessary administrative confusion and complexities and could prevent effective use of existing expertise and resources.

ISSUE	PROHIBITION AGAINST HAVING MESA INSPECTORS ENFORCE COMPLIANCE WITH ACT
Administration Position:	No such provision.
Senate Bill as Passed:	No such provision.
House Bill as Passed:	Floor amendment offered by Hechler, and passed, provides: "(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 person or persons are not needed for such inspections under the 1969 Act." [Sec. 201(d)]
Proposed Status for Conference:	Prefer Senate bill.
Rationale for Administrative Position:	House amendment would require duplicate personnel and inspection visits, would complicate administration of inspections, would increase costs, and would not provide any substantial benefit. The transparent purpose of the amendment is to denigrate MESA. Overlap during the interim period may be necessary if the conditions of the Bill are to be met in the short time [illegible] by the Bill.

ISSUE	NEPA REQUIRED FOR FEDERAL AND STATE PROGRAM PROMULGATION
Administration Position:	No such requirement.
Senate Bill as Passed:	"Approval of the State programs, pursuant to 503(b), promulgation of Federal programs, pursuant to 504, and implementation of the Federal lands programs, pursuant to 523, shall constitute a major action within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)." [Sec. 702(d)]
House Bill as Passed:	No such provision.
Proposed Status for Conference:	Prefer House and Administration views.
Rationale for Administration Position:	The Administration believes that it is poor precedent to specifically provide that certain Federal actions are "major actions which significantly effect the environment." Experience under NEPA is now sufficiently extensive so that the Act can stand on its own without adding provisions in other bills either expanding NEPA or restricting it. We prefer working within the present NEPA framework.

ISSUE	MODIFY VARIANCE PROVISION FOR CERTAIN POSTMINING USES AND EQUIPMENT SHORTAGES
Administration Position:	Would permit variances from certain performance standards of Sec. 415 in cases involving equipment shortages, and where equal or better economic or public use of the land is anticipated. [Sec. 402(d), 415(c)]
Senate Bill as Passed:	No changes in variance provision.
House Bill as Passed:	No changes.
Proposed Status for Conference:	Favor Administration position.
Rationale for Administration Position:	The equipment variance would only apply to the relatively short duration of the interim period. With the safeguards provided in section 402(d), the equipment variance is a reasonable measure permitting coal to be surface mined in an environmentally sound and approved manner while equipment is unavailable to the operator through no fault of his own. It must be remembered that there are serious backlogs of orders for heavy earth-moving equipment and that not all coal is surface mined with the same equipment used in the reclamation of mined land. For example, coal is often surface mined by draglines, shovels and trucks, whereas bulldozers are needed for return of the land to approximate original contour.

ISSUE	PREFERENTIAL CONTRACTING
Administration Position:	Would not require that special preference be given in reclamation contracts to operators who lost their jobs because of the bill.
Senate Bill as Passed:	Requires "Preference for Persons Adversely Affected by the Act" in the award of reclamation contracts. [Sec. 708]
House Bill as Passed:	Adopted Administration's position; deleted preference provisions
Proposed Status for Conference:	Seek adoption of House version.
Rationale for Administrative Position:	Contracts should be awarded on merit and on competitive bidding. The Administration's view would permit the regulatory authority to award the contract on a bid basis as would be set out in regulations promulgated by the Secretary.

ISSUE	DELETE REQUIREMENT OF SALES OF COAL TO ANY CLASS OF PURCHASERS UNDER FEDERAL LEASES
Administration Position:	Contains no provision which would prohibit denial of sale to any class of purchasers.
Senate Bill as Passed:	Requires that with respect to lessees, permittees, and contractors for U.S. owned coal, "no class of purchasers of the mined coal shall be unreasonably denied purchase thereof." [Sec. 523(e)]
House Bill as Passed:	Requires Secretary to assure in granting permits, leases or contracts for U.S. owned coal, "no class of purchasers shall be unreasonably denied purchase thereof." [Sec. 523(e)]
Proposed Status for Conference:	Favor House language.
Rationale of Administration Position:	The Senate provision in particular, could interfere unnecessarily with both planned and existing coal mining operations particularly in integrated facilities. This provision is not in the Administration's proposal and if the provision does have merit it should be in a lease agreement, not in a reclamation bill.

The House version requires the Secretary not to deny coal to a class of purchaser when issuing leases. This is reasonable. However, the Senate version requires that federal coal after being mined can not be denied to a class of purchaser.

ISSUE	PROVIDE AUTHORITY FOR APPROPRIATIONS RATHER THAN CONTRACTING AUTHORITY
Administration Position:	Would finance Administration of Act through direct appropriations. [Sec. 612]
Senate Bill as Passed:	For implementation of certain provisions, provide contracting authority in Secretary; as opposed to appropriation; Senate report notes that provision is deliberate with purpose of speeding implementation of Act without waiting for appropriation. [Sec. 715]
House Bill as Passed:	Identical to Senate. [Sec. 712]
Proposed Status for Conference:	Support Administration position.
Rationale for Administrative Position:	The Administration bill does not provide for such contract authority because such an approach is both unnecessary and inconsistent with Congressional Budget Reform and Impoundment Control Act. Under the Administration bill, such costs would be financed through direct appropriations and thus receive the full budget scrutiny that is necessary to assure the best use of our Federal resources.

ISSUE	LIMITATION OF APPLICABILITY TO UNDERGROUND MINING
Administration Position:	No provision.
Senate Bill as Passed:	No provision.
House Bill as Passed:	Adds provision that with respect to certain surface effects of underground mining, the provisions of section 515 shall apply, except that the Secretary may modify those requirements where necessary because of differences between surface and underground mining. [Sec. 516(b)(10)]
Proposed Status for Conference:	Desirable provision inasmuch as it clarifies application of section 515 to underground mining.

ISSUE	SPECIAL REGULATIONS FOR ANTHRACITE COAL MINES
Administration Position:	Has section directing Secretary to issue separate set of regulations for anthracite coal mines which shall apply environmental protection provision of State where the mines are located. [Sec. 529]
Senate Bill as Passed:	No such provision.
House Bill as Passed:	Same as Administration provision. [Sec. 529]
Proposed Status for Conference:	Neutral; not a major point.

PROP - per G. Schmults guidance

Secretary administers program on Indian la. and conducts study. [Sec. 601(a)(9) and 610

ISSUE — **INDIAN LANDS**

Administration Position:

Would define Indian lands so as to assure that non-Federal Indian lands would not be regulated by the Secretary.
[Sec. 601(a)(9)]

Senate Bill as Passed:

Full Program delineated, Sec. 610.
Adopts Administration amendment.
[Sec. 701(a)(9)]
Identical to Administration bill

House Bill as Passed:

Does not adopt Administration language
[Sec. 701(a)(9)]
and added new title VI, entire new Indian Lands Program which gives Indians option

Proposed Status for Conference:

Favor Senate language in 701(a)(9). Favor Senate approach
Favor Senate program over House in its entirety.

Rationale of Administration Position:

With respect to the question of definition of Indian Lands, the Senate version, which adopts the Administration position, is preferable in that it would eliminate the possibility of having the bill construed so as to require the Secretary to regulate non-Federal Indian lands.

With respect to the much broader issue of the overall programs delineated in the respective bills, the Administration and Senate provisions are identical, and they provide for a study to determine the most beneficial regulatory scheme for Indian lands and Indian involvement; in addition they provide for interim regulatory requirements and timing deadlines for imposition of the various provisions of the Act.

rewrite.

need to more fully note differences

The House bill was amended on the floor to add an entire new title VI, which propounds a comprehensive program that not only includes the study provisions of the other bills, but also includes a full regulatory scheme, similar to

that provided for the States, covering Indian participation, interim programs, and alternate Federal enforcement. The Senate program is preferred by the Bureau of Indian Affairs, and by the majority of Indian groups polled on the subject for the reasons that it permits further study and additional time for the Indians to better assess the most suitable program for them to adopt; and it avoids the possibility of imposing upon the Indians at too early a time a program that may be more onerous than desirable.

In addition, the House bill suffers from certain defects, not the least of which is the ambiguity of blending a study program (Sec. 612) with a complete regulatory scheme. Other problems include jurisdictional uncertainties, as between the Secretary and the tribes, such as found in sections 606(a), 611 and 612.

THE WHITE HOUSE

WASHINGTON

April 10, 1975

MEMORANDUM FOR: CHARLIE LEPPERT

FROM: Glenn Schleede

SUBJECT: Strip Mining

Here are five items that should be useful in connection with our discussion of this morning:

1. The President's February 6, 1975 letter transmitting the Administration's bill.
2. The March 14, 1975 information memo to the President with an initial assessment of the Senate passed bill.
3. The March 21, 1975 status report expanding on the earlier report on Senate action and describing House action.
4. A detailed summary of differences in the House and Senate bill prepared on the Hill which lists a total of 67 significant and non-significant differences.
5. The latest draft of the 29 Administration position papers which show Administration preferences on significant items that are different in the two bills.

These papers* were prepared by an inter-agency group under OMB's leadership. They are being prepared in final form and could go to the Hill today. I have asked that they be held up until we have an agreement as to posture and strategy.

Attachment

cc: Jim Cavanaugh
Mike Duval

*Described in paragraph 5.