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11/18/74

THE WHITE HOUSE

WASHINGTON

November 16, 1974

MEMORANDUM FOR THE PRESIDENT
 THROUGH: KEN COLLINS
 FROM: MIKE DUVAL
 SUBJECT: STRIP MINING BILL

The Conference on the surface mining bill will resume next Tuesday. Minority conferees, aware of the split within the Administration on the bill, have asked Bill Timmons for a firm signal of Administration position. The issues for your consideration are (a) whether you want to take a position at this time, and (b) if so, what position.

BACKGROUND

Briefly, the bill follows other environmental legislation in its approach; i.e., it sets minimum Federal standards for reclamation and environmental protection, encourages states to regulate and enforce and substitutes Federal enforcement if the states do not act. Even though states have improved their controls over strip mining, environmentalists are continuing to push hard for a tough Federal bill. Despite tough fights in both the House and the Senate, the current bill has many features that vary from the Administration's request.

Conference Chairman Udall contends that all issues have been resolved except the matter of surface owner rights. Some minority conferees will push for reopening other issues and may try to stop the bill either by (a) tying it up in conference, or (b) helping to include an unacceptable surface owner consent provision that might tie the bill up in House Rules Committee or increase chances of a veto.

Principal aspects of the current bill considered objectionable by one or more of the agencies are described in Tab A. Briefly, these involve:

- . A 35¢ per ton excise tax with receipts going to a Federal fund for reclaiming orphaned strip mined land, public facilities, disaster assistance, etc. (\$210 million annually at current production levels.)
- . \$75-90 million for grants, research, and Federal regulation.

- . Precedent setting unemployment assistance.
- . Coal production losses in 1975 of 3 to 6 percent (not counting unknown impact of provisions listed below).
- . Surface owner protection provisions that could prevent access to Federal coal lands, produce windfall profits to surface owners and reduce Federal revenue from leases.
- . Complex procedural requirements and standards in the 160 page bill which will involve extensive litigation and potential production impact, particularly:
 - A requirement to "prevent adverse effects" which could lead to a court decision like that of the Clean Air Act "significant deterioration" finding.
 - A very broad citizens suit provision.
 - Near prohibition on mining that disturbs alluvial valley floors or water supplies in the West.
 - Limited administrative discretion.
 - Procedural requirements that could delay permits for new operations and impose a temporary moratorium on mining permits for Federal lands (including mineral rights).
 - Regulation of underground mining.
- . Extensive Federal involvement.

Rog Morton held a meeting of the principal agencies concerned yesterday (Friday) which indicated that (a) none of the agency leaders believe you should get involved at this time -- largely because they believe involvement would not change the final outcome and a veto will likely be overridden anyway, and (b) within the Administration, positions break down along the following lines:

- . Those who are almost certain to recommend a veto if most of the problems are not corrected - Treasury, Commerce, OMB.
- . Those who agree the problems are serious but believe changes cannot be obtained or a veto sustained and will therefore recommend signing - Interior, FEA.
- . Those who believe the bill is acceptable - CEQ, EPA.

Decisions Needed

- A. Do you wish to become involved at this time? Alternatives are to state your intention to veto the bill if major changes are not made, or merely instruct Rog Morton to continue seeking changes to satisfy objections.

Arguments for a White House signal

- . Every attempt should be made to get changes, even though passage of an unacceptable bill is virtually certain and chances of sustaining a veto are negligible.
- . The strength of the objections my not yet have been conveyed clearly to the conferees, thus you could strengthen opposition to the current bill.

Arguments against any White House position

- . Rog Morton and other agency leaders believe it would not affect the outcome and it might even strengthen the resolve of the bill's supporters.
- . Preserves your option of deciding to accept or reject the bill later when Congress completes action.
- . Will avoid strong environmentalist criticism.

Decision A:

Signal your position NR7 No White House Signal _____

.Roy Ash
.Ken Cole
.Bill Timmons
.Bill Seidman

.Rog Morton
.Treasury
.EPA
.CEQ
.Commerce
.FEA

- B. If you decide to give the Conferees an Administration position (probably via a letter from Rog Morton), how strongly should your objections be stated? The alternatives are:
1. List all or a part of the objectionable provisions in Tab A and indicate general opposition but single out only the surface owner issue as a veto threat. (This is essentially the position Rog Morton is currently taking with the Conference committee.) The argument for this alternative is that a veto is likely to be overridden anyway and your opposition will not change the outcome.
 2. Cover all the issues listed in Tab A and state that, taken together, the bill will be vetoed. Leave open the question of what combination will be enough to tip the scale in favor of veto. (This essentially puts you on record against the listed provision and lays the predicate for a veto.) The argument for this alternative is that the bill is bad and you should signal your opposition because the conferees know there is a split within the Administration.

Decision B:

General Opposition only _____ Strong Opposition to all issues in Tab A WR7

- .Rog Morton
- .EPA
- .CEQ
- .FEA

- .Roy Ash
- .Ken Cole
- .Bill Timmons
- .Treasury
- .Commerce
- .Bill Seidman

The wording of the Legislative Message for Monday is general enough to accommodate any of the decisions listed above.

A

SURFACE MINING LEGISLATION

Eight provisions listed below and four general problems described on page 2 constitute the most objectionable sections of the bill now before the Conferees.

Specific Provisions

1. Any environmental degradation is prohibited -- similar to Clean Air Act

The bill's purpose is "to prevent the adverse effects to society and the environment". Such purposes create a non-degradation standard which is impossible to achieve in any surface coal mining operation and could lead to the same type of non-degradation interpretation encountered under the Clean Air Act.

2. Citizens suit provisions assures strict interpretation of bill. Provisions are precedent setting.

The bill authorizes citizen suits for violation of the Act itself, and thus seriously undermines the integrity and finality of the permit granting mechanism, and the procedural safeguards imposed thereon. It does not appear expressly to authorize citizen suits for violation of permit conditions.

3. Bill would cause near prohibition of surface mining on alluvial valley floors where farming can be practiced, and provides unduly strict data collection requirements dealing with subsurface water.

The bill requires a permit applicant to perform the nearly impossible task of affirmatively demonstrating that surface operations "would not have a substantial adverse effect on valley floors... where such valley floors are significant to present or potential farming or ranching operations". Other provisions requiring reclamation of the land provide necessary protection to farmlands. In addition, unduly cumbersome permit application requirements are required for determining status of underground water.

4. Surface owner protection

The conferees have not decided what provision will be adopted regarding any change in rights of the surface owner versus the Federal mineral estate. Most options under serious review by the Committee apparently assure the private owner will not only retain ownership of the reclaimed land but will also retain the right of consent over surface mining and may receive large windfall payments

which are unrelated to any damages that may occur. Such payments would go to a relatively few landowners with a probable loss in revenues to the Treasury amounting to hundreds of millions of dollars.

5. Bill establishes precedent setting unemployment assistance

Extended unemployment benefits cover all coal surface mining employees with no limit on the duration of benefits and very liberal labor force attachment criteria. Provision sets a bad precedent.

6. Reclamation Fund has many serious problems

Among other things:

- a. \$.35 per ton charge is inflationary, difficult to administer, and charges current users of coal for previous users damage to the environment.
- b. Fee is adjusted to reflect any change in the cost of living index at the end of each three-year period.
- c. Would develop into massive Federal land purchase program.
- d. Purpose for use of fund is not clear, e.g., hospitals, public facilities, disaster assistance, in addition to reclamation.

7. Federal takeover of State responsibilities

Federal inspections and enforcement of violations of all surface coal mines every 3 months during interim program duplicates State efforts, denies Secretary's flexibility, and encourages Federal takeover of State responsibilities.

8. Underground Mine Regulation Program established

Not considered appropriate in a surface mining bill.

General Problems

1. Bill would be inflationary

When fully in effect, approximately \$90 million would be authorized per year not counting possible loss in revenues to the Treasury amounting to hundreds of millions of dollars from possible surface owner protection provisions. This is in addition to private and State costs, and the 35¢ per ton reclamation fee which, on the basis of current production, would cost coal consumers over \$210 million a year.

2. Coal production would be lost

In addition to reductions from the specific above provisions cited, the bill would reduce immediate production by 14 to 38 million tons and 1980 production by 18 to 105 million tons. (Assumes current economic conditions.)

3. Secretary would lack discretion in administering bill

Secretary has little authority to amend overly strict and detailed provisions to solve particular problems or to amend to meet constantly changing conditions.

Also, the legislative history encourages enforcement through citizen suits, which is particularly troublesome when linked to the non-degradation standard noted in Point 1.

4. Potential moratorium

Several sections which could impose a moratorium on issuance of operating permits on Federal lands (including Federally owned mining rights) and these should be clarified.

THE WHITE HOUSE
WASHINGTON

November 18, 1974

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: KEN COLE
MIKE DUVAL

FROM: JERRY H. JONES 

SUBJECT: Strip Mining Bill

Your memorandum to the President of November 16 on the above subject has been reviewed and the following decisions were made:

Decision A -- Signal your position was approved.

Decision B -- Strong Opposition to all issues in Tab A was approved.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld