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March 6, 1976

MEMORANDUM FOR: MAX L. FRIEDERSDORF
THRU: VERN LOEN
FROM: CHARLES LEPPERT, JR.
SUBJECT: Strip Mining

H. R. 9725, the Strip Mining bill, has been ordered reported by the House Interior Committee. As of Friday, March 5 the Committee report was not ready to be filed and it is now anticipated that the report will be filed within the next two weeks. I expect the bill to go before the House Rules Committee the week of March 15 or 22nd.

I am advised that the House leadership is not enthusiastic about scheduling the strip mining bill for House consideration. In the meantime an effort is being made to have the House Rules Committee deny a rule on the bill. I am informed that industry is having the steelworkers contact Ray Madden, the utilities contact Jim Delaney and Morgan Murphy, the oil and gas and pipeline people contact John Young and Gillis Long. On the Republican side we need to talk to John Anderson as the other Republican Members have voted with us on this bill.



March 12, 1976

MEMORANDUM FOR:

JIM CANNON

THRU:

MAX L. FRIEDERSDORF
VERN LOEN

FROM:

CHARLES LEPPERT, JR.

SUBJECT:

H. R. 9725 - Strip Mining

Attached for your information is a copy of the House Interior Committee Report on H. R. 9725. It is now anticipated that the Committee report will be filed the week of March 15.

At this time we have no idea when the House Interior Committee will request a hearing before the Rules Committee.

cc: Jim Mitchell
Glenn Schleede
George Humphreys



THE WHITE HOUSE
WASHINGTON

Nota: 3-15-76

File this
on Strip Mining
file. Clear.

94th CONGRESS
2nd Session

HOUSE OF REPRESENTATIVES

REPORT

No. _____

PROVIDING FOR COOPERATION BETWEEN THE SECRETARY OF THE
INTERIOR AND THE STATES WITH RESPECT TO THE REGULATION OF
SURFACE COAL MINING OPERATIONS, AND THE ACQUISITION AND RECLA-
MATION OF ABANDONED MINES, AND FOR OTHER PURPOSES

Ordered to be printed

Mr. Haley, from the Committee on
Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 9725]

The Committee on Interior and Insular Affairs,

to whom was referred the bill (H.R. 9725) To
~~provide for the cooperation between the Secretary of the Interior~~
provide for the cooperation between the Secretary of the Interior
and the States with respect to the regulation of surface coal
mining operations, and the acquisition and reclamation of
abandoned mines, and for other purposes,

having considered the same, reports favorably thereon with amend-
ments and recommends that the bill as amended do pass.
~~joint resolution~~

The amendments are as follows:

Page 1, line 4, strike out "1975." and insert "1976."

Page 13, line 8, strike out "1975," and insert "1976,".

Page 13, line 9, strike out "1976," and insert "1977,".

Page 15, line 23, strike out "1975," and insert "1976,".

Page 34, following line 11 insert:

"are available for acquisition under this section and
based upon those findings he shall select lands for purchase
according to the priorities established in section 402. Title
to all lands or interests therein acquired shall be taken in
the name of the United States. The price paid for land under
this section shall take into account the unrestored condition
of the land. Prior to any individual acquisition under this
section, the Secretary shall specifically determine the cost
of such acquisition and reclamation and the benefits to the
public to be gained therefrom."

Continued

Page 42, line 16, strike out "1976," and insert "1977,".

Page 52, line 11, strike out "Sec. 54." and insert "Sec. 504.".

Page 74, lines 7 through 17, strike out all of subparagraph (5)

and insert in lieu thereof the following:

"(5) the proposed surface coal mining operations, if located west of the one hundredth meridian west longitude, would--

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

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

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

Page 162, line 15, strike out "1976." and insert "1977.".

Page 164, line 23, strike out "June 30, 1975," and insert
"September 30, 1977,".

Page 165, line 24, strike out "1976," and insert "1977,".

Changes in Existing Law

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 1114, TITLE 18, UNITED STATES CODE

§ 1114. Protection of Officers and employees of the United States

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Bureau of Narcotics and Dangerous Drugs, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty, in the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare or of the Department of Labor *or the Department of the Interior* assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or an account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title, (June 25, 1958, ch. 645, 62 Stat. 756; May 24, 1949, ch. 139, § 24, 63 Stat. 93; Oct. 31, 1951, ch. 655, § 28, 65 Stat. 721; June 27, 1952, ch. 477, title IV, § 402(c), 66 Stat. 276; July 29, 1958, Pub. L. 85-568, title III, § 304(d), 72 Stat. 434; July 2, 1962, Pub. L. 87-518, § 10, 76 Stat. 132; Aug. 27, 1964, Pub. L. 88-493, § 3, 78 Stat. 610; July 15, 1965, Pub. L. 89-74, § 8(b), 79 Stat. 234; Aug. 2, 1968, Pub. L. 90-449, § 2, 82 Stat. 611; Aug. 12, 1970, Pub. L. 91-375, § 6(j) (9), 84 Stat. 777; Oct. 27, 1970, Pub. L. 91-513, title II, § 701(i) (1), 84 Stat. 1232; Dec. 29, 1970, Pub. L. 91-596, § 17(h) (1), 84 Stat. 1607.)

94TH CONGRESS
1ST SESSION

H. R. 9725

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 1975

Mr. MELCHER (for himself, Mr. RONCALIO, Mr. STEELMAN, Mr. PHILLIP BURTON, Mr. VIGORITO, Mr. WEAVER, Mr. MILLER of California, and Mr. CARR) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

A BILL

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

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Surface Mining Control
- 4 and Reclamation Act of ~~1975~~ 1976".

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TITLE IV—ABANDONED MINE RECLAMATION

- Sec. 401. Abandoned Mine Reclamation Fund.
- Sec. 402. Objectives of Fund.
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MINING

- Sec. 501. Environmental protection standards.
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- Sec. 510. Permit approval or denial.
- Sec. 511. Revision of permits.
- Sec. 512. Coal exploration permits.
- Sec. 513. Public notice and public hearings.
- Sec. 514. Decisions of regulatory authority and appeals.
- Sec. 515. Environmental protection performance standards.
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- Sec. 517. Inspections and monitoring.
- Sec. 518. Penalties.
- Sec. 519. Release of performance bonds or deposits.
- Sec. 520. Citizen suits.
- Sec. 521. Enforcement.
- Sec. 522. Designating areas unsuitable for surface coal mining.
- Sec. 523. Federal lands.
- Sec. 524. Public agencies, public utilities, and public corporations.
- Sec. 525. Review by Secretary.
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Sec. 714. Surface owner protection.

Sec. 715. Federal lessee protection.

Sec. 716. Alaska coal.

Sec. 717. Water rights.

1 TITLE I—STATEMENT OF FINDINGS AND

2 POLICY

3 FINDINGS

4 SEC. 101. The Congress finds and declares that—

5 (a) extraction of coal and other minerals from the
6 earth can be accomplished by various methods of mining,
7 including surface mining;

8 (b) coal mining operations presently contribute
9 significantly to the Nation's energy requirements; sur-
10 face coal mining constitutes one method of extraction
11 of the resource; the overwhelming percentage of the
12 Nation's coal reserves can only be extracted by under-

1 calendar year on the actions taken and not taken during the
2 preceding calendar year under this subsection.

3 TITLE III—STATE MINING AND MINERAL RE-
4 SOURCES AND RESEARCH INSTITUTES

5 AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

6 SEC. 301. (a) There are authorized to be appropriated
7 to the Secretary of the Interior sums adequate to provide
8 for each participating State \$200,000 for fiscal year ~~1975~~, ^{1977,} 1976,
9 \$300,000 for fiscal year ~~1976~~, ^{1977,} and \$400,000 for each fiscal
10 year thereafter for five years, to assist the States in carrying
11 on the work of a competent and qualified mining and mineral
12 resources research institute, or center (hereinafter referred
13 to as "institute") at one public college or university in the
14 State which has in existence at the time of enactment of this
15 title a school of mines, or division, or department conducting
16 a program of substantial instruction and research in mining
17 or minerals extraction or which establishes such a school of
18 mines, or division, or department subsequent to the enact-
19 ment of this title and which school of mines, or division or
20 department shall have been in existence for at least two
21 years. The Advisory Committee on Mining and Minerals
22 Resources Research as created by this title shall determine
23 a college or university to have an eligible school of mines,
24 or division, or department conducting a program of sub-

1 of the college or university with which it is affiliated to con-
 2 duct competent research, investigations, demonstrations, and
 3 experiments of either a basic or practical nature, or both, in
 4 relation to mining and mineral resources and to provide for
 5 the training of mineral engineers and scientists through such
 6 research, investigations, demonstrations, and experiments.
 7 Such research, investigations, demonstrations, experiments,
 8 and training may include, without being limited to: explora-
 9 tion; the extraction; processing; development; production of
 10 mineral resources; mining and mineral technology; supply
 11 and demand for minerals: conservation and best use of avail-
 12 able supplies of minerals; the economic, legal, social, engi-
 13 neering, recreational, biological, geographic, ecological, and
 14 other aspects of mining, mineral resources, and mineral rec-
 15 lamation, having due regard to the interrelation on the natu-
 16 ral environment, the varying conditions and needs of the re-
 17 spective States, to mining and mineral resources research
 18 projects being conducted by agencies of the Federal and State
 19 governments, and other institutes.

20 RESEARCH FUNDS TO INSTITUTES

21 SEC. 302. (a) There is authorized to be appropriated
 22 annually for seven years to the Secretary of the Interior
 23 the sum of \$15,000,000 in fiscal year ~~1975~~¹⁹⁷⁶, said sum in-
 24 creased by \$2,000,000 each fiscal year thereafter for six
 25 years, which shall remain available until expended. Such

1 purpose, notwithstanding that the Secretary plans to hold
2 the interest in land or mineral rights so reclaimed or acquired
3 as an open space or for recreation, or to resell, if acquired,
4 the land following completion of the reclamation facility or
5 project.

6 (2) The Secretary may acquire by purchase, donation,
7 or otherwise, land or any interest therein which has been
8 affected by surface mining and has not been reclaimed to its
9 approximate original condition. Prior to making any acqui-
10 sition of land under this section, the Secretary shall make a
11 thorough study with respect to those tracts of land which

are available for acquisition under this section
and based upon those findings he shall select lands for
purchase according to the priorities established in section
402. Title to all lands or interests therein acquired
shall be taken in the name of the United States. The
price paid for land under this section shall take into
account the unrestored condition of the land. Prior
to any individual acquisition under this section, the
Secretary shall specifically determine the cost of
such acquisition and reclamation and the benefits
to the public to be gained therefrom.

(3) Within six months after the completion of any work
to abate pollution caused by past coal mining operations
herein contemplated on any privately owned surface prop-
erty, the Secretary, or the appropriate regulatory authority

1 requests are made by the Governor or tribal chairman and
2 only after all reclamation with respect to abandoned coal
3 lands or coal development impacts have been met, except
4 for those reclamation projects relating to the protection of
5 the public health or safety.

6 (d) In those instances where mine waste piles are
7 being reworked for coal conservation purposes, the incre-
8 mental costs of disposing of the wastes from such operations
9 by filling voids and sealing tunnels may be eligible for fund-
10 ing providing that the disposal of these wastes meets the pur-
11 poses of this section.

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

15 FUND REPORT

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

20 TRANSFER OF FUNDS

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

1 cial assistance under titles IV and VII of this Act or in
 2 the imposition of a Federal program. Regulation of the
 3 surface coal mining and reclamation operations covered or
 4 to be covered by the State program subject to the injunc-
 5 tion shall be conducted by the State pursuant to section
 6 502 of this Act, until such time as the injunction termi-
 7 nates or for one year, whichever is shorter, at which time the
 8 requirements of sections 503 and 504 shall again be fully
 9 applicable.

10 FEDERAL PROGRAMS

Sec. 504.

11 ~~SEC. 51.~~ (a) The Secretary shall prepare and, subject
 12 to the provisions of this section, promulgate and implement
 13 a Federal program for a State no later than thirty months
 14 after the date of enactment of this Act if such State—

15 (1) fails to submit a State program covering surface
 16 coal mining and reclamation operations by the end of the
 17 eighteen-month period beginning on the date of enact-
 18 ment of this Act;

19 (2) fails to resubmit an acceptable State program
 20 within sixty days of disapproval of a proposed State pro-
 21 gram: *Provided*, That the Secretary shall not implement
 22 a Federal program prior to the expiration of the initial
 23 period allowed for submission of a State program as pro-
 24 vided for in clause (1) of this subsection; or

1 commenced pursuant to section 522 (a) (4) (D) of this
 2 Act, the operator making the permit application demon-
 3 strates that, prior to the date of enactment of this Act,
 4 he has made substantial legal and financial commitments
 5 in relation to the operation for which he is applying for
 6 a permit) ; and

7 ~~(5) the proposed surface coal mining operation, if~~
 8 ~~located west of the one hundredth meridian west longi-~~
 9 ~~tude, would not have a substantial adverse effect on allu-~~
 10 ~~vial valley floors underlain by unconsolidated stream-laid~~
 11 ~~deposits where farming can be practiced in the form~~
 12 ~~of irrigated, flood irrigated or naturally subirrigated hay~~
 13 ~~meadows or other crop lands (excluding undeveloped~~
 14 ~~range lands), where such valley floors are significant~~
 15 ~~to the practice of farming or ranching operations, includ-~~
 16 ~~ing potential farming or ranching operations if such~~
 17 ~~operations are significant and economically feasible.~~

(5) the proposed surface coal mining opera-
tions, if located west of the one hundredth
meridian west longitude, would--

(A) not interrupt, discontinue, or
prevent farming on alluvial valley floors
that are irrigated or naturally subirrigated,
but, excluding undeveloped range lands which
are not significant to farming on said
alluvial valley floors and those lands that
the regulatory authority finds that if the

farming that will be interrupted, discontinued, or prevented is of such small acreage as to be of negligible impact on the farm's agricultural production, or,

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

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

(c) The applicant shall file with his permit application a schedule listing any and all notices of violations of this Act and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the one-year period prior to the date of application. The schedule shall also indicate the final resolution of any

THE WHITE HOUSE
WASHINGTON

March 17, 1976

TO: CHALRIE LEPPERT
FROM: GLENN SCHLEEDE

MEMORANDUM FOR ERC

File

Issue: Administration Position on 1976 Surface Mining Legislation

It is possible that Federal legislation to control surface mining patterned after the two bills previously vetoed will be passed in this session of the 94th Congress. The most probable candidate is H.R. 9725, introduced by Congressman Melcher. This contains the basic provisions of H.R. 25, vetoed by the President in May 1975.

Major provisions of H.R. 9725 remain seriously objectionable, and are in the opinion of all agencies administratively unworkable. Production losses and other adverse impacts would remain significant, although they might be lower than those projected for the previously vetoed bills. There has been virtually no communication with the Hill on this bill, except a signal to the Minority that the Administration favors stopping it in House Rules if possible.

EPA and CEQ now believe that the political circumstances on the Hill may have changed, and that an acceptable compromise bill may now be possible.

Some Presidential advisors wish to return to ground zero, and address the question of whether or not Federal legislation is necessary at all.

The Administration should clarify its objectives and strategies on this legislation. It should be noted that in view of the prior vetoes, a change or major clarification of prior positions would require a Presidential decision. Some would favor orphan land reclamation legislation only.

Possible Administration objectives include:

- try to improve H.R. 9725 for enactment this session of Congress
- oppose H.R. 9725 on the ground that either
 - existing Federal and State laws are adequate and no Federal legislation is necessary; or
 - there is very little chance for enactment before 1976 elections of acceptable legislation and compromise efforts could have serious adverse political and legislative impacts.

Possible Administration strategies to achieve these objectives include:

1. Work for agreement in advance with key Hill members on a small number of significant structural changes that would make the bill administratively workable. This option would necessarily require Presidential commitment to sign or veto, based upon acceptance of the entire package.
2. Take no action now, but if H.R. 9725 emerges as a real threat, signal that the bill will be vetoed and/or move to strategy 3.
3. Oppose the bill vigorously at all points, laying out all deficiencies and adverse impacts, then accept or veto based on final version as enacted.

Background

In 1971 the Administration first submitted comprehensive legislation to control surface mining of coal. After extended debate and numerous Administration warnings that the developing drafts were not acceptable, S. 425 was passed and pocket vetoed in December 1974.

In an explicit attempt to achieve compromise, the Administration prepared and submitted H.R. 3119, which was patterned closely after S. 425. In submitting this bill the President expressly indicated the major flaws which had made S. 425 unacceptable, and listed nine "critical" and eighteen "important" changes which were reflected in our bill and needed for acceptable legislation. These tracked previous Administration letters to the various committees. Few of the major changes so identified were made.

The President vetoed H.R. 25 on May 20, 1975, citing production losses of 40 to 162 million tons, employment losses of up to 36,000, and specific procedural and structural defects in the bill. Unprecedented veto override hearings were held on June 3rd, and the veto was sustained by the House on June 10th. The override vote was particularly controversial, and opposition in the press was virtually unanimous.

Current Status

The Senate has passed S. 391, a Federal coal leasing bill which also has the provisions of H.R. 25 attached, so as to become applicable only to Federal lands.

The House has passed H.R. 6721, Mrs. Mink's coal leasing bill, after narrowly rejecting in Committee an attempt to add the full provisions of H.R. 25, applicable to both Federal and private land. In addition, the House Interior Committee has reported out H.R. 9725, Mr. Melcher's new version of H.R. 25. As introduced, it made no substantive changes to H.R. 25, but the Committee accepted one substantive amendment, modifying the alluvial valley floor prohibition. The House Rules Committee has not yet decided whether or under what circumstances it will grant H.R. 9725 a rule. Mr. Melcher has indicated he will allow ameliorating amendments on the floor.

Senator Metcalf has told Mrs. Mink he will not schedule a conference on the coal leasing bills until the House has resolved the surface mining issue one way or the other. Mrs. Mink had pledged to the Rules Committee not to accept the Senate (Federal lands only) version in Conference, and the Rules Committee indicated great reluctance to accept back from Conference a leasing bill which includes surface mining provisions on which the House has not voted. Interior does not feel a new coal leasing bill is necessary.

Administration representatives have told the House minority that H.R. 25 remains unacceptable, and that sufficient amendment to cure its defects did not seem possible. A Committee minority strategy was agreed upon that H.R. 9725 should be reported out with as few amendments as possible, so as to closely resemble H.R. 25 and enhance the possibility the Rules Committee will deny it a rule on the grounds that it has already been voted upon by the same Congress.

Other Related Actions

State:

All States with major active coal mining or significant strippable reserves now have regulatory mechanisms. Since 1971 when the Administration legislation was first introduced, 24 of the 26 States that produce coal have enacted or substantially amended State surface mining legislation. A comparison with the operative provisions of the vetoed legislation indicates that virtually all such amendments have been directed to the problems addressed by H.R. 25, including license and bonding requirements and restoration of approximate original contour, top soil replacement and vegetation requirements, blasting restrictions and the creation of civil and criminal penalties.

Organizations of Western State governments have adopted resolutions for State regulation of private and state lands and Federal regulation of public lands, as the preferred regulatory approach.

Federal:

Interior Department has recently published a final environmental impact statement on, and is prepared to adopt final regulations imposing reclamation requirements on surface mining of Federal coal. It is the Department's belief that these regulations represent balanced strip mine regulations.

Analysis of Administration Strategies

I. Is Federal legislation necessary?

Pros:

- o Would place all States under uniform minimum procedural and substantive reclamation requirements, and thus eliminate State-to-State variations.
- o Enforcement activity and commitment also varies from State to State, and Federal legislation would help to ensure minimum levels of State enforcement.
- o Some feel that legislation is needed to give Interior the authority to do what it has proposed in its regulations relating to State laws.

Cons:

- o In light of rapidly improving State laws and programs, Federal regulations, and States' preference for primacy in this area, there is no present justification for Federal involvement. State programs should be given an opportunity to work.
- o The President's strong stand against the continued and growing Federal bureaucratic regulatory presence in so many facets of our economy.
- o Uniformity would preclude desirable variations in standards and procedures based on different physical site conditions in various parts of the country. (What is necessary and desirable in arid western plains is quite different from eastern Appalachian mountains.)
- o Existence of Federal enforcement program would create disincentives for States, and probably result in direct and expensive Federal regulation and enforcement.
- o Interior attorneys are confident their authority to adopt State laws as Federal requirements will be upheld.

II. Strategy towards pending legislation

1. Work for agreement in advance with key Hill members on a small number of significant structural changes in the bill that would make it administratively workable. This would involve explicit Presidential commitment to sign or veto based on acceptance or rejection of proposed package.

Pros:

- o Takes advantage of an opportunity to resolve impasse with Congress on this issue.
- o Successful negotiation should eliminate reasons cited by the President in May veto message and avoid need for a third veto.
- o If negotiations are unsuccessful, the Administration will have established specific criteria for a veto.
- o Administration establishes an environmentally positive stance.

Cons:

- o Events since the May veto have worsened our energy position. Any compromise bill will have serious defects and some negative production impact and could be read as weakening of Administration commitment to increased coal production and use.
 - o Without extremely explicit Presidential commitment, obtaining some but not all of the Administration amendments would reopen the bitter debate on whether to sign or veto the bill.
 - o Negotiated agreement could undercut validity of earlier veto and jeopardize position of minority who have supported an unpopular veto.
 - o Serious disagreement exists as to what amendments are necessary, and formulation of specific package would itself be difficult. See Attachment "A."
2. Take no action now, but if H.R. 9725 emerges as a real threat, signal that the bill will be vetoed and/or move to strategy 3.

Pros:

- o Preserves maximum flexibility to respond to congressional action.
- o Does not require any change from status quo.

Cons:

- o Fails to resolve longstanding issue, could be later viewed as evidence of intransigence by Administration.
 - o Delay would reduce possibility that ameliorating amendments will be introduced and vigorously supported by minority.
3. Oppose the bill vigorously at all points, lay out all deficiencies and adverse impacts on the Floor, then accept or veto based on final version as enacted.

Pros:

- o Consistent with prior vetoes, and Administration commitment to increased coal production.
- o Would force Congress to make major concessions or face another veto.
- o Clarifies Administration opposition to compromises, any one of which would itself be controversial and unacceptable to both coal development interests and many environmentalists.

Cons:

- o Redraws sharp battle lines between congressional/ environmental advocates of national legislation, and could be viewed as Administration opposition to any national legislation.
- o If unsuccessful, would result in another major confrontation between Congress and the Administration, and could require a third veto.
- o Major floor debate with Administration participation would rekindle the issue, drawing presently inactive prior participants such as Mr. Udall and Senator Jackson, into the debate, and making it a factor in the Presidential campaign.

Attachments

- A. Minimum list of amendments required to make H.R. 9725 acceptable
- B. Additional amendments to address all Administration objections to H.R. 9725
- C. Review of estimated production losses and jobs lost
- D. Summary of State Surface Mining Laws
- E. Congressional support for options

SUBSTANTIVE ISSUES CRITICAL TO ACCEPTABLE SURFACE MINING LEGISLATION
TO BE AGREED UPON IN ADVANCE BY ALL INTERESTED PARTIES

I. Issues as to which agencies are in substantial agreement

1. Variance Mechanism

Specific authority must be provided for the regulatory authority, State or Federal, to allow variances from the stated performance standards and administrative procedures where shown to be consistent with environmental protection goals and efficiency of operation with appropriate safeguard measures.

2. Burden of Proof

Section 510 must be amended so that the burden of proving the negative is reversed, and the authority authorized to issue a permit where it determines that the specified standards will be met. In addition, Section 513 must be amended by deletion of the specific burden of proof upon an operator and resulting restoration of the normal burdens of proof upon an administrative or judicial review on appeal.

3. Applicability of State Law - Designation of Lands

The bill must expressly reserve a Federal veto, consistent with DOI regulations, to prevent States from banning the mining of Federal coal without Federal override in appropriate circumstances.

4. Timing and Management

The appropriate Federal-State responsibilities in the interim period (before approval of State programs or disapproval and imposition of full Federal program) should be --

- limited to emergency circumstances
- limited to areas where existing State programs are determined to be inadequate.

With respect to decisions on permanent programs, existing State programs not determined in interim period to be inadequate should be presumed to be acceptable, unless disapproved by the Secretary of the Interior.

Time for preparation and approval of State programs, and for existing mines to conform with legislation's performance standards, should be 36-40 months.

5. Small Mines

Waive front-end data, permit application requirements for all mines under 50,000 tons per year, and those mines under 100,000 tons per year which demonstrate serious financial need.

6. Alluvial Valley Floors

Grandfather out of prohibition under 510(b)(5): (1) existing mines in or adjacent to and permitted with respect to, alluvial valley floors, and, subject to further analysis as to need, (2) future mines for which mining plans have been submitted to DOI or the States.

II. Issues still in serious dispute among agencies as to inclusion in list acceptable as price for getting strip mine bill this session

1. Surface Owner Protection

The right to consent or withhold consent should be a matter for determination under State law, and Federal legislation should not override the States on this question.

2. Exploration Permit Program

Delete.

3. Alluvial Valley Floor Performance Standards

Provisions should be modified for flexibility.

4. Prohibition of Mining in the National Forests

Legislative prohibition should be deleted, restoring administrative discretion.

5. Mineral Research Institutes

Delete.

6. Certain Aspects of Reclamation Program: breadth of impact assistance, reclamation of privately owned lands, 50/50 Federal-State participation.

SUBSTANTIVE ISSUES CRITICAL TO ACCEPTABLE SURFACE MINING LEGISLATION
FOR OPEN FLOOR DISCUSSIONS WITHOUT PRIOR AGREEMENT AMONG INTERESTED
PARTIES

1. Alluvial valley prohibition Sec. 510(b)(5)

* Problem: effectively prohibits coal surface mining of most western alluvial valley floors and possibly areas outside of such valleys by requiring mine operators to "affirmatively demonstrate" that there will be no adverse effect on agricultural activities within such areas --- significant coal reserves (22 to 66 billion tons) and on-going production (22 to 66 million tons) would be foregone.

* Solution: delete this provision -- the bill's basic safeguards and tough performance standards will protect alluvial valleys.

2. Forest system prohibition Sec. 522(e)(2)

* Problem: prohibits coal surface mining on National Forest lands -- this would lock up 7 billion tons of strippable reserves mostly in Montana (equals 11 years of production at current rates).

* Solution: delete this provision or as a minimum provide authority for the Secretary of Agriculture to waive the prohibition after showing national need.

3. Water replacement Sec. 515(b)(10)(E)

* Problem: requires the mining operator to "affirmatively demonstrate" that (in kind) water replacement is assured in cases where the supply is contaminated, diminished, or interrupted resulting from mining -- in many cases the mining operator will be unable to make such assurances conclusively.

* Solution: amend this provision to allow monetary compensation for actual losses.

* Problem: requires the mining operator to "affirmatively demonstrate" that he is in compliance with all of the requirements of the Act -- such an onerous requirement could lead unnecessary coal production losses while still not creating significantly improved environmental protection.

* Solution: amend Section 510 so that the burden of proving the negative is reversed and the regulatory authority is authorized to issue a permit where it has been demonstrated that the indicated standards will be met. In addition, Section 513 must be amended by deletion of the specific burden of proof upon an operator and resulting restoration of the normal burdens of proof upon an administrative or judicial review on appeal.

5 State veto of Federal leasing

*Problem- In the floor debate on the provision stating that the Federal standards on Federal lands must be at least as stringent as the State standards, it was agreed in the Senate that the provision meant that a State could ban leasing on Federal lands.

Solutions- Amend wording so that bill expressly maintains Federal control.

6 . Variances

* Problem: in certain cases where a mountain, ridge, or hill top are to be entirely mined through, the bill authorizes a variance from the requirement to restore the land to its approximate original contour -- this is the bill's only variance and it is totally inadequate in light of the bill's many complex performance standards and elaborate procedural requirements.

* Solution: specific authority must be provided for the regulatory authority, State or Federal, to allow variances from the stated performance standards where shown to be consistent with environmental protection goals and efficiency of operation.

7. Surface Owner Consent

Sec. 714

* Problem: Secretary shall "to the maximum extent practicable, refrain from leasing" where Federal coal lies under privately owned surface area, thus inhibiting development on these lands. Also, the coal could not be mined by surface methods without the consent of the surface owner, and when such consent is given, the surface owner is to be paid the appraised value of his surface estate plus: (1) income loss during mining and reclamation; (2) relocation costs; (3) cost of lost livestock, crops, water and other improvements; (4) payments for other damages to the surface; and, (5) other compensation of up to \$100/acre. Finally, following reclamation, the surface estate would return to its owner -- surface owners could veto the mining of major Federal coal reserves in the west; provides an unwarranted windfall to consenting surface owners.

* Solution: delete this provision -- the right to consent or withhold consent should be a matter for determination under State law and Federal legislation should not override the States on this question.

8. Mineral Research Institutes Title III

* Problem: provides additional funding authorization for mining research centers through a formula grant program for existing schools of mining -- such a new program would be unnecessary, costly (\$26M to \$48M a year), duplicate existing authorities for research, and could fragment existing research efforts already supported by the Federal Government. Provision has been in 3 vetoed bills.

* Solution: delete this provision.

9. Federal preemption of State laws and regulatory programs

* Problem: encourages Federal takeover of existing State programs through regular federal inspection of all mines and by requirement that Secretary must approve each State program (interim and permanent), and make a finding that the State is providing adequate manpower and funding--otherwise the State regulatory program is replaced by direct Federal regulation.

* Solution: delete this provision -- adequate coal supplies at competitive prices will be available without imposing this restrictive measure.

13. Contract authority

Sec. 712(a)

* Problem: provides contract authority (\$10,000,000) in lieu of appropriations for each of the program's first three years for certain startup phases of the regulatory program -- this is both unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Act.

* Solution: delete this provision -- appropriations can finance these costs just as well.

14. No mining within 500 feet of an active mine

Sec. 515(b) (12)

* Problem: prohibits any surface coal mining within 500 feet of an active mine -- such a restriction would unnecessarily limit recovery of substantial coal resources when mining of such areas would be the best possible use of the resource.

* Solution: authorize the regulatory authority to permit an operator to mine closer to active mine where this does not create hazards to health and safety of potentially affected miners.

15. Siltation

Sec. 515(b) (10) (B) and
Sec. 516(b) (9) (B)

* Problem: requires, to the extent possible, using the best technology currently available, to prevent any increase in runoff or streamflow siltation above natural levels -- this requirement would be unnecessarily costly, extremely difficult for many operators to achieve in practice, and could force on-going operations to either adopt new procedures of questionable merit or go out of business.

* Solution: modify this feature to require, to the maximum extent practicable, operators to prevent such siltation outside the permit area -- such an approach would achieve the objective of appropriate siltation control without unduly impairing mining operations.

16. Hydrologic disturbance

* Problem: (1) requires mining applicant to "affirmatively demonstrate" that mining and reclamation activities are designed to prevent significant irreparable offsite damage to the hydrologic balance, and (2) that during mining and reclamation, operators must preserve the essential hydrologic functions of alluvial valley floors -- these respective requirements would (1) carry a difficult burden of proof and (2) be very difficult to achieve (near-absolute).

* Solution: qualify both of the above by requiring such standards "to the maximum extent practicable" -- this will better balance environmental protection and the need for coal production.

17. Hydrologic data

Sec. 507(b)(11)

* Problem: requires mining applicants to determine the hydrologic consequences of the mining and reclamation operations, both on and off the mine site -- this is an unnecessary requirement because such data may already be available to the regulatory authority and it may be beyond the ability or means of small miners.

* Solution: authorize the regulatory authority to waive the hydrologic data requirement in whole or in part, if adequate data is already available to the regulatory authority.

18. Grants to the States

Sec. 705

* Problem: provides cost sharing grants to the States for developing, administering, and enforcing State programs for the first four years -- such grant assistance is unnecessary and unwarranted because permit fees provide for cost recovery by the regulators and most States already have an on-going program (no major front end start-up costs).

* Solution: delete this section.

ESTIMATED PRODUCTION LOSSES AND EMPLOYMENT IMPACTS

(Data and Analysis to be provided on Monday)

I. Baseline Coal Production and Consumption Data

Will track recent Project Independence forecasts

II. Estimates of impact of H.R. 25 used last year

	<u>Production Losses</u>	<u>Jobs Lost</u>
Small mines	22 to 52 million tons	
Steep slopes	7 to 44 million tons	
Alluvial valley	11 to 66 million tons	
	40 to 162 million tons	11,000 to 36,000

III. Estimates of impact of H.R. 9725

IV. Estimates of specific amendments to mitigate impacts
of H.R. 9725

PRELIMINARY COMPARISON OF ESTIMATED PRODUCTION LOSSES

	<u>H.R. 25</u> <u>1977 Estimated Production Loss</u>	<u>H.R. 9725</u> <u>1979 Estimated Production Loss</u>
Small Mines (under 50,000 tons/yr)	22-52	19-45 ¹
Medium Mines (50,000-100,000 tons/yr)	-	- ²
Steep Slopes	7-25	8-28
Siltation	0-10	0-10 ³
Aquifers	0-9	0-9 ³
Alluvial Valley	<u>11-66</u>	- ⁴
	40-160	

¹ Projected 1979 expected projection lower due to evidence that growth of small mines is less than previous estimate

² Not available at this time.

³ No new analysis

⁴ Subject to detailed analysis of existing and proposed Western mines by USGS and EPA

STATE SURFACE MINING LAWS
Enactments and/or Amendments since January 1, 1969

STATE		19 69	70	71	72	73	74	75
West Virginia	*			A				
Indiana	*				A	A	A	
Illinois	*			A			A	
Pennsylvania	*		A	A	A	A		
Ohio	*				A		A	A
Kentucky	*			A			A	
Maryland	*				A			
Virginia	*				A	A		
Montana	*	A		A		A	A	
Tennessee	*				A		A	
Iowa	*					A		A
Oklahoma	*			A	A			
Kansas	*						A	
Wyoming	*	E				A	A	
North Dakota	*	E				A		A
Arkansas	*	E						
Minnesota	*	E				A		
Colorado	*	E			A	A		
Maine		E						
Alabama	*	E						A
Washington	*		E					
Michigan	*		E		A			
Idaho				E				
South Dakota	*			E	A			
North Carolina				E				
Missouri	*			E				
Oregon	*			E				
New Mexico	*				E			
South Carolina						E	A	
New York							E	
Texas	*							E
Utah	*							E
California								E

E - Original Enactment
A - Amended or New Enactment
* - Coal Producing States



y

ge effective

Changes made as a result of amendments, or new enactments.

Blank. No change since original enactment.

FILE

CHAIRMAN • BARBER B. CONABLE, JR.

Republican Policy Committee

U.S. HOUSE OF REPRESENTATIVES

1620 LONGWORTH BUILDING

WASHINGTON, D.C. 20515

202/225-6168

94th Congress
Second Session

March 22, 1976
Statement #7
H.R. 9725

REPEAT PERFORMANCE FOR SURFACE MINING BILL

A muscle-bound Majority in Congress is preparing to subvert the rules of the House to permit an election-year reconsideration of a surface mining bill being pushed by two Presidential candidates and a House Member running for the Senate.

The merits of federal government regulation over surface mining have already been debated and voted upon by the 93rd and 94th Congress and are not the subject of Policy Committee concern at this point. It is the flagrant abuse of the House Rules that we oppose.

This legislation is far from new. A comprehensive surface mining bill was vetoed after enactment by the 93rd Congress in 1974. Then, in 1975 H.R. 25, another very similar measure, was passed by the 94th Congress and vetoed by the President, and the House sustained the President's veto. Under the rules of the House, this sequence should have precluded further action on that particular bill in the 94th Congress and laid the matter to rest.

This week, however, the House may again take up the same 40,000-word, 174-page measure, this time under the number H.R. 9725, despite the fact that the 94th Congress has already concluded action on the proposal. In order to reconsider the same measure after it has been rejected by the 94th Congress, the bill's proponents must twist the rules of the House so far as to make a mockery of both their letter and spirit.

First, the bill's proponents claim that H.R. 9725 is not the same substance as the vetoed H.R. 25. The Republican Policy Committee believes, however, that changing a few dozen words in two titles of a seven title text of over 40,000 words can be characterized as trivial and cosmetic -- not substantive -- particularly when none of the many objections to the bill which led to its veto are altered by these few words. Two precedents support our opinion that merely rewording a measure does not change its

substance if the purpose remains the same.

Because others share the opinion that H.R. 9725 is a reconsideration of H.R. 25, this measure has been introduced and reintroduced by its sponsors at least seven times since H.R. 25 was vetoed, each time in an infinitesimally different form. Not only did this ploy require some \$50,000 in printing costs, it demonstrated that even its proponents understood that its resemblance to H.R. 25 was so close as to render it virtually identical.

Second, the bill's proponents claim that the rule preventing second consideration of a measure applies only to the duration of a session and not a congress. However, the Rules of the House make it quite clear that the status of all bills, resolutions and reports at the end of the first session shall carry over to the second session. (See Rule 26, also Hind's Precedents, Vol. 5, Sec. 6727.) If the situation were otherwise, we would see a second session test on every close vote taken in the first session.

Third, proponents of the bill argue that H.R. 25 was not rejected by the House since a majority supported it on initial House passage, on the Conference Report, and even on reconsideration after the veto. But if the sustaining of the veto of H.R. 25 was not a rejection of the measure, then why must Congress pass it again? The Constitution clearly provides that one-third plus one Members of either House can reject a vetoed bill.

The House rules barring second consideration of a measure are important to an orderly legislative process. Without them, Congress' time could be taken up with dilatory or capricious reconsiderations of controversial issues, and the final result of House action on any rejected measure would never be fixed until the end of any Congress. Any negative vote would remain subject to subsequent reconsideration.

The Republican Policy Committee calls on the Rules Committee to uphold the Rules of the House and not to distort them to suit the convenience of short-term, election-year motivations.

Should H.R. 9725 reach the Floor, Members are urged to vote down the previous question on the rule.

On a measure as controversial as federal regulation of surface mining, allowing a lop-sided partisan majority to manipulate House rules and procedures for the benefit of election-year politics and candidates must not be permitted.

JOHN J. RHODES
1ST DISTRICT, ARIZONA

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2310 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

ALMA A. ALKIRE
RICHARD ROBERTS

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ROBERT J. SCANLAN

Office of the Minority Leader
United States House of Representatives
Washington, D.C. 20515

Five
H-232, THE CAPITOL
WASHINGTON, D.C. 20515

JOHN J. WILLIAMS
DENNIS J. TAYLOR
J. BRIAN SMITH
CLARA POSEY

IMPORTANT NOTICE FOR MEMBER

March 22, 1976

re: Surface Mining Legislation.

Dear Republican Colleague:

H.R. 9725, the Strip Mining bill, is scheduled for this week. This legislation is virtually identical to H.R. 25 which was rejected last June when the House sustained a veto.

In our opinion, the consideration of H.R. 9725 is a violation of the spirit of the rule and precedents against second consideration of legislation in the same Session of Congress. Attached for your information is a thorough discussion of the parliamentary situation. We urge all Members to review the attachment and to join us in opposing this ill-considered attempt to disregard normal procedure.

Sincerely

John J. Rhodes
John J. Rhodes, M. C.
Minority Leader

James H. Quillen
James H. Quillen
Ranking Member
Rules Committee

John B. Anderson
John B. Anderson
Chairman
Republican Conference

THE WHITE HOUSE

WASHINGTON

June 9, 1976

MEMORANDUM FOR:

JIM CANNON

THRU:

MAX FRIEDERSDORF

FROM:

CHARLES LEPPERT, JR. *CLJr*

SUBJECT:

Strip Mining Bill

The House Committee on Interior and Insular Affairs will again consider reporting a strip mining bill to the House of Representatives in the next week or so.

The Committee will consider reporting H.R. 13950, sponsored by Rep. John Melcher and a majority of the Committee members. Attached is a copy of H.R. 14217, which I am advised is identical to H.R. 13950.

Since H.R. 13950 does contain some changes from the previous bill passed by the Congress and vetoed by the President, it appears likely that H.R. 13950 will be granted a rule and considered by the Congress during the remainder of this 94th Congress.

cc: Tom Loeffler
Pat Rowland

Congress of the United States
House of Representatives

JOHN MELCHER
MONTANA—EASTERN DISTRICT
CHAIRMAN—SUBCOMMITTEE ON PUBLIC LANDS

*File
Strip
mine*

COMMITTEES:
INTERIOR
ENVIRONMENT AND ENERGY
MINES AND MINING
INDIAN AFFAIRS
AGRICULTURE
LIVESTOCK AND GRAINS
FAMILY FARMS AND
RURAL DEVELOPMENT
FORESTS

August 31, 1976

Honorable Ray J. Madden
Chairman
House Rules Committee
Suite 313
U.S. House of Representatives
Washington, D.C.

Dear Mr. Chairman:

By a vote of 28 to 11 the Interior Committee voted out the strip mine bill modified in 15 instances to take care of some of the red tape and many of the problems of small coal companies.

We hope the Rules Committee will approve an open rule with a short general debate.

Senator Metcalf, speaking for himself, Senator Jackson, and Senator Mansfield, assured us last week that if the bill is passed by the House in the general form as the Committee approved it, the Senate would take the bill from the desk without going to committee and urge the Senate to approve the bill as passed by the House, therefore not needing a conference.

President Ford on Sunday in Yellowstone Park announced a major shift in the Administration's attitude on additions of land to National Parks, Wildlife Refuges, and National Recreation areas. This fine recommendation by the President concerning vital environmental needs of the nation encourages us to believe the President will also decide to sign this improved version of the strip mine bill.

Sincerely,

John Melcher
W. L. ...

John Melcher
Paul F. ...
Jim Weaver



THE WHITE HOUSE

WASHINGTON

September 7, 1976

MEMORANDUM FOR:

MAX FRIEDERSDORF

FROM:

CHARLES LEPPERT, JR. *CLJ.*

SUBJECT:

Vote Check of House Rules Committee on Strip Mining Bill

In response to our question "Will you support the rule requested by the House Interior Committee for consideration of the strip mining legislation," the results are as follows:

Madden	Undecided. Inclined not to support rule.
Delaney	No.
Bolling	Undecided. Depends on how vote will affect race for majority leader.
Sisk	Out of town. Asking for postponement.
Young (Tex.)	No.
Pepper	Yes.
Matsunaga	Out of town.
Murphy	Out of country on Speaker's business.
Long	Leaning no.
Moakley	No.
Young (Ga.)	Yes.
Quillen	No.

Memo re strip mining bill.

Anderson	No.
Latta	No.
Clawson	Out of town. Will return if needed to win.
Lott	No.

Totals	Yeas - 2
	Nays - 8
	Undecided - 2
	Out of town - 4

THE WHITE HOUSE
WASHINGTON

September 7, 1976

File

MEMORANDUM FOR:

MAX FRIEDERSDORF

FROM:

CHARLES LEPPERT, JR. *CLJ.*

SUBJECT:

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Quillen	No.

Memo re strip mining bill.

Anderson No.

Latta No.

Clawson Out of town. Will return if needed to win.

Lott No.

Totals Yeas - 2
Nays - 8
Undecided - 2
Out of town - 4

THE WHITE HOUSE

WASHINGTON

September 13, 1976

MEMORANDUM FOR:

JACK MARSH

THRU:

MAX FRIEDERSDORF

FROM:

CHARLES LEPPERT, JR. *CLJ*

SUBJECT:

Strip Mining

Attached is a comparison of H.R. 13950, the strip mining bill reported by the House Interior Committee, and the bill previously reported, passed, and vetoed by the President. This comparison terms H.R. 13950 as "a bill of identical substance".

This comparison is a "boot-legged" copy and is being closely held for distribution to the members of the House Rules Committee immediately prior to the Rules Committee consideration of the request for a rule on the strip mining bill.