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STATEMENT OF FRANK G. ZARB
ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT, AND
SUBCOMMITTEE ON MINES AND MINING
UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 3, 1975

Mr. Chairman:

It is a privilege to be with you today to discuss the reasons why the President believes that enactment of H.R. 25 would be contrary to the National interest.

I especially welcome the opportunity because I fully support the objective that you, Congresswoman Mink and others have of setting the record straight on the impact that H.R. 25 could have on this Nation's economy and overall energy situation.

Quoting from your May 23 letter to your colleagues in the House:

"A number of Members who had formerly supported the bill were concerned with the assertions that enactment of the legislation would result in the loss of thousands of jobs, drive up electric utility bills, and preclude the production of millions of tons of coal."

"Those of us who are close to the development of this legislation are certain that these charges cannot be substantiated--our support would be irresponsible if they could be--and during the next two weeks we will be attempting to set the record straight."

I believe that these hearings will set the record straight.

The facts and figures that will be presented during these hearings will demonstrate that the responsible, if perhaps not

the politically popular, course has been taken.

I would stress, at this point, our willingness to evaluate and discuss with you any estimates of adverse effects that the Committee or its staff may have developed which are different from ours. The experts that I have here with me today are those responsible for developing the Administration's estimates, and they are available not only to answer questions regarding our estimates, but also to examine any estimates you may have.

-- John A. Hill, Deputy Administrator of the Federal Energy Administration, did his work for his BA degree and his Ph.D. studies at Southern Methodist University. He has worked on energy and environmental matters in the Environmental Protection Agency and the Office of Management and Budget before taking his present post. As Associate Director at OMB, he was responsible for interagency coordination, budgeting and overall management of all Federal programs in Natural Resources, Energy and Science. He has continued his leadership of the interagency group working on strip mining and related programs since coming to FEA.

-- Eric R. Zausner, Deputy Administrator-designate of the Federal Energy Administration, has a BS in electrical engineering from Lehigh, and an MBA from the Wharton School of the University of Pennsylvania. He has worked



on energy and environmental matters in the Council on Environmental Quality, the Department of the Interior before coming to the Federal Energy Administration. Prior to his nomination as Deputy Administrator, he served as Assistant FEA Administrator for Policy and Analysis, and led the Executive Branch efforts that culminated in the Project Independence Report and in subsequent national energy policy analyses.

-- Thomas V. Falkie has served as Director of the U.S. Bureau of Mines since 1974. He received extensive training in engineering, having received a B.S., an M.S., and a Ph.D. in mining engineering from Pennsylvania State University. Prior to joining the Government as Director of the Bureau of Mines, he served for five years as Head of the Department of Mineral Engineering at Penn State. In addition, Dr. Falkie has served as arbitrator of the Joint Industry Health and Safety Committee of the Bituminous Coal Operations Association and the United Mine Workers of America and as a consultant to the United Nations on Mining Economics and Mine Management.

-- Raymond A. Peck, Jr. is a lawyer with LL.B. and LL.M. degrees from New York University, where he was a Root-Tilden Scholar. After five years of private practice in New York City, he joined the Government in 1971 as an attorney-



advisor in the Department of Commerce. Since that time he has worked exclusively on environmental and energy matters for the Departments of Commerce and Treasury, and specifically on surface mining legislation.

I have every confidence that we can explain the adverse effects of the bill so that you and your colleagues will have a firm basis for casting your vote on June 10 to sustain the President's veto.

I would like to make several preliminary points before turning to a detailed review of the Administration's impact estimates and the methodologies used in determining those estimates. Of primary importance is the fact that our loss estimates only relate to impacts on small mines and expected impact of restrictions relating to steep slopes, aquifers, siltation and alluvial valley floors.

Our estimates do not cover:

-- First, losses that could result from provisions of the bill that simply cannot be quantified because no one can predict how they might be implemented or enforced.

Provisions in this category include the authority to designate areas unsuitable for mining, surface owner consent, and State control over Federally-owned coal.

-- Second, losses that would result from litigation that could be necessary to resolve ambiguous features of the

bill and its legislative history. Ambiguous language breeds litigation, and forces the courts to legislate. With different opinions from different district courts, subject to review by 11 different circuit courts of appeal, and ultimately the Supreme Court, definitive resolution of uncertainties can take years.

Past history -- the case of the Trans-Alaska Pipeline, for example -- demonstrates how long these periods of confusion can last.

More recent history -- the case of the "non-significant deterioration" language of the Clean Air Act, for example -- demonstrates what can happen when a court feels compelled to apply the more rigid possible interpretations of ambiguous language -- interpretations that may be far more inflexible than the Congress would have intended if the particular circumstances before the courts had been presented to the legislative draftsman. We cannot afford to rely on the courts to thrash out these problems which should, in the first place, be resolved at the legislative, not the judicial, stage.

Thus, it is important to recognize that our estimates of losses of 40 to 162 million tons of coal attributable to H.R. 25 are not all-inclusive. It is clearly impossible for the Administration -- or anyone else -- to provide numbers to go

with many such features of the bill. But we can state categorically that they can only increase these losses and their corresponding impacts on jobs, consumer costs, and vulnerability, not decrease them.

We also have not attempted to quantify adverse impacts of the bill, such as the impact on coal miners' health and safety -- human considerations that cannot be equated to barrels of oil or tons of coal. No one gets black-lung in a strip mine, and the injury rate in strip mines is less than half what it is underground.

A final preliminary point that I must make this morning relates to the charge that the Administration is willing to tolerate continuation of the environmental abuses that have accompanied surface mining activities in the past. That, simply, is not the case.

The previous Administration first submitted legislation to impose minimum Federal standards on surface mining in 1971.. Since then, on countless occasions, in testimony, in correspondence and in conferences with members and staff of this and other Committees and Subcommittees, we have stressed our commitment to a balanced view of the compelling environmental and energy considerations involved in the surface mining of coal.

As recently as February 6, 1975, the President transmitted to Congress proposed surface mining legislation. In submitting that legislation, he specifically identified the areas of difference between the previously vetoed bill, S. 425, and our proposal. He stressed the overwhelming importance of these differences in terms of lost coal production, unemployment and other adverse economic impacts.

Because of the gravity of our energy situation, and its implications for the future of all Americans, these differences must be resolved as soon as possible -- and resolved on a basis of knowledge, not emotion, a basis of responsibility and cooperation not partisanship and politics.

We have worked long and hard to come up with an accurate analysis of H.R. 25 and a fair assessment of its potential impact. But we recognize -- as we hope each of you does -- that there are legitimate areas of disagreement among responsible individuals -- both within the Administration and within the Congress. I would say once again that the Administration stands ready to work with Congress to resolve these differences. But we must avoid coming together in an arena of confrontation. We must meet on the higher ground of cooperation and conciliation.



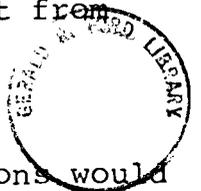
IMPORTS, VULNERABILITY AND H.R. 25

You all know the magnitude and scope of this Nation's energy problem. Even under the most optimistic circumstances -- assuming Congressional enactment of the President's entire legislative program and crude oil price decontrol -- we will still be importing about five million barrels of oil per day in 1985. With no action on our energy program, we will be importing more than half the oil we consume, or more than 12 million barrels per day.

No matter what projections are used, one thing is clear: we will have to greatly expand coal production in the next ten years. This expansion must occur steadily during this period if our 1985 goals are to be reached. Coal will be needed in new and existing powerplants, for direct burning in some areas, and in a growing synthetic fuel industry. In the long-run, coal will be one of the most essential elements for conversion to liquids and gases for industrial and utility use.

If the strong national energy program proposed by the President were enacted by the Congress, we might be able to accept the losses of coal production that would result from this bill. Without such an energy program we cannot.

The President's conservation and domestic supply actions would substantially reduce our need for imported oil, whereas H.R. 25



would increase it. The loss of even 40 million tons of coal per year -- the low end of our estimate spectrum -- could increase imports by more than 450,000 barrels per day. And, at the high end, lost production could mean more than 1.8 million barrels a day in increased oil imports because of H.R. 25 alone.

An increase of imports of this magnitude would have to come from insecure foreign sources -- where still higher prices are already being discussed and where the danger of an embargo remains very real. Even at current prices, such an increase in oil imports to make up for the lost coal would require consumers to export an additional \$1.9 to \$7.8 billion a year for their energy. These extra costs would do nothing to reduce the Nation's vulnerability; they would be incurred, in fact, as a result of actions that would actually increase our vulnerability.

Viewed in this context, the Administration believes that this bill would preclude the possibility of achieving true balance among important national objectives for energy, our economy, our environment and our national security. It has been called an "anti-energy" bill, but its negative impact is much broader than that.

I would now like to address some of the specific provisions of H.R. 25 and our assessment of its impact.



H.R. 25 AND PRODUCTION LOSSES

On May 23, 1975, Dr. Thomas Falkie, Director of the Bureau of Mines, submitted to Chairman Metcalf of the Senate Subcommittee on Minerals, Materials and Fuels an analysis of the adverse impact that we predict would result if H.R. 25 were to become law. I understand that copies of this material have been distributed to members of the Subcommittee, but I would like to submit it at this time for the record.

In general, the low range of our estimates represents the adverse impact we expect if the bill were interpreted loosely, that is, if its provisions were interpreted in ways that would minimize production losses, economic costs and mine closures. The high range of estimates represents those losses that we would expect if a strict, literal interpretation and vigorous implementation were given to each provision.

In brief, we have estimated that from 40 to 162 million tons of annual coal production would be lost during the first full year of implementation. Losses would occur in three general categories:

- reduced production or closures of small mines;
- delays or prohibitions arising from the steep slope, siltation and aquifer protection provisions; and, most important perhaps,
- bans on mining operations which would affect alluvial valley floors.

Each of these areas is identified in Dr. Falkie's submission to Senator Metcalf, and he is here today prepared to discuss them in more detail. I will now touch briefly on each of the three categories in which losses would result.

Small Mines

In preparing our estimates for small mines, we have classified as "small" those mines with annual production of 50,000 tons or less. As noted by the Council on Environmental Quality in its report to Congress in 1973, at that level of production, a mine's capital availability, cash flow and technical resources are limited. As a result, operators of this size would simply not be able to bear the front-end costs of applying for and obtaining permits to mine, and would have great difficulty meeting the increased reporting requirements under H.R. 25.

Faced with this inability to obtain a permit and the difficulty of meeting those requirements, many such mines would be required to close. Our estimate is that at least 40%, and possibly all of projected production from small mines would be precluded under H.R. 25, with principal impact in the East. As the Council on Environmental Quality pointed out, such mines account for as much as 50% of production in the Appalachian states. I might also note here that these losses attributed to small mines, which I have just mentioned,

are not included in the loss estimates that I will be discussing during the remainder of my testimony.

Steep Slopes, Siltation and Aquifer Protection

With respect to provisions concerning steep slope, siltation and aquifer protection, we have estimated losses ranging from seven to 44 million tons in the first full year of implementation. Strict interpretation and application of H.R. 25's steep slope provisions alone would result in loss of production from virtually every mine operation on slopes in excess of 20 degrees -- loss totalling from seven to 25 million tons.

Much of this loss is, in our view, unnecessary. With appropriate environmental restrictions, authority to grant some variances from the absolute requirements of H.R. 25 could be allowed, greatly reducing production losses without danger to the environment.

The aquifer protection provided by H.R. 25 is also set forth in near-absolute and ambiguous terms. Consequently, a literal interpretation of these provisions could result in termination of all production near aquifer-fed water sources. We estimate that nine million tons of actual and projected production is subject to such an interpretation. Allowing individual operations to accommodate individual circumstances at individual

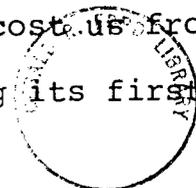
mine sites could greatly reduce the losses that these provisions might entail, without serious negative environmental effects.

Earlier versions of this legislation prohibited absolutely any increase in normal siltation levels during or after mining operations. Congress recognized the impossibility of achieving this result and modified the siltation provisions of H.R. 25 accordingly.

However, a serious problem still remains. As now drafted, the bill would require operators to use any technology that exists and that could prevent siltation. Such a requirement is unrealistic. It could require operators to apply technology that, although theoretically available, would be prohibitively expensive, to prevent even relatively insignificant siltation. Here again, the bill's lack of flexibility could result in mine closures where environmental concerns could, in fact, be accommodated with continued production of the Nation's coal resources.

Alluvial Valley Floors

Finally, we estimate that the various provisions of H.R. 25 related to alluvial valley floors would cost ~~us~~ from 11 to 66 million tons of coal production during its first full year of implementation.



It should be noted that what we are dealing with here is a possible ban on the mining of coal in certain areas. We are not dealing only with reduced production levels, or closures of mines which might afterwards be reopened. We are talking about locking away billions of tons of coal -- placing it permanently off-limits for any and all surface mining. And our experts tell us that in virtually all of the geological areas involved, surface mining is the only feasible method of extraction. Thus, the effect of these provisions will be permanent losses, both of production and of reserves.

As I suggested earlier, the fairly wide range of these estimates derives from the fact that our lawyers are unable to predict how regulatory authorities or courts would interpret H.R. 25 and its legislative history.

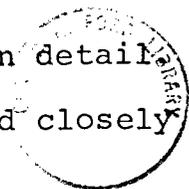
We cannot say, for example, whether a court would conclude that an area such as the Powder River Basin is "undeveloped range land," and thus not subject to the bill's prohibitions, or whether it would consider such an area to be "potential" farming or ranching land and thus off-limits for surface mining. Under the first interpretation, a great proportion of the Powder River Basin would be covered by the exclusion and open for mining. Under the latter interpretation, our experts tell us that a virtual ban on the mining of great Western coal deposits could result.

This question, although critically important, cannot be answered on the face of the bill. Nor does its legislative history solve the problem.

But this is only one difficulty of many in interpreting the language of H.R. 25. In addition, it would prohibit mining that would have an adverse effect on some actual or potential farming or ranching operations that are themselves located on such floors. The impact of this language is even more difficult to assess. Proper interpretation would depend upon the individual geologic and hydrologic conditions of a given proposed operation. H.R. 25 places the burden of proving the absence of any such adverse impact upon the applicant for a permit. Proving a negative is always difficult, and, under H.R. 25, the negatives which must be proved could present insurmountable hurdles for an applicant.

Based upon all of these considerations, we estimate a production loss attributable to alluvial valley floor provisions ranging from 11 to 66 million tons and a reserve loss at least 1000 times greater - that is, a loss of from 17 to 66 billion tons of coal, permanently locked into the ground.

Our experts have reviewed these figures in detail. They have made on-site inspections and have analyzed closely the



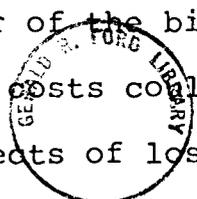
provisions of the bill. We consider these loss estimates, in fact, to be conservative.

RELATIONSHIP OF PRODUCTION IMPACTS TO
OTHER NATIONAL CONCERNS

In addition to these concerns, there is the very broad concern that the President has expressed; We must move with extreme caution as we seek to balance our national objectives. If we take away from our domestic energy supplies, we must know precisely how much we are subtracting, what the impact will be on consumers, industry and our Nation's economy, and how our environmental and foreign policy objectives will be affected. And we must find ways to balance our priorities so that no sector of our Nation bears a disproportionate burden. If we do not take such an approach, our economy, the welfare of America's citizens, and our national energy situation will deteriorate.

H.R. 25 AND COSTS TO CONSUMERS

If one combines the higher costs of imported oil use to replace lost coal -- the \$1.9 to \$7.8 billion I mentioned earlier -- with the higher market costs of the remaining coal that would be mined, during the first year of the bill's implementation, total additional consumer costs could range from \$2.4 to \$5.6 billion. The price effects of lost production and strict limitations on capacity expansion on



spot market price for coal itself would be immediate, sharp and substantial. Coal users would be bidding against one another for limited supplies of coal. Its price would quickly jump to that of residual fuel oil, taking into account the higher cost of handling and burning coal. Our experts estimate that the spot price could increase by \$12 to \$18 per ton, for an annual additional cost to consumers of \$1.6 to \$2.4 billion.

In more meaningful terms, this \$2.4 to \$5.6 billion total would constitute the equivalent of increases in the cost of electricity of between 3.4% and 8%, increases in the Consumer Price Index of between 0.16% and 0.38%, and increases in average household budgets of between \$34 and \$80.

H.R. 25 AND UNEMPLOYMENT

Not only would American consumers pay more, if H.R. 25 were to become law, many thousands would lose their jobs. Basing our calculations on the loss of 36 tons per day per man, we calculate that direct job losses could affect between 5,000 and 20,000 coal miners. And for each 10 miners' jobs lost, a minimum of an additional eight jobs would be lost in other sectors of the economy dependent upon the mining industry. Applying this factor to projected production losses and manpower efficiency rates applicable to such losses, we have concluded that from 9,000 to 36,000 jobs would, in fact, be

lost as a result of implementation of H.R. 25.

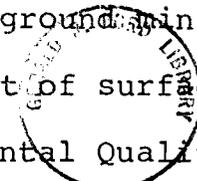
Again, these numbers of conservative, and would increase as we experienced production losses that have not been quantified.

Two other specific points should be mentioned in this regard.

First, we would expect this resulting unemployment to be concentrated in certain areas and to be especially severe in Appalachia. New jobs created nationwide in reclamation efforts could not offset these regional disparities. As indicated by data in the CEQ report, some counties in Appalachia -- which have suffered through years, not months, of depression, not recession -- could, in fact, be devastated by H.R. 25.

Second, to the extent that reclamation activities funded by H.R. 25 would create jobs, they would do so only at the expense of other jobs and any actual offset would be illusory. The reclamation fee would withdraw significant funds from the economy and reduce employment elsewhere accordingly. To the extent that expenditures of those funds lagged, there would be a direct recessionary impact.

It has been suggested that the shift to underground mining would create more jobs and offset unemployment of surface miners. However, as the Council on Environmental Quality has



pointed out, long lead-times and major capital outlays are required to open or expand underground mines. As a result, any offset from this source would be years away.

Moreover, the skills required for surface mining are drastically different from those required for underground mining. Substantial retraining of surface mine personnel would be required before they could work in deep mines.

H.R. 25 AND OTHER NATIONAL GOALS AND CONCERNS

Besides the detrimental impact that H.R. 25 would have in terms of consumer costs and unemployment, it would severely distort the development of the coal industry and, consequently, limit the further contributions that the industry could make to our national productivity and security.

Underground mining is inherently less efficient in terms of mineral removal and manpower utilization. Thus, the costs of such mining, relative to productivity, is substantially greater than those of surface mining operations.

Still another dimension of the problem lies in what H.R. 25 would mean for other national priorities. One year ago Congress passed, and the President signed, the Energy Supply and Environmental Coordination Act.

The Administration is firmly committed to carry out Congress' ESECA mandate, which aims at increasing coal use

in certain power plants and other major fuel-burning installations. Under the provisions of that law, we can do so in a way that still protects our environment. But to carry out that law, we must have the coal to burn. That means more coal production, not less. We believe the Congress shares our commitment to carry out the ESECA, but I must add that if H.R. 25 were to become law coal conversion under ESECA could be seriously impaired.

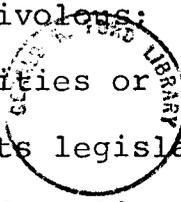
And, while substantial progress in underground mine safety has been made, the fact remains -- as I mentioned earlier -- that underground mining is more dangerous than surface mining and involves more than twice the risk of accidents and injuries associated with surface mining.

Mr. Chairman, I consider this only a brief outline of the objections and problems which compelled the President to veto H.R. 25. Many additional issues could and should be discussed if our efforts here today are seriously concerned with responsible action. We must consider realistically:

- To what extent would the states, in fact, designate land areas unsuitable for mining?
- To what extent could H.R. 25 allow frivolous petitions for such designations to create additional obstacles to the granting of mining permits?
- To what extent would the states be able to implement programs within the narrow time constraints of the bill,

- and how much time would an operator have to bring an existing operation into line with the terms and conditions of a new permit?
- How many operations presently being planned would be classified as "new" instead of existing operations, and therefore be subject immediately to the more stringent standards set forth in the bill?
 - To what extent would the owners of surface lands overlying Federal coal deposits simply refuse to allow the mining of coal belonging to the Nation?
 - To what extent would production be halted or reserves locked up by the bill's "water replacement" provisions?
 - To what extent would the states use this law to prevent development of Federal coal reserves on Federal lands within their borders?
 - To what extent would small mines be forced to close or sell out to large companies that are able to bear increased capital and operating costs? And is such an incentive to market concentration desirable?
 - To what extent would the bill affect Clean Air Act objectives by precluding low-sulfur coal production?

Mr. Chairman, these questions are obviously not frivolous; they cannot be ignored. Each derives from ambiguities or uncertainties in the language of the bill or in its legislative history, and any or all could present questions of public



policy and national security at least as grave as those issues that I have covered in this statement. In our view, the Nation simply cannot afford to run the risks inherent in a regulatory program as important, and as uncertain, as that embodied in H.R. 25.

To date, no comprehensive energy program has been enacted. No legislation has been passed that would significantly curb consumption. No legislation has been passed that would assure the development of other domestic resources -- resources to offset the coal production that would be lost because of H.R. 25. No recognition has been given to the progress made by the individual states as they have moved to implement surface mining regulations.

This Nation cannot afford to reduce the availability of our one abundant domestic energy resource until and unless we have another to replace it. We cannot continue the past practice of making piecemeal decisions and calling them policy.

Coal is the only major domestic resource upon which we can rely as a secure source of energy in the coming decades. This bill would have a direct and immediate impact on its availability.



We firmly believe that environmental concerns can be balanced with energy needs -- without the uncertainties so clearly present in H.R. 25 and without the burdens that it would so clearly place on American workers and American consumers and the Nation as a whole. We beg Congress to proceed with that task -- to take the responsible course and to sustain the President's veto.

