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[May 1975]

STRIP MINING RESPONSES

Full is here
Wednesday - Tues
5/20

7:30 AM - Staff Meeting
Wednesday, April 16, 1975

full book
M op, rest
new data
Just wants to
see data, events &
and paper due to Monday.

1) Do Best - w/ facts +
opinions in book
risk miscom

2) Monday - Interview new
parts, which
can evaluate -

3

memo comes -
w/ opinions
As information
paper



[May 1975]

THE WHITE HOUSE
WASHINGTON

TO: *Jim Cannon*
FROM: MIKE DUVAL

For your information _____

Comments:

Here is the latest
re-write of the
Stuy Manning memo.
I've tried to balance
the pro / con arguments.
Mike



MEMORANDUM

FROM:

SUBJECT: STRIP MINING BILL

H.R. 25, the Surface Mining Control and Reclamation Act passed the Senate on Monday by Voice vote and the House on Wednesday by a vote of 293-115.

This memorandum briefly describes the bill, compares it to the one you proposed on February 6, identifies the impacts on coal production and other economic considerations, lists arguments for and against approval, and presents recommendations of your advisers as to signing or vetoing the bill.

Jim Lynn will soon be providing an enrolled bill memorandum which will provide more detail on the bill and agency positions.

The Bill

Briefly, the principal features of the bill:

- Establish environmental protection and reclamation standards for surface mining activities.
- Call for State regulatory and enforcement activities.
- Require Federal (Interior Department) regulation and enforcement if States do not act.
- Places an excise tax of 15-35¢ on each ton of coal to create a trust fund for use in reclaiming public and privately owned abandoned mined lands, and paying other facility and service costs in areas affected by energy development.
- Provides funds for state mining and mineral institutes.

Background

The Executive Branch proposed bills in 1971 and 1973 to establish environmental and reclamation standards for surface and subsurface mining of coal and other minerals. The Congress passed a tough bill in December 1974. Your Memorandum of Disapproval announcing the pocket veto of that bill in January 1975 is enclosed at Tab A.



On February 6, 1975, you transmitted a new bill which followed the wording of the vetoed bill except for eight changes identified in your letter (Tab B) as critical to overcome the problems that led to your veto and 19 other changes which were designed to reduce the coal production losses and make the bill more workable.

In order to place in context many of the objections that are now being voiced against the Enrolled Bill, it is important to note that your February proposal represented a substantial compromise. For example, the Executive Branch gave up after numerous attempts to obtain less rigorous restrictions on steep slope mining and post-mining uses. The Appalachian states' objections to the bill are due to these restrictions which they claim would put small mine operators out of business and generally restrict mining activities.

Actions Already Taken By States

Eleven of the twelve leading surface mining states -- which account for about 87% of 1973 surface coal mining in the Nation -- now have their own surface mining laws. Since 1971, when Federal legislation began to be considered, 21 states -- including the twelve leading surface coal producers -- have enacted or strengthened their surface mining laws. In addition, a survey conducted by C.E.Q. indicates that most leading coal producing states have tightened up their regulations and increased their regulatory staffs.

These developments are significant because they indicate that our concerns for the environment do not depend solely on Federal legislation.

Enrolled Bill Compared To Your Recommended Compromise Position In January

In assessing the adverse impact of the Enrolled Bill, you may find it useful to compare this bill to the compromise you proposed as you pocket-vetoed the bill passed by Congress at the end of the 93rd Session.



Tab summarizes the changes in the Enrolled Bill compared to your compromise position. Although it is extremely difficult to quantify the differences between the two, the following are rough estimates:

- . Coal Production Losses
 - . Vetoed bill - 48-141 million tons
 - . Your bill - 33-80 million tons
 - . Enrolled bill - 40-162 million tons

- . Unemployment
 - . Vetoed bill -
 - . Your bill -
 - . Enrolled bill -

In general, the Enrolled Bill makes changes in six of the eight areas as you identified as critical in your January letter to Congress. This includes adopting the Administration position on citizen suits and unemployment assistance.

However, the Enrolled Bill is worse than last years bill because it creates three important new problems, involving State control over Federal coal landds, restrictions on mining in alluvial valleys and water rights.

Arguments in Favor of the Enrolled Bill

- . This represents an environmentally sound solution to the problem of strip mining. Furthermore, it will reclaim the acres of abandoned lands that now exist.

- . The bill represents a reasonable compromise between the position you took when you vetoed last year's bill and the position of the bill's sponsors. This argument is especially persuasive because you are clearly on record as supporting an environmnetally sound strip mining bill as long as it does not unnecessarily impact you energy independence goals.

- . Your Administration is beginning to develop a negative environmental record due to your previous pocket-veto of the strip mine bill, your proposed Clean Air Act Amendments in connection with your Energty Independncy Act, your decision not to propose a land use bill this year aand your nomination of Governor Hathaway.

For additional arguments in favor, see memorandum from Russ Train at Tab .

Arguments Against the Enrolled Bill (See details in Tab)

- . This is a badly drafted bill which goes way beyond its laudable environmental goals and creates an unnecessary Federal and state regulatory system and bureaucracy, and because of ambiguities, it will invite years of litigation thus unnecessarily constraining coal production.

- It results in unnecessary loss of coal production and jobs and it is inflationary.

- Coal Production Losses. Between 40 to 162 million tons (6 to 24% of expected 1977 production). This does not include losses for other reasons which cannot be quantified, such as court challenges and surface owner rights. The range cannot be narrowed because of ambiguities in the bill.

These levels of production losses will likely result in an increase in oil imports of between 139 and 559 million barrels in 1977 involving dollar outflows from \$1.5 to 6.1 billion.

- Job Losses. In addition to the job losses associated with the dollar outflows, Interior and FEA have estimated that direct and indirect job losses will range between 11,000 and 36,000. These will be partially offset by lower productivity due to tighter restrictions and, after some years, expanded underground mining.

- Inflation. The bill is very inflationary. The excise taxes amount to about \$150 million a year; strip mining production costs will increase by %; and the bill will cost \$90 million for Federal and state government implementation.

In addition, electric bills will increase because coal costs increase and because some utilities will use more oil which costs 10 times more than coal on a BTU equivalency basis.

- States have already taken effective action, therefore all that is required at the Federal level is assistance with reclamation funding.

Legislative Outlook

Last day for your action on the Enrolled Bill is May 20.

Max Friedersdorf reports that you can probably sustain a veto in the House. The Senate will likely override easily (it initially passed in the Senate 83 to 13).

Recommendations (Note: Official agency positions will be in OMB's Enrolled Bill memorandum.)

1. Sign
2. Allow to become law without signature.
3. Veto

Decision

I recommend that you defer final decision until you receive the Enrolled Bill memorandum from Jim Lynn.

FEA

[May 1975]

It must be clearly kept in mind that the legislation is complex, it is not clear in many places, that there are a chain of actions that must be forged by the applicant, regulatory authority and citizenry before a mining operation can commence to surface mine coal. Any break in this chain, any weak link, will stop the action, mining will not start and coal will not be produced. In addition, it must be understood that the legislation is to act as a floor, a minimum level, to which the State may add additional levels which can further restrict production and that if a State does further tighten the production valve, the Federal agency control of mining on Federal coal lands must meet the State standards.

The Administration, in its comments on the legislation, has directed its concern to some 29 specific issues. Not all of these issues are of concern to FEA. We shall address ourselves to those issues which we believe will adversely affect coal production.



During the pendency of S.425, DOI and FEA took different positions as to the technical effects resulting in production losses. This occurred because the agencies were proceeding down different avenues and using different assumptions. Since that time the two agencies have been working closely together and when a disagreement arose, discussions were held until agreement was reached.

Of the 29 issues addressed in the Administration position, there are seven issues which concern us the most. These issues, provisions, or features are:

- Prohibition of Mining on Alluvial Valley Floors
- Requirements that Federal Lands Adhere to State Program Requirements
- Stream Siltation
- Provision Against Hydrological Disturbances
- Reclamation Fee
- Prohibition Against Surface Mining in National Forests
- Timing Requirements for Interim Program

These issues appear to relate in part to different portions of the bill. This is true except that they are all tied together at one point -- the Application Permit Requirements, Section 507, and specifically in the Permit Approval or Denial, Section 510. In the latter, the language is as follows:

"Sec. 501(b) No permit, revision, or renewal application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant,"

Again, the many threads specified in various sections throughout the bill finally come together to weave a fabric that will be either accepted or rejected by Sections 507 and 510

The specific issues listed previously are now discussed in detail and their resulting impacts on coal production (production losses) on coal availability (reserve lockup) are described.



● Prohibition of Mining on Alluvial Valley Floors.
(Section 519(b)(5)).

We estimate the coal production loss from this range from 22 to 66 million tons annually. This applies to the Western States. It poses an extremely difficult test to prove -- that the surface mining would not have an adverse effect on alluvial valley floors. The floors can contain not only present farming and ranching but potential farming and ranching. It does not exclude undeveloped range lands. It has been estimated that some 97% of the area is undeveloped range lands. However, these lands will be easily deemed in part to be potential farming or ranching lands so the 97% figure is a very questionable figure upon which to draw any conclusions. In addition to the production loss, this section could cause upward to a 66 billion tons of coal to be taken out of the Nation's coal reserve base (lockup).

- Prohibition Against Surface Mining in National Forests,
(Section 522(e)(2)).

The concern here is not so much from coal production loss, but rather from the lockup of valuable coal resources. This loss in the coal reserve base poses a future problem, and although the Congress indicates they will entertain a review at some future date, history shows that lands once withdrawn from mineral development become lost to the resource base. This is particularly true if exploration is denied for the resource that would be needed to determine the resources actual value (quantity, quality, etc.).

- Timing Requirements for Interim Program, (Section 502(a), (b) and (c)).

It is not possible to determine what production loss could occur as a result of this provision. It could close ongoing mining operations simply because of the failure of the regulatory authority to complete action on the mining permit and without fault of the mine operation. There are serious questions of compliance in this section which could stop new operations from opening and leaving operating mines subject to closure due to administrative delays.



- Stream Siltation, (Sections 515(b)(10)(B) and 516 (b)(9)(B)). Estimated coal production loss from these sections have been included with losses from hydrological disturbances. This provision is nationwide, but probably would have its severest effect in the Eastern states. Although the bill as reported by the Conference is closer to the Administration's bill than was S.425, it still places some difficult road blocks in the mining operation. It continues to place higher standards than the Clean Water Act. The test the Administration would place would "prevent to the maximum extent practicable additional contributions of suspended solids ..."



- Prohibition against Hydrological Disturbances, (Sections 510(B)(3) and 515(b)(10)(F)).

We estimate the coal production loss from this range from 7 to 44 million tons annually. This includes those losses resulting from Section 515(d) which are applicable to steep-slope surface mining and, therefore, have the greatest impact on coal production in the Eastern states (particularly Appalachia). The losses also include losses resulting from stream siltation. Again the Administration requirements would prefer language "designed to the maximum extent practicable to prevent ..."



• Reclamation Fee, (Section 401(d)).

There is no estimate of production loss for this provision. The fee as designated by the legislation is different for surface mined coal at 35¢ per ton, underground mined coal at 15¢ per ton, 10% of the value at the mine, whichever is less, and lignite at 5% of the value at the mine or 35¢, whichever is less (5% would be about 15¢/ton at today's values). The funds for the fee are used to reclaim abandoned mined lands (orphaned lands). The Soil Conservation Service estimates some 600,000 acres fall into this category. The fee is patently discriminatory against surface mining, yet the fund can be used for many purposes aside from the direct effect of past surface mining. A base fee of 10¢ a ton for all coal is more eminently fair and easier to administer. Many states have already placed a severance tax on coal, most recently North Dakota of 50¢ per ton, which will be in addition to the reclamation fee. This will result in an increase in coal minimum costs and eventually higher prices. These are all on top of the reclamation costs involved with the specific surface mine operation which must reclaim the land as required by the legislation.



- Requirement that Federal Lands Adhere to State Program Requirements, (Section 523(a)).

This requires that the Federal lands program shall, at a minimum, include the requirements of the approved state program. This could, if the State program were restrictive enough, foreclose development of Federal coal lands. This raises an extremely difficult question with relationship to the development of Federal resources on lands within the various states. The national policy is to encourage production of Federally owned coal if the land can be reclaimed.

In addition to the losses described in the issues above, there is a serious loss resulting from the general requirements of the legislation. These stem from the necessity to gather analysis and prepare a report to accompany the permit application. These requirements lay heaviest upon the small mine operator. Studies show many of these operators simply will not be able to acquire a permit. The losses resulting from closure of their operations range from 22 to 52 million tons annually.

The total losses that could occur in coal production upon the first full year of complete implementation of the legislation range from 51 to 162 million tons. The potential decrease of the coal reserve loss could range from 12 to 72 billion tons out of an estimated reserve base of 132 billion tons.

ISSUE

STREAM SILTATION

Administration
Position:

Would "prevent to the maximum extent practicable additional contributions of suspended solids" [Secs. 415(b)(10)(B) and 416(b)(9)(B)]

Proposed Status
for Conference:

House version is preferable, of the two.

Conference
Report:

(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; [Section 515(b)(10)(B)]

(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions as measured prior to any mining, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines. [Section 516(b)(9)(B)]



REVISE TIMING REQUIREMENTS FOR INTERIM PROGRAM TO
MINIMIZE UNANTICIPATED DELAY

ISSUE

Administration Position	Timing requirements for interim program are tied to regulatory authority action, so as not to leave mine operators subject to close down due to administrative delays. Sec. 402(a) and (b)
Senate Bill as Passed:	Did not change with respect to interim compliance period of 135 days; adopted Administration position with respect to 30-month requirement for compliance with approved programs. Secs. 502(a), (b) and (c)
House Bill as Passed:	Same as Senate. Secs. 502(a), (b) and (c)
Proposed Status for Conference:	Interim period still a problem. Support Administration position.
Conference Report:	Not discussed at conference



ISSUE

SURFACE OWNER CONSENT

Administration
Position:

Surface landowner and other property rights would
continue to be governed under existing law.
Sec. 613

Senate Bill as
Passed:

Remains unchanged; Secretary shall give preference to
leasing for underground mining to maximum extent
practicable; where surface mining anticipated;
Secretary must obtain written consent of surface
owner, and applicant must pay surface owner the value
of his interest.
Sec. 717

House Bill as
Passed:

Same provision as Senate version
Sec. 714.

Conference Report:

No substantial change

ISSUE

FEDERAL PREEMPTION OF STATE ROLE
DURING INTERIM PERIOD

Administration
Position:

Would limit Federal enforcement role during interim period to situations which create imminent danger to public health and safety or significant environmental harm.

Secs. 402(b), 421

Senate Bill as
Passed:

No changes made; Senate report points out lack of state enforcement of its programs.

Secs. 502(b), 521

House Bill as
Passed:

No change made.

Secs. 502(b), 521

Proposed Status
for Conference:

Still a problem; note House committee report comment, "the intent of this provision is to place the Secretary in the role of monitoring State activity in the interim period and providing backup enforcement where appropriate." Should pursue adoption of position of this sort in Conference.

Conference Report:

No changes.



ISSUE

PROHIBITION AGAINST HYDROLOGICAL DISTURBANCES

Administration
Position:

Would include language "designed to the maximum extent practicable to prevent. . ."
[Secs. 410(b)(3); 415(b)(10)(E)]

Senate Bill as
Passed:

Uses language, designed "to prevent to the maximum extent possible using the best available technology. . ."
[Secs. 510(b)(3); 515(b)(10)(F)]

House Bill as
Passed:

Provides: ". . . designed to prevent irreparable offsite impacts to the hydrological balance. . ." [Sec. 510(b)(3)]

and "preserving throughout the mining and reclamation process the hydrologic integrity. . ."
[Sec. 515(b)(10)(F)]

Conference
Report:

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Section 507(b) has been made and the proposed operation thereof has been designed to prevent significant irreparable offsite damages to hydrologic balances:
[Section 510 (b)(3)]

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and
[Section 515(b)(10)(F)]



ISSUE

REPLACEMENT OF WATER SUPPLY

Administration
Position:

No such provision.

Senate Bill as
Passed:

"(E) Replacing the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream channel where such supply has been affected by contamination, diminution, or interruption proximately resulting from mining;"
[Sec. 515(b)(10)(E)]

House Bill as
Passed:

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

In addition, Section 817, an entirely new section added on the floor, required that wherever it appeared likely that a proposed mining operation would adversely affect the water supply, a permit application must either contain the consent of water rights owners or show a willingness and capability on the part of the applicant to provide substitute water.

Conference
Report:

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

Provision at Section 817 of House bill was deleted.



ISSUE

DEFINING AMBIGUOUS TERMS

Administration
Position:

Would provide explicit authority in the bill for the Secretary to define ambiguous terms in the Act. [Section 601(b)

Senate Bill as
Passed:

Not adopted, but the Senate Report notes "that the Secretary has general rulemaking authority to define terms; the courts normally look to administrative interpretations of the law to resolve ambiguities."

House Bill as
Passed:

No provision

Proposed Status
for Conference:

We should seek to obtain in Conference report language similar to, or reference to, Senate language.

Conference
Report:

No statutory language adopted.

ISSUE

RECLAMATION FEE

Administration
Position:

Would provide for a fee of 10¢ per ton on all coal mined.
[Sec. 301(d)]

Senate Bill as
Passed:

Would provide a tax of 35¢ per ton on surface mined coal, 25¢ per ton of underground coal, or 10% of the value of the coal at the mine, whichever is less. Unchanged from earlier position.
[Sec. 401(d)]

House Bill as
Passed:

Bill retained 35¢ tax on surface mined coal but was modified to reduce the tax on underground coal to 10¢ per ton; or 10% of value of the coal at the mine (5% for lignite) whichever is less.
[Sec. 401 (d)]

Proposed Status
for Conference:

Should opt for the House version. (including credit to States for reclamation fees they charge.)

Conference
Report:

(d) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of thirty-five cents per ton of coal produced by surface coal mining and fifteen cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that this reclamation fee for lignite coal shall be at a rate of 5 per centum of the value of the coal at the mine, or 35 cents per ton, whichever is less. Such fee shall be paid no later than 30 days after the end of each calendar quarter occurring after the date of enactment of this Act, beginning with the first calendar quarter (or part thereof) occurring after such date of enactment and ending ten years after the date of enactment of this Act unless extended by an Act of Congress.

Credit to states not adopted.

15¢/ton

size of fund
6204

164 - 1974

6505



ISSUE

MODIFY PROVISIONS ON IMPOUNDMENTS

Administration
Position:

". . . structures are located so as to minimize danger to the health and safety of the public if failure should occur."

[Secs. 415(b)(13); 416(b)(5)]

Senate Bill as
Passed:

Adopted Administration language.

[Secs. 515(b)(13); 516(b)(5)]

House Bill as
Passed:

Entire supervision of "design, location, construction, operation, maintenance, and abandonment" of impoundments and refuse piles is given to the Army Corps of Engineers.

[Secs. 515(b)(13); 516(b)(5)]

Proposed Status
for Conference:

Seek adoption of Senate language; prior problem of absolute terms solved; provision regarding Corps of Engineers is a problem.

Conference
Report:

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

[Sec. 515(b)(13)]

(e) The Secretary with the written concurrence of the Chief of Engineers, shall establish within 135 days from the date of enactment, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal and abandonment of new and existing coal mine waste piles referred to in Sec. 515(b)(13) and Sec. 516(b)(5). Such standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for: review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment: performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety



Conference
Report:
(Cont'd)

inspections; and issuance of notices for required remedial or maintenance work.
[Section 515(c)]

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



ISSUE

MODIFY PROHIBITION AGAINST SURFACE MINING IN NATIONAL FORESTS

Administration Position: Modified prohibition to permit waiver by Secretary when multiple resource analysis indicates that such mining would be in the public interest.
[Section 422(e)(2)]

Senate Bill as Passed: No modification.
[Section 522(e)(2)]

House Bill as Passed: No modification.
[Section 522(e)(2)]

Proposed Status for Conference Support Administration position.

Conference Report: (e) Subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted --

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any national forest except surface operations and impacts incident to an underground coal mine;
[Section 522]

ISSUE

UNEMPLOYMENT ASSISTANCE

Administration
Position:

Would delete provision relating to unemployment assistance.

Senate Bill as
Passed:

Provides that Secretary of Labor may make grants to states "to provide cash benefits to any individual who loses his job in the coal mining industry as a direct result of the closure of a mine" due to the enforcement of the Act.
[Section 709]

House Bill as
Passed:

Adopted Administration position and deleted provisions.

Proposed Status
for Conference:

Work for House approach

Conference
Report:

Adopted House approach; provision deleted.



Administration
Position:

(1) Would provide for Federal-State cost sharing on acquisition and reclamation with maximum 50% Federal share and (2) would eliminate Federal cost sharing for private landowners.

Title III

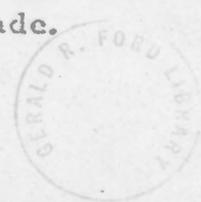
Conference
Report:

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

[Section 404(d)]

(5) States are encouraged to acquire abandoned and unreclaimed mined lands within their boundaries and to transfer such lands to the Secretary to be reclaimed under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this title but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made.

[Section 405(a)(5)]



ISSUE

REQUIREMENT OF WRITTEN SURFACE OWNER CONSENT FOR
COAL EXPLORATION PERMITS

Administration
Position:

No provision

Senate Bill as
Passed:

Requires statement by applicant of right by which he intends to pursue exploration, and certification that notice of intention to pursue exploration has been given to surface owner.

Sec. 512(b) (8)

House Bill as
Passed:

Requires written consent of surface owners.

Proposed Status
for Conference:

Prefer Senate provision inasmuch as it would more readily facilitate exploration.

Conference Report:

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

Sec. 512(b) (8)

Administration Position:	Would seek to assure that petitions for designating lands as unsuitable for mining are handled expeditiously, and provides for preliminary review of petition to avoid mining ban from frivolous petitions. [Sec. 410(b)(+); 422(c)]
Senate Bill as Passed:	Preliminary review not adopted. Adopted amendment which would require authority to render decision within 1 year, and if not done in 1 year, mining permits could be issued. [Secs. 510(b)(4); 522]
House Bill as Passed:	Does not adopt preliminary review. [Sec. 522]
Proposed Status for Conference:	Seek adoption of Administration position.
Conference Report:	<p>(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 522 of this Act or is not within an area under study for designation in an administrative proceeding commenced pursuant to Section 522(a)(4)(D) or Section 522(c) (unless in such an area as to which an administrative proceeding has commenced pursuant to Section 522(a)(4)(D) of this Act, the operator making the permit application demonstrates that prior to the date of enactment of this Act, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit); and [Sec. 510(b)(4)]</p> <p>(c) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of</p>

ISSUE

ELIMINATE DELAYS RELATING TO DESIGNATIONS
AS UNSUITABLE FOR MINING

Conference
Report:
(Cont'd)

facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resource of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.
[Sec. 522(c)]

ISSUE

NEW CRITERIA FOR DESIGNATING FEDERAL LANDS
AS UNSUITABLE FOR MINING (other than coal)

Administration
Position:

No additional provision.

Senate Bill as
Passed:

No additional provision.

House Bill as
Passed:

Adds categories of lands which may be designated "unsuitable": "where mining operations could result in irreversible damage to important historic, cultural, scientific, or aesthetic values, or natural systems, of more than local significance, or could unreasonably endanger human life and property." [Sec. 601(b)(3)]

Proposed Status
for Conference:

Prefer Senate version.

Conference
Report:

Adopted Senate position; deleted additional category.



ISSUE

FEDERAL PROGRAM REQUIREMENTS:
DESIGNATED LANDS

Administration
Position:

No provision.

Senate Bill as
Passed:

If a Federal program is implemented for a state the section dealing with designating lands unsuitable for mining shall not apply for a period of one year following the date of such implementation.
[Sec. 504(a)(3)]

House Bill as
Passed:

No such provision.

Proposed Status
for Conference:

Senate provision desirable; provides flexibility for implementation of program.

Conference
Report:

(3) fails to implement, enforce, or maintain its approved State program as provided for in this Act. If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority if a Federal program is implemented for a State, subsections 552 (a), (c), and (d) shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

ISSUE

OFFICE OF SURFACE MINING RECLAMATION AND
ENFORCEMENT; HOUSE PROVISION PLACING OFFICE
UNDER ASSISTANT SECRETARY, LAND AND WATER
RESOURCES

Administration
Position:

No such provision.

Senate Bill as
Passed:

No such provision.

House Bill as
Passed:

Adopted floor amendment, proposed by Mr. Seiberling,
that would place office of Surface Mining Reclamation and
Enforcement under the Assistant Secretary for Land and
Water Resources.
[Sec. 201]

Proposed Status
for Conference:

Support Administration position.

Conference
Report:

TITLE II - OFFICE OF SURFACE MINING RECLAMATION
AND ENFORCEMENT

Creation of the Office

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

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



ISSUE

OFFICE OF SURFACE MINING RECLAMATION AND
ENFORCEMENT; HOUSE PROVISION PLACING OFFICE
UNDER ASSISTANT SECRETARY, LAND AND WATER
RESOURCES

Conference
Report:
(Cont'd)

TITLE II - OFFICE OF SURFACE MINING RECLAMATION
AND ENFORCEMENT

Creation of the Office (Con'td)

mineral resources or regulating the health and safety
of miners under provisions of the Federal Coal Mine
Health and Safety Act of 1969 (83 Stat. 742), shall be
transferred to the Office.

ISSUE

PROHIBITION AGAINST HAVING MESA INSPECTORS
ENFORCE COMPLIANCE WITH ACT

Administration Position: No such provision.

Senate Bill as Passed: No such provision.

House Bill as Passed: Floor amendment offered by Hechler, and passed provides: "(d) the Director shall not use either permanently or temporarily any person charged with responsibility of inspecting coal mines under the Federal Coal Mine Health and Safety Act of 1969, unless he finds, and publishes such finding in the Federal Register, that such person or persons are not needed for such inspections under the 1969 Act."
[Sec. 201(d)]

Proposed Status for Conference: Prefer Senate bill.

Conference Report: Adopted House provision.



NEPA REQUIRED FOR FEDERAL AND
STATE PROGRAM PROMULGATION

ISSUE

Administration
Position:

No such requirement.

Conference Report:

(d) Approval of the State programs, pursuant to section 503(b), promulgation of Federal programs, pursuant to section 504, and implementation of the Federal lands programs, pursuant to section 523 of this Act, shall constitute a major action within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).



ISSUE

MODIFY VARIANCE PROVISION FOR CERTAIN POSTMINING
USES AND EQUIPMENT SHORTAGES

Administration
Position:

Would permit variances from certain performance standards of Sec. 415 in cases involving equipment shortages, and where equal or better economic or public use of the land is anticipated. Sec. 402(d), 415(c)

Conference Report:

Not a Conference Issue and not adopted.

ISSUE

PREFERENTIAL CONTRACTING

Administration
Position:

Would not require that special preference be given
in reclamation contracts to operators who lost
their jobs because of the bill.

Conference Position: Administration position adopted.



ISSUE

DELETE REQUIREMENT OF SALES OF COAL TO ANY CLASS
OF PURCHASERS UNDER FEDERAL LEASES

Administration Position:	Contains no provision which would prohibit denial of sale to any class of purchasers.
Senate Bill as Passed:	Requires that with respect to lessees, permittees, and contractors for U.S. owned coal, "no class of purchasers of the mined coal shall be unreasonably denied purchase thereof." Sec. 523(e)
House Bill as Passed:	Requires Secretary to assure in granting permits, leases or contracts for U.S. owned coal, "no class of purchasers shall be unreasonably denied purchase thereof." Sec. 523(e)
Proposed Status for Conference:	Favor House language.
Conference Report:	Adopted House language



ISSUE

PROVIDE AUTHORITY FOR APPROPRIATIONS
RATHER THAN CONTRACTING AUTHORITY

Administration
Position:

Would finance Administration of Act through direct appropriations.
[Sec. 612]

Conference
Report:

AUTHORIZATION OF APPROPRIATIONS

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

ISSUE

LIMITATION OF APPLICABILITY TO UNDERGROUND MINING

Administration
Position:

No provision.

Senate Bill as
Passed:

No provision.

House Bill as
Passed:

Adds provision that with respect to certain surface effects of underground mining, the provisions of section 515 shall apply, except that the Secretary may modify those requirements where necessary because of differences between surface and underground mining.
[Section 516(b)(10)]

Proposed Status
for Conference:

Desirable provision inasmuch as it clarifies application of Section 515 to underground mining.

Conference
Report:

Adopted House provision



ISSUE

CONFLICT OF INTEREST

Administration
Position:

No such provision.

Senate Bill as
Passed:

No such provision.

House Bill as
Passed:

Floor amendment to title II, proposed by Representative Dingell, was adopted, to the effect that no employee having any duties under the Act may own a direct or indirect financial interest in coal mining operations except that ownership of stock up to 100 shares, total, is permitted. Any such interest must be disclosed. A criminal penalty of up to \$2,500 or one year imprisonment is imposed for knowing violations.

Proposed Status
for Conference:

To the extent that it reinforces existing conflict of interest prohibitions, it is a desirable provision; the 100-share exception is undesirable and should be deleted.

Conference
Report:

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

ISSUE

INDIAN LANDS

Administration
Position:

Secretary administers program on Federal
Indian lands and conducts study.
[Secs. 601(a)(9) and 610]

Conference
Report:

Adopted Administration position in toto.

ISSUE

PROHIBITION OF MINING ON ALLUVIAL VALLEY FLOORS

Administration
Position:

"(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on the valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of flood irrigated or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to present farming or ranching operations."
[Section 410(b)(5)]

Senate Bill as
Passed:

(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on croplands or haylands overlying alluvial valley floors where such croplands or haylands are significant to the practice of farming or ranching operations.
[Section 510(e)(5)]

House Bill as
Passed:

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

(New: Added in
House floor →
debate)

"(A) not adversely affect, or be located within alluvial valley floors, underlain by unconsolidated stream-laid deposits where farming or ranching can be practiced on irrigated or naturally subirrigated hay-meadows, pasturelands, or croplands; or".

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

(C) not alter the channel of a significant water-course which is identified as a stream fed by (1) a spring, other ground-water discharge, or surface flow that flows an average of two hundred and fifty gallons per minute or more during one hundred and twenty days or more per year; and (2) a drainage area which encompasses ten thousand acres or more when measured above the lowest point of impact on the water-course by the proposed surface coal mining operation, as documented by the State or Federal regulatory authority.
[Section 510(b)(5)]

Proposed Status We should make a strong effort for Senate language.
for Conference: New House language, could prohibit all surface
 mining in or around alluvial valley floors.

Rationale of
Administration
Position:

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

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

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

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

THE WHITE HOUSE

WASHINGTON

May 3, 1975

MEMORANDUM FOR: THE PRESIDENT
FROM: JIM CANNON *JC*
SUBJECT: STRIP MINING LEGISLATION

The Senate-House Conference Committee has reported out a compromise bill which will be taken up by the Senate on Monday and the House on Wednesday.

We anticipate that by Monday there will be (a) many questions as to your position on the bill, and (b) pressure from opponents of the bill for you to signal a veto so that a higher negative vote can be built up.

The Conference Results

Tab A summarizes the results on substantive changes from last year's bill. Tab B is a preliminary estimate of production and other impacts of the bill. However, Frank Zarb wants to look more carefully at the energy impacts before giving a recommendation on signing or veto.

Briefly:

- Success or good progress was achieved on six of the eight critical changes requested from last year's bill.
- Two new problems were created: State control over Federal lands and bans on mining in alluvial valleys. The seriousness of the alluvial valley provision will depend on court resolution of an inconsistency between restrictive bill language and a loose report interpretation.
- The experts' preliminary estimates of production losses (51-162 million tons) are about the same as for last year's bill. However, the progress that has been made should help keep losses in the lower end of the range.



Arguments

The arguments for and against the bill will remain essentially the same:

For: It's good environmentally, will back up state regulatory activities, stop bad strip mining practices and reclaim land, including abandoned lands; politically difficult to oppose; and sustaining a veto may not be possible.

Against: The bill creates another Federal-state regulatory system and bureaucracy; it's a long, ambiguous bill which invites years of litigation; compared to no bill, there will be adverse impacts on coal production, oil imports, electric bills and employment; restrains western coal development; and will put small mines in Appalachia out of business.

Expected Agency Positions

We expect Rog Morton, EPA, CEQ, and Agriculture to recommend signing the bill. Treasury and Commerce probably will continue to favor a veto. As indicated, Frank Zarb hasn't decided.

Hill Situation

The Senate passed its bill by 84-13 and the House by 333-86. Since then, the miners' Washington demonstration and an intensified lobbying effort apparently have changed some votes. Opponents of the bill are claiming that at least 150 votes could be produced to sustain a veto in the House. At present, Congressional Relations staff believes this count is optimistic and that sustaining a veto probably will be extremely difficult.

Recommendation

Frank Zarb and I recommend that you do not take a position on the bill before the House and Senate votes. Instead, the burden should be left on the opponents to demonstrate what they can do. Administration spokesmen would say that we are continuing to assess the Conference bill (which just became available late Friday, May 2) and that you have made no decision.

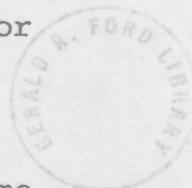
The Congressional Relations Staff is pooling the Senate and House leadership and will have a report for you over the weekend or early Monday. They will also ask on Monday for a House whip check.

Decision: Do not signal position.

_____ Agree

_____ Disagree

_____ See me



TAB A

SUMMARY RESULTS - CONFERENCE BILL

A. Action on changes from vetoed bill identified as "critical to overcome objections".

Subject & Proposed Change

Conference Bill

- | | |
|--|---|
| 1. <u>Citizen Suits</u>
Narrow the scope | Adopted |
| 2. <u>Stream Siltation</u>
Remove prohibition against increased siltation | Partially adopted |
| 3. <u>Hydrologic Balance</u>
Remove prohibition against disturbances | Partially adopted |
| 4. <u>Ambiguous Terms</u>
Specific authority for Secretary to define | Not adopted but other changes make this much less important |
| 5. <u>Abandoned Mine Reclamation Fund</u>
. Reduce 35¢-25¢ to 10¢
. Limit use of fund to reclamation | Fee reduced on some coal
Uses broadened |
| 6. <u>Impoundments (Dams)</u>
Modify virtual prohibition on impoundments | Changed enough to be acceptable |
| 7. <u>National Forests</u>
Allow mining in certain circumstances | Rejected |
| 8. <u>Special Unemployment Provisions</u>
Delete as unnecessary and precedent setting | Adopted |

B. Two new problems created in this year's bill

1. Senate floor debate indicates that the language of the bill can be constructed to permit states to ban surface coal mining on Federal lands. The House took the opposite view in floor debate. Not dealt with in the Conference report. Believed to be a major problem.
2. The Conference adopted a provision prohibiting location of a mining operation in an alluvial valley floor which may prevent expected production and lock up major coal reserves in the West.

C. Action on changes from vetoed bill identifies as "needed to reduce further the potential for unnecessary production impact and to make the legislation more workable and effective".

<u>Subject & Proposed Change</u>	<u>Conference Bill</u>
1. <u>Antidegradation</u> Delete requirements	Adopted
2. <u>Abandoned Mine Reclamation Fund</u>	
• Require 50/50 cost sharing	Rejected
• Eliminate grants for privately owned lands	Broadened
3. <u>Interim Program Timing</u>	
• Reduce potential for mining delays	Rejected
• Allow operations under interim permit if regulatory agency acts slowly	Adopted
4. <u>Federal Preemption</u> Encourage states to take up regulatory role	Rejected
5. <u>Surface Owner Consent</u> Rely on existing law	Rejected

Subject & Proposed Change

Conference Bill

6. State Control over Federal lands
(Now a serious problem - discussed
in B.1, above)
7. Funding for Research Centers
Delete as unnecessary
8. Alluvial Valley Floors
(Now a serious problem - discussed
in B.2, above)
9. Designation of areas as
unsuitable for mining
Expedite review and avoid
frivolous petitions
10. Hydrologic Data
Authorize waiver in some case where
unnecessarily burdensome
11. Variances
Broaden variances for certain
post-mining uses and equipment
shortages
12. Permit Fee
Permit paying over time rather
than pre-mining
13. Contracting for reclamation
Delete requirement that contracts
go to those put out of work by bill
14. Coal Sales by Federal Lessee
Delete requirement that lessee must
not deny sale of coal to any class
of purchaser
15. Appropriations Authority
Use regular appropriations authority
rather than contract authority
16. Indian Lands
Clarify to assure no Federal control
over non-Federal Indian land

Rejected

Partially adopted

Rejected

Rejected

Adopted

Adopted

Requirement softened

Rejected

Adopted

Subject & Proposed Change

Conference Bill

17. Interest charge on civil Penalties
Adopt sliding scale to minimize
incentive for delaying payments

Adopted

18. Mining within 500 feet of active mines
Permit where it can be done safely

Rejected

19. Haul Roads
Clarify restriction on connections
with public roads

Adopted

TAB B



IMPACT OF THE CONFERENCE BILL ON COAL PRODUCTION,
RESERVES, OIL IMPORTS, DOLLAR OUTFLOW,
JOBS AND HIGHER COSTS

Conference
Bill

1. Loss of coal production during first full year of application -- based on expectation of 330 million tons of strip production and 685 million tons of total production if there were no bill. (does not cover potential losses from delays due to litigation or restrictive interpretation of ambiguous provisions):

In millions of tons:

. Small Mines	22-52
. Restrictions on steep slopes, siltation, aquifers	7-44
. Alluvial valley floor restrictions	<u>22-66</u>
<u>Total</u> - 1st full year of application	51-162
(% of production-estimated at 685 <u>million</u> tons.)	7-24%

(Note: Administration bill would also have impacted coal production -- in the range of 33-80 million tons.) By way of contrast, the vetoed bill involved a potential production loss of 48-141 million tons and the Administration's bill could reduce expected production by 33-80 million tons.

2. Lock up of coal reserves.* The U.S. demonstrated reserve base which are potentially mineable by surface methods is 137 billion tons. Estimate reserve losses are (billion tons):

. Alluvial valley floor provisions (includes losses from national forest provisions of 6.3 billion and surface owners provisions of 0-14.2 billion)	22.0-66.0
. National forest (outside alluvial valleys)	.9-.9
. Other provisions (e.g., steep slopes)	<u>0-6.5</u>
<u>Total</u> - <u>billion</u> tons	22.9-73.4

*Note: Remaining strippable reserves would be many times expected annual production.

Conference
Bill

3. <u>Increased oil imports and dollar outflow</u> - assuming 80% of lost coal production was replaced by oil. (20% by underground mining.)	
. <u>million</u> barrels per year (4.3 barrels per ton of coal)	176-559
. dollar value (\$11 per barrel) - <u>billions</u>	1.9-6.1
4. <u>Job losses*</u> (assuming 36 tons per day per miner and 225 work days per year; and .8 non-mining jobs per miner)	
. direct job losses -	6,000 to 20,000
. indirect job losses -	5,000 to 16,000
Total	11,000 to 36,000
5. <u>Inflationary Impact</u> - In addition to higher cost foreign oil -- would include (in millions). Assumes 60 million tons strip mining loss.	
. Fee for reclamation fund	\$145 to \$155
. Higher strip mining production and reclamation costs (estimated at 60-80¢ per ton)	\$162 to \$216
. Costs of Federal and State program administration (not including unem- ployment compensation)	\$90

*Does not reflect possible offset for job increases due to (a) reclamation work or lower productivity per man in strip mining, or (b) possible increases in underground mining which probably will occur to offset part of the strip mining production loss. Employment gains for underground mining will be some years off due to time required to open mines.

