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THE WHITE HOUSE

WASHINGTON

DECISION

April 21, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

*Handwritten signature of Jim Cannon*

SUBJECT: STRIP MINING ACTIVITIES

House-Senate Conferees began meeting on strip mining bills on Wednesday, April 16 and Friday, April 18. They meet again next Tuesday, April 22 and may reach agreement on a bill before the end of the week.

This memorandum is to: (a) report on the House and Senate bills, (b) comment on the outlook for Conference actions, and (c) seek your decision as to whether additional steps should be taken to influence the Conference or to posture the Administration for acceptance or veto of the bill.

Briefly, the problem before us is a complex bill that will create another major Federal-State regulatory system and have serious adverse impact on coal production and other objectives. Despite this and your veto of last year's bill, the Administration has been unable to get significant improvements and it will be very difficult to sustain a veto. The public perceives the environmental benefits of the bill but not the adverse impacts, so there are significant political liabilities in further opposition to the bill.

THE BILLS PASSED BY THE SENATE (84-13) AND HOUSE (333-86)

Changes from last year's bill. Your February 6, 1975, letter (copy at Tab A) transmitting the Administration's bill indicated that eight changes were "critical to overcome objections" which led to your veto, and that additional changes were needed to reduce unnecessary production impact and make the bill more effective and workable.

The table at Tab B shows the results of House and Senate action. Briefly, it shows that:

- . Three serious new problems were created in one house or the other. All three affect the potential for Western coal development by locking up reserves and

reducing expected production. They involve:

- Making Federal coal lands subject to State law and regulation, including bans on mining.
- Restrictions on mining of alluvial valley floors.
- Establishing a precedent in Federal law with respect to water rights by requiring that a mining permit applicant demonstrate ability to replace interrupted water supplies.

. Of the eight critical changes:

- None were fully adopted by both houses.
- Two were partially adopted by both houses:
  - . Partial lifting of prohibition on sediment increases.
  - . Modified restrictions on location of impoundments (dams).
- Two were fully adopted by one house:
  - . Narrowing of citizen suits.
  - . Eliminating special unemployment provisions.
- Three were partially adopted or partially covered in report language in one house:
  - . Restriction on impacting hydrologic balance.
  - . Authority to define ambiguous terms.
  - . Reducing the tax on coal for a reclamation fund -- (but the permissible uses of the fund were broadened).
- One change -- to permit mining on national forest lands under certain conditions -- was specifically rejected by both houses.

. Of the nineteen other changes requested, (a) four were fully accepted and one partially accepted in both houses, (c) three were partially accepted in one house, (d) seven were rejected in both houses, and (e) two were made worse in one house.

Impact of the bills on coal production and reserves, oil imports, unemployment and inflation. Interior and FEA have estimated the bill's adverse impacts which are summarized below and provided in more detail at Tab C:

S. 7

H.R. 25

. Loss of coal production in the first full year of application, not including potential impact of delays from litigation or restrictive interpretations of ambiguous provisions:

- |                                    |           |           |
|------------------------------------|-----------|-----------|
| - in millions of tons -----        | 40-162    | 62-162    |
| - as % of expected 1977 production | 5% to 22% | 8% to 22% |

(The vetoed bill involved a potential production loss of 48-141 million tons, and the Administration's bill 33-80 million tons.)

- . Lock-up of coal reserves, principally because of restrictions on mining in alluvial valley floors:
  - in billions of tons ----- 12-72 33-72
  - as % of demonstrated surface mineable reserve of 137 billion tons ----- 9% to 53% 24% to 53%
  
- . Increased oil imports, assuming 80% of lost coal production is replaced by oil.
  - millions of barrels per year 138-559 215-559
  - dollar value - billions \$1.5 to \$6.1 \$2.4 to \$6.1
  
- . Job Losses - direct and indirect 9,000 to 36,000 14,000 to 36,000
  
- . Inflationary Impact - in addition to higher cost foreign oil would include (in millions)
  - Fee for reclamation fund \$130 \$204
  - Higher production and reclamation costs \$171 \$171
  - Federal & State Program Administration \$110 to \$160 \$100 to \$160

#### THE CONFERENCE

Administration Actions. Detailed position papers outlining Administration position rationale on 29 specific issues subject to Conference action have been provided to Senator Fannin, Congressman Steiger and other minority Conferees. If the positions in these papers are adopted, estimated adverse effects will be reduced.

Conference Action. In meetings, on April 16 and 18, the Conferees agreed on a number of less important items; agreed on a "reclamation fund" tax of 15¢ per ton on deep-mined coal and 35¢ per ton for surface mined coal except lignite which is to be taxed at 5% of value (now selling for \$3-4 per ton), and agreed on some changes in alluvial valley provisions. The meaning and impact of the latter changes are still in sharp dispute.

Prediction. It is too early to predict the outcome with any certainty, but our current estimate with respect to other "critical" changes and new problems are that:

- . Problems involving State control over Federal lands, and water rights may be mitigated somewhat but will remain serious.
- . The Administration position probably will not be adopted with respect to citizen suits or special unemployment provisions.
- . Changes or report language will be adopted to (a) reduce the effect of restrictions on siltation, hydrologic impact, and impoundments; and (b) indicate that current law permits defining ambiguous terms in regulations.

The Administration position has been rejected with respect to mining in national forests; to limit the excise tax to 10¢; and limit use of the reclamation fund only for reclamation.

The net result probably will be a bill that is very similar in acceptability to last year's bill. However, it is still possible the Conferees could vote out a bill that is somewhat better or worse.

#### IMPACT OF THE MINERS' DEMONSTRATION

The objectives of the recent miners' demonstration apparently were to, (a) highlight the impact of steep slope restrictions and permit applications on small mine operators in Appalachia, (b) emphasize expected unemployment, (c) point out that many states have adopted their own strip mining controls, (d) urge you to veto the bill, and (e) urge members to vote to sustain a veto. The Congressional Relations Staff indicates the impact of the demonstration is not yet clear but that it impressed some members. The demonstration was sponsored principally by small mine operators.

#### OVERALL OUTLOOK FOR THE BILL

Support for the bill is still strong particularly among environmentalists who contend that its impacts on production, unemployment, etc., are grossly overstated. The inconsistency between the bill and the goal for increased coal production is not widely perceived.

Congressman Burton is a strong proponent of the bill and it is likely that the Democratic caucus will continue to support passage of a rigorous bill.

At present, the Congressional Relations Staff believes it will be very difficult to sustain a veto.

#### CUMULATIVE EFFECT OF NEGATIVE ENVIRONMENTAL DECISIONS

In reaching your position on surface mining legislation, you may want to consider (a) the continued national popularity of environmental objectives, and (b) the cumulative impact of a number of your decisions affecting environmentalists' concerns. These include the veto of last year's strip mining bill, clean air amendments, the Interior Secretary appointment, the land use legislation issue, and the leasing and development of oil and gas on the OCS and coal in the West.

#### ISSUE FOR DECISION

Should additional actions be taken by the Administration to try to improve the bill in Conference or to posture the Administration for acceptance or veto?

Alt. #1: Try to cut losses with a conciliatory approach to Conferees. Obtain prompt Morton, Zarb and Train agreement on a small number of changes that would be sought in a "last ditch" attempt to influence the Conference bill. Approach Conferees now either through (a) personal contact by the three principals, or (b) a conciliatory letter from you or the principals. Follow immediately with negotiations, preferably by a principal authorized to commit you to accept a bill if Conferees make concessions.

##### Pro

- . Takes advantage of any flexibility Conferees may be willing to exercise (e.g., changes in report language).
- . Positions Administration to accept a bill that it probably will get anyway.

##### Con

- . May be construed as caving in, thus weakening chances of getting additional changes.
- . Any changes accepted by Conferees will narrow basis for veto.

Alt. #2: Presidential hard line attempt to influence the Conferees. On Monday, dispatch a Presidential letter to Conferees which (a) continues position in February 6 letter, (b) reiterates changes needed to avoid a veto, and (c) lays out for the public the case against the bill. A draft letter is enclosed at Tab D. (Hopefully, this draft will provide you a basis for evaluating the strength of the opposition case -- in terms of impact on the public and Congress -- if you are leaning towards a veto.)

Pro

- . Makes clear your intent to continue pushing for a better bill.
- . Should attract press and public attention to issues and may influence some Conferees.
- . Provides a rallying point for opponents of undesirable features of the bill.

Con

- . May harden positions of proponents even more.
- . Reduces options for accepting the bill later.
- . Will further anger environmentalists.

Alt. #3: Zarb (or Morton) hard line attempt to influence the Conferees, followed by an attempt to negotiate an agreement on selected changes. Move early Monday with a Zarb letter to Conferees and/or a press briefing indicating your serious concerns over the bill (but not indicating you have decided to veto the bill); seek maximum publicity to put pressure on Conferees; and follow-up with a Zarb attempt to get Conferees to accept a few significant changes -- as in Alt. #1.

Pro

- . Would put additional pressure on Conferees and provide rallying point for opposition forces.
- . Keeps open, more than Alt. #2, your options to accept the bill later.

Con

- . Will anger environmentalists.
- . Will make it more difficult to explain acceptance of bill if you decide to sign it.

- Alt. #4: Make no significant moves now. Continue current work with Conferees, maintaining position in February 6 letter. Immediately assess final results of Conference and decide then whether to:
- A. Begin posturing to accept or veto the bill through an announcement of your intentions before floor votes; or
  - B. Wait for final Congressional action before deciding acceptance or veto.

Pro

- . Additional action now will have little affect on the Conference bill, and may stiffen proponents resolve.
- . Keeps options open to accept or veto the bill.

Con

- . Passes up the last opportunity to influence contents of the bill -- short of a sustained veto.
- . Passes up an opportunity to begin positioning to accept the bill or to sway marginal votes against undesirable features of the bill.

RECOMMENDATIONS AND DECISION

Train, Peterson Alt. #1. Try to cut losses with a conciliatory approach to Conferees.

Simon Alt. #2. Presidential hard-line attempt to influence the Conferees.

*MR 7*  
Zarb, Friedersdorf, Buchen, Cannon, Greenspan, Marsh Alt. #3. Zarb (or Morton) hard line attempt to influence Conferees, followed by an attempt to negotiated selected changes.

Morton Alt. #4. Make no significant moves now.

Jim Lynn believes that you must first make a threshold decision to lean toward accepting or toward vetoing the bill. If it is to accept, he sees no problem with either Alternative 1, 3 or 4. If it is to veto, he believes Alt. #2 is the best approach, though he recommends revising the TAB D letter to give additional emphasis to the positive steps you have taken to get legislation which will protect the environment against strip mining abuses.



TAB A

THE WHITE HOUSE

WASHINGTON

February 6, 1975

Dear Mr. Speaker:

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

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

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

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

- . Caused inflationary impacts because of increased coal costs and Federal expenditures for activities which, however desirable, are not necessary at this time.
- . Failed to correct other deficiencies that had been pointed out in executive branch communications concerning the bill.

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

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

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

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

Sincerely,

A handwritten signature in black ink, reading "Gerald R. Ford". The signature is written in a cursive style with a large, prominent "G" at the beginning.

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

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

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

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

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

Critical changes.

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

2. Stream siltation. S. 425 would prohibit increased stream siltation -- a requirement which would be extremely difficult or impossible to meet and thus could preclude mining activities. In the Administration's bill, this prohibition is modified to require the maximum practicable limitation on siltation.
3. Hydrologic disturbances. S. 425 would establish absolute requirements to preserve the hydrologic integrity of alluvial valley floors -- and prevent offsite hydrologic disturbances. Both requirements would be impossible to meet, are unnecessary for reasonable environmental protection and could preclude most mining activities. In the Administration's bill, this provision is modified to require that any such disturbances be prevented to the maximum extent practicable so that there will be a balance between environmental protection and the need for coal production.
4. Ambiguous terms. In the case of S. 425, there is great potential for court interpretations of ambiguous provisions which could lead to unnecessary or unanticipated adverse production impact. The Administration's bill provides explicit authority for the Secretary to define ambiguous terms so as to clarify the regulatory process and minimize delays due to litigation.
5. Abandoned land reclamation fund. S. 425 would establish a tax of 35¢ per ton for underground mined coal and 25¢ per ton for surface mined coal to create a fund for reclaiming previously mined lands that have been abandoned without being reclaimed, and for other purposes. This tax is unnecessarily high to finance needed reclamation. The Administration bill would set the tax at 10¢ per ton for all coal, providing over \$1 billion over ten years which should be ample to reclaim that abandoned coal mined land in need of reclamation.

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

6. Impoundments. S. 425 could prohibit or unduly restrict the use of most new or existing impoundments, even though constructed to adequate safety standards. In the Administration's bill, the provisions on location of impoundments have been modified to permit their use where safety standards are met.
7. National forests. S. 425 would prohibit mining in the national forests -- a prohibition which is inconsistent with multiple use principles and which could unnecessarily lock up 7 billion tons of coal reserves (approximately 30% of the uncommitted Federal surface-minable coal in the contiguous States). In the Administration bill, this provision is modified to permit the Agriculture Secretary to waive the restriction in specific areas when multiple resource analysis indicates that such mining would be in the public interest.
8. Special unemployment provisions. The unemployment provision of S. 425 (1) would cause unfair discrimination among classes of unemployed persons, (2) would be difficult to administer, and (3) would set unacceptable precedents including unlimited benefit terms, and weak labor force attachment requirements. This provision of S. 425 is inconsistent with P.L. 93-567 and P.L. 93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. The Administration's bill does not include a special unemployment provision.

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

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

2. Reclamation fund. S. 425 would authorize the use of funds to assist private landowners in reclaiming their lands mined in past years. Such a program would result in windfall gains to the private landowners who would maintain title to their lands while having them reclaimed at Federal expense. The Administration bill deletes this provision.
3. Interim program timing. Under S. 425, mining operations could be forced to close down simply because the regulatory authority had not completed action on a mining permit, through no fault of the operator. The Administration bill modifies the timing requirements of the interim program to minimize unnecessary delays and production losses.
4. Federal preemption. The Federal interim program role provided in S. 425 could (1) lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and (2) discourage States from assuming an active permanent regulatory role, thus leaving such functions to the Federal government. During the past few years, nearly all major coal mining States have improved their surface mining laws, regulations and enforcement activities. In the Administration bill, this requirement is revised to limit the Federal enforcement role during the interim program to situations where a violation creates an imminent danger to public health and safety or significant environmental harm.
5. Surface owner consent. The requirement in S. 425 for surface owner's consent would substantially modify existing law by transferring to the surface owner coal rights that presently reside with the Federal government. S. 425 would give the surface owner the right to "veto" the mining of Federally owned coal or possibly enable him to realize a substantial windfall. In addition, S. 425 leaves unclear the rights of prospectors under existing law. The Administration is opposed to any provision which could (1) result in a lock up of coal reserves through surface owner veto or (2) lead to windfalls. In the Administration's bill surface owner and prospector rights would continue as provided in existing law.
6. Federal lands. S. 425 would set an undesirable precedent by providing for State control over mining of Federally owned coal on Federal lands. In the Administration's bill, Federal regulations governing such activities would not be preempted by State regulations.



7. Research centers. S. 425 would provide additional funding authorization for mining research centers through a formula grant program for existing schools of mining. This provision establishes an unnecessary new spending program, duplicates existing authorities for conduct of research, and could fragment existing research efforts already supported by the Federal government. The provision is deleted in the Administration bill.
8. Prohibition on mining in alluvial valley floors. S. 425 would extend the prohibition on surface mining involving alluvial valley floors to areas that have the potential for farming or ranching. This is an unnecessary prohibition which could close some existing mines and which would lock up significant coal reserves. In the Administration's bill reclamation of such areas would be required, making the prohibition unnecessary.
9. Potential moratorium on issuing mining permits. S. 425 provides for (1) a ban on the mining of lands under study for designation as unsuitable for coal mining, and (2) an automatic ban whenever such a study is requested by anyone. The Administration's bill modifies these provisions to insure expeditious consideration of proposals for designating lands unsuitable for surface coal mining and to insure that the requirement for review of Federal lands will not trigger such a ban.
10. Hydrologic data. Under S. 425, an applicant would have to provide hydrologic data even where the data are already available -- a potentially serious and unnecessary workload for small miners. The Administration's bill authorizes the regulatory authority to waive the requirement, in whole or in part, when the data are already available.
11. Variiances. S. 425 would not give the regulatory authority adequate flexibility to grant variiances from the lengthy and detailed performance specifications. The Administration's bill would allow limited variiances -- with strict environmental safeguards -- to achieve specific post-mining land uses and to accommodate equipment shortages during the interim program.
12. Permit fee. The requirement in S. 425 for payment of the mining fee before operations begin could impose a large "front end" cost which could unnecessarily prevent some mine openings or force some operators out of business. In the Administration's bill, the regulatory authority would have the authority to extend the fee over several years.

13. Preferential contracting. S. 425 would require that special preference be given in reclamation contracts to operators who lose their jobs because of the bill. Such hiring should be based solely on an operators reclamation capability. The provision does not appear in the Administration's bill.
14. Any Class of buyer. S. 425 would require that lessees of Federal coal not refuse to sell coal to any class of buyer. This could interfere unnecessarily with both planned and existing coal mining operations, particularly in integrated facilities. This provision is not included in the Administration's bill.
15. Contract authority. S. 425 would provide contract authority rather than authorizing appropriations for Federal costs in administering the legislation. This is unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Control Act. In the Administration's bill, such costs would be financed through appropriations.
16. Indian lands. S. 425 could be construed to require the Secretary of the Interior to regulate coal mining on non-Federal Indian lands. In the Administration bill, the definition of Indian lands is modified to eliminate this possibility.
17. Interest charge. S. 425 would not provide a reasonable level of interest charged on unpaid penalties. The Administration's bill provides for an interest charge based on Treasury rates so as to assure a sufficient incentive for prompt payment of penalties.
18. Prohibition on mining within 500 feet of an active mine. This prohibition in S. 425 would unnecessarily restrict recovery of substantial coal resources even when mining of the areas would be the best possible use of the areas involved. Under the Administration's bill, mining would be allowed in such areas as long as it can be done safely.
19. Haul roads. Requirements of S. 425 could preclude some mine operators from moving their coal to market by preventing the connection of haul roads to public roads. The Administration's bill would modify this provision.

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

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

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

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

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

TAB B

SUMMARY OF RESULTS OF HOUSE AND SENATE ACTION

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

<u>Subject &amp; Proposed Change</u>	<u>Senate</u>	<u>House</u>
1. <u>Citizen Suits</u> Narrow the scope	Adopted	Rejected
2. <u>Stream Siltation</u> Remove prohibition against increased siltation	Partially adopted	Partially adopted
3. <u>Hydrologic Balance</u> Remove prohibition against disturbances	Partially adopted	Rejected
4. <u>Ambiguous Terms</u> Specific authority for Secretary to define	Partially covered in Sen. rpt.	Rejected
5. <u>Abandoned Mine Reclamation Fund</u> . Reduce 35¢-25¢ to 10¢	Rejected	Fee reduced on some coal
. Limit use of fund to reclamation	Uses broadened	Uses broadened
6. <u>Impoundments (Dams)</u> Modify virtual prohibition on impoundments	Adopted	Rewritten to provide Corps of Engrs. authority and standards
7. <u>National Forests</u> Allow mining in certain circumstances	Rejected	Rejected
8. <u>Special Unemployment Provisions</u> Delete as unnecessary and precedent setting	Rejected	Adopted

B. Three significant new problems -- not previously on the "critical" list.

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 takes the opposite view.
2. The House adopted a provision prohibiting location of a mining operation in an alluvial valley floor which is expected to prevent expected production and lock up major coal reserves in the West.
3. In addition to a tough provision requiring replacement of water affected by a mining operation, the House added a new provision requiring either (a) written consent to mining by offsite owners of water rights, or (b) ability and willingness to provide substitute water. Agency experts believe provision is inconsistent with state law, would be difficult to handle administratively, and would involve burden of proof problems.

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 &amp; Proposed Change</u>	<u>Senate</u>	<u>House</u>
1. <u>Antidegradation</u> Delete requirements	Adopted	Adopted
2. <u>Abandoned Mine Reclamation Fund</u> . Require 50/50 cost sharing . Eliminate grants for privately owned lands	Rejected Broadened	Rejected Broadened
3. <u>Interim Program Timing</u> . Reduce potential for mining delays . Allow operations under interim permit if regulatory agency acts slowly	Rejected Adopted	Rejected Adopted
4. <u>Federal Preemption</u> Encourage states to take up regulatory role	Rejected	Not adopted but report supports concept



<u>Subject &amp; Proposed Change</u>	<u>Senate</u>	<u>House</u>
5. <u>Surface Owner Consent</u> Rely on existing law	Rejected	Rejected (water rights provision added; Sec.B.3, above)
6. <u>State Control over Federal lands</u> (Now a serious problem - discussed in B.1, above)		
7. <u>Funding for Research Centers</u> Delete as unnecessary	Rejected	Rejected
8. <u>Alluvial Valley Floors</u> (Now a serious problem - discussed in B.2, above)		
9. <u>Designation of areas as unsuitable for mining</u> Expedite review and avoid frivolous petitions	Partially adopted	Rejected
10. <u>Hydrologic Data</u> Authorize waiver in some case where unnecessarily burdensome	Rejected	Rejected
11. <u>Variiances</u> Broaden variances for certain post-mining uses and equipment shortages	Rejected	Rejected
12. <u>Permit Fee</u> Permit paying over time rather than pre-mining	Adopted	Adopted
13. <u>Contracting for reclamation</u> Delete requirement that contracts go to those put out of work by bill	Rejected	Rejected
14. <u>Coal Sales by Federal Lessee</u> Delete requirement that lessee must not deny sale of coal to any class of purchaser	Rejected	Requirement softened

<u>Subject &amp; Proposed Change</u>	<u>Senate</u>	<u>House</u>
15. <u>Appropriations Authority</u> Use regular appropriations authority rather than contract authority	Rejected	Rejected
16. <u>Indian Lands</u> Clarify to assure no Federal control over non-Federal Indian land	Adopted	Rejected. Also, new Indian lands program adopted
17. <u>Interest charge on civil Penalties</u> Adopt sliding scale to minimize incentive for delaying payments	Adopted	Adopted
18. <u>Mining within 500 feet of active mines</u> Permit where it can be done safely	Rejected	Rejected
19. <u>Haul Roads</u> Clarify restriction on connections with public roads	Adopted	Adopted

TAB C

IMPACT OF THE HOUSE AND SENATE PASSED BILLS  
ON COAL PRODUCTION, RESERVES, OIL IMPORTS,  
DOLLAR OUTFLOW AND JOBS

S. 7                      H.R. 25

1. Loss of coal production in the first full year of the bills' application (covers only those features for which estimates can be made; does not cover potential losses from delays due to litigation or restrictive interpretation of ambiguous provisions):

In millions of tons:

. Small Mines	22- 52	22- 52
. Restrictions on steep slopes, siltation, aquifers	7- 44	7- 44
. Alluvial valley floor restrictions	<u>11- 66</u>	<u>33- 66</u>
 Total	 40-162	 62-162
(% of 1977 production-estimated at 750 <u>million</u> tons.)	5- 22%	8- 22%

(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)	10.8-65.0	32.5-65.0
. National forest (outside alluvial valleys)	.9	.9
. Other provisions (e.g., steep slopes)	<u>0- 6.5</u>	<u>0- 6.5</u>
 Total - <u>billion</u> tons	 11.7-72.4	 33.4-72.4

S. 7

H.R. 25

3. <u>Increased oil imports and dollar outflow - assuming 80% of lost coal production was replaced by oil. (20% by underground mining.)</u>		
. <u>million</u> barrels per year (4.3 barrels per ton of coal)	138-559	215-559
. dollar value (\$11 per barrel) - <u>billions</u>	1.5-6.1	2.4-6.1
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 -	5,000 to 20,000	8,000 to 20,000
. indirect job losses -	4,000 to <u>16,000</u>	6,000 to <u>16,000</u>
Total	9,000 to 36,000	14,000 to 36,000
5. <u>Inflationary Impact</u> - In addition to higher cost foreign oil -- would include (in <u>million</u> ).		
. Fee for reclamation fund	\$130	\$204
. Higher production and reclamation costs	\$171	\$171
. Costs of Federal and State program administration	\$110 to \$160	\$100 to \$160

TAB D

THE WHITE HOUSE

DRAFT

WASHINGTON

Dear Mr. Chairman:

On February 6, 1975, I transmitted to the Congress a proposed surface mining bill which would strike a balance between our objective of improving environmental quality and other national objectives including increased energy independence and a strong economy.

I am pleased that some of the changes from last year's bill that I recommended have been adopted by one or both Houses and are now being considered by the Conference Committee. However, I want to reiterate my concern about the bills before the Committee, stress the importance of the Committee's action for all the people of the Nation, and identify changes that are needed to produce an acceptable bill.

I favor action to protect the environment and reclaim land disturbed by surface mining of coal and to prevent abuses that have accompanied such surface mining in the past. But we must also recognize that surface mining legislation also involves other fundamental national objectives and issues including (a) energy independence, (b) outflow of dollars to other nations, (c) unemployment, (c) higher consumer costs, particularly for electricity, and (e) the expanding role of the Federal Government in some areas where it is not necessary to achieve national objectives.

I recommend strongly that the Conferees weigh carefully the developments affecting these important issues that have occurred since the Congress began considering this legislation.

1. Energy Requirements. The Nation must take steps through energy conservation and increased domestic energy production to stem our growing dependence on foreign oil which is (a) increasing our vulnerability to serious disruption from another oil embargo, and (b) increasing the outflow of U.S. dollars (and jobs) for oil imports.

Increased domestic coal production is one essential step. I have called for doubling coal production -- reaching 1.2 billion tons by 1985. The energy plan advanced by

the Congressional democratic leadership calls for 1985 production of 1.37 billion tons. There is now a serious risk that the Conference could adopt a bill that is inconsistent with those goals.

Interior and FEA estimate that the Senate-passed bill (S. 7) would reduce expected coal production by 40 to 162 million tons (5 to 22%) in the first full year of its application; and that the House-passed bill (H.R. 25) would reduce production by 62-162 million tons (8 to 22%). These estimates do not include potential delays from litigation or stringent interpretation of ambiguous provisions of the bill.

Each ton of coal is equivalent in energy value to roughly 4.3 barrels of oil. If the legislation were to result in loss of only 50 million tons of coal per year, alternative energy equivalent to 215 million barrels of oil would have to be obtained from other sources. Importing that amount of oil will increase dollar outflow by more than \$2.3 billion dollars and cost more than 10,000 jobs. The loss in domestic energy production could more than offset the results of our energy conservation actions.

2. Inflationary Impact. Consumers have already been subjected to higher costs because of our heavy reliance on expensive foreign oil. If domestic coal, which is used primarily in producing electricity, must be replaced by foreign oil, consumer costs will be forced still higher. In addition, consumer prices or taxes would reflect the added cost of \$130 to \$204 million in taxes on coal, \$171 million in increased coal production and reclamation costs, and \$100 to \$160 million for Federal and State government activities to carry out requirements of the bills.

Unnecessary burdens of the legislation will fall most heavily on small mining operations and may put many out of business. This runs the risk of lessening competition in the coal industry and could contribute to higher prices.

3. Unemployment. As indicated above, greater outflow of dollars means loss of jobs in the United States. In addition, Interior and EPA estimate that jobs lost as a result of legislation would range from 9,000 to 36,000 in the case of the Senate bill and 14,000 to 36,000 in the case of the House bill. These employment losses would hit hard in those areas such as Appalachia that have been struggling to improve their economic conditions. It is true that some jobs would be created by the requirements to reclaim areas abandoned in the past but this would involve dislocation of employees and fewer job gains than losses.



4. Actions already taken by States. All of the twelve leading surface mining states -- which account for about 98% 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 12 leading surface coal producers -- have enacted or strengthened their surface mining laws. In addition, a survey conducted by the staff of the Council on Environmental Quality indicates that the leading coal producing states have tightened up their regulations and increased their regulatory staff.

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

Beyond minimum standards and requirements necessary for the national interest, the States should have the freedom to adopt standards which take into account widely varying conditions in their states and reflect desires of their citizens. We should avoid to the maximum extent possible setting national requirements that do not take state differences into account or which unnecessarily superimpose Federal requirements and Federal enforcement activities.

5. Locking up domestic coal. In addition to near term reduction in expected coal production, Interior and FEA have estimated that the Senate passed bill has the potential of preventing mining of 12 to 72 billion tons of coal and the House passed bill from 33 to 72 billion tons. These amounts constitute 9 to 53% of the total 137 billion tons of coal in the Nation's demonstrated reserve base which are potentially mineable by surface methods.

I urge the Conferees to take these developments into account and to report a bill which achieves a balance among our national objectives.

My February 6, 1975, letter identifies changes from last year's bill which are needed to reduce unnecessary impact and to achieve a workable and effective bill. I call your attention particularly to the need to:

- . Modify citizen suit provisions to avoid unnecessary and unacceptable production delays or curtailments.
- . Change hydrologic disturbance provisions to avoid requirements which would be impossible to meet, are unnecessary to provide reasonable environmental protection, or which would preclude most mining activities .

- . Reduce the excise tax on coal to 10¢ per ton because this amount would be adequate to support a fund for reclamation of abandoned surface mined lands.
- . Remove the special unemployment provisions which would result in unfairly discriminating among classes of unemployed persons, would set undesirable precedents, and are inconsistent with unemployment program modifications signed into law on December 31, 1974.
- . Make clear that State laws and regulations do not cover Federal coal lands.
- . Avoid requirements that precludes mining in alluvial valley floors which could lock up surface mineable coal reserves.
- . Avoid setting new precedents with respect to water rights.
- . Permit surface mining on national forest lands when this is found to be in the national interest.

Administration officials stand ready to work with you to discuss these and other changes, with the objective of developing legislation that is in the overall best interest.

Sincerely,

THE WHITE HOUSE

WASHINGTON

April 21, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

JIM CANNON

FROM:

JERRY H. JONES 

SUBJECT:

Strip Mining Activities

Your memorandum to the President of April 21 on the above subject has been reviewed and Alt. #3 -- Zarb (or Morton) hard line attempt to influence Conferees, followed by an attempt to negotiated selected changes -- was approved.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld