HEARING, FEBRUARY 24 and 25, 1977
Legislative History
February 24 and 25, 1977 Hearing

Following is the February 24 and 25, 1977 hearing before the House of Representatives SubCommittee on Energy and the Environment of the Committee on Interior and Insular Affairs. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

HEARING: SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES BILL-NO: H.R. 2, 95TH CONGRESS, 1ST SESSION FEBRUARY 24, 1977, FEBRUARY 25, 1977, SERIAL-NO: Serial No. 95-1 PART III

THURSDAY, FEBRUARY 24, 1977

1 HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, Washington, D.C.

1 The subcommittee met at 9:45 a.m., pursuant to recess in room 1324, Longworth House Office Building, Hon. Morris K. Udall, chairman, presiding.

1 The CHAIRMAN. The Subcommittee on Energy and the Environment will be in session. We have scheduled a very, very long list of witnesses today and groups who have asked to testify on H.R. 2, the surface coal mine legislation.

1 We will stay here as long as necessary today. I would like to urge all the witnesses to summarize their testimony when it can be done to avoid duplication. Tell us why you are for or against the bill and how we can change it or improve it and we will do the best we can with the time we have today.

1 We first scheduled the Honorable Max Baucus, our colleague from the First District of Montana. Will you take the stand and we will be glad to hear from you.

1 Mr. BAUCUS. Thank you, Mr. Chairman. I have a prepared statement which I would like to submit for the record.

1 The CHAIRMAN. It will be printed in full as though you read it. It is good to hear from you.

1 [Editor's Note. - Prepared statements and additional material submitted for the hearing record may be found in the appendix at the conclusion of this volume.]

STATEMENT OF HON. MAX BAUCUS, A U.S. REPRESENTATIVE FROM THE STATE OF MONTANA

1 Mr. BAUCUS. Basically, Mr. Chairman, I would like to commend you for your expeditious approach to these hearings. After all the difficulty we have had in the last 2 years, I think it is vitally important to push this bill through as quickly as possible. Western coal will inevitably be mined, but let us put the horse before the cart and make surface mining legislation a part of our national energy policy.

1 There are several positions I wish to bring out which I think are particularly important to my State of Montana.

2 One is the prohibition of the bill against surface mining in national forests. I think this is very important.

2 We do face an energy problem in the West, but it is equally important to protect wood fibers as a resource in our national forests. I commend the committee for that provision in the bill.

2 Second, I think it is very important to keep the public input portion in the bill as well. In my experience it has been extremely helpful to have various interest groups, various people across the country, testify in public hearings. It is essential both as we develop the bill and as we implement it when a company submits an application to proceed with mining. By hearing the views of different people with different perspectives we can protect the public interest in a much better fashion than would be the case if there was no public input.

2 Of course, we could bog down the process with excessive public comment. So, I think that the committee should find the proper balance - as much public input as possible yet at the same time expeditious, orderly processes so we can decide with sufficient clarity whether or not a company should proceed to mine.

2 I also want to emphasize the wisdom of the committee in taking special pains to protect the hydrological balance in various areas. This is all the more important today because of the potential drought in the West. Water, next to coal, is one of the most important resources in the West, as you know. Mr. Chairman, coming from Arizona, you know that water is a big problem.

2 I strongly urge the committee to keep these provisions in the bill, because they are very important to us in Montana.

2 Those are just three points on which I wish to commend the chairman.

2 Finally, I pledge my cooperation to do whatever I can to help the chairman

of this committee get this bill passed. We worked last year on all of the overrides, unfortunately unsuccessfully. This year I do not believe that this
will happen.

2 The CHAIRMAN. Thank you. I appreciate this long support for this legislation and your interest in this problem.

2 As you indicate in your statement, Montana is perhaps as impacted as any
other State by surface mining. You have a real and genuine interest in this. I
am particularly glad to see your support.

2 I skimmed through the statement to see your support for the surface owner
protection clause that we worked out after many months and after months of negotiating in the last Congress.

2 I am a little troubled by the provision of the reinvolvement of the old Mansfield amendment offered by your senior Senator from Montana.

2 It seems to me that we have come up with a solution that everyone can live
with. I am delighted to see that you support that program.It can be worked out
and I think the committee has done a good job of balancing out those various interests. It gives us a chance to do so.

2 Mr. BAUCUS. It gives them a chance to do so.

3 I would also like to point out, in my judgment, the State provisions should control where they are more stringent, as a general rule, given the quilt
or checkerboard pattern of land ownership in Montana, we need uniform enforcement. I have great confidence in the ability of my home State of Montana
not only to pass but to maintain more stringent standards of reclamation.

3 With that in view, I would hope the committee will allow States that have
more stringent standards to administer the provisions and also handle jurisdiction.

3 The CHAIRMAN. Let me ask you one thing. I note in the early part of your
statement you referred to provisions that prohibit mining, strip mining, in national forests. Our colleague from Utah, Mr. McMay, has a situation in his State where national forests exist but in large areas of them there are no trees. I have the same situation in my own State. We have an area designated
as a national forest where there might not be a tree within 10 miles but it is
still national forest.

3 He would like an exception provided so that where the land and reclamation

can be achieved that you could surface mine in national forests but not those which have any trees on it, only brush or

3 Mr. BAUCUS. I would have no strong feeling either way, because that is not the case in Montana. He is in a much better position to comment on the situation in the State of Utah, as you would be in the case of the State of Arizona. I would have no strong feeling either way on that.

3 The CHAIRMAN. Are there any questions?

3 If not, thank you Congressman Baucus. We appreciate your presence here today.

3 Congressman Wampler is the next witness. He is to appear with a group of
State officials.

3 If you would, come forward and introduce them.

3 Mr. SKUBITZ. Before the witness testifies may I say it is really tragic
that at this very hour we have meetings of the Interior Committee, the subcommittees on Energy, Water and Power, and Interior on specific investigations. This makes it impossible for a member of these committees to be
present at three places at one time. I think people in the audience watch this
and wonder just how important we as Members of the Congress take our responsibilities. I find only three members present.

3 If it is at all possible as chairman of the full committee you should exert your power to see that only one committee or not more than two committees,
meet at the same hour.

3 The CHAIRMAN. I share my colleagues concern. The other committees were
not to last all morning and they are important.We get 2,000 bills introduced and
referred to this committee and we must have some kind of system where we can process more than one of them at a time.

3 Mr. SKUBITZ. I hope we will not pass all 2,000 this year.

3 [Prepared statement of Hon. Max Baucus may be found in the appendix.]

3 The CHAIRMAN. Congressman Wampler, you may proceed.

STATEMENT OF HON. WILLIAM WAMPLER, A U.S. REPRESENTATIVE FROM THE COMMONWEALTH OF VIRGINIA

4 Mr. WAMPLER. It is a pleasure to appear before your subcommittee on Energy and the Environment.

4 I would like to introduce a distinguished panel of high officials from the

Commonwealth of Virginia to relate to you some of their fears of the impact of
the bill, H.R. 2, on the citizens of Virginia.

4 The Honorable Mills E. Godwin was scheduled to appear but the General Assembly of Virginia is in session and is scheduled to adjourn next week. For
obvious reasons, he was not able to be here. He extends his deep regrets.

4 In his stead we have the secretary of commerce and resources, Hon. Earl Shiflet; the attorney general of Virginia, Hon. Anthony Troy; commissioner of tazation, Hon. William Forst; the commissioner of Virginia State Employment Commission, Hon. Robert Masden.

4 We have three members of the faculty of the Virginia Polytechnic Institute
and State University, Mr. Holland White, Mr. Wolf, and Mr. Morse.

4 We also have two representatives of District 28, United Mine Workers of America.

4 Mr. Chairman, I also have a statement that I would like to submit and I would ask unanimous consent that it appear in the record.

4 The CHAIRMAN.Without objection it will appear in the record. We will be
happy to have a summary of your position.

4 We have a long agenda though.

4 Mr. WAMPLER. My position is pretty well known on this legislation.

4 The CHAIRMAN. I began to think you were against the legislation.

4 Mr. WAMPLER. In the interest of time, I would ask that Mr. Shiflet be permitted to present the Governor's statement and then if he will introduce the
other members of the panel for their presentations.

STATEMENT OF EARL SHIFLET, SECRETARY OF COMMERCE AND RESOURCES, COMMONWEALTH OF VIRGINIA

4 Mr. SHIFLET. Mr. Chairman, distinguished members, Governor Godwin extends his regrets for not being able to get here.

4 As Congressman Wampler has relayed, the requirements of the agenda of the
General Assembly make it impossible for him to be here with you this morning. I
shall read into the record his statement for him with your approval, sir.

4 The CHAIRMAN. Do you have copies of this statement?

4 Mr. WAMPLER. We have made them available to the clerk.

4 The CHAIRMAN. Our rules say they are to be filed here 24 hours in advance. But we are glad to get them even late.

4 Mr. SHIFLET. We apologize for the fact they were not sent in advance.

5 The CHAIRMAN. You may proceed.

5 Mr. SHIFLET [reading].

5 The Governor presents himself as Mills E. Godwin and states that he appreciates this opportunity to present some of our views on the implications of surface mining legislation before this committee.

5 My purpose today is to underline the way coal is surface mined in the mountains and narrow valleys of southwestern Virginia and our neighboring States and the consequent differences in the impact the legislation before you will have.

5 As the committee is well aware, surface mining by major coal companies with huge machines on level or gently rolling land contrasts sharply with the small, often family-owned surface mining operations in the Appalachian region.

5 The economic impact of H.R. 2 by conservative estimates will be substantial. The larger operators will likely be forced to reduce production. Many of the smaller operators are likely to be forced out of business. Our State agencies estimate that some 3,000 workers depend directly on surface mining operations for their livelihoods.

5 The mountains of southwestern Virginia, as you know, have long been a depressed economic area. For a number of years, I have had the pleasure of serving on the Appalachian Regional Commission which is a Federal agency designed to attempt to alleviate the restricted opportunities in a highly mountainous area which has largely been unable to attract new industry, and where farming operations are limited to the few areas of flat ground.

5 In southwest Virginia, as in many areas of our surrounding States, coal is king and the fortunes of the entire region rise and fall with its price and availability.

5 Surface mining has an entirely different meaning in southwest Virginia from its application in the Western prairies.

5 To restore surface mined land in our southwestern counties to its original contours would be a costly undertaking in relation to the value of the coal produced. Much of Virginia's surface mine production is steam coal in contrast with the more valuable metallurgical coal produced by some of our neighboring States.

5 As it is practiced in southwest Virginia, some coal surface mining consists of perhaps one entrepreneur who has a lease on the land. He employs perhaps two or three in his blasting operation and perhaps one or two bulldozers

to remove the overburden and a front-end loader to dig the coal and load the trucks.

5 He may have a truck or two of his own, but he relies primarily on individual heads of families who own their own trucks and haul the coal to the tipple where it is transported by rail to market.

5 Such an operator who is independent or who is agent for a larger corporation would find it beyond his financial or his physical capabilities to restore mountainsides fully to their original contour. The requirement would, in fact, put him out of business along with all those who depend on him for a living.

5 In Virginia we are currently engaged in increasing our own surveillance and approaches to the environmental problems that surface mining inevitably involves.

5 This process has been continuing for several years and has been increased since I have been in office.

5 Currently, Virginia levies a fee of $1 2 per disturbed acre on surface mining operations, most of which goes to operate the reclamation program. Bills now before the General Assembly of Virginia would increase this fee substantially.

5 At the present time, Virginia is producing some 13.6 million tons of coal annually by surface mining methods, which employ approximately 3,000 workers and generate a total payroll of $4 0 million, which in the counties of far southwest Virginia is a mighty sum indeed.

5 What is more, our coal producing counties rely heavily on their own coal severance taxes in meeting demands of public services.

5 Finally, the bill before you aims to protect the public interest through a number of required public newspaper notices and provisions for citizen suits, the clear import of which is that neither State nor Federal authorities can be trusted to enforce the law.

6 Surely it is difficult enough today for the small businessman to struggle through the process of obtaining permits and complying with a host of regulatory rules and regulations from formal government agencies, without having to contend with a self-appointed guardian of the public domain, whose claim to a personal interest is that he is a member of the general public.

6 Virginia's position on environmental matters is, and has been, that environmental concerns must be protected.

6 Virginia had one of the early water control boards to begin the task of cleaning up our rivers and streams. This was followed by an air pollution control board to provide clean air.

6 Environmental regulations for coal surface mining began in 1966 and have
been addressed periodically since.

6 Our environmental legislation covers wetlands, flood plains, suburban shopping centers, and residential communities and construction by the State itself.

6 As a consequence, my own strong feeling is that the regulation on surface
mining should be left to the individual States.

6 I, therefore, strongly suggest that you reject this legislation in its present form and allow the Commonwealth of Virginia to look after her own.

6 That completes the statement of Governor Godwin.

6 May I present three other gentlemen from the Commonwealth of Virginia.

6 First, I would like to ask the attorney general, Mr. Anthony Troy, to come
forward for a statement.

6 The CHAIRMAN. Good morning, Mr. Troy. Do you have a prepared statement?

6 Mr. TROY. I do have one and copies are available. I apologize that they
were not pre-sent. They are being handed to the reporter.

6 The CHAIRMAN. How long is your statement?

6 Mr. TROY. The statement is roughly six pages but in the view of saving time I will, if the chairman permits, merely summarize the salient points that
are being made.

6 The CHAIRMAN. That would be very helpful. We will print it in full in the record. You can summarize.

6 We have a lot of people that have come a long distance from a great number
of States and we have agreed to some ground rules as being 10 minutes for each
group, although I recognize the great importance of this subject to your State.

STATEMENT OF ANTHONY F. TROY, ATTORNEY GENERAL, COMMONWEALTH OF VIRGINIA

6 Mr. TROY. Mr. Chairman, I think the record will demonstrate that the Commonwealth of Virginia has in fact been responsive and is committed to an effective and continuing environmental protection program in the surface mining of coal, especially through the southwestern portion of Virginia.

6 Conditions now regarding the regulation of Virginia coal mining operations should remain, we submit, with the Commonwealth's legislative or administrative agencies. They are in the best position to consider the unique conditions of Virginia's environment and coal mining industry.

6 The Surface Mining Control and Reclamation Act now being considered will, of course, completely preeempt the ability of Virginia to set its own environmental protection standards. The bill will impose mining methods upon us in Virginia which have no significant relationship to Virginia's unique environmental situation.

7 For example, the requirement of original contour of hillsides as it existed prior to mining. This requirement will entail the use of expensive, heavy, additional moving equipment which an average operation in Virginia simply will not be able to afford. In Virginia where most mining is operated on contour the result of the restoration requirement to original will be a long string of problems even until such time as vegetation has been established. These long sloping hills, of course, are subject to restoration.

7 Virginia does not require a contour restoration which, we submit, is of little, if any, environmental value. Instead, a mining operator currently must leave a bench which is relatively stable and the bench must be sloped inward so that drainage is done to an appropriate point where it is released and therefore minimizing any error. The bench, of course, would be revegetated. At the present time, Virginia is trying to move forward even more because the overburden on the downslopes and revegetated areas are being reconsidered to the amount of downslope that will be allowed.

7 Thus, Virginia policy presently controls the environmental disruptions. I submit the requirement of the Federal law to esthetically restore the given original contour does not enhance the environment at all and in Virginia especially where under our proposal and at all and in Virginia especially where under our proposal and under current law the downslope can be used for creating flat tablelands. That land can now, in fact, be utilized for future industrial development.

7 In addition to objections to the provisions of H.R. 2 which unnecessarily encumbers surface mining, the problem is created in the area of Federal-State relations. Section 502(b) of H.R. 2 establishes standards that all State

permits which are incurred 6 months after the date of enactment of the act will
also require complying with certain environmental standards, including restoration to original contour, minimization of hydrological disturbance to ground water.

7 As said previously, Virginia law does not require restoration to original
contour nor has it been found feasible to make certain comprehensive hydrological consequences. Virginia, therefore, is simply not going to be able
to comply with 502(b) of H.R. 2, if in fact it does become law. Being unable to
comply, I presume the State regulatory processes will be dismantled until or unless the Virginia legislature conforms State laws to specifics of H.R. 2.

7 Accordingly, if Congress should impose requirements of H.R. 2 upon operations until a complete State or Federal program is established then Congress must establish and enforce it through a Federal agency.

7 The Commonwealth of Virginia reserves powers of States to require that the
State and Federal Government administer their own laws without imposing that responsibility on others.

7 In summary, the Commonwealth of Virginia does oppose Federal amendments to
completely displace State programs to regulate coal surface mining. Virginians
are concerned about environmental problems and I submit the Commonwealth of Virginia has reacted responsibly to those concerns. Because, however, of the differences in geological climate, mineral resources, and mining, bonds which exist among the States, the subject is one which should clearly remain under the
control of the individual States and not be subject to the sweeping laws, such
as that proposed in H.R. 2.

8 Mr. Chairman, I appreciate the opportunity to make these remarks. I appreciate the opportunity to appear before the panel and we will be happy to answer any questions at a later time.

8 The CHAIRMAN. Thank you.

8 [Prepared statement of Anthony F. Troy may be found in the appendix.]

8 Mr. SHIFLET. Mr. Chairman, Mr. Robert Masden who is Commissioner of Virginia Employment Commission who would like to make a brief comment.

STATEMENT OF ROBERT L. MASDEN, COMMISSIONER, VIRGINIA EMPLOYMENT COMMISSION, COMMONWEALTH OF VIRGINIA

8 Mr. MASDEN. I will take only about 2 minutes.

8 I don't think there is any need for me to remind you of the limited economic base in the area that we are talking about, seven far southwestern Virginia counties and its special relationship to other economic centers.

8 These people really are left to use the economic resources available, the natural resources, coal being that principal one.

8 Also, let me remind you that between 1955 and the early 1970's in this area where the demand for coal was very low, the unemployment persisted in the area of 15 to 18 percent. And that is in spite of all the efforts of the Federal Government and the State government to lower that unemployment rate.Now, this dropped below the Stae average because of demand for coal so that the area is economically viable.

8 This legislation could in fact destroy its economic activities.I think it is important as we look at the impact to realize that if unemployment - if we should lose 2,000 jobs in that area this could cost millions of dollars in our trust fund but that does not tell the entire story in terms of its adverse nature. Because of Federal legislation, under which we act, the unemployment system will have employers who are impacted by the layoffs and have in turn to replace the money in the trust fund.

8 That means that it is doubly devastating to these people. We have a trust fund based upon Federal legislation which is supposed to be actuarially sound. That is, the very employers who experience the layoffs have to replace the trust fund money so that at the time you force them to reduce their work force immediately we begin requiring them to replace the money we pay out on unemployment payments to the trust fund.

8 So really, an economic impact has to be doubled and tripled on these employers. That is all.

8 The CHAIRMAN. Thank you very much.

8 Mr. SHIFLET. Mr. Chairman, Mr. William Forst, commissioner of tax of the Commonwealth of Virginia has a brief remark to make.

8 The CHAIRMAN. All right.

STATEMENT OF WILLIAM H. FORST, STATE TAX COMMISSIONER, COMMONWEALTH OF VIRGINIA

9 Mr. FORST. I will be very brief and I hope precise and concise.

9 I am here to say something to you that is quite obvious. Any unemployment in that area, any pollution of their economic base creates problems not only for the State but also for local revenues.

9 I have a complete statement for the record that would indicate that the revenues have a potential loss, annual potential loss of somewhere around $8 million, not a very great deal.

9 Hopefully, those $5 million worth of revenues from severance taxes that are employed by these mines affect the value of the company's contracts, a very
significant problem there.

9 Another item that I think we can relate to you, if the staff will collect
the data elements that are used for distributing revenue sharing funds today, they will find that they are using 1972 per capita income for this region. It
averages less than $3 ,000 per capita. Today, on returns we find per capita income of these six counties is in excess of $3,000 a year.

9 So coal has done for this Appalachian region in a very short period of time what the whole Appeal Commission has been trying to do since the early 1960's.

9 Mr. Chairman, that is the only thing I have to say.

9 The CHAIRMAN. Thank you. We will put your tables in the files.

9 [The documents referred to have been placed in the committee files.]

9 Mr. WAMPLER. Mr. Chairman, there are three gentlemen here from our land-grant university, V.P.I. & S.U., who have been working as a research group
on the agricultural uses of reclaimed strip mined coal lands. It is my understanding that they have statements to file but would appreciate the opportunity to make a brief summary.

9 The CHAIRMAN. I am going to really have to insist these be very brief, from 8 to 10 minutes.

9 Mr. WAMPLER. I understand the dilemma but we feel the legislation is so
important that we would like an opportunity to be heard.

9 The CHAIRMAN. Well, it is important and we heard it previously from witnesses and we undoubtedly will hear more.

STATEMENT OF HOLLAND WHITE, AGRONOMY EXTENSION SERVICE, VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, COMMONWEALTH OF VIRGINIA

9 Mr. WHITE. Virginia Polytechnic Institute, land-grant university, has been very much interested and highly involved in research and educational programs in the strip mining areas of Virginia.

9 I would just like to indicate that in 1969 V.P.I. had two technicians who
were assigned to the agricultural program under a cooperative grant to study revegetation. In 1976 the turnover of this particular group was $50,000 to $150,000.

10 The Virginia Energy Co., which is primarily a company of mining coal,
awarded two research grants, one of which is a 2-year grant for $2 5,000 to study strip mining from spoil to soil. The other is a $12,000 renewable to study horticulture.

10 EPA has been awarded one for $4 0,000 to research the relationship of strip mining to horticulture.

10 There are the equivalent of three full-time scientists and two technicians working with these research and educational programs in Virginia.

10 The overall goal for these areas is to make available - is for areas made
available by surface mining in southwestern Virginia to be effectively revegetated and utilized to expand the monoeconomy coal base of the area through
increased agricultural production.

10 I will just add these research efforts are showing quite conclusively that higher use of these areas is certainly feasible and a practical way of utilizing these areas and in most cases returning these steep areas to the original contour would eliminate much of this higher use for agricultural uses.

10 The CHAIRMAN. Thank you very much for your complete statement.

10 Mr. SHIFLET. Our final witnesses are representatives of District 28, United Mine Workers of America.

10 The CHAIRMAN. You may proceed.

STATEMENT OF JOSEPH TATE, PRESIDENT OF LOCAL UNION 2166, DISTRICT EXECUTIVE BOARD, DISTRICT 28, UNITED MINE WORKERS OF AMERICA

10 Mr. TATE. Mr. Chairman, members of the committee, my name is Joe Tate. I am a resident of Dickenson County in southwest Virginia, a member of the United States Mine Workers of America, president of Local Union 2166 and a
member of the District Executive Board, District 28, United Mine Workers of America.

10 I appear before you in opposition to H.R. 2.

10 In contrast to the proponents of this legislation, I feel that H.R. 2 would invoke undue hardships on all United Mine Workers, cause increased energy
costs and cause our Nation to be more dependent on foreign nations for our energy needs. To expand further on this, I offer the following for your consideration:

10 Having been directly involved in surface mining for the last 6 years of
my 21 years employment in the coal industry I feel this qualifies my opinion as

well, if not better, than those who view our segment of the coal industry as an
unnecessary evil.

10 Surface coal mine production in Virginia as compared to deep mine production is almost equal. If H.R. 2 is enacted and it has the effect I think
it will, how will this production be replaced? If H.R. 2 does contain a steep
slope provision and a return to original contour provision, I am convinced that
I and thousands of my coworkers in Virginia, and other States affected by this
legislation, will join the ever-growing ranks of the unemployed. If this does
happen, as I believe it surely will, there will also be disastrous effect on the
health and retirement fund of the United Mine Workers of America due to the fact
that over 55 percent of all moneys paid into our health and retirement fund is
derived from surface mine employers signatory to our 1974 agreement.

11 H.R. 2, if enacted, will no doubt be a boon to the environment. But what of the people? Does this committee of Congress have anything but an educated guess as to what will happen to the regions most affected by this type
of legislation?

11 Take a chance with H.R. 2?

11 As a member of the United Mine Workers, I cannot afford it.

11 As a consumer, I cannot afford it.

11 As an American who wants his country to be independent of all foreign energy, I definitely cannot afford it.

11 The CHAIRMAN. Thank you.

STATEMENT OF JAMES P. BROOKS, REPRESENTATIVE, DISTRICT 28, UNITED MINE WORKERS OF AMERICA

11 Mr. BROOKS. My name is James P. Brooks, I am from District 28 Local 7276 UMWA, Southwest Virginia. I am a member of the District 28 Compensation Executive Board and chairman of the 7276 Local Mine and Safety Committee.

11 In April of 1975 when this same bill was before a committee up here, I lost 2 weeks wages on a wildcat strike in protest of this bill, my health services and pension fund lost thousands of dollars in royalty to our fund, and
this bill and our opinion has neither one changed. As you all know in our 1976
constitutional convention by a great majority voted against a Federal bill and
for a State by State strip mine bill, because of the different terrain in our several coal producing States.

11 If this bill is passed, there will be millions of tons of coal that can never be recovered by deep mining because some of these seams of coal are too thin to be deep mined. There will be thousands of lives lost over the next few years because of trying to mine this outcrop coal that has very little cover over it. I speak of this from experience because in 1948 when I was an underground miner, I was covered up in a roof fall while trying to help drive a drain way outside under this bad top near the outside. I have 25 years surface and 5 years underground mining experience. This should qualify me to speak on this subject. The first 7 days of 1977 there were seven miners killed in the mines which is just statistics to most people who do not realize the dangers of mining coal, but I can assure you it means much more to their families and widows and children. It also means more to me because these are my fraternal brothers.This slaughter continues in spite of our 1969 Health and Safety Act. I believe that most of the testimony presented to this committee in favor of this bill has been by people that have never worked in an underground coal mine or even seen one, yet they say to me, "Go back underground and mine this coal."

11 Also, people point to the Pennsylvania strip mine bill and say they are doing this kind of mining in Pennsylvania. But no one has mentioned the fact that over the past 3 to 5 years $9 million have been pulled out of our dues money to subsidize the anthracite pen sion and health services fund. Part of this Pennsylvania anthracite fund comes from stripping anthracite coal. Looking at the facts, I don't believe our bituminous funds can survive under this great loss of moneys to our funds that comes from the royalty of strip mine coal that comes from our steep slope mines that will be abolished by this bill.

12 This committee was shown slides of about 10 mine sites in southwest Virginia, which is my home. One of these was of the Backbone Ridge mine in the city of Norton, Va., where reclamation and seeding had not been done because the mining had not been completed.I don't believe the fact was mentioned that a hospital and shipping center was being built on this so-called raped land, that sold for $2 8,000 per acre, gentlemen. We have a deep mine brother with us who is on the board of directors of this hospital who is available for comment if any committee member is interested.

12 We also have a multimillion-dollar airport in Wise that will accommodate jet aircraft that would not have been possible under this bill. These are only

two examples of what can be done with this strip mined land in this rugged hill
country of the Appalachian region.

12 In closing, this land is my home where I sincerely hope to work at my trade as a strip miner until retirement age and live the rest of my remaining days in the peace of my homeland.

12 Gentlemen, I thank you for the privilege you have granted me by listening
to what I had to say.

12 The CHAIRMAN. Thank you Mr. Brooks.

12 Mr. WAMPLER. Mr. Chairman, if time permits, and if there are any questions the panel is available to respond.

12 The CHAIRMAN. We will take just a few moments for questions before we move on.

12 Let me say to you, Congressman Wampler, I thank you for coming here and
for putting together a very well informed and important panel made up State officials and people who work in the mines and we are glad to have you here. We
are anxious to keep an open mind. If it is a bad bill we want to know why and
if we can improve it we want to know how, too.

12 I wish you would become a missionary on one thing for me. We hear from
State after State, both from environmentalists and from coal interest, "Why don't you come down and see it." The environmentalists say it is a good bill and
you reply it is the meanest bill that has ever been proposed. The coal people
say we are doing such a good job in Virginia and "can't you leave us alone." You
want us to pass a Federal bill. So I set up a schedule of field trips to the different areas of our country. There is one scheduled going West in a couple
of weeks and we have one down to Virginia scheduled for March 12 or 13. We are
going to arrange for helicopters from the Army and get people out and around and
see Virginia and Kentucky. I think the problem is we cannot get any members to
go. We had one member sign up for the trip to your area out of 46 people on the
committee.

12 It takes about 48 hours of our time. I have seen them and I am going back but I wish you would get after your colleagues and highpressure and move them and romance them and get them to come down and see it.

13 If Virginia is doing as good a job as we were told here today maybe you

can make some converts down there. I urge my colleagues to take -

13 Mr. WAMPLER. This is the first time that I was aware this visit was scheduled. I am particularly appreciative to you for doing it. The gentlemen from Virginia will be there to greet you and I will follow your suggestion and talk to at least some of the members that I feel I may have some persuasion with because this is particularly important to see.

13 May I say that there are two remedies. Somewhere in the middle lies the answer. Abolition is not the answer and to go unregulated is not the answer. It is just that many of us feel the States are doing an adequate job. They can do a better job but we do not want to legislate this industry out of business and I am afraid of the limits H.R. 2 -

13 The CHAIRMAN. That is the difference of opinion I have with you.

13 Let me just say two or three quick things and then I will let my colleagues get into the act. We start from different assumptions. You start from one assumption. I start from another and your assumption is that if we pass this bill we are going to put you out of business.

13 The mining and strip mining of coal in southwestern Virginia will come to a grinding halt. On the contrary, I do not think it will. I think the experience elsewhere shows it. I want to mine more coal. I want to see your area come back. I think these communities were down and out because coal was flat on its back and the young people had to go off to the big cities like Detroit and Cleveland. I would like to see them come back and see these areas prosper.

13 I want to write a bill to see this increase in the production of coal and double it in the next 10 years.

13 You are persuaded that the bill will not permit it. I am persuaded that it will.

13 We had the fellow from Pennsylvania and they have got some steep hills just as steep as yours. He said the mining companies told us we could not do it. We forced them to do it and now they are very happy. Many of them are realizing that coal is coming back and we are putting the land back and so on.

13 But we have tried to write a bill that lets the States take over. The States are proud of their law and the States can do a good job. We encourage them to administer the law and take over the process.

13 I am for your airports and I am for using flat land. I think you need flat land. I know you have uses for it, in your airports, or a hospital or a

school or a shopping center or housing. Let's create some flat land out of this
strip mining process.

13 So, we hope we can improve the bill and we listen to you cheerfully and
the only reason I have been a little bit impatient this morning is that we have
a lot of people, an overcrowded schedule. I personally have heard all these
arguments before. I try to listen to them again with an open mind. Some of my
newer colleagues have not heard them and they have a right to be educated and to
listen to your opinions and views.

14 Mr. WAMPLER. We have proposed some amendments that I hope we can live
with but as the law is presently written I am convinced we cannot do so. I
heard from people whose judgment I value and they say that we simply cannot do
it.

14 The CHAIRMAN. That is an honest difference.

14 Mr. BROOKS. Mr. Chairman, one word sir.

14 I have strong feelings that this committee owes it to these people and
the people of this Nation to come down to our country.Don't take our word for
it. I will take time off my job. I will walk you over Wise County.

14 The CHAIRMAN. I am trying to get them to come down. I have been there
several times and I will go again.

14 Mr. RAHALL. I would just like to express my appreciation that
Congressman Wampler brought his men from Virginia. I represent the neighboring
State of West Virginia on this committee. I am very concerned with a lot of the
concerns you expressed in regard to this bill and I would like to commend the
chairman for setting up the visits that he has set up.

14 He will be coming into my home State also. Unfortunately, the time of
the year is not the best but I do realize the necessity to proceed along with
this bill that has been before this committee for many years.

14 I would like to also express my desire to work with you and to hear your
amendments that you present to this committee.

14 Again, thank you for your testimony here today.

14 Mr. RONCALIO. I would like to just take a minute, Mr. Chairman, to first
compliment Congressman Wampler in the presence of this audience of his
constituents.

14 We have had this bill a couple of times on the floor of the House of Representatives. There is not a more articulate man than Bill Wampler in having defeated this legislation and the overrides of the President. He was responsible for at least 10 votes to sustain the overrides and you ought to know this.

14 Our purpose, as the chairman so eloquently said, is not to frustrate anybody, but it is to write a bill we can all live with, in Montana, Wyoming, South Dakota, Virginia, Kentucky, Nevada. We all must live with something that can define the problem where you have a surface mine that is not reclaimed and massive coal deposits, I believe, with a minimum of possible danger of depression hurting people.

14 One thing you keep repeating, my friends, is that you cannot live with the provision requiring restoration to original contour. The bill does not require restoration where it is going to be a massive difference between original contour because it need not be. No place in the bill does it say so.

14 Now, you start thumbing through the bill.You won't find it. You will find "approximately." That means a massive difference. It can mean the difference of 30 to 90 feet in the places where you are drilling.

14 So, let me say, we want to live with what we are doing and we will try to take all of your suggestions and appeals and write a bill we can all live with.

15 The CHAIRMAN.Mr. Bauman.

15 Mr. BAUMAN. I want to say something not only to the gentleman whose State officials appeared, but to the gentlemen from southwestern Virginia, who took the time to come up here today. We do appreciate not only your being here but your views. A lot of people come here and make their views known. I do not think I will forget at any time the massive protest we saw here last year of this legislation. To me it evidenced the deep human concern, that all of you have, as Mr. Brooks and Mr. Tate have shown very eloquently here.

15 I do not want you to feel that your views are forgotten. You have an eloquent spokesman in your Congressman from southwestern Virginia and he relates your views well.

15 We will be glad to have amendments. As one member of the subcommittee, I certainly will be able to offer some of those to try and perfect the bill so that it is liveable.

15 I do not agree with one of the leaders of the Congress who said on television Sunday that the American people sometimes want one thing, but the

Congress knows better what they ought to have. We are trying to save the environment; but human beings are part of the environment.

15 Being here today allows us to understand that.

15 Keep up the pressure.

15 The CHAIRMAN. Are there any questions?

15 There was one truck that said, "Udall's own canyon is a high wall."

15 Mr. EDWARDS. I just want to point out, we have had a number of very eloquent witnesses that have appeared before this committee.

15 One of the things that very seldom gets brought out is the effect of H.R.
2 on a different kind of animal, the human animal. We are all concerned with cars so that they forget about looking after an animal that needs to be taken care of.

15 I share the concerns about this bill that were brought up this morning.
I just wanted to thank you, especially Mr. Brooks and Mr. Tate, because we have
such a problem in this Congress with limousine liberals who are so busy trying
to protect people from themselves that it is about time we had an opportunity to
hear from the people who are going to be adversely affected by some of our brainstorms up here and have the chance for them to have some input into the process.

15 We will definitely, some of us, take your amendments very seriously. They may be the only additive we have to defeating the bill but I appreciate it.

15 Mr. Wampler, I want to say that I appreciate very much the role that you
have had in bringing these people here. It is a side of the issue that we too
seldom hear in words and we need to hear more of it.

15 The CHAIRMAN. We thank you Congressman Wampler and all of the good folks.

15 Mr. SEIBERLING. One comment. I just would like to point out that Mr. Carter has abolished the limousines that were chauffeuring Republican bureaucrats in the last 8 years. So I do not know where the limousine liberals
are.

16 Mr. EDWARDS. Permit me to say just this, I passed one of them today as
I was coming in on the beltway.

16 Mr. SEIBERLING. It must have been one of the holdovers from the last administration.

16 Second, I just would like to say when we had testimony on Tuesday from representatives of mining companies in Virginia I asked them questions as to what was so different, specifically, about Virginia that made it different from other States where mining on steep slopes is taking place, such as Pennsylvania, West Virginia, and Kentucky.The only thing they could come up with was that these other States had said they could live with this bill and Virginia cannot.

16 The only answer I got was that Virginia has a higher percentage of steep slopes. But the point I was looking to make was nevertheless in Pennsylvania and these other States they are mining slopes of 35 degrees and doing so successfully restoring slopes to the original contour and so forth.

16 I wish you gentlemen could throw some light on this by writing us; it would be very, very appreciated, as to what your peculiar problems are because if they are different we certainly should address ourselves to them.

16 Thank you.

16 The CHAIRMAN. I am afraid we started a war with limousine liberals.

16 Mr. SKUBITZ. There are a few questions I would like to ask these gentlemen from Virginia. Do I understand you correctly? Do you have a reclamation law within the State? Do you feel that it is working satisfactorily?

16 You mention the State of Virginia levies a $1 2 per acre tax on stripped land. Does the State feel this is sufficient to take care of the reclamation within the areas?

16 Mr. SHIFLET. We have legislation before the General Assembly now asking for increase in that. We hope we will be successful in it.

16 Mr. SKUBITZ.How much of an increase?

16 Mr. SHIFLET. One bill asks for about a 25-percent increase, another asks for a 300 percent increase.

16 Mr. SKUBITZ. I would like to see the State of Virginia go to a per ton tax on coal in order to raise money to take care of their problems.

16 I was impressed with Jim Brooks' testimony. He expressed some of the things we talk about. I can tell my colleagues if they think you are going to start mining coal by deep shaft at present prices, forget it.

16 I would like to see some of them do it. It is not such an easy job to crawl under that desk. That is about the depth of the coal in my State. Try

working there for 8 hours and shoveling coal for 8 hours and find out if they want to go back to deep mining again.

16 The CHAIRMAN. All right.

16 Mr. SKUBITZ. Some of the evidence here today brought up one thing and that is those members of the committee that are constantly talking about this not stopping the production of coal, may just as well forget it.

16 One thing we are doing by this legislation in its present form is driving the small producer out of business. He cannot afford the type of equipment or the expense that is incurred to reclaim land. The big producers can; they may be able to do the job.

17 The small fellow cannot. I have seen that operation, Mr. Chairman. My father was blackballed and could not get a job and we had to mine a small dinky mine in order to make a living. I know that these fellows are operating with two or three small trucks trying to make a living. They do not want to go on this wonderful welfare program we have.

17 They cannot afford to buy the equipment thus they cannot do the reclamation that is required.

17 I am wondering, Mr. Chairman, if it would be possible in this legislation, before the final draft, to exempt these operations that employ up to 10 people. Then let the State make the determination as to the reclamation project that is necessary to stop pollution.

17 That would be a big improvement and would make it possible for the little fellow, who is still in the free enterprise system, that this bill could put out of existence, to stay in business.

17 I thank you.

17 The CHAIRMAN. I think we are really at the end again, Congressman Wampler and all your fine citizens from the Commonwealth of Virginia, we thank you.You have been very helpful.

17 Mr. WAMPLER. I thank you for your kindness.

17 The CHAIRMAN. Tell the Governor we will expect him next time.

17 Our next witness is Mr. Frank Mendicino, the attorney general of the great State of Wyoming.

17 Mr. SKUBITZ. Mr. Chairman, I ask the unanimous consent, following Mr.

Roncalio's statement, regarding th ereturn to original contour, that we insert
in the record at that point, following his statement, page 4, line 10 through line 15.

17 Mr. RONCALIO. May I reserve the right to be heard?

17 I read from the language and I said in order to restore to the approximate original contour.

17 Mr. SKUBITZ. That is where the debate takes place, what we mean by approximate.

17 Mr. RONCALIO. There is no debate. While the bill is before the members,
I do not think it is necessary to inflict upon the taxpayers the cost of printing the language.

17 Mr. SKUBITZ. I am just asking for 10 lines.

17 The CHAIRMAN. If there is not objection, it will be placed in the committee files.

17 Mr. RONCALIO. I thank you, Mr. Chairman.

17 The last person I want to argue with is my good friend Mr. Skubitz who is
a coal miner and so am I. His father coal mined and so did mine. We come from
the same part of the world and we are immigrant sons.

17 We have no business quarreling about this bill. It does not require anybody to restore to the original, which we can live with.

17 In Wyoming, the attorney general is Frank Mendicino. He, too, comes from
immigrant stock.

17 We have been down this road time and time and time again and we are asking you all to help us write a bill we can all live with.

17 This is an unfortunate emotional introduction. I introduce to you our good friend, Frank Mendicino.

STATEMENT OF V. FRANK MENDICINO, ATTORNEY GENERAL, STATE OF WYOMING

18 Mr. MENDICINO. I have prepared a statement to the staff which I believe has been circulated.

18 The CHAIRMAN. It will be received and printed in the record in full along with the comments and recommendations that you made.

18 [Prepared statement of V. Frank Mendicino may be found in the appendix.]

18 Mr. MENDICINO. You will note from the statement, I am here on behalf of

the Governor of Wyoming who is involved in the closing days of our legislative session. He asked me to convey his best wishes to the committee and his thanks for allowing us to appear before you on this.

18 Attached to the statement are some very specific section by section comments and recommendations which I will not touch on in my remarks today which I submitted for your consideration.

18 It has long been the position of our Governor that comprehensive regulation of local surface mining operations is essential in order to protect and preserve our environment while developing a sound energy and economic policy. This committee, and the Congress, has devoted a great deal of effort in developing a national strip mining bill which attempts to meet those objectives.

18 First, State programs with primary jurisdictions for administering the provisions of either H.R. 2 or S. 7 will be viable in Western States only if Federal lands are also subject to those State programs. Where ownership of a vast majority of the surface and/or the mineral estate is vested in the Federal Government, a State program limited to only private or State lands cannot be effective. Furthermore, the interspersing of Federal lands with State and private lands would make the program even more complex. In addition, one of the stated findings of both bills is that "Primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and operations subject to this act should rest with the States."

18 This emphasis on primary State jurisdiction as the preferred method of implementing environmental protection laws is consistent with the provisions of the Clean Air Act and the Federal Water Pollution Control Act. For these reasons, we would urge the committee to adopt the provisions of S. 7, particularly 423(d), relating to State jurisdiction over Federal lands under an approved State program.

18 The next point we considered to be extremely important has to do with what happens during the interim period between the passage of the bill and the approval of a State program.

18 We are concerned that the bill currently calls for the Federal Government to create a large interim bureaucracy to enforce the interim provisions. Those States that have entered into agreements with the Department of the Interior pursuant to 30 CFR 211.75, or that are otherwise qualified to make such agreements, should continue to have primary responsibility for enforcing

reclamation laws, pending an administrative determination on the approvability of the State program under the Federal bills. This approach would minimize the creation of an interim Federal bureaucracy which, as we are all too painfully aware, may tend to become a permanent Federal bureaucracy.

19 In this regard, section 702(d) appears to us to require the preparation of an environmental impact statement prior to the approval of a State program. Congress, by enacting either H.R. 2 or S. 7, would appear to have concluded that a State program meeting the requirements of the law should be approved. I fail to perceive what added benefits the EIS process will add in view of that fact determination.

19 Turning to the Abandoned Mine Reclamation Fund, we would request the committee to continue the emphasis on State responsibility by changing the language of section 401(e) to conform to section 301(d) of S. 7, which allows the States to administer the funds, if there is an approved State law.

19 As you might expect, we endorse the 35 percent ton add-on in H.R. 2 rather than the Senate version which diverts a portion of the Federal mineral royalty. In addition, we believe the purposes for which the funds can be used should be expanded to include noncoal surface mining operations which have been abandoned. Abandoned uranium pits from the 1950's and early 1960's are the major problem in Wyoming and some other Western States, perhaps even more so than abandoned coal mines.

19 Although it is not now a part of H.R. 2, we would like to express our concern about the Mansfield amendment, section 423(e) of S. 7. We believe this provision is undesirable because we believe it could force mining into areas which are more difficult to reclaim. In addition, given the amounts of coal which have already been leased, the importance of that section in terms of land owner protection is likely to be minimal.

19 Gentlemen, I recognize that at this stage in the development of this legislation you are no longer interested in broad, general statements and that what you want now are specific comments and recommendations and we have attempted to provide those to you. In order to make my final, and perhaps strongest recommendation, I must, however, make a general statement with respect to our greatest concern in Wyoming.

19 Really, what we are asking for is the opportunity for the State of Wyoming to administer its reclamation program. As you probably know, we concluded several months of negotiation with the Department of the Interior on this very issue by entering into an agreement pursuant to 30 CFR 211.75 which allows us this opportunity. There are many who have ridiculed this agreement

because it is apparent that a Federal bill will be passed in the near future. Even in the West there are many States that do not agree with us primarily because they want Federal dollars to administer their programs or they are unable to enact strong reclamation legislation in their States.

19 We understand their problems but we do not understand why a Federal bill cannot be passed including provisions which will allow us to administer our program so long as a determination has been made by the Secretary that it is at least as stringent as Federal law. We are concerned that the bill presently is ambiguous with respect to the authority of a State if a State plan is approved.

20 I repeat, we feel that there is a great deal of ambiguity as to what happens next if the State plan is approved. We would like to see stronger language in the bill regarding this point. It is our understanding that it is the thought and the intention of this committee, if the State program is approved, that the Federal involvement will likely be limited to a monitoring of the State program to insure that the provisions of the law are being complied with and the State program is being enforced.

20 We can live with that but we do not want to see anything in the bill that says that. We would feel a lot more comfortable if there was something there.

20 In addition, we believe that the technical provisions in both the House and Senate versions of the bill make it nearly impossible for a State to develop a meaningful and workable State program. If these provisions are applied with great rigidity, the response from the States may well be similar to our response to the Safe Drinking Water Act, the Federal Government can keep the program.

20 By comparison, the other two pieces of Federal legislation which I have mentioned, the Clean Air Act and the Water Pollution Control Act, provides the flexibility which we think make those pieces of legislation far more acceptable to the States. It is on those concerns, with regard to the specificity of the bill, that are provided in the appendix.

20 The CHAIRMAN. I particularly like your emphasis on the specific language. We hear a lot here, emotional statements, and it is understandable on issues as important as this, but we want to write a bill. We are going to do that in the next couple of weeks. We need to have a specific critique.

20 So, I thank you for that input.

20 Do I understand that Governor Herschler supports a bill along the lines of H.R. 2?

20 Mr. MENDICINO. As long as the points that I have pointed out are considered, Mr. Chairman. I think that he would.

20 We are very concerned. It has been a most significant thing to us for the past 2 years, relative to the involvement of the States in these matters and we are primarily concerned with the present language that we feel simply cannot be enforced by the Federal bill. If it is taken from the Federal Government we would just as well do that but there are certain minimums that we must make. If there were standards set up by the Federal bill and we were allowed to enforce our own program, I think that it would be acceptable.

20 The CHAIRMAN. Are there any other inquiries?

20 Mr. RONCALIO. I am going to take my leave, Mr. Attorney General. I called a luncheon meeting at 11:45 - I see I have time for that. I do not have to leave just yet.

20 We have to mark up this bill soon and we will get input from your specific recommendation. They will be given paramount - I think more than paramount - consideration.

20 Last fall the language caused serious concern on my part.

fall the language caused serious concern on my part.

21 State regulations should lead and the States should administer it where there is a paramount threat.

21 Well, what is a paramount threat? It is what some Federal official says it is.

21 A few years ago Gerald Ford stood on the floor of the House and said the ground rules for impeachment are not what anybody says they are. They are what the Congress says it is at any given time. He said that is what the ground rules of impeachment are. It is too ambiguous, too nebulous, to get on the books so that was the only reason we felt it was very plain.

21 We want State leadership where the State laws are more stringent. I hope I can take out of this whatever will result in ambiguity.

21 We have enough trouble mining the coal now. We see where we can get

caught up in redtape.

21 Mr. SKUBITZ. I would like his definition of paramount. What Congress thinks it is. I wonder if he says the same applies to the word approximate?

21 Mr. RONCALIO. The difference is the word approximate is put in the statute, Mr. Skubitz. The difference is the word approximate is written in the law. It is not written in the law what paramount is. I think there is a lot of difference in the wording.

21 Mr. SKUBITZ. Approximate will be what the court defines it to be.

21 I have one question, Mr. Attorney General. Is most of the coal in your State, Government-owned coal?

21 Mr. MENDICINO. Yes.

21 Mr. SKUBITZ. In this law there is a 35-cent tax per ton of coal produced to be levied for reclaimed or flatlands. That is correct, is it not?

21 Mr. MENDICINO. Yes.

21 Mr. SKUBITZ. 17 1/2 cents per ton of that will remain in your State.

21 We in Kansas and the other States did not get that. We mine most of our coal and the coal that we are paying this tax on is Kansas coal as well as your coal and we believe it belongs to Uncle Sam.

21 If my figures are correct, you mine about 72,000 tons of coal per acre. That is a nice return, is it not, to reclaim 1 acre of land?

21 In addition to that, there is a 17 1/2-cents-per-ton tax annually on all coal mined. The company itself will have to reclaim that land, will it not? Then add that expense to the cost of production.

21 In your statement, I understand that you have legislation pending, or are anticipating introducing legislation to place a severance tax on coal. Can you tell me what the thought is in the State. How much per ton?

21 Mr. MENDICINO. Our tax, our severance tax, Congressman, is now on a percentage basis. We are, if the bills which are now in various stages of process in the House and the senate of our State pass in the form they were in when I left, we would have a total severance tax of approximately 11 percent.

21 Mr. SKUBITZ. Inasmuch as this is Federal coal, I feel the 35 cents reclamation fee should be distributed by the Federal Government itself into

those areas requiring reclamation for flatlands wherever they may be found. It
should not go to the States and be at their disposal.

22 Thank you.

22 Mr. MENDICINO. Congressman, if I may respond. If I am understanding your statement correctly, you are having some concern relative to the amount of
money which this bill would leave in Wyoming. Perhaps I am not understanding you correctly, that you have concern in view of your request that we administer
our own program. I think our response to you is if we are given the choice, if
you say to us in this bill, "You administer your own program with certain minimums and you receive less money from the Government to do it," we will take
that, sir.

22 We want the opportunity to administer our own program. We recognize that
one of the enticements of the bill is the money that is made available and that
this is very attractive to some of our sister States in the West. We say, sir,
we will prefer spending our own money and administering our own program rather
than having a program imposed upon us and receiving as a price tag for that a substantial amount of Federal money.

22 Mr. SKUBITZ. I would like to see a proposal. Let the States make the determination. The point I am trying to make is that in your area, you mine about 2,000 tons of coal per acre. We allow 17 1/2 cents per ton to be left in
the States to reclaim 1 acre. That is a tremendous sum of money, $350 per acre,
to be exact.

22 Inasmuch as it is Federal land, that money should be distributed by Uncle
Sam, on some sort of basis, to all States where we have mined coal, where we have flatlands.

22 The CHAIRMAN. Are there any other questions?

22 Mr. RUPPE. Thank you, Chairman.

22 I believe you made reference to the fact that about half of the reclamation fee paid in the State stays in the producing State. I believe your
comments on page 3 of your testimony is that in the utilization of these reclamation funds you feel the dollars ought to be used not just for reclamation
of coal mined lands but for reclamation of any other type of orphan lands within
your State.

22 Mr. MENDICINO. You are referring to the number of lands? Is that what you are referring to?

22 Mr. RUPPE. Yes.

22 Mr. MENDICINO. That is correct.

22 Mr. RUPPE. I gather you are of a mind also, that if the State now has developed an arrangement with the Federal Government complying with what I believe are recently issued regulations governing the mines of the West, you are saying then that the State ought to control the present arrangement even during the interim process, rather than having the Government direct its own interim program to achieve what you are now achieving through the present agreements held with the Federal Government.

22 Mr. MENDICINO. That is correct.

22 Mr. RUPPE. You indicate opposition to the Mansfield amendment. I would suspect that is the opinion that is widely held in this committee. What do you feel in general, in terms of surface mining owner consent?

23 Mr. MENDICINO. We support certain statements on owner consent, with a provision in our own law. We suspect that that is going to be required.

23 Mr. RUPPE. Well, you have a surface owner consent clause in your law. Do you know that the Federal Government has a surface owner consent clause in this legislation or could you tell me what would be the cost to the various States to administer that program and let the various States, whether they are Wyoming or Kentucky, administer that program on the State level.

23 Mr. MENDICINO. I think we will have to take the position that we would like to do that at a State level.

23 Mr. RUPPE. On page 1 of your appendix, I gather you are addressing the point that - or rather it is page 2. I am sorry, I think it is page 2, when you refer to stringency. I gather what you are saying, at least what I understand you are saying, is if a mining company reclaims the land involved such that better agricultural use of the land is possible than may be the case prior to mining, that you would not want that precluded by this statute?

23 Mr. MENDICINO. That is correct.Although, the mind trust of that particular comment, Congressman, is that we hope that mere dollars will not become the test of stringency but rather the uses.

23 In other words, that the greater number of dollars that are required for

reclamation does not necessarily mean the higher the use.

23 Mr. RUPPE. In other words, you are saying, let's look to the uses, not look to the dollars involved in the reclamation process.

23 Mr. MENDICINO. Right. What is the result of reclamation going to be.

23 Mr. RUPPE. On page 1 you indicate, I gather, so far as unsuitability is concerned, you would find it difficult to go through the State of Wyoming and set up a suitability or unsuitability pattern throughout the State. You would prefer to have the question of unsuitability done on a case-by-case basis with the test being can it or can it not be reclaimed?

23 Mr. MENDICINO. That is correct. That aspect of the bill does cause us some concern. The way that our State on reclamation is set up there is a significant number determined during our permitting process at the present time. We would prefer doing it that way rather than trying to catalog at a point those properties or those tracts which can or cannot be.

23 Mr. RUPPE. Do you know what procedures you have? Do you have enough information in Wyoming to really designate on any kind of a permanent basis the suitability or unsuitability of your State lands for the mining process?

23 Mr. MENDICINO. No. We think we have got the information. We would simply prefer to do it through the permitting process.

23 Mr. RUPPE. You also indicate on page 5 of your appendix that you feel a monthly report filed here is not necessarily the best way to do the job but it simply leads to more paperwork.

23 Do you feel that the experience in Wyoming is that you would feel comfortable in reporting to the regulatory authorities on a 3-month basis and you would be comfortable, at least in your State, with that. Is that what you are saying, that it would be sufficient to insure that the mining companies would operate in conformity with the law?

24 Mr. MENDICINO. Surely. However, in all fairness, I must say that we recognize that our problem in this area, in Wyoming, is not as severe as it is in other parts of the country and I guess really what we are saying in that regard is that perhaps the difficulty is in section and that the different parts of the country should be taken into consideration.

24 Mr. RUPPE. Thank you very much.

24 Mr. UDALL. Let me say to my colleagues, we shall have a long wait, far
into the night, the way we are going.

24 We have a vote on right now. We will go to 12 o'clock and break for
lunch until about 1:30. We will move along as quickly as we can this
afternoon.

24 Mr. SEIBERLING. Could I just make a couple of comments so we can get
his
reactions. First of all, it seems to me your suggestion about having State
and
Federal regulation - I mean, State and Federal regulation - I mean, State and
Federal law is being very sound. I do not think, however, we can call up a
Federal administrator to wait and see what the States go for. One thing we
have
to make sure, that they do what they are told to and if they do not then we
have
a further delay, if we wait to create a Federal structure. Do you want to
comment on that?

24 Mr. MENDICINO.Yes. All we are saying is that we want an agreement
with
the Department which sets up the kind of machinery. We recognize that it
could
require some adopting in order to administer the things that are in this bill
and what we are saying is that we want that relationship created, that we
should
have the opportunity to expand on it and use it with respect to this bill.

24 Incidentally, there are two or three other States that have followed
our
lead.

24 Mr. SEIBERLING. I think that makes sense.

24 Another thing is I do not think it is practical to have each State
deal
with the surface owner permits. We are dealing with Federal coal. It is all
Federal coal and we know we have a uniform treatment.

24 Mr. MENDICINO. I do not think that.

24 The CHAIRMAN. Thank you very much.

24 Our next set of witnesses is a panel from Appalachian Coalition
Citizens
panel.

24 Who is quarterback of this group?

24 All right, Mr. Askins.

24 I am going to leave to vote in just a couple of minutes and I will

24 I am going to leave to vote in just a couple of minutes and I will return
but we will have to interrupt at that point, but let's go ahead.

STATEMENT OF DONALD ASKINS, APPALACHIAN COALITION, INC.

24 Mr. ASKINS. My name is Donald Askins, and I am from Jenkins, Ky., a small mining town in eastern Kentucky. My friends and I represent the Appalachian Coalition, a regional nonprofit citizens organization composed of State and local community groups from the coal-producing sections of Appalachia.
The coalition is a response by Appalachian citizens to the widespread environmental and social destruction and suffering that strip mining has subjected them to for the past 20 years, and continues to subject them to today.
The coalition reflects the sense of the people that, in the controversy surrounding the issue of strip mining, their voice and their concerns have been
largely ignored, particularly in the last 5 years or so.

25 The CHAIRMAN. Excuse me for interrupting, Mr. Askins. I think I better go. We will just suspend for a couple of minutes.

25 [Recess.]

25 [Prepared statement of Donald Askins may be found in the appendix.]

25 AFTER RECESS

25 The CHAIRMAN. My voting record has been saved so we can proceed.

25 Mr. ASKINS. We thank you for the opportunity to speak here today, and we
trust that this committee will be both sensitive and responsive to the needs of
the hundreds of thousands of Appalachian citizens who now live under the ominous
burden of strip mining.

25 I would now like to present the Rev.R. Baldwin Lloyd.

STATEMENT OF REV.R. BALDWIN LLOYD, APPALACHIAN PEOPLES SERVICE ORGANIZATION

25 Reverend LLOYD. I appreciate the opportunity to be a part of this panel to testify before you today. I only wish that the thousands of people throughout this great land of ours who have suffered so the ravages of strip mining could be here to speak to you today, too. For only if you can grasp the
enormity of the evil - the desecration of peoples lives, of their communities and their land, can you truly be able to understand the immensity of the problem
and why strip mining must be phased out.

25 My remarks will be addressed to moral questions implied in strip mining.
I know that when we speak about what is or is not moral that that depends on

what frame of reference we use; we each speak from our own. I also know that there are many frames of reference upon which people in our society act, and many interpretations of any set of moral values. But his should not prevent us from addressing the moral questions.

25 My own view of morality is based upon a Judeo-Christian understanding of creation. It is one that understands that God created all the heavens and the Earth. It is one that understands with the psalmist that, "The Earth is the Lord's and all this is in it." It is one that understands God created everything with a purpose to be fulfilled - all of creation, this earthly home of ours. God created the world as one, whole, interconnected, limited, fragile entity - held together in a delicate balance of interrelationships of all living things. We as human beings, today as never before, experience and know the interdependence of all people. Also and unalterably, we of the human family are mutually interdependent with all the rest of Earth's creation - the fertile, life-giving land, the water, the air and all living things. The special role assigned to us in this interdependence is to be caretakers and to live in harmony with creation's on-going, life-giving process. To understand is to know that to hoard, to destroy or to waste the Earth is to destroy life, and that this destruction is wrong and evil.

26 In the words of Warren Wright, a great mountain preacher, who has been himself personally affected by strip mining:

26 Strip mining is not, or should not be, a debatable subject. It's like debating whether to cut off your hand if you can't get enough money out of it. How do you debate the worth of taking our topsoil and destroying the balance of nature and dealing with the rights of every generation of people?

26 What do we usually discuss about strip mining? Our debates on the issue are full of the economic pros and cons of strip mining, the energy crisis, and the role of fossil fuels. We hear much about the need to produce more and more energy for more and more technological advancements that benefit fewer and fewer people. We might indeed ask, in the scale of values, do all these benefits really contribute to a more humane society?

26 Lost in the debate is what is happening to the people and to the environment in which they live. Also lost in this debate is the question of whose would it is that we human beings inhabit. There is no consideration of this Earth as God's and no understanding that the fulfillment of our human lives - indeed that of all living things - has somehow to do with God's intended purpose for all his creation.

26 So the debate about strip mining is a moral question above all else. Strip mining is immoral because of what it does to people and to land and water
and forests, and all other living creatures it affects.

26 What are the effects of strip mining in Appalachia? Allow me to give just a few concrete examples of this.

26 In a region of steep mountains and heavy rainfall, the people of Appalachia live in constant danger of floods and landslides. Some of the heaviest costs of strip mining are off of the actual strip mine sites.Households
- whole communities live increasingly in fear every time there are extended rains or sudden cloudbursts, common to the mountain region.

26 In the spring of 1975, you will remember, eastern Kentucky, southwestern
Virginia, and southern West Virginia experienced devastating floods, not one, but in some areas, three in a period of 1 month. Hundreds of homes were destroyed or damaged, farms and gardens, highways and bridges were destroyed. The cost was in the millions of dollars. In eastern Kentucky, two men were drowned in the floods of that time. Even Congressman Carl Perkins of Kentucky
attributed the worst of this damage directly to strip mining.

26 These are costs left behind - not internalized in the production of strip
mined coal. These are costs thousands of Appalachians have had to endure for a
long time. And with the rapid acceleration we have seen of strip mining in the
region, tens of thousands more people are faced with the same ill-fated prospect.

26 Blasting has proved to be a terror in the lives of thousands of people,
killing and injuring people and causing serious emotional and mental anguish. Last summer near the Breaks Interstate Park, on the part of Virginia near Kentucky, a huge boulder on the opposite side of the mountain from strip mine operations was dislodged. It crashed down the mountain leaving destruction in
its path, killing a young Kentucky couple and leaving two children orphaned. The previous year a 700-pound boulder crushed 72-year od Alice Fugate as she lay
in bed in Buchanan County, Va. She died 2 days later.

27 In December 1975, in Wise County, Va., the Clinch Valley College fieldhouse suffered $5 0,000 damages from flying boulders crashing through its
roof. In Norton, Va., residents of 13th Street were pelted by flyrock and buried in dust. The dust was so intense that even in midsummer windows and doors had to be kept tightly closed. Even that did not prevent dust seeping in
to cover furniture, clothes, food, everything. Children could not play outside,

for fear of flyrock and dust effect to health. Nevertheless, several contracted silicosis. None had ever worked a day in a mine or in a quarry.

27 In 1976, a study was compiled by the Center for Science in the Public Interest which charged that strip mine blasting caused $2 00 million in damage to about 10,000 citizens. Over the past 10 years, the damage exceeded $1 .5 billion and has affected 75,000 people. Most of these costs have never been internalized in the cost of coal production.

27 Legal support is hard to come by for those who suffer from strip mining. One medical doctor in Wise County, Va., learned what countless others had learned when seeking help. His small cattle farm lost its water supply due to blasting. Even 25 years' medical practice in Wise County could not assure him of local assistance, even from his lawyer patients. He had to go outside the area to get a lawyer who would be willing to take his case.

27 Virtually every lawyer in Virginia's seven coal counties is retained by strip mine operators or is into stripping himself. The victims of strip mining are for all intents and purposes legally disenfranchised.Few have the money or know-how to gain the legal support they desperately need.

27 For many in Central Appalachia, strip mining sounds the toll of death for their region. "Dying men live by dying streams in the midst of dying mountains. Our homeland is dying."

27 Few today, of whatever religious persuasion, have thought seriously or spoken out about the morality of our relationship to the natural world. This now suddenly becomes for all of us a critical issue for the survival of world and all of life. And we are caught largely unprepared.

27 Science and technology can be used to help, if used to seek and promote truth and that which affirms the whole creative process of life; or it can be used to exploit, control, and disrupt, regardless of the consequences, in order to fulfill the insatiable appetites of power and profit-hungry people and corporations. It seems as though we live and behave like we are the last generation that will inhabit this Earth, with little or no thought for the legacy we will leave for future generations.

27 There is no wise answer to strip mining but to phase it out as quickly as we can. The moral cost - human and environmental - is too great for it to continue. And to know that we don't have to strip mine at all only compounds the moral judgment placed on our generation. The terrible desecration of human

life and land is all but a small percentage of the total minable coal - for less than 5 percent of it - a mere pittance.

28 For 7 years, efforts to end these abuses through congressional legislation have failed, more than time enough to have made the transition from strip mining back to deep mining. Even the coal industry said 5 years ago that it would take 3 to 5 years to make this transition. This was in response to Congressman Ken Hechler's timetable to ban strip mining in 3 years. But it is clear industry will take no steps in this direction unless by law it must; for strip mining has greatly accelerated, and deep mining has diminished over the course of these 5 years.

28 Now, however, we have a new administration and a new Congress, a new day, we pray, a chance to begin again and set things right.

28 Mr. Chairman, I also, on behalf of the people who have suffered so long in southwestern Virginia and who cannot be here implore you and the committee and I commend you that you are having this tour in Virginia. I implore all the members of the committee to come and to talk with those who have suffered so long, to see and hear what they have to say.

28 The CHAIRMAN. Thank you very much.

28 [Prepared statement of Rev.R. Baldwin Lloyd may be found in the appendix.]

28 Mr. ASKINS. Next we have J. W. Balradley from Save our Cumberland Mountains.

STATEMENT OF J. W. BRADLEY, PRESIDENT, SAVE OUR CUMBERLAND MOUNTAINS

28 Mr. BRADLEY. I will have my full statement printed in the record if you will strike from the record now all the untruths that have been told here this morning about why we need strip mining.

28 Evidently, you are not going to do it.

28 I would like for you to take this picture and look at it. It is what happened to a mountain and this picture was taken by the National Geographic. This is not something that we do.

28 I would like my testimony to be put in the record.

28 My talk may be burdensome. For many years Tennessee was the 50th in per capita income for their educational system in the United States. But at the same time we have some of the wealthiest Representatives, both State and Federal, that exist.

28 I am ashamed of the UMW because the UMW, regardless of what it was made for, that union was made by deep miners and not strip miners. I have often said that the strip miners were smarter. They go ahead and join the union and get the equipment and deep mine.

28 I have a picture that I would like to show you that illustrates some of the things that we are talking about. They say that they are opposed to going to make original contour, whatever the argument was a while ago.

29 One study shows that we have 27.9 tons of silt run off per square acre from a particular mountain.

29 OK. We strip mine it. We leave a high wall of a 100 feet. Then we put back none of that and then we drain the water back to the high wall but nature has already told us if you have any commonsense, that this is going to erode and fill up the waterways and you are going to have an overspill.

29 You bring it back to approximate original contour and this type here is estimated that it's 30,000 tons of drainage. That is from a strip mined area and that was back in 1970 when we had smaller equipment and different people operating it. They weren't as greedy as they are now. But you've got this exposed and so forth and so on.

29 You are displacing the water table because you've stopped the natural water reservoir in these mountains and any where else. You have already made a lot of these mineable coals unrecoverable because you've fractured over it.

29 There is probably less than 1 percent of the total coal in the United States that can be recovered by strip mine's present technology. I say this because the strip mine companies borrow from the research of the deep mine industry. There is some deep mine coal that can be stripped but there is very little. And they didn't give credit to the strip mined coal that is deep mineable so they take us from there.

29 But this is just to show what goes on there.I have got a case of this sort that has been in court for over 5 years. Strip miners have an injunction to keep me off my own property. You take the size of the TVA, the world's largest consumer of strip mined coal, they are with the strip mine industry. They have financed strip mining. They have supported strip mining. They even go as far as to accept illegally located coal and strip mines, and the very nature of it is of a worse quality than the deep mined coal.

29 One thing we did was to show that TVA had been getting $1 1/2 million on

one coal contract by illegally located strip mining companies. A year later the
FBI did a study to show that there was no violation still going on. We went
back as before and had articles to show them, and we took TV's down there to
where these violations were occurring. We watched them film it. Then we took
the FBI back and the FBI witnessed the illegal loading and the processes and
they verified it. We got search warrants for these people and when it was taken
into the Federal court they couldn't get an indictment. They didn't have
anything but visual, videotape witnesses of both the process and the citizens.
The TVA attorney and the FBI said they didn't have enough to go on.

29 We feel that the only sensible thing is to start a regulated phase out of
the strip mining. We are not going to close down the industry but we know if we
do less than 1 percent of coal that can actually be strip mined then it is going
to phase itself out.

29 So, the longer we wait the more time we are wasting. The Federal
Government can set up a bureaucracy. I wish they had done that 5 years ago.
Maybe then they wouldn't have gotten as big a raise as they got this time.

29 It is expensive to regulate strip mining. It is useless to set up a
bureaucracy that is going to destroy the land, the water, and the people, and a
lot of the natural resources. I wish I had time to really tell you what's going
on.

30 [Prepared statement of J. W. Bradley may be found in the appendix.]

30 The CHAIRMAN. Well, you feel very strongly, and you make an impressive
witness, Mr. Bradley.

30 Mr. BRADLEY. It's not worth much. I've been told that before.

30 The CHAIRMAN. Well, I have heard it before and one of my dreams is that
before the summer is here we are going to have a strip mining bill, at long
last, that will start some Federal regulation of these abuses you are talking
about.

30 Mr. BRADLEY. I don't want to argue with you, sir, but the bill that you
are all after is the same as the bill over 2 years ago. We lost confidence in
that.

30 Mr. ASKINS. Now I would like to present Judy Stephenson, executive
director of Save Our Mountains from West Virginia.

STATEMENT OF JUDY STEPHENSON, EXECUTIVE DIRECTOR, SAVE OUR MOUNTAINS

30 Ms. STEPHENSON. I am also going to be a little shakey. The severe winter in West Virginia has taken its toll in more than just the water pipes and the natural gas shortage. It has taken its toll on a lot of our healths, including mine.

30 In 1949 we had the strongest reclamation law in the country and a bureaucracy that was trying to regulate strip mining. Congressman Rahall, who sits on this committee is a freshman Congressman from West Virginia, and he has made the statement that our law in a lot of ways is a lot stronger than H.R. 2 and it is in a couple of aspects a lot weaker.

30 Under our law, the Department of Natural Resources director has authority to do several things. One, is to issue permits and to inspect strip mines and approve applications. There is a great deal of debate. We have an appeal now before the board of review, concerning that application process as laid out in the law but there is a process which strip mining operators must come and present plans to the department which must be accepted and then bonds must be posted, et cetera.

30 One of the problems with that is the Division of Reclamation currently has no technicians except for one geologist among their specialists. A lot of these people are on civil service. There is no provision that these people be trained to read the plans, reclamation plans that have been drawn up by engineers or appropriate geotechnical people by the strip mine operators before they are submitted.

30 The pay is low. Most start at about $9 ,000 a year and go up from there, probably the ceiling is about $1 1,000 for a strip mine inspector. Due to this there is a lot of bribing going on. There is a lot of bribing in the hills any way, but there is a lot of bribing and I have documented it in our testimony.

30 People are offered everything from Christmas gifts to a bulldozer, to a job that would pay a hundred percent more than they are making now. Operators - I mean inspectors have also been threatened by operators. You report this violation and your family lives down the road, that kind of a threat.

31 Another problem inspectors have is when a lot of violations are brought before the courts. They have no lawyer to go with them and there is a coal company represented by their own legal counsel before a local magistrate that

also has the same problem of living in the local district where the strip mining is going on.

31 As for the mines, the West Virginia code sets up a nice section 20-6-30 that requires a $100 to $1 ,000 fine or up to 6 months imprisonment or both be levied when an operator operates without a permit or bond, falsifies information, or wilfully violates the law. If the violation is deliberate, the fine ranges from $1,000 to $1 0,000. Each day of violation constitutes a separate offense and may be fined accordingly.

31 The average fine levied in 1972 was $4 7.83 and increased to $2 31.73 in 1975. Despite this increase the fines levied in West Virginia are a sham. The amounts collected would not deter an operator from violating the law. The operator oftens finds it less expensive to violate the law and risk being fined than to correct his violation.

31 We have a Reclamation Commission. The commission is made up of the director of the Department of Mines, the director of the Department of Resources, the director of Water Resources, and the director of the Division of Reclamation. Three of those men, the last three, are part of the Department of Natural Resources. The purpose of the commission is to review the regulations set up under the law. Therefore, the people who are administering the law are also reviewing their own decisions.

31 The Reclamation Board of Review is appointed by the Governor. One of these people has to be a representative of the mining industry, one of forestry, one in agriculture. Presently, one of the members of the board is president of a coal company, while the other member is representing Gates Engineering which does extensive work with coal companies. So, we would state that coal companies are more than represented on the board, considering there is also one vacancy.

31 Another thing the law requires is that where there is no bench involved with strip mining they are to return as much as possible of the land to its natural contour. We have that section in our law also. Section 11 requires - well, doesn't require, it allows, the director of the Department of Natural Resources to delete certain areas from strip mining. This came into effect in 1971. Since that time not one area has been deleted from strip mining.

31 Shavers Fork area of West Virginia is a well known reclamation area and
despite the protests of local citizens the U.S. Department of Fish and Wildlife
Division and the U.S. Corps of Army Engineers on two separate occasions when the
department refused to permit it, the Reclamation Board overturned and ruled for
the mine operators on Shavers Fork.

31 One of the problems with the provisions in the State law is that most
citizens have no technical expertise or have no access to technical expertise to
finally review plans.

32 Also, many of them have a lack of access to the information although
I must say the Department of Natural Resources have kept their files open to
anybody at any time during the natural day when you - working day.

32 One of the problems in West Virginia has been the ownership of the land.
There is a chart in my testimony dealing with the ownership of the land. Over
5 million acres of land in West Virginia are owned by 50 large companies. Four
of the top land holding companies in the State own almost 2 million acres of
land.

32 The problem we think, goes back again to the fact of the citizens being
almost powerless. If somebody can own that much land and strip mine it
themselves - I mean, the Department of Natural Resources is caught in the middle
of trying to administer the law in a State where companies hold the power and
citizens do not and the citizens are on the other end of the stick trying to do
their best when they feel their rights are being violated.

32 Let me speak very briefly to two - one other point on the geology of the
area. One, in the mountains of West Virginia much of the top soil is extremely
thin. You cannot take it off and put it back.There is just not much to put
back. So, some sort of soil has to be put back there to revegetate. Also,
another thing is low pH materials find their way to the surface operations as
silt material after a period of time when they return to revegetate the area.
Another thing, we had to revegetate timber lands and turn them into grassland.
There is debate as to whether grasslands are used for any other ways of changing
the natural habitat for a lot of animals and birds in the area. Also, it is
documented that two-thirds of West Virginia is one of the major landslide areas
in the United States. Anything over 23 degrees of slope in West Virginia, it is
very likely, if you do anything like build a high wall, it is very likely to

cause landslides.

32 I have a statement in my testimony about the hydrological conditions of the area too. In the mountains, if you start tampering with what is there with what we have in West Virginia, since we have such an abundance of water, you damage the water shed. You damage the drainage pattern and this causes extensive flooding.

32 Also, another thing, because of the slopes you get a lot of the sedimentation, and often after reclamation, that is currently happening now, 75 to 85 percent of vegetation that was there when we originally revegetated the area is damaged.

32 I wanted to speak to the therefores of what all this means. What it means is we have a lot of landslides, we have a lot of flooding and I would like to speak about one flooding, Gilbert Creek, which happened in the early 1970's. What happened was over a long period of time that whole region was stripped, permit by permit to almost the entire top of the water shed and the extensive area was strip mined. In 1972 there was a flash flood which cost $7 million of damage and it was declared a national disaster area. It was by strip mining.

32 In Clear Fork, which is being strip mined now, there is an article in my testimony referring to this, the people there have no water at all or are flooded due to strip mine operations.

33 Another thing, in some counties is important is tourism. In Nicholas County there has been a study and it has been projected into in the year 1980, jobs created by tourism is 3 1/2 times that that could be created by strip mining. This is a comparison not just of mining but of several other industries.

33 Another thing that concerns a lot of people there, it seems there is no respect for the cultural aspects of our own society there and how people value their home land, from their own backyards, but if that is where the water shed is you might not have any homeland left once the flood comes.

33 It has been estimated that 3.8 percent of the land can be strip mined. The remaining 96 percent can only be deep mined. Thus, to obtain 3.8 percent of West Virginia's coal some 12 percent of the State's area would be stripped directly. Therefore one of the coal operators from Virginia who testified before this committee on January 10, 1977 is correct that stripping disturbs 3 acres for every 1 stripped, then it follows that a total of at least 36 percent

of West Virginia's area will be disturbed to reach approximately 4 percent of the coal reserves. With the new techniques the industry reports to have, the area could be even greater than that.

33 The CHAIRMAN. Thank you for a very good statement. I had not realized the concentration of land ownership in West Virginia.

33 [Prepared statement of Judy Stephenson may be found in the appendix.]

33 Mr. ASKINS. Our next speaker will be Mr. Earl Cheatwood from the Alabama Conservancy.

STATEMENT OF EARL CHEATWOOD, ALABAMA CONSERVANCY

33 Mr. CHEATWOOD. I live in the northern part of Jefferson County which contains the largest city of Birmingham and in the northern part of Jefferson County we have numerous small cities and communities. Quite a number of them, I want to say, are in need of a Federal code or legislation. The State law has no provision for blasting in it to protect the people.

Under section 11 of the Alabama law it states an operator shall use explosives only in accordance with the rules, regulations, and standards as set forth by the Mine Enforcement and Safety Administration. The coal mining laws of the State of Alabama also have provisions that they cannot blast at night time. The only provision in it to protect the citizens in the surrounding areas is a 300-foot setback from the occupied building.

Gentlemen, that is not far enough, by the standards that they blast today, to remove the overburden of the coal. By blasting as heavy as they do you find in the State of Alabama that we have the VA and FHA loans withdrawn from the subscription in certain areas. We have homeowner insurance denials that are not renewed. I have also documented proof in my testimony to this effect, while property depreciates under economic penalties of 40 percent and more. If you are a transit worker or the company you happen to work for requires you to relocate and you are close to a strip mine area or if it is visual to you then the 40 percent runs something like 50 to 60 percent. You have a hard time reselling your home.

34 We have numerous physical damages to the surrounding area and I have documented proof in my testimony of where it ranges from small amounts to better than $10,000, damages to individual homes. That is strictly because Alabama does not have a provision to protect the citizens.

I have also a newspaper article in the testimony of where the completion of

Interstate 65 Highway was being held up, a section of it, to whereas they can strip mine before they complete the highway.

We have numerous civil suits within the area, 42 to my knowledge now.

I also included in my testimony in the back several newspaper articles where the Strip Mine Commission that was created by the Alabama law, one of their own commissioners of the seven that was appointed by the Governor of Alabama, has pointed the finger at three of the others and asked the State Ethics Committee to investigate.

I also have numerous articles that state conflict of interests on one of the State senators. There are several articles pertaining to the conditions, pertaining to the Alabama law, that are not being able to get an Alabama law passed.

Gentlemen, I have been involved for the past 2 years in trying to get some State legislation passed, in particular, to give relief to the blasting conditions in Alabama. Last year I got some local legislation passed through the house but it died in the senate. At this time I also - we do have local legislation passed through the house now but the outlook is still dismal for it. We have a hard problem of getting any legislation passed in the State of Alabama, because of conflict of interest, in my opinion.

So, we ask that we have some strong provisions in this Federal bill pertaining to blasting within the area.

I would like to stress the fact that there has been damage caused as high as 2 miles away. On February 5, 1976 Q. & T. Coal Co. put off a blast that shattered a glass 2 1/2 miles away from the point and that was in a straight line from a pit area, not going around the old country road. That is why I say we need some strong provisions, even in the Federal bill pertaining to the blasting.

[Prepared statement of Earl Cheatwood may be found in the appendix.]

The CHAIRMAN. You have a good collection of material.

Were you here last month when the Alabama officials told us they had the best law in the country? You do not agree with that?

Mr. CHEATWOOD. No.

Mr. RUPPE. In a sense is the problem in the lack of a suitable law or is it in the lack of adequate, tough enforcement? Where do you consider the nature of the problem to be - in the fact that your State does not have an adequate law or

that you do not enforce the law but just have it on the books?

Mr. CHEATWOOD. Under the act 551 that was passed in 1975, it is a fact that
it has around 35 loopholes in it. There is nothing in it as far as blasting or
even the reclamation that can truthfully be enforced.

35 Under section 5, paragraph 15, it states that the seven-man commission,
they can accept or compromise or use their discretion as to what may be
dangerous to the State or take any action to recover penalties to compel
compliance with the act or any other rule or regulation and can waive or reduce
up to 90 percent of any penalty for person against whom the penalty is assessed
and take satisfactory action.

Under that paragraph alone -

The CHAIRMAN. Mr. Ruppe is making the point that you can have the toughest,
meanest law in the world but unless you have got the enforcement people,
people who are tough and enforce the law strictly, a good law does not matter.

Do you agree with that?

Mr. CHEATWOOD. Yes. This seven-man commission, one of the Commissioners,
the chairman, Mayor Bill Noble of Gardendale, is resigning because he accepted a
plane trip to the Alabama-Indiana football game in November. The Ethics
Committee asked him to resign.

The CHAIRMAN. Do you have more witnesses?

Mr. ASKINS. Yes. We have Mr. Phil Ronan.

STATEMENT OF PATRICK PHIL RONAN, DIRECTOR OF THE OFFICE OF APPALACHIAN MINISTRY, VIRGINIA CITIZENS FOR BETTER RECLAMATION, INC.

35 Mr. RONAN. My name is Patrick Phil Ronan. I am director of the
Office of Appalachian Ministry, of the Catholic Diocese of Richmond, Va.,
located in Wise, Va. I am also a member of the board of directors of the
Virginia Citizens for Better Reclamation, Inc. Referred to hereinafter as
VCBR.

35 VCBR, Inc. is a 250-member citizens' group concerned with the social,
economic and environmental effects of poorly controlled strip mining practices
primarily in Southwest Virginia's coalfields. Seventy-five percent of the VCBR
membership is made up of coalfield residents, 40 of whom have experienced some
type of strip mine related damages from landslides and stream siltation caused
by inadequate sediment controls to cracked home foundations, destroyed water

supplies and numerous other property damages resulting from poorly controlled strip mine related blasting.

35 I would like to make it clear at this point that neither myself nor VCBR is anticoal industry, as the membership of VCBR is substantially made up of coal miners and/or relatives of coal miners. In fact, one member of our board of directors is a UMWA surface miner and would have attended today's meeting except for an illness in his immediate family. VCBR seeks to enhance the job availability in coal mining through the encouragement of deep mining and the improvement of labor-intensive reclamation techniques.

35 For this and other reasons VCBR has introduced legislation to improve the State's reclamation and mine safety laws. Every effort to get a legislative package out on the floor for a vote was foiled by delegates from Virginia's coal counties. Out of 20 suggested improvements not one, not one got out of committee in this 1977 session of the Virginia Legislature. All that one might say we accomplished is to have these issues referred to further study and to prove beyond any doubt that the State of Virginia is totally opposed to improving the environmental and social standards of the mining industry in southwest Virginia. The prospect of any future Statewide office holders to recognize the plight of southwest Virginia is slim indeed. Already we have experienced one gubernatorial candidate trying to sway testimony of a citizen before this very committee and another candidate for the same office has written the chairman of this committee endorsing a strip mine permit fee increase in Virginia when in reality, he helped kill the measure by appearing before Virginia's House Mining and Mineral Resources Committee and asking that they study the matter further. The fee was consequently increased by a paltry 25 percent when the State Department of Conservation had substantiated a need for a 300-percent increase. This State mining committee did, however, see fit to pass a resolution memoralizing the U.S. Congress to let individual States take care of their own strip mine program without Federal intervention or guidelines. This bill, House Joint Resolution 270, was copatroned by all four Virginia coalfield delegates, three of whom voted against improving Virginia's reclamation program, most notably by sabotaging the strip mine permit fee increase which would have been used to bolster the Division of Mined Land Reclamation's helpless enforcement program.

36 Let me deviate for a moment and offer to the committee some newspaper articles from the Coalfield Progress, the local newspaper in Wise County, northern Virginia, February 10, documenting what I have just said. I wanted to do this in light of the testimony given by our illustrious State leaders earlier this morning. I think it is important.

36 The CHAIRMAN. Do you intend to read the whole statement?

36 Mr. RONAN. No. I intend to summarize.

36 At this point I might add to the members, that this complete opposition to strip mining had caused us to do a critique of a bill, 13850 which is H.R. 2 of this current session. The line numbers used on our notes do not correspond so in my testimony they are different. I did not realize it. So, if you use my testimony you should be aware of that.

36 The CHAIRMAN.I have flipped all through and see you have some very good and specific criticisms and suggestions for the bill. I think we will want to look at it.

36 Mr. RONAN. Then I will skip that and close out by saying VCBR and other State and regional groups have identified Virginia as having the most severely handicapped strip mine control program in the entire Appalachian coal mining region. Accelerated strip mining activities in the past few years have left thousands of acres of vital watershed irreversibly damaged due to the antiquated method of steep slope mining so accurately termed "shoot and shove." This is a process whereby the topsoil, subsoil and blasted, fractured rock is simply shoved down the mountain slopes with little regard for public safety, watershed, stability of disturbed lands, and future land use.

37 When VPI said they are doing research relative to the uses of strip mined land, the research they are doing with regard to food production, garden production, is one experimental project I personally know of. They started the project last April and it is interesting to note that that particular topography beyond the rolling hills is plateau stripping and it is not steep slope stripping.

37 So you see, they find the need to heavily concentrate the area with nitrogen consistently to keep vegetation alive, which is very evident from the various plans they have and the various degrees of nitrogen they have used in their efforts to experiment.

37 I have followed the process of H.R. 25 in 1975, H.R. 13950 in 1976, and the preliminary process of strip mine legislation in both Houses of Congress since about 1970. I must confess, gentlemen, I am astonished to find myself here in Washington attempting to present some information this subcommittee can

use relative to strip mine legislation. I am surprised because it is not my lot
to be a lobbyist. I am not at ease in this position. But I am here because
many of my friends who have carried this concern of strip mine controls to the
State capital and to Washington, D.C. in the past, have given up hope or have
simply dropped out for lack of confidence in the system. I must confess I am
confused within myself of my participation in this political process on the one
hand, and the moral principles I see at stake on the other.My tradition teaches
me that we are stewards of God's gifts of creation, not the least of which are
our abundant energy resources. As responsible stewards we must take care to see
that these gifts are distributed in ways that provide for the basic needs of all
people and that the development of these resources does not infringe on the
basic human rights of people nor mistreat the land from which they come.

37 Specifically, I feel that national regulatory legislation is urgently
needed to promote the responsive development of our coal and other mineral
resources and to protect the people and the lands affected by such
production.

37 With regard to the specifics of H.R. 2 I would like to point out a
sensitive concern of mine. Under title V, Control of the Environmental Impacts
of Surface Coal Mining, I would like to ask you gentlemen to be sensitive to the
human dimensions of stripping by including in the title of this section the
words "human and," before the word environmental so that title V should read,
"Control of the Human and Environmental Impacts of Surface Coal Mining." I
request this of you gentlemen, because too often persons are forgotten as we go
about the rationalizations of compromise.

37 When I consider that H.R. 2 is essentially H.R. 25 of 1975, and that the
process of H.R. 2 has a history of 5 or 6 years, then I am suspicious of its
value. I know the regulating of strip mining has suffered compromise in this
process. I am further amazed by the presence of the coal industry and their
aggressive attempts to water down this bill even further. It is with this
attitude that I would like to offer criticism of the bill.

37 Appalachian contour stripping presents the problem of reclamation in a
situation where steep slope stripping constitutes the major method used. When
this practice is complicated by multiseam stripping, acidation, sedimentation,
and siltation will result, unless controls are enforced that will ban stripping
on slopes in excess of 20 degrees or require the operator to use the haulback
method or blockcut method of mining. Regulation must prohibit outslope
overburden spillage, commonly known as spoil.

38 [Prepared statement of Patrick Phil Ronan may be found in the

appendix.]

38 The CHAIRMAN. Let me ask. We have a lot of people from other States and we are in for a long, long session this afternoon. We had asked these group presentations to try to hold down to ten or 15 minutes so that we do have some time for questions.

38 We will break for lunch in just a moment.

38 Does this conclude what you have, Mr. Askins?

38 Mr. ASKINS. I have one more brief comment in closing. It is the consistent opposition we have in this appeal for society.The three major ones point to the fact of the very limited strippable reserves and the great quantity of intentional and human damage that is done in mining those reserves and the lack of enforcement in all the States and the apparent inability to achieve any viable degree of enforcement; that, instead of continuing the destruction of the land and of the people for the quick and easy energy and wealth that stripping provides for some, logic dictates that we make the more responsible choice of developing a deep mining industry that can provide, safely and over the long term, a reliable source of energy to meet the national need until alternative and renewable sources come on line.

38 It is in this context of an overall national energy policy that we recommend the phasing out of strip mining on slopes above 15 degrees; the phaseout should occur over a period of time adequate for increasing underground production to replace the supply lost as stripping is gradually stopped. The timetable which we recommend for the implementation of the phase out is appendixed on the last page in the testimony.

38 Basically, it begins a phase out after 18 months from day enactment of the law should be completed by 4 1/2 or 5 years.

38 We believe this schedule to be realistic and practical, providing for the orderly and gradual cessation of strip mining over a number of years, during which time the industry can plan and implement a program for shifting production to deep mining.

38 An Appalachian coal industry based on deep mining and guided by an enlightened commitment to safety and the national interest has social, environmental, and economic advantages for the people of the region that this committee can help bring to fruition. To those who live with the ravages of strip mining, the desirableness of moving to deep mining has long been clear. To those who are unfamiliar with our situation, we urge consideration of the most convincing evidence available, come and see it.

38 Thank you. That concludes my presentation.

38 The CHAIRMAN. We all thank you very much.

38 I feel a deep bond of sympathy and concern for the panel this morning.

38 I have fought this fight all of these years with very few resources and men against a well financed industry that sees this differently.

39 I know G.W. is kind of skeptical and pessimistic.

39 Mr. BRADLEY. I am a former dep miner so I, too, mined coal for less so I would be willing to work in no other industry now that is not as safe.

39 The CHAIRMAN. I do not thinkyou have to convert me or Mr. Seiberling or Mr. Ruppe, who has been supportive and sensible over the years on this problem.

39 We appreciate the work that has gone into the presentations and all the love and devotion for the land.

39 I personally want to thank you for being here and doing what you have done in the past.

39 I want to adjourn and we will reconvene by 1:30 or 1:45.

39 Mr. SEIBERLING.I am going to have to leave, too. I have a friend here from the city of Akron that I promised to have lunch with at a quarter to twelve. He has been very patient.

39 I would just like to say that I was the first cosponsor, in fact, the coauthor of Ken Hechler's original bill to ban strip mining of coal.I think I feel it would be better if we waited until the balance of our coal reserves are stripped, whatever remains, instead of making that our first attack on the problem. But I have to say the realities of the situation with respect to the energy crisis, we have gotten ourselves out on a limb.

39 Now, we happen to have more than half our coal coming from strip mined coal and with a tremendous increase in demand that is going to take place with our future energy requirements, that is why I see no practical possibility of phasing out.

39 So, the next question we ask ourselves is how do we control it? It is obvious that all the industries will be coming in and saying the States are doing it, and there are States whose mining laws are meaningless, but it is the State mining laws that are going to impose a regional law which is adequate, and comparable, to the one proposed by this bill, such as Pennsylvania. Or they are not and in that case the fact that there is a State law does not answer the problem.

39 I would like to ask Miss Stephenson, since I think she expressed some very excellent comments about the problems involved and so did the gentleman from Alabama, in enforcement, whether you think this bill is doing everything reasonably necessary to insure that the enforcement will be effective by means of Federal policing of the States?

39 Ms. STEPHENSON. I doubt that it will. I think there is one thing the bill will do. It will allow for some standards and regulations to be set up as far as inspectors reclamation plans are concerned that could be of value.

39 One of the big problems, as I said before, is who oversees what. I think in West Virginia it may help some but I think it is really that so much of the land and the politics are owned by people with money that is it going to be extremely hard.

39 Mr. SEIBERLING. It will be a little harder to bribe a set of two inspectors, one of them operating under Federal laws, though I recognize that there is a fallibility in human beings at all levels.

40 Ms. STEPHENSON. One of the problems I have with the provisions of the law is whether the way the departments are it will be possible to have the State administer the program on its own.

40 Mr. SEIBERLING. Well, of course, the history of the coal industry is one of brutality and corruption. I suppose that history will not be totally obliterated. But it seems to me we have to give the regulatory process a try. Where we find it is weak we will have to make it tougher. As experience dictates, in coal mine safety there is a dangerous situation there, as we know, particularly in deep coal mine safety and because all we can do there is where a problem arises we can try to tighten it up.

40 Ms. STEPHENSON. In 1975 there were more fatalities per manhours in strip mining than there were in deep mining. That is documented by the UMW report.

40 The other thing that we mention is there is no ban on mountain top stripping and there is no ban on stripping, like after 23 degrees. That is extremely important as far as people are and what happens to them.

40 Mr. SEIBERLING. As far as no ban on mountain top stripping, those things we think are not adequate, but the coal company people come in here, just this week, and protested this bill, that it would ban mountain top stripping. So it all depends on what position you are going to take. It will not ban mountain

stripping, you are quite right.

40 I have no further questions.

40 Mr. RUPPE. Thank you very much. I am very impressed with the testimony.
It seems to me that in this session of the hearings there has been a great deal
more emphasis on the part of how to deal with the blasting problem than there
was heretofore. Perhaps it relates more to the particular witnesses we heard.

40 Do you feel that if there is good documentation in terms of when the
blasting occurs along with blasting material used, do you think that is
sufficient information available to nearby residents so if they feel there has
been damage done they would have sufficient evidence available to them to
properly make their case.

40 Mr. CHEATWOOD.Alabama State law, as it stands now, the people in the area
have to show negligence to the company.

40 Mr. RUPPE. If I live a hundred feet or a mile away and my windows fall
out at 10 o'clock in the morning and I show that the company let out a blast at
that time and the company has to register that information, I think I could make
a pretty good case.

40 Mr. CHEATWOOD. I would say it would depend on the information. There
should be some provision in it to set up as a permanent record kept the amount
of explosives in each blast. So, therefore, a geologist could look at their
report, look to see the actual areas, look at the statistics, and all and he can
fairly well determine whether that blast did do the particular damage to your
home.

40 Mr. SEIBERLING. Would the gentleman yield?

40 It seems to me that our first aim should be to put in some standards so
that rocks would not fall on Alabama. Isn't that what we really need to do?

40 Mr. RUPPE. There is a lot of damage done by explosives and there are no
rocks.

41 Mr. SEIBERLING. We have a lot of testimony about rocks being projected
as far as a thousand feet.

41 Mr. RUPPE. How about the damage to people at a distance from a mine
site. What these gentlemen are saying, I think, is that we want enough

information to have a good record kept of that blasting. At least we can make a
decent try under the Federal bill.

41 Mr. CHEATWOOD. There are 200 movements per second. Under those conditions on the same street level you can experience damage 1 1/2 miles away
through seismic waves and convulsions that travel to the area from the strip pits in Alabama. As I stated earlier about the shattering of the glass 2 1/2 miles away, that was actually a convulsion traveling through the air but we are
having extensive damage away from strip pit areas by seismic waves traveling underground because there are an awful lot of homes on the same street level as
strip pits.

41 Mr. SEIBERLING. It does not seem to me that we ought to consider putting
a provision in this bill that shifts the burden to the proof and provided that
where the damage is established by the owner of the property and the timing of
damages is shown to have coincided with a blasting operation that from that point the burden shifts to the mine operator to show that they did not cause the
damage. If they fail to have that kind of State law then the Federal regulation
would take over, that would be one way.

41 Mr. CHEATWOOD.In my opinion the way may be to find out whether the strip
mining operators actually did the damage. When a strip mine operator requires a
permit to strip mine, companies should have to go to someone in the general area. They should be required before they even start operating to go into the
area, take pictures of the homes, do a complete survey of the area and then they
can start and then if there is damage to the homes then they can answer whether
the strip mining operators did it or not.

41 Mr. SEIBERLING. Ladies and gentlemen, We have really appreciated your testimony today.I share with Chairman Udall. I have a very sympathetic bond with people who have been subjected to indignities and the danger and deprivation of strip mining over the years. It has been devastating in all parts. I want you to rest assured if it is within our power we are going to do
something to end this sort of situation. We appreciate very much your help and
we will need your continuing help.

41 This session is recessed until 1:30.

41 [Recess.]

41 AFTER RECESS

41 The CHAIRMAN. The subcommittee will resume its hearings.

41 Our next scheduled witnesses are a panel of deep miners, Mr. Gibson and Mr. Brewer. Will the gentlemen come forward and take the witness stand, please.

41 Is Mr. Gibson here? I gather he is not.

41 Before you begin, let me say to the others who are here. We have a long list of witnesses today. It turns out to be a very busy day in the House. We are going to be interrupted with some more recesses for voting during the afternoon.

42 We try to compile a record here and we do that through the prepared statements and charts and tables and we accept witnesses' statements that are presented to us. But I have to encourage you to try to educate the members of the committee, and sometimes the education goes both ways here. But I feel in these days of hearings we are hearing over and over a lot of the same arguments. So I hope you can shorten your statements, summarize them, tell us your business, about your communities, your lands, or give us some specifics. That is the most valuable piece of your time.

42 We have agreed today to hold panels to about 10 minutes, which saves a lot of time for questions and answers. So, to the extent possible, please comply with that kind of a rule. If there are any witnesses who have special problems or want to submit your statements for the record or have an air plane to catch, let my staff people here know about it and we will try to accommodate you. It may be fairly late this afternoon before we get through.

42 All right, Mr. Brewer.

STATEMENT OF JOSEPH BREWER, APPALACHIAN COALITION

42 Mr. BREWER. I am presently employed as a safety supervisor for Davis Coal Co., and prior to my present job I was employed by Buffalo Mining Co. during which I was a member of the United Mine Workers of America.

42 I have lived on Marrowbone Creek in Mingo County, W. Va., for most of my life, and my home is only a stone's throw away from the house in which I was born. My family and kinfolk have for many generations lived and farmed in this small valley. They have lived through hardships. Some have prospered, and some have not, yet clearly the definition of poverty is in the eye of the beholder,

for rich or for poor, the people of Marrowbone Creek are proud of their home, and in this pride there is a richness that escapes any social definition of the word poverty, or the word prosperity. This richness of pride and deep appreciation for our homeland, the beauty of the hills, the clarity of our streams, the abundance of wildlife is in no way limited to our own area but seems to be a set of values appreciated in many other areas in the mountains of West Virginia and among many who work in the deep mine industry of our State.

42 It is with these in mind, my family, my community, and other communities in the West Virginia mountains, that I come before coal miners, to inform you that not everything that you hear about strip mining in West Virginia is all peaches and cream and true. Although the surface mine industry can go to extravagant lengths to fool the people they cannot fool the deep miner, nor can they fool the people that live in the hollows and hills.

42 While working for the Appalachian Regional Hospital Service Corp. I did extensive traveling in southern West Virginia between hospitals and also in parts of eastern Kentucky and southwest Virginia where strip mining is taking place. I personally witnessed the aftermath of the Buffalo Creek disaster, the worst disaster in the history of West Virginia in which strip mining played the part of death dealer for 125 lives and destroyed millions of dollars worth of property damage and homes. Pittston Coal Co.'s argument that the flood was an act of God lost out in a $3 million court suit on behalf of the people of Buffalo Creek which proved that it was Pittston's coal slag dam and surrounding strip mine operations which contributed to the disaster.

43 Many times when I was on the road, the highway would be blocked by slides coming down out of a strip mine site operation. One time in 1972 between Mann, W.Va. and Gilbert, W.Va. I saw a drive-in restaurant pushed over the hill by a strip mine slide. Usually the conditions leading up to such a slide were normal for the time of year, and were related to the amount of rainfall or combinations of rain and snow thawing or ice. It is virtually impossible under many expectable weather conditions such as rain, of which there is a very high amount in certain times of the year, to prevent slippage of some kind from spoils.

43 The situation is aggravated by the steep terrain of our region. This poses an immediate threat to people living in valley terrain below a strip mine site operation. On Gilbert Creek in Mingo County in 1972, a summer flash flood caused extensive damage to homes and property. Heavy stream siltation flowed

directly from strip mines into Gilbert Creek, the stream bed which was already
congested with strip mine debris filled at a rate three times faster than normal. Basements were flooded and filled with mud and water. People had to shovel mud out of their homes. Even businesses in the town of Gilbert were flooded. I knew many of the people that were affected in this area.

43 Right now in our area we are witnessing a population boom that is expanding at a rapid rate. A great number of people return home from the northern cities of Chicago, Columbus, and Dayton where they migrated seeking jobs and better life styles. They have returned to their homeland to an environment they are harmonious with, to be close to their heritage and roots.
As one who left home and attended college and served in the Korean conflict and
lived in other parts of the country and the world, I have made my decision to return to Mingo County to build a home and raise my family. I am fortunate to
have land passed down from generation to generation to me, yet the great percentage of the people that live in Mingo County are not as fortunate, for 75
percent of the land is controlled by absentee corporations who are unwilling to
sell their surface rights. This has forced a very high population density into
small privately owned tracts of land which comprise the remaining 25 percent of
the available land. Many of the people who do live on so-called company land take out leases which could call for their immediate removal from the premises
in the event that the company intends to mine the property. The pattern of land
ownership threatens the security of the community, in that it also makes possible strip mining that leads to a dangerous silt build up in the valleys where the population is concentrated. The only solution for communities in the
mountains when strip mining moves in is for the community to break up and move
out and try to find homes elsewhere.

44 The CHAIRMAN. I read all through your statement as did the other members so we will print it in full as though you had read it. I would like to
take a little time for some questions.

44 Do I understand that you are opposed entirely to any strip mining, a full
phase out?

44 Mr. BREWER. Definitely, I would, sir.

44 The CHAIRMAN. Immediately or over a period of time?

44 Mr. BREWER. Well, I wouldn't want anyone to suffer from a lack of employment but as soon as possible I would like to see strip mining phased out,
yes.

44 The CHAIRMAN. We have been hassling over this bill for the last 10 years.

44 It is interesting that some of the official positions have turned around
a little bit in your State.

44 Mr. BREWER. The Governor who ran on an end-to-strip mining 4 years ago
now says he is for regulating strip mining.

44 The CHAIRMAN. Has there been a change in attitude. You live there, tell
me about it.

44 Mr. BREWER. Being a deep miner and living in the area above lower Gilbert Creek. I am just afraid to live in that area, where they are strip mining it.

44 The destruction of homes and property and probably lives that it has taken, I can tell you for sure, sir, that there is not a deep miner in West Virginia that is not opposed to strip mining. I do not know what the statistics
of the UMWA are but I am not aware of it.

44 The CHAIRMAN. You work for a coal company?

44 Mr. BREWER. Yes; I do.

44 The CHAIRMAN. And is your company union?

44 Mr. BREWER. Pardon.

44 The CHAIRMAN. Is your company represented by a union?

44 Mr. BREWER. Thirty days ago I worked for Pittston which has union employees. I work for another union organization now.

44 The CHAIRMAN. Can you tell us why some union mine working people have changed on this bill?

44 Mr. BREWER. There is a lot of union mine workers that live in the cities, sir. They don't really know the country way of life. Unfortunately, the unions, they are in the cities and they don't know the facts.

44 The CHAIRMAN. Including those that live in the cities, would you say most of the workers are against strip mining, total?

44 Mr. BREWER. Yes; people that are aware of the costs of strip mining, yes.

44 The CHAIRMAN. All right, sir. We thank you very much for coming today.
I appreciate your testimony.

44 Mr. BREWER. Thank you.

44 [Prepared statement of Joe Brewer may be found in the appendix.

44 The CHAIRMAN. Our next witnesses are from investor-owned utilities, Mr.
Parker, Mr. Austin, Mr. Smith.

44 Will the gentlemen take the stand.

44 Which will serve as quarterback?

44 Please identify the group.

45 Mr. AUSTIN. I am Mr. Austin, T. L. Austin, for the record, and this
is Mr. Bill Parker of Duke Power Co., and Mr. Robert Smith of Oklahoma Gas & Electric Co.

45 The CHAIRMAN. All right. Do each of you have a separate statement?

45 Mr. AUSTIN. Yes. We will cooperate with you and finish as soon as possible.

45 The CHAIRMAN. If you will summarize it will be very helpful.

STATEMENT OF B.B. PARKER, PRESIDENT, DUKE POWER CO.

45 Mr. PARKER. We certainly appreciate the opportunity of being here today.

45 This particular bill is preeminently important to our industry, of course. I would like to direct my comments basically to the Appalachian situation because that is where we get all of the coal.

45 I do have a prepared text which takes about 16 or 17 minutes but I will
just summarize quickly the highlights, if I may.

45 The CHAIRMAN. Very well, Mr. Parker.

45 [Prepared statement of B. B. Parker may be found in the appendix.]

45 Mr. PARKER. I am from Duke Power. It is the second largest utility. We
furnish essentially all the power to almost 4 million people over a 20,000 square mile area of the central portion or North and South Carolina. We generate approximately 50 billion kilowatts per hour of electricity 70 percent
from coal, 25 from nuclear and about 4 percent from hydrogen. We burn $1 4.1 million of coal. It comes from the central Appalachia region which we call Appalachia coal. Forty percent or 6.2 million tons of this coal was from strip
mining or surface strip mining.

45 This clearly establishes our critical interest in the mining bill which

is before us today. My people tell me that if we lose all or even a portion of this natural coal we just do not know where the coal would come from. Duke has, for a long time been committed to energy efficiency conservation, and protection of the environment, through several measures.

45 We have, for the past 6 years, been first for those years in efficiency as represented by the Federal Power Commission and we have been in the top 6 for the past 18 years.

45 Fifteen years ago we pioneered a general home legislation requirement for all electric homes and we established our first environmental department in 1923. We are committed to sound reclamation practices for all coal mining operations, both surface and deep.

45 Therefore, we would support the concepts of H.R. 2 but oppose the enactment of it for two major reasons. One, we feel that it is unnecessary; and second, it will severely curtail the supply of coal which is so vital to our area.

45 Now, as to the need for H.R. 2: the States within Appalachia, North Carolina, Virginia, Kentucky, and West Virginia, all have strong reclamation laws and continue to strengthen them each year. We see strong State regulation as a very definite preference to Federal regulation. We say this because it is more easily enforced. It is more adaptable to the local situation and it reflects a more coordinated relationship between government and industry with proper identification of environmental concerns, jobs, production, tax cut consequences, and so forth.

46 As to the impact on supply: There is a critical need, of course, in this Nation for our indigenous resources, coal oil, gas and uranium. Six hundred and fifty million tons of coal were produced in 1976 with 55 percent of that, or 365 million, being surface produced. Utilities use 44 million tons of that coal with 6k percent of it, or 288 million tons, surface produced and coming from Appalachia. Appalachia, which is the area I am directly speaking to, produced 235 million tons of that with approximately 130 million tons of it surface produced.

46 Going further as to central Appalachia: a March 1973 EQ report on coal surface reclamation, 93-80, on page 53, one, that 11.5 percent of all surface mined coal comes from coal on slopes of 20 degrees or greater. Second, that total strippable reserves from this area is 1.9 billion tons with 62 1/2 percent in high slopes of 23 degrees or more. Also, on page 54 of that same report it speaks of the very high quantity, low sulphur content, of the coal from this

region.

46 We see enactment of H.R. 2, as it is proposed, could foreclose the availability of this for, at the best, most of this 1.2 billion tons of coal which is greatly needed and is highly desirable from an environmental standpoint. Duke would be especially hard hit by such an impression or implementation of restrictive regulation of H.R. 2 for, it is from this region that we get almost all of our coal. We have made long-term contracts, plus entered into plans for our own coal production and have commitments for 13.4 billion tons of coal on an annual basis.

46 As I briefly stated, about 40 percent of this requirement would come from surface mining. Duke also is committed to muclear for future generations. If we encounter further delays in licensing and so forth, we could find ourselves in having to go to coal as an alternative and if we did this, of course, it will increase the requirement for our coal.

46 Quickly, the other impacts of H.R. 2: one, much of the coal - much of the surface coal produced in this region comes from small operators with minimum capital investment. Many of these operators would find it impossible to finance large expenditures to purchase the 230,000 trucks necessary to comply with the holding section of section 517(d). This will result in the loss of coal and dislocations of capital and manpower resources.

46 Also, it could have a substantial impact to the cost of the coal. At the moment this is indeterminate, however, I will remind you that testimony in the 1969 Mine Safety bill indicated that rather insignificant increases in coal costs will be there if the law were enacted. Since the enactment of this legislation, deep mine productivity has dropped from 16 tons per man day to about half, or around 8 tons per man day.

46 Personalizing it for a moment, our average coal cost have gone from $4.25 to $2 2.58 and while I would not say that all these charges have been brought about by -

47 The CHAIRMAN. I was going to ask you about that.

47 Mr. PARKER. I will have to say that there are many costs chargeable and I think definitely over and beyond what was anticipated at the time that the Mine Safety regulation was enacted. I would just point out, as we view it, the cost for enactment of H.R. 2 is certainly a very definite thing at this time.

47 Approximately through, just another half a page. A third point, to shift

to Midwest or Western coal, if it were available, would require tremendous expansion of railroad rolling trucks, substantial increases in the use of easy transport fuel and a severe loss in generating plant capacities and efficiency due to the low heat value of this coal, and the potential environmental problem due to high sulphur content.

47 This summarizes our opposition to H.R. 2 with the many suggestions. We think it is unnecessary thereby preferring State regulation. However, we support the objective of the bill for good reclamation. If a surface mining and reclamation act must be enacted we urge that the provisions of section 515(d), relating to original contour and no highwalls, be eliminated and that there be substituted a requirement that the land must be restored to a condition as useful or more useful than that which existed prior to mining.

47 Thank you very much.

47 The CHAIRMAN. Thank you, Mr. Parker.

47 We will hear from the other two executives and then we will ask questions.

STATEMENT OF T. L. AUSTIN, JR., CHAIRMAN, TEXAS UTILITIES CO.

47 Mr. AUSTIN. Mr. Chairman, thank you for listening to us. I am against your bill but I really feel for you gentlemen. I feel for you up here in Washington because you have got some tough decisions to make. I have seen a bill come out through the Clean Air Act. I have seen all these people coming here and everyone wants a turn to be heard. They want solutions for this and that.

47 My Governor is down in Texas now running the ads wanting to buy Texas gas until we get something to burn as an alternative fuel and the only way we can do that is either to go to coal or nuclear, which makes a horrendous mess of the land. Prices of nuclear plants are such today that I am not sure we will ever build another one.

47 Just don't put this thing on us too, please. You have got a job, I wouldn't want your job for anything.

47 The CHAIRMAN. You think we need a pay raise?

47 Mr. AUSTIN. Yes, sir, I certainly do.

47 Mr. CHAIRMAN. That is the first sign for us that I have heard on this.

47 Mr. AUSTIN. I am honest. I think you do but we believe in reclamation.
I have even got some pictures -

47 The CHAIRMAN. Those are good pictures

47 Mr. AUSTIN. We have got one of the best reclamation programs. I am serious about this. Come down and visit our operations and see we do a pretty
good job with coal and nuclear.

47 I hate to say this to you gentlemen, but we need relief from these activist lawyers. The activist lawyers are going to shut this world down.

47 Now, I am a little bit more concerned about human beings than anything that is extinct now. We human beings are going to be an extinct species. So,
please, let the States handle this and let us get on with providing the energy

47 I will let the others continue now because you heard enough.

47 Thank you very much. I will answer any questions.

47 [Prepared statement of T. L. Austin, Jr., may be found in the appendix.]

47 The CHAIRMAN. You are my kind of witness.

47 Mr. Smith?

STATEMENT OF ROBERT SMITH, OKLAHOMA GAS & ELECTRIC CO.

48 Mr. SMITH. Well, that is going to be an awful hard act to follow.

48 But I appreciate your taking the time to allow us to testify.

48 I represent Oklahoma Gas and Electric Co. and we have about 550,000 customers in Oklahoma and western Arkansas. We cover about 30,000 square miles.
Now, we, at the present time, are 100 percent natural gas. We started checking
into alternate fuels to see what we could do because we knew that gas was going
to be difficult to get. It was getting too costly so we started that investigation to see what we could do and coal was the answer that we came up with. Now, we spent a lot of time trying to find the type of coal that we could
burn. The reason I say that is just what Mr. Austin brought out and Mr. Parker,
that we have had trouble with the various agencies of the Government, after we
find a fuel that there is an abundance of and are able to burn it. Now, we find
that the coal in Wyoming is a coal that we can burn if we can ship it to Oklahoma. We can use it at the present rates and prices and burn it cheaper

than it would cost us to buy new gas.

48 Now, the thing is that we had a contract with Atlantic-Richfield and we had a contract that was good for both parties. We would burn about 3 million tons of coal per year for 250 megawatt units so we worked out a 30-year contract. Atlantic-Richfield said they were going to open their mines. From then on they ran into problems. They were supposed to start supplying us with coal in June 1976. They had problems with law suits, with licensing, with all different types of problems and they haven't got them open yet.

48 Now, we had to go out and find an alternate coal supplier because we are putting these coal-fired units on the line. Now, it has cost the people, our customers of Oklahoma, $9 million additional because we cannot get their coal mines open.

48 Now, we have not started any plans for nuclear. The leadtime for nuclear is, we think, anywhere from 13 to 14 years and if we started today, sir, that would put it around 1990 before we would even have one on the line; if by then.

48 So, what we have got to do is to build coal-fired units for the next 10 to 13 years. Like I said, we have to begin with our total capacities of natural gas, which we hope to be at about 49 percent by 1985, coal fire. Now, if we were to get every bit of our gas to move outside of Oklahoma, every bit of gas we have got to reserve, we are not a gas retailer or anything, but if we did, it would probably last the people of this Nation about 17 days. In our reserves it gives us capacity of about 33,500 megawatt units of gas fired, about 10 years reserve.

49 I don't want to take a lot of your time and I think that all of our written statements go into the record but I would like to point out too, that Oklahoma does have an abundance of coal. It is said that Oklahoma has over 33 billion tons of coal. Four hundred to five hundred million tons of that is strippable but in 1974 the only thing that we could use the coal for was, in Oklahoma, was shipping out of State for coke and they did mine about 2 1/2 million tons of coal in Oklahoma.

49 [Prepared statement of Robert H. Smith may be found in the appendix.]

49 The CHAIRMAN. Where in the State do you find coal?

49 Mr. SMITH. In the eastern and central areas. It is down towards Atoka, Coalgate, and McAlester, where the Speaker came from.

49 I just point to another thing, we used to be able to build a fire plant for about $100 a kilowatt. The units that we have plans for will cost $38 88 a kilowatt and it keeps going up.

49 With your bill is the fact that it is going to reduce the amount of coal that is going to be available to us and we have got to have the coal to keep this country moving because at least 50 percent of our coal customers are industrial and refineries and other parts of business.

49 Thank you very much.

49 The CHAIRMAN. Thank you, all three of you gentlemen.

49 I have said several times today and I want to assure you that I believe the Nation has got to increase the production of coal over the next decade. It is our insurance policy against the Arabs and it gives us a little time to make some additions on nuclear powerplants, and to get on the right course for long-term energy requirements.

49 We can probably all agree on the impact of the bill. I want to write one that lets more coal be mined and lets it be mined at a reasonable cost. I think what Mr. Austin said has a great deal of truth. We really owe it to the country to resolve our environmentalenergy problems and point the way to preventing paralysis of energy development. That is why I look forward to President Carter and Jimmy Schlesinger coming up with an energy policy in the next few months to provide direction to what we are going to do. For instance, either we have regulation of fuel prices or we deregulate. We either use new fuel resources or not. We either ought to allow you to do certain things with coal or not do them, but this uncertainty is paralyzing the country.

49 I appreciate Mr. Austin's sympathy. I just became chairman of this committee last month. We have now been given the jurisdiction that used to be in the old Joint Atomic Energy Committee. We have to make some big decisions about nuclear energy in this committee. We also want to decide on this coal legislation one way or the other.

50 So we need all the help and advice that we can get. I am going to write a reasonable bill that will let you dig and burn coal and the country is going to have to do it.

50 Mr. AUSTIN. I believe you gentlemen will do the best job you can in writing this bill but when you have all the hearings and the procedures and the

processes for investigation and all of this concern, don't pass anything until
you really have to because our customers, they cannot afford the bill they got
now and if we get $50 million tied up in the coal mines and then somebody delays
that for, you know, 1 year or 2 years or more then we just need a $100 million
bond and our customers have got to pay.

50 Please get out of the way.

50 The CHAIRMAN. I suppose the information that brought this suit -

50 Mr. AUSTIN. The Federal judge was on the east coast -

50 The CHAIRMAN. I haven't got into the details of either one of those to
the extent I want to, but my view is that sometimes these citizens suits will
defuse the thing and let you go forward rather than delay.

50 In the coal country, we have had a parade of witnesses, and we have had
some here today. One of the most utter frustrations of people who fear coal
mining in Appalachia is that there is no one to talk to. The legislature has
been bought off, in their view, and at the county courthouse the judge and all
the lawyers are on the side of the coal companies.

50 If they had some place to be heard and take out the frustrations, a lot
of times that helps. You give your wife the right to complain and sometimes she
won't complain. They don't have a forum to be heard, and that is the philosophy
behind the citizen suit provisions, to legitimize and standardize some kind of
forum through which people who haven't been heard on the stripmining provisions
could be heard.

50 Mr. AUSTIN. Could you pass something that if they lose, in court, they
will be responsible for the delay to our customers?

50 The CHAIRMAN. Well, I hadn't thought about it, but we want to write a
bill that will not permit untoward delays, but at the same time will give a guy
whose home has been knocked off its foundations through blasting a place to get
a hearing.

50 That is what most people in Appalachia want and complain about. They
want an opportunity to be heard.

50 Mr. PARKER. Mr. Chairman, I believe the legislators back home are
beginning to get the message in a positive way, and that is why my thrust has

been to identify it with the State level, rather than the Federal level. That
gives more flexibility than you find under Federal legislation.

50 The leadtime now for bringing in deep mine coal is stretching out beyond
any comprehension, so if we do give up on the available surface mine coal that
we would give up under the possibility of this bill, we have to look at the
leadtime to replace it with deep mined coal, and it is much further away than we
ever envisioned 2 years ago.

51 The CHAIRMAN. We ought to try to simplify the procedures. If we are
going to mine coal and some is going to be strippable and some deep, we ought to
have simple provisions that don't enlarge the leadtime. I hope to write a bill.
We appreciate your advice. It will simplify and streamline this to not keep
coal companies hanging all the time, so that they have to protest 10,000 pieces
of paper before starting the mine.

51 Mr. PARKER. They are coming to us now for the financing. They say that
they can't stand the cost of the capital to open mines, and they come to us and
say, "You have to furnish the capital to get the job done, or there is no
expansion of deep mines."

51 The CHAIRMAN. My friends from Oklahoma or Texas, are you interested in
the coal pipeline legislation?

51 Mr. AUSTIN. Yes, sir. Our out-of-State coal in Texas, we are
negotiating with New Mexico, and there is no water up there, so we possibly will
not haul that coal with a coal slurry line, but we think this is a technology
that should be available to society, and we think with the energy that has to be
moved in this country - the railroads are going to have all they can do, and the
coal slurry pipelines are going to have all they can do. We need all the
alternatives.

51 Mr. PARKER. We at the present time have a bill in our State, which has
already passed the Senate and is in the State House at this time, and we are
having problems with the railroad companies of saying that, you know, we are
going to put them out of business, but I think from everything we have found out
there is going to be plenty of business for everybody, and one of those 36-inch
coal slurry pipelines can move 30 million tons of coal a year, and if we need 3
million or 6 million or whatever we are going to need that way, it certainly

would help.

51 The CHAIRMAN. I have come to that conclusion. I had some doubts about the slurry lines, but I have come to the conclusion that it is a technology we ought to use. There is a 400-mile line in my State that is working very well.

51 Mr. EDWARDS. Mr. Austin said he felt sorry for us because we had tough decisions to make. You needn't feel sorry for us. The Members of Congress have appropriated unto themselves those decisions.

51 Mr. AUSTIN. You certainly have. It is out of our hands.

51 Mr. EDWARDS. You would certainly be better off and I think the country would, if we made fewer of these decisions and left them up to the people.

51 I have to question one of the things that you and Mr. Smith talked about, and that is nuclear. We have a question of whether or not we have an energy policy in this country, the point being made how hard it is to get nuclear activity underway.

51 I am not sure that we don't have an energy policy in this country. It seems to me that we make it very difficult to get oil and gas produced. We are making it very difficult to get nuclear energy produced.

51 You know, if we tried to cut down timber wood, we would have the people here in front of us telling us not to cut down the trees, and if you try to develop high power, you would have them in hearings saying not to damage the rivers and streams. So, I think H.R. 2 is part of a consistent energy policy. I am not sure I approve of it.

51 [Laughter.]

52 Mr. EDWARDS. One of the things, Mr. Austin, that you made a comment about, was the rules and regulations, and I think that is a significant part of what the long-range problem of H.R. 2 would be, or of any similar problem.

52 This morning, you weren't here, but Mr. Roncalio talked about the fact that - and it is true - that this bill does not require returning to the original contour. It only requires returning to the approximate original contour, which may be seen as making the problem less, but I think it makes it more, because we would be tied up in regulations and litigations forever over what "approximate" means.

52 I don't want to belabor this, but one point -

52 Mr. AUSTIN. You are doing pretty good as far as I am concerned.

52 [Laughter.]

52 Mr. EDWARDS. One point, Mr. Smith, that I would like to say, is this. Mr. Smith and his company, the Oklahoma Gas & Electric Co., have done a magnificent job of providing plentiful and low-cost energy for my State of Oklahoma, and by the way, I will throw in, Bob, I think it is very nice of you
to bring along one of our suburban neighbors from Texas.

52 Mr. AUSTIN. He is, especially on Cotton Bowl day.

52 Mr. SMITH. Whenever they ask for a quarterback, Texas University has a
pretty good one.

52 The CHAIRMAN. Some folks refer to Texas as "Baja Oklahoma."

52 Mr. AUSTIN. I was pretty sorry for you up until now, Mr. Chairman.

52 Mr. EDWARDS. I would like to get to one point Mr. Smith made, and perhaps he would like to elaborate on it.

52 He made the statement in his testimony that the disruption of coal delivery has cost the consumers in my State $9 million, and I think that is a very important point, because these delays and these things that make it more difficult to produce the energy do not ever cost these big utilities that everybody is out to get.

52 Mr. AUSTIN. Would you come down and talk to the Public Utility Commission for us?

52 Mr. EDWARDS. Mr. Smith or one of the others would want to elaborate on
the fact of what this does to the consumers.

52 Mr. SMITH. I will add this to the thing, Mr. Chairman. Whenever the chairman was referring to the fact to let the people have a chance to be heard,
some place to go, that they are frustrated - from what it has cost us in delays,
they have places to go, they have agencies to see, they have got remedies, and
like this thing that happened to us, there were 2 1/2 years delay, and if another law is passed, I don't know how many more years we will have delays. And everytime it delays, it costs more money. Everything does.

52 I mentioned a while ago that we used to build a gas-fired unit for $1 00
a kilowatt. That is two times, almost four times here, within about 8 years, and that is costing the people of each - each rate payer.

52 All this thing is doing is going up and up and up, and that is why we are
having such hollers and cries because of the bills we have, and it is not really

- we paid 8 3/8 for $6 0 million worth of bonds just here last month. The interest is going up. That is a lot there, but there is a lot of other things that are causing this, too, and I don't believe legislation has helped us.

53 Mr. PARKER. A nuclear plant costs about $1 .250 billion. We have four of them in process at the moment. A 1-year delay on those two units will cost our consumers $100 million - a 1-year delay cost is $100 million. This is aside from the strip mining bill.

53 The CHAIRMAN. We will call you back when we get to some of these nuclear bills.

53 Mr. SEIBERLING. Mr. Chairman, I have to leave and go to the OCS Committee meeting, but I would say first of all that I am not in a very good mood to listen to the people from Oklahoma, because the Goodyear Tire & Rubber Co. is in my district, and which has already transferred 25,000 production jobs out of Akron to other parts of the country.They just announced today they are going to build a $1 80 million automated tire plant in Oklahoma. So you fellows must be doing pretty well down there. And let me say, second, that I have yet to hear why mining on steep slopes in States like Virginia, North Carolina, and Alabama is going to be any more difficult under this bill than it will be in States like Kentucky, West Virginia, and Pennsylvania, all of whom have sent witnesses in here, including industry witnesses, to say that not only can they comply with this bill and restore approximate original contours on steep slopes, but they are doing it.

53 I see no such documentation, Mr. Parker, in your statement other than the generalities that a small operator can't afford to do this. Well, he may not have to buy big trucks. Other people are functioning, and I think it is up to you to come in here and document your general statements with specific dollars and cents information and specific other information so that we can see exactly what you are basing that on.

53 Mr. PARKER. I would like to respond to that. We will furnish the data. We will make a quick check of this with our suppliers. We do have the quantification of the dollars of cost, and the impact that would come to our coal.

53 We said we have this commitment. What would the impact be as to cost and

as to your probable ability to deliver.

53 Mr. SEIBERLING. Your costs may increase, and consumers costs may increase, but we would like to see what your projections are.

53 Mr. PARKER. The availability of supply is critical.

53 Mr. SEIBERLING. But you see, other States have already experienced this, and they have not had the dislocation you predict.

53 One other thing I would like to point out is on page 10 of your testimony. You point out there that between 1969 and 1976, you have seen your average coal prices go from $4.25 to $2 2.58 per ton, and have seen underground coal production drop from 16 tons to 8 tons per man today.

53 You attribute that to legislation.

53 I have gone into this in great depth, and it is true that coal production has tripled in that period, but coal production costs have gone up by a fraction of that increase.

53 One reason they have tripled is the increase in oil prices, which has brought off the prices of competing coal, and, No. 2, some small increases in production costs.

54 In that same period, we have seen an enormous shift from underground coal, which is more expensive, to strip mined coal, which is less expensive.

54 So, I think that the implication that this is the result of the 1969 Mine Health and Safety Act and other legislation is not borne out by the actual fact.

54 As a matter of fact, the big increase has been in the margin of profit of coal operators, generally.

54 Now, if you get down to specific individuals, in some cases, particularly where they are small and there are steep slopes, they haven't gone up as much.

54 But we had a witness here this week who is opening a new mine, admittedly in the West, and he is making today almost a 100-percent profit on his production costs.

54 So, it is time that the utility companies started really shopping around, in my view, and getting the prices down, and not just relying on the fuel adjustment clause so that they don't need to worry about the increases in costs.

54 Mr. PARKER.Sir, I think you are misinterpreting the point we make here.

54 The first point is that we do see from the records that productivity has dropped by roughly 16 percent.

54 Mr. SEIBERLING. I think that may be true in deep mines, but we are talking about strip mines.

54 Mr. PARKER. If you give up the strip mined coal, you increase deep mining. When you do that, you find the differences in price because of the change in productivity, and the increased costs of labor and other things that go into it.

54 I do not attribute a change of $4 to $2 2 to the Mine Safety Act. I do not say that.I make it a point that the change to the cost of any enacted legislation is indeterminant, and we find that by the time they are implemented, the costs are manyfold more than we envisioned. You pass the laws, and we have to live by them.

54 Mr. SEIBERLING. The difficulty gets down to who is going to bear the cost, the consumers of coal or the people who have to live in the areas that are left destroyed by improper mining practices.

54 We had witnesses in here yesterday that testified to billions of dollars of property costs resulting from improper strip mining practices and the resultant siltation and physical destruction of homes, et cetera, not to mention the loss of productivity of the soil, which in some cases, in, for example, in my State of Ohio, is very severe.

54 I think that the gentleman from Texas, Mr. Austin, has shown some excellent examples of good strip mining reclamation, albeit on flat land, which is much easier to do.

54 But we have had equally good witnesses in here from other States showing it done on very steep slopes.

54 So, I think we need much more documentation.

54 Mr. PARKER. Let's look at the proper timeframe. My own statement says we are for reclamation. Tremendous progress has been made in Kentucky and West Virginia and many areas in the East where you have the steep slopes. They are

moving forward strongly with reclamation, and we support that concept.

55 We are saying it is better for the States to have the latitude of doing that, where they can identify with the local situation, than it is to be pushed down from the top in Federal legislation.

55 Mr. SEIBERLING. This bill gives them the latitude, but says they have to meet certain minimum standards. It seems to me that is a reasonable compromise between the two extremes.

55 There are States that say today they have no trouble meeting these standards.

55 My time has expired.

55 The CHAIRMAN. Are there any other questions?

55 Mr. Marriott?

55 Mr. MARRIOTT.Yes; I apologize for coming in late, but I do have a couple of comments and questions.

55 First of all, I am on record as being in favor of the free enterprise system, and especially small businesses, and one of the problems I am having with this strip mining legislation is that I can't get a straight answer out of the businesses that I am trying to represent, and that is that some businesses come in here and say that they can't possibly function under H.R. 2, and others come in here and, like yesterday, and say it is a wonderful bill and that they can live with it.

55 Would you clarify for me once again what is wrong in your opinion with H.R. 2 other than the fact that you prefer, as I think I do, State legislation?

55 Can you, or can't you, live with H.R. 2, and is it simply the steep slope problem that is bothering you, or can you summarize for me again why you are against propagation?

55 Mr. AUSTIN. I can tell you why we are against it. It is what you said at first. We think land ought to be reclaimed, and anywhere we go, we are going to reclaim the land.

55 Now, you can't make an oasis out of northwest New Mexico that was a desert to start with, but you can put it back in some productive capacity.

55 Our objection to the bill is that we still think, and I can only go by what our lawyers tell us, and that is that it is going to be fraught with delays and litigation and permits and hearings and studies, and you are going to delay getting on with producing coal in the United States.

55 Now, I think you have some problems with these alluvial valleys and all like that, but I am not prepared to go into detail on all that. I am a preaching witness. We will get you an expert witness to go into those kind of things, get you a mining engineer.

55 Mr. MARRIOTT. In your opinion, how much of the coal being produced by strip mining procedures in the country today is being produced by small business? I am not sure how we define it. The SBA defines it as those with less than 250 employees, and a certain profit margin, I guess, but using your term for small business, how much of the business is being done in mining as compared to the large corporations?

55 Mr. AUSTIN. I don't have that figure for the whole country. In Texas, it is all by large business.

55 Mr. MARRIOTT. That was the argument we heard from the people from the West yesterday, that basically the coal producing companies are large companies, and so when we talk about saving the small business, we are whistling in the wind.

56 Mr. PARKER. I think that is true. As you go to the West, it is a new venture and the big boys have gone there, and they have covered themselves with the leases and documents and what not that are necessary, and it has taken the big boys to do it.

56 Back East, on the Appalachian area, I was asking my man here, we, of course, have contract coal, and that is covered with the medium-large and large producers.We buy a lot of spot coal as well. We buy from producers who supply as little as 1,000 tons a month and go from there on up to 5,000 and 10,000 tons per month.

56 Those people, we are hearing, are the ones that are capitalized with a million dollars or thereabouts, and if you try to buy one of these trucks, which I understand costs $8 30,000, to haul the dirt up, that is 25 percent of the original capitalization, and doesn't add anything to his productivity and really doesn't give him an opportunity to add anything for profit. It is not enhancing his profit.

56 Mr. MARRIOTT. Just a couple of other short questions.

56 In your opinion, would a uniform law adequately serve your area of the country as well as the West?

56 The input I am getting is that the West isn't too concerned about H.R. 2.
The testimony is because of their type of landscape, they are not too worried about it.It looks like the opposition, then, is mostly in your area.

56 Do you then say the uniform bill that governs all the areas of the country is not practical.

56 Mr. PARKER. It is not practical, and if I could be facetious, it is like writing rules for skiing and water skiing with the same rules.

56 One is flat terrain and the other is steep slopes and sharp mountains, and just a very little bit of land that you can use in terms of transportation,
for roads, or building.

56 Mr. MARRIOTT. And if the steep slope provision is amended in the existing bill, you could then accept H.R. 2?

56 Mr. PARKER. Well, steep slope is a problem, and the back to original contour, I hear comments that you are talking about some flexibility there. But
I come back to my strongest point that I am trying to make, which is that the big preferences I have is for State regulations of these matters because it gives this element of flexibility and yet still gets the job done.

56 But what you want, I think, and what we want is that there be good reclamation, and we think better reclamation will come through State activity rather than through Federal.

56 Mr. MARRIOTT. I agree with that, and I think when you leave it to the States you begin to get back to my opinion, and that is that we reduce the size
of the Federal Government and return it to the smallest possible unit.

56 There has been some argument that H.R. 2 will create another bureaucracy,
which we don't need, but other than that being another issue, your only argument
against the propagation at this point are the steep slopes and returning to original contour?

56 Mr. PARKER. Let me say, I have not addressed myself to the other points
of the bill, how much it costs for reclaiming the piles and the areas that have
been deformed in the past.

57 There are other aspects of the bill that I think that you have heard expert testimony on.

57 The CHAIRMAN. We will hear the coal industry tomorrow at some length.

57 Mr. PARKER. I do not have the expertise to testify on it.

57 Mr. AUSTIN.Don't forget my objection. I don't think we need the bill at all. I am regulated and proceeded and processed to death, all right.

57 The CHAIRMAN. We understand. You made your position clear.

57 Mr. AUSTIN. Thank you, Mr. Chairman.

57 The CHAIRMAN. Thank you, gentlemen.

57 Our next witness is Mr. H. E. Bond.

STATEMENT OF HON. H. E. BOND, VICE PRESIDENT, SYNTHETIC CRUDE & MINERAL DIVISION, ARCO, ACCOMPANIED BY S. R. OETTINGER

57 The CHAIRMAN. Mr. Bond, I have to go to a quick meeting of the Arizona delegation. I am going to ask Congressman Vento to proceed.

57 Mr. VENTO [presiding]. Mr. Bond.

57 Mr. BOND. I am H. E. Bond, vice president of the Atlantic Richfield Co., and manager of the Synthetic Crude and Minerals Division, which is responsible for developing projects such as coal, oil shale, uranium, and phosphates.

57 I am accompanied by S. R. Oettinger of our firm, and in the interest of time, I am going to omit portions of the prepared statement.

57 Atlantic Richfield has acquired and is in the process of developing coal resources in several States. The majority of our surface minable resources are located in the Powder River basin of Wyoming. We have two surface minable tracts in Wyoming consisting of Federal and State leases, referred to as Black Thunder and Coal Creek.

57 The Black Thunder Mine is now under construction and Atlantic Richfield expects to begin production by the fourth quarter of 1977. We have contracts to deliver coal for electricity generation from Black Thunder to utilities located in the States of Nebraska, Oklahoma, and Texas. We were scheduled to produce coal from this mine by the last quarter of 1975 but were delayed because of the injunction resulting from the Sierra Club v. Morton lawsuit. The company is now attempting to market coal from its Coal Creek property, and desires to begin construction as soon as the ongoing marketing/permitting/EIS activities are

complete.

57 Before elaborating on specific issues related to the proposed legislation, I want to stress the urgent requirement to vigorously develop all major coal basins in this country - including the East, Midwest, and West.

57 Oil imports are continuing to increase at alarming rates as most recently evidenced by the fact that imports during the first part of 1977 accounted for 50 percent of our liquid fuel consumption. This will result in a balance-of-payments deficit of $4 0 billion this year, and by 1985 this will double. This has a major impact on jobs and, of course, our supplies of energy.

58 In our opinion, coal is really the main option of this country to reduce oil imports, until we get to so-called perpetual sources of energy, such as solar or fission, or whatever.

58 We believe the Eastern coal producers will be hard pressed to supply the needs of Eastern coal consumers.

58 The productivity has dropped from 1969 to 15.6 tons per manshift to 9.5 tons per man-shift in 1975.

58 On the other hand, the coalfields of Montana, Wyoming, and the low sulfur, large surface mineable reserves are expected to have productivities in excess of 100 tons per man-shift.

58 We believe that there is a bias in Congress in favor of the Eastern underground mining at the expense of Western surface mining. That is primarily because of the lack of understanding that surface mining in the West can be accomplished in an environmentally accepted manner, including effective land reclamation.

58 I believe that there is no need for Federal legislation on surface mining, primarily because of the difficulty of writing one set of regulations that cover the widely varying terrain.

58 Thirty-eight States have enacted surface mining and reclamation laws. Most of the ones in the West where we plan to operate have at least as stringent environmental provisions as are contained in H.R. 2.We have absolutely no quarrel with those provisions. We are in favor of them.

58 The history of surface mining is not one that we ought to be proud of as a country. The people in Appalachia enjoyed cheaper coal because they failed to have adequate reclamation laws.

58 The problems of mining Appalachian coal are special, compared to Western coal, because of the major changes in topography.

58 I would like to note that we in this country need to accept moderate, temporary environmental disturbances as a part of energy development. An example of the environmental impact of our mines is, I think, a good one in this instance. At full production, we will produce 20 million tons of coal per year.

58 In that mining operation, we will disturb 180 acres per year, or it takes about 5 years to reclaim that land fully, so that we would have 900 acres out of service for mining activities.

58 If you include all the surface for access roads, plant facilities and so forth, we would have no more than 1,300 acres out of service. Based upon estimates of range management professionals at the University of Wyoming, this would represent a loss of grazing capability of only 35 head of cattle, and the energy could provide nearly all of the electricity of the State of Virginia.

58 Atlantic Richfield supports environmentally supported protection statements in H.R. 2. Our major concern with this bill is the substantial amount of ambiguous language that is certain to lead to court battles and protracted delays in the development of surface mineable coal reserves at a time when the Nation needs them.

58 If Congress is going to enact surface mine legislation, then we believe that several key modifications and/or refinements are needed in the bill so that this production can come about.

58 Four of the major areas that concern us include alluvial valley floors, hydrological balance, designating areas unsuitable for mining, and surface owner consent.

59 The ambiguous language in the alluvial valley floor provision, we are convinced, is indeed a lawyers "paradise." In its broadest definition, the entire Powder River Basin is an alluvial floor. The alleged impact in the West on agricultural and farming activities is really insignificant, because that part of the country is really grazing country. It is not farming country.

59 We would suggest that the impact be modified so that the word "State" is substituted for the word "farms" in section 510(b)(5)(A) so that the impact is

on a State basis rather than on an individual farm basis.

59 The definition of an alluvial valley floor that has been suggested by the State geologist for the State of Montana appears to be a reasonable one in our opinion. It reads:

59 Alluvial valley floors mean the unconsolidated streamline deposits of major stream or major river valleys where water availability is sufficient for flood irrigation of economical agricultural activities of 160 acres or more.

59 Section 510 of this bill describes the hydrological balance concept, and they speak of preventing irreparable offsite damage to hydrological balance.

59 In describing this material, they do not distinguish surface water and ground water. The criteria are different for these two kinds of water. The definition of hydrological balance is at least subject to controversy.

59 We have taken a great deal of hydrologic data in preparation for our mining activities over the past several years. We have a number of water wells on the property and three off the property, and we believe that we have gathered a great deal of data that helps us define the cycle of hydrology in the area.

59 We really readily accept the fact that historically we have always paid for whatever damage we might cause to residents of the area. If a water well is damaged by our mining operations there is no doubt in our mind that we would replace it or provide water to the individual.

59 Our concern, again, is with lack of understandable language and lack of adequate, accurate description of water problems.

59 In turning to the designating of areas unsuitable for coal mining, we are again concerned with the lack of better criteria by which the States might make those determinations to withdraw from mining of various areas. We find that that language is quite vague and subject to a great deal of possible varied interpretation.

59 As presently worded, section 522, "Designating Areas Unsuitable for Surface Coal Mining," provided that that section of the bill does not apply to mining operations where substantial legal and financial commitments are in existence prior to September 1, 1974.

59 This date appears to be a carryover from an earlier version of the bill. Therefore, Atlantic Richfield recommends that the date of September 1 be changed

to read, "the date of enactment of this bill." This will protect the operations
that have begun in the intervening time.

59 The question of surface owner consent is also a very troublesome one, particularly in the West, because when those people acquired the surface title,
it was expressly clear that Uncle Sam was reserving unto himself minerals such
as coal and the right to exploit them.

60 The idea of the Federal Government abrogating its responsibility to administer these coal lands and delegating it to individual ranchers is, to me,
unthinkable. While I think all of the surface owner consent relating to surface
owner consent should be stricken, I do have a compromise which would include the
following language refinement in section 714(d) and (e). Section (d) would read: "The Secretary should not enter into any lease of any such coal deposits
until the applicant has agreed to pay in addition to the rental and royalty and
other obligations due the United States, the money value of the surface owner's
interest as determined according to the provisions of subsection (e), and (e) would read, "The value of the surface owner's interest shall be fixed by the Secretary based on appraisals by three appraisers. One such appraiser will be
appointed by the surface owner, one by the Secretary and one by the other two appraisers * * *" and so forth.

60 We do not anticipate that any formal condemnation proceeding would be penalized, since there is no compensable interest taken. In effect, this settlement would be a gift to the landowner.

60 In conclusion, Altlantic Richfield does not feel the Federal surface mining legislation is necessary because of the action taken by the States to effectively regulate surface mining pratices. If Congress and the President believe this type of legislation is in the Nation's interest, H.R. 2 needs in certain instances more precise language so as not to invite litigation with its
attendant delays of coal mining projects.

60 I have addressed four areas of the bill that need significant provisions.
In an effort to improve the bill, we will soon provide staff with draft language
consistent with the points I have made today, as well as with respect to other
key areas of the bill. This country needs to produce all the coal it can from
all the major coal basins from an environmentally acceptable fashion.

60 Atlantic Richfield supports sensible reclamation requirements as exemplified in Wyoming's Environmental Quality Act. We are concerned that

Federal surface mining legislation will delay development of urgently needed low
sulfur, surface mineable coal.

60 Thank you very much.

60 Mr. VENTO [presiding]. Thank you, Mr. Bond.

60 It is good testimony, and I think it is very constructive in testimonies
of pointing out some problems that you have, and some fears that you have.

60 In going through that, you commented about changing the grandfather clause in the legislation from September of 1975. What is the percentage of mines, or any type of a quantitative figure that you can put on that of mines that would be involved that would be excluded from the provisions of H.R. 2 with
that change in date, even though we don't know what the date of enactment might
be. Do you have any idea?

60 Mr. BOND. Let me look at it a moment.

60 Mr. VENTO. Your testimony referred to that.

60 Mr. BOND. Yes, I have forgotten what provision it refers to. That refers to the section dealing with lands unsuitable for surface mining, and I don't have a precise feel, really, for the loss of production that would result
from that date being left intact.

61 My problem is that this bill has in various forms been kicking around
for, as Chairman Udall mentioned, several years, and I guess I just feel it ought to be brought up to date throughout the bill to avoid being retroactive any more than is absolutely essential.

61 I reiterate that we are not in any way opposed to environmental legislation. It is necessary to put everyone on an equal, competitive footing.
What we need is to understand rules and to be able to obey them from this point
forward. We have spent, for instance, about $4 0 million to date in the development of Black Thunder since the injunction was lifted last year.

61 It is conceivable that with this language it could be argued in court that we didn't get grandfathered and that somebody in the State of Wyoming could
designate that site as unsuitable for mining. That is a hell of an investment
to have it risked frivolously.

61 That mine will cost in excess of $1 80 million, but by the time it reaches the capacity of 20 million tons.

61 We need to understand what the risks are, and what the ground rules are.

61 Mr. VENTO. The second point I make is that you said you had to be on equal footing with regard to various environmental proposals.

61 Mr. BOND. What I was saying was that I think all of industry in a given area needs a set of environmental regulations, or the forces of competition can drive one individual to dump pollutants into a river or behave irresponsibly in seeking a profit, because there are a lack of specific rules that are reasonable. So I am saying that we advocate reasonable environmental and reclamation requirements.

61 Mr. VENTO. I think one of the problems, the basic problems, that the bill tries to address is a region, not necessarily the boundaries of a State. I think some of the concerns I have heard voiced from States having more stringent laws which have evolved as a result of surface mining found that they had an economic disadvantage in competing for the sale of products.

61 If we permit individual States to set up the different and varying guidelines that would result, I think that they could administer a program States and we have confidence that they could administer a program pretty effectively. In fact, a number of programs have been passed by Congress in that regard in recent past.

61 One State may have a policy to recognize the environmental hazards and provide for the proper format for mining and reclamation processes and the other State does not. As a consequence, the State that is protecting natural resources is not able to compete economically.

61 So, I think that is basically what you are saying. Are you saying that?

61 Mr. BOND. I am not saying it quite that way, but I am sympathetic with what you are saying. If I felt all States should be equal, and I don't know that I think it is the Federal Government's mandate to make sure things are precisely the same in every State, but if you feel that you need a Federal surface mining bill, then clearly we need to eliminate an awful lot of opportunities for litigation and misunderstanding and delays, and you need to write regulations that fit various geographic regions that are indeed different.

62 The mining in Appalachia is a lot different than the mining in Wyoming. We are looking at flat terrain, a coal seam that is 60 feet thick, and huge equipment. The trucks cost $6 00,000 each. It is monstrous. We have 12 or 14 inches of rain a year. We have done revegetation plotting, and we know we can reclaim it, but it is different in Appalachia.

62 Mr. VENTO. I will stop at this point and see if other members of the committee have any questions of Mr. Bond.

62 Mr. Marriott?

62 Mr. MARRIOTT. Mr. Bond, I would like to express my appreciation for your testimony. I think it is excellent, and I am happy to see some suggestions that you have laid out here about possible language for the bill. I would certainly hope that you would feel free to give us some ideas on the way the bill would better serve industry and the utilities in the markup session.

62 Mr. BOND. Thank you.

62 Mr. MARRIOTT. I would like to ask you one question.

62 Of the 38 States that you mention here who have strip mining laws, do you feel all those State laws are adequate today? Do they really do the job for all of us?

62 Mr. BOND. I am most familiar with the Western States. This is where our operations are likely to be. That is where we are spending money, and I am not that familiar with the Appalachian area.

62 It is my perception that there is a significant variation in the State laws, east of the Mississippi, for instance.

62 The problem that Chairman Vento was mentioning is a real one, where neighboring States could be in a different competitive position if one is willing to ravage its State and the other requires reclamation.

62 I guess that is something that will soon become apparent to the residents of that State so that it will be self-correcting. When people see irresponsible mining, they will exert pressure upon their State legislature and their State regulatory bodies to correct this irresponsible behavior, so that I guess I think that they are not all consistent, in my opinion, and they are not all as good as the environmental provisions of H.R. 2.

62 I am not concerned about the environmental provisions of H.R. 2. I am concerned about all of the other provisions, practically all of which invite litigation.

62 Mr. MARRIOTT. I am no expert on H.R. 2. I do come from Utah, however, and I am concerned about the contradictory testimony of people mining coal in the West. Again, I understand most of the problems in the East, and I have heard testimony in the last week, and half the people are saying that H.R. 2

does not pose a problem for Western coal mining, and the other half saying these
four problems you have stated are problems. How is a simple mind like me even
supposed to decide?

62 Mr. BOND. My mind is kind of simple, too, but I have a memory going back
a few years where we, as a company, have been part of the legislation coming
from NEPA.Our North Slope pipeline and our reserves there, 25 percent of the
reserves of the United States, were held up because of differences of opinion
with respect to that piece of legislation.

63 We were also in the Powder River Basin, Sierra Club v. Morton, again
in that same act, attempting to understand what the intent of that act is.

63 I urge you, please ask yourself how people can misunderstand what you are
trying to say in legislation, about 50 times a day, because we will. We will
try to interpret it to fit our own goals and objectives.

63 The environmentalist is on the one side and industry on the other side
and government on another, it is indeed human to read about a bias, it is very
difficult to write precisely.

63 I urge you to do whatever you can to make it precise.

63 Mr. MARRIOTT.Which States, again, do you actually operate in?

63 Mr. BOND. We are building a mine in Wyoming, and our second surface mine
will be in Wyoming. We have underground coal deposits in several other States,
including Appalachia.

63 Mr. VENTO. I look at this bill, and it seems 178 pages long. There is a
lot of language in it, and if we want to make it more precise, I expect it will
end up being twice that long.

63 Mr. BOND. it doesn't have to be. We are going to give you some
suggestions.

63 Mr. VENTO.Things are passed by a legislative body and rules and
regulations are written by the Secretary of the Interior and other executive
agencies. There has been a concerted effort as near as I can see by the authors
and those involved, and I am sure there is a willingness to work on the problems
you mentio.

63 To come back to my question - well, I will do that in a
minute.Representative Seiberling, do you have any questions at this point?

63 Mr. SEIBERLING. No. I would like to say, Mr. Bond, that I think we are going to have a strip mining bill, and whether some people like the idea or not, I think it is pretty fore-ordained that we are going to get one. Everytime this last Congress had a chance to vote, it voted overwhelmingly for a strip mining bill, and it was only the President's veto that prevented us.

63 I don't think we are going to get a veto, and I think we will get an overwhelming vote.

63 So the question gets down to what kind of bill.

63 Mr. BOND. Yes.

63 Mr. SEIBERLING. Your specific comments are well advised, and with respect to a particular comment, I think we all see there are some ambiguities in the alluvial valley floors provision that need to be clarified and straightened out. We will make an effort to do that.

63 As for the designation of areas unsuitable for surface mining, it seems to me that perhaps we need to try to make that a little more specific.

63 I especially would resist changing the date of the commitment from September 1 to 1974 to the date of enactment of the bill for one simple reason.

63 The only reason why that date isn't in the law now is because of the United States, the former President of the United States, very inadvisedly, in my opinion, vetoed the bill. Everybody has been on notice that that is the date we have been talking about, and I think we ought to stick with it.

64 As to surface owner consent, it may be possible to try to improve on that, and we ought to try, but I don't agree with your basic conclusion that in effect the proceedings we authorize will amount to a gift to the surface landowners.

64 At the time that many of these people acquired the surface rights, the modern techniques of strip mining weren't even conceived, and nobody thought that the retention of the coal rights by the Federal Government in effect that the surface would be totally disrupted in many places.

64 So they have invested a lot of time and a lot of their hard-earned cash and their sweat into building up a ranch or whatever, and all of a sudden that is jerked out from under them, literally, and the alternative to this was the Mansfield amendment, which would have put a total ban on this, and I don't think that is desirable, either.

64 So, this is an effort at compromise, and if there is some way we can improve on it, I think we should. I just thought it would be helpful to you and others to get one Member's reaction.

64 Mr. BOND. I appreciate it very much, Congressman.I recognize the very strong possibility that we will have a surface mining bill. I would urge that we make it a workable bill if we possibly can, as workable as we can, so that it accomplishes our objectives, which I assume are the same, which is the protection of the environment while permitting the development of surface mines, as well as underground coal.

64 Mr. SEIBERLING. It is my personal view, again, that if the President had not vetoed the bill in 1974, we would now have had 2 years of experience, we would be down the road to the point where we are starting to put into effect the full effect of the provisions of the bill, and the States would all have had some guidelines as to what was expected of them in terms of their own legislation, and I think we would have been further along in the solution of our energy problem.

64 But 2 years have passed, the people have gotten further out on a limb and the country has gotten out on a limb and this kind of delay has not served the interests of the people.

64 Mr. BOND. I would like to amend the remark with respect to surface owners. I am not familiar with Appalachia.

64 In the West, it has been the practice of my company to pay the rancher at least two or three times the actual damages in the event we distrub his land for a well location or a mine. Disturbances caused by the surface mining in Wyoming in the Powder River basin are temporary, and if we have a man who owns surface over coal property and if his surface was unavailable to him for income earning purposes, we would pay him more than the normal earning ability of that surface for all of the time that it was out of service.It would become completely restored to at least as good as it was and handed back to him.

64 At the time we acquired these leases, we thought the law was quite clear, and that was that Uncle Sam had the right to grant us the mining rights, and that we would be expected to deal reasonably and fairly with the surface owner and with any improvements he might have on the property.

65 Mr. SEIBERLING. I think your company has a pretty good reputation, and
I am sure you do. Let me simply say that I think there was no provision in this
bill that was fought over more bitterly in Congress between the House and Senate
than the surface owners provision, and I can take a somewhat detached point of
view, since it doesn't affect any part of the country that I am from, but there
were many Members, and still are, who think that the surface owner should have
an absolute right to refuse to permit any mining, and my emotional feelings,
frankly, are with the surface owner, as long as there are other alternatives for
getting the coal, but this was a solution which was a compromise, and I am sure
we can improve on it, and I hope we would.

65 Mr. BOND. I can't tell on reading the bill whether it is intended to be
retroactive to existing leases, or for new leases.

65 The CHAIRMAN.Thank you, Mr. Bond.

65 [Prepared statement of H. E. Bond may be found in the appendix.]

65 The CHAIRMAN. Our next panel is Mr. Planje, Mr. Hosler, Mr. Osborn, and
Dr. Copeland.

A PANEL ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE UNIVERSITIES
CONSISTING OF DEAN THEODORE PLANJE, UNIVERSITY OF MISSOURI; DEAN CHARLES HOSLER,
PENNSYLVANIA STATE UNIVERSITY; DR. E. F. DSBORN, CARNEGIE GEOPHYSICAL
LABORATORY, COLORADO SCHOOL OF MINES; AND DEAN WILLIAM D. COPELAND, DEAN OF THE
GRADUATE SCHOOL

65 Dean PLANJE. I am serving as quarterback. I am C. J. Planje,
representing the National Association of State Universities. With me are Dr. E.
F. Osborn of Carnegie Geophysical Laboratory, Dean Charles Hosler, Pennsylvania
State University, and Dean Copeland from Colorado which represents the
association that are not represented in the National Association, and he is
going to speak for those universities involved in mining, mineral, and
engineering education.

65 On behalf of the panel, I would like to thank you gentlemen for the
opportunity to submit our views with regard to title III, and I will make every
effort to keep our presentation to 10 minutes.

65 I would say that the members of the association have testified in support

of legislation intended for the establishment of the State mining and mineral institutes. Since 1971, that is, as you will appreciate, and subsequently, as these provisions were contained in the surface mining bills of the last three sessions of Congress, which unfortunatelv, as has been pointed out, did not succeed, and it has been our position that in this country, research, as well as education in the fields of mining and mineral energy engineering have been sort of neglected over the past 25 years.

66 We see as a result of testimony today that there are certainly legitimate problems and concerns on the parts of industry as relating to the implementations of surface mining legislation. The general public also has concerns, and we are not suggesting that all of these can be addressed and reconciled through research, but certainly many of them are amenable to solutions that will evolve from academic research.

66 We also feel there is a need for research conducted on a regional basis because of the widely differing characteristics of the kind of research that must address local geology as it impacts upon not only the coal mining, which has been our primary concern here today, but all surface mining activities for the recovery of mineral commodities. That includes metallic, of course, and the nonmetallic.

66 I would like to suggest that, and keeping to my time limit, gentlemen, we would like to commend you for including provisions of title III in H.R. 2, and we would certainly hope that these provisions might prevail in such legislation as might be enacted in this session for the surface mine control and reclamation.

66 Dr. OSBORN. My name is Elbert Osborn of the Carnegie Institute of Washington. My expertise in title III stems largely from the fact that I am former Director of the U.S. Bureau of Mines, and also Dean of the College of Mineral Industries at Penn State. I have a written statement which I trust will be part of the record.

66 The CHAIRMAN. It will appear in the record in full, and I will read it tonight.

66 Dr. OSBORN. In view of that fact, I would like to take time to make two remarks.

66 Our civilization is based upon agricultural resources and mineral resources. The Congress very wisely recognized many years ago the need for competent research people in a university in each State for agricultural resources, with tremendous results. This stems, or originated with the Hatch Act of 1887, as you know.

66 We have never done that for the mineral resources, which are just as important, and the difference shows up, as, for example, in my State of Pennsylvania, where the gypsy moth gets into the trees in eastern Pennsylvania, our agriculture college people are there to do something about it. We have underground coal mines on fire in Pennsylvania, something like 175, and really the universities haven't got the competence to do anything about it. If it were an agriculture problem, they would be doing something about it.

66 So the intent has been for quite a few years, as Dean Planje says, to do for mineral resources something along the line, but on a smaller scale, as we have done for agriculture, and it was originally a bill as an amendment to the National Mines and Minerals Policy Act of 1970, which was vetoed in the fall of 1972.

66 It seems to the Congress that inasmuch as research of the type that can be done in universities is important in strip mining that, therefore, it was not inappropriate to put those provisions as title III in this bill, and we strongly endorse this, and I know as my former associate in the Bureau of Mines that the lack of competent mineral engineers in universities is just a crying shame. We couldn't get them as consultants. They just don't exist in universities in general.

67 So we are very much hopeful that in the strip mine bill, this title III will remain.

67 The CHAIRMAN. All right.

67 Dean HOSLER. I am Charles Hosler, Dean of the College of Earth and Mineral Sciences at Penn State. I have a written statement submitted for the record.

67 I would simply like to say amen to what has been said, and also point out that if, 25 years ago, some such provisions as in title III had been made, a lot of the questions that people have been arguing about here today and diverse answers you have been getting would not be questions any more and the answers would be more converged upon by now.

67 This is a mineral based economy, and will continue to be, and we have to have the research expertise in the university to have students associated with

the research and to have an idea factory in the universities which is constantly operating.

67 Support for research in these areas has been up and down. It has gone almost to zero in some of these areas at times. You can't sustain a critical mass of individuals interested in these fields with that kind of support. Even these days with great influences of money into energy research, these are often short-range projects, not looking forward to tomorrow's problems and not giving us the base support that universities need.

67 I would like to say that while you have retained title III in the House version of this bill, we are greatly concerned that it is being dropped from the Senate version of the bill and would like to challenge your other side of the Capitol here to retain title III in the bill in spite of the fact that it has been dropped on the Senate side.

67 I think something near and dear to your heart, the water resources projects in the West fall in the same category of something where you have to look way down along the line and look far ahead for the years, even if we don't want to expand our uses of water, there are going to be dry years where we will need every reserve of water we can get.

67 The same is true, I think, with respect to research in these areas. Though no one worried about coal liquefaction and gasification and safely strip mining coal 25 or 30 years ago. They thought that was passe. I think we should be more forward looking and provide the universities a base to give this research support.

67 While there are government laboratories interested in these fields, and industry laboratories interested, the more people working on the problem, the more likely the answers will be. No group has a monopoly on ideas, and the universities have been left out of the research field so long.

67 The CHAIRMAN. Dr. Copeland?

67 Dean COPELAND.I have three papers. I will summarize my statement.

67 Less than 1 percent of the graduate degrees are in the area of mineral engineering. The need for these graduates is so great that the schools are having difficulty keeping or increasing their faculties. We need help in attracting and training young people in this field.

68 I have listed in the paper a wide variety of research problems involving coal production from exploration extraction to social impact. The solutions of these problems wil require a few well-planned centers. In the laboratories of the university, private institutions, and Government agencies

68 Thank you.

68 The CHAIRMAN. I think you sense that it will be in more trouble this time than it was in previous years when attention was focused on other issues.
The sponsors in the Senate decided to drop it this year.

68 So I would advise you to do your lobbying through you diffeent colleagues
and associations to get all the influence you can. We will be writing the bill
in the next 6 weeks. If it stays into the conference, it may prevail in the Senate.

68 You have one other problem that you may not be aware of. I got a letter
from Secretary Andrus dated February 4, commenting on this bill. He says on page 3 of the letter that the provisions in title III need to be carefully examined, since there are no effective ways of developing manpower. He recommends that this matter be separately considered and not be included in surface mining legislation. You are probably aware of that report, but would you care to comment?

68 Dr. OSBORN.I was just going to say, Mr. Udall, that he doesn't say what
those other ways are, and I wonder if you or anyone asked him what he is referring to.

68 The CHAIRMAN. I think he is suggesting that we refer this title as a separate bill to our Mines and Mining Subcommittee and let them produce that as
a separate bill since it isn't that directly connected with the surface mining
of coal.

68 Dr. OSBORN. I think that is what the Senate had in mind, too. In fact,
Senator Metcalf introduced, I think, S. 302, which is a bill on coal, and nonfuel mineral institutes. So I think they have in mind we ought to keep these
separate, but our feeling is that time is passing, we are not getting anything
by this.

68 The first bill was worked on back in 1969 and 1970, and was a separate bill, and inasmuch as there is very close real connection between title III and
the very great problems we have with strip mining, if we are going to move into
the strip mining legislation, certainly we ought to have this going and not wait, and if a bill is introduced now, it probably won't come up until a year from now.

68 The CHAIRMAN.You have convinced me, but you have your work cut out on the
Senate side and with the other 45 members of this committee.

68 In that connection, I wanted to raise one other problem.

68 The CHAIRMAN. Off the record.

68 [Discussion off the record.]

68 The CHAIRMAN. There was a fear expressed the last time around that the way we had this worded that we wouldn't be giving $20 00,000 a year to the 15 or 20 States that had longstanding and established mining colleges, but that every State would come in and hang on the wall a sign "Department of Mines" and put a professor in there with a couple of assistants and come in for their money, too.

69 How many university schools will qualify under this mining area, and how do we meet that apprehension as expressed in the conference committee the last time around?

69 Dr. OSBORN. I think you have gone a long way toward taking care of that on page 14 last year, plus the fact that the State has to provide non-Federal funds. If the State doesn't have any such schools now, as, for example, the New England States, they would have to provide the facilities and operate 2 years before they qualify.

69 This is simply going to greatly slow down such an effort.

69 Now, if the State feels its mineral resource problems are so great that it has to do this, then they ought to have a chance.

69 The CHAIRMAN. All right. That is a pretty good plea, and I think it is a pretty good triggering mechanism. If they feel strong enough to support it on their own for 2 years, maybe we ought to help after that.

69 Dr. OSBORN. You have an advisory committee in here of very knowledgeable people, and they certainly won't approve a school even if it has started something if they have no adequate program, if they are something that seems to me a phony operation. I am sure that that committee is competent.

69 In my testimony on the last page I refer to my own thinking on this, and I think it agrees with the association that it might get up to as high as 35 States, and so the authorized funds would be, I am sure, far greater than the actual funds that would be used.

69 The CHAIRMAN. Any other comments on this?

69 Any questions? Mr. Marriott?

69 Mr. MARRIOTT. Just a couple of easy questions.

69 The CHAIRMAN. Utah State won't fall.

69 Dr. OSBORN. Incidentally, that is a good school.

69 Mr. MARRIOTT. Dean Hosler, some have indicated that among schools of excellence, such as Penn and others, that there is a critical shortage of faculty, and as a result there is a certain degree of pirating on around the country with regard to this field, and I wonder if title III might mitigate the situation.

69 Dean HOSLER. There is a great deal of competition, but I don't think the pirating problem is serious. I think the few people in mineral engineering faculties in the United States are there because of loyalty to the school, not because of the money. Any of them could double or triple their salaries simply by answering the phone.

69 I think if the universities could give more visibility to mineral engineering and mineral-type research, to bring in an influx of students and graduate students and over a period of years build the competence in the country to the point where no one would be lacking in qualified faculty.

69 We have not vet reached that critical mass. We have tried to recruit faculty. We are overburdened with undergraduate students that we can't handle with present faculty. They just don't exist. You have to start somewhere to get this moving. This would be an excellent place to start.

69 Mr. MARRIOTT. Dean Copeland, in your testimony you have indicated that you refer to a few well-conceived centers which could reach out like an octopus to grasp the wide range of expertise, and so forth. How many centers are there in your estimation and would there be some type of language to identify who those well-conceived centers might be?

70 Dean COPELAND. I wouldn't want the universities to reach out and grab them, but I would want them to work closely with them. We have 17 or 20 of these areas now that have had the industry building up around them to various extents. I think we could identify them. I don't know about the language, but we can give it a try.

70 Mr. MARRIOTT. Could you give us a list of those who might qualfy under this?

70 Dean COPELAND. If you would like me to, I would.

70 Dean HOSLER. I would like to correct Congressman Marriott. I am not from Penn. I am from Penn State. It is a fine school.

70 The CHAIRMAN. Penn State is a fine school, too.

70 All right, yes, we will do our best by you, and we appreciate your being here today to help us.

70 [Prepared statements of Theodore J. Planje, E. F. Osborn, Charles L. Hosler, and William D. Copeland may be found in the appendix.]

70 The CHAIRMAN. We now have a number of Kentucky mining groups, and I understood these organizations were willing to appear as a panel. If you will, come forward and pick your quarterback and have at us here.

A PANEL CONSISTING OF MICHAEL NICHOLS, ATTORNEY; ANDREW FROST, PRESIDENT; CECIL GIBBS, VICE PRESIDENT; AND DAVID O. SMITH, EXECUTIVE VICE PRESIDENT, ON BEHALF OF KENTUCKY-TENNESSEE COAL OPERATORS ASSOCIATION; KARL FORESTER, ATTORNEY, AND HARVEY NAPIER, OPERATOR, ON BEHALF OF HARLAN COUNTY APPALACHIAN SURFACE MINING & RECLAMATION ASSOCIATION; AND PAUL PATTON, ON BEHALF OF KENTUCKY COAL ASSOCIATION

70 Mr. SMITH. Mr. Chairman, my name is David Smith. I am a partner in Smith Coal Co. of Corbin, Ky.

70 On my far left is Mr. Paul Patton, a coal operator from Pikeville, Ky. Next to him is Andrew Frost, president of this association, and also president of the Frost Coal Co. of Williamsburg, Ky. Next to him is Cecil Gibbs, president of a coal mining company in Middlesboro, Ky.

70 Also, I would like to point out that he was a recipient of the East Kentucky Reclamation Award for 1976 presented by Governor Julian Carroll in the Department of Natural Resources.

70 Next to me is Mr. Mike Nichols, our attorney. Mr. Nichols will present our testimony, which will be brief.

70 Mr. NICHOLS. My name is Michael J. Nichols. I am a practicing attorney in Louisville, Ky., and am here on behalf of my clients who are members of the Kentucky-Tennessee Coal Operators Association, Inc. That association is composed of small coal operators engaged in the surface and deep mining of coal in an eight-county area of south central Kentucky. It is, in turn, a member of the Kentucky Independent Coal Producers Association, which is based in Frankfort, Ky.

71 By way of introduction, I would like to state that if the goal of H.R. 2 is to provide a way to meet this Nation's needs for coal energy while at the same time protecting its natural beauty and resources, then it is indeed a worthwhile endeavor. If, however, through an excess of zeal, we sacrifice individual rights at the altar of administrative convenience, then each of us in a very real sense has lost a bit of his own freedom.

71 It is my feeling that H.R. 2 can be a procedurally fair and equitable bill if the following proposed amendments are adopted. My remarks will be limited to four major areas where it appears that the constitutional rights of people who make their living by operating coal mines are violated by H.R. 2 in its present form:

71 First, the absence of provisions for prerevocation and presuspension hearings.

71 Second, the absence of clearly defined standing requirements for objectors during the administrative process.

71 Third, the absence of any warrant requirements for administrative inspections.

71 Fourth, the absence of reasonable time limits within which the regulatory authority must act in various circumstances.

71 First, the absence of provisions for prerevocation and presuspension hearings.

71 As a positive note in this regard, let me acknowledge that in section 511(c) the committee has required notice and hearing before the regulatory authority may modify a permit. Additionally, I have no constitutional argument with post-suspension hearings in situations involving imminent danger of irreparable harm to the public or the environment (as in sections 521(a)(2) and corresponding provisions of 525).

71 However, I strenuously object to section 521(a)(3) and the corresponding provisions of 525 which purport to authorize only postsuspension hearings in all of the other cases, those in which harm is not to be imminent and irreparable. Where no emergency condition is found to exist, the operator has a constitutional right to notice and a presuspension hearing.

71 The Supreme Court has held that notice and an opportunity to be heard prior to suspension or termination of an important benefit is a constitutional imperative.

71 The right to prerevocation hearing is also denied by sections 504(d) and (f). These sections allow either the Secretary or the State regulatory authority to determine that a permit has been improvidently granted and, in effect, to revoke it in part or in toto. While there may be no right to hearing where only questions of law are involved, the determinations under 504(d) and (f) must necessarily involve mixed questions of law and fact and the due process clause of the Constitution mandates that these questions be resolved only after procedurally proper notice and an opportunity to be heard.

71 Second, in the question of standing.

71 The concept of standing as expressed in various sections of H.R. 2 should be refined to give the words the meaning intended by the drafters and required by the Constitution and commonsense. It is obvious that it is not the intention of section 513(b) to give any person, no matter how situated, with a valid legal interest in an undefined something or anything, standing to object to a permit application and then through 514(c) the standing to seek judicial review of the energy decision.

72 Mr. Udall has assured us that this amorphous and hypothetical person, as personified by the little old lady in Toledo with a typewriter -

72 The CHAIRMAN. Or maybe Louisville.

72 Mr. NICHOLS. Or maybe Louisville. We have them there, too. They couldn't hold up the opening of a coal mine.

72 Perhaps he is right. However, H.R. 2 itself could assure us of this in simple, definite and constitutionally correct terms, saving, by the way, the time and expense of case-by-case litigation which would arise under section 514(c) - if only it were amended to provide that the valid legal interest be one which would be directly and adversely affected by the granting of the application. One of the Supreme Court's requirements for article III standing is injury in fact. This committee should require no less.

72 It is my suggestion that section 519(f) and 520 be amended in similar fashion. These amendments are necessary to insure that any person whom the bill allows to hold up the approval of a permit application or a bond release or to bring a suit in court, will have sufficient stake in the matter to maintain a suit in Federal court, sufficient stake to justify keeping a man or woman from

earning a living in a legal manner.

72 Third, warrantless searches.

72 Very simply put, the 4th and 14th amendments to the Constitution guarantee each of us freedom from warrantless searches absent certain compelling circumstances. The Supreme Court has held that business premises are entitled to this constitutional protection. Therefore, I must strongly object to so much of section 517 as allows the regulatory authority to search the business premises of the operator without a permit.

72 I propose, then, the following addition to this section:

72 "A warrant under this section shall be required for any entry or administrative inspection authorized by subsections (a) and (b) except if such entry or inspection is:

72 "1. With the consent of the landowner or the operator or agent in charge of the operations or premises;

72 "2. In any exceptional or emergency circumstances where time or opportunity to apply for a warrant is lacking;

72 "3. For access to and examination of books, records, and any other documentary evidence required to be kept pursuant to subsections (b)(1) and (2); or

72 "4. In any other situations where a warrant is not constitutionally required."

72 Fourth, finally, and perhaps of the greatest practical importance, is the matter of time limits for administrative action on permit applications under sections 510(a) and 514 and bond releases under section 519.

73 The practical reason for definite and reasonable time limits is simple. A small- or medium-sized operator cannot stay in business, making payments on expensive equipment, paying for unusable leases, paying other expenses and trying to keep his employees on the payroll while a permit is being considered for an indefinite period of time.

73 It is of note that Kentucky's strip mine law (Kentucky Revised Statutes, chapter 350) currently requires the division of reclamation to notify the operator within 30 working days of the receipt of an application whether it is or is not acceptable. Kentucky's law in this respect is in harmony with the constitutional guarantees of due process and with the court cases which have held that benefits delayed may be benefits denied and that property may be as

effectively taken by a long-continued delay as by direct confiscation.

73 There can be no doubt that an operator has a vital interest in having his permit application processed within a definite and reasonable time. There is also little doubt that a definite time limit will comply with the requirements of the U.S. Constitution and thereby litigating on a case-by-case basis what a reasonable time is under sections 510(a) and 514(c).

73 Accordingly, we suggest that those sections be amended to require the approval or denial of a permit application within 3 months following the filing thereof where no public hearing has been held and within 30 days following a public hearing held pursuant to section 513(b).

73 For similar reasons we suggest an amendment to section 519 which would require an administrative decision on a bond or a deposit release within 60 days following such a request or, if a hearing is held pursuant to section 519(f), within 30 days thereafter.

73 Additionally, we propose that section 502(e) be amended by deleting the words "but in no case later than 38 months from the date of enactment of this act." This deletion would clarify the intent of the section that initial permit applications must be processed within 8 months following the approval of a State program or the implementation of a Federal program.

73 The Constitution of this country will not and common decency should not permit a citizen to be put out of business simply because of administrative inaction.

73 At this time I would like to place into the records the following documents: A "Legal Analysis of H.R. 2"; proposed "procedural Amendments to H.R. 2"; and proposed "Substantive Amendments to H.R. 2."

73 In closing, I would like to point out that the proposals I have made today would allow for the basic procedural rights guaranteed by the Constitution without making any serious inroads into the substantive portions of the bill.

73 Let us not waste our resources litigating points that could be so simply resolved here in the drafting process of H.R. 2.

73 Thank you.

73 The substantive amendments, I might add, have been spoken to by previous witnesses for the association.

73 The CHAIRMAN. We are pleased to have these for our files, and we will look carefully at them. It is a constructive statement that you have given us,
and I like the emphasis on specifics. I think every member of the committee wants to write a reasonable bill, one without unnecessary redtape and unnecessary regulation, and I think the suggestions you have we will consider carefully.

74 Mr. SMITH. We will yield our time now to the second group in our panel.

74 Mr. PATTON. I did understand you wanted all three groups with the panel.
I do have a separate statement.

74 The CHAIRMAN. We will get another batter in the box here.

74 Mr. FORESTER. Mr. Udall, my name is Karl Forester, and I have a different statement to make.

74 The CHAIRMAN. Mr. Forester, bring your group forward, and we will be glad to hear from you.

74 To the extent you can, summarize, and we are going to print the total statements.

74 Mr. FORESTER. We have approximately 20 members of the group here, and we
see no necessity to introduce them to you. I think you met many of them this morning.

74 The CHAIRMAN. All right, sir.

74 Mr. FORESTER. Mr. Chairman and members of the committee, as I said, my
name is Karl Forester. I am a practicing lawyer from Harlan, Ky. I am here on
behalf of the Appalachian and Harlan County Surface Mining and Reclamation Association in Harlan, Ky. Members of our association are small surface mine operators, and individuals who are involved, associated or benefited by the surface mining industry in our area.

74 As I said, the surface mine operators in our association are small operators. No operator mines more than 250,000 tons of coal or did last year.

74 Harlan County, Ky., is in the southeastern area of the State. It is characterized by narrow valleys and high mountains. The highest point in the State of Kentucky is in Harlan County.

74 Since the beginning of coal production in Harlan County approximately 70
years ago, we have been primarily dependent upon the coal industry as our prime
economic base. The surface mining industry in the county is a substantial contributor to the economic wellbeing of our county.

74 A large majority of the members of our association have been in the surface mining business for less than 6 years. Each member of the association has operated under the terms and conditions of the Kentucky surface mining laws and regulations, which we believe are the most comprehensive, or among the most comprehensive in the Nation insofar as a balance between environmental protection and coal production is concerned.

74 Members of our association are all citizen-residents of the county, and we are most interested in seeing that the environment is protected through legislation and on a voluntary basis.

74 We are aware of the failure in some States to adopt surface mining laws which adequately protect the environment. For this reason, we see the necessity for Federal intervention and the imposition of Federal standards in those States and those coal operators who have been derelict in the imposition of adequate surface mining laws and techniques.

75 We do want to point out to you, sir, that H.R. 2 in its present form will result in a most serious burden, not only on members of our association, but upon those who depend upon the surface mining industry for a livelihood.

75 It should be pointed out in our area, in most instances, coal that is surface mined is coal which is not economically recoverable by any other method. The coal is generally of a high quality, and the seams are generally less than 30 inches in height.

75 The primary method of mining used by the members of our association is the auger method, which results, we believe, in minimal surface disturbance.

75 Before I talk about the economic impact of H.R. 2 on our members, I did want to mention to you that there was some discussion among members of the committee relating to the definition of approximate original contour, and there was some talk that you would have to go to court to get the definition and so forth and so on, but it is defined on page 154 of the act.

75 It says that approximate original contour means that surface configuration achieved by backfilling and grading of the mined area, so that it closely resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, and so forth.

75 So it is defined in the act, and I think it leaves little doubt as to what is meant by the term "approximate original contour."

75 Presently, in order to auger mine coal in our county, an operator is required to have a basic equipment inventory consisting of an auger of the Salem Tool Co., and conveyors, auger sections, and fuel tanks. He is required to have a heavy hydraulically operated bulldozer of the Caterpilar D-8 or D-9 variety; a medium-size rubbertired highlift of the Clark Michigan 197 type, and related production equipment such as a haul truck to remove the coal from the mined area. This equipment is quite expensive, but is required to effect the most efficient mechanical, maximum coal recovery, and to comply with surface mining regulations in Kentucky.

75 If H.R. 2 in its present form is enacted, the members of this association would be required to purchase new equipment, which given today's present market costs would require a minimum capital investment in excess of $500,000 for each auger operated.

75 From what I have said, substantial new economic capital investment would be required. Each operator would have to purchase this equipment on the open market.

75 If capital is available, the specialized equipment won't be available because of the increased demands of the marketplace. We are assuming that small operators will be able to obtain the capital necessary to purchase, or to make the minimum downpayment on the required equipment. It is unlikely that members of this association could obtain any financing for this equipment within the time schedule for the implementation of this act.

75 The members of this committee are urged to have a staff investigation made as to the availability of the various types of equipment which will be required to be used by surface mining operators. The committee will find that at the present time, in the entire State of Kentucky, there are no more than five 15- to 20-year endloaders available for purchase.

76 The committee will further find that there is presently a serious shortage of large dirt carriers available for sale in the State of Kentucky, and we would assume in other States as well.

76 The members of the association further urge the members of this committee to investigate and determine the production capacity of the various companies in the country which manufacture the types of equipment that we have to have for lawful operation under the present terms of H.R. 2.

76 It is hoped that when you say the companies can't manufacture what we are going to require to stay in business, that some steps would be made to give us a break along these lines.

76 We would direct the committee's attention to the fact that:

76 First. When the Federal Coal Mine Health and Safety Act of 1969 was first passed, there was a serious shortage of the equipment necessary to comply with the terms of that act.

76 Second. The state of the mining art was not sufficiently sophisticated at the time of the passage of that act for underground operators to meet the requirements of the act.

76 Third. That provisions were made in the Federal Coal Mine Health and Safety Act of 1969 to allow those who were compelled to operate under the terms of the act to come into compliance with the act. For instance, provision was made for stage implementation of the cab and canopy provisions. That is, on or after January 1, 1974, canopies were required on electrical equipment cabs in coal mines having mining heights of 72 inches or more. Six months later the requirement was lowered to coal mines having mining heights of 60 inches or lower. Six months later, canopies were required for coal mines having mining heights of 48 inches or lower, and then it kept going down.

76 This association would recommend to this committee and the Congress that because of the great economic impact and capitalization requirements for operators and especially small operators, that provisions be added to the present bill to ease the burden on the small operator coming into compliance with the act.

76 We would also recommend that, as in the Coal Mine Health and Safety Act of 1969, an extension of time be granted to the small operator in order to provide an opportunity for him to obtain the capital necessary to finance the required equipment, and in order to purchase the equipment on the open market.

76 We further maintain that, in view of the foregoing discussion of the bill and in consideration of this committee's own findings, an extension of 3 years before the requirements of the act be finally implemented, would be a rational and justified provision.

76 We are suggesting how you should go about doing this, but we do think we need a break, and that is one way we think we can be helped in surviving with this problem.

76 In the alternative, in the event the Congress does not allow an extension, this association would recommend that operators who make a good-faith effort to purchase the required equipment be allowed a grace period during which they could continue to operate utilizing present mining methods, until full compliance is a practical possibility. Such a grace period would minimize economic hardship and prevent many small companies from being forced out of business during the transition from present mining laws to the new Federal act.

77 These recommendations, as previously pointed out, are within the spirit of previous mining laws, particularly the Federal Coal Mine Health and Safety Act of 1969.

77 The members of the association feel that many of the mining permit requirements of H.R. 2 are unrealistic. One of the primary problems with the permit procedure of the act relates to an absence of time limitations within which the regulatory authority must act. We submit that the regulatory agency should be required to notify a permit applicant within 60 days after receipt of a completed application as to whether or not the proposed plan is acceptable.

77 We further submit that if a plan is not acceptable, the regulatory agency should be required to articulate the basis for its declination of the plan. The regulatory agency should have the further duty to propose modifications, which would render the plan acceptable. It is wholly unrealistic to empower a regulatory agency without providing a timeframe within which it must act. You have previously heard testimony relating to the unavailability at the present time of experts capable of interpreting the hydrological data called for by the proposed act. We do not dwell upon the unavailability of these experts, in view of the fact that this committee has been so advised by testimony and by the study done under contract No. EQ-6-AC-016 by ICF, Inc.

77 I have a written statement, which I think has been filed.

77 The CHAIRMAN. Yes. I have gone through it, and I am ahead of you.

77 Mr. FORESTER. We appreciate that very much.

77 We feel in the eastern part of the country a 5-year growing season is unrealistic. The Kentucky law provided for two growing seasons, and after the first there be a partial release of the bond. We feel consideration should be given to lowering this 5-year period east of the Mississippi River, or in our area of Kentucky, Pennsylvania, Tennessee, and Virginia.

77 We do have a serious problem in restoring the land to the approximate

original contour. We have talked about the definition for approximate original contour, and to me that means you get it back just as nearly as you possibly can to the way it was originally, and if you can't get it back that way, you don't mean it. I think that is what the act says.

77 We would bring to your attention the IRF report which has been filed with the committee, I think, and I believe it is AC-3016.

77 We would point out to you that in that report it was mentioned that grading mountainous land to the approximate original contour provided an adequate degree of environment protection, but does not achieve the highest level of the reclamation.

77 In our county much of the land is virtually useless prior to mining activity. If you restore it to the way it was, you still don't have any use for that land, with the exception of, in some areas, timber.

78 As shown by that report, regrading to the approximate original contour would result in the loss of many good post-mining uses. For example, pasture development, access roads to timber, access roads to get to fires, firebreaks, housing, industrial sites, and you have heard some other possibilities.

78 We feel that the act is somewhat discriminatory for us here in the East, in that we are required to restore the land to the approximate original contour, and yet operators in the western States are not required to restore the land to the approximate original contour.

78 We do feel that we are being unfairly treated along those lines. We feel that in the long run that the lands in our area would not be better suited in many instances to restore to the original contour, but that we can make better use of the land than what we now have.

78 We submit that the potential for environmental damage by eliminating highwalls as required by the act is greater than the present system we have in Kentucky, and I think you have heard experts from Kentucky talk about that, and you are going to hear next week some other Kentucky experts, so I won't get into that.

78 I just want the members of the committee to know, and you, sir, to know that you have been very kind to us and we certainly appreciate the attention you have given to us today.

78 The CHAIRMAN. It was a fine statement. I appreciate your summarizing

it.

78 Mr. Patton, do you want to be heard now?

78 While he is getting ready, I had the great privilege of visiting the State of Kentucky 2 weeks ago. One of the western miners handed me a coal journal. It was labeled "Western Coal Operators." I appreciate the concern of the West. I would be just as happy if I didn't dig any western coal at all.

78 In my own congressional district I don't have any coal at all. The West has some advantages and some disadvantages, but I don't personally have any bias.

78 Go ahead, Mr. Patton.

78 Mr. PATTON. I would like to submit a written statement from the Kentucky Coal Association, which is their official position. That is different than this.

78 The CHAIRMAN. We have it, and we will print it.

78 Mr. PATTON. I am primarily a deep miner, and I appear here reluctantly, but at the urging of friends of mine, coal miners, shopkeepers, people in auxiliary industries who are really concerned about the economic health of eastern Kentucky. I have interests in surface mines, and perhaps 10 percent of my interest is in that. I would say last year zero percent of my income came from surface mining.

78 I think this act as now written would be real good for me economically, but I think you have to understand something about the people of eastern Kentucky perhaps to understand the way I feel about them.

78 I see this act as having substantial economic impact on the coal industry. It is going to increase the price of coal, which is to the consumer, as you have heard, and I am sure you realize that basically when a cost is incurred throughout the industry, the industry passes it along. If additional capital expenditure is required, the industry will expect more profit.

79 The impact of this legislation will occur in Appalachia. We were talking about restoration to original contour.There were many provisions of this bill which I think are excessive, and most of them have been mentioned today, but I would like to deal in two areas, the restoration to original contour, and I think an area which has been neglected, and that is its effect on underground mines, particularly small underground mines.

79 I doubt if you really appreciate the value of level land in eastern

Kentucky. I don't believe unless you had done a detailed study that you could
really appreciate how valuable and scarce the level land is, for homebuilding,
for industrial uses, for any variety. It just isn't there.

79 I don't contend that all strip mining ventures - or half of them or a big
percentage of them - will ever be utilized for a higher land use, but there are
some, and there are some that I wich I could show you, some that are relatively
close to Pikeville and the land values in Pikeville would make the land values
in Washington cheap, I am sure.

79 It is a shame to me, when we need the land so badly, that we cannot
utilize that particular part of the land that is in low-lying places, where 20
or 30 acres of land can be created by leaving the highwall, perhaps a 100-foot
highwall.

79 So I think there should be an exemption for leaving a bench and a
haulfield under strict limitations, something similar to your hilltop - mountain
removal type of provisions.

79 If you could have a provision in there which would allow certain
restrictive places that are obviously going to be valuable and useful, then I
think those should be left. Perhaps the highwall should be split so it won't
be dangerous, like a highway.

79 The CHAIRMAN. I think our bill covers that now, and -

79 Mr. PATTON. For a highwall?

79 The CHAIRMAN. Yes; you could have highwalls if appropriately graded and
stabilized to their approximate original contour using terracing or other such
grading practices. You need flat land for hospitals and houses, and all the
other things, and I am with you and that is what the mountaintop mining is all
about. But if it is some bench 20 miles out from a beautiful town, and it won't
be used 100 years from now, don't give me that argument. But if you have one
close to town that someone wants to build on, you should have that right,
providing that the reclamation standards of the bill are met.

79 Mr. PATTON. I am not an expert on the bill, but I did interpret it that
way. I will study it a little more and see if I understand better about the
highwall. I didn't see an exemption to leaving a highwall.

79 But as concerning just the ordinary top of the mountain, 40 miles from

Hazard stripping, where a highwall would be left, I think what these people need
is something they can physically do. I don't believe, and I concur what I
believe restoration to present contour - and I think it means restoration to the
original contour.

79 Two years ago I was up here talking to some staff member, and I said,
"Can we leave a road?" "No; you can't leave a road."

80 "Can we leave a 5-foot-high highwall?" "No; you can't leave a
5-foot-high-highwall."

80 That is what I interpreted the interpretation to be. In my opinion, at
least 50 percent of the mining in Kentucky will be impossible, without regard to
economics.

80 The CHAIRMAN. This is the reason I am trying to get the brothers out in
the field on the field trips, so they can see.We have had repeated testimony
that in Pennsylvania, using the same kind of equipment you use, they have put it
back to original contour, and still have got the coal out.I want people to see
that that can be done.

80 It is an approximate original contour, and if you go in and get the coal
out and have some contours in there, you shape it so that the contour is
somewhat different than the original straight line, if your original lines are
there, based on what you find, so that you can get back in there later for
timber or if there is reclamation, or whatever is appropriate.

80 You don't have to restore the land to the original situation. Sometimes
you can leave it a little better than it was in the first place.

80 Elimination of the highwall is in the bill. In a few limited situations
where you have an immediate postmining use near town or something and land can
be graded for development use, then that is allowed also.

80 Mr. PATTON. What I think that the people in eastern Kentucky can live
with - physically, to do the job - well, which direction are you going to haul
the coal? You either have to haul the coal out ahead of you, over through a
place where you can maintain a road, or you have to haul it out backward.

80 You have to go one way or the other.

80 The CHAIRMAN.You need roads. There is no question about that, properly
engineered and planned.

80 Mr. PATTON. The way to haul the coal is back over the spoil area. To do that, you need a minimum of a 30-foot road.

80 Now, if you leave a 30-foot road, you are going to have a 30-foot-high highwall; that is just the way it is.

80 The CHAIRMAN. Why can't you contour it so you have a subsequently rolling slope and your road is part of it?

80 Mr. PATTON. If you are operating on a 30-degree hill and you fill it back on 30 degrees, you are going to end up where you started. If you come out here and move out for a road, you are going to be off your outslope down here.

80 The CHAIRMAN. Well, we can argue about it later. I wish you had been here a week ago. We had the chief enforcement guy with beautiful slides where they have restored to approximate original contour, and consistent with their law, on which our bill was based, have left roads so that you can continue to go through there.

80 Mr. PATTON. I saw those slides in Kentucky, and to me, with all respect, that will be an environmental disaster.

80 Now, I have in one of my appendixes a theoretical study done by a civil engineer. He took a small hollow and he said, "OK, we will do it like we normally do it, and we will figure out how much area we have left subject to erosion, and we will do it the way they want to do it. The areas came out to be essentially the same, 10 acres, or something like that, but if 10 acres under your method were on a 28-degree slope, and under our method there was only about 2.6 - the figures were in there - 2.6 acres were on 28 degrees, and 2.3 acres were on 20 degrees, and the rest was on 20 degrees.

81 Now, sheet erosion is going to occur on freshly disturbed soil. It doesn't matter how quick you put it back in grass or what you do to it. You will get sheet erosion, and probably gully erosion.

81 Sheet erosion on 28 degrees is going to be many, many times grester than is sheet erosion on 6 degrees, or basically flat. I think that the difference - and this is what I asked you to do - there is no information available on how many tons of material could we expect to erode from an acre of ground over a year's period, the first year that it was disturbed, if it is on a flat level, or 6 degrees, or 28 degrees. I don't have those figures.

81 If we had the figures, I think they would show that on 28 degrees the

sheet erosion is going to be really, really steep, and if you get it down on 6
degrees, it is going to be practically negligible. If I had those figures, I could have finished this thing that the engineer did and say that under your method we are going to have 200 tons of erosion into the streams, and under our
existing methods we are going to have 50 tons. I don't have the information.

81 The CHAIRMAN. You made good arguments here today.

81 Give us whatever information you have and we will take a look at it. I
recognize the problems that the coal operators have, and I am one who wants to
mine more coal. I want a bill under which you can mine more coal and under which we can put the land back into shape.

81 Mr. PATTON. I realize the highwall is not beautiful, but if we could plant trees, give us a 30- or 40-foot highwall, and make us plant trees, and in
10 or 15 years they will conceal the highwall from view. I think the only argument against the highwall is that, and if we could have a 30- or 40-foot highwall where we would have enough room to build the road and maintain water control and plant the trees, I think that would eliminate in time the esthetic
argument.

81 Now, deep mines. Deep mines have been included in this as an afterthought. In Kentucky the legislature did the same thing. They wrote a two-sentence law. They used the logic that they would use in regulating a strip
mine, and it would have been a disaster, and we, through a tremendous debate, finally, I think, have convinced them that deep mines are different than surface
mines.

81 Now, for instance, under this bill can I put stuff over the outslope if I
open up a deep mine?

81 The CHAIRMAN. No. What we tried to do here, and I was talking to a bunch of coal operators earlier today - what we tried to do is to say that we are dealing with the surface impact of surface mining, but there are also surface impacts of deep mining. You have to clean the coal, you have waste, you
have roads, and you have a lot of surface effects of mining underground.

81 We said, in effect, that while we are dealing with the surface impacts of
surface mining, we should deal with the surface impacts of underground mining.
Are you contending that you are regulated already, and we ought to leave you alone on that?

81 Mr. PATTON. No, the State of Kentucky has passed surface effects legislation which will be in effect imminently.

82 We have to have, on one place, we are in one place for a long time, 5, 10 or 15 or 20 years - we are in one place. We have to have a tremendous amount of area. I have just opened up a mine complex at the head of a hollow, and in effect I stripped it around the head of the hollow, and I have 2 acres. I have 200 employees, I have to have parking, bathhouses.

82 So, in effect, after doing something which I know is not going to be legal under this act, no way, we are still having to store all our nondaily supplies in a remote area. The only thing we can do in this area is to have parking for our people and daily supplies.

82 The CHAIRMAN. All we are suggesting in the bill, and certainly my intention is, that you do a little bit of planning, that you say, "All right, we have an underground mine here, we will be here 15 years, we are going to have parking," and plan a little bit so you don't have another Buffalo Creek, and have acid drainage come down.

82 Mr. PATTON.We are in complete agreement. I assume you are an attorney, and I am not.

82 The CHAIRMAN. I used to be.

82 Mr. PATTON. I don't guess I read the bill the way you do, but if I could but remember the definition of a surface mine operation, the surface effect of all surface mines and the surface effects of all underground mines - this bill is full of surface mining operations. Every provision of this bill practically applies to an underground mine that I can tell.

82 Now, it says that the Secretary has the right to make exemptions, but my experience in dealing with Federal regulatory agencies is worse than dealing with Congressmen. The Congressmen are much more sympathetic than are the bureaucrats.

82 I interpret this bill to say that I cannot, as it stands now, and unless the Secretary makes an exemption, I cannot put any material over the outflow, if I open an underground mine, and I have got to have a place to store my equipment. It is an entirely different operation than the surface mine. The effects can be the same, and they should be controlled, but there should be more, there should be more work rather than just as a side category say, "And this also applies to deep mining."

82 The CHAIRMAN. Give us some help on it, and Mr. Crane here is one of my chief staff people, and you can blame himif the bill is badly written.

82 We have a time problem.

82 Mr. PATTON. I realize that, and I apologize for taking so much time.

82 The CHAIRMAN.We are glad to have your testimony and listen to you. You are on the spot and know what the problems are.

82 Are there any other questions?

82 Mr. Ruppe?

82 Mr. RUPPE. What you are suggesting, if I understand it correctly, is that the regulatory authority, if there is a postmining use of the land that is a valuable one, should permit the operator to leave a bench or the open highwall if that suits the postmining use. Is that correct?

82 Mr. PATTON. Yes, in very strict circumstances.

82 Mr. RUPPE. Both the highwall and the bench?You need to cover the highwall, don't you, so you don't run into the acid drainage problem?

83 Mr. PATTON. No, not in my area. We don't have the acid.

83 Mr. RUPPE. So you are saying you would like to have the highwall and/or the bench if the circumstances dictate and if regulatory authority in its wisdom feels it is a pretty good idea?

83 Mr. PATTON. Yes. I am trying to buy some property to build a house, and it is going to cost us more than the house does, and -

83 Mr. RUPPE. Come to Washington, and we will arrange to get the house -

83 [Laughter.]

83 Mr. PATTON. There are a few isolated places where valuable property can be created. I know of some. To me it is a shame. I am on our local investment commission and we are involved in trying to procure sites for industry, and the cost is phenomenal.

83 Mr. RUPPE. I think under the present bill the only exception to restoration to approximate original contour would be in mountaintop removal. That is the way I read the bill.That is not the way Mr. Udall reads the bill.

83 The exemption is the mountaintop removal.

83 The CHAIRMAN. Where is the regulation where you have postmining use?

83 Mr. PATTON. That in my opinion is mountaintop removal.I haven't discussed mountaintop removal, because that is so logical, and I understand a lot of people have addressed themselves to that point.

83 Mr. RUPPE. I believe that is the only time when we have thereby given exception to the original contour situation; except for experimental situations, that is.

83 Mr. PATTON. The bill now contains restrictions on mountaintop removal, which I think ought to be eliminated. I am saying that something similar to those restrictions ought to be placed on highwalls. They are accessible, if they are low-lying, if they are close enough to a populated region where they will be used, perhaps not 3 years from now, but for housing. Then they ought to be left.

83 Mr. RUPPE. How wide are the benches you are talking about that will be left?

83 Mr. PATTON. What I am talking about is what we would now on a low-lying seam of coal that goes back toward the head of a hollow. They move it in and fill the entire hollow up, and these can be 500 or 600 feet wide and maybe 1,000 or 2,000 feet long.

83 This is a tremendous flat area. Now, I think that when you get out around to where the bench is only 100 feet wide, unless it is exceptional, it probably wouldn't be too useful, although there are houses built on low-lying strip areas that are 100 feet wide.

83 I am talking about hollow-type fills where the entire hollow is covered and you have got 600 or 700 by 1,000 feet, and I know of one specific area like that which I get is worth a million dollars, and it would be a shame to spend another million dollars to fill it back up to where it was so that it will be worth nothing.

83 Mr. RUPPE. Thank you, Mr. Chairman.

83 The CHAIRMAN. Mr. Vento?

83 Mr. VENTO. No questions.

83 The CHAIRMAN. Gentlemen of Kentucky, it has been a great day for you. We appreciate your help.

84 [Prepared statements of Karl Forester and Paul Patton may be found in the appendix.]

84 The CHAIRMAN.Mr. Harger is our next witness.

STATEMENT OF WILLIAM HARGER, PRESIDENT OF WESTERN PENNSYLVANIA SURFACE MINE OPERATORS ASSOCIATION; ACCOMPANIED BY ROBERT SHOSTAK, COUNSEL

84 Mr. SHOSTAK. Mr. Chairman, I am Robert Shostak. I am an attorney, and the gentleman with me today is Mr. Harger, who is the president of the western Pennsylvania Surface Coal Mining Association, and he would like to address you and open up for questions and answers afterward.

84 I had prepared a written statement. However, because of his testimony, and some of the questions that came up today, I have a lot of penciled-in things that I would like to go over with you today, and I would ask for permission to submit a written statement conforming to what I am going to say today subsequently after this hearing.

84 The CHAIRMAN. We will be glad to have it, and we will put it in the record, if received in time for printing.

84 [Prepared statement of Robert Shostak, when received will be placed in the committee files.]

84 The CHAIRMAN. We also have 10 pounds of proposed amendments which we will take a look at.

84 Mr. SHOSTAK. My name is Robert Shostak, and I am here on behalf of the Surface Coal Miners Association.

84 By way of background, I would like to advise the committee that I worked for the Commonwealth of Pennsylvania Environmental Strike Force, for the Department of Environmental Resources in 1971 until 1974. That is a period of 3 years, during which time I prosecuted, negotiated, ordered, cajoled, and otherwise dealt with the strip mine industry and its various impacts on air, water, and land.

84 It was my philosophy as a Government official, and it countinued to be my philosophy today, that a balance must be struck between the requirements of industry on the one hand and the requirements of governmental regulations.

84 My remarks today are premised on the fact that Pennsylvania shall become the regulatory agency and these amendments before you today are also premised on that fact.

84 Contrary to the general impression of this committee and its members, under present law, Pennsylvania will not meet the requirements of H.R. 2 to become the approved regulatory agency.

84 I would like to repeat that. Pennsylvania would not be the approved regulatory agency. The Federal Government would maintain that supervision.

84 I would like to highlight some of the amendments we have in this package.
We propose potential harassment by persons be minimized by seeing that they have
a legitimate interest.

84 We propose that the submittal of detailed extensive hydrological data be
limited to the areas that information is unavailable to the Government, or where
the mining will pose problems for the water supply.

84 The Eastern States do not have a water supply problem such as those in the Western States. It would therefore be burdensome on the Eastern industry and unnecessary bureaucratic information compilation to request this data except
in the area where serious consequences to the water supply is threatened.

85 We are opposed to the act's tightening the time period.

85 The regulatory agency and the industry should be familiar with and reply
upon the administrative process.

85 We have proposed amendments to the act to eliminate potential areas for
abuse, such as the requirement for two independent estimates for determining the
reclamation bond rate. We propose changes to H.R. 2 to provide for reclamation
to contour other than approximate original contour, since in certain instances
it would not be environmentally sound to restore the land to approximate contour. I beg and disagree with the chairman, in that the approximate original
contour would not allow terrace type reclamation.

85 We have proposed a reclamation credit on page 1 of this document which would enhance and encourage reclamation. We have tried to amend H.R. 2 so that
it would give the approved regulatory agency the discretionary power to control
surface mining within its jurisdiction without the necessity of watchdog control, supervision and duplicative intrusion by the Federal Government. We believe the State which has demonstrated its ability to adequately protect the
environment should not be arbitrarily subjected to more unwanted Federal interference.

85 We have attempted to draft requirements in H.R. 2 in such a fashion that
they will protect the environment and health and safety of the public and at the
same time allow the operator maximum recovery with minimum expenditures of man-hours.

85 H.R. 2 as it is currently drafted does not have these restrictions. It is our sincere hope that you will examine our amendments with an objective eye and an open mind, and if you find our points well taken, amend H.R. 2 accordingly. We hope that if the State of Pennsylvania through its Representative endorses any amendments, you will not turn a deaf ear. These amendments have been submitted to the DER in Pennsylvania, and they will be contacting you shortly.

85 There is an attachment as a last exhibit to our proposed amendment.

85 At this point, I would like to present Mr. Harger, who also would like to address the committee.

85 The CHAIRMAN.I get the impression today you are not very strong for this bill of ours.

85 Mr. HARGER. Well, reserve your conclusions until I am finished, sir.

85 My name is William Harger. I am from Butler, Pa. I am 56 years old. I have been connected with strip mining in Pennsylvania for 35 years. I have been the president of Sunbeam Coal Corp. for 30 years.

85 I note from my records that I was down here on the 21st of May 1973 before this committee, or its predecessor, and I submitted detailed proposals on our comments on House bill 5988, and I note from going over most of it that most of what I recommended was ignored. We offered to cooperate with the staff, to explain how the Pennsylvania law worked so that you could take that into consideration in the proposed strip bill, but H.R. 2 is actually far worse than the H.R. 5988 was.

86 Now, in H.R. 2, the purpose clause says "To assure the coal supply essential to the Nation's energy requirements and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

86 I don't need to tell you that 55 percent of the coal mined in the country last year was by strip mining. The percentage of strip mining has been going up each year.

86 In 1973, I pointed out to you that the rate of fatalities was 5.56 times as great per million tons in deep mining as it was in strip mining. In 1976, it

was six times as great in deep mining per million tons of coal produced as it is
in strip mining.

86 If you pass H.R. 2 in its present form, you will have the blood of many,
many more miners on your conscience. How many men do you wish to condemn to death?

86 Now, strip mines are the only hope for this country to solve the energy
crisis in the short run. In the next 5 to 10 years, that is.There is no other
possible alternative source of energy. We are becoming more and more dependent
on the Arabs everyday. Only the strip mines can increase production quickly and
economically to solve the 5 to 10 years' energy crisis. Hopefully by the end of
5 or 10 years, some other program is going to be forthcoming, and the pressure
could be taken off of the strip mines, but until something else comes along,
that is the only thing that you have got.

86 In Pennsylvania, we have half small operators. In the last page of my
presentation, I showed the scale or the chart of the operators for 1975, and you
will note about a total of 503, out of that total, 450 of them produce less than
100,000 tons of coal a year.

86 I think you will find this is a case in most of the other Appalachian
States, that over half of the operators are small operators.

86 H.R. 2 in its present form is going to put the small operator out of
business. There is no way that he can contend with the complexities in H.R. 2.
Now, I am not talking about reclamation so far as Pennsylvania is concerned.
H.R. 2 requires absolutely no additional reclamation - rather reclamation that
we are now doing in Pennsylvania, except for the terrace backfill thing, which I
am going to get to a little later. It is the redtape, the hearings, the delays
that are going to put the small operator out of business.

86 Now, there are all kinds of talk about breaking up the oil companies and
breaking up the integration that the oil companies have bought the coal
companies, and there is a concentration of power. If you want to reverse that,
you have to amend this H.R. 2 to protect the small operator and let him continue
to live.

86 The small pieces of coal aren't economically feasible to recover by the

larger operators. Only the smaller operators can go in and get the 25 and 50 and 100 acre patches that we are doing in Pennsylvania.

86 We have one large company in Pennsylvania that requires three permits a week to operate, plus some amendments.

86 Now, that is the largest company in the State.They have 25 or 30 jobs running. But they have to have three permits a week. Now, they have 1,000 men working.

86 In the State as a whole, there are 1,200 new applications for permits. That does not count amendments. That is over 100 a month. That is 25 a week. That is 3 or 4 a day.

87 There is no way they can be handled in the complexities of H.R. 2. The hearing procedures alone in H.R. 2 are going to slow these down for months and months and months. If H.R. 2 is passed in its present form, it can cause every coal company in the United States to have to go to a hearing on their permit by simply filing a letter, a written technical objection. Anybody can do it that can scare up a vital legal interest, or a valid legal interest, and in Pennsylvania, a neighbor of mine had to go to court. He was tied up in court for 18 months because some oufit filed an objection to his permit. They had a valid interest, so he was held up.

87 It is a question of reclamation versus regulation. We have reclamation now in Pennsylvania. We don't need additional regulating.

87 If you think this bill is bad, you ought to see the regulations that the Federal boys have proposed to issue in this country, assuming it was going to become law. They already have the regulations written, and they are far worse than what is in this bill.

87 Pennsylvania doesn't need H.R. 2. We don't want it. We want you to exempt Pennsylvania. We are the good guys with the white hats. We are leaders in this thing. We are the example. Everybody comes to see Pennsylvania. We restore the highwall and the topsoil. We don't need H.R. 2. We want to be exempted. We are content the way we are.

87 You have exempted Pennsylvania anthracite, and we want you to exempt anthracite and bituminous.

87 The CHAIRMAN. I have been preaching Pennsylvania is the leader under this bill. You can say you want to administer your own law, and if your law is

as good as the Federal law, they let you do it.

87 Mr. HARGER.It would take two or three sessions of the State legislature.
There is no State in the country that could qualify under this without additional legislation.

87 Mr. RUPPE. It is said that Pennsylvania restores to approximate original
contour, but don't you have terracing, and you shave the top of the highwall?
You don't really have total approximate original contour in your mining area?

87 Mr. HARGER. On the original permits, where there was no previous mining,
we are required to do original contour restoration. Any shaving of the highwall
at the top is 3 or 4 feet for cosmetic purposes. They will not permit any
substantal shaving of the highwall at the top. It is for settlement purposes only.

87 Mr. RUPPE. Do you have terracing? In your Pennsylvania law, I believe
counsel suggests you use the word "terracing."

87 Mr. HARGER. I will address that right now. Terracing is where we
reaffect areas stripped in World War II, before the first reclamation law which
was passed in 1945. We are permitted terracing where we reaffect an old area,
and where we are not going to go more than 300 feet additional into the highwall.

87 In the last 10 years, Pennsylvania operators through the terracing
procedure have reclaimed 15,000 orphan acres at not one penny of cost to the
Commonwealth of Pennsylvania. We reclaimed 3,000 orphan acres. H.R. 2 will not
permit terracing the way it is written.

87 Mr. RUPPE. Terracing is a legal and useful tool in Pennsylvania dealing
with an area that has been previously mined, and terracing has permitted you to
go that route, and as a result you have done a pretty good, if not exceptional,
restoration job in a previous mined area?

88 Mr. HARGER. Yes.

88 Mr. RUPPE. May I ask you, sir, why you can live with this, or why you
can't live with it. What would be your response to perhaps other witnesses who
have suggested that the approximate original contour cannot be lived with?

88 Mr. HARGER. It is tough above 20 degrees. We have the skillful
operators who use a modified block method in Pennsylvania, who are mining up to

35 degrees or 37 degrees. I think Mr. Udall is familiar with the Mears Coal Co.
It is a difficult proposition, but those people go to the regulatory authorities, they negotiate the amount of the bond, and if they say they are going to do it, their feet are held to the fire. They have to do it.

88 Mr. RUPPE. Both large and small operators can do that if they have the
right skill?

88 Mr. HARGER. The skills and the guts.

88 Mr. SHOSTAK. Terracing is defined as grading where the steepest contour
of the highwall shall not be greater than 35 degrees from the horizontal, with
other provisions.

88 Terracing is sloped to the toe of the spoil bank at a maximum angle not
to exceed the original contour of the land, with no depression to accumulate water and with adequate provisions for drainage. Both terracing and approximate
original contour require the highwall to be covered. However, under terracing
type, the angle of repose from where the highwall had been, to where the coal was removed was steeper than the original contour provision.

88 The way I read H.R. 2, terracing was not a part of approximate original
contour, and contrary to Mr. Udall's statement earlier that it was. I disagree.
I think it should be defined earlier.

88 Mr. RUPPE. I think one thing we may have to address is the question of
terracing, and whether that is a variance to original contouring.

88 The CHAIRMAN. We are going to walk out of here with a vote in about 3 minutes.

88 Mr. HARGER. We will wait for you.

88 The CHAIRMAN. I have some other problems that I have put off all day here. I am not sure I can come back.

88 Mr. HARGER. Sir, this has been going on for 4 years, and today is the appointed day and the appointed hour. If you can't do it today, can we come back first thing in the morning?

88 The CHAIRMAN. I thought you were instructed along with all the witnesses
to bring prepared written testimony, that you were going to have 10 minutes of
testimony, and whatever questioning the committee wanted to do. You have been

at us now substantially more than 10 minutes. I am willing to hear you 2 or 3
minutes.

88 Mr. HARGER. The vice president of Arco got 45 minutes this afternoon.

88 The CHAIRMAN. He wouldn't have if I had been in the Chair.

88 Mr. HARGER. We are trying to be instructional, not objective, but we are
teed off, because 4 years ago, I presented this terracing problem to the
committee and they ignored it.Four years ago, I gave them copies of the
Pennsylvania bill and they ignored it. The gentleman from Wyoming, who is not
here, he thinks that we don't have to go back to original contour. It is true
out in the West where the amount of the coal is so thick as compared to where
the overburden is, it is impossible to put it back to contour. But under H.R.
2, where the dirt is available, we have to put it back to contour.

89 It doesn't matter in Pennsylvania. We are doing it anyhow.

89 Now, the reason we are able to do this in Pennsylvania is the price of
coal has gone up four times in the last 10 years. It costs us all - all our
expenses have gone up double, and our production under the contour backfill and
removing and restoring the topsoil has been cut about in half. That is the
economics of it.

89 On this blasting, now, I wish the gentleman from Ohio was here. We have
solved the blasting problem in Pennsylvania. We are closely regulated. Our
mine inspector has to approve our blasting procedure and the plan on which we
are going to notify the people. The Governor of Pennsylvania has a hotline, and
if we put off a bad shot, they call the Governor's hotline and in about 2 hours,
the mine inspector comes running in to see what went wrong. The State of
Pennsylvania has a standard for the maximum size of a blast for strip mining.
We are not permitted to exceed that standard. When we get closer to buildings
and homes than 1,000 feet, we often must reduce that standard.

89 If necessary, we have to use a seismograph to measure the size of the
blast. No flying rock is permitted in Pennsylvania.

89 The CHAIRMAN. Hold tight, and I will be back in about 10 minutes.

89 [Brief recess.]

89 The CHAIRMAN. Mr. Harger, you tell me your problem. Let me tell you
mine. I have a list of witnesses tomorrow that is about as long as the one
today. I have another vote that is coming in less than 10 minutes. I have an
office full of people, all of whom have been delayed, and you won't believe
this, but my wife expects me home for dinner at 7 or 7:30.

89 So if you could give me about 5 minutes worth, I have one more witness who has been very patient. I want to save him about 5 minutes and give you 5 minutes more.

89 Tell me what I need to know, and send me a letter or give me something in writing, and I promise you I will read it.

89 Mr. HARGER. OK.

89 On blasting, we have preblast surveys, and we have a company that does that. They take pictures. If there is any damage done, there is no question that we are responsible for it.

89 We do keep logs. We object to the word "magnitude" in the bill, because the word "magnitude" implies that you must seismograph every blast, but we do keep logs.

89 On the Coal Mine Health and Safety Act that was referred to here this morning, if you gentlemen don't put some responsibility and penalties on the employees so we can penalize an employee for willful or careless failure, we are never going to cut the fatalities down to where they should be. There is no penalty on the employee for willful violation.

89 One of the successful parts of the Pennsylvania program is the 40 standard conditions that they for all of the permits, and then especially, special conditions when necessary.

90 The regulatory authority in Pennsylvania has the right to make us do anything, but they exercise it judiciously, and they only require us to do what is necessary for each particular application.

90 We object to the time limit on the permits. They should run for the life of the mine. The hydrological survey and that technical information should be optional with the regulatory authority and only required when necessary. We object to the type of citizen participation provided in H.R. 2. The type of citizen participation we have in Pennsylvania is working perfectly. You should copy it, if you follow our amendments.

90 The CHAIRMAN. What is the difference?

90 Mr. SHOSTAK. The basic difference is that in Pennsylvania, you must file written objections. There is an informal procedure available first. If you go beyond that, then you must file written objections, and you must have valid objections.

90 The CHAIRMAN. We are thinking of putting the informal procedure in.

90 Mr. SHOSTAK. We would be in support of something like that. We have proposed it in the amendment book we gave you.

90 The CHAIRMAN. All right.

90 Mr. HARGER. The two bondings, that is a farce, because people would set themselves up in business just for bonding estimates, and they would really be unreasonable. The regulatory authority has experience and has the ability to determine the amount of bond needed.

90 Three places in your bill, the incremental bonding is referred to, but there is no provision in the bill for incremental bonding. The bill contemplates that the permit applications will be on 500 acres, but that the bonding will be done perhaps a year at a time.In three places, incremental bonding is referred to, but it is not provided for.

90 Mr. SHOSTAK. You actually mention incremental permits at one place, which is extremely confusing. So we have amended those provisions to refer to it as bonded areas.

90 Mr. HARGER. Your program is more complicated than we have found in Pennsylvania. We need the terracing. We would like a commitment from your circumstances, that we can work with your staff and give you the benefit of our experience and expertise in perhaps doing something to make this law better.

90 I endorse the technical complaints that the people from Kentucky filed, and I want to emphasize again that Pennsylvania operators want exempted from this bill 5 or 10 years, or until such time as Pennsylvania other States catch up with Pennsylvania, until such time as Pennsylvania can enact necessary enabling legislation so that they can be the regulatory authority under H.R. 2, and that is provided, of course, that you adopt our 70 amendments, every one of which has blood on it. We worked hard on those amendments, and none of those are frivolous

90 Thank you.

90 The CHAIRMAN. Thank you very much. You have been an effective witness. I am glad to have spent the day with you.

90 Mr. Baker, you have had a long day here.I appreciate your patience.

STATEMENT OF LLOYD BAKER ON BEHALF OF DISTRICT 20, UNITED MINE WORKERS, BIRMINGHAM, ALA.

91 Mr. BAKER. Mr. Chairman, I have a prepared statement, but in case -

91 The CHAIRMAN. It will be put in the record in full.

91 [Prepared statement of Lloyd Baker may be found in the appendix.]

91 I will read it tonight, if I ever get home.

91 Mr. BAKER. I will go as fast as I can, and try not to spend more than 5 minutes. If there are any questions concerning the information I have, one of the controversies has been in the past and future concerning our union.

91 Mr. Chairman, and members of the committee, my name is Lloyd Baker and I appear before you today as president of District 20 of the United Mine Workers of America. District 20 includes that part of the Appalachian coalfield which extends into Alabama, Mississippi, and Georgia.

91 I appreciate this opportunity to appear before you to express the concern of the Alabama coal miners regarding H.R. 2 titled as the Surface Mining Control and Reclamation Act of 1977. Alabama's union miners concur with the resolution of the UMWA executive board of February 11, 1977, in which they called for the regulation of surface coal mining to remain in the hands of the individual States rather than be subject to control by the Federal Government.

91 We understand that under certain conditions there are provisions in H.R. 2 for the State to enforce and administer surface mining regulations if that bill becomes law. But we also understand that H.R. 2 has no provision to allow for the difference in the mining conditions encountered in the different States.

91 We do not feel that one law with a rigid set of uniform regulations can be workable throughout the country - the Western regions of the United States have extremely thick, low quality coal seams; those in Alabama are thin but of high quality; western coalfields are dry, arid places getting only 6 inches or less of rain per year; in Alabama, we normally have 10 times that amount; in the Midwest the topsoil is measured in feet, whereas in Alabama it is measured in inches.

91 These are only a few of the God-created differences encountered throughout the coalfields of the United States. It would be nearly impossible to write any single law which would be flexible enough to cover the many, many differences found without creating financial inequities. Passage of H.R. 2 as it is presently written would not only eliminate much district 20 coal, but

would create a cost disadvantage for the remaining production.

91 That is why the membership of district 20 favors State regulation of the coalfields within each individual State. We feel that the State legislatures know well the conditions and problems of their own States and with this knowledge have enacted workable surface mining laws in each of the coal mining States. The States have shown their continuing interest in surface mining by regularly revising and upgrading their law governing the industry.

92 Our membership is also concerned that enactment of H.R. 20 will endanger their jobs in Alabama. Since the coal seams in our State are thin, averaging only about 24 inches in thickness, most of them can only be surface mined. If it was possible to mine them by underground methods, our job potential would increase, but this is not the case in Alabama. Therefore, since this bill is slanted toward fostering underground mining, we are concerned that its enactment into law will decrease the available mining jobs in Alabama.

92 Our concern for our jobs is not unfounded. The original draft of the ICF, Inc., report dated January 24, 1977, found this to be true. That report indicated that the enactment of H.R. 2 would result in the loss of 22 million tons of production and 1,400 jobs in the Appalachian coalfields alone, and the two States that would bear most of this loss would be Virginia and district 20's Alabama. The reason given for the tonnage and job losses was the terrain and the thin coal seams in those two States.

92 It is easy to understand that when per acre reclamation costs are more or less standardized, the area having the thinnest coal and the least tonnage per acre of production is bound to have the highest cost. H.R. 2 would put district 20 coal at a competitive disadvantage and cost us jobs.

92 From a safety standpoint, we know that there are four times as many fatalities from mining equal tonnage by underground methods rather than by surface mining. Safety has long been one of the foremost concerns of the United Mine Workers and in district 20 lives are still important.

92 Our country needs to have a healthy underground coal mining industry and we should work toward bettering its safety record. But why should we lose lives to make a point; why should we pass over so much of our surface mineable coal. I repeat - in district 20 lives are still important.

92 We are also concerned by the many built-in delays in H.R. 2. The bill calls for many public hearings, appeals from the hearing results, and makes provision for lawsuits. The resulting delays will make the opening of new mines

and even the continuation and expansion of present mines slow and costly. These
delays are expensive for the mine operator and will discourage the start of new
projects. For a small operator, the cost of the delays alone will make him
afraid to undertake any expansion and, we believe, he will be forced out of
production - and with him will go district 20 jobs.

92 Every step of the process of obtaining a mining permit and obtaining
approval of a mining plan calls for public participation through hearings. We
are not opposed to public hearings, they can have good results. However, we
recognize public hearings only bring out opponents to a project. Those in favor
or who have no objections stay at home or are silent. A few outspoken opponents
generally monopolize public hearings and have more influence than their numbers
warrant. Participation in the hearings called for concerning permitting and
mining plans should be limited to property owners in the area concerned.

92 The procedures outlined in section 522 titled "Designating Areas
Unsuitable for Surface Coal Mining" are typical of those throughout the bill
which concern us. How can any businessman seriously consider a project which
the regulating agency has up to 12 months to decide is unsuitable?

93 Coal miners have living expenses just as you do - food and groceries to
buy, rent to pay, and children to raise. Delays in mine extensions and canceled
mine openings will mean lost paydays and an uncertain future.

93 If H.R. 2 has to be the law of the land, our sincere hope is that it will
be completely rewritten so that it controls surface mining as its title states,
but does not prohibit surface mining and our surface mining jobs.

93 Thank you, Mr. Chairman, and I appreciate the chance to be here, because
I have 16,000 bosses in Alabama and they instructed me to be here. I didn't
come here on my own. They told me to be here.

93 The CHAIRMAN. You have done a good job for them today.

93 Do you have members in coal mining just in Alabama, or in Georgia and
Mississippi?

93 Mr. BAKER. We have members in Alabama. Coal mining is in the extreme
northeastern part of Georgia that is not union. We may add that 90 percent of
our production in Alabama is union coal, but the reason we cover Mississippi and
Alabama is that I requested it, because in the near future, there will be, and I
can't say a year or 5 years or 10 years, but there will be a lignite or
subbituminous coal in Mississippi through the middle parts, and also lower

Alabama, which we are not mining presently, and also Georgia, and all of this will be strippable coal. It cannot be underground mining.

93 The CHAIRMAN. Your 16,000 members, are they all in coal, or do you cover other kinds of mining?

93 Mr. BAKER. We do not cover anything other than coal and construction. Out of the 16,000, there are about 4,000 who are retired members. We have at the present time 11,000 active miners and we expect to have in the next 2 years, 4,000 or 5,000 additional members.

93 The CHAIRMAN. There seem to be - I am glad to know it has increased.

93 There seems to be a shift of opinion in your organization since a year ago. I know I worked with Mr. Miller and some of the officials here in Washington. As a matter of curiosity, what happened?

93 Mr. BAKER. Well, I don't know whether there has been a shift of opinion. I have always, and my membership were against H.R. 11500 and the board, as I understand it, voted here before on that bill and it was close to a tie vote. I think maybe by one vote.

93 But the Canadian delegates voted, and for the information of the committee here, January 25, in Charleston, at the executive board meeting, which I was present - I have no vote - they voted to stand behind the mandate of the 47th Consecutive Constitutional Convention in Cincinnati, where the mandate was to fight for State laws and against Federal law, and in Charleston, the 25th of January, the board unanimously adopted a resolution, 22 to 0, at that time, to fight for State laws and be opposed to a Federal law.

93 February 11 in Washington, D.C., at the board meeting on Friday, 2 weeks ago, I think it was, they voted again on a resolution, and I have it here if anyone would like to see it, the resolution that they voted on. They voted at that time, 5 absent - 4 absent, 5 abstentions, and 14 for it, and also that date there was a letter sent to President Carter. If you would like a copy of that, it was signed by 15 international executive board members scattered all over the United States. They also sent it expressing their opinion that they were against the bill.

94 The CHAIRMAN. There is also a division among UMW members. We have had testimony from some of them.

94 Mr. BAKER. There will be.

94 The CHAIRMAN. You are an independent and democratic organization and people have different points of view.

94 Mr. BAKER. That is right. As I say, I was sent here by 16,000 people.
I have no problem doing what my executive board directs me to do, and I never have in my tenure of office, and I will not do that in the future. That is the
reason I am here.

94 The CHAIRMAN. Very good, Mr. Baker.

94 We will stand in recess, and we will meet tomorrow morning at 9:45.

94 [Whereupon, at 5:50 p.m., the committee recessed, to reconvene at 9:45 a.m., Friday, February 25, 1977.]

FRIDAY, FEBRUARY 25, 1977

95 U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, Washington, D.C.

95 The subcommittee met, pursuant to notice, at 9:55 a.m., in room 1324, Longworth House Office Building, Hon. Morris K. Udall, (chairman of the subcommittee) presiding.

95 The CHAIRMAN. The Subcommittee on Energy and the Environment will be in
session.

95 After a 10-hour day yesterday, we have scheduled another long day today.
We have a long list of important witnesses who wish to be heard on H.R. 2, the
Surface Mining Control Act of 1977.

95 We begin this morning with one of my favorite Governors, Governor Richard
Lamm of Colorado. It is a pleasure to have you here today. Proceed with your
testimony.

95 [EDITOR'S NOTE: - All prepared statements and additional material submitted for the hearing record may be found in the appendix at the conclusion
of this volume.]

STATEMENT OF HON. RICHARD D. LAMM, GOVERNOR OF COLORADO, WESTERN GOVERNORS REGIONAL ENERGY POLICY OFFICE, NATIONAL GOVERNORS CONFERENCE

95 Governor LAMM. Thank you, Mr. Chairman.

95 I welcome this opportunity to testify. I am here today to present not only Colorado's position, but also the position of the majority of the member States of the Western Governors' Energy Policy Office. In addition, I would

like to submit to you a copy of the strip mine policy recently adopted by the Natural Resource and Environmental Management Committee of the National Governors' Conference.

95 It must be stressed that the Governors' Conference position is a committee policy. This coming Tuesday, our committee will present this policy statement to the full Governors' Conference for their gratification. In addition, Gov. Julian Carroll, chairman of the Natural Resource Committee, will be presenting this policy statement to a subcommittee of the Energy and Natural Resource Committee of the Senate.

95 In this sense, I am wearing three hats, but the central positions of my State and these two organizations differ only slightly in degree and detail, not in basic intent or substantial and substantive recommendations.

96 The message that the Governors bring to you today is that a Federal strip mine bill is absolutely essential to the well-being of this Nation. We give our full support to Congress in expediting and enacting this vital legislation. It is a reflection of the importance of this legislation that I am able to present consistent testimony from the various Governors' organizations.

96 I submit Colorado's testimony first and then tender to the committee the formal statements of NGC and WGREPO with a few clarifying comments.

96 Colorado, in supporting the bill before you, urges the embodiment of the following essential provisions:

96 First, reclamation standards must apply to all lands and subsurface interests - Federal, State, and private.

96 Chaos and confusion will result if one standard is applied to the Federal surface, and another standard to adjacent State or private surface. Application of different standards on and off Federal lands would create obvious inequities and would be contrary to the interests of the Federal and State governments as well as the industry.

96 Second, surface mining should be permitted only when reclamation is assured.

96 We have billions of tons of coal reserves in this country. We can afford to insist upon reclamation as a condition of mining.

96 Third, reclamation should be as contemporaneous with the mining as possible. Both the responsibility for reclamation, and the probability of it,

fade with time, as we have seen.

96 Fourth, State reclamation laws and regulations should apply to all Federal lands, as well as State and private lands, when State standards are as stringent as Federal standards. Such application of State laws to Federal lands should take place whether or not checkerboarded land patterns exist.

96 Fifth, the States should be permitted to administer and enforce the Federal law or the State law, as the case may be, of Federal land as long as the Federal interest is protected. Such an administrative arrangement can be undertaken by agreement between the appropriate Federal agency and the State.

96 The Federal Government should provide financial assistance to those States requesting moneys to administer and enforce programs on Federal lands.

96 Sixth, duplication, overlap, and inconsistent State and Federal reclamation programs should be avoided. Although concurrent State and Federal jurisdiction may be desirable, dual permits, dual bonds, dual administration, must be avoided as an undue burden on the operator and an unjustified expense to the Government.

96 Seventh, the law should make provisions for the protection of critical areas - either by the establishment of procedures for the designation of critical areas, or by specifying certain classes of lands, that is, wilderness areas, as unsuitable for surface coal mining or both.

96 States should be permitted to designate additional areas as unsuitable for mining, and such designations should be applicable to Federal lands.The Federal Government is the owner of 36 percent of my State, and it becomes important that we have some jurisdiction and impact on those lands.

97 Eighth, substantial opportunity for public input should be required at all stages of the process, including the drafting and promulgation of regulations, processing of applications, permits, and bond release.

97 I believe that the bill you have under consideration largely embodies these principles; I hope that amendments and modifications to the bills before you will be examined carefully to insure that these concepts are in the final legislative package.

97 Turning then briefly to the position of the Western Governors' Energy Policy Office, I would submit the formal statement to the committee and ask that it be admitted into the record.

97 The CHAIRMAN. It will be. We will have that as part of our permanent hearing record.

97 Governor LAMM. In doing so, I urge the committee to focus on a number of points in addition to the ones I have earlier raised. These would include the following:

97 First, WGREPO would urge the States be given maximum time possible to implement individual State programs before a large scale Department of Interior staff is placed into motion, particularly when States are undertaking diligent efforts to develop their own programs. Page 4 of the WGREPO testimony details this concern of the Western Governors.

97 Some States meet only every other year in their legislatures - some, yearly.

97 Second, abandoned mine reclamation. The Western States wish to call to the committee's attention that in contrast to the East, there are few abandoned coal mines in the West. At the same time, the West's previous mining booms have left numerous abandoned noncoal mines.

97 In addition, the Western States remain deeply concerned with the numerous socioeconomic impacts accompanying the current and anticipated coal developments. Therefore, the Western Governors recommend that the legislation include a fee levied on all coal and that such a fee be in addition to royalties paid on Federal coal; insure that all revenue from such levies be returned to the State in which it was collected; and provide that priority expenditure of such money be for reclamation of abandoned coal mines, for amelioration of coalrelated socioeconomic impacts and for reclamation of abandoned noncoal mines.

97 Finally, we recommend that, at the request of the Governor, the State be delegated the responsibility for operating any such abandoned mine reclamation.

97 A detailed discussion of this issue appears on pages 4 and 5 of the WGREPO statement.

97 Third, although no formal position was reached by the Western Governors on the question of surface owner protection, there was consensus that the Senate amendment prohibiting mining of Federal coal where the surface was under non-Federal ownership was unreasonable and contrary to the interests of the Western States.

97 A number of other important points are contained in the submitted statement which warrant your careful attention.

98 The more general and shorter National Governors' Conference endorsement of the legislation is also tendered to the committee and requested to be incorporated into the record.

98 I wish to thank the committee for its courtesy and attention.

98 The CHAIRMAN. We will make that a part of the record.

98 [Prepared statements of WGREPO and Gov. Jerry Apodaca may be found in the appendix.]

98 The CHAIRMAN. Thank you very much, Governor Lamm. We spent many hours yesterday hearing from representatives of the Appalachian coal-producing States, Kentucky, West Virginia, Virginia, and even Alabama. There seems to be a common theme running through the testimony of some of these witnesses, that this bill represents an effort on the part of the Western Governors, the Western Congressmen and the Western interests generally to write a tough bill that would prevent mining coal in the East and in Appalachia and therefore would encourage and give a large competitive advantage to coal in the West.

98 I would be interested if you would address that a little bit, because I seem to have had noises in Colorado and out in the West indicating that some of your people don't want to expand coal production as rapidly as some of these people think.

98 Governor LAMM. We have a condition in the West where you have exponential increases almost beyond the ability of the State and local governments to follow. We have gone to a projected 35 million tons of production in my State in a very short time.

98 We have little communities, where you have a house today, a village attorney, a town the next day and a city the following day. It becomes a very great burden to manage some of these socioeconomic impacts, and I would say that the West is certainly not trying to impose unreasonable restrictions on Eastern coal development.

98 Because we already have serious questions as to whether or not we can manage the impact that we already have, let alone ask for more.

98 The CHAIRMAN. You comment on page 3 with regard to the abandoned mine reclamation fund. Everyone seems to agree with you that we should have such a fund, but each time this bill has been before us, we have had a great deal of

controversy about the disposition of it, and I suppose that will be the same again today.

98 You in the Western Governors argue with some merit, it seems to me, that if we are going to produce a lot of the coal the Nation needs, that there ought to be some Federal assistance on the front end to help communities which are impacted to build new facilities and so on.

98 On the other hand, the Eastern States claim they have most of the abandoned mines, and that they would like to have most of the money spent where the abandoned mines are, and not to be spent in the West, which has been spared this kind of devastation.

98 You also suggest that the fund be made available to reclaim lands damaged by mining not for coal, apparently uranium, copper and other hard-rock minerals that have been produced in Colorado over the years.

98 How would you justify taking money from coal production all over the country and putting it into Colorado to repair the ravages of an old uranium or a molybdenum mine somewhere in the Rockies?

99 Governor LAMM. Mr. Chairman, I would say just as easily as taking money from Colorado coal and reclaiming land in some other State. I would recognize that your job here is to protect the national interest, and you recognize in turn that I as a Governor of a State have to argue that State's interest.

99 But I would say that there are two meritorious objectives here. One would be to create a fund from the Federal standpoint to reclaim abandoned or orphaned lands. On the other hand, I hope we do have two additional things that we have to present and protect in our States. Number one is the fact that we have a number of other mining ventures that have gone on in the West and which have been an important part of our economy and our heritage, that have not had good reclamation practices, and leave us with scars which in a semiarid climate we still see the tracks of the Oregon Trail, to show how long it takes for our land to heal at times.

99 I think you recognize that some of the past mining impacts are equally meritorious in terms of the funds, even though they were noncoal.

99 Another important point is very much on the mind of every major city council person, legislator, and Governor in the West. For instance, an example of it would be a recent figure developed by the oil industry, that for every

employee moving into western Colorado, they are looking at a capital expenditure
of $1 2,500, not from the company standpoint, but for the public investment in
schools and roads and sewers and other indirect expenses.

99 Two thousand people into a town does not seem much by Eastern standards,
but it could be a tripling of the population base and the concomitant need to
expand sewer systems and everything else.

99 So, I think both of those other things, reclaiming noncoal lands in the
West, but particularly the socioeconomic impact, are the basis of a very strong
case that we would like to weigh when you weigh your other national interests.

99 The CHAIRMAN. I have one other final line of inquiry you might wish to
comment on. We are going to be caught in this reclamation fee by crossfires and
arguments. In Montana, the State has imposed a 30 percent severance tax. As
the bill now stands, we would put on the 35 cent reclamation fee on top of that.
Montana would be taking off a good chunk of money from its own severance tax to
do some of the things you and I have just been talking about.

99 I know the Colorado legislature is one of the most orderly and
predictable legislative bodies in the Free World, and maybe you can tell me what
they are going to do with a severance tax in your State?

99 I am speaking with tongue-in-cheek.

99 Governor LAMM. It is a sensitive question, Mr. Chairman, but it is a
good question, and it is one we have given thoughts to in the West. I am not
sure we came up with a rational conclusion. Your severance taxes are very
considerable, as you point out, from 30 percent in the high-grade bituminous
coal in Montana, to, in my own State, I am embarrassed to say, zero. We have a
seven-tenths of 1 percent inspection fee, but there is no severance tax on coal
in Colorado.

99 That is our fault, and not yours. That is something that I have been
trying to overcome, but I do feel that there is a definite responsibility on the
part of the States to impose their own tax systems to help to some degree to
ameliorate that burden, and it is - there is no rational reason why the West
can't be required to self-help itself before coming here, that is, pass a
severance tax.

100 How that fits into the 35 cents, that is up for you to decide, but our
State is lacking and is at fault in not having a reasonable severance tax.

100 The CHAIRMAN. There is a problem there, where Montana coal is being sold to Commonwealth Edison in Chicago, and the folks in Chicago are helping pay that 30 percent tax, and then we whack them with a 35-cent reclamation fee on top of it, whereas Colorado coal may be going in the same area with one of those burdens, but not the other.

100 I don't know what the answer is, but the inconsistency troubled me a little bit.

100 Governor LAMM. We have a situation now where the United Mine Workers and the transportation systems and the railroads make money from Colorado coal. We take a ton of coal, and it is reduced to electricity and sold in Minnesota, where they have a 3 percent sales tax on electricity, and the government of Minnesota makes $1 a ton on Colorado coal. I am giving you an estimate off the top of my head.

100 At this point, the Colorado people don't get anything from their coal.

100 Mr. RUPPE. Would the chairman yield?

100 On Federal coal in the West, you get a minimum of 12.5 percent royalty, don't you, the States share in a 50-50 basis on that, so we are talking of a triple dip, because you get the royalty payments which are set at a minimum of 12.5 percent.

100 You get the State severance tax, which will be all yours, and I assume you will continue to get a portion of the reclamation fee which is attached to this bill.

100 Governor LAMM. We have been getting the 37.5 percent. You are talking about the increase under the Mineral Leasing Act to 12.5 percent.

100 Mr. RUPPE. Yes.

100 Governor LAMM. What you say is true, but keep in mind that when you have some of these western States, a large percentage of it which is in Federal ownership and not subject to the property tax, that there is no revenue.That was originally enacted as a replacement for the property tax.

100 Nevertheless, that is true that we do have, and we appreciate the new 12.5 percent of the Federal tax, and that is all part of the equation, also.

100 Mr. RUPPE.And now you get this in the form of payments in lieu of tax, too.

100 Governor LAMM. Yes.

100 Mr. SKUBITZ. Would the gentleman yield?

100 The CHAIRMAN. The gentleman from Kansas.

100 Mr. SKUBITZ. In other words, you get the 12.5 percent Federal tax in lieu of ad valorem taxes on federally owned lands. You are aware we are paying taxes on all the national parks located in each State and you get that, too, don't you?

101 Governor LAMM. Yes; but you see, the payment in lieu of taxes, sir, there are numerous deductions from that. I am not fully briefed on the issue.

101 Mr. SKUBITZ. The western States have gained financially by acts of this Congress.

101 Governor LAMM. Well, I can tell you, sir -

101 Mr. SKUBITZ. I am not objecting to it, because I come from Kansas.

101 The CHAIRMAN.We hope Kansas pays its share to Colorado.

101 Mr. SKUBITZ. We have always paid our share to everybody.

101 Governor LAMM. Let me reflect the fact that - I think that a very acute - I am chairman of a special energy impact subcommittee set up by the National Governors' Conference, and I think that in that sense, that I think the West either wants to benefit outrageously, or do we want to be burdened outrageously from energy development. Right now, I think I would speak for most every energy impact area in our State to say that the costs are far exceeding the benefits, and that really is the question that you get, sir.

101 They can hardly balance a budget. They no sooner build a hospital than they have to build another one. There is an amazing correlation between the energy impact and things like predictability increases in everything from child abuse to alcoholism. There are so many direct and indirect costs of energy. But I think it would benefit you in making decisions and me in making decisions to have a close, acute accounting, how much does the West get, and in turn, how

much does it spend, because I think that it is only fair, and all I can say as
an administrator of a State is that we are not by any measure getting wealthy
from our natural sources.

101 Part of that, I recognize, is our fault. You have done some substantial
tries on which we are in agreement. Actually it is Colorado that is at fault
for not enacting a reasonable severance tax.

101 You can't just simply look at this side of the column and not look at
the fact that we have towns that double in a couple of years and in turn, double
again in another couple of years.

101 Those are very expensive.

101 The CHAIRMAN. Are there any further questions?

101 Mr. RUPPE. On page 2 of your statement, item 7, you indicate provisions
should be made for critical areas. I believe the legislation presented to us
provides that to assume primary regulatory authority, the State has to establish
a planning process under which certain areas are to be declared unsuitable.
That, in essence, requires a Statewide plan.

101 Other witnesses, I believe a gentleman from Wyoming, has suggested that
such a designation of an area, a critical area and one unsuitable for mining,
should be made more on a case-by-case or individual claim basis, and I wondered
if you have any comment to make as to whether the unsuitability provision should
require an overall State plan, and a Statewide set of designated areas, or do
you think it should be done more on a case-by-case basis as applications are
presented to the regulatory authorities?

101 Governor LAMM. One of the problems we have, and it relates to the
previous subject, is the whole question of predictability. If we can have a
better predictability about where coal development or energy development is
going to take place, we have a number of coal leases in Colorado, and we are
getting production on less than 10 percent of our coal leases. So you have a
question where you have this large number of coal leases, and yet we are getting
relatively little production from them, and what we would like to know is to
have some overall idea about where the impact is going to take place so that we
can react to it and anticipate.

102 Mr. RUPPE. On a suitability basis, if Colorado is of a mind to take
over the regulatory authority, are they prepared to develop a Statewide plan or
planning process under which certain areas of the State would be designated
unsuitable for all and various types of surface mining? Can you undertake that

type of thing?

102 Governor LAMM. It is the type of thing we would like to be challenged with; yes.

102 Mr. RUPPE. You stated, I believe, that the western people would like the States to be given the maximum time possible for individual State programs.Right now, sir, the bill states that until the final State program is approved by the regulatory authority, Federal inspections would be the paramount way of regulating mining.

102 On the other hand, I believe that pursuant to the Federal regulations, a number of the western States have negotiated or developed final agreements with the Secretary of the Interior regarding mining.

102 Do you feel if those agreements are in place between the States and the Federal Government regarding these areas that you would be in a position to regulate mining in your State in the interim period rather than have the Federal Government do that for you until such time as this final State plan is approved?

102 Governor LAMM.There are four States just around us that have entered into a cooperative agreement with the Federal Government, that I do think though ought to be honored, and that flexibility ought to be achieved.

102 Mr. RUPPE. So, if they are doing a good job at the time of the passage of the legislation, they could continue to do it as long as the cooperative agreement was in effect.

102 Thank you, Governor.

102 Mr. SKUBITZ. Governor, I notice on page 3 of your testimony, that deals with abandoned mine reclamation, you made the statement that western States wish to call the committee's attention to the fact that, in contrast to the East, there are few abandoned coal mines in the West. This bothers me.

102 Under existing laws, and this law, the western States are going to get a 12.5-percent royalty under the Leasing Act. Under this act, we are providing a 35-cent-per-ton reclamation fee, with 17.5 cents of that 35 cents to stay in the State where the coal is mined.

102 The coal we are discussing in most instances, is not State owned coal,

but is federally owned coal. It belongs to every State in the Union. But when distributing the reclamation fee, half of it is going to stay in the State from which the coal is mined.However, the States where most of the orphaned lands are located are in other parts of the country and the land is not federally owned.The coal is used to provide energy for all the people of the United States.

102 Of the 17.5 cents per ton that remains in the States under this law, the money is being used not only for reclaiming land, but can be used to build highways, sewers, schools, or even as loans to people to build homes.

103 Do you feel it is fair that 17.5 cents per ton be used in that way? This is detrimental to other States who have provided coal in the past. These States need funds in order to reclaim lands that can actually be put back into production of acceptable commodities.

103 Governor LAMM. I think that you have asked a question, and you state a passionate case.

103 Mr. SKUBITZ. It isn't passionate. It is a fair case.

103 Governor LAMM. I agree with you.

103 My State, on the other side of that, has provided a vast amount of wealth for the eastern States. The Hope diamond was bought with wealth from Colorado. Whether it is silver or gold, we have had a boom and bust cycle in my State. We have provided mineral wealth far in excess of what we have received. We have seen most of it drained away to other places. The West in fact has been a natural resources colony for the rest of the country, and has given much more.I saw statistics the other day that English barons in the 1800's profited far more from our State than in fact the people who lived there.

103 I think it is important to understand, when you place this in context, that there are abandoned mines in other States, and they are a national problem and we respect your right to deal with that as a national problem.

103 But do not underrate the problem that I could present passionately, also.

103 Mr. SKUBITZ.I am not underrating the problem. Do you have a severance tax?If not, I feel certain Colorado will get in line with the other States having one. They are getting the royalty, and half of the 35-cent reclamation

fee. I believe these moneys can be used for reclamation. I question whether this money should be used for such things as building sewer lines, building schools, building hospitals, or making loans to people to build homes at the expense of the rest of the country.

103 I feel the money should be used by the Federal Government. Since it is Federal coal land, the money should be used equitably between all the States that have orphaned lands. That is my opinion.

103 Governor LAMM.Let me relate to that if I could, because I think one of the problems - we want an equitable bill, and I can understand. The problem on the thing is that in Colorado and in a lot of the West, we have an energy crisis, and coal has a large role to play in solving that energy crisis.

103 I believe we get far more down the field by solving the problem and working together. There is nothing like a local county commission that can tie up the coal companies and delay them 3 or 5 years if they feel they are not getting their just due, and they are having incredible things where bond issue after bond issue is going down to defeat, because people see instance after instance where they can hardly afford to get a sewer line in.

103 So, all of these things, I believe, you are not overcompensating the West, in fact, you are setting a partnership where we can go forward with the development of western coal. Absent that, I think you are going to get a lot of local government objections and delay instead of the kind of partnership that we want as a Nation to get coal developed.

104 Thank you.

104 The CHAIRMAN. Thank you, Governor, we appreciate your presence here today.

104 Mr. Huckaby?

104 Mr. HUCKABY. Yes.

104 I gather that you generally endorse H.R. 2, Governor. I have a couple of questions.

104 The laws on the books now in Colorado now, are they as stringent as H.R. 2, or less stringent, and do they take into account noncoal operations?

104 What percent of your lands are noncoal operations?

104 Governor LAMM. OK, Colorado 2 years ago passed a mine reclamation bill.We had a previous one which would I think has some by anybody's standards.

We now have one which I think has some place, but at least is an adequate one.

104 Whether or not it is the same as this one, or whatever, depends on the regulations and what regulations come out under it, but we have, I think, a fairly good strip mining bill right now.

104 In terms of our total production, of coal, we hear everything about oil shale, and we have been preparing, perhaps, for the wrong war in Colorado. We have been preparing for oil shale and worrying about it, and coal is really today's real impact.

104 We have, as I say, we project to go from seven million tons a year to 35 million tons a year by 1981.

104 So, I think that an awful lot of our interests, and our bill covers more than just coal. Our main reclamation bill does cover more than just coal, but frankly, it is our major subject of our interest. Is that responsive, I hope?

104 Mr. HUCKABY. You spoke of the county commissions holding up development. Don't you see that happening the way H.R. 2 is now written, as far as hearing and everything?Wouldn't it be possible -

104 Governor LAMM. I think right now local governments probably have enough roadblocks so that if they are so disposed, just under their police powers, they can put infinite costs and roadblocks in the way of any industry. So, they have the power to bureaucratically sabotage most any development. That is not in our interest, nor in yours. We would like to see our energy developed in a phased way, paying its own way, and I think that is the best way to assure cooperation. This might give them additional roadblocks, but I don't know, and I don't admit to that.

104 All I can say is that they already have an infinite variety who harass anybody they want to, just under zoning powers.

104 I think they want compesation to build the public improvements that they have to get.

104 Mr. HUCKABY. Thank you.

104 The CHAIRMAN. Thank you very much.

104 Our next set of witnesses represent the American Mining Congress and the National Coal Association. They appeared before us previously on the general question of whether we needed a bill, and we said we would invite them back to talk about the specific strengths and weaknesses of the legislation before us.

104 Do you have a quarterback down there this morning?

A PANEL CONSISTING OF R. E. SAMPLES, PRESIDENT AND CHIEF OPERATING OFFICER, CONSOLIDATION COAL CO.; DONALD L. STURM, VICE PRESIDENT, PETER KIEWIT SONS, INC.; JOHN PAUL, VICE PRESIDENT, AMAX COAL CO.; AND J. L. JACKSON, PRESIDENT, FALCON COAL CO.

105 Mr. SAMPLES. All right, Mr. Chairman, and distinguished members of the subcommittee. My name is Gene Samples. I am president and chief operating officer of the Consolidation Coal Co. We are the Nation's largest coal company, and the second largest coal producer.

105 We produce about 54 million tons annually, and my company operates in eight States located in the East, Midwest, and the West.

105 We produce coal by both the underground and surface mining methods; about 70 percent of our production is from underground mines. Despite this high percentage of underground production, my company holds large reserves of coal, much of it in the West and mineable only by surface mining methods.

105 I have already filed a more comprehensive statement with the committee, and you may call on me for necessary elaboration.

105 The CHAIRMAN. I appreciate your input and we will go over it very carefully.

105 [Prepared statement of R. E. Samples may be found in the appendix.]

105 Mr. SAMPLES. The issue of the need for this legislation has already been addressed, and we have already responded to this issue, and today we hope to get into the substantive and procedural aspects of the legislation.

105 Our panel here will attempt to address all these issues, in both oral presentation and written submissions. We have four witnesses with us, and we would respectfully ask that they all be allowed to present their statements and then question them after it is done.

105 The CHAIRMAN. I think that would be the best procedure. I would urge

all of you, where you can, to summarize or give us the gist of the statements,
rather than reading them in full. We really want to hear about your major concerns within that time.

105 Mr. SAMPLES. I think it is critically important that this bill be reviewed today in its historical context. The bill was written or conceived sometime 4 or 5 years ago when at least some of our national political leaders
were advocating elimination of surface mining of coal as a pattern of national
policy.

105 This bill was perceived as a way of implementing that goal. The bill,
in short, I think, was conceived as a means of encouraging a shift to deep mining of coal as a matter of national policy.

105 It is therefore ironic that the bill effectively frustrates the deep mining of coal in the United States, and I want to address this issue in the 5
minutes of testimony that has been allotted to me.

105 Each of the areas proposed to be regulated with respect to underground
mining under surface mining bills are today either explicitly regulated, or the
complete authority exists under existing legislation for the accomplishment of
the expressed objectives.

105 MESA has the defined authority to deal with this issue where it is a problem, but even more importantly, it treats the issue of subsidence and the issue of concern for the safety of the miner.

106 Roof control mining technology is directly related to the problem of
subsidence, and therefore related to the safety of the coal mine. Any proposal
that would compromise this objective, we think should be summarily rejected.

106 Therefore, the full question of subsidence should be left to MESA as the
regulatory authority.

106 Another regulatory purpose of the bill is to require the backstowing of
mine and processing wastes to the mine workings. Now, such a requirement imposed for environmental purposes will, we believe, raise serious questions insofar as safety in underground mines.

106 Mine safety officials have already voiced serious concern about this issue.We think it should be eliminated from the bill and treated, if at all, only by MESA.

106 The problem of impoundments created by revenue disposal from underground

mines are now regulated by MESA as a part of its underground regulatory authority.

106 This bill would subvert MESA's jurisdiction and its concern for the public in this vital area. We think it should be eliminated from the bill.

106 The act also attempts to regulate in section 516(b) the release of suspended solids from coal mines. This effect of underground mining and surface mining, also, for that matter, is presently adequately and comprehensively regulated by the national pollution discharge elimination system under EPA. This additional regulation would therefore be wholly redundant.

106 To impose a complicated and overlapping regulatory structure which interjects the conflicting environmental objectives and duplicate regulation on deep mining, we think, would be counter productive.

106 Underground mining is already under the Health and Safety Act and section 516 can only frustrate the principal objective of the legislation, and that is the safety of the coal mine.

106 H.R. 2 would directly conflict with MESA and EPA authority in several critical areas. In short, we think all significant portions of this bill purporting to deal with any aspect of underground mining which includes section 516 should be totally eliminated from the bill.

106 Gentlemen, this concludes my presentation, and I would like to now introduce John Paul who will carry on our program.

106 The CHAIRMAN. Thank you, Mr. Samples.Mr. Paul, we will hear from you now.

106 Mr. PAUL.Thank you, Mr. Chairman, and members of the committee. My name is John Paul and I am vice president of public affairs for Amax Coal Co.

106 I appreciate the opportunity to appear before you today.

106 The Mining Congress testified on January 12 that we do not believe there is a need for Federal legislation in this area. I believe that testimony from the panel clearly substantiates their position. Recently, public announcements by State officials, by union representatives and others opposing Federal legislation further reinforce that panel's position. I believe it necessitates a further look by this committee and by the Senate, again, as to the need for Federal regulation.

106 However, our purpose today is to address specific objections to the proposed legislation, and I would like to first say that I don't think that we have seen any meaningful changes over the last 2 year which have incorporated

any of the important suggestions that we had recommended.

107 There are numerous areas within the proposed legislation which we believe are unnecessary or ambiguous, and each member of the panel will address specific issues.

107 I would like to address a few issues which directly affect Amax operations and other operations in the areas of the mines.

107 One area of the bill is of immediate concern to all miners is the issue of hydrology. All operators are required to include a determination of the hydrologic consequences of the mining and reclamation operations both on and off the mine site. It deals with the hydrologic regime, the quantity and quality of the water, the surface and ground water systems, seasonal flow and flow conditions, in order to make an assessment of the probable cumulative impact of all anticipated mining in the area upon the hydrology of that area, and particularly upon water availability.

107 This requirement applies to all surface mine operators who are required to file a permanent application within 2 months after a State program is approved. It also should be noted that section 516(b)(9) imposes requirements on underground mines with regard to hydrologic balance.

107 Most western surface operations involve either Federal land or minerals, and therefore have an approved environmental impact statement. That statement includes quite specific hydrologic information which we believe should be sufficient to determine on-site impact of that ongoing mine operation.However, a determination which will satisfy the regulatory authority as to the "cumulative" impact appears to be extremely onerous, if not impossible, within the time frames required by the fill of individual operators. I believe that applies regardless of size, expertise or location of the operator.

107 Legal questions concerning access to the "surrounding areas," however that is to be confined, we believe would create substantial problems.

107 It is also unclear, assuming you can obtain the necessary approvals for off-site study, what is the scope of the "anticipated mining" to be studied?

107 As currently proposed, the operator would be required to project the cumulative impact in his area of mining.

107 The small operators everywhere will be confronted with an impossible task, since they are also subjected to the same requirement. The proposed legislation provided a procedure intended to assist operators who do not produce

more than 250,000 tons of coal a year.

107 However, I believe even these operators will have extreme difficulty in complying with the requirements within the time frames as provided in the bill.

107 Operators producing over 250,000 tons will obviously have the same difficulty.

107 The studies provided for section 507(c) cannot be performed by the regulatory authority until they are "approved" by the regulatory authority, and that means a State-approved plan under the procedures.

107 The section 502(e) requires an operator to submit a permanent application no later than 2 months following the approval of a State program. We contend the hydrologic data and the results of the test boring and test samples as required by 507(b) are a significant element that will be considered in the application. Two months is a totally unrealistic time period for the required hydrologic studies in view of the magnitude of the undertaking and the fact that the bill itself requires that seasonal flow conditions be measured.

108 Therefore, it is imperative that the time frame during which this testing must be accomplished should be extended for the small and the large operators.

108 We also believe consideration should be given to the establishment of a procedure where the operators have the opportunity to conduct the studies themselves, or perhaps select a third-party consultant from an approved list provided by the regulatory authority.

108 The studies would be the responsibility of this consultant, and the cost of funding such studies could be shared by numerous operators benefiting by the results of that study

108 Application of the hydrologic requirements in 515(b)(10) as it applies to alluvial valleys has been referred to in detail in our written testimony, and will be addressed by another member of our panel.

108 However, the section that requirements in 515(b)(10) as it hydrologic balance at the mine site and so forth, is also an interim standard which must be complied with by all operators no later than 180 days from enactment.It is questionable whether the allowable time for compliance provides a realistic opportunity for the operator to make any necessary changes in his already approved ongoing operation in order to meet these rather detailed and complicated hydrologic requirements in 515(b)(10).

108 The subject of areas of unsuitable land and land-use planning we think should be carefully addressed. Section 502 establishes a procedure whereby each State will provide a land-planning process before the State can assume the regulatory authority pursuant to 503. Not only is this the establishment of a federally required and enforced zoning program, but I believe it ignores the needs and goals of the individual States. Subsection 522(a) sets forth a long list of criteria such as fragile and historic lands, esthetic values, and "natural systems."

108 These criteria, we believe, are vague and obviously subject to future subjective determinations by a future regulatory authority.

108 In fact, under the broadest interpretation, we believe this criteria could potentially preclude mining anywhere in the United States. In addition, if there is to be a federally imposed State land-use planning, and we do not support that concept, the States themselves should be the ones to determine what criteria should be included in the program in order to meet their individual State's needs.

108 The impact of section 522 becomes even more critical in the overall mining process and planning process, when it is recognized that 522(c) allows any person having an interest which is or may be adversely affected to petition the regulatory authority to have an area designated unsuitable for mining.

108 The exclusionary language in 510(b)(4) dealing with approval or denial in areas under study or designations, does provide protection for an operator who prior to the date of enactment of this act has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.

109 That language is in direct conflict with subsection 522(a)(6), which adopts the same exclusionary language approach, but only with respect to substantial legal and financial commitments and operations which exist prior to September 1, 1974.

109 This obvious oversight could cause substantial difficulties with respect to this protection. Both exclusions should apply to legal and financial commitments made prior to the effective date of this act.

109 Like so many other areas in this bill, the language concerning the so-called grandfather clause appears to solve objections of the operators when in fact the language is is either unclear or is conditioned by other sections in the bill.

109 There are at least five sections in H.R. 2 which impact on the question of the so-called grandfather clause. My written testimony beginning on page 5, paragraph c, details those problems.

109 Not only do we question the fact that existing mines are grandfathered, but we question the scope of the grandfather clause.Clarification of this issue is absolutely necessary. I might add that our position seems to be supported by the House committee's report, and the ICF study. Both of those references are in my testimony on page 7.

109 Mr. Chairman, I have addressed a few major problems we have with H.R. 2. I believe this points out that if the bill is enacted in its present form, it will prohibit the mining of millions of tons of coal, without recognizing that the coal could be mined while still maintaining or improving the environment.

109 Thank you for the opportunity to make these comments, and I would like to turn over to Mr. Sturm, who will address other specific issues.

109 [Prepared statement of John H. Paul may be found in the appendix.]

109 The CHAIRMAN. Mr. Sturm?

109 Mr. STURM. It is a pleasure to come before the committee today. My name is Donald Sturm. I am from Omaha, Neb.

109 Our company was the eighth largest coal producer in the United States last year. We operate solely in the West.All of our production is within the States of Montana and Wyoming, and it is all by the strip method.

109 We have operated under the laws of the States of Montana and Wyoming. These States have what we consider very stringent mining laws and reclamation laws.

109 We have faced many of the issues and many of the problems that are being addressed by H.R. 2, and we have done so in a way where we have satisfied the State agencies, and have been able to do our thing.

109 It is our position, therefore, that the laws of the State of Montana and the State of Wyoming, as well as the current Federal regulations, are adequate to cover our type of operation, and throughout this we are really stressing that the laws of the States of Wyoming and Montana be allowed to apply to govern our type of operation.

109 I would like to address some of the provisions of the bill, starting with the citizens suit provision.

110 We personally feel that this type of legislation would subject the mining company to needless and endless litigation and interference, and we would respectfully request that this provision be tightened up and allow the citizens to input with the regulatory agencies and hopefully stay away from the mining company-type of operation.

110 I would also like to comment on section 402, the abandoned mine reclamation fund. Our type of operation is on public lands. Our largest mine is the Decker mine, in Decker, Mont., and we produced last year about 10 million tons from that single mine.

110 That coal is subject already to a 30-percent Montana severence tax, and the production within the State of Montana depending upon the price of the coal, could yield that State between $2 and $4 per ton.

110 Additionally, we spend, as part of our operation, about 38 cents per ton. That is both within the States of Montana and Wyoming.

110 The Federal Leasing Act also provides for a sharing with the State of the Federal royalty.

110 To add another level of surcharge upon our type of production, particularly in the States like Montana, it seems to me grossly unfair and to burden further our customers with another cost.

110 At section 506, we would suggest that the mining permit not be limited to 5 years, but be allowed to extend over the life of the mine, or over the life of the local mining unit. We have to file a mining plan based upon the life of a mine or the life of the logical mining unit, and we think the permit should correspond with that plan.

110 We would favor the elimination of section 506(d) which allows for a public hearing on a permanent renewal.We feel that the regulatory agency is very capable and able to, in and of itself, handle permanent renewals.

110 We also feel that section 501(b)(4) ought to be amended to allow for a State to cite specific bases with respect to areas unsuitable for mining.

110 Concerning the alluvial valley provisions in section 510(b)(5), we feel that since this provision applies only in the West that it is discriminatory to begin with, that it would eliminate much of the western coal mining,

particularly in areas that we operate in, and we would suggest that provision be
stricken from the bill and leave the determination of whether mining should in
fact take place in these areas to the States on a site-specific basis.

110 It is interesting to note, I trust, that both the States of Wyoming and
Montana, within the last 2 weeks, considered provisions concerning alluvial
valleys. Both of the legislatures have failed to pass any provision governing
alluvial valleys other than their current laws.

110 We would recommend, however, that if this provision, this type of
provision, is left in the bill, that mining be allowed to take place in an
alluvial valley so long as the area can be restored to its prior use.

110 We would also recommend that the State agency be allowed to determine
when and where and if mining should take place on a sitespecific basis.

110 At section 514, we would suggest that the mining permit decisions be
placed under some kind of time limit.We would suggest that the consideration and
decision by the regulatory agency be made within the same time frame that the
environmental impact statement is being prepared.

111 Section 515(b)(3), on that we feel that the provision of the bill
regarding original contour restoration is unreasonable and too strict. We
feel that it ought to be left to the State agency to determine on a
site-specific basis, in that the area may have a higher and better use than the
way it originally was.

111 At section 515(b)(10)(f), we feel that the hydrological functions of
alluvial valleys cannot be preserved during the mining process as the bill
presently provides, and we would suggest that, as long as it can be returned to
its prior use, mining ought to be allowed to take place.

111 At section 515(b)(12), we would suggest that the 500-foot limitation,
wherein strip mining cannot take place where there is an underground activity,
be modified so as to provide that whichever mining was in fact there first would
have priority. The way the subsection now reads, if strip mining was there
first, an underground mine then came 500 feet within the strip mining area, then
the underground mining would take preference and the first activity in the area,
that is strip mine, would have to remove itself.

111 We also feel that section 515(b)(20) should be amended and allow a
5-year liability and responsibility in lieu of the current 10-year term for
successful revegetation in areas having less than 26 inches of annual rainfall.
We have reclaimed this type of land within the 5-year period and we feel that to

have ourselves liable and responsible and have bonds out for 10 years is unreasonable and costly.

111 My last comment has to do with the surface owner protection, section 714 of the bill. The way the bill is written, and as I interpret it, the Secretary of the Department of the Interior is instructed within his discretion not to lease unleased Federal coal where the surface is owned by another party.

111 Before the Secretary, where he decides to use his discretionary authority, before he decides to lease he must obtain the permission of the surface owner to the lease.

111 The provisions of the bill also provide that the surface owner is limited to an economic recovery small enough where we feel he would have no incentive to consent to the lease.

111 We have had numerous negotiations and transactions, both by lease and by purchase, with surface owners in the States of Wyoming and Montana, and have had no problem in working out an applicable negotiation with the surface owner. We would suggest that this provision be stricken from the bill, leaving it up to the marketplace to determine whether the mining company can obtain the surface rights.

111 I might add that in the State of Wyoming, the regulations of that State currently provide that the mining company has to be in charge and control the surface state before he can apply for a permit. We have worked out our problems with the landowners in Wyoming and Montana, and would respectfully request that Federal interference not be imposed by legislation.

111 I would like to thank the panel for listening to my comments. I have had more full comments in a written statement, and I would now like to introduce Mr. J. L. Jackson of Falcon Coal Co., who will conclude the panel's presentation.

111 [Prepared statement of Donald L. Sturm may be found in the appendix.]

112 The CHAIRMAN. All right, sir. I hope you didn't bring your relatives for a cheering section.

112 Mr. JACKSON. Mr. Chairman, and members of the committee: my name is J. L. Jackson. I am president of the Falcon Coal Co., which is engaged in the surface mining of coal solely in the Commonwealth of Kentucky. I am also a director of National Coal Association.

112 I appreciate the opportunity to appear before the committee again. As you know, I presented testimony before the committee last January 12, and have since been visited by you, Mr. Chairman, and Secretary Andrus at one of my operations.

112 I am not sure you were aware that it was one of my operations, but it was.

112 Since Falcon Coal Co.'s operations are conducted on the steep slopes of eastern Kentucky, I will confine my remarks to some of the aspects of the bill which affect such operations. However, I do believe my comments are applicable to most of the mountainous terrain of Appalachia. I will attempt to confine my remarks to those aspects that most directly affect production. In order to save time, I will discuss only some of the significant concerns with which I am most familiar.

112 I would also like to reiterate my previous statement of January 12 that I think Kentucky has adequate surface mining and reclamation legislation and has improved its enforcement mechanism with the hiring of qualified technical personnel in the last couple of years. However, it is my understanding that we are here today to discuss only the pending legislation.

112 At this point, I would like to depart from my statement and make it shorter.

112 The CHAIRMAN. Fine. We will print the statement in the record.

112 [Prepared statement of J. L. Jackson may be found in the appendix.]

112 Mr. JACKSON. I would like to direct your attention to the damage involved with mining on steep slopes. Most actual environmental damage results from excessive spoil being placed on the slopes. That type damage is landslides, sedimentation, mineralization, and problems with revegetation, so I think the bill should more appropriately address how we can avoid this and still mine while providing adequate environmental protection.

112 One means that I believe we can use to achieve this is through mountaintop mining. Is it an answer to these environmental problems? I believe it should be acknowledged, and it should be recognized in the bill, as an effective, acceptable, and proven mining technique. I think we have done that.

112 It should not be handled as a variance from some other specified, approved mining technique.

112 It is compatible with hollow fills. I think you have seen how the excess material, which you have allowed for in some of the processes in the bill, has been used as hollow fill and has been stabilized there, and the environment has been protected through that technique.

112 It provides much better land use, it provides flat land. The roads we build to the mining areas provide access to areas previously inaccessible. If done properly and graded properly at the surface, it can provide water sources where water has not previously been available. It harmonizes with environmental protection. It helps us control landslides, siltation, mineralization, and new vegetation is much easier on the more gently rolling slopes.

113 It is compatible with private landowners' desires and preferred uses, which I think is extremely important. I think any legislation we have should certainly take into consideration the wants and desires of the private owners so long as off-site damage is not done to someone else.

113 Over 90 percent of Falcon's coal property, much of it small tracts, is owned by private owners. All owners are anxious for us to complete the mining and leave the surface in a way that was not possible previously, and in their opinion is more useful for the purposes they have for the land.

113 Can we achieve this environmental protection through the original contour concept? Is it an answer? I can't say that it is not an answer. Why is it the answer, the only answer? How does it relate to landslides, sedimentation, mineralization and revegetation of the disturbed areas?

113 As I said before, I think these things are mainly contributed to by the degree of the slope, the steepness of the land that is being mined.

113 Why is there so much concern with the highwall? Is it truly for environmental protection, or for cosmetic purposes?

113 In my opinion, I think engineering data can prove that the highwall does not contribute to this true environmental damage. If the highwall and its unsightly appearance is what you are directing the legislation at, I think it should be done in that sense. Say we don't like the looks of it, so let's get rid of it, rather than argue that it contributes to true environmental damage.

113 Will other techniques accomplish environmental and land use goals more effectively? I think in some instances they will.

113 Partial elimination of the highwall in conjunction with the hollow fill could leave more gently-sloping land and reduce the amount of highwall exposed, with the excess spoil being stored in an off-site area.

113 Why not provide for variances from the one narrow technique that the law proposes, and tends to insist upon, in instances where real environmental and land-use goals may better be achieved?

113 There are other ambiguities that some of my colleagues have mentioned here, and contradictions in the proposed bill which must be noted and dealt with. The problem areas that I have discussed are of major import to a workable, sensible bill that truly has the objective of allowing the surface mining of coal while providing meaningful assurances of adequate environmental protection.

113 Thank you for the opportunity to comment on my very serious concerns with the proposed legislation.

113 The CHAIRMAN. Thank you, gentlemen. We will want to take a good, hard look at the specific amendments you have recommended and the problems that you raise.

113 I am personally going to look, Mr. Jackson, at the whole issue of mountaintop removal as a variance. It had seemed to me that we were simply talking semantics, and whether it is a variance or not really doesn't matter, as long as it can be approved and used in a case where it is appropriate. Because I have visited your property, and I have visited a lot of the other States, and mountaintop removal is a legitimate, good, practical way of getting at coal.

114 Very often, you leave a better result.I would rather have, rather than a steep, rocky hillside put back a level area that can provide society with another use. The technique doesn't bother me. It simply gives a better result than simply going back to original contour.

114 It seems to bother industry that this is listed as a variance and not as an honorable, successful and ordinary kind of procedure to use. So, maybe we can take a look at that. I thought it was largely semantics and not a question of substance. If the writing of the language is preventing you from using this technique in places where it ought to be used, I personally want to look at

changing that.

114 I want to say to Mr. Samples that I am going to have my staff look at this whole section rather carefully on surface impacts of underground mining.

114 The argument is made here with some force that we are doing exactly what our new President tells us not to do, we are getting regulations that overlap, and it becomes more complicated, and I don't want that.

114 If there is already, as you suggest, a system for regulating subsidence, a system for regulating the coal, the waste piles, the system of regulating the water impoundment facilities relating to underground mines, then it wouldn't seem to make a lot of sense to come in on top of that and have another duplicating system.

114 I think we can go back and look at it and work out a mechanism so that some single agency is regulating these impacts and not a double regulation.

114 If that is what is likely to occur, then it is serious and I would want to take a look at it. I don't think we need the regulation twice.

114 I wanted to finally talk to Mr. Sturm a minute about surface owner consent.

114 This was one of the toughest and meanest problems we had at the Conference Committee. It held us up for months 2 years ago when we were in conference

114 You say that you have had no problem in getting agreement with ranchers and farmers in Montana and Wyoming who own the surface in most cases where the Federal Government owns the underlying coal. The reason they have no problems is that they get rich in selling you the interests or giving consent, and a lot of people can't understand why a private owner who knew when he bought the land that he didn't own the coal underneath should make a profit when people of the United States sell coal that belongs to them. How do you get around this?

114 Mr. STURM.It is a very practical answer. I would rather mine the coal and pay the price than not be able to mine the coal.

114 The CHAIRMAN. Is it your thesis that our provision, which I think pays a rather generous price - he is not going to get rich, but he is certainly not

going to lose anything, and he is going to be ahead of the ballgame. Is it your
theory that people won't consent under that provision?

114 Mr. STURM. Exactly. I don't think the surface owner has the incentive
to give his consent, and I don't think he will, and I think we are going to lock
up a lot of the Federal coal.

115 The CHAIRMAN. We don't want to lock it up in places where the land
can be reclaimed. Coal is a real asset that ought to be used. But isn't the
lock up impact due in large part to the uncertainty? If I am a rancher and I
think that this bill is defeated and Congress doesn't act, and I can make $5
million by selling a company my coal, but if I knew the bill was passed and it
was settled and there was no way I was going to get more than twice the value of
my surface-ownership, I might sell out to you.

115 Mr. STURM. I think you would continue to be a rancher. I think you
would stay where you are. We have been able to deal with our surface owners.
You say we are making them rich. On a per ton basis, it is far, far less than
anything we were looking at for reclamation or some of these other costs, and it
is just one of the costs of doing business. But we would rather do business and
pay the cost, rather than not be able to do the business at all.

115 The CHAIRMAN. Are there questions on my left?

115 Mr. Carr?

115 Mr. CARR. Mr. Samples, in part of your presentation on page 3, I
believe, you have an assertion that the bill invites litigation and delay. That
particular section, you seem to zero in on is section 520.

115 Is what you are objecting to - the fact that the bill might be
enforced?

115 Mr. SAMPLES. No. I think that we are ready to accept that the bill is
going to be enforced, and all we want to - we need some and want some assurances
that people who have other axes to grind, and maybe I have said this, don't use
this as a vehicle to delay and cause disruption when their real purpose is
something else.

115 Mr. CARR. The act is rather specific in what can be alleged and pleaded
by a citizen in a suit. Surely the fact that a person might have a private
agenda which motivates complying with what I think are rather rigorous
requirements for citizens, surely if the pleadings make the proper allegations

under the statute, the fact that this person might have a private axe to grind
shouldn't disqualify the person, should it?

115 Mr. SAMPLES. I think if his actions are unrelated to this act, he shouldn't be -

115 Mr. CARR. Then he wouldn't be able to file a suit, would he? If the citizen is alleging, as he must under the act, that a unit of government or a coal company, has not observed the regulations, has violated a rule or a permit,
and that allegation is in the complaint, the fact that the person might have another ancillary reason that motivates that person to get together a considerable amount of money to prosecute the case, that motivates a person to
do the 60-day requirements and potentially puts that person at liability via bonding, the facts that there might be a hidden motivation shouldn't disqualify
that person, should it?

115 Mr. SAMPLES.Does he not already have a right to the courts and legal action under present and existing law?

115 Mr. CARR. In most States, he doesn't.

115 Mr. SAMPLES. I am not aware of that.

115 Mr. CARR. Well, I would suggest before you attack the citizen suit provisions, and I for one am always willing to learn where we have been deficient here, but I am the one guy on this committee who has had previous experience in environmental law, prosecuting these kinds of cases, and I am always willing to learn where we can do a better job, but I just don't see in that particular portion of your testimony where this bill's citizens suits invite litigation or delay. I think they invite citizens to help government, or
coal operators, or States, to enforce the law that we have, but this bill does
not in any way say that you can sue anybody for anything just because you have
an axe to grind.

116 That isn't a legitimate thing to put in your complaint. The Federal judge would wash that out instantly. That wouldn't stand.So that kind
of a thing really isn't a threat to you. I might indicate to you that I come from a State where we have probably the broadest citizen suit, standing to sue,
provisions of any State in the Nation, and it virtually says that anybody can sue on an allegation of environmental damage, and our experience up there in Michigan is quite the contrary. The practical limitations of bringing lawsuits
are sufficiently great and the procedures to safeguard against sham lawsuits are
sufficiently potent to prevent people running around suing their neighbor burning trash or tires in their backyard or those kinds of things we hear about.

116 So I would ask you, if you intended to pursue an objection to section 520 of the bill that you give us more substantial information on which we might be to approach it.

116 At the same time, Mr. Chairman, I don't think we have seen it here.

116 I also might make one further editorial comment. An example was put in Mr. Samples' statement here that construction of a badly needed nuclear powerplant was faulted because discharged water affected the temperature of the ocean for a few miles along the coast.

116 I was an attorney in a rate case like that in the Palisades plant in Michigan. They were going to externalize the cost of nuclear-powered electric generators. They were going to externalize that cost into Lake Michigan, and that few degrees for a few miles would have destroyed the spawning grounds for a little known fish and a little cared for fish called the alewife. It so happens that the alewife is in the food chain of the coho salmon, and literally millions and millions of dollars had been spent by the Great Lakes States to stock the Great Lakes with coho salmon to create a good fishing industry and tourism.

116 I am willing to work with you on improving section 520, but I don't think your statement, Mr. Samples, really zeroes in on what might be the real corrections of the problems you might see.

116 Mr. SAMPLES.I will reexamine, and we will restudy and resubmit if we have a point that we think needs to be further made.

116 Mr. CARR. Thank you.

116 The CHAIRMAN. Mr. Skubitz is recognized on his own time.

116 Mr. SKUBITZ. I wanted to ask my colleague a question.What does a 2.5-inch snail do for fish?

116 Mr. RUPPE.If the gentleman would yield, it has a very good standing in court.

116 [Laughter.]

116 Mr. SKUBITZ. I want to indicate that I am pleased to hear the chairman of this committee say he is willing to take another look at section 516 of this act. It is a section that bothers me. I don't know what procedure you follow in reclaiming a deep mine that isn't going to be safe through the years. I don't know what is done today. In the old days when you deep mined coal you used to have pillars in the mine to support the top of the mine. You used props

in order to support the overburden, and when you finished your operation, you went back, pulled the pillars, and left the props.

117 Is that the mode of operation today?

117 Mr. SAMPLES. Yes. In many areas of the country, that is the way. We extract pillars, and, of course, in the extraction process, in other words, to make it work, the roof must collapse. Other ways, the overriding pressures cause problems.

117 Mr. SKUBITZ. I cannot visualize how you would reclaim that sort of an area without tremendous expenses that would destroy the value, or hinder mining unless you have a tremendous vein of coal.

117 In the old days, those props wore out and there was a cave-in. I am hopeful they are not going to demand the coal companies take the overburden they send to the top in the form of waste, and start packing it back down in there like you would in a decayed tooth.

117 Do you read this as having to do that, or requiring you do that?

117 Mr. SAMPLES. Yes, underground mining is complicated. It has to do with ventilation, the character of the material you put back, its chemical properties, and we presently, of course, are being encouraged by MESA on the grounds of safety, and justly so, to keep our mines clean of all waste.

117 Our practice in the past was to stow a good portion of the underground waste material that was not coal, and that is inherent in the mining process in areas underground.

117 Our present regulatory authority thinks that is a safety hazard, and I tend to agree, and they do not permit us to do this.

117 So a backstowing regulation or some thrust to cause backstowing seems to me in direct conflict with the regulations already in force.

117 Mr. SKUBITZ. I can see the pulling of pillars, if that were done. Unless you do that, you are going leave a tremendous amount of coal in the mine; isn't that correct?

117 Mr. SAMPLES. That is correct.

117 Mr. SKUBITZ. On page 4 of your testimony you state coal development in the entire North Great Plains was halted by a single lawsuit.

117 What are you referring to?

117 Mr. SAMPLES. I think that was the Sierra Club suit, and I defer to Mr. John Paul here, who has had more detail on that, but it had to do with an environmental impact statement governing the whole Northern Great Plains area.

117 Mr. SKUBITZ. Would it be fair to say in your opinion, that this legislation in its present form will not stop the mining of a pound of coal. That, in fact, because of these suits that can be brought and may take a year or so to dispose of, we can stop the production of millions of tons of needed coal.

117 Is that correct?

117 Mr. SAMPLES. That was my feeling, but Mr. Carver particularly backed me down and said, "Bring more data."

117 Mr. SKUBITZ. I wish you would, too. I think that even if you lose the case, then go up on appeal; and there is appeal after appeal; and time set aside for a continuance; it can go on over a year's period of time easily.

118 This is one of the problems that is going to face the mining industry.

118 Mr. SAMPLES. Very definitely.

118 Mr. SKUBITZ. There are other questions that I would like to ask you witnesses, but we are limited in time, so I ask unanimous consent, Mr. Chairman, for the privilege of submitting a number of questions to these gentlemen in order to complete the record for those that might be interested in reading it at a later date.

118 The CHAIRMAN. Without objection, so ordered.

118 Mr. BINGHA [presiding]. Mr. Huckaby?

118 Mr. HUCKABY. Thank you.

118 Mr. Samples, is your basic objection to restoration as it is now in H.R. 2, the fact that restoring to original contour prohibits terraces?

118 We look at Pa. law, and I understand it will have to be modified to conform with H.R. 2, and the Pennsylvania law is probably the shining light in this area in the United States today.

118 Mr. SAMPLES.I am sorry. Maybe I am mistaking the thrust of your question. I didn't hear it at all. Would you repeat it, please?

118 Mr. HUCKABY.As far as the reclamation process, is your basic objection the fact, in restoring to original contour, that terracing is prohibited?

118 Mr. SAMPLES. No, not at all. I think in many instances a unique opportunity is created when the mining is done to do something more meaningful with the land, or to some better use, and the law tends to preclude that flexibility.

118 We think that we should be allowed that flexibility, and we don't - I don't think we object to a regulatory authority looking at it on a site specific basis, but we see no reason for the generality.

118 Mr. HUCKABY.What you are advocating is that at each site, a regulatory authority would come in. But would you ever take terracing apart -

118 Mr. SAMPLES. I think terracing has its place in certain types of reclamation. I don't know that I have any specific axe to grind, or to include or exclude terracing.

118 The CHAIRMAN. Are there other questions?

118 Mr. Ruppe?

118 Mr. RUPPE. Thank you very much.

118 Mr. Sturm, on the question of surface owner consent, you are not, as I would understand it, particularly opposed to the provisions of the bill, but rather the details that spell out how surface owner consent must be given or how the surface owner should be compensated; is that correct?

118 Mr. STURM. Basically, we would prefer that no provisions be included in the bill regarding surface owner consent.

118 In our area, we have been able to work out this type of legislation. There are statutes on the books under the Homestead Act, and I don't think in Montana or Wyoming they have been used at all. We have not used them, obviously. I don't think there is any precedent to say that you can kick the surface owner off his surface, so to speak, because he got title to the surface with that condition.

119 We have negotiated in good faith on an arms-length basis and have been successful in getting the surface consent either by ownership or by lease.

119 Mr. RUPPE. Do you think most companies have negotiated with the surface

owners? Although there is a question, as I understand it, that the company can actually go in and mine the minerals with or without his consent, most but not all of the mining companies of the West simply have made a deal with the surface owner?

119 Mr. STURM. Yes.

119 Mr. RUPPE. As I recall, the way the bill reads at the present time, there is a problem in that the surface owner, if he sells his land, can make any deal he wants, but if he retains his land, he is limited to a formula compensation established under the bill. In effect, as I remember the bill, we almost encourage the surface owner to sell his land to get the maximum dollars rather than to retain the land and be limited as to the amount of compensation or reward, if you will, that he can receive upon the entering of the coal operator.

119 Mr. STURM. In our particular experience, we have purchased. We own the surface over our full reserves. We have made these transactions over the past few years, and this particular provision would not affect us relating to our current reserves.

119 Mr. RUPPE. You have gone in and bought the land, so it is a moot question as far as you are concerned.

119 Mr. STURM. Except where we wanted unleased Federal coal where a private owner owned the surface. The bill says that the Secretary is encouraged, within his discretion, but still to the maximum extent practical, not to lease that kind of coal.

119 Mr. RUPPE.Mr. Jackson, you expressed a lot of concern about the highwall and the desirability under certain circumstances to retain all or a portion of it after the mining operation is concluded.

119 Does your concern over the highwall develop essentially because a lot of small operators in your opinion might not have the ability to use the block-cut method?

119 Mr. JACKSON. No, sir, not mine. Maybe I don't agree with some other operators, but most mining in Appalachia in steep terrain areas has had to resort to a changeover the past few years and possibly will have to go further

under new State regulations with regard to the handling of the spoil material.

119 The mining processes that we use have resulted from no regulations, and the cheapest handing of the spoil material, to what we now have in Kentucky, which allows you to put 40 percent of the spoil material removed from the coal seam on the downslope. This progression has resulted because of demonstration that excessive amounts of spoil placed on the downslope cannot be controlled. Therefore, we have landslides and sedimentation and so the highwall, to me, is simply a result of moving the coal.

119 The highwall in and of itself does not contribute to the true environmental damage, other than the esthetic and cosmetic values.

119 Mr. RUPPE. If you use the block-cut method to restore the highwall, wouldn't that be a method to save the esthetic values, and so forth?

119 Mr. JACKSON. I don't think restoration to contour and restoration of the highwall is always the answer.

120 Mr. RUPPE. When isn't it?

120 Mr. JACKSON. When the material can be disposed of better.For instance, in the head of a hollow -

120 Mr. RUPPE. You then have the remaining esthetic problem of the highwall and the probable leeching or acid drainout that might come?

120 Mr. JACKSON. No, I don't think you have any more of that from the highwall than in the normal conditions usually because these are sediment beds, and you have that anyway. You just don't see it when you don't have the hgihwall.

120 But the tradeoff is between whether you think it is important enough to eliminate the negative esthetics or cosmetics, or whether it is more proper to provide better true environmental protection and probably have better land uses, and I think this has to be looked at.

120 Mr. RUPPE. Mr. Samples, you expressed a good deal of considerable concern about alluvial valley floors. I tend to agree with you, on page 75 of the bill, where it says that "there can be no permanent mining that could adversely affect the quality or quantity of waters," and so forth, "in these alluvial valley floors."

120 The question is, What is the alluvial valley floor, the valley itself,

or the terraces adjacent to it, or the sandstone structures underneath and laterally to the sides of the alluvial valley floor itself? I assume the question of limitation affects the width and length and sides of what might later be defined as an alluvial valley floor.

120 Mr. SAMPLES. I am sure that that is the effect, and I have trouble in determining what is an alluvial valley floor.

120 Mr. RUPPE. I can take the terraces above it, or go underground with the aquifers and go a distance. Am I correct that it is hard to define?

120 Mr. SAMPLES. Yes, it is very hard to define. I don't know how to define it.

120 Mr. RUPPE. We would have to have a better definition in the bill, or our terraces in the West would be put off limits to all mining operations.

120 Mr. SAMPLES. That might, by your definition, apply to the entire Powder River basin.

120 Mr. RUPPE. Well, that is the problem. Will it apply? To what extent do we cover the Powder River basin? Because if we talk about the affected underground water systems, they certainly run through the sandstone in the very valley bottom itself.

120 Mr. SAMPLES. Yes.

120 Mr. RUPPE. Thank you very much.

120 Mr. SKUBITZ. Would the gentleman yield?

120 Mr. RUPPE. Yes.

120 Mr. SKUBITZ. The same point bothered me, Mr. Samples, on page 9 of your testimony, you state that it is impossible to determine accurately how much tonnage would be put off limits by the Secretary dealing with alluvial valley floors.

120 This is what shocks me: "Previously, estimates have been placed as high as 66 billion tons of strippable reserves."

120 Are you saying that under this act it is possible for us to lose that much coal?

120 Mr. SAMPLES. Yes, and it could be more, as Mr. Ruppe pointed out. It also has the effect of eliminating the access to the coal reserves, depending on how wide or how narrow the interpretation may be.

121 Generally, the access to the coal reserve or the beginning of the mine must start with some proximity to the stream bed or to the alluvial valley floor, and any mining operation has a number of streams generally that are of greater or smaller size passing through it that have to be dealt with.

121 It would be an incredibly complex thing, again, to deal with all of these streams, depending upon how widely interpreted this provision is.

121 So we feel that it must be better defined, or a more preferable way to deal with it would be on a site specific basis, and let us provide the adequate relief.

121 Mr. SKUBITZ. Then in your opinion, if the section remains dealing with alluvial valley floors we will reduce the amount of coal production tremendously; is that correct?

121 Mr. SAMPLES. That is my feeling.

121 Mr. SKUBITZ. Thank you, sir.

121 The CHAIRMAN. Are there any other questions?

121 Mr. Bauman?

121 Mr. BAUMAN. Therefore you don't agree with Secretary Andrus' statement that this bill would not lose 1 ton of coal in production?

121 Mr. SAMPLES. I do not agree with it.

121 I think, also, that all of these ambiguous things will impose a tremendous regulatory burden on Secretary Andrus if it happens to be his lot to administer this act.

121 Mr. BAUMAN. I don't know what your legal advice has been, but would you agree with my estimate as a country lawyer that this section gives virtually everyone in the United States standing to sue for one reason or another, at a great many points in the procedure?

121 Mr. SAMPLES. That is our fear.

121 Mr. BAUMAN. I would just observe, too, that we received a letter from the Justice Department on February 10, suggesting amendments to the bill. Specifically, this section would limit the Government's possibility of suit against the Government, to only the provisions in this bill, rather than the common law or other statutory rights, so that the Justice Department under the current administration seems to see a scope in this section that others perhaps, those who drafted it, do not see.

121 The CHAIRMAN. Mr. Seiberling?

121 Mr. SEIBERLING. Thank you, Mr. Chairman.

121 On the last point, I would just like to point out that nobody is entitled to sue under section 520 of the bill unless he has an interest which is or may be adversely affected. So it doesn't give practically any citizen in the United States standing to sue.

121 I would like to ask a couple of questions of you, Mr. Jackson. I wasn't here when you testified, but I read your prepared statement.

121 Of course, we have tried to provide here for the variations that are possible, and one of them is 515(c), and 515(c)(3) is not the only way to go, and 515(c)(2) isn't the only way to go as far as mountain top mining is concerned.

121 As I construe these provisions, it is that if you mine a mountain top, one of several seams, when you get through, you can put the spoil back and have a more level place than you had before. If you want to make it a flat area rather than a peak area, and if that isn't clear, I think we ought to make it clear.

122 However, the real problem as I see it and the real concern of the mining industry is that they don't want to have to put the spoil back at the place where they took it out.

122 Now, we already allow for placing the excess overburden in some other place, but isn't your real problem not the concern of providing more level land in Appalachia, because most of the level land will never be used according to the testimony that has already been had.

122 The real concern is that you don't want to have the extra cost of moving the overburden twice. Isn't that really what it comes down to?

122 Mr. JACKSON. No, sir, that is not it at all. It doesn't cost more to put the overburden back to where it was in many instances than it would cost to put it in another location that would be preferable from the standpoint of protecting the environment.

122 Backhauling and restoring the original contour in some cases may be considerably cheaper than an alternative that would provide better land use and better environmental protection. I think the law should have the flexibility in it to try to let the operators accomplish what the objective of the law supposedly is, which is to protect the environment.

122 Mr. SEIBERLING.You know, most of the coal operators haven't shown any great solicitude for the environment until it became a public issue, and some of them still don't. So I take that with a grain of salt, maybe not from you, sir, but from the industry generally.

122 But what other objectives is your company trying to achieve in terms of not backfilling and restoring the contour?

122 Mr. JACKSON. I am not adamant against restoring to the approximate original contour when it makes sense to do that.

122 Mr. SEIBERLING. Why do you wish not to have that imposed upon you except under the conditions that are set forth in the bill; namely, where you want a mountain top that is level, or you have some postmining use that you plan to make of that property? Why isn't that enough?

122 Mr. JACKSON. I think more from the standpoint of the private owners who own the surface where we mine. It is easier for us to make agreements with them to use their surface and settle with them if we can leave the land in a configuration they would like.

122 Mr. SEIBERLING. Does your company own mineral rights under broad form deed?

122 Mr. JACKSON.We have mineral rights leased. We don't own any.

122 Mr. SEIBERLING. Do you operate under that form?

122 Mr. JACKSON. Yes.

122 Mr. SEIBERLING. Do you find owners who object.

122 Mr. JACKSON. Not one we can't agree with, including the Widow Combs.

122 Mr. SEIBERLING. They don't have much choice, do they?

122 Mr. JACKSON. In Appalachia, they will come up there with their rifles and shotguns and keep you from doing it.

122 Mr. SEIBERLING. My point is that coal companies have never shown any great solicitude for the owners' surface rights.

122 Mr. JACKSON.I don't agree with that.

123 Mr. SEIBERLING. All I can say is that the only concern that I have ever seen at the bottom line in all of these objections from the industry is

that they don't want the extra cost of moving the spoils back on to the bench,
and if you can show me in some way that this 515(c) needs to be specifically changed in order to address itself to the legitimate concern of the coal companies, then I am 100 percent with you in trying to make that, but it seems
to me that there is sufficient flexibility here already.

123 For example, we say in section 515(c)(3) that in cases where an industrial or commercial, including agricultural or commercial postmining use,
and agricultural includes planting trees, if that is what you want to do. The
regulatory authority may grant a variance for surface mining operations of the
nature described in subsection C-2, and all of these things that are listed there are no greater burden.

123 For example, in your testimony you cite that they have to show that the
use, such use, will be taken care of. If you are going to plant trees, there would be no public facilities.

123 I would like for you to go down the line and tell me which sections are
not practical.

123 Mr. JACKSON. I think the commercial agricultural is not practical. If
you understand the surface ownership and the areas we are mining in Appalachia,
you have very small owners, whose property abuts at the ridge line generally. One may own 5 acres or 10 acres. I don't know if you can consider that commercial agricultural.

123 Mr. SEIBERLING. What kind of uses would be made of the mountaintop areas or other leveled area after mines that are not covered in section 515(c)(3)?

123 If you can tell me that and it is reasonable, I think we ought to put it
in.

123 Mr. JACKSON. I am not an attorney.

123 Mr. SEIBERLING. You are a mining manager. I don't think cattle graze
even would be included on small plots. If it isn't covered, let's make sure it
is.

123 Mr. JACKSON. That is the use these small owners want to put their land
to, because it is the most readily available.

123 Mr. SEIBERLING. I will tell you now that I will certainly talk with the

staff to see if we can't change it.There is no good reason not to put that in.

123 The CHAIRMAN. Would the gentleman yield to me.

123 I don't agree with what he said, and I would say the reason we got into the box we got in here, is that in the last Congress the one thing we kept fighting and fighting was the long-term experience of the Appalachian people.One of the ways that carried on the famous old amendment was to define agriculture so that if you left a bench up there and there were a few blades of grass, that was agriculture, and, therefore, you could allow highwalls in all times and places. I agreed with Mr. Seiberling that agriculture is a legitimate use, if you can take a mountaintop off, and cattle can graze there, and introduce timber, that is fine. There is no reason to recreate the rocky ridge that was there originally.

123 Mr. JACKSON. Mr. Chairman, I would like, if I may, to ask you to look at this one point about why the great desire to eliminate the highwall either on the part of the people of Appalachia who live there, or by the others. My opinion is that it is always thought of as contributing to the landslides. The landslides and the sedimentation have been caused by the placement of spoil on the outslope where it cannot be stabilized or controlled. Everyone looks at it and sees the highwall and the landslide below.

124 What I am saying is, if there is a way to leave the highwall and a more useable piece of land and control your sedimentation, I think that should be allowed in the bill.

124 The CHAIRMAN. Your analysis is correct.

124 The landslides are caused as you say. I think the highwall is offensive on a lot of grounds, not just esthetics. There are rugged ridges in nature. I was kidding a bunch of fellows here yesterday. One of those guys came to Washington in their trunks, one of them said "Udall, the Grand Canyon is a highwall a mile deep." Which it is.

124 Some highwalls produce acid drainage, and they have other bad effects, and not simply the esthetics of it all.

124 Mr. SEIBERLING. I will take you to Ohio, and I will show you mile after

mile of our most beautiful section of our State where you have got a hill with a highwall exposed from mining practices prior to the time we changed our law, and the top of that hill is totally inaccessible. It stands out for miles. It destroyed the character of our countryside, it is producing acid drainage, and it is a safety hazard.

124 It seems to me the burden properly should be on the owner of the land or the mining operator to show why he shouldn't restore to approximate original contour, and if he can show a good solid reason, and it meets with proper engineering advice and so forth, then I don't see any reason why, under proper circumstances, he should have to restore the highwall, or cover it, but the land, the rock formations, varies from State to State and place to place.

124 Sometimes the highwalls are stable, and other places they are not.

124 The burden should properly be on the person who wants to change it.

124 Now, what is the matter with that?

124 Mr. JACKSON. There is not anything the matter with that, if you write the law that allows the flexibility, but the way it is written, I don't consider us to have that flexibility.

124 Mr. SEIBERLING. All right. I think you ought to tell us specifically, and you have done so in one case, with respect to the grazing limitation, but you should tell us, if you say "we shouldn't be required to restore the contour," and so forth, I don't think that is enough.

124 As Mr. Udall says, this profession is suspect, because for years they have fought any reasonable bill; and now when they know there is going to be a bill, they are in here saying "you should do this, and you should do that."

124 I am not going to hold that against them. That is democracy; but I think we are entitled to have specific suggestions about this bill, and there are suggestions that should be supported.

124 They keep talking about head of hollow fills. We had testimony in here this week by Mr. Hayes, replete with slides and everything, and he was the former mining regional supervisor for Kentucky, and probably familiar with your operation, who says that you start at the bottom of the hollow, not the head of the hollow, if you want a stable fill. And he showed us example after example of slides from the head of hollow fill where the whole thing was sliding down the hill, with slip planes and everything else.

125 And so you sit here and say people want a plateau where they can put buildings and things, is simply nonsense when you are talking about ground that is unstable, and you know that.

125 So we need specific, concrete suggestions and not generalities about how we can't have this flexibility. We tried to put flexibility in here, and if we haven't done a good job, let's get specifics; and we will try to do better.

125 Mr. JACKSON. I will be happy to try. Mr. Hayes has been on our job, and with regard to soil stability and the stability of overburden that is placed in a specific area, I think he should defer his qualifications to others who are more qualified. He does not have a technical background. The Department has since hired engineers who do have that ability.

125 I do agree there are instances where hollow fill should not be allowed.I think it should be a judgment decision at the time the hollow fill is requested, as it is under Kentucky law now. We cannot indiscriminately put material in the heads of hollows. If it is not done properly, we do have problems.

125 Mr. SEIBERLING. I think if you saw Mr. Hayes' slides, he does know what he is talking about. He may not be an engineer, but anybody can see a slip plane and know what it is.

125 Mr. JACKSON. I didn't disagree that we do not have those slides in hollows. He has his opinion as to how hollow fills should be made, I think there should be other opinions.

125 Mr. SEIBERLING. If I could have 30 seconds -

125 The CHAIRMAN. We have a long list of witnesses.

125 Mr. SKUBITZ. Reserving the right to object -

125 The CHAIRMAN. Mr. Seiberling can have 30 seconds and then you can have a minute

125 Mr. SEIBERLING. I have been with your mine in 1973, and it looked to me like you fellows were doing a competent job. I also had personal testimony from some of the residents of Hazard who said they couldn't catch fish in the streams any more for miles around because of the sedimentation having killed all the life in the streams.

125 So there are still unresolved problems, and I think your company is

undoubtedly trying to help solve them; but we do have an overall responsibility here to try to look at this from all points of view, and I hope we can do so.

125 Thank you.

125 The CHAIRMAN. Mr. Skubitz?

125 Mr. SKUBITZ. I ask unanimous consent that the gentleman have an opportunity to place into the record at this point those reasonable amendments they think ought to be put in, and the reasons for suggesting those amendments that Mr. Seiberling is asking for.

125 Mr. SEIBERLING. I second the motion.

125 The CHAIRMAN. We have encouraged the industry people here to do that. If there are not amendments covered in the prepared testimony, we would be glad to have them.

125 All right, gentlemen, thank you very much for a very effective presentation.

125 The CHAIRMAN.Our next witness is Mr. Robert Bell.

STATEMENT OF ROBERT BELL, COMMISSIONER, KENTUCKY DEPARTMENT OF NATURAL RESOURCES; ACCOMPANIED BY THOMAS R. MILLS, AND FRANK COOK

126 The CHAIRMAN. Mr. Bell, it is good to see you again. Welcome to the committee. You have a pound of testimony here which we are happy to receive and print in our record.

126 [Prepared statement of Robert Bell may be found in the appendix.] The CHAIRMAN. I hope you can summarize your statement in a few minutes.

126 Mr. BELL. Mr. Chairman, I have a short statement, and I will shorten it even further, with an opportunity to introduce other material in the record.

126 I am Secretary of the Department of Natural Resources and Environmental Protection of the Commonwealth of Kentucky. We appreciate the opportunity to address the committee.

126 In order that you might understand our interest, our Department at the State level has the responsibility for the functions that are performed at the Federal level by the Department of the Interior and the EPA.

126 I would like to say that the Commonwealth of Kentucky thoroughly supports the broad objectives of the proposed legislation. Governor Carroll has

personally expressed his support on several public occasions. Having said that,
I would like to say emphatically that we in Kentucky believe there are provisions in this legislation that ought to be changed.

126 We will be filing with the committee some lengthy commentary within a week that addresses practically every section of the legislation. We offer this
in the hope that it will serve a constructive purpose.

126 At the present time, we have a number of major concerns. We are concerned about the procedural requirements of the bill. We think they could be
simplified.

126 We are concerned about the abandoned mine reclamation fund, and especially the procedures under which the allocations should be made with respect to the States. I believe I heard Governor Lamm say this morning that they would prefer to see the collections of the fees that are collected within
each State returned to each State. I can't speak expressly for Governor Carroll on that point, but I believe in Kentucky we would prefer that over any
other method.

126 We are concerned as to whether or not there is sufficient Federal financial support for State regulatory authorities under the act. We are worried about the rights of surface landowners in Kentucky under broad form D and whether or not their rights are really protected in this legislation.

126 But all of these will be discussed in the papers we will submit.

126 Today, I would like to address only two issues which relate specifically
to steep slope mining in the central Appalachia area and these are mountaintop
removal, and approximate original contour.

126 I would like to preface my remarks about these two subjects by trying,
the best I can, to demonstrate to the committee that it is simply patently unfair and unrealistic to continue to suggest that the Pennsylvania experience
can simply be transposed to other Appalachian States.

127 Central Appalachia consists generally of eastern Kentucky, West Virginia, southwest Virginia, and northern Tennessee.

127 In this area less than 4 percent of the coal surface mining methods come
from slopes of less than 15 degrees.

127 On the other hand, we contrast that with non-Appalachia, which consists
of eastern Ohio, western Pennsylvania, northwest Virginia and Maryland, where the terrain and topography is absolutely and drastically different than what you

encounter in central Appalachia.

127 Pennsylvania, over 82 percent of the stripping in Pennsylvania underlies slopes of less than 10 degrees. Almost 95 percent underlies slopes which measure less than 15 degrees. We have prepared two position papers addressing the issue of mountaintop removal and return to contour, and we would like to enter those in the record.

127 The CHAIRMAN. We are pleased to have them, and we will have them for the record.

127 [The documents referred to above follow the prepared statement of Robert D. Bell.]

127 Mr. BELL. I may say that our engineers have spent a long number of hours. We have relied on what we think are the most recent and current publications that are available, and the most authoritative. All of these were paid for by the Federal Government. One of them is evaluation of current surface coal mining overburden handling techniques and the reclamation practices. That is phase 3, Eastern United States, prepared by a division of Mathematica, Princeton, N.J. This was prepared for the Department of the Interior and submitted this year.

127 The second is sedimentation control, surface mining, prepared by Hickman & Associates, Columbia, Md., for Pennsylvania in 1976.

127 There was publication of a consultant's report produced by ICF, Inc., which tended to support the bill before us.

127 It is our opinion that none of these three studies, I think which combined probably cost the Federal Government close to $1 million, they simply do not support, gentlemen, the concept that underlies the bill with respect to mountaintop removal, or return to approximate original countour in steep slope areas.

127 I won't dwell at length on the mountaintop removal issue since the chairman has acknowledged on several occasions that the committee would probably consider new language.

127 I will summarize our attitude in the State regulatory commission in Kentucky, that mountaintop removal as it has been practiced by a few companies in the last 2 to 3 years, especially, represents the best mining and reclamation technology which has yet been developed in the steep slope areas of eastern Kentucky; and we would like to see it continued.

127 The CHAIRMAN. I particularly thank you for your exhibit. You have

actually written the mountaintop removal provisions you recommend we adopt, and
that is the specific kind of recommendation that is most helpful.

127 Mr. BELL. Yes, sir. We have tried to effect changes that would affect
as little the language of the bill as possible and still achieve the objectives.

127 If I may, I would like to skip on, then, to the question of approximate
original contour, which has been discussed already this morning.

128 I would like to say again that we are talking about steep slope areas,
areas that exceed 20 degrees or more. Engineers of our State regulatory
authority do not believe that return to original contour is all the best
practice. We think the slopes should be returned to the approximate contour,
including the elimination of all highwalls, where that practice would be
engineeringwise correct and environmentally sound. We don't think that slopes
that exceed 25 degrees in most instances, they should not be returned to
approximately original contour.

128 In this instance the partial reduction of a highwall, accompanied by a
lesser slope, is far preferable, with the remaining overburden of the excess
backhauled to a designed spoil area.

128 The advantage of placing more overburden in spoil storage areas and less
overburden on a solid bench are obvious. Both areas can be restored with more
gradual slopes. Both areas will be more stable and less subject to erosion.

128 Additional yardage placed in the spoil store area will have less surface
exposure.

128 Historically, and I think we have noted the conversations this morning,
it has always been difficult to environmentalists to disassociate the
engineering problems called by proper handling of surface mine spoil from the
aesthetic problem of exposed highwalls, especially since the two problems result
from the same operation, removal of material to reach a coal seam

128 In our opinion, it is clearly the handling of overburden and spoil which
has contributed most to the problems of erosion, sedimentation, acid drainage,
landslides, and water pollution.

128 Let me depart from the text just a moment. I respectfully disagree with
the comments made this morning that there are other problems associated with

highwalls. It is possible, I suppose, that the material that could be unstable,
but the premining exploration requirements you have written in the bill could detect that, and the area ought not to be mined in the first place.

128 As mine drainage at least as it occurs in central Appalachia, is 70 to
75 percent deep mines. Most of the remainder of the problem comes from the overburden and spoil after the material has been fractured and handled, and is
exposed to weathering, and exposed to drainage. That is our big problem, not water running down; and you have national studies, a very excellent, I think, national study made for the Congress that indicates this.

128 Placement of large volumes of uncompacted spoil on steep slopes below the elevation of the coal seam will generally result in landslides and severe erosion, and debris. The proposed act prohibits placement of overburden over the outslopes. This is a strong provision, and Kentucky supports this provision.

128 Sedimentation generally arises from a long slope with less than adequate
vegetative cover. There is no basic disagreement between engineers, geologists,
and soil scientists. Newly graded steep slopes are highly vulnerable to erosion, and the steeper and longer the slope, the greater the vulnerability.

128 We believe it is illogical to argue that steep slope areas present unusual reclamation problems, and then contend that original slopes should always be recreated after mining by construction of man-made slopes of unconsolidated, less stable material than existed before mining. We are suggesting an amendment to section 515(b)(2) which would make the return to approximate original contour requirement on steep slopes consistent with sound
engineering principles; and we urge its consideration.

129 We would like to suggest another additional item of legislation which
I believe might have been a drafting oversight, perhaps. You have a requirement
in that section of the legislation relating to mountaintop removal that requires
an undisturbed natural barrier be left at the edge of the outslope. In our opinion, this is mining reclamation practice. We think your act would be strengthened if you explicitly set forth this was one of the performance standards applicable to all steep-slope mining.

129 We suggest an amendment, also, that would accomplish this.

129 Finally, in summary, may I say that what we are concerned about in the
State regulatory authority, we have miles and miles of environmental problems that have been left with our State and with other States in Appalachia, because
of unregulated surface mining over the years.

129 Now, we are concerned with a Federal act that is going to require

additional miles and miles of contours to be restored to approximate original contour on steep slopes of unconsolidated material which we don't think will stay there. We think there are much better solutions, and that they ought to be given an additional consideration.

129 We think our position is supported by at least a half-dozen national studies that have been made for the Federal Government this past year, and we do not believe the members of the committee have had an opportunity to know of this material and know of its existence.

129 As I say, these have been paid for by the Federal Government. They have been performed by competent firms. I have with me today two representatives of two consulting organizations who are not employed by us, but who were employed by the Environmental Protection Agency and the U.S. Department of Interior to conduct these studies, and I would like to introduce them to you.

129 I think they stand in a position of being as objective about this matter as any advice you could get.

129 On my immediate right is Thomas R. Mills, professional engineer, with Hickman & Associates. They completed a study on surface mining in the eastern United States last year for EPA. This was about a 15-mountain study.

129 On my left is Frank Cook, professional engineer with Mattek, a division of Mathematica Co. He is associated with Ford, Bacon & Davis in a study of surface mining in eastern Kentucky which this committee relied on, and it is reflected in 3950, the House report.

129 Last year they had a study of one-half-million dollars paid for by the Department of the Interior. I believe these gentlemen will support my contentions, and I hope you will avail yourselves of them.

129 The CHAIRMAN.Thank you, Mr. Bell. And we are glad to have these exceptionally well-qualified people with you.

129 You know, I have traveled in Japan and Taiwan, and everyone comments on how they have used terraces on steep slopes. Is it your view that the approximate original contour language does not permit the terracing of the slope, even with the elimination of the highwall?

130 Mr. BELL. I am not sure the language itself does, Mr. Chairman. I think that technically, and as a practical matter, it would make it more difficult to put the terraces in on a steep slope.

130 If I have a steep slope, in the first place, there are other solutions.

There are other solutions that have been developed, especially in the last 2 to
3 years, that could be utilized, save for the leaving of some exposed residual
highwall.

130 The problem is, it doesn't seem that anybody can separate the highwall
from the real problem, which is the overburden and the spoil.

130 The CHAIRMAN. You have made that point very effectively today.

130 Mr. BELL. These gentlemen, in connection with their work, have visited
I would say, combined, about 200 surface mining sites in Appalachia; and their
respective specialties are erosion and sediment control.And I just think they
will confirm this for you if you will address those questions to them.

130 The CHAIRMAN. All right.

130 Are there any questions of Mr. Bell? Mr. Seiberling?

130 Mr. SEIBERLING. Thank you.

130 Mr. Bell, I have a general comment on your testimony. H.R. 3, which
passed the House in 1972 had a complete ban on stripping slopes over 20 degrees,
as I recall. You are making a rather persuasive case for the argument that at
least from an environmental standpoint that we were sound in adopting that
approach.

130 Now, maybe from an economic standpoint you can't afford to lose that
production, but I think you have made a strong case that we were right at that
time.

130 Mr. BELL. I don't think that follows at all, Congressman. There are
steep slopes that shouldn't be mined, not necessarily because of the slope
alone. That is another problem we have.Everyone gets hung up on degree of
slope. There are other factors that you ought to consider.

130 There are much less steep slopes that shouldn't be mined at all because
of other factors that are present.

130 We believe you can safely mine these. We are just saying there is a
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130 Mr. SEIBERLING. I am not challenging the fact that you can safely mine
them.

130 Mr. BELL. Well, environmentally, save the leaving of some residual
highwalls, say 10 to 15 feet.

130 Mr. SEIBERLING. A 10-foot highwall is less hazardous than a 100-foot highwall.

130 Mr. BELL. What is the question of hazard?

130 Mr. SEIBERLING. Well, people fall off cliffs.

130 Mr. BELL. You are not serious, are you?

130 Mr. SEIBERLING. I am.

130 Mr. BELL. Drunk people do.

130 Mr. SEIBERLING. All kinds fall off cliffs.Why should we go around the
cliffs?

130 Mr. BELL. If that were the case, we would tear down Natural Bridge.

130 Mr. SEIBERLING. I am talking about man-made ones.There is a nuisance law in most States, that where you create a nuisance you are responsible.

131 In any event, that is a philosophical point. I would like to ask you
whether the State of Kentucky has fined any operators for violating its laws?

131 Mr. BELL. Over $400,000 in penalties last year.

131 Mr. SEIBERLING. Can you tell us what regulations were involved?

131 Mr. BELL. Normally, it was putting overburden in places where it shouldn't be put, and failure to control overburden.

131 Mr. SEIBERLING. Can you tell me the average amount of the fines?

131 Mr. BELL.The fines normally will run from $2 ,000 up to $20,000.

131 Mr. SEIBERLING. How did the amount compare with the cost of compliance
by the operator?

131 Mr. BELL. Well, I think there was a time before - you may not understand. We have only been there this past year. I think prior to that there was probably an opportunity for better - it was better to pay the fine than to observe the law.

131 Mr. SEIBERLING. Will that continue to be true?

131 Mr. BELL. I don't think it is true now.

131 Mr. SEIBERLING. Are there any other penalties?

131 Mr. BELL. Suspension.

131 Mr. SEIBERLING. Have you suspended any operators?

131 Mr. BELL. I think 186.

131 Mr. SEIBERLING. How long does the suspension last?

131 Mr. BELL. A week or 10 days up to 2 or 3 months, depending on the difficulty involved in hearings and transcripts.

131 Mr. SEIBERLING.Do you sometimes close mines?

131 Mr. BELL. Yes, sir, always, when they are suspended.

131 Mr. SEIBERLING. How effective has this been?

131 Mr. BELL. I think we have had a dramatic turn for the better in the past year. We have - our abstemption orders and our penalties far exceed what we had in previous days, and I think that has helped.

131 But we have made an effort especially toward the employment of special engineers. A year ago we had two professional engineers, and one was 74 years of age. We made a determination that that is what we wanted to do. We have since put 20 special engineers in charge of this program, in all the major sections of our office.

131 Mr. SEIBERLING. Does this bill merely require of you to try to carry on the regulations that you were carrying on, do you see any problems of having a better bill so that you could do what you are doing?

131 I am not talking now about your criticisms of the bill.

131 Mr. BELL. Are you talking for the State or the regulatory authority?

131 Mr. SEIBERLING. For example, in the enforcement of your mining laws in Kentucky and the regulated strip mining practices, generally in your State, is there anything wrong with having a Federal regime looking over your shoulder?

131 Mr. BELL. I don't find a quarrel with it. I am not all that optimistic that it will have that much effect, because I also deal with the air and water pollution in the State. The Federal presence there has not been all that persuasive. We do the work, we file the suits, we do the prosecutions. It is only in a rare, dramatic case that is very unusual with publicity that they appear on the scene.

132 Mr. SEIBERLING. Don't you think it would be helpful in dealing with the operators to say that we have this requirement in our laws, and if we don't endorse it, the Feds will?

132 Mr. BELL. That is a ploy that can be used. I think I could do better
with helicopters and engineers.

132 The CHAIRMAN. Before we break for lunch, Mr. Skubitz?

132 Mr. SKUBITZ. Mr. Chairman, I want to commend the witness for his testimony. I will read it more carefully.

132 He mentioned two reports in here on page 4. I wonder if you could provide me with copies of those?

132 Mr. BELL. Yes.

132 The CHAIRMAN. We are going to break until 1:45 this afternoon.

132 Let me say to the witnesses who are waiting here that these hearings have two real functions: One is to build the hearing record with prepared statements and suggested amendments and that kind of thing.

132 The other is to educate the committee and get a dialog here, and if during the lunch hour you waiting to testify can boil down and summarize the points that haven't been made, your own personal experience, these are things that we haven't heard before. These are the helpful kinds of things that make
the hearings most useful.

132 So we will be back here at 1:45.

132 [Whereupon, at 12:25 p.m., the hearing was recessed, to reconvene at 1:45 p.m. this same day.]

132 [The following documents submitted by Mr. Bell may be found in the appendix following his prepared statement: (1) Position paper on mountaintop removal and the Federal Surface Mining Control and Reclamation Act of 1977; (2)
Mountaintop Removal - Suggested changes in subsection (c), section 515, title V,
of H.R. 2; (3) Position paper on Return to "Approximate Original Contour."]

132 AETERNOON SESSION

132 The CHAIRMAN. The subcommittee will be in session.

132 Our next witnesses are scheduled as a group from the Pennsylvania Coal
Mining Association.

132 Gentlemen, will you identify yourselves.

STATEMENT OF VERNON KERRY, CHAIRMAN, PENNSYLVANIA COAL MINING ASSOCIATION, ACCOMPANIED BY VINCENT MARINO, EXECUTIVE DIRECTOR; RUSSELL HALLER,
PRESIDENT, WEST FREEDOM MINING CO.; AND STEVEN L. FRIEDMAN, COUNSEL

132 Mr. FRIEDMAN. Mr. Chairman, thank you very much. I am Steven

Friedman, counsel for the Pennsylvania Coal Mining Association, an association
of independent surface mining operators located and mining coal in Pennsylvania.
Appearing with me today is Vernon Kerry, chairman of our association; next to Mr. Kerry is Vincent Marino, executive director; and to my right is Russell Haller, a coal operator in Pennsylvania who is a member of the association.

132 I would respectfully request that our full written statements, which have been previously submitted to the committee, be made a part of the record;
and I would also respectfully request that the three of us, Mr. Kerry, Mr. Haller, myself, be allowed to give a brief summary of our statements, to be followed by any questions from the committee.

133 The CHAIRMAN. We will follow that procedure and we appreciate your summarizing.

133 Mr. KERRY. Mr. Chairman, and members of the committee, I am Vernon Kerry, and I am a small Pennsylvania coal mining operator.

133 I produce approximately 225,000 tons of coal a year.

133 Despite the fact that you admit the Pennsylvania statutory and regulatory program is the strictest in the Nation, both in terms of environmental protection and reclamation standards and also the most effective
program, H.R. 2 as now written realistically prevents Pennsylvania from continuing our present effective program. Ironically, Pennsylvania's present regulations program which you admit is a model, cannot even qualify for certification under section 503. You have assumed a vast responsibility in drafting a bill to specifically cover the particular and peculiar concerns of both Eastern and Western surface mining. Accordingly, I am sure that most of these problems result from you not being aware of H.R. 2's many and serious conflicts with present Pennsylvania law.

133 Members of Congress and of this committee have repeatedly cited Pennsylvania's law as a model for the Nation. H.R. 2's present inflexibility destroys that model.

133 For the past few years "Project Independence," the gas shortage, OPEC,
and the need for an affirmative energy policy has been a lively matter on your
agenda. In Pennsylvania and throughout America these issues are not theories;
they are deadly serious problems which must not be compounded by the present inflexibility of H.R. 2.

133 We have reviewed H.R. 2 carefully. Its present form is disaster. Today
I will share a few general thoughts with you. I am simultaneously submitting specific amendments and request the opportunity to review them with your committee staff.

133 First, H.R. 2 combines, in quite extensive detail, environmental

protection and reclamation standards for Eastern or Appalachian surface mining
and Western surface mining. Surface mining techniques are admittedly quite different in both these areas in regulatory needs and concerns, being conducted
under very different conditions of terrain, weather, and hydrology. H.R. 2 outlines environmentally essential procedures for Western mining that are totally unnecessary in the East, such as the inflexibly mandated hydrological imbalance study.

133 Second, H.R. 2 is unreasonably inflexible. It precludes certain tested
and effective reclamation techniques used by Pennsylvania.

133 For example, terrace backfilling, a technique which has reclaimed thousands of Pennsylvania acres for useful purposes, is prohibited by H.R. 2. We have suggested an amendment to section 515(b)(3) to allow Pennsylvania regulatory authorities to continue to use the valuable tool of terrace backfilling.

133 Section 512(a) requires a time-consuming coal exploration permit, which
is not required in Pennsylvania, mostly because Pennsylvania exploration is done
by drilling, not by potentially destructive excavation techniques.

134 Accordingly, we suggest that section 512(a) be amended so as not to
require these permits for drill bore exploration.

134 Section 515(b)(15) is an impossibility. Thunderstorms, a late dynamite
truck arrival, and any one of a hundred operational dislocations can change our
blasting schedule. Pennsylvania's experience recognizes this and we need section 515(b)(15) amended. Section 515(b)(15) should not create a new substantive Federal law on explosives.

134 Section 512(a) and (5)(2) of H.R. 2 allows for the issuance of cease and
desist orders, but fails to provide that the burden of proof to sustain this drastic action should be properly on the regulatory agency evoking this drastic
power. When the regulatory agency uses this most stringent power, it should hold a hearing within 72 hours at the job site or else these ex parte orders expire. Otherwise, an operator will be deprived of due process. Both the Pennsylvania and Federal rules of civil procedure require that ex parte orders
expire unless a hearing is held, and section 521(a) must be amended.

134 Similarly, since a cessation order is itself such an inherently harsh penalty, the additional imposition of a civil penalty should not be automatically imposed through section 515(a) but should instead be left to the
discretion of the regulatory agency.

134 These are not mere housekeeping items. These are fundamental issues on which Pennsylvania's program has significant experience, and we vigorously urge you to cut red tape and bureaucratic inefficiency by amending H.R. 2 to allow administrative flexibility in these vital areas.

134 I hope the committee will consider the fact that for every ton of coal, H.R. 2 locks in the ground because of this bureaucracy, it will require four barrels of oil to be placed in a tanker in the OPEC countries to be shipped here. That is expensive oil that will get much more expensive when OPEC leaders realize the impact H.R. 2 has on energy production in this Nation.

134 H.R. 2 in its present form will replace the small surface mining operation, it will place the small surface mining operation in the same position that the bureaucratic and unworkable Coal Mine Health and Safety Law placed on the small underground miners a few years ago, that put them out of business.

134 If this committee is successful in getting H.R. 2 on the law books as it now stands, I predict that the Appalachia region of the Nation will become more depressed than it was during the great depression of the 1930's.

134 I want to thank you for your time and attention in this important matter.

134 The CHAIRMAN. Thank you very much.

134 Mr. HALLER. Mr. Chairman, members of the committee -

134 The CHAIRMAN. I will ask Mr. Murphy to preside and I will be back in about 2 seconds. Go ahead. I will read your statement when I get back.

134 Mr. HALLER. I am Russell Haller and I am a surface mine operator from Kittanning, Pa. Now, I have about 44 people and I mine around 200,000 tons of coal annually.

134 By education I am an engineer and in a way you might call me a conservationist because I have reclaimed over 1,000 acres of World War II desolated strippings without 1 cent of State or Federal money.

135 Pennsylvania's present reclamation program works. I have carefully followed these and your earlier hearings, and the record does not disclose a single criticism of Pennsylvania's present reclamation program. In fact, the contrary is true; you have actually saluted Pennsylvania as a leader in this area. Therefore, I earnestly beg you not to destroy Pennsylvania's present regulatory program.

135 H.R. 2 as drafted right now, must be amended to allow Pennsylvania some

breathing room which is essential to the timely and efficient operation of any
reclamation program. You know, my business is capital-intensive. I pay a quarter of a million dollars for even a small bulldozer. My employees are good,
skilled workmen. And cash flow is a serious problem.

135 Now most operators in Pennsylvania lease the areas they mine from the landowners. Royalties and option payments to landowners plus a heavy capitalization of equipment are up front financial investments. Our communities
benefit from our financial infusions and our social commitment.

135 My company annually puts around $3.5 to $4 million back into the economy
of western Pennsylvania. So what's the point?

135 One of them is, one motto that I have is that if you can't put the land
back, don't mine it.

135 VOICE FROM THE AUDIENCE. Hear, hear.

135 Mr. HALLER. I subscribe to the worthy reclamation goals that you have
in H.R. 2, but you must make some amendments to allow Pennsylvania's program to
effectively exist.

135 For example, in section 501(a) of H.R. 2, that must be amended to require the regulatory authority to act on the permit application within 90 days, no more.

135 Section 510(b)(4) as presently written would allow the mere filing of an
unsuitable action to stay a permit renewal. At bare minimum, H.R. 2 must be amended to provide that persons filing the unsuitability provisions possess a valid legal interest. Otherwise, you are inviting irresponsible delay which would actually stop coal production.

135 Furthermore, section 514(c) of H.R. 2 must be amended to provide that appeals from the granted or denial of permits are limited to those persons again
with a valid legal interest.

135 Now, there is some Supreme Court history which would substantiate such
an amendment.

135 Now, let us go a little further. Congress, in the past has rejected the
national land use legislation and in doing so decided that land use issues properly belong with local and State authorities. Yet, sections 508(a), (9), 515(b)(2), 515(b)(17) of H.R. 2, by indirection impose many severe land use controls upon local and State authorities.

135 It is really incredible to me that section 155(c)(1) of H.R. 2 presently
does not require each State certified program to contain various procedures. These procedures are effective and regularly part of the Pennsylvania program.
We must have those variance procedures.

135 Unfortunately, inflexibility is also present in section 518(c) which mandates once a month inspections. Frankly, some operators should be visited many times a month, and others may need inspections only a few times a year. But to eliminate this proliferation of bureaucracy, H.R. 2 should be amended to
allow the regulatory agencies the discretion to ascertain how many inspections
are necessary.

136 Now believe me, I have worked and I lived in Wyoming and I am well aware of the different conditions and mining techniques between the West and the
East. A crucial aspect of H.R. 2 will be the regulations that it spawns. In fact, I think parenthetically that H.R. 2 tends more to regulation than really
legislation.

136 To make H.R. 2 work, I would urge you to add to section 501(a) a specific amendment creating a, for lack of a better title, an advisory committee on environmental protection and reclamation standards which shall be
consulted by the regulatory body prior to the promulgation of any regulations.

136 This broad-based advisory committee could and should inject practical experience and knowledge into any reclamation program.

136 Mr. Chairman, I would invite you - and I know you have been to Pennsylvania - but I invite you back to look at our reclamation work. You have
got to realize that H.R. 2 is not the Pennsylvania bill and we want, we want to
work with you to make H.R. 2 an effective vehicle for environmental progress.

136 I really hope that you would work with us to achieve this goal.

136 I thank you.

136 The CHAIRMAN. Thank you very much.

136 Mr. FRIEDMAN. Mr. Chairman, thank you.

136 You have previously heard, Mr. Chairman and members of the committee, witnesses describe the Pennsylvania Coal Mining Association has a model of the
Nation. Mr. Kerry and Mr. Haller have stated previously this system works. To
quote a prominent Southern philosopher, if it ain't broke, don't fix it.

136 That is really the important theme that underlies this book of

amendments which the Pennsylvania Coal Mining Association has submitted to all members of the committee. I think you can tell by its size and its bulk there was a lot of work put into it, a lot of thought put into it, and we earnestly hope that the committee will seriously consider these amendments.

136 I briefly want to make a few comments so that you understand the themes behind them.

136 First of all, Pennsylvania law, Pennsylvania regulatory system, as presently drafted and administered, would not be certifiable under 502 of H.R. 2. In fact, in order for such a certification to ultimately be given by the Secretary, it would require substantial amendments and revisions to the statute and regulations presently in effect in Pennsylvania.

136 Now, referring to some specifics, as Mr. Haller eloquently stated, it's one thing to talk about western mining which is generally conducted in areas with arid climates, and rainfall generally less than 26-inches; in the East we have a very different situation: rainfall is in the area of 40 inches per year or more. H.R. 2 yet inflexibly requires in sections 507(b)(11), 507(b)(14) and 510(b)(3), without exception, a hydrological imbalance study, a study that is - may be appropriate for Western mining, where you are very concerned about the depletion of surface water and ground water from mining, and concerned about water availability and water shortage.

137 This study in most situations, if not all, would not be environmentally sound or environmentally necessary in Pennsylvania. Therefore, one of the proposed amendments by the association would limit the mandatory requirement of such a costly study to the western regions defined in the bill as west of the 100th meridian longitude, and make such a study though it is discretionary with the regulatory authority for the eastern regions.

137 We have proposed amendments to make discretionary the requirements of certain other data in the bill which again make applicable in some permit applications and some reclamation plans but not in all plans and not in all permit applications.

137 For example, the requirement of a chemical analysis of the overburden - now, in Pennsylvania such a study, which is to chemically analyze all the soil levels, all the way down to the overburden, it's not required in all situations. In fact, the Pennsylvania regulatory authority only requires it in very few situations; because in Pennsylvania the regulatory authority has found it

sufficient to conduct an analysis of the drill hole lots and combined with other
data to make the necessary determination as to the chemical properties of the overburden, the acid-bearing capacity, et cetera.

137 So again our proposed amendment would give the discretion to the regulatory authority to require it only when it's deemed essential, and again one of the important themes of our amendment is that we recognize and appreciate
the expertise of the regulatory authorities and we think that this bill has to
reflect it and to reflect the faith that they can make the determination when certain extraordinary studies may or may not be required.

137 Now, another area which has raised great concern and perhaps is more the
subject matter of an attorney's comment are the procedural confusions under the
bill. I think many people have testified generally about the fact that the bill
seems to create many procedures, procedures that may be initiated by citizens or
regulatory authorities, before, during, and after the permit process, and during
the process of release of bond in phases.

137 One provision that Mr. Haller referred to, that we are very concerned about, is the fact that there is a condition for denying a permit in section 510(b)(4) which is that a suitability proceeding initiated under 522(c) by a citizen or under 522(a)(d)(4) by a regulatory authority, that is a proceeding to
declare a given area of land unsuitable for coal mining, the mere pendency of that proceeding can be grounds for denying a permit.

137 Now if you think of the ramifications, what that could mean is that a proceeding, if filed with a piece of paper, no matter how meritorious or not the
allegation is on that piece of paper, it could be filed under 522(c); the hearing doesn't have to be held for 10 months. You could have an unmeritorious
proceeding filed, lag around for 10 months, and just because it is filed, no permits in the area covered by the subject matter of that petition for unsuitability could be granted.

137 This could have a tremendous impact on dislocation of vitally necessary
coal production.

137 We have proposed an amendment which says as follows, if I can generally
summarize this, that if the regulatory authority is aware of such a proceeding
being filed, either by the State or by a citizen, that it is not sufficient grounds to deny a permit while the proceeding is pending, but there must be established the likelihood that that proceeding will prevail on the merits, and

that ultimately in that proceeding an agency or court is going to rule that that
land is unsuited for mining.

138 And we think this eliminates the possibility of having many areas,
without justification, withheld from mining and yet, if an area under the
provisions of this bill looks like it's going to be ultimately declared
unsuitable, then that could be reason for denial of a permit.

138 Another area of great concern is the procedure for issuance of a
cessation order. Under the terms of the bill as drafted, a cessation order can
be issued, presumably based on the personal objection of an inspector, and yet
there is no requirement in the bill that a hearing on whether that order was
valid or not, whether it was supported by substantial evidence or not, whether
that order was valid. There is no time limit. The result is that if that order
was valid. There is has to curtail operation, vital coal production may be
disrupted, and the order could be ultimately determined 6 months, 12 months
later in some hearings before an administrative law judge in Arlington, miles
from the site, that that order had no basis.

138 Now, we recognize that there may be situations where such an order is
valid and a dangerous condition or dangerous violation may be viewed by the
inspector. But if that order is issued it is vitally necessary - and I think
there are some very strong due process arguments that a hearing must be held.
We have suggested that a hearing be held within 72 hours at or near the mine
site so the validity of that order can be adjudicated.

138 If the inspector is right and if the condition or violation exists, then
the order stands. If it is improperly issued, the order will be rescinded and
the environmental interest is protected, the safety interest is protected; but
you don't have coal operators being put out of business for many months waiting
for some hearing in the administrative logjam in Washington on the basis of a
challenge that shouldn't have been issued in the first place.

138 We have suggested, in the booklet submitted to the committee, many
amendments. Mr. Haller made reference to the advisory committee.

138 I think this is vitally necessary for several reasons: Clearly, the
bill, as it is drafted, is drafted more like a regulation than legislation. But
in any event, if it is enacted at some point, regulations will have to be
promulgated.

138 Now, I think the committee is becoming aware of the differing conditions
confrontig mining in eastern regions and western regions of the country; and
even within the Appalachian region; you have the central, northern region, the

central region, the southern region, and even those regions are climatically and
hydrologically different, and may require different treatment in the regulations.

138 It is essential that an advisory committee consisting of the Secretary,
the head of the Bureau of Mines in the Department of Interior, coal mine operators, representatives of labor, heads of regulatory authorities, State officials with expertise, that these people have the opportunity to get some input into the promulgation of regulations. Our amendment as drafted to section
501 which would require that such a committee be constituted and have the input
prior to promulgation of any initial regulations within 180 days of the act or
any subsequent regulations that may be promulgated or proposed from time to time. We think this is vitally necessary.

139 We have added a further part of the amendment which I think is essential in light of varying conditions around the country. If any regulations
were to be promulgated that clearly would only affect operations in three or less States - and in the Appalachia regions it is possible you could have one proposed because of the terrain, overburden - could only affect mining in Pennsylvania, Ohio and West Virginia, that in such a case the committee as constituted must include operators and heads of regulatory authorities from those States so that you get or you are guaranteed local input, and you get the
local knowledge and hopefully the local expertise as to whether that regulation
is valid or not as proposed.

139 In conclusion, I would only say to the committee that this is a very overbroad bill. It has a very overbroad mandate. No one has really attacked the Pennsylvania regulatory system. I think everybody lauds it. Many people in
testimony this morning, the gentleman from Kentucky was saying that the bill as
drafted unfairly subjects the rest of the country to Pennsylvania's standards.
That is not the case.

139 This bill was drafted, and does not codify or incorporate Pennsylvania
law. It sets up standards, it attempts to cover the whole country. These standards in many areas conflict with Pennsylvania law, would prevent certain procedures that Pennsylvania has used very successfully; would impose procedures
on Pennsylvania operators that are environmentally unnecessary; and we would only hope that we have the opportunity to meet with the committee and the staff
at a subsequent time to review our amendments.

139 Thank you very much. I think we are all available for questions.

139 The CHAIRMAN. Any questions?

139 Mr. Seiberling?

139 Mr. SEIBERLING. Yes; I have a question or two.

139 Mr. Friedman, of course you are a lawyer and so am I and you are aware of the possibility of abuse of the judicial process; and I think that to the extent you have raised that question, we ought to review those sections, et cetera, and make sure that we minimize the possibility of frivolous litigation.

139 I don't think I would go so far as to say it should be limited only to the people who have a direct property interest affected, but maybe we ought to put some sort of limitation on it.

139 Let me ask you, how familiar are you with the administrative process?

139 Mr. FRIEDMAN. Well -

139 Mr. SEIBERLING. You know, the quasijudicial bodies in the State as well as the Federal Government?

139 Mr. FRIEDMAN. Yes, sir, I have had some experience with that.

139 Mr. SEIBERLING. You are a lawyer as well in bringing court proceedings, etc.

139 Mr. FRIEDMAN. Yes.

140 Mr. SEIBERLING. You know, one of the problems we have had is that every time we set up an administrative agency it ends up being captured by the industry it is supposed to regulate. That is one of the problems that we have in considering strip mining legislation. That was one of the reasons why a lot of Members of Congress originally wanted a total ban on strip mining. Now we are obviously past that point.

140 But to set up an advisory board of that kind you indicate and put a lot of people from industry on it, it seems to me you are going to end up with a situation where the industry is going to be running the show and the history of the mining industry is not a very satisfactory one in terms of its concern for the people that it affects.

140 Mr. FRIEDMAN. Mr. Congressman?

140 Mr. SEIBERLING. I wonder how you would answer that.

140 Mr. FRIEDMAN. Mr. Congressman, I must respectfully take great issue with you. That proposal is based on some very satisfactory, very effective regulatory experience in Pennsylvania where the Pennsylvania regulatory authority, the department of environmental resources has a board called the environmental quality board, which is the agency that promulgates regulations in Pennsylvania.

140 That board has a citizens advisory committee which has been guaranteed and required to have input into promulgation of regulations. The citizens on that committee include environmentalists, representatives of the industry, representatives of the regulatory authority in Pennsylvania, and they have had a tremendous input into the ultimate development of the Pennsylvania program; and that input has been very, very successful and I don't see - I don't make any presumptions that that kind of model could not prevail on the national level especially where it is not just an advisory committee.

140 You have got to have some industry people on it because they are the ones mining the coal every day and they have got some expertise. You have regulatory authorities on it, they are the people who have to slap the coal mine operators on the hand from time to time. You have labor representatives, you have representatives of the Department of Interior. I would say it is a very enlightened body.

140 Mr. SEIBERLING. I would agree that Pennsylvania has done an outstanding job in that respect. Unfortunately there are not more people like Walter Hyne and Bill Guckert to administer this sort of thing. But they are not immortal and history over the years of regulatory agencies - and I can cite you at least a dozen Federal agencies - that they end up stacked with people who are spokesmen in effect for the industry they are supposed to regulate. And you probably know as many as I do.

140 So we have to try to build something in here that is going to be impartial and objective as it is possible to do that.

140 Now, the Ohio regulatory agencies, the reclamation board, at least in its first few years - and I have not looked at it in the past year or so - was a vehicle. We had a tough law and a board that was determined not to impose it.

140 So maybe there is no perfect solution, but it seems to me that by letting the State, as this bill does, set up its own agency any way it wants, and then having the Federal Government look over its shoulder is about the best way to make it effective; and I think that there is complete freedom for the States to structure their own agency any way they want. What is the matter with that kind of approach?

141 Mr. FRIEDMAN. Mr. Congressman, the only problem is that you have a bill regulating different coal fields with different conditions. Regulations have to be promulgated, the advisory committee - if that is your main concern in this dialogue now - it's only an advisory committee, as the word connotates; the Secretary is not bound by what it does. He is bound only to receive and listen to the recommendations in good faith.

141 When you have regulations covering all these different regions there will be a lot of problems if you don't have an institutionalized body set up with people on it representing all the various interests who are constituted and meet from time to time.

141 I am concerned that even the rulemaking procedure itself which is why we set up this, often at times because of the way scheduling works and because of, you know, interests and time and energy, the rulemaking process with hearings doesn't always guarantee that everybody gets there who should.

141 That is why I think the advisory committee is important.

141 Mr. SEIBERLING. It's purely advisory; this is something we ought to consider.

141 Mr. FRIEDMAN. That is the purpose of it.

141 Mr. SEIBERLING. Whether or not you have to do it - no, all it says is that the Secretary shall consult with and receive recommendations from.

141 Let me say that we have tried to have flexibility in this bill so each State could handle its own conditions. I think to my reading of the bill it is not inflexible. There perhaps are things we can improve on, I am sure there are.

141 But you gave as an example, the hydrologic process. Well, I know from personal experience in the State of Ohio that we have very severe hydrologic consequences from strip mining.

141 My favorite example is the place where I went to a woman's home and she showed me that when you pumped her hand well, her water came out coal-black; and it never did that before in something like 70 years that she and her family lived there until they started strip mining about a half-mile away.

141 So this is the kind of thing that I think is not limited to the Western States.

141 Mr. FRIEDMAN. Mr. Congressman, all we are saying is that if there are places in Ohio where that situation prevails the regulatory authority should have the discretion and the power and the authority under these minimum national standards to require such a study.

141 All I am saying is that in Pennsylvania the program that works, the experience has been that such a study is usually not required; and it is not to say that there are not some situations where it may be required.

141 Mr. SEIBERLING. Suppose we wrote this in terms of not specifying exactly the kind of hydrologic study, but that whatever was necessary in order to determine the hydrologic consequences of the particular proposed operation would be made, and leave it up to the regulatory agency to decide what in a particular case that was; would that make you feel better?

142 Mr. FRIEDMAN. You know, that is the kind of - I think a lot of assurances are given in the legative proceedings, we won't make it clear, we won't specifically define; but the bill as drafted now says hydrological imbalance including quality flow, availability of water. Now any study that a legitimate hydrologist was going to conduct to satisfy that language, if he is a good hydrologist, he has to do an extensive study. To me, the answer is not to necessarily water-down what you requirement is, because I agree with you; there may be cases where it may be required. That is why our argument is not to eliminate it; our argument is to make it discretionary, use the discretion, have some of the faith in the regulatory authority on which this bill has to be based.

142 Mr. SEIBERLING. Well, if it is totally discretionary, I know what will happen. It will be waived.

142 But if we say that they must determine what the hydrologic consequences are where that could be an important factor and leave it up to them to decide under what conditions they are going to do it, maybe that is the way to do it.

142 Then if we find they are consistently ignoring that, we go in and say, you are not in compliance and we are going to take over if you don't straighten out.

142 Mr. FRIEDMAN. Mr. Congressman -

142 Mr. SEIBERLING. Maybe that would help things. Is that what you are saying?

142 Mr. FRIEDMAN. Well, I would suggest, what I would like to do is, we have not thought of using that kind of language and I would like to consider it
and I would hope that perhaps next week or at some point when we sit down with
the staff, or meet with you, what-have-you, we can further discuss this.

142 I mean, I can't say to you, gee, that sounds exactly like what we are proposing, because I think it's difficult; but I think we will come to a suggestion and of course we would like to think about it. I appreciate it.

142 Mr. SEIBERLING. OK. Thank you. I think that would help.

142 The CHAIRMAN. Thank you, gentlemen. We appreciate your being here today.

142 [Prepared statements of Vernon Kerry, Russell Haller, and Steven L. Friedman, may be found in the appendix.]

142 The CHAIRMAN. Mr. Gregory, please.

STATEMENT OF DANIEL W. GREGORY, VICE PRESIDENT, FIRST STATE BANK OF WISE, VA.

142 The CHAIRMAN. Let me emphasize, we ask that panels not take more than 10 minutes and advise witnesses not more than 5 to summarize their position. We have a lot of people who have been waiting for some time, and we
can always read your full statements. But if you would just try to summarize briefly, it would be fair to all of those who are here waiting today.

142 Mr. GREGORY. Mr. Chairman, and members of the committee, may I express
my sincere appreciation for the opportunity to appear before you today.

143 I am Daniel W. Gregory, vice president of the First State Bank of Wise, located in the far southwestern Virginia county and town of Wise.

143 I represent the board of directors and the chief executive officer of the First State Bank of Wise and the majority of the banking institutions in Lee
and Wise Counties, Va.

143 Our position on H.R. 2 in its current form is supported by our larger banking correspondents in Virginia and our neihboring States, particularly those
in a position to lose hundreds of thousands of dollars in outstanding loans as a
result of the impending decline of our surface mining industry. In fact, I have
not talked to a single financial institution or banking association that does not fear the adverse economic impact of H.R. 2.

143 The economic health of our coal mining industry directly affects the

economies of our southwestern Virginia counties. Any adversity falling upon that industry is felt sharply here, across Virginia and into neighboring States.
When a legislative proposal as far reaching as H.R. 2 is presented, it is incumbent upon us as bankers to make an objective assessment of its probable economic impact upon our banks and the respective communities they serve. That
assessment was made independently by our area banks utilizing their knowledge of
the mining industry gained over the past several years and their insight into communities they serve, giving the consideration to the requirements of H.R. 2.
Their conclusions are outlined briefly below and very frankly, they are frightening.

143 Approximately 95 percent of recoverable surface coal reserves lie in areas having surface slope angles greater than 20 degrees. Thus, the majority
of our surface mine operators will be required to meet that part of section 515
of H.R. 2 relating to steep-slope surface mining in addition to the other standards imposed. It is our opinion, as area bankers, that the costs of additional equipment to handle spoil placement, of providing for highwall and bench covering and of securing the necessary engineering and geological services
would be more than the smaller operators could bear.This is even more evident when the extensive data collection, surveying, bonding, public hearing delays,
and other permitting plans and requirements are considered. It must be remembered that our surface mine operators are at this time only beginning to recover from a recessionary lack of market demand and extremely low prices during 1975 and 1976. This adverse market condition was immediately followed by
subzero weather conditions in early 1977 that completely precluded production.

143 We conservatively estimate that from 80 to 95 percent of the surface coal mines in southwest Virginia will be forced to close if H.R. 2 becomes law
in its present form. The majority of our surface mines are small operations producing the average, 25-35 thousand tons per annum, employing an average of five to seven production workers and two to three office workers per mine.

143 If only 80 percent of our surface mines close, the minimum annual loss
of high quality strip and auger coal from southwestern Virginia would be over 9,800,000 tons. Valued at a conservative $1 2 per ton, the annual revenue lost
to our area and to the Commonwealth of Virginia would be $117,600,000.

144 We expect over 2,000 production and clerical jobs to be lost and the
resulting decline in annual payrolls to exceed $3 0 million. I wish to stress
that neither the unemployment figure nor the payroll dollar loss includes another 5,000 to 6,000 persons in this area employed in providing goods and services to the surface mining industry.

144 There is no doubt that the expected losses of revenue, jobs, and payroll dollars, or even half that amount, would result in economic chaos in southwest Virginia and its neighboring States. It would surely turn the clock back 25 years bringing us again to the brink of economic disaster experienced in the late 1940's and early 1950's. Please remember that the production and sale of coal was and still is the most important factor in the economic health of our area.

144 Area banks and their correspondents have in good faith made substantial investments in the future of the surface mining industry. We have financed much of the equipment used for extraction, for transportation, and for processing of coal. We have extended loans to individuals directly and indirectly employed by the surface mining industry, those loans being for the most part to purchase homes, automobiles, furniture, and other needs.

144 We have participated our large commercial mining loans to our Virginia and Tennessee correspondent banks; still other large banks have purchased substantial amounts of mortgage paper from area banks and have otherwise assisted in serving the needs of our people.

144 The expected closure of the majority of our surface mines after enactment of H.R. 2 will have a devastating impact upon our banking system. In addition to a heavy runoff of deposits from all sources, it is expected that a substantial number of individuals and organizations will be unable to repay their borrowings after the effects of increased unemployment and area revenue loss are felt. If the results of the previous months establish any sort of guideline the banks face a major catastrophe.

144 Upon debtor default with no hope for future repayment, the lending banks will have no alternative to securing all supporting collateral and disposing of it at less than average market conditions. Substantial loan losses are inevitable under these circumstances.

144 Of course, some banks will be unable to meet this sudden and unusual economic strain and will be forced to look to the FDIC to absorb the excess losses. Those area banks that may remain would take many years to recover, if ever.

144 I might add that our outside auditors are so concerned that they have requested that we include a statement in our annual report of the probable effects of H.R. 2 upon our economy.

144 In the short time allotted, I have presented a rather bleak economic

picture for our area and State if H.R. 2 is implemented, but we truly believe it
to be most accurate. We know that we do and must have environmental protection,
but that must be balanced with economic protection as well. With the jobs and
lives of thousands of Virginians at stake in this legislation, we implore you to
restudy this bill giving due consideration to the human rights of our people to
be employed in an area of their choosing and to their economic health. Please
give consideration to amendments which may be presented to you to provide for
compensation, for losses incurred by operators, general communities, banks, and
other economic units.

145 Whatever amendments are needed to allow our mining industry to survive
should be seriously considered.

145 We are not the economic moguls or powerful and reactionary corporate
interests as has been suggested. Rather we are simply common people trying to
make a decent living for ourselves and our children, and to provide those
children with a better standard of living than most of us had.

145 Most of the operators have their life savings tied up in their mines and
equipment. Under this bill it would be lost. We have recently learned in a
most dramatic way the adverse effects upon our communities of stopping the
surface mining industry for 1 month can mean to our communities. We simply
cannot survive this on a permanent basis.

145 Thank you for your time, and if you have any questions, I will be happy
to entertain them.

145 The CHAIRMAN. Thank you, Mr. Gregory.

145 I don't have any questions except to say that my goal is the same as
yours. I would like to see your part of the country prosper, I would like to
see more coal mined and this bill will let you increase production of coal.

145 A lot of people don't agree with that and you are one of them.

145 We have listened to you though, and we appreciate your testimony.

145 Mr. GREGORY. Could you tell me how? That is something I can't get
through. Many people tell me that we could increase production.

145 The CHAIRMAN.Well, the history of this is, and they can tell you this in
Pennsylvania, "If you pass the bill you will put us out of business." But
instead of putting them out of business, they have vastly increased production

of coal. The same was said in Ohio. The same had been said with a lot of these
other States.

145 The guy from Kentucky was here and stated they are drastically increasing production down there and they have a good tough law. We think you
can do it in Virginia.They do it elsewhere.

145 Mr. GREGORY. I have not read the law in detail, the Virginia law, but I
have firsthand knowledge through trying to collect some payments that Virginia's
reclamation people do enforce their law both in blasting and reclamation.

145 The CHAIRMAN. Any questions?

145 If not, thank you, sir.

145 Mr. Straub?

STATEMENT OF EUGENE STRAUB, SIERRA CLUB

145 Mr. STRAUB. Thank you, Mr. Chairman.

145 I am Eugene Straub. I am speaking on behalf of the Sierra Club of which
I am an active member. I operate a farm in Appalachian, Md., Garrett County,
where in 1972, I was named County Soil Conservation Farmer-of-the-Year. When,
in 1974, our legislature decided that two citizens should be added to the
Maryland Land Reclamation Committee, I was appointed to this body.

145 This committee is not an advisory group.It is an element responsible for
three key steps in the process of regulating strip mining.

145 It reviews mining and reclamation plans, and must approve them before a
permit can be issued.

146 It reviews annually mining and reclamation operations under each permit.

146 It approves or denies the release of revegetation bonds. Additionally,
it sets the amount of revegetation bond and can order the State Director of the
Bureau of Mines to suspend a permit.

146 I do not represent this official body, but my testimony is based on
firsthand experience of working as part of a State regulatory agency.

146 The Sierra Club supports only that mining which meets goals consistent
with the maintenance or improvement of environmental quality.

146 In view of your time constraints, it may be well to move directly to the bill itself.

146 We strongly support H.R. 2. Federal minimum standards governing coal mining and reclamation are an essential substrate on which the States can build a tough but flexible regulatory framework. However, the bill falls short of what we believe is feasible and desirable in certain respects which would be remedied by the following recommended changes:

146 Federal inspection. The bill proposes that Federal inspection take place under only two conditions - when an operation has been found to be in violation of interim standards during two consecutive State inspections, or at request of a citizen. Neither of these options is realistic. Enough has already been said about the unreliability of many State inspection systems. And to expect a private citizen to trespass on a mining operation and turn without harm, and then commit himself in writing to call in the Feds, is an expectation held by very few who have lived in Appalachia. What we need is a Federal presence. It need not be large, but it must be available.

146 Upon approval of a State program, the Federal presence can dwindle to that necessary to evaluate State performance, but it should never disappear. The Secretary has a continuing responsibility to assess whether a State is enforcing and maintaining every part of its approved program (sec. 504), and he should not have to rely on citizen volunteers for his information.

146 Recommendation: Until a State program is approved, some 2 or 3 years down the road - and this will require a finding that the State has in place both legal authority and qualified enforcement personnel - there must be Federal inspection by Federal inspectors on a random basis at least every 3 months.

146 Permit approval or denial. According to section 510, the regulating authority can deny a permit only when:

146 (1) The application is defective according to the check list of section 510(b), or

146 (2) The applicant is currently in violation of law and is not deemed to be in process of correcting the violation.

146 Under restrictions like these, few denials can reasonably be expected. An engineer can be retained to prepare a reclamation plan which the applicant supposedly "can" accomplish. The problem is whether the regulator can reasonably expect the applicant to carry out the plan, and the bill provides no room at all for the regulator's judgment in this regard.

146 Assuming a fair regulator and a recently discovered violation, the regulator will move promptly to arrange for correction in the public interest.
Another loophole is for the application to be present by a newly organized entity. In certain cases, the regulator itself, at public expense, will have prepared the hydrologic balance assessment; it is not likely to disapprove this
item.

147 An operator's fear of having his bond forfeited is not enough to insure faithful performance of the permit conditions. Bond forfeitures are not
numerous they are helped about with many conditions, and in Maryland at least,
are felt to be so severe a penalty that our regulating authority will temporize
with an unsatisfactory condition almost forever, until a problem is resolved in
some fashion other than forfeiture.

147 Recommendation: As written, the bill seems to provide an absolute enforceable right of an applicant to a permit and puts a burden on the regulating authority to specify exactly how a defective permit can be made acceptable. We would like the regulator to be empowered to use its judgment and
to be able to deny an application based on the applicant's record and operational capability after considering, perhaps;

147 First, the extent of the applicant's experience with mining and reclamation under conditions comparable to those in the proposed operation.

147 Second, the applicant's past performance with respect to violations and
fulfilling permit conditions including control of water quality and quantity during and after mining, adherence to time schedules, timely revegetation, and
present status of past revegetation. Performance includes reports of violations
settled out of court, consent agreements, orders issued without penalty, disputes compromised administratively, and the like.

147 The CHAIRMAN. Mr. Straub, I am going to have to begin blowing the whistle on the 5-minute rule. I have read all the way through your very excellent statement. You have some good recommendations. How extensive is surface mining in your area?

147 Mr. STRAUB. In Garrett and Allegany County, we have 150, the coal extraction rate is around 3 million tons a year. We are not as big, but we have
as much of a problem with a 100-acre permit as everybody else. The rain falls
on our acres just as it falls on Pennsylvania acres.

147 The CHAIRMAN. You are in a good position to make an assessment. How do
you view the Maryland law and its enforcement generally today?

147 Mr. STRAUB. Our law, sir, is not as strong as this. Our customs are almost as strong. Our law has three things that your law does not have. We have an absolute ban on the 20 degrees; we have no mining on Government-owned land; and we have a very extensive public participation program. Every permit is subject to public hearing, every bond release, and every annual review. As I stated here in the testimony which I guess you have read, we have had absolutely no problem at all with frivolous suits.

147 The CHAIRMAN. That is one of my arguments.

147 We provide a valid legal interest, someone must have a right in this bill. I don't think the idea that vindictive people are going to sit around and file all these lawsuits. I don't think that's going to happen.

148 Mr. STRAUB. From my viewpoint, sir, it looks as if you can do it legally or you can do it politically. If you can get political acceptance of what is going on by public participation, free and open, the whole thing aboveboard, you get people working head to head. You get citizens working against operators and not lawyers working against lawyers, with lawyers making a lot of money.

148 The CHAIRMAN. The thing that brings lawsuits is the feeling people have that they have no other remedy. Once you give them the remedy and get it out in the open, as you say, the number of lawsuits tends to be very limited.

148 Mr. Sharp.

148 Mr. SHARP. Mr. Chairman, if we were not on the record here I would like to comment about lawyers.

148 I am in full agreement with him.

148 The CHAIRMAN. Thank you very much.

148 Mr. Franzman, Mr. Orr, Mr. Spalding, and Mr. Dean.

A PANEL CONSISTING OF CHARLES FRANZMAN, HARLAND BARTHOLEMEW ASSOCIATES; LAIRD ORR, LONDON, KY.; HENRY SPALDING, HAZARD, KY.; AND CHARLES DEAN, MIDDLESBORO, KY., PRIVATE PROPERTY OWNERS

148 Mr. FRANZMAN. Mr. Chairman, I will be the only sepaker. I will keep it brief and cut out everything I can.

148 We have a slide proposal here, so I will follow that.

148 The CHAIRMAN. Fine.

148 Mr. FRANZMAN. Mr. Chairman, and members of the committee, I am Charles

Franzman. I am a landscape architect, land planner, and a partner in the firm of Harland Bartholemew & Associates, landscape architects, planners, and civil engineers in Atlanta, Ga.

148 I represent Mr. Laird Orr, London, Ky., with me at the table, along with Mr. Charles Dean from Pineville, Ky., and Mr. Henry Spalding, Hazard, Ky. Mr. Dean also represents the Asher interests who own large tracts of land around Pineville, Ky.

148 These gentlemen are property owners in eastern Kentucky whose lands are leased to mine operators. We are not here to oppose the Surface Mining Control and Reclamation Act of 1977 in principle but to suggest benefits to be gained by two important changes we would urge you to consider.

148 Our firm prepared in 1975 a comprehensive, long-range surface mine reclamation plan for a 10,000 acre tract for the Asher ownership in Bell County, Ky.

148 Implementation of that 20-year plan has begun.

148 The Kentucky Department of Natural Resources and Environmental Protection praised the plan as the most comprehensive approach to reclamation ever submitted. Through the interest of the U.S. Forest Service I was asked by the University of Kentucky to present the plan to a seminar of miners and planners in April of 1976.

148 Dr. David Maneval, science adviser to the Appalachian Regional Commission asked me to make a presentation of the plan to staff members of this Commission and to Mr. James Paone, Chief, Division of Environment for the Bureau of Mines, who requested a copy of the plan and reviewed it in detail.

149 I would adhere that we have recently been asked by Mr. Orville Lurch, former alternate Federal Cochairman of the Appalachian Regional Commission to prepare a similar plan for his property in Pennsylvania.

149 We are now under contract to Mr. Orr to prepare a similar reclamation plan for his 8,700 acres in Bell County. The interest of this landowner is one of land values after the coal has been mined. Mr. Orr's land was partially mined and left in unreclaimed condition approximately 20 years ago. The land is steeply sloping and in this condition it has present real estate value of $50 to $7 5 per acre. Because of the nature of the terrain in Bell County there are no tillable farms of as much as 300 acres even though the climate and approximately

46 inches of annual rainfall make the area otherwise suitable for a wide range
of agricultural crops.

149 According to the Bell County tax commissioner, a productive farm of substantial size, if available in the county, would be worth $500 to $1 ,000 per
acre. We are very aware that land capable of producing food will become an increasingly valuable resource.

149 Many provisions of our plan that I have described far exceed requirements of the State of Kentucky; this can be justified for two important
reasons. The first is that it can be done at little or no greater cost than that of minimum reclamation because the reclamation process is made an intergral
part of mining rather than a separate followup operation. The second reason is
that every acre of land disturbed by mining is left at a grade of 14 degrees or
less, which slope can be worked with ordinary farm implements.

149 We were brought into this assignment initially because of a reputation
for planning ecologically sensitive land developments throughout the Eastern United States. Of particular interest was our planning of the Big Canoe development in the north Georgia mountains on terrain similar to the Asher and
Orr properties. Big Canoe has won numerous awards for planning, ecological sensitivity, and construction methods, particularly for roads and drainage and
was featured in the March 1976, issue of Southern Living magazine.

149 I will leave out the quote, Mr. Chairman.

149 The CHAIRMAN. I have read it though, and it is good.

149 Mr. FRANZMAN. In our study, we came to recognize that the most obvious
damage to landscape esthetics from surface mining came from two practices: One,
spoils deposited in steep banks downslope from the coal outcrop and two, unimproved high walls. Our plan would eliminate the first of these objections
and mitigate the second. Spoil on the downslope is counterproductive to our goal of creating valuable and productive real estate from all disturbed land. With respect to high walls, we feel there is a better solution in the interest
of all concerned than to recreate slopes greater than 14 degrees, and would urge
certain amendments to H.R. 2 without diminishing the goals of this legislation.

149 The first amendment we would urge concerns the requirement to return contour mine sites to original contour in terrain steeper than 14 degrees; 25 percent.

149 I won't repeat the quote from Secretary Bell. The State of Kentucky is in agreement that where the land is too steep, a cover of the high wall is not the most desired approach.

150 While it is practical to completely cover the high wall, as required on slopes of 14 degrees or less because the resulting land is usable and maintainable, our studies indicate a more appropriate approach on steeper slopes for the following reasons:

150 First, mine spoils can be as productive as nonmined land and revegetation can be accomplished in a relatively short period by following proper land management practices. This requires access to the land by tractors or similar equipment which cannot operate efficiently or safely on slopes greater than 14 degrees.

150 I would like to show you a slide to illustrate that.

150 [Slide.]

150 Mr. FRANZMAN. Shown here is a photograph of damaging ruts created by tractors in the course of maintaining a slope of 18 degrees on one of our interstate highways. This condition is common and obviously will result eventually in serious erosion and deterioration.This is a common standard, three on one slope of interstate highways slopes and they are grassed and maintained by farm tractors and mowers.

150 We have two more views.

150 [Slides.]

150 Mr. FRANZMAN. The tractors rut this as they go across it.

150 Erosion from surface water runoff on backfilled slopes steeper than 14 degrees cannot be controlled effectively. Continuous siltation of streams below and damage to vegetation will result.

150 Third, revegetation is materially speeded by building the organic content of finished grade through tilling a series of cover crops into the soil. Increased organic content will provide greater rates of rainwater percolation to sustain growth of vegetation as well as to replenish the groundwater system rather than allowing surface water to run off.

150 I have another slide on water impoundments as we designed them in the Asher report.

150 [Slide.]

150 Mr. FRANZMAN. They are provided on the contour bench to further slow runoff, to preserve water for cattle, raise fish or provide recreational opportunities. Shown here is a typical design for proper construction of water impoundment.

150 It is designed for the 25-to 30-year rainfall; designed for fish to spawn; and trees are kept on the north side to prevent shading and disturbing of the fish and wildlife quality.

150 In my introduction to this suggested amendment with respect to steep slopes, I indicated that esthetic objections to the highwall created by contour mining could be satisfied without return to original contour so that the bench can be retained for more productive uses.

150 If we are to engage in contour mining on slopes greater than 14 degrees - 25 percent - we must employ effective means to stabilize and screen the highwall. While many of our Nation's streams and valleys are flanked by attractive natural palisades well weathered by centuries of exposure, when such effects are manmade we believe it reasonable to take steps to speed the process and propose the following treatment:

150 [Slide.]

151 Mr. FRANZMAN. Illustrated is a steep slope of 27 degrees - 50 percent - or one on one. This is common in the Bell County, eastern Kentucky area.

151 Equipment used in the operation and present economics would indicate a maximum high wall of 100 feet above the coal seam which would make a bench 200 feet wide. We propose backfilling halfway up onto the high wall - 50 feet - which would produce a manageable and useful bench having a maximum slope of 14 degrees and leave a high wall having a maximum height of 50 feet.

151 [Slide.]

151 Mr. FRANZMAN. Calling on our successful experiences with near vertical cuts for roads at Big Canoe as illustrated by the following pictures, we would hydroseed and mulch the remaining highwall immediately with a mixture of cellulose fiber, grass, and tree seeds. At Big Canoe we did not include tree seeds and you can see that windborne seeds have lodged and germinated naturally in the grass cover. These cuts are from 2 to 4 years old and these recent pictures illustrate conditions after the most severe winter in our history.

151 We would expect that the high wall would be revegetated and screened as rapidly by this process as would be the case if spoil were returned to natural contour yet the proposed solution would yield a useful and valuable bench.

151 The other amendment we would suggest to this legislation is with respect to mountaintop removal. Again, we are in total agreement with Secretary Bell's testimony this morning and Kentucky believes that the mountaintop removal method is a successful surface mining method as long as there is nothing put over the side.

151 Following our objective of providing an attractive landscape having land practical for farming and other land uses we have designed criteria for hollow fills having no slope greater than 14 degrees - 25 percent - and contoured to retain runoff and control erosion. This also far exceeds Kentucky requirements, has no steep slope and every square foot is productive. It is also slideproof, having a grade less than the natural angle of repose. That is very important. Many of our slides come from the hollow fills as well as the outslopes.

151 [Slide.]

151 Mr. FRANZMAN. This is a detail specifying the plan and profile how a hollow fill will appear after completion.

151 The mountaintop, after mining, would be graded for proper drainage, slowing runoff, providing impoundments to hold up to 25-year frequency rainfalls and have grades which are 100-percent suitable for farming.

151 We also submit that the variance procedures required in H.R. 2 are too restrictive and not practical with respect to mountaintop removal. The desirable land uses listed as acceptable in H.R. 2 may come to pass but they are not likely to be guaranteed in order to be permitted, from so many aspects and by so many parties years before the land can be made available.

151 In summary, by following our criteria for contour mining, hollow fills, high wall vegetation, and mountaintop removal on the Asher property where existing slopes are steep, every square foot of the 7,000 acres disturbed will be capable of cultivation in an esthetically pleasing form; $50 per acre land will be worth $5 00 per acre or more and a county which doesn't have a 300-acre farm today will have a productive 7,000-acre farm.

152 We are currently planning Mr. Orr's 8,700 acres to be reclaimed in this recommended manner so that the 20-year old unsightly spoil piles will be cleaned up in the process of mining and reclamation. The land will have no adverse esthetic or environmental qualities, will be productive and will be valuable if we can apply the techniques described.

152 We respectfully request your adoption of amendments incorporating these criteria in harmony with the objectives of the proposed legislation.

152 We will submit a recommended form of these amendments along the lines I have outlined here.

152 Do you have any questions? We would be pleased to answer.

152 The CHAIRMAN. We would like to have your suggested amendments.

152 Personally, I want to commend you on a fine statement and your associates for bringing new ideas to this whole problem. I am delighted the landscaping and architectural professions are a skill being put to use here.

152 I notice where you cover half the high wall and have the 50 foot as you showed us. It looks like you have to go back and reduce the angle. You don't have a vertical high wall.

152 Mr. FRANZMAN. We propose that the last drilling might be on an angle or they might be back at the top and sluff it down to a half on one which is just 6 inches back by a foot up just to make the revegetation easier.

152 It can be done and some of these slides here at Big Canoe were nearly vertical. They were vegetating with tree seeds lodging into the grass from naturalization process. We would not plant them there. I think it is interesting - I am sorry, Mr. Seiberling isn't here this afternoon, because he said he wanted to be shown that the mining industry is doing more, wants to do more than they are forced to do.

152 This Asher plan was requested by the mine operator, the Hobert Corp. out of Birmingham, Mr. Hobert said, "when I pick this material up I can put it down good or bad. If you furnish me with a plan and if it doesn't cost too much more than the minimum reclamation, I will do it."

152 And they furnished him a plan. It has been a year and a half since it was submitted, and his engineers told me this week that while it was a harsh plan to them at first, to eliminate spoil over the outslopes is very unusual. I don't believe anybody in Kentucky does it. They told me this week that they

have come to the conclusion that it is the best, and they will not do it anymore.

152 So we are real pleased.

152 The CHAIRMAN. It gives me a good feeling that there are some forward looking people trying to get into this. You have given us something to think about here today.

152 Thank you very much.

152 Mr. FRANZMAN. Thank you.

152 The CHAIRMAN. Mr. Tostasin?

152 [No response.]

152 The CHAIRMAN. If not, Mr. Wingfield?

STATEMENT OF ROBERT WINGFIELD, VICE PRESIDENT, CENTRAL COAL CO., GRUNDY, VA.

153 Mr. WINGFIELD. Thank you, Mr. Ghairman.

153 Mr. Chairman and members of the committee, my name is R.L. Wingfield, and I am from Dallas, Tex. and Grundy, Va. I am here to talk about the new H.R.
2, alias H.R. 13950, alias H.R. 25, better known as the Melcher bill.

153 Energy has been my business since 1939. I was an independent oil and gas producer from 1947 until I became an independent coal operator in 1967.

153 I know that everyone has refused to believe that a real energy crisis has been ticking away like a time bomb for over 25 years.

153 Well, just recently Mother Nature has finally exploded in our face, and
has forced most Americans to begin to believe what every expert in or out of the
coal industry has warned about for over 30 years: America's greatest need, other
than peace, is energy; because without energy nothing moves, and nothing happens, and the Nation simply shuts down. And coal is our great domestic energy resource.

153 Make no mistake, gentlemen, your lifestyle and mine has changed forever.
This crisis is real, and is not going to go away.

153 I shall not remind you again of our most recent devastating winter temperatures, and the sharp and immediate effect they have had on the Nation's
economy. I do, however, want to clearly point to one unavoidable fact: the absolute failure of Government at all levels to deal effectively with the problem. All of the regulations, allocations, guidelines, price controls and monstrous red tape of the Federal bureaucracy only succeeded in bringing the Nation to its knees.

153 This near national disaster had its overall beginnings years ago, in hundreds of committee hearings identical in many ways to this hearing today. Now H.R. 2 would only compound the many mistakes of the past.

153 Most people do not understand H.R. 2 or today's surface mining methods as practiced under State law. I know this from personal experience after visiting with over 100 members of Congress. Many believed that they knew what H.R. 2 provided, several had actually read some of the committee reports. But my lawyers tell me a report is not the law and the differences between what some members told me and what they thought was in the bill and what is actually there would be the difference between success and failure of an entire industry.

153 Let me give you an example: most people think that under H.R. 2 mining operations on steep slopes would be allowed to do what we are doing now, creating valuable flat land for people to use. Mr. Chairman, this is simply not true. The bill would require that the approximate original contour be restored, and section 502(d) would allow a variance from this requirement only where the entire top of a mountain is to be removed, and the fill can be placed in the head of a hollow - sections 515(b)(3) and 515(d). Why should the Congress insist that we put the land back to its original contour when the owners themselves don't want it put back? Can anyone here really say that farms, schools, hospitals, and airports are all that bad? I hope not, because everyone down our way thinks they're just great.

154 Another widespread misconception is that the timetables of H.R. 2 would allow operators to phase in their operations to meet its new requirements. Mr. Chairman, this is also not true. Many of these requirements are impossible in any timeframe. Further, all of the requirements that really matter to an ongoing operation would have to be completed within 1 year - section 502(c). This can't be done.

154 These facts are not understood by the members of Congress, let alone the media and the well-intentioned environmentalists who support this bill.

154 After the President's veto of H.R. 25, the Environmental Protection Agency and the President's Council on Environmental Quality asked that an independent study of the bill's impacts be prepared. This study, by ICF, Inc., points out that H.R. 13950, the earlier Melcher bill, was indeed ambiguous, and would result in what the authors described as unintended effects due to mismatches between the apparent intent and the actual wording of the bill.

154 ICF, Inc., discovered what I already knew, namely that H.R. 13950 was in fact very different from what the Congress had believed it to be.

154 Mr. Chairman, nothing has changed to this day, and I am convinced that Congress still doesn't understand H.R. 2.

154 Further, Mr. Chairman, the ICF report sets out in great detail what many of us in industry have been saying all along, H.R. 2 is an incredibly complex bill. Many of its provisions are vague and ambiguous. At the very best, long delays and extensive litigation can be anticipated in obtaining permits. At the very worst, proper permit applications can be denied.

154 Over and over H.R. 2 has been presented as nothing more than a bill to require the reclamation of surfaced mined land. However, this is a far cry from the truth.

154 Many supporters of H.R. 2 seem to be deliberately misleading the President, the Congress, the national news media and last but not least the poor American taxpayer, who already cannot pay his energy bill.

154 Death and taxes have always before been the only two irrevocable things in life. Now there are three.

154 A new Federal agency, once created, is like death and taxes. It just won't go away. The new Federal agency that would be created by this bill will just continue to grow and grow and finally, combined with all of the other strangulating government agencies, the economic health of our Nation will become terminal.

154 The only possible benefit to us in this proposed new Federal agency will be that hundreds or thousands of individual people will gain jobs in the civil service section of the Federal Government. It is redundant to point out that these new people will be in the nonprofit, nonproductive sector of our economy. When it becomes obvious to Congress and the American people that this bill is a mistake, after creating an additional costly layer of Federal bureaucrats, it will then be too late.

154 To even consider the complete dismantling of the surface coal mining industry, especially in view of the critical political unrest in the volatile Middle East oil producing nations, is absolute sheer folly. Let us take the necessary time to solve the energy crisis without becoming panic striken over the strip mining of coal which is already adequately controlled by the coal

mining States themselves.

155 Mr. Chairman, I am a businessman and I understand my responsibility to protect the environment.

155 Very soon, the full Congress will again consider a surface mine bill. I am convinced that few, if any, members have actually read H.R. 2. I am also convinced that none of the individual members' staffs understand H.R. 2.

155 Coal is our Nation's most valuable energy resource, and the Arabs don't own it. H.R. 2 is the most important bill now before the Congress, and it can be read in just 2 hours.

155 If Congress is so unconcerned about the energy crisis as to vote again on this bill without understanding it, then I say that the surface coal mining industry is just that 2 hours from eternity.

155 President Carter has asked all of his Cabinet officers to read all the regulations that they sign.

155 Now, why can't each member of Congress read H.R. 2 and let the folks back home know that this time his votes will reflect his own personal judgment.

155 Mr. Chairman, thank you for allowing me the opportunity to appear before your committee.

155 The CHAIRMAN. Thank you, Mr. Wingfield.

155 Would you give us some idea of the size of your operation in Virginia?

155 Mr. WINGFIELD. Yes, sir.

155 We principally mine metallurgical coal, approximately 1 million tons a year.

155 The CHAIRMAN. Under the present Virginia law can you leave highwalls?

155 Mr. WINGFIELD. Yes, sir.

155 The CHAIRMAN. Put spoil below the downslope?

155 Mr. WINGFIELD. Put it below the downslope - below the cut?

155 The CHAIRMAN. Yes.

155 Mr. WINGFIELD. Yes.

155 The CHAIRMAN.Would you like us to come and see some of the product, the
land, when you are through?

155 Mr. WINGFIELD. Yes, sir.

155 The CHAIRMAN. You think under Virginia law you leave it in pretty good
shape?

155 Mr. WINGFIELD. Yes, sir. Absolutely.

155 The CHAIRMAN. All right.

155 Well, I just want to tell you, I am one Member of Congress who has read
H.R. 2. Granted maybe the others haven't, but I have read it and I don't think
it does what you say it does.

155 If it is going to close down the coal industry, I would be against my
own bill. I don't think it will.

155 Mr. WINGFIELD. There are paragraphs that will really do just that, but
that's for the lawyers to decide in their presentation.

155 The CHAIRMAN. Thank you, sir, for coming.

155 Mr. WINGFIELD. Thank you.

155 [Prepared statement of R.L. Wingfield may be found in the appendix.]

155 The CHAIRMAN. Mr. Faerber.

STATEMENT OF KENNETH R. FAERBER, RECLAMATION MANAGER, HOBET MINING &
CONSTRUCTION CO., INC.

156 Mr. FAERBER. Mr. Chairman, with your permission I would like to
approach you and give you something to look at while I read - not read my
testimony, but chat with you briefly here this afternoon.

156 The CHAIRMAN. All right.

156 Mr. FAERBER. I would like to pass out to the audience the same
thing.

156 We feel that this best shows what the people of West Virginia feel, and
how they feel about surface mining in West Virginia.

156 Mr. FAERBER. What I have passed out are some placemats that our company
had made up as gifts, attractive reminders, so to speak, depicting the
surface

mines in the State of West Virginia.

156 We had 2,400 sets, sets of four, made, and they have been distributed throughout the State and throughout the Nation.We continually get calls into the office wanting these placemats.

156 As reclamation manager for Hobet Mining & Construction Co., I can certainly assure you that that is good reclamation. It's an outstanding example of reclamation.

156 The people of West Virginia do not need a Federal surface mine law to protect the environment of our State, nor do we need the increase in utility bills that would result if the Federal bill is enacted.

156 West Virginians acted responsibly in 1971 to insure the environmentally sound development of its most important energy resource. However, West Virginia does need a Federal regulation or national standard if it is going to continue to compete in the coal market with States that have less stringent reclamation laws.

156 A Federal surface mine law regulating all States would prevent those States with less stringent standards from reaping an unfair economic advantage over strictly-regulated West Virginia. For that reason, Hobet endorses the concept of national standards.

156 However, it is unfortunate that there are provisions in H.R. 2 that will cause a decrease in production due to completely unnecessary timelags.

156 The present situation in West Virginia allows an individual to obtain a surface mine permit in 90 days. It is estimated that under the Federal bill it would take between 12 and 18 months.

156 Now, what that means is, to Hobet and its affiliated companies, it means approximately 100,000 tons per month, or enough energy which could be utilized by 9,100 homes each month.

156 Hobet Mining & Construction Co. as well as other mining companies in the State, are aware of their responsibility as energy producers, operators, and miners.

156 Provisions in H.R. 2 which were strongly opposed to are public notice which we - public notice and public hearing which we feel is totally unnecessary

if the operator can show that he has the legal right to enter and operate on the
land in question, it does not border or cover Federal or State-owned property,
and he submits a completed application.

156 Any deviation from this would be what we feel is infringing on the right
of the individual to develop, explore, mine property which he controls.

157 Mr. Chairman, you have been involved in the surface mine bill for a
long time. You know what public hearings can do when it's necessary to get the
job done.

157 Hobet further would hope that consideration is given, and it is provided
for in the bill, to State regulatory authorities having the option and the power
to make changes in H.R. 2 which would allow present day mining methods.
Particularly the haulback or mountaintop removal.

157 We at Hobet do not feel that H.R. 2 provides for the two major mining
methods in the State, the haulback and mountaintop.

157 We are asking that these provisions, rather than things being taken out
of the bill, be written into the bill.

157 The CHAIRMAN. We have a good deal of testimony on that subject, and my
only inclination is to make some changes. I think mountaintop removal ought to
have the status of a recognized, legitimate method of operation.

157 Mr. FAERBER. We feel that it's important. Rather than hint at it in
the bill or give option to it, it ought to be spelled out and criteria for that
method ought to be covered in the rules and regulations.

157 West Virginia is now recognized as having the most stringent reclamation
requirements anywhere in the United States, as you know. Hobet has been
operating in West Virginia for 21 years. We have operated in Ohio, Virginia,
West Virginia; we have operated under every degree of surface mine legislation.
We will continue to operate if the Federal bill is enacted. We will pay the
additional costs for reclamation.

157 But we feel that it is important to get fair and just regulations. Core
drilling, hydrologic information, etc., public hearings, they may not be
required in West Virginia. We would like for you to come to the State and make
that decision yourself.

157 The CHAIRMAN. We have a trip scheduled next week. I have been trying to get some of the subcommittee and full committee members to go. We tentatively have on our list of places, your operation in Scarlet; I don't know whether we can get enough people to go on the trip to justify it; but I personally would like to see what you have done.

157 Mr. FAERBER. Yes, sir, thank you, sir.

157 The CHAIRMAN. What is the snow cover down there? Is it melted?

157 Mr. FAERBER. It is all melted. It's a shame to have to be inside. It is beautiful in West Virginia; I am anxious to get back.

157 The CHAIRMAN. Any questions?

157 Mr. SHARP. I am just curious. What is your common relationship with the land? Are you owners of it for a short period of time, or are you also contracting to go onto somebody's private property?

157 Mr. FAERBER. We operate most of our operations under a lease situation. We own very little land in fee.Basically it is a lease-type operation. We have currently eight surface operations producing coal at this time.

157 Mr. SHARP. My concern is over your criticism of the public hearing. I can understand if this becomes endless hearing processes where we try to hear from 200 different sources; that would be a delay. But it seems that this is well-organized and provides the citizenry the opportunity to see that the Government is enforcing the law and that the Government is on top of the situation, and the people can see it.That is why I am not sure that it is fair to claim that the public has no interest because it is a private property arrangement, private contractor arrangement.

157 Mr. FAERBER. We feel the amount of acreage being disturbed when you consider the total acreage being disturbed in the State through highway construction, agriculture, it is insignificant to those. Yet, the requirements of public hearing do not exist for those.

157 We feel that if we are going to mine in a State park or adjacent to a State park, there may be a need for public hearings. But if we have a lease on 15,000 acres in the middle of nowhere, it would be unfair to possibly tie us up for 15 months because of a Sierra Club opposition to surface mining - blanket - per se.

157 Mr. SHARP. Thank you, Mr. Chairman.

157 Mr. FAERBER. And this is quite possible, we feel.

157 The CHAIRMAN. Thank you very much.

157 [Prepared statement of Kenneth Faerber may be found in the appendix.]

157 The CHAIRMAN. Are there any other witnesses here that we have overlooked today?

157 We will continue these hearings on Monday morning at 9:45.

157 Thank you all for being here.

157 [Whereupon, at 3:44 p.m., the hearing was recessed to reconvene at 9:45 a.m., Monday, February 28, 1977.]

TESTIMONY BY REP. MAX BAUCUS (DEM., MONTANA)

before Committee on Interior and Insular Affairs February 24, 1977

159 Mr. Chairman, I am delighted to have this opportunity to testify on the "Surface Mining Control and Reclamation Act of 1977." I would like to express my sincere appreciation and admiration for the diligent and intelligent effort which you and your fellow members of this Committee have put into this bill. With a sympathetic President in the White House, we can now expect to have this truly monumental piece of legislation put into effect.

159 Although there are a few areas where I feel minor changes in the language might be appropriate, you can certainly count on me as one of the strongest supporters of this legislation.

160 As you well know, Montana has more coal reserves than any other state. And most importantly, with respect to this legislation, more than fifty percent of the nation's coal with a sulfur content under one percent and suitable for strip mining lies under the plains and mountains of my state.

160 Like most Montanans I recognize the contribution which Montana coal can make to solving our country's energy problems. But this is not a one-way street. We expect and demand orderly development of our coal resources as well as a fair return. WE are concerned about the impact which coal development will have on our social and economic infrastructure and on our environment. This legislation will provide answers to many of our most serious concerns.

160 For instance, the prohibitions on surface coal mining in our National Forests are very important to Montana. We are convinced that ample coal reserves exist elsewhere - we do not need to spoil the majestic beauty of Montana's forested mountains in order to handle our country's energy problems.

161 I also strongly support the bill's provisions for extensive public input at all stages of the program's implementation. We are dealing with

national resources, and it is essential that we have public involvement and public understanding.

161 One of the bill's greatest strengths is its emphasis on the importance of preserving hydrologic balance in those areas where strip mining takes place. As the West faces serious drought conditions, surely we need not dispute [*] the folly of tampering with a fragile relationship with the underground waters which Nature has provided us.

161 In this light, I would like to focus for a moment on the bill's provisions concerning alluvial valleys. One can hardly overestimate the importance of these valleys to Montana's agriculture, and I certainly support your efforts to protect them. I would argue, however, that the bill leaves some [*] loopholes which we might live to regret. It seems to me that the current use of land, such as "undeveloped range land," is not nearly so important as the potential use of the land - we should not render unproductive land which offers potential for agriculture.

162 We must also be very diligent in protecting the private property rights of those whose lands lie adjacent to portential mining sites. We should not allow strip mining to take place on "undeveloped range land" when such mining would seriously affect the hydrologic balance on surrounding farmland. I would suggest eliminating the exclusions for undeveloped range lands and areas "of such small acreage as to be of negligible impact on the farm's agricultural production." The hydrologic balance should be the primary concern.

162 Similarly I support the provision that strip mining not adversely affect the quantity or quality of water in surface or underground water systems that supply these valley floors. I would agree with those who feel that "adversely" might be more precisely defined, but there is no point in protecting alluvial valleys if we fail to protect adequately the waters upon which these valleys depend.

163 As we seek to protect good farmland, we might rely on criteria other than those in the "alluvial valley floor" definition. All across our country there are tremendously productive farmlands - many of them outside of alluvial valleys - which should not be sacrificed in a short-sighted search for easily-mineable coal. While reclaimed land might make good pastures, pastures are no substitute for bumper corn crops. Existing legislation provides us with a definition of "prime farmlands" which could be used in delineating areas unsuitable for surface mining. I urge the Committee to give this concept

serious consideration.

163 The concept of "surface owner consent" is another provision of this bill which deserves special praise. Those of us value the right of private property are somewhat uncomfortable with flat prohibitions on the use a landowner may make of his property. Thus I am more comfortable with the idea of discouraging rather than prohibiting surface mining of federally owned coal when the surface rights are held by private individuals.

164 But equally important, The drafters of this legislation have done an admirable job of devising elaborate protections for surface owners. For those whose families have farmed land for generations, no amount of monetary damages could make up for the loss of treasured land.

164 I also support the Committee's effort to define "surface owner" in such a way as to protect genuine farmers and ranchers and at the same time discourage speculators whose only interest is a quick profit.

164 Finally, I would like to turn to the role which States play in the implementation of strip mining regulations. In the initial statement of intent, this legislation notes that the primary governmental responsibility for developing, authorizing, issuing, an denforcing regulations for strip mining and reclamation operations should rest with the States.

164 In line with this intent, it seems to be that States should, at their discretion, be given this reponsibility when their programs meet or exceed federal standards. A checkerboard system of federal and state regulation and its inevitable confusion should be avoided if at all possible. Public accountability is facilitated by clearly defined responsibilities.

165 The State of Montana's regulations on strip mining already meet or exceed this bill's standards in several respects, and I am confident that its program could easily be strengthened in those areas where it is deficient. Highly regarded environmental groups in Montana are convinced that the combination of federal oversight and the potential for citizens' suits will ensure [*] faithful implementation of the legislation by the State.

165 I might also add that when the States can handle adequately a strip mining regulatory program, there is little sense in creating one more level of federal administrative machinery. Let us keep government as close to the people as possible.

165 In conclusion, let me again state my firm support for this legislation.

I feel that some of my suggestions would improve it, [*] and I hope you give them serious consideration. But I would certainly not want to undo any of the difficult compromises which have brought this legislation so close to fruition.

165 Thank you very much for this opportunity to present my testimony.

Statement Submitted by The Honorable William C. Wampler of Virginia to the Subcommittee on Energy and the Environment on H.R. 2, Surface Mining Control and Reclamation Act of 1977

Thursday, February 24, 1977

166 Mr. Chairman and Members of the Committee:

166 During these hearings, you are faced with the challenge of whether or not, and if so, to what extent, the federal government should control the surface mining of coal in this country. H.R. 2, the Surface Mining Control and Reclamation Act of 1977, as now written, would virtually prohibit surface mining in some regions, and therefore is not a fair and equitable proposal. When a proposal would discriminate against a portion of our citizens, then it cannot be considered good for the nation as a whole, and therefore should not be written at the federal level. It is the right and duty of the individual states to consider such matters as cannot be regulated on an unbiased basis through federal laws. I think everyone will admit that different regions have differing needs and face special problems inherent in the areas due to topography, industry, economics and natural resources availability. One of the best characteristics of our nation is our willingness to interact and share our resources and abilities from region to region and across the nation. When the federal government attempts to standardize such differences, we are making a grave mistake.

166 H.R. 2 is such a mistake, and should be either extensively amended or preferably forgotten altogether. This bill would have surface mining regulated in the same manner in our states with flat land, in those with rolling hills, and in those mountainous regions of central Appalachia. You must either admit that this is not feasible, or that H.R. 2 is an attempt to severely curtail surface coal production in the mountainous Appalachian region. Perhaps this would benefit some coal producing regions, but it would be to the detriment of a region I am honored to represent in the Congress, and to the consumers who depend upon the availability of coal and coal products at reasonable prices.

167 Over one-half of our coal production in this nation and approximately one-third of Virginia's coal production comes from surface mining operations.

Virginia coal is, in large part, of very low sulphur content, and therefore is most desireable. To severely restrict mining of this amount of our coal production could have disastrous effects on our energy and economic outlooks.

167 The steep slope and approximate original contour provisions of H.R. 2 would result in the loss of approximately 85 percent of Virginia's surface mined coal production. Alternate usage of surface mined lands should be more liberally interpreted if such a provision is to remain a part of this bill. In Southwestern Virginia, the need for flat land resulting from surface mining reclamation is great, and this land is used for a variety of purposes such as home sites, schools, airports, recreation areas, industry buildings, farming and pasture. Land flat enough for these purposes is rare, and the cost of using steep land, when at all possible, is prohibitive.

168 Coal is this nations most abundant source of fuel.It seems ironic that we would even consider legislation which would result in a reduction of mining this fossil fuel in light of our recent and continuing experience with natural gas shortages. Also, in light of our experiences with imported oil in the past years it hardly seems reasonable to try to enact such anti-energy legislation. The consumer will be the ultimate loser if this legislation is pursued. Not only in the loss of fuel, but in the pocketbook, through payment of higher costs for the decreased amount of available coal, its products, and the increased cost of coal dependent utilities, such as electricity. Considering our overall energy, unemployment and inflation picture, I hardly think this is the time to force such extra and unnecessary expenses on the consumer.

168 The bureaucratic red tape which would ensue, if this measure is approved, would only result in additional cost increases to both producer and consumer. Permit approval could be delayed up to a year because of the various steps to be taken and the introduction of possible citizens suits into the procedures. Property rights of surface owners could be seriously infringed upon due to these citizens suits provisions. Under Virginia State law, both the surface owner and the mineral owner must agree and be compensated by the operator before the land can be surface mined. This is a reasonable and realistic law, which regulates the mining with regard to those parties who rightfully have an interest in the coal mining operation, without having the process bogged down by persons with no legal hold on the property.

169 With regard to the economic and employment impact of H.R. 2 on Virginia alone, the bill is most unsatisfactory. It has been stated by proponents of the bill that no additional unemployment would result from passage

of this measure. However, just how this will be accomplished has not been made
clear. As written, the provisions of this bill will undoubtedly force many small operators out of business, thereby resulting in a lack of jobs for the persons now employed by these operators. In Virginia, approximately 3000 persons are directly employed by surface mining companies, with several thousand
additional persons depending upon this industry for their direct support. Wages
for these employees total over $4 0 million annually, resulting in over twice that amount being circulated in the Southwestern Virginia economy annually. The
resulting unemployment for even a fraction of these employees would have a profound effect on the economy of that region, and of the Commonwealth of Virginia. In addition, numerous railroad employees, service industries and even
retail stores would be adversely affected by the decreased purchasing power of
the consumer. The consumer and the businesses dependent upon the consumer and
the surface mining industry would suffer, especially in the Appalachian region
which needs the economy bolstered, not restricted. Current estimates of the surface mining industry's contribution to Virginia's economy would set this figure at about $2 00 million annually. Again, it is clear that the loss of even a portion of this amount would have an unhealthy impact on the state's economy.

170 We can either be idealistic or realistic in our efforts to cope with our energy needs and the effect on the environment. I opt for realism, which keeps people employed and keeps the economy healthy. Virginia has met this challenge and has been able, through excellent reclamation laws, to provide
an abundant coal supply with temporary disturbance to the immediate environment
of the surface operation. At the same time, the industry has been a boon to the
economy of the state, and particularly to the economy of Southwestern Virginia.

170 I urge you to view this issue realistically and reasonably, and to debate how you can in all good conscience support H.R. 2, which would result in
increased unemployment and a decreased energy supply at a time when this nation
is fighting both of these severe problems. The benefits of surface coal production with adequate reclamation provisions, as we now have in Virginia and
are still improving upon, far outweigh the benefits, if any, which would result
from passage of H.R. 2.

170 Thank you for allowing me the opportunity to present this statement in
opposition to the Surface Mining Control and Reclamation Act of 1977.

TESTIMONY BY ANTHONY F. TROY ATTORNEY GENERAL OF VIRGINIA BEFORE THE

INTERIOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES

Washington, D.C.

February 24, 1977

172 The General Assembly of Virginia has long recognized the need to control the adverse environmental effects of coal surface mining. In 1966, the General Assembly enacted the Virginia Coal Surface Mining Law. Legislative amendments in subsequent years, and administrative regulations adopted in accordance with the Virginia law, have resulted in an effective program to minimize adverse environmental disruptions, while at the same time allowing coal surface mining to continue as a significant part of Virginia's economy.

172 Virginia's laws and regulations impose stringent requirements upon mine operators to provide for proper drainage and erosion control, and to achieve stabilization of disturbed land through effective grading and revegetation practices.These laws and regulations are strictly and vigorously enforced, through the issuance of orders, court actions, permit revocations and bond forfeitures.

172 Virginia also has an ongoing program to reclaim orphaned land which was mined prior to the enactment of the State surface mining law. This program has been greatly assisted by a $6 ,000,000 grant from the TVA. This grant will enable reclamation of all orphaned coal mined land in southwest Virginia, over the next five years.

172 The Commonwealth is committed to an effective and continuing environmental protection program in the area of coal surface mining. The State legislature and the State regulatory agency are, as you have been told, considering further improvements to our Commonwealth's program, by increasing permit fees and specifying more rigorous procedures for the disposition of overburden.

173 In short, decisions regarding the regulation of Virginia's coal surface mining operations should remain with the Commonwealth's Legislature and administrative agencies, which are in the best position to consider the unique conditions of Virginia's environment and its coal mining industry.

173 H.R. 2 which this committee is now considering will completely preempt the ability of Virginia to set its own environmental protection standards without unnecessarily restricting coal production, or adding unjustifiable costs to both the mine operator and the regulatory agency. The Bill would arbitrarily impose mining methods upon operations in Virginia which have no significant relationship to Virginia's unique environmental situation. Virginia will be

allowed to regulate coal surface mining only if it imposes these unreasonable and costly requirements.

173 For example, H.R. 2 would require all operations to be restored to the approximate original contour of the hillside, as it existed prior to mining. This requirement will entail the use of expensive, heavy earth-moving equipment, which the average operator will not be able to afford. In Virginia, where most mining is conducted on the contours of hillsides, the result of the restoration requirement to original contour will be a long strip of hill or mountainside, consisting of raw earth, until such time as vegetation has been established. This long sloping area, without vegetative protection, is subject to erosion by weather and drainage from the higher elevation.

174 Virginia does not require this contour restoration, which is of little, if any, environmental value. Instead, a mine operator may leave a bench, which is relatively stable. The bench is sloped inward so that drainage is collected and channelled along the bench to an appropriated point, where it is released through a properly constructed drain to minimize erosion. The bench is also revegetated.

174 At present, the excess overburden is placed downslope and revegetated. Our state regulatory authority, however, is considering new regulations which would require the elimination of a substantial amount of downslope spoil, allowing the operator to place the spoil, under controlled conditions, in valleys and hollows. Drainage and revegetation would be required.

174 Thus, the Virginia program controls environmental disruptions, such as erosion, yet allows changes in the land, such as the creation of benches and fills, which become potentially useful flat land in hilly southwest Virginia. The federal bill senselessly requires restoration of the contour and the elimination of the highwall. The environment is not especially protected or enhanced by this practice, and the cost to the operator is unjustifiably and greatly increased.

174 It is true that the federal bill will allow a variance from the restoration requirement, for mountain top removal. Mountain top removal, however, is an acceptable method of mining. No variance should be required, provided the operator complies with established reclamation procedures. Contour mining, which leaves a highwall, is environmentally acceptable, as long as the overburden is properly disposed of. Virginia laws and regulations currently require the proper treatment and stabilization of overburden, without imposing the needless expense of restoring the contour.

175 Other examples of requirements which are inappropriate and unnecessary for Virginia mining operations are found in @ 507. Sections 507(b)(11) and (b)(15) require a permit application to contain an extensive determination of hydrologic consequences of the proposed mining and a statement of the result of test borings from the permit area. I am told that it has not been found necessary in Virginia, to require a determination of hydrologic consequences to the extent called for in H.R. 2, nor is a statement required concerning test borings. Virginia does require the identification of surface drainage and the prevention and treatment of toxic runoff and sedimentation. The requirements pertaining to hydrologic consequences and test borings, contained in H.R. 2 will place an inordinate burden on both the operator and the regulatory agency in Virginia.

175 In addition to objections to the provisions of H.R. 2 which unnecessarily encumber surface mining in Virginia a problem also is created in the area of federal-state relations. Section 502(b) of H.R. 2 (page 45) mandates that all state permits which are issued on or after six months from the date of enactment of the Act shall contain terms requiring compliance with certain environmental standards including the restoration to original contour, and the minimization of hydrologic disturbances to ground water, and aquifer recharge capacity.

176 As said previously, Virginia law does not require restoration to the original contour, nor is it feasible to make comprehensive assessments of subsurface hydrologic consequences. Virginia woould be unable to comply with 502(b) of H.R. 2, since State law does not authorize the state regulatory agency to incorporate these requirements in the permits which it issues. Being unable to comply with @ 502(b), State authority to issue permits will cease. The State regulatory process will be displaced until or unless the Virginia legislature conforms State law to the specifications of @ 502(b), and provides required increased funding for the task.

176 Accordingly, should Congress desire to impose interim requirements upon mine operators, until a complete State or federal program is established, then Congress should expect to enforce and administer these requirements through a federal agency, not that of a state. The constitutionally reserved powers of the states, as expressly recognized in the Tenth Amendment, requires that state and federal governments administer their own laws without imposing that responsibility on the other.

176 In summary, the Commonwealth opposes federal attempts to completely displace State programs to regulate coal surface mining. Virginia, and other

states, are concerned about the environmental problems caused by surface mining,
and are taking appropriate measures to correct them. Because of the differences
in geography, in climate, in mineral resources and in mining methods which exist
among the States, this subject is one which clearly should remain under the
control of the states. A sweeping federal law, such as embodied in H.R. 2,
would overlook those differences and impose arbitrary demands which are not
appropriate for local or regional conditions. In Virginia, the result will be
an unjustifiable sacrifice of employment and economical coal production, with
little, if any, benefit to the environment.

STATEMENT OF ATTORNEY GENERAL V. FRANK MENDICINO ON BEHALF OF GOVERNOR ED HERSCHLER OF WYOMING, FEBRUARY 24, 1977

178 Mr. Chairman and Members of the Committee:

178 It has long been my position that comprehensive regulation of coal
surface mining operations is essential in order to protect and preserve our
environment while developing a sound energy and economic policy. This Committee
and the Congress, has devoted a great deal of effort in developing a national
strip mining bill which attempts to meet those objectives.

178 First, State programs with primary jurisdiction for administering the
provisions of either H.R. 2 or S. 7 will be viable in Western States only if
Federal lands are also subject to those State programs. Where ownership of a
vast majority of the surface and/or the mineral estate is vested in the Federal
Government, a State program limited to only private or State lands cannot be
effective. Furthermore, the interspersing of Federal lands with State and
private lands would make the program even more complex. In addition, one of the
stated findings of both bills is that "primary governmental responsibility for
developing, authorizing, issuing, and enforcing regulations for surface mining
and operations subject to this Act should rest with the States."

178 This emphasis on primary State jurisdiction as the preferred method of
implementing environmental protection laws is consistent with the provisions of
the Clean Air Act and the Federal Water Pollution Control Act. For these
reasons we would urge the Committee to adopt the provisions of S. 7,
particularly 423(d), relating to State jurisdiction over Federal lands under an
approved State program.

178 Pending a determination on the sufficiency of a State program, it would
appear inappropriate for the Federal Government to create a large interim
bureaucracy to enforce the interim provisions.

179 Those States that have entered into agreements with the Department of the Interior pursuant to 30 CFR 211.75, or that are otherwise qualified to make such agreements, should continue to have primary responsibility for enforcing reclamation laws, pending an sdministrative determination on the approvability of the Stateprogram under the bills. This approach would minimize the creation of an interim Federal bureaucracy which, as we are all too painfully aware, may tend to become a permanent Federal bureaucracy. In this regard, section 702(d) appears to require the preparation of an invironmental impact statement prior to the approval of a State program. Congress by enacting either H.R. 2 or S. 7, would appear to have concluded that a State program meeting the requirements of the law should be approved. I fail to perceive what added benefits the EIS process will add to that determination.

179 Turning to the Abandoned Mine Reclamation Fund, we would request the Committee to continue the emphasis on State responsibility by changing the language of section 401(e) to conform to section 301(d) of S. 7, which allows the States to administer the fund if there is an appropriate State law.

179 As you might expect, we endorse the 35-cent per ton add-on in H.R. 2 rather than the Senate version which diverts a portion of the Federal mineral royalty.In addition, we believe the purposes for which the funds can be used should be expanded to include noncoal surface mining operations which have been abandoned. Abandoned uranium pits from the 1050's and early 1960's are the major problem in Wyoming and some other Western States, perhaps even more so than abandoned coal mines.

179 Although it is not now a part of H.R. 2, I would like to express our concern about the Mansfield amendment - section 423(e) of S. 7. We believe this provision is undesirable because it could force mining into areas which are more difficult to reclaim. In addition, given the amounts of coal which have already been leased, the importance of that section in terms of landowner protection is likely to be minimal.

179 Gentlemen, I recognize that at this stage in the development of this legislation you are no longer interested in broad, general statements and that what you want now are specific comments and recommendations, and we have attempted to provide those to you. In order to make my final and perhaps strongest recommendation, I must, however, make a general statement with respect to our greatest concern in Wyoming. Really, what we are asking for is the opportunity for the State of Wyoming to administer its reclamation program. As you probably know, we concluded several months of negotiation with the Department of the Interior on this very issue by entering into an agreement

pursuant to 30 CFR 211.75 which allows us this opportunity.There are many who have ridiculed this agreement because it is apparent that a Federal bill will be passed in the near future. Even in the West there are many States that do not agree with us primarily because they want Federal dollars to administer their programs or they are unable to act on strong reclamation legislation in their States. We understand their problems but we cannot understand why a Federal bill cannot be passed to include provisions which will allow us to administer our programs so long as a determination has been made by the Secretary that it is at least as stringent as Federal law. We are concerned that the bill presently is ambiguous with respect to the authority of a State if a State plan is approved. In addition, we believe that the technical provisions in both House and Senate versions of the bill make it nearly impossible for a State to develop a meaningful and workable State program. If these provisions are applied with great rigidity, the response from the States may well be similar to our response to the Safe Drinking Water Act - the Federal Government can keep the program. Some of our specific areas of concern in this regard are set out in the appendix to my remarks for the Committee's consideration.

180 In summary, we hope that the technical aspects of the law will allow the same type of flexibility as exists with the Clean Air Act and the Federal Water Pollution Control Act and that the relationship between the State and the Federal Government can be similar pursuant to this law as it is pursuant to the two laws which I have just mentioned.

180 In closing, I would like to emphasize that the State of Wyoming does not disagree with the purpose of insuring environmental protection and prevention of abuses which have sometimes resulted from strip mining. Our hope is that the national strip mining bill will allow the necessary flexibility to accommodate the geographical, climatological, and economic differences which exist in this country and that the Congress will provide an opprotunity to those States which choose to accept it to administer their own reclamation programs so long as those programs are at least as stringent as Federal law.

181 APPENDIX

181 I. Section 422 of S. 7 and Section 522 of H.R. 2 Comments

181 These sections provide for studies and designation of areas unsuitable for mining on a statewide basis. To become an agreement State, the State must set up a process for such study and designation on private and State lands.

However, the Federal government will set up such a process on Federal lands.

181 Such a statewide study and designation process is not logistically feasible, and would probably fail to provide the detail required to make intelligent decisions as to which lands are suitable or unsuitable for mining.

181 The Wyoming Environmental Act provides an alternative procedure of designating lands unsuitable for mining through the permitting process in that mining permits cannot be issued if the lands cannot be reclaimed. Such a decision is based on a site specific detailed study of the area requested to be mined. This study, contrary to a statewide study, can provide the detailed information required to make an intelligent decision as to whether the area should be mined. Further, the decision as to whether a particular area is suitable or unsuitable for mining will then be based on current profit margins and technology.

182 Recommendations

182 It is recommended that the wording in S. 7, 403(a)(5) be changed to include, " . . . unless State laws provide that permits to mine will not be issued where the land cannot be reclaimed. . . . "

182 II. Section 405(a) and (b) of S. 7 and 505(a) and (b) of H.R. 2

182 These portions require the most "stringent" of the State or Federal laws to apply in an agreement State.

182 Wording should be added to provide that, "once the appropriate post-mining land use is determined, the fact that reclamation to such a land use is less costly to the operator than alternative land uses does not render such requirement less stringent; nor does the fact that it is more costly to the operator render it more stringent. Further, changing of land use after mining to a more intensive agriculture and flatter contours, where it has been determined that this would produce the most appropriate post-mining use, does not render such requirement less stringent."

183 III. Section 408(a)(8) of S. 7 and 508(a)(7) of H.R. 2 Comments

183 Provisions to maximize recovery of the mineral resource should not override requirements for reclamation.

183 IV. Section 409(c) of S. 7 and 509(c) of H.R. 2 Comments

183 This subsection would waive a separate surety on the bond where the applicant demonstrates a history of financial solvency and continuous operation.

183 Recommendation

183 This subsection should be deleted because: (1) The regulatory authority would have to make an evaluation of the applicant's financial history; and (2) the reclamation aspects of the mine may extend for greater than 40 years (despite the limitation to a five-year permit) and thus make it impossible to predict that a company would still be solvent at the end of this time.

183 V. Section 410(b)(4) of S. 7 and 510(b) of H.R. 2 Comments

184 This subsection, specifically the earlier portion, indicates that a permit can not be obtained to mine in areas designated unsuitable for mining. However, the last portion of the subsection implies that mining may take place within such areas if substantial legal and financial commitments have been made by the applicant prior to the enactment of this Act. What constitutes substantial legal and financial commitments? Considerable surface area and mineral properties have already been purchased or leased by mining companies for future mining. By this subsection, a company may be able to obtain a permit to mine on designated lands if the company purchased or leased the land prior to enactment of the Act.

184 VI. Section 415(b)(3) of S. 7 and 515(b)(3) of H.R. 2 Comments

184 This subsection, as written, would substantially relax reclamation standards to the extent that slopes unsuitable for vegetation would be created. Also, it is not clear how adequate drainage can be provided if the amount of overburden is insufficient to restore to the approximate original contour. The loopholes provided in this subsection could eliminate any meaningful reclamation.

184 VII. Section 417(b) and 417(c)(1) of S. 7 and 517(b) and

184 417(c)(1) of H.R. 2

184 Comments

185 These sections require monthly reports from mining companies and monthly inspections by the regulatory agency with subsequent inspection reports to be written and filed in the county, gulticounty area, and state area of mining.In addition, a copy of each report must be filed with the Federal agencies overseeing the State program. This abundance of inspections and paperwork is unjustified and will only serve to divert the focus of attention from care of the land to care of the paperwork.

185 Recommendations

185 Language should be changed to require one full inspection and report by the regulatory authority every three months as was provided in the interim

standards, and only one report per quarter by the mining company for each discrete mining operation. Rather than filing inspection reports in the county,
it is recommended that these reports be made available for public review at the
nearest area office of the regulatory agency.

185 VIII. Section 424 of S. 7 and 524 of H.R. 2

185 Comments

185 This requires any agency, unit, or instrumentality of Federal, State, or
local government, including public utilities and corporations, to comply with the provisions of this Act if such party engages in surface coal mining operations.

185 Recommendations

186 This is an important and valuable provision.

186 IX. Section 501(25) of S. 7 and 701(25) of H.R. 2 Comments

186 The definition of "permit area" is inadequate and does not describe those lands that should be contained within the boundary of the "permit area."

186 Recommendation

186 The "permit area" should include the activities defined under "surface
coal mining operations" (Section 401(5)) and should also include surface areas
overlying proposed underground excavations.

PREPARED STATEMENT OF DONALD ASKINS, APPALACHIAN COALITION, FEBRUARY 24, 1977

187 Gentlemen: My name is Donald Askins, and I am from Jenkins, Kentucky, a small mining town in eastern Kentucky. My friends and I represent
the Appalachian Coalitien, a regional non-profit citizens' organization composed
of state and local community groups from the coal-preducing sections of Appalachia. The Coalition is a response by Appalachian citizens to the widespread environmental and social destruction and suffering that strip mining
has subjected them to for the past twenty years, and continues to subject them
to today. The Coalition reflects the sense of the people that, in the controversy surrounding the issue of strip mining, their voice and their concerns have been largely ignored, particularly in the last five years or so.

187 We thank you for the opportunity to speak here today, and we trust that
this committee will be both sensitive and responsive to the needs of the

hundreds of thousands of Appalachian citizens who new live under the eminous burden of strip mining.

187 At this point in time, after five futile years of continued effort to obtain Federal strip mine legislation, and after a barrage of governmental and private studies, it should be abundantly clear to everyone that the destructiveness of strip mining is unjustifiable. The only quasi justification for maintaining the status quo in relation to strip mining is an economic one, and it can be summed up in the word "profits." These are not profits that enter the cash flow of the locality to enrich the area (stripmined counties are noteriously the most impoverished in the region, in terms of per capita income, services, and other factors that determin the standard of living); rather, a part of the profits enter the pockets of individual operators and stay there, while the remainder flow northward and eastward to augment the wealth of absentee land and mineral owners.

188 Instead of continuing the destruction of the land and a people for the quick and easy energy and wealth that stripping provides for some, logic dictates that we make the more responsible choice of developing a deep mining industry that can provide, safely and over the long term, a reliable source of energy to meet the national need until alternative and renewable sources come on line.

188 It is in this context of an overall national energy policy that we recommend the phasing out of strip mining on slopes above 15 degrees; the phase out should occur over a period of time adequate for increasing underground production to replace the supply lost as stripping is gradually stopped. The timetable which we recommend for the implementation of the phase out is as follows: (Read into the record and appended to this statement).

188 We believe this schedule to be realistic and practical, providing for the orderly and gradual cessation of strip mining over a number of years, during which time the industry can plan and implement a program for shifting production to deep mining.

189 An Appalachian coal industry based on deep mining and guided by an enlightened commitment to safety and the national interest has social, environmental, and economic advantages for the people of the region that this committee can help bring to fruition. To those who live with the ravages of strip mining, the desirableness of moving to deep mining has long been clear; to those who are unfamiliar with our situation, we urge consideration of the most convincing evidence available - come and see.

190 TIEETABLE FOR PHASING OUT STRIP MINING (MOUNTAINS)

190 1 - No permits issued after 18 months (1 1/2 yrs.) after enactment for
mining on slopes of 20 degrees or over

190 **2 - No mining on slopes of 20 degrees or over 30 months (2 1/2 yrs.)
after enactment (with option of mining up to 42 months (3 1/2 yrs.)

190 3 - No permits issued after 30 months (2 1/2 yrs.) after enactment for
mining on slopes of 15 degrees or over

190 **4 - No mining on slopes of 15 degrees or over 42 months (3 1/2 yrs.)
(with option of mining up to 54 months (4 1/2 yrs.)

190 Secretary of Interior does a study on whether an additional year is required for mining in order to prevent or minimize production loss and employment dislocation **Do.

190 This timetable does not apply to situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is
encountered through which the mining operation is to proceed, leaving a plain or
predominating flat area.

PREPARED STATEMENT OF REV.R. BALDWIN LLOYD, FEBRUARY 24, 1977

191 Mr. Chairman and Members of the Committee:

191 I appreciate the opportunity to be a part of this panel to testify before you today. I only wish that the thousands of people throughout this great land of ours who have suffered so the ravages of strip mining could be here to speak to you today, too. For only if you can grasp the enormity of the
evil - the desecration of peoples' lives, of their communities and their land,
can you truly be able to understand the immensity of the problem and why strip
mining must be phased out. If only the devastated lands, the running streams and rivers, indeed all living things that suffer at the hands of the strippers
could cry out to you for their rights to fulfill their created purposes! I have
no doubt you would respond and put an end to these abuses. But much of creation, upon which we are so dependent, can not speak out here before this committee, except through our attempts to speak on their behalf. Yet speak they
will when, as a part of that delicate balance of creation's ecology, they can no
longer serve to hold that balance, and we become cursed for our failure to hear
or see or preserve.

191 My remarks will be addressed to moral questions implied in strip mining.
I know that when we speak about what is or is not moral that that depends on what frame of reference we use; we each speak from our own. I also know that there are many frames of reference upon which people in our society act, and many interpretations of any set of moral values. But this should not prevent us
from addressing the moral questions.

191 My own view of morality is based upon a Judeo-Christian understanding of
Creation. It is one that understands that God created all the heavens and the
earth. It is one that understands with the psalmist that, "The Earth is the Lord's and all that is in it." It is one that understands God created everything
with a purpose to be fulfilled - all of creation, this earthly home of ours. God created the world as one, whole, interconnected, limited, fragile entity -
held together in a delicate balance of interrelationships of all living things.
We as human beings, today as never before, experience and know the interdependence of all people. Also and unalterably we of the human family are
mutually interdependent with all the rest of earth's creation - the fertile, life-giving land, the water, the air and all living things. The special role assigned to us in this interdependence is to be care-takers and to live in harmony with creation's life-giving process. To understand these interrelationships is to know that to hoard, to destroy or to waste the earth is
to destroy life, and that this destruction is wrong and evil.

192 In the words of Warren Wright, a great mountain preacher, "Strip mining is not, or should not be, a debatable subject. It's like debating whether to cut off your hand if you can't get enough money out of it. How do you debate the worth of taking our topsoil and destroying the balance of nature
and dealing with the rights of every generation of people?"

192 What do we usually discuss about strip mining? Our debates on the issue
are full of the economic pros and cons of strip mining, the " energy crisis" and
the role of fossil fuels (coal being the most abundant of these resources). We
hear much about the need to produce more and more energy for more and more technological advancement that benefits fewer and fewer people. We might indeed
ask, in the scale of values, do the benefits really contribute to a more humane
society?

192 Lost in the debate is what is happening to the people and to the environment in which they live. Also lost in this debate is the question of whose world it is that we human beings inhabit. There is no consideration of this earth as God's and no understanding that the fulfillment of our human lives

- indeed that of all living things - has somehow to do with God's intended purpose for all his creation.

192 So the debate about strip mining is a moral question above all else. Strip mining is immoral because of what it does to people and what it does to land and water and forests, and all other living creatures it affects.

192 What are the effects of strip mining in Appalachia? Allow me to give some concrete examples

192 In a region of steep mountains and heavy rainfall, the people of Appalachia live in constant danger of floods and landslides. Some of the heaviest costs of strip mining are off of the actual stripmine sites. Households - whole communities live increasingly in fear every time there are extended periods of rain or of sudden cloudbursts, common to the mountain region.

193 In the Spring of 1975, Eastern Kentucky, Southwestern Virginia and Southern West Virginia experienced devastating floods, not one, but in some areas, three in a period of one month. Hundreds of homes were destroyed or damaged, farms and gardens, highways and bridges were destroyed. The cost was in the millions of dollars. In Eastern Kentucky, two men were drowned when their pickup trucks were swept away. Even Congressman Carl Perkins of Kentucky attributed the worst of this damage directly to strip mining.

193 These are costs left behind - not internalized in the production of strip mined coal. These are costs thousands of Appalachis have had to endure. And with the rapid acceleration we have seen of strip mining in the region, tens of thousands more people are faced with the same ill-fated prospect.

193 Blasting is one of the most obscene aspects of strip mining, creating quite literally the atmosphere of warfare imposed on the people adjacent to strip operations. And warfare waged against a defenseless people and land (the land has a right to fulfil its intended purpose) is immoral, so too is strip mining.

193 Blasting has proved to be a terror in the lives of thousands of people, killing and injuring people and causing serious emotional and mental anguish. Last summer near the Breaks Interstate Park, a huge boulder on the opposite side of the mountain from stripmine operations was dislodged. It crashed down the steep mountainside leaving destruction in its path, killing a young Kentucky couple in their home. The previous year a 700-pound boulder crushed 72-year-old Alice Fugate as she lay in bed in Buchanan County, Virginia. She died two days later.

193 In December, 1975, in Wise County, Virginia, the Clinch Valley College

fieldhouse suffered $5 0,000 damages from flying boulders crashing through its roof. In Norton, Virginia, residents of 13th Street have been pelted by flyrock, had boulders crash into homes and have been buried in dust. The dust was so intense that even in mid-summer windows and doors had to be kept tightly closed. Even that did not prevent dust seeping in to cover furniture, clothes, food, everything with a fine film of dust Children could not play outside, for fear of flyrock and just effects to health. Nevertheless, several residents, including a father and two teenage sons, contracted silicois. None had ever worked a day in a mine or in a quarry.

194 In 1976, a study was compiled by the Center for Science in the Public Interest which charged that stripmine blasting caused $2 00 million in damage to about 10,000 citizens. Over the past 10 years, the damage exceeded $1 .5 billion and has affected 75,000 people. Most of these costs have never been internalized in the cost of coal production.

194 Legal support is hard to come by for those who suffer from strip mining. One medical doctor in Wise County, Virginia, learned what countless othes had learned when seeking legal help. His small cattle farm lost its water supply due to blasting and siltation from a strip operation. even twenty-five years' medical practice in Wise County could not assure him of local legal assistance, even from his lawyer patients. He had to go outside the area to get a lawyer who would be willing to take his case.

194 Virtually every lawyer in Virginia's seven coal counties is retained by strip mine operators or is into stripping himself. The victims of strip mining are for all intents and purposes legally disenfranchised. Few have the money or know-how to gain the legal support they desperately need.

194 For many in Central Appalachia, strip mining sounds the toll of death for their region. "Dying men live by dying streams in the midst of dying mountains. Our homeland is dying."

195 Few today, of whatever religious persuasion, have thought seriously or spoken out about the morality of our relationship to the natural world. This now suddenly becomes for all of us a critical issue for the survival of the world and all of life. And we are caught largely unprepared.

195 Science and technology can be used to help, if used to seek and promote truth and that which affirms the whole creative process of life; or it can be used to exploit, control and disrupt, regardless of the consequences, in order

to fulfill the insatiable appetites of power-and profit-hungry people and corporations. It seems as though we live and behave like we are the last generation that will inhabit this earth, with little or no thought for the legacy we will leave for future generations.

195 There is no wise answer to strip mining but to phase it out as quickly as we can. The moral cost - human and environmental - is too great for it to continue. And to know that we don't have to strip mine at all only compounds the moral judgement placed on our generation. The terrible desecration of human life and land is all but a small percentage of total mineable coal - less than 5% - a mere pittance.

195 For seven years, efforts to end these abuses through congressional legislation have failed - more than time enough to have made the transition from strip mining back to deep mining. Even the coal industry said five years ago that it would take 3 to 5 years to make this transition. This was in response to Ken Heckler's timetable to ban strip mining in three years. But it is clear industry will take no steps in this direction, unless by law it must; for strip mining has greatly accelerated, and deep mining has diminished over the course of these five years.

195 Now, however, we have a new administration and a new congress - a new day, we pray - a change to begin again and to set things right!

A STATEMENT CONCERNING FEDERAL STRIP MINE REGULATIONS

A presentation to the House Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, Hon. Morris K. Udall, Chairman

February 24, 1977

Presented by:

J. W. Bradley

Save Our Cumberland Mountains

Petros, Tenn.

197 Gentlemen, my name is J. W. Bradley, and I am president of Save Our Cumberland Mountains, a citizen's group of the Tennessee coalfield areas. We appreciate this opportunity to present testimony to this committee.

197 Save Our Cumoerland Mountains was chartered to work to improve living conditions in the Tennessee coalfields. We realize that our major economic asset is coal, and we believe that the future of the coal industry is in underground mining. We have witnessed destruction wrought by strip mining in the past. We know from first-hand experience that strip mining is harmful to

the people and property, the environment, and the coal industry itself. We believe that continued dependence on strip mined coal is contrary to a sound, long-range energy policy, and is dangerous to the nation's future.

197 Coal Reserves

197 The total coal reserves in the U.S., according to U.S. Geological Survey estimates, is 1.5 trillion tons. Only 10% of those reserves can be strip mined. The vast majority of U.S. coal reserves can only be deep mined, yet more than 50% of our nation's coal in 1976 came from the strip mines. In Appalachia, only 5% of the region's reserves can be strip mined, yet nearly half of Appalachia's 1976 coal production was in strip mine coal. It is clear that more and more capital and energy is being invested in this method of coal extraction that does no more than skim the cream off the top of our total U.S. reserves.

197 We believe that the Federal governmenths efforts to regulate the strip mine industry are short-sighted, unrealistio, and a waste of time; because, in terms of total coal reserves, strip mining is a small part of the coal industry and will eventually phase itself out anyway. Our concern is the massive amount of damage that it causes in the meantime. We don't believe that any regulations can make strip mining acceptable. We feel the most important thing to do now is think in long-range terms - build up deep mine production while phasing out strip mining in a regulated manor so as to insure we produce enough energy to meet our future needs.

197 Most strip mining in Appalachia is being done above deep mine reserves. The damaging effects of blasting and augering in strip mining make these deep reserves dangerous, and often impossible, to mine. Several people will tell of experiences which prove this. If our goal is energy independence based on coal, we cannot afford to lose any coal reserves.

197 Economic Impact of Stripmining

197 The main reason that strip mining has become a major source of coal is the profit in it for the operator. The problem is, as history has shown, that the public has had to bear the final costs. During the late 1940's when our demand for energy was on the rise and oil became highly competitive with coal, strip mining became an attractive investment. Since it was the cheapest, quickest, and therefore, most profitable method, strip operations began to

recieve most of the large contracts with TVA and other utility companies. This forced deep mining out of the competitive market, causing thousands of miners to lose their jobs. Only a minority of that force could enter the strip mine industry as strip mining takes only one third the amount of labor to produce a ton of coal than in the deep mines. It was during the late 50's and 60's as strip mining grew that eastern Tennessee and other Appalachian areas experienced the highest rate of out-migration. Rows of empty houses in the abandoned coal camp towns are testimony to the economic impact of strip mining. As of 1975, Tennessee's coal labor figures shows it is fairly evenly split - 1,891 deep miners, 1,227 strip miners. It is important to note that one deep mine operation has 450 miners employed - that is more than one third the total labor force of the approximately 200 strip mine operations in Tennessee.

198 A major argument that the strip mine operators give is that the passage of a regulation bill will result in a massive loss of jobs. Just the opposite is true. In 1973 a study by Charles River Associates done for the Appalachian Regional Commission projected that with a ban on contour and auger mining, direct employment would rise by 8,842. Indirect employment would rise by 1,857, and induced employment by 4,157. Dr. William H. Miernyk, benedum professor of economics and director of the Regional Reseach Institute of West Virginia University, states there would be no adverse effects on the economy if strip mining were phased out in Appalachia: "The control of surface mining would cause temporary dislocations in Appalachia, but it would not slow down the long run development of the region. Indeed, I believe that failure to control surface mining in the region is more likely to be detrimental to the development of this area . . . ." (statement to the Committee on Interior and Insular Affairs, U.S. Senate, March 15, 1973)

198 Yet as long as strip mining remains in our counties, it makes any other plan for economic development impossible. The supposedly "flat" land left by a reclaimed strip mine is economically infeasible to develop for any type of industry or housing. Even if the sites were accessible to highways, water and sewage systems and other community services, the cost alone just to prepare the site for construction, makes it noncompetive to other naturally flat areas. Bill Shelton, director of the Program Planning and Support Branch of the Community Division under HUD in Tennessee, stated "In order to build on a filled strip mine site, we would have to be sure it is approximately 95% of the natural compaction. But once you perform the necessary tests and soil compaction, the

development costs would be so high, a developer would rather go somewhere else.
It is erroneous to conclude that strip mining offers us developable land."

199 Host coal areas in east Tennessee, and Appalachia on the whole, are so steep that outdoor recreation and tourism is about the only potential source of new development. But that potential is lessened everytime stripmining scars the mountains and pollutes the streams. A study entitled "Opportunity Costs of Land Use: the Case of Coal Surface Mining" done by Robert Spore, an economist at Oak Ridge National Laboratory, found that the value of strip mining all the coal along the Big South Fork of the Cumberland River in eastern Tennessee and Kentucky would total $1 3,906,000, while the recreational value of that area could total three times that - $4 2,620,000. But a recent study performed by the U.S. Army Corps of Engineers "New River Comprehensive Study - Interim Report" concludes that all of New River and Big South Fork have been polluted by sediment exclusively caused by strip mining. This excessive siltation, says the study, makes the Big South Fork incompatible with a National Recreation Area.

199 Social and Economic Costs of Strip Mining

199 The fact remains - strip mine coal is not cheap coal. The operators just pay a "down payment" on the extraction of the coal, and the counties and Federal government subsidize them by cleaning up the creeks, revegetating the mountains, and repairing the county and state highways. Public and private property damage from stripping is a fact of life in the coalfields. What is more, the taxpayers bear these costs. In 1971, a stripmine slide completely blocked the road leading out of Norma, Tennessee, and cost $7 5,000 in federal, state, and county funds to clean the mess up. The community was completely cut off from the outside for one month. Tennessee state highway 90 has been plagued by damages caused by strip mining near by. It has cost Claiborne County more than $4 5,000 to keep the road from sliding off the side of a strip mined mountain, and still the county is spending lonal and federal taxes trying to correct the situation.

199 Roads are not the only public property affected. The LaFollette Tennessee Resevoir is filling up rapidly with silt from upstream strip jobs authorized by TVA. Since strip mining began in that watershed, 2% of the resevoir's capacity has been lost to silting each year, as compared to .25% per year before stripmining came.

199 Beyond the economic costs of strip mining, the mental and physical "payment" community members have to make are sobering.Floods directly linked to strip mines in the mountains have taken several lives in our coal counties. A flood from a stripped out hollow killed 5 people and destroyed 25 homes in

Clinchmore, Tennessee. In Beech Grove, one man was killed when a flash flood from a strip pit that broke washed him away. Strip mining contributed to the death of 2 children of Valley Creek who were washed away in a flash flood. The figure, "125," is well known in Appalachia as the lives taken in the Buffalo Creek Disaster of 1973. It is no wonder when one doctor in Clairfield, Tennessee continually remarks about the majority of complaints in his clinic being caused from mental and emotional strain. Local residents come to him suffering from nervous trauma as they see the devastation going on around them and worry constantly about the safety of their families.

200 Continuous flooding has ruined miles of productive creek bottom land in Tennessee and washed homes and communities away all over Appalachia. These floods are caused by the unnatural siltation of the streambeds from strip mine run-off. Several studies made of strip mining's impact on stream siltation gives an idea of the extent of the problem. In 1970, a study by the U.S. Geological Survey of the Beaver Creek Basin of Kentucky showed that 30,000 tons of silt was discharged from a stripmined area, while close by, in an area where there was no stripping, only 27.9 tons of silt were discharged annually. A study conducted in the heavily stripped New River Basin area of East Tennessee by the Department of Soil Conservation showed that 1,071,083 tons (or 48,000 truck loads) of soil was being lost annually from stripped areas totaling 7,000 acres:

200 The industry claims that reclamation will solve the silt problem. We say that no amount of reclamation can keep the mud and rock from washing off steep ridges once they are disturbed. More specificly, the greatest amount of erosion, land slides and siltation occur during the actual time of strip mining. Even the best reclamation law cannot deny the laws of nature.

200 TVA And Strip Mining

200 TVA, the world's largest purchaser of strip mined coal, has, as a federal agency, continually subsidized and nurtured the industry.They have contracted with companies to strip TVA owned land.This policy of buying strip mined coal has placed TVA in the position of dependency on the strip mine industry, and forced them to favor strip mine companies in contract negotiation. An example of this is in TVA's treatment of the recent "layer loading" controversy. Layer loading is a method of loading coal trucks so as to disguise the actual quality of the coal. Poor quality coal is loaded in each end of the truck and a small portion of high quality coal is put in the middle of the truck. When coal is delivered to TVA, an automatic sampler takes a sample from

the area loaded with high quality coal. The price of the entire load is based
on that sample, so TVA is tricked into paying premium coal prices for "dirt" coal.

201 A Tennessee strip mine company, Shemco, Inc., was filmed layer loading coal to go to TVA's Kingston steam plant. TVA filed suit against the company, but soon settled out of court with no fines or penalties. Instead they
awarded Shemco a brand new $7 0 million contract. TVA witnessed layer loading
by several companies under contract to them. None of these companies were prosecuted, and all are still under contract to TVA. The coal stripped by these
companies is so bad that they have opened up deep mines to get high quality coal
to blend or layer load with their strip coal in order to sell it to TVA.

201 We urge that TVA's policy toward strip mining and purchasing of strip mine coal be investigated and corrected.

201 Problems With a Regulatory Bill and Enforcement

201 Tennessee, along with other Appalachian states, have found that no matter how strong the regulatory law, the enforcement agencies are weakened and
hindered by state politics. Bureaucratic red tape has stifled enforcement in Tennessee to the extent that no penalty or fine has ever been assessed on any coal operator since the passage of the strip mine law in 1972. We are concerned
that a Federal regulatory bill would merely create another bureaucracy which often times is a stepping stone into the strip mine industry itself. Several instances in Tennessee bear this out. The top officials in the regulatory agencies have either taken positions in the industry or are operating strip mines themselves.

201 - The Director of the field enforcement, Division of Surface Mining, is
now a lobbyist for the strip mine industry of Tennessee

201 - The man that replaced him resigned from the Division to become a strip
miner

201 - The former head of the Water Quality Division of Public Health that also regulates strip mining is now a consultant for the third largest coal company in the world, and testified against his previous division on behalf of
that coal company.

201 We have found that the judicial system is strongly influenced by the industry, especially on a local level. Many magistrates are stockholders or operators themselves, and unwilling to support the enforcement of strip mine laws. In one instance, a strip mine operator obtained a restraining order to keep a State special investigator off his site. That same operator was previously convicted for assaulting a strip mine inspector and fined a total of

$2 5. Tennesse's history of strip mine enforcement has shown us that if an inspector is not bought off, he is run off.

201 Strip mining's influence in politics reaches all the way from the local to federal level. In Tennessee, where the coal counties' unemployment rates are higher than the national level, whose average family income is far below the national level, and whose per studant allocation for education in the entire state was among the nation's lowest, one of our own Senators, who last year earned $80,000-$90,000 from strip mining alone, has continually refused to sit down with us to discuss these problems.

202 Summary

202 In closing, we would like to stress that we are an organization of concerned American citizens, not just a gang of radical environmentalists. We are interested in correcting the adverse effects of strip mining on human, community, and future energy resources.

202 We have been willing to work with local and federal government when there is a need for the services that we can give. We have worked with TVA to expose fraudulent loading practices, helped the Tennessee Department of Health Water Quality Division prevent Amax Coal Company from beginning mining activities that would have been in direct violation of the Tennessee water quality law. Our efforts toward fair taxation have resulted in millions of added dollars for our county budgets.

202 We would like to see the Federal government take advantage of the past mistakes that states have made in regulating stripmining. We feel that based on the facts and arguments offered in this testimony, the only effective way to regulate strip mining is to begin an orderly phase out. It is obvious that strip mining will phase itself out and we will be forced to return to deep mining. The imparative thing to do now is begin that phase out, coupled with incentives for rebuilding the deep mine industry so that no production lag occurs.

202 In Appalachia, America's richest region in coal, the people should reap the benefits of coal production and not be forced to bear the unfair cost as is now happening.

202 Let's make coal a blessing instead of a curse for the people of Appalachia and of the nation.

PREPARED STATEMENT OF JUDY STEPHENSON, DIRECTOR, SAVE OUR MOUNTAINS, INC., FEBRUARY 24, 1977

203 [*]

204 [*]

205 Geologic Potential for Flooding

205 ". . . the surface mining operations can produce substantial modifications to the hydrologic equilibrium, especially if several operations are conducted concurrently in the same watershed. Permitting of surface mining operations is conducted on an individual basis. At present there are no limits on the number of operations and, therefore, the percentage of areal disturbance on a watershed basis.

205 "The two most significant hydrologic modifications that impact the receiving stream channels are increases in the rates and total volume of surface runoff. Sudden changes in these parameters of the hydrologic equilibrium coupled with accompanying increase in sediment concentrations in the surface runoff adversely impact the stability of the stream channels. An adverse chain reaction of down cutting of the channel bottom and undercutting the sloughing of the stream banks can be triggered, which may continue to contribute sediment long after the surface mining operations are complete." (2)

206 slides

206 Landslides from various sources produce millions of dollars of damage in West Virginia each year. This is because "The western two-thirds of West Virginia is a significant portion of one of the major landslide areas in the United States" (3)

206 Connected with the landslide problem is the disruption of the groundwater table when a slide occurs. " . . . there is urgent need for extensive and accurate measurements of groundwater levels in hillslides of various configurations and geologic make-up. The reported research disclosed that severe groundwater conditions can be expected in slide susceptible terrain . . . "

*2*Table I.

*2*OWNERSHIP OF LAND IN WEST VIRGINIA BY CORPORATION

*2*The Four largest land holdred in West Virginia are:

Continental Oil	554,097 acres
Chessie Systems, Inc.	517,636 acres
Norfolk & Western R.R.	441,331 acres
Georgia-Pacific Corp.	377,308 acres
Total	1,892,372 acres

The next four largest landholders in West Virginia are:

Columbia Gas System	326,605 acres
Westvace Corporation	272,262 acres
Eastern Gas and Fuel Assoc.	263,025 acres
Cabor Corporation	136,995 acres
Total	998,887 acres

207 The four largest companies own 36.8% of the land owned by the 50 largest landholders.

207 The eight biggest landholders have 56.2% of the land held by the 50 largest landholders. (2,891,259 acres).

207 5,138,000 + acres are owned by 50 corporations.

207 See attached chart for more detailed breakdown.

208 According the Stanford Research Institute Study, 1972, commissioned by the West Virginia Legislature only 3.8% can be strip mined, the remaining 96 can only be deep mined. "Thus, to obtain 3.8% of West Virginia's coal some 12% of the state's area would be stripped directly" (5) Therefore if one of the coal operators from Virginia who testified before this committee on January 10, 1977 is corrected that stripping disturbs three acres for everyone stripped, then is follows that a total of at least 36% of West Virginia's area will be disturbed to reach approximately 4% of the coal reserves. and with the new techniques the industry reports to have, the area could be even greater than that.

209 SOURCES OF INFORMATION

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209 2. Erosion and Sediment Control, Surface Mining in the Eastern United States No. 1, EPA Technology Transfer Seminar Publication. October, 1976.

209 3. The Development of Design Criteria For Soil Slopes of West Virginia Highways. Dissertation, George A. Hall, West Virginia University, 1974.

209 4. The Growth Prospects of Nicholas County by John P. Blair; Regional Research Insitute of West Virginia University. July, 1974

209 5. Surface Mining in West Virginia. Mid-Appalachian Environmental Service, Charleston, W. Va. The Stanford Report in perspective. January, 1973.

209 6. West Virginia Green, Part I. by Jack Frazier. 1976

209 7. "Clear Fork Residents Fear More Stripping" from the Raliegh Register, August 8, 1976.

209 8. "Another 'Act of God'", from the Mountains Journal, 1976.

Alabama Needs Federal Coal Surface Mining Legislation by Earl Cheatwood *

* Earl Cheatwood is Chairman of the Concerned Citizens for Better Strip Mining Legislation and a member of the Alabama Conservancy. He lives in one of the many affected areas of Jefferson County, Alabama.

A Presentation to the Committee on Interior and Insular Affairs House of Representatives Subcommittee on Energy and the Environment, Hon. Morris K. Udall, Chairman

February 24, 1977

211 BLASTING DAMAGES - RESIDENTS OF NORTH JEFFERSON COUNTY, ALABAMA

211 I. Refusal and Withdrawal of VA and FHA Loans and penalties due to adverse influences of blasting and strip mining.

211 II. Insurance - claim denial and non-renewal.

211 III. Property depreciation and economic penalty of 10% and more - physical damages to houses - strip mining and blasting operations creating an adverse environmental effect on properties.

211 IV. Water supply - Rural areas water supply lowered extremely or completely depleted, impurities in water supply caused by strip mining.

211 V. Completion of I-65 Highway delayed until area involved could be strip mined.

211 VI. Forty-two known civil cases against Strip Mining Companies in Jefferson County, Alabama:

211 a. Fifteen on civil suit (Warrior, Kimberly and Morris) against Alabama By-Products.

211 b. Fourteen on civil suit in Knob Mine Area against Alabama By-Products Company

211 c. Three on civil suit at Morris, Alabama.

211 d. Five involved in civil suit against Strip Mining Company in the Glenwood Community in North Jefferson County, Al.

211 e. Five individuals on civil suit in Cane Creek Road Community in North Jefferson County, Alabama against Drummond Coal Company. This particular case has been under litigation for over four years.

211 Approximately one hundred fifty people have sustained damages but have not as yet filed civil suits against the Strip Mining Companies.

211 VII. Specific damages incurred include:

211 Cracked foundations, cracked or blown-out windows caused by blasting.

211 Lights jarred loose from ceilings in residences, sheetrock, ceramic tile, panelling and other wall coverings cracked and loosened from blasting damages.

211 Basement floors, driveways, walkways, bricks cracked, fireplaces damaged
by strip mining blasting.

211 Built-in cabinets pulled loose and away from walls, china and other dishes and glassware broken as a result of heavy blasting.

211 Definite noise nuisance and dust problems.

212
TILL. EDDLEMAN & HESTER
BIRMINGHAM ALABAMA 35203
TELEPHONE 328-2643
March 30, 1976
Mr. Carl Jolly
P.O. Box 366
Gardendale, Alabama 35071
Dear Mr. Jolly:

212 On May 3, 1974 Cherokee Estates in Warrior, Alabama (formerly known as
Meadowgreen Estates) was suspended from receiving loans by the Veterans Administration. The reason for this suspension of loans was due to the strip mining operations of Drummond Coal Company. According to the letter received from the Veterans Administration on May 3, 1974, the strip mining and blasting
operations are creating an adverse environmental affect on proparties in the area.

212 According to their letter of September 3, 1974, the Veterans Administration made a second inspection of the subdivision and found physical damage to some of the houses. As a result of their findings, the Veterans Administration continued to deny loans in the area.

212 In the second paragraph of the letter, dated September 3, 1974, the Veterans Administration rafers to an economic penalty. "The economic penalty amounted to a 10% reduction in the appraised value of the houses in the area. This amounted to $3,000 on a $30,000 house.

212 For two years we have been unsuccessful in obtaining loans in this area
due to the strip mines. If governmental agencies continue to decline loans in
the Warrior, Alabama area, there will be no means to finance homes if the homeowner is required to relocate.

212 Sincerely,

212 Bill d. Eddlaman, C.P.A.

212 BDE/cw

212 94-673 460

213 [*]

214 [*]

215 VETERANS ADMINISTRATION

215 REGIONAL OFFICE

215 474 SOUTH COURT STREET

215 MONTGOMERY, ALABAMA 36104

215 W. L. Hudson, Builders

215 804 Hilltop Drive

215 Warrior, AL 35180

215 S/D 3032

215 Cherokee Estates

215 Warrior, Alabama

215 This is to confirm our phone conversation of April 1 that we are not accepting applications for new construction in Cherokee Estates. While we do not have specific information on Hilltop Acres we based our conclusion in part on interviews with residents in the general area. If, as you stated, Hilltop is located adjacent to Cherokee Estates I feel sure we would be completted to decline applications in that development also, and for the same reasons. That is, the area is not acceptable due to the adverse influences of blasting and strip mining.

215 If I can be of additional assistance please let me know.

215 KENNETH L. HARVEY, Chief

215 Construction & Valuation Section

216 VETERANS ADMINISTRATION

216 REGIONAL OFFICE

216 474 SOUTH COURT STREET

216 MONTGOMERY, ALABAMA 36104

216 Real Estate Financing, Inc.

216 P.O. Box 3306-A

216 Birmingham, AL 35205

216 225 624

216 Rt. 1, Box 350-M

216 Gardendale, AL

216 We have reviewed the appraisal and regret to advise that the CRV cannot
be issued due to the following adverse location factors:

216 1. Sparsly populated remote area; heavy economic penalty applied.

216 2. Strip mining throughout immediate area of subject.

216 3. Poor real estate market; no improvements.

216 We are returning the plans and specifications.

216 TERRY L. WASHINGTON

216 Appraiser

216 Enclosures: 2

216 cc:

216 W. E. Rayfield

216 c/o Westavia Realty Co.

216 3124 Lorna Rd

216 Birmingham, AL 35216

216 823-0558

217
State Farm Fire and Casualty Company
March 18, 1976
Frank H. and Nellie Sue Mosley
Route 1 Box 70
Morris, AL 35116
Re: Policy # 1 070-5186 Location: Morris, Alabama
Dear Mr. and Mrs. Mosley:

217 On April 25, 1976, this policy will expire. We regret that we cannot extend your coverage beyond that date, but we appreclate your having allowed us
the opportunity to serve you.

217 This advance information is being provided for your protection, and you

are urged to secure other insurance in order to prevent any lapse in coverage.

217 Very truly yours,

217 Mary Helen Hall

217 Underwriter

218
STATE OF ALABAMA
DEPARTMENT OF INSURANCE
MONTGOMERY, ALABAMA 36130
AREA CODE 205-832-6140
March 26, 1976
Mrs. Frank Mosley
Route 1, Box 70
Morris, Alabama 35162
Dear Mrs. Mosley:

218 This will supplement our recent telephone conversation regarding denial of a claim and the non-renewal of your homeowners policy by State Farm Fire and Casualty Company.

218 The company indicates that after their claims adjuster made an inspection of your home the company is now of the opinion that the damage to your dwelling was caused by the foundation settling over an extended period of time.

218 Lour homeowners policy was not renewed because the company indicated that it does not meet the underwriting requirements. The company is concerned about the foundation problem with the kitchen floor. The company also states that although there is a strip mining operation in the area of your home, it still has other properties insured.

218 We have been advised that the decision to non-renew was not made by an individual but was submitted to the company's underwriting committee for final determination. There is no Law in Alabama which gives this department the authority to require the company to continus coverage.

218 Sincerely yours,

218 CHARLES H. PAYNE

218 COMMISSIONER OF INSURANCE

218 BY: Tharpe Forrester

218 Deputy Commissioner

219 Due to damage to my home from the blast to remove coal from the

ground, State Farm Insurance Co. refused to repair my house and I received a letter stating they had cancelled my policy. As a results I am unable to get insurance from any company.

219 All-State Insurance agreed to cover my home with fire insurance only. I
had a home-owners policy with State Farm for several years.

220
VETERANS ADMINISTRATION
REGIONAL OFFICE
474 SOUTH COURT STREET
MONTGOMERY, ALABAMA 36104
Johnny Lee Mayfield
Rt. 1, Box 350-M
Gardendale, Al. 35071
Rt. 1, Box 350-M
Gardendale, Al. 35071

220 As you requested in our telephone conversation of June 23, 1976, the following information is furnished:
Value estimate without economic penalty:
$51000
Economic penalty (reflecting stripmining and location factors): -
9500
VA estimate of reasonable value:
$41500

220 I hope this will be sufficient. If I can be of additional assistance please let me know.

220 KENNETH L. HARVEY, Chief

220 Construction & Valuation Section

221
BRICE BUILDING COMPANY, INC.
GENERAL CONTRACTORS
SIRMINGHAM
NEW ORLEANS
May 19, 1976
Mr. Woodrow Lawley
Warrior Surgical Supply
Warrior, Alabama 35180
Dear Woodrow:

221 We are pleased to submit to you a proposal for performing the following
repair work:

221 1. Remove gravel from existing roof down to smooth working surface.

221 2. Furnish and install 1/2" thick rigid roof insulation.

221 3. Furnish and install a new twenty (20) year specification aggregate
surfaced built-up roof, complete with composition type base flashings.

221 4. Furnish and install new galvanized iron gravel stops

221 5. Furnish and install necessary flashing at roof penetrations.

221 6. Furnish and install two (2) new 12" gravity ventilators.

221 7. Repaint exterior building including concrete block walls, gutters and downspouts and trim, and including interior walls of dining room and office.

221 8. Replace loose concrete block on interior.

221 9. Furnish and install a new aluminum and glass entrance door.

221 We propose to furnish and install the items as listed above in a first class and workmanlike manner, and guarantee all work to be free from defects in workmanship and materials for a period of one (1) year, except the roof which will carry a guarantee of two (2) years, for the sum of Twenty-seven thousand Two Hundred Forty-One Dollars ($27,241.00).

221 We appreciate the opportunity to prepare this proposal for you and look forward to your order to proceed.

221 Yours truly,

221 W. N. Rowell

221 Vice President

222 [*]

223
Cumberland Realtg, Inc.
1012 DECATUR HIGHWAY
P.O. BOX 427
FULTONDALE, ALABAMA 35068
PHONE (205) 849-0153
March 15, 1976
Mr. & Mrs. Herschel Suddeth
Route One, Box 285A
Warrior, Alabama
Gentlemen:

223 I have inspected the property owned by Mr. & Mrs. Herschel Suddeth, located Route One, Box 285A, Warrior, Alabama, and have found the following damage:

223 1. The kitchen floor has settled approximately 1/2 inch.

223 2. The concrete floor in the basement has a large crack across the width of the basement.

223 3. The exterior brick shows numerous cracks running not only through

the mortor joints, but also through the bricks themselves. This is also evident
on the concrete blocks on the interior of the structure.

223 4. The brick on the fireplace in the den also shows cracks.

223 5. The ceramic tile in the hall bath also shows damage.

223 In my opinion, these conditions were caused by something other than natural settlement of the structure and this has depreciated the property approximately $7,500.00.

223 HARRY J. CRANE

223 CUMBERLAND REALTY INC.

224
November 11, 1976
District Claim Office
254 West Valley Road
Birmingham. Alabama 35201
Phone: (205) 942-2000
P.O. Box 2445
In reply please refer to
Mr. Herschel Suddeth
Rt. 1 Box 285A
Warrior, Alabama 35180
RE: Our claim number: 15H06337 H Our insured: Suddeth Date of Loss: 11-20-75
Dear Mr. Suddeth:

224 This is to verify that Herschel C. Suddeth of Rt. 1 Box 285A in Warrior,
Alabama is insured with Allstate Insurance Company under policy #15 916 488.On
2-24-76 Mrs. Suddeth reported a loss to her dwelling due to strip mining
explosion operations near her home. On 2-27-76 I went to the Suddeth's home and
inspected the damages. There were damages to several areas of the basement and
foundation, the front sidewalk, around the chimney and fireplace, and there were
multiple cracks in the mortar of the brick veneer exterior. I explained to the
insured that the policy excludes accumulated damages of this type and that a $5
0.00 deductible is applied to each occurrance. I only prepared an estimate on
one area that the insured felt all occurred at one time. A copy of that
estimate is attached in the amount of $196.00.

224 The insured has made no claim for this amount as of this date but wanted
it for record only. I have been handling explosion claims for over 10 years and
there is no question that there is an accumulation of blasting damage many times
the amount of this one estimate but is not collectable under this policy

contract.

224 We are not qualified to quote a depreciation figure on the dwelling due
to the blasting but it would surely be a considerable amount.

224 If we may be of further assistance, please call.

224 Yours truly,

224 Don Campbell

224 Sr. Property Adjuster

A STATEMENT IN SUPPORT OF STRIP MINING REGULATIONS

(with cencern for the economy of the coal-producing regions of our country)
and A CRITIQUE OF H.R. 2

A presentation to the House Subcommittee on Energy and the Environment of the
Committee on Interior and Insular Affairs, Hon. Morris K. Udall, Chairman.

February 24, 1977

By: Phil Ronan Box 1576 Wise, Virginia 24293

TEXT: 226 My name is Patrick Phil Ronan. I am director of the Office of Appalachian Ministry, of the Catholic Diocese of Richmond, Virginia, located in
Wise, Virginia. I am also a member of the board of directors of the Virginia Citizens for Better Reclamation, Incorporated. (Referred to hereinafter as VCBR).

226 VCBR, Inc., is a 250 member citizens' group concerned with the social,
economic and environmental effects of poorly-controlled strip mining practices
primarily in Southwest Virginia's coalfields. Seventy-five per cent (75%) of the VCBR membership is made up of coalfield residents, forty of whom have experienced some type of strip mine-related damages from landslides and stream
siltation caused by inadequate sediment controls to cracked home foundations, destroyed water supplies and numerous other property damages resulting from poorly-controlled strip-mine related blasting.

226 I would like to make it clear at this point that neither myself nor VCBR
is anti-coal industry, as the membership of VCBR is substantially made up of coal miners and-or relatives of coal miners. In fact, one member of our board
of directors is a UMWA surface miner and would have attended today's meeting except for an illness in his immediate family. VCBR seeks to enhance the job availability in coal mining through the encouragement of deep mining and the improvement of labor-intensive reclamation techniques. n1

226 n1. "Citizens and Industry may clash over mine law changes" Coalfield Progress, Dec. 23, 1976, p. 1.

226 For this and other reasons VCBR has introduced legislation to improve the state's reclamation and mine safety laws. n2 Every effort to get our legislative package out on the floor for a vote was foiled by delegates from Virginia's coal counties. n3 Out of twenty suggested improvements not one, not one got out of Committee in this 1977 session of the Virginia legislature. All that one might say we accomplished is to have these issues referred to "further study" and to prove beyond any doubt that the state of Virginia is totally opposed to improving the environmental and social standards of the mining industry in Southwest Virginia. The prospect of any future statewide office holders to recognize the plight of Southwest Virginia is slim indeed. Already we have experienced one gubernatorial candidate trying to sway testimony of a citizen before this very committee n4 and another candidate for the same office has written the chairman of this committee endorsing a strip-mine permit fee increase in Virginia when, in reality, he helped kill the measure by appearing before Virginia's House Mining and Mineral Resources Committee and asking that they study the matter further. The fee was consequently increased by a paltry 25% when the state Department of Conservation had substantiated a need for a 300% increase. This same state mining committee did, however, see fit to pass a resolution memoralizing the U.S. Congress to let individual states take care of their own strip-mine program without federal intervention or guidelines. This bill, House Joint Resolution No. 270, was co-patroned by all four Virginia coalfield delegates, three of whom voted against improving Virginia's reclamation program, most notably by sabotaging the strip-mine permit fee increase which would have been used to bolster the Division of Mined Land Reclamation's helpless enforcement program. n5

226 n2. "Virginia Mine Reclamation Group, UMW Combine Lobby for Safety, Strip Mine Controls", Kingsport Times, Jan. 6, 1977, p. 8A.

226 n3. "Strip Mine Measures Beat", Coalfield Progress, Feb. 10, 1977, Front Page.

226 n4. "Henry Howell Travels with The Big Boys", The Plow, Feb. issue, pp. 5-6.

226 n5. "Many strip mine law violations go unnoticed", The Coalfield Progress, June 17, 1976, p. 1. I might add that the Virginia United Mine Workers-COMPAC, a lobbying arm for the state's union mine workers, had endorsed and lobbied for VCBR's efforts to improve the state's reclamation and mine safety laws. n6

226 n6. "Virginia Mine Reclamation Group, UMW Combine for Safety, Strip Controls", Kingsport Times, Jan. 6, 1977, p.8A.

227 VCBR and other state and regional groups have identified Virginia as having the most severely handicapped strip mine control program in the entire Appalachian coal mining region. Accelerated strip mining activities in the past few years have left thousands of acres of vital watershed irreversibly damaged due to the antiquated method of steep slope mining so accurately termed "shoot and shove." This is a process whereby the topsoil, subsoil and blasted, fractured rock is simply shoved down the mountain slopes with little regard for public safety, watersheds, stability of disturbed lands, and future land use.

227 I have followed the process of H.R. 25 in 1975, H.R. 13950 in 1976, and the preliminary process of strip mine legislation in both houses of Congress since about 1970. I must confess gentlemen I am astonished to find myself here in Washington attempting to present some information this subcommittee can use relative to strip-mine legislation. I am surprised because it is not my lot to be a lobbyist. I am not at ease in this position. But I am here because many of my friends who have carried this concern of strip mine controls to the state capitol and to Washinton, D.C. in the past, have given up hope or have simply dropped out for the lack of confidence in the system. I must confess I am confused within myself of my participation in this political process on the one hand, and the moral principles I see at stake on the other. My tradition teaches me that we are stewards of God's gifts of creation, not the least of which are our abundant energy resources. As responsible stewards we must take care to see that these gifts are distributed in ways that provide for the basic needs of all people and that the develpment of these resources does not infringe on the basic human rights of people nor mistreat the land from which they come.

227 Specifically, I feel that national regulatory legislation is urgently [*] mineral resources and to protect the people and the lands affected by such production.

227 With regard to the specifics of H.R. 2 I would like to point out a sensitive concern of mine. Under Title V, "Control of the Environmental impacts of Surface Coal Mining", I would like to ask you gentlemen to be sensitive to the human dimensions of striping by including in the title of this section the words "human and", before the word environmental so that Title V should read,

"Control of the Human and Environmental impacts of Surface Coal Mining". I request this of you gentlemen, because too often persons are forgotten as we go about the rationalizations of compromise.

227 When I consider that H.R. 2 is essentially H.R. 25 of 1975, and that the process of H.R. 2 has a history of five or six years, then I am suspicious of its value. I know the regulating of strip mining has suffered compromise in this process. I am further amazed by the presence of the coal industry and their aggressive attempts to water down this bill even further. It is with this attitude that I would like to offer criticism of the bill.

228 In light of the total inadequacy of regulations to control blasting relative to strip mining, and of the havoc wrought on human life and property, I find section 515(b) 15 too ambivalent to address the problem of blasting. Instead, I would recommend the following:

228 A public hearing should be mandatory when blasting is to take place within 2,000 ft. of private man-made structures, water supplies, and public lands., with notices of such public hearings being sent via registered mail to all landowners and/or land dwellers of property within 2,000 ft. of perimeter of permitted area.

228 When blasting is permitted within 1,000 ft. of privately-held lands, and public lands, with man-made structures and water supplies, the state shall be responsible for conducting a pre-mining inspection of each and every structure within this distance to ascertain if any visible damages have been sustained by such structures prior to mining; these damages shall be photographed and copies of the inspection report made available to the property owner/dweller of the inspected property, the mining company involved with the mining of the site, and the state. This procedure will protect the state and coal industry from unfounded damage claims while allowing the citizen a chance to prove that additional damages have occurred, if they have, after blasting by comparing the pre-inspection report with an after-blasting report.

228 All blasts within 1,000 ft. of private man-made structures, water supplies and public lands shall be witnessed and recorded by a state mine inspector.

228 When blasting occurs within any distance of a man-made structure, water supply, and public lands, and the state inspector has probable cause to believe that blasting has caused damage to such property, then he shall shut down the mining operation until a full investigation is made by the state and all possible means are taken to prevent further damages have been taken. This

criteria should also be used when it appears to the inspector that the operation
poses a safety hazard to the public.

228 Mining operation, including blasting, should be forbidden within 50 ft.
of adjoining property without written and notarized consent from the land owner
and/or dweller, or the agency designated to oversee such property.

228 Title V continued.

228 Sec 502

228 (b) 1. All operation, on lands where a State regulates stripping, which
commence operation pursuant to a permit issued on or after the date of enactment
of this Act shall comply with the provisions of the subsections of sec 515
specified in sec. 502(b).

228 (c) 2. All operations should comply with the provision of the above
specified subsections within 90 days of the enactment of this Act.

228 Sec. 503

228 Rather than give the State 18 mos. to submit its program and the Sec. an
addtional 6 mos. to approve it, immediately upon promulgations of Federal
regulations, federal inspectors should enforce the law in every state until the
states are shown to be in compliance. (Cuts out a 2-year delayin applying the
Act.) This entails deletion or amendment of much of Sec. 504.

229 Sec. 507

229 (a) amend line 19: such fee may not be less than the anticipated cost .
. . etc.

229 (b) (4) should include a record of the violations, fines, citations,
suspensions, etc., of all persons named in the paragraph.

229 (b) (5) amend to read that no permit shall be issued if any permit has
ever been suspended or revoke, or it any bond has ever been forfeited.

229 (b) (6) should include the information required in (b) 1 & 2; should
also be broadcast on radio during prime newstime; should identify adjacent
residents and proved written notification to them; and all persons specified in
(b) 13, plus date, time, and location of public hearing; should include the
information required in (b) 7, 8, 10.

229 (b) (11) amend line 19; water availability for agricultural, domestic
recreational, industrial and other uses.

229 (b) (12) delete line 20 - insert "a determination of" the climatological factors . . . "shall be made" etc,

229 (b) (14) delete the material in parenthesis in lines 17-19.

229 (b) (15) amend to read at end of paragraph: in all cases the information above shall be part of the application record.

229 (b) (16) amend in line 6: "any person or his representative"

229 Add a (b)(17) requiring the filing of a blasting plan that details all human and environmental impacts, with specific reference to geologic strataand location of homes, together with proof that the blasting plan will not adversely affect the ground water table.

229 Delete paragraph (c). This section should also require proof of taxes having been paid up-to-date on both mineral and equipment.

229 Sec. 509

229 (a) set bond on a per acre basis - not less than $10,000 per acre.

229 (b) amend lines 9ff to remove "corporate surety" and to restrict operators bonding options to cash, State or U.S. negotiable bonds, or negotiable certificates of deposit of banks.

229 (c) delete in its entirety.

229 (f) delete in its entirety.

229 Amend this section to provide for the establishment of a reclamation fund in which each bond is deposited and earmarked for its specific site.

229 Sec. 519

229 (a) amend to read (line 16) once a week for four successive weeks, rather than five successive days.

229 (c) delete in its entirety - amend to read that no bond will be released until expiration of the full period of the operator's liability.

229 (e) delete in line 3 "total or partial". Possibility of unimproved or unreclaimed lands owned by corporations being condemned by the State and placed in a State Land Trust?

230 Sec. 513

230 (a) amend line 16 by adding after "affected", and the date, time and location of the public hearing. amend line 17-18 "every local newspaper . . . in the county "; if the notice appears in a daily paper, it should appear on the same day of each week.

230 (b) amend to make the hearings mandatory and automatic.

230 Sec. 514

230 (b) amend notification to "all interested parties" to public notification in local papers of general circulation.

230 Sec. 515

230 (b) 1 delete from lines 2 ff "so that reaffecting the land, etc." and substitue "No reclaimed area shall be reaffected in the future."

230 (b) 2 dfine "higher or better use" as a use determined and approved by the local govt. or citizen landowner prior to the beginning of stripping operationg.

230 (b) 8 amend to prohibit impoundments or silt dams in areas exceeding 12 degrees in slope.

230 (b) 9 amend to prohibit augering as being incompatible with safety and efficiency of resource recovery.

230 (b) 12 amend 500 feet to 1000 feet; this sub-section needs to be reconsidered in its entirety from the point of view of the safety of underground miners and the effect of stripping upon recovery of minerals by underground methods.

230 (b) 16 amend to read that reclamation efforts proceed contemporaneously with stripping operation.

230 (b) 18 amend line 12 to "normal flow and quality of water."

230 (c) 2 delete in its entirety.

230 (c) 3A amend to "after approval of the appropriate . . . etc."

230 (d) steep slope to contour

230 (d) 4 delete in its entirety.

230 Sec. 517

230 (c) amend lines 10-11: "not less than one inspection per week by field

inspectors . . . etc." amend line 22: In areas of 26 inches or more annual rainfall, the ratio of field inspectors to permits shall not exceed 10-1, with no more than 1000 acres per inspector.

230 The Act should make provision for an adequate training program for field inspectors.

230 Sec. 518

230 (a) amend lines 18-19: "Such penalty shall not be less than $2 5,000 for the first violation, $50,000 for the second, and $7 5,000 for the third.

230 (f) amend lines 3-4: "a fine of not less than $100,000, or by imprisonment for not less than 3 years or both.

230 (h) amend lines 2-3: "a fine of not less than $100,000, or by imprisonment for not less than 3 years or both.

230 Sec. 520

230 (a) amend line 14: any person or his representative.

231 (b) delete from line 13: "sixty days." This Act should also provide for the protection of citizens from countersuits by operators- perhaps by requiring the operator to prove a malicious intent behind the citizen suit. It should also provide for education of citizenry in procedural matters of filing a suit, and should establish administrative courts to hear first stages of the citizen suit process. Some provision should be made for reducing the amount of bond a citizen must post when seeking injunctive relief and writ of mandamus. The Act should also provide for full-time citizen advocates as suggested by Mark Morgan in Enforcement of Strip Mining Laws.

231 Sec. 521

231 (a) 2 delete from lines 17-18 "or the portion thereof . . . or violation."

231 (a) 3 amend line 13: "not more than 30 days . . . "

231 (a) 3 delete from line 20 "or the portion . . . violation."

231 (a) 4 amend line 7: "a pattern of three or more violations . . . "

231 (a) 5 amend line 10: "and published in a paper of general circulation in the locality of the operation.

231 Sec. 522

231 (a) 6 delete in its entirety.

231 (b) amend to prohibit stripping on Federal lands until after the Secretary's review.

231 (c) delete from lines 18-19: "or to have such a designation terminated."

231 (e) 2 delete from line 4: "surface operations and"

231 (e) 4 question the adequacy of the provision of the paragraph.

231 (e) 5 amend 300 feet to 1000 feet.

231 Appalachian contour stripping presents the problem of reclamation in a situation where steep-slope stripping constitutes the major method used. When this practice is complicated by multi-seam stripping, acidation, sedimentation, and siltation will resalt, unless controls are enforced that will ban stripping on slopes in excess of 20 degrees or require the operator to use the haul-back method or block-cut method of mining. n7 Regulation must prohibit outslope overburden spillage, commonly known as spoil.

231 n7. Coal Age, Oct, 1976 p. 122ff.

231 A good example of Virginia's willingness to legally accommodate the surface mining industry, and in particular the problems of steep-slope mining, is a provision in that statute which gives the operator the opportunity to increase the size of his permit area for "spoil spread", which is another way of saying off-site landslide damage or unauthorized debris disposal. Provision such as this one make legal what might otherwise be construed as property damage and/or a public hazard in the making.

231 Since the vast majority of our coal reserves are deep-minable, I cannot understand why in a time of peace we are mining the easily accessible reserves through stripping instead of conserving these reserves for whatever national emergency may occur. The present rate of production in Virginia is about 60% deep mined coal and 40% stripped. As of January 11, 1977, 182 surface mines employed 1,849 miners, and 310 underground mines employed 10,839 miners. The effect on the economy is greater as far as the distribution of income is concerned, when deep mining is the major method for producing coal. Deep mines employ more miners.

232 Virginia has produced between 34 and 36 million tons of coal consistently since 1965. In 1976 Virginia produced a little over 36 million tons of coal. It is interesting to notethat Virginia is at the equivallent of its 1947 productions statistics, expecially since in 1947 automation was very

limited. I cannot help but question the industry when it say H.R. 2 will put it
out of business. It may require small operators to pool capital in order to
compete with the deep mining industry, I do not believe it will put them out of
business.

232 Conclusion

232 In 1967 the U.S. Department of the Interior estimated that 2,033 square
miles of land had been strip mined for coal. n8 Based on these claculations and
estimates of land disturbance from state agencies and scientific studies, an
estimated projection to the year 2000 of the cumulative land disturbance by
strip mining will mean that by 1980, 4,300 square miles will have been stripped;
by 1990, 6,500 square miles will have been stripped and by 2000, 10,400 square
miles will have been stripped.

232 n8. U.S.Dept. of Interior, Surface Mining and Our Environment,
(Washington, D.C., U.S. Government Printing Office 278-800, 1967).

232 Strip mining has already disturbed an area aquivalent to a mile-wide
strip stretching from coast to coast. By the end of this century, it will have
disturbed an area larger than the combined areas of New Jersey and Delaware. A
mammoth portion of our land will have been given over to this enterprise. n9

232 n9. Spoil, A Moral Study of Coal Strip Mining, By Richard Cartwright
Austin, 1976. Nation Division Board of Global Ministries, United Methodist
Church, 475, Riverside Drive, New York, N.Y. 10027.

232 I must concur with our new administration, that, "negative arguments
have characterized the strip mine debate for too long", and encourage the speedy
passage of good strip mine regulations with a constructive concern for the
development of the coal industry as a whole.

PREPARED STATEMENT OF JOE BREWER, SAFETY SUPERVISOR, DAVIS COAL CO.,
MINGO COUNTY, W. VA., FEBRUARY 24, 1977

234 Hello, My name is Joe Brower. I am presently employed as a Safety
Supervisor for Davis Coal Company, and prior to my present job I was employed by
Buffalo Mining Company during which I was a menber of the United Mine Workers of
America.

234 I have lived on Harrowbone Creek in Mingo County West Virginia for most
of my life, and my home is only a stones throw away from the house in which I
was born.My family and kinfolk have for many generations lived and farmed in
this small valley. They have lived through hardships. Some have prospered, and

some have not, yet clcarly the definition of poverty is in the eye of the beholder - for rich or for poor, the people of Marrowbone Creek are proud of their home, and in this pride their is a richness that escapes any soical definition of the word poverty, or the word prosperity. This richness of pride and deep appreciation for our homeland, the beauty of the hills, the clarity of our streams, the abundance of wildlife is in no way limited to our own area but seems to be a set of values appreciated in many other areas in the mountains of West Virginia, and among many who work in the deep mine industry of our state.

234 It is with these in mind - my family, my community and other communities in the West Virginia mountains - that I come before this committee to offer testimony, as a coal miner and on behalf of coal miners, to inform you that not everything that you hear about strip mining in West Virginia is all peaches and creamative. Although the surface mine industry can go to extravagant lengths to fool the people they cannot fool the deep miner, nor can they fool the people in the hollows and hills.

235 While working for the Appalachian Regional Hospital system, I did extensive traveling in southern West Virginia between hospitals and also in parts of Eastern Kentucky and Southwest Virginia where strip mining is taking place. I personally witnessed the aftermath of the Buffalo Creek Disaster, the worst disaster in the history of West Virginia in which strip mining played the part of death dealer for 125 lives and destroyed millions of dollars worth of property damage and homes. Pittston Coal Companies argument that the flood was a "Act of God" lost out in a 3 million dollar court suit on behalf of the people of Buffalo Creek which proved that it was Pittston's coal slag dam and surrounding strip mine operations which contributed to the disaster. *

235 * Refer to Representative Ken Heckler's testimony, July 18, 1974, page 24094.

235 Many times when I was on the road, the highway would be blocked by slides coming down out of a strip mine site. One time in 1972 between Man, West Virginia and Gilbert, West Virginia I saw a drive-in restaurant pushed over the hill by a strip mine slide. Usually the conditions leading up to such a slide were normal for the time of year, and were related to the amount of rainfall or combinations of rain and snow thawing or ice. It is virtually impossible under

many expectable weather conditions such as rain, of which there is a very high amount in certain times of the year, to prevent slippage of some kind from spoils. The situation is aggravated by the steep terrain of our region. This poses an immediate threat to people living in valley terrain below a strip mine site. On Gilbert Creek in Mingo County in 1972, a summer flash flood caused extensive damage to homes and property. Heavy stream situation flowed directly from strip mines into Gilbert Creek, the stream bed which was already congested with strip mine debris filled at a rate three times faster than normal. Basements were filled with mud and water. People had to shovel mud out of their homes. Even business in the town of Gilbert were flooded. I knew many of the people that were affected.

236 Right now in our area we are witnessing a population boom and is expanding at a rapid rate, as an unprecedented number of people return home from the northern cities of Chicago, Columbus, and Dayton where they migrated seeking jobs and better life styles. They have returned to their homeland to an environment they are harmonious with, to be close to their heritage and roots. As one who left home and attended college and served in the Korean Kar and lived in other parts of the country and the world, I have made my decision to return to Mingo County to build a home and raise my family. I am fortunate to have land passed down from generation to generation to me, yet the great percentage of the people that live in Mingo County are not as fortunate, for 75% of the land is controlled by absentee corporations who are unwilling to sell their surface rights. This has forced a very high population density into small privately owned tracks of land which comprise the remaining 25% of the available land. Many of the people who do live on so called "company land" take out leases which could call for their immediate removal from the premises in the event that the company intends to mine the property. The pattern of land ownership threatens the security of the community, in that it also makes possible strip mining that leads to a dangerous silt build up in the valleys where the population is concentrated. The only solution for communities in the mountains when strip mining moves in is for the community to break up and move out and try to find homes elsewhere, because certainly it would be intolerable to live within close proximity of strip mine blasts and with the threat of flooding and other forms of damage to your home. Their is a great potantial for trajedy in a community such as ours. Families uprooted from their homes could be forced to find housing in a coal region already plagued with a serious housing shortage. An illustration of this difficulty in finding available

housing happened at the community of Rum Creek in Logan County, in 1974. Thirty-two families living on land leased by coal companies were evicted and given thirty days to relocate. Fa milies found it extremely difficult to find available housing in Logan County. The community of Rum Creek was acattered into nearby counties and states. While I present this testimony I am neither condemning or condoning the fact that the eviction was due to a coal preparation plant constructed by Pittaton Mining Company, but that the actions of the company demonstrated the seriousness of the housing problem. The eviction of families from company land did and can happen. Given the predominance of corporate controled land such actions can occur again as strip mining spreads and breaks up small communities which will in all likelyhood have similar difficulties finding homes. Many miners and non-miners and especially odd people are painfully of the problems and the probability of having to relocate if strip mining moves in. Once, strip mining moves in, where can people move? Certainly not the ridge tops where the blasting and devastation is taking place. And in four or five years time when the strip mine operation is over what will these people be left with?

238 Being aware of these problems moat deep miners have serious reasons why they oppose strip mining. They are, at least in Mingo County, totally opposed to stripping of any form. In the summer of 1975 a group of citizens in our area got together a petition to express to local officials our opposition to strip mining. I circula ted the petition among the deep miners in our area, and even had them calling me at home wanting to sign the petition. We obtained signatu res from approximately 90 families constituting over 90% of our community. A majority of these families work in deep mine related activities. The sentiment against strip mining among the deep miners was overwhelming. They wanted to see it stopped, period. These are people the have their reasons why coal production whould be continued and increased in deep mining. They know they are mining better quality coal. They also know that coal mined from strip mines is in many cases of such poor quality, that it must be mixed with coal produced by deep mines. Deep mining with the proper enforcement of federal law is as safe as any job you can get, in Washington D.C. Being familiar with the many different seams of caoal they know that the amount of deep minable coal far exceeds the amount of coal that can be stripped. So why go ahead and strip? Why destroy our communities and our landscape and force trajedy upon us when we could be getting a strong vital supply of coal from deep mines? Why should we create laws which only legitimize what can only cause harm and continues to cause harm to West Virginia, and is right at this moment moment causing harm to

my state and others?

239 Surface miners say there is a demand for the flat land produced by strip mining. To this false and biased argument I must cpunter that as a resident of our mountains, and I must say that ours are no different than Kentucky's, or Virginias, that in the terrain that we have there is already a great deal of flat land on the mountain ridges, flats that have been farmed, and
there is bottom land in the valley areas that we want to keep and use. This bottom land close to our creeks and rivers due to the increased flood hazards [*] being made more and more useless as homesites and farms as strip mining spreads.

239 Finally, one deep mine when opened can last 30 to 50 years. A strip mine which employs one third as many people provides a short run of coal lasting
2 to five years. This is usually low quality coal.

239 Gentlemen of the committee, I appreciate this opportunity to express the
opinions fo fellow deep miners with you on this matter. Thank you. I am willing to try to answer any questions that I can.

STATEMENT OF B. B. PARKER, PRESIDENT, DUKE POWER COMPANY, CHARLOTTE, NORTH CAROLINA BEFORE THE ENERGY AND THE ENVIRONMENT SUBCOMMITTEE OF THE INTERIOR AND INSULAR AFFAIRS COMMITTEE HOUSE OF REPRESENTA TIVES ON H.R. 2

240 INTRODUCTION: Mr. Chairman and members of the Subcommittee, I am B. B. Parker, President of Duke Power Company, Charlotte, North Carolina. I appreciate your giving me this opportunity to appear before this Subcommittee to
present the position of my company on what we consider critical legislation. H.R. 2 which you have before you will, in our opinion, have a profound effect upon the energy production of this country, and particularly the Carolinas, at a
time when energy is perhaps the highest priority issue facing our nation.

240 DUKE'S SERVICE AREA: Duke Power is the nation's sixth largest electric
utility. We provide electricity to 1,150,000 retail customers in the 20,000 square mile Piedmont Area of North and South Carolina which has a population of
approximately 3.9 million people. In addition Duke Power sells wholesale to 38
other incorporated municipalities and to a number of rural electric cooperatives
and private companies. In 1976, 70.6% of Duke's generation was fueled by coal,
25.5% by nuclear power and 3.9% utilized water power. Parenthetically, the economy of our area has been one of the hardest hit in the nation by the current
gas shortage.

241 IMPORTANCE OF COAL: If this country has any thoughts of achieving
close to independence in energy supply, and we are committee to that goal, it will have to come through conservation and the increased use of nuclear and

coal. In the case of coal, we must develop our coal in all regions of the United States. This will require vastly increased production by both surface and underground methods. About one-third of our proven reserves can be surface mined, the only practical way to extract most of this reserve.

241 Presently 55% of the total nation's coal production is by surface mining, and the electric utilities' coal supply is 65% surface produced.

241 PIONEERING ACHIEVEMENTS: Duke Power has had a long-term commitment to energy efficiency and environmental protection. Our coal-fired generating system has for many years been one of the most efficient in the nation, ranking in the top six for the past 18 years. According to industry statistics compiled by the Federal Power Commission, the company ranked first in 1970 and 1971 and second in 1972 and 1973 in terms of the efficiency of its fossil-fuel generating system. Preliminary data indicates that the company ranked first in 1974 and 1975 in terms of such efficiency.

241 Fifteen years ago, Duke pioneered with stringent insulation requirements for customers to be eligible for the all-electric rate. As a forerunner of today's across-the-board spectrum of environmental protection and enhancement, Duke established its full-time environmental department in 1923 and an extensive soil conservation and reforestation program in 1939.

242 NO NEED FOR H.R. 2: We at Duke Power do not quarrel with the goal which H.R. 2 seeks to achieve, that of good restoration of land disturbed by surface mining. We believe in that concept and fully support it. Nevertheless, we oppose H.R. 2 for two reasons, First, we feel it is unnecessary legislation. Second, we are quite certain that H.R. 2 will severely curtail our supply of coal - coal upon which the 3.9 million people we serve rely on for electricity.

242 DUKE'S COAL AREA: Duke Power draws all of its coal from an area comprised of southern West Virginia, eastern Kentucky, and western Virginia. This area is generally called Central Appalachia and this includes most of Mine Districts 7 and 8. In 1976, we burned 14.1 million tons of this Appalachian coal making us one of the nation's largest coal-burning utilities. In 1976, 44% of our coal supply was produced from surface mines in Central Appalachia, practically all of which was in terrain with 20 degrees or greater slopes.

242 At the request of Senator Henry M. Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, the Council on Environmental Quality submitted a report in March 1973 entitled "COAL SURFACE MINING AND RECLAMATION, an Environmental and Economic Assessment of Alternatives," Serial No. 93-8

(92-43).On page 53 the report focuses on surface mining and surface mining reserves in Central Appalachia which is the area from which Duke Power Company receives all of its coal.

242 At the time of the CEQ Report, 87.5% of all coal surface mined in Central Appalachia came from mining on slopes of 20 degrees or greater. The report further indicated that 62.5% of the total strippable reserves in Central Appalachia underlay slopes of 20 degrees or greater. These reserves amounted to some 1.9 billion tons of coal.

242 It should be noted that in this era of ever increasing restrictions relating to air quality, Central Appalachian coal is badly needed to maintain air quality. The CEQ Report at page 54 stated:

242 "The coal produced by both surface and underground methods in the central Appalachia region - which could be most highly impacted by a slope angle prohibition - has the lowest sulfur content of any coal in the Appalachian and central U.S. regions. *** Low sulfur fuel is already in high demand for use in steam electric plants to meet national sulfur oxides air quality standards."

242 It therefore appears that to the degree that the rigid provisions of Section 515(d) of H.R. 2 with respect to mining on slopes of 20 degrees or greater makes such mining unfeasible, a very significant portion of badly needed and high quality energy resources for the nation will be lost. This is of great concern to our company, dependent as we are upon surface-mined Appalachia coal.

244 STATE RECLAMATION LAWS:

244 The states of West Virginia, Kentucky and Virginia from which we obtain our coal all have state reclamation laws and they are being enforced. Excellent reclamation is being accomplished under the individual state laws. In addition, all of these states have strengthened, and we would expect them to continue to strengthen, their reclamation requirements.

244 Conditions vary greatly throughout the nation as to soil composition, topography, climate, and vegetation. It is our very strong opinion that these variances, combined with the present good reclamation and continual strengthening of reclamation laws, dictate that this is today an area in which Federal legislation is not needed and will not work.

244 We further feel that the proposed legislation will unduly restrict, and

as a result, curtail recovery of a badly needed quality energy resource at a time when we are urgently seeking further energy for the nation. As indicated, the states which are our coal sources, are requiring excellent restoration of mined areas. But they do not set the blanket, rigid restrictions contained in Section 515(d) of H.R. 2. They do not because we believe they had the wisdom to realize that coal production, vital to their states and the nation, would be greatly reduced by imposition of these measures. While sound reclamation can be achieved, the practical aspects of mining on Appalachian slopes are such that it is simply not feasible to achieve approximate original contour with no exposure of any high walls which is mandated by H.R. 2.

245 DUKE CONTRACTS: Recognizing the long-term need for environmentally acceptable coal and to obtain a reliable supply, Duke began in the late 1960's to commit to long-term contracts and its own production in order to obtain a supply of low sulfur Central Appalachian coal. Presently, Duke has long-term commitments for 13.4 million tons of this coal annually. Based on the present State Implementation Plans, the sulfur content of this coal is low enough to meet air requirements for our existing stations.

245 In 1976, 41% of the coal produced under these commitments was by surface methods. A larger portion is scheduled to be surface mined in the future. We have polled our suppliers, asking them to analyze how the provisions of H.R. 2 would impact on their ability to meet their commitments in the future. Their general response indicates to us that it will be impossible for them to maintain delivery under our contracts in view of the stringent reclamation requirements of Section 515(d).

246 It must be kept in mind that if this legislation effectively prohibits the mining of much of the coal reserves on Appalachian slopes of 20 degrees or greater, and all of our evidence indicates that it will, the Congress will have committed this very valuable, low sulfur source of coal to nonproduction forever. This is because these reserves, located as they are, cannot, for the most part, be mined by deep methods. It seems to us incredible that this be done at the very time our nation is experiencing a severe energy crisis.

246 IMPACT ON SMALL PRODUCER:

246 Much of the coal produced by surface mining in Central Appalachia is produced by relatively small, independent coal operators. We understand you have received the TVA Massengale Mountain Project Final Report concerning the

Economic Impact of Back to Contour Reclamation of Surface Coal Mines in Appalachia. There is little doubt from that report and from our own data that the small, independent operator will be eliminated by back-to-approximate-original-contour requirements.

246 The massive equipment required will mean huge needs for additional capital which it is unlikely can be obtained, since most independent operators work small areas of reserves. A small operator may have as little as $1 -million invested in mining equipment.It will be impossible for him to finance the large trucks, at $2 30,000 each, necessary to do the hauling required by Section 515(d).

247 There is little doubt that H.R. 2 will doom most independent operators in Central Appalachia. Recovery of coal under such restrictions, if it can be done at all, will have to be by the large energy companies which can muster the required capital for the necessary massive equipment. This is paradoxical when in this time of energy crisis we should be encouraging every possible small energy recovery venture.

247 Also, as pointed out in the Massengale Report, it will for some time be impossible for the nation to produce the trucking capacity which H.R. 2 will necessitate, even if capital were available to mine operators.

247 IMPACT AND ALTERNATIVE ENERGY SOURCES:

247 Because of our great dependence upon Central Appalachian coal, the people of the Piedmont Carolinas may be more critically affected by H.R. 2 than any other populated area in the country. Our Fuel Department has done what we consider an outstanding job over the years in keeping us adequately supplied with coal. They tell me that they simply do not believe that coal will be available from alternate sources to replace the coal which we have counted on from our long-term commitments and which they are sure will be lost by the enactment of H.R. 2.

247 Coal from Central Appalachia is geographically closest to our service area and thereby, utilizes the least amount of transport fuel to reach our system. Movement into the mid-western area or northern West Virginia would result not only in much higher transportation costs, but also in the utilization of additional transport fuel which is oil, the principal energy source for which we are trying to reduce consumption. This also would mean our moving into high sulfur coal, with the consequence of our not being able to meet our state's air quality requirements. Moving to the Great Plains or Rocky Mountain area for

coal would require transporting a product possibly 2,300 miles, utilizing 10% of the energy being transported in transport fuel, again oil.Compounding this is the fact that the lower BTU coals would reduce our generating capabilities and efficiencies.

248 All of this additional transportation would require substantial expansion of the nation's railway rolling stock. The equipment is certainly not available today and will not be for the foreseeable future. Also, implicit in the idea that we could move to other areas for our coal supply is the assumption that after the enactment of H.R. 2, sufficient coal to meet the country's needs will be mined in those areas. This is, to say the least, highly doubtful.

248 Further aggravating our ability to meet our customers' needs are the delays in obtaining licensing for our nuclear stations. Our earlier projections indicated that with our nuclear program, we could hold somewhere around a 14-million ton per year coal burn for a number of years in the future. However, if the long delays in licensing our nuclear projects continue, our coal requirements will certainly greatly increase.

249 COST : We have not attempted to spell out for you the added cost of coal which the provisions of H.R. 2 would impose. We understand that you have had various testimony on this subject. We would only caution you that our experience has been that cost associated with legislation such as proposed by H.R. 2 invariably far exceeds the high end of the scale presented by academic studies.

249 To understand our reluctance to accept statements that H.R. 2 will not significantly affect cost or production, one has only to remember the enactment of the Mine Health and Safety Act of 1969. Testimony then was that neither cost nor production would be changed greatly by that legislation. But between 1969 and 1976, we have seen our average coal prices go from $4.25 to $22.58 per ton and, during the same period, have seen underground coal productivity drop from about 16 tons to 8 tons per man day.

249 Cost, of course, is of great concern to us. Our customers, as well as electric users everywhere, are complaining strongly about the increased cost of electricity these past few years. Fuel is our single largest expense, in 1976 being over four times the total salaries and wages of our electric operating employees.Consequently, increased cost of fuel greatly affects our customers,

and this we deplore. However, it is the sheer availability of fuel, which translates into our ability to supply our customers, that brings us here today.

250 CONCLUSION: We oppose H.R. 2 because we think that it is unnecessary and that it delves into an area that is being and will be properly taken care of by state legislation. We are also quite certain that it will severely restrict our essential coal supply which is vital to the lives and jobs of almost 4 million Carolinians.

250 We recognize there have been past abuses of surface mining. This is regrettable, and we strongly support government-enforced, sound reclamation practices. However, in our view H.R. 2 proposes not sound, but prohibitive, reclamation.

250 Only this past Sunday, Senator Jackson on a televised news press meeting, referred to the fact that the Congress was going to have to mandate the conversion of gas and oil facilities to coal. This cannot be if we are to make surface mining either technically or economically unfeasible. It is an accepted fact that coal must play an important role in our nation's future energy supply. This being so, instead of enacting a bill which will effectively prevent the recovery of large coal reserves, we believe that the Congress should enact legislation which will encourage coal production by all methods.

250 If a surface mining and reclamation act must be enacted, we urge that the provisions of Section 515(d) relation to approximate original contour and no high wall be eliminated and that there be substituted a requirement that the land must be restored to a condition that is as useful or more useful than that which existed prior to mining.

250 Again, Mr. Chairman, we thank you for affording us the opportunity to appear before you and present these views.

STATEMENT OF T. L. AUSTIN JR. HEARING ON HOUSE BILL 2 COMMITTEE ON INTERIOR AND INSULAR AFFAIRS FEBRUARY 24, 1977

252 My name is T. L. Austin, Jr., chief executive officer of Texas Utilities Company, which serves approximately four million people in a 75,000 square mile area in north central and east Texas.

252 These people are some of the best people in the world and it is on their behalf that I am appearing before you this morning.

252 Please do not pass this restrictive legislation which will add to the cost of living of these already over-worked and over-taxed people. Let us remember that these are the kinds of people who pay most of the taxes in this nation. They are the same people who buy most of the products and are,

therefore, hurting worse when prices go up due to inflation. This is particularly true with regard to electric bills.

252 Our company believes strongly in reclamation of the land. We have, and intend to keep, one of the best reclamation programs in the country. We have received many favorable comments from environmental groups, including the Sierra Club, about our efforts to reclaim the land.

252 I know that you ladies and gentlemen of the Congress face quite a dilemma and, frankly, I feel for you. It is no secret that we in industry have been wrong many times in the past and you have had to pass laws to straighten us out. Anyone that says that we are all perfect is making a serious mistake. Our environment needed cleaning up and you people in Congress passed the laws to see that this was done.

253 However, it is now time to question the costs that have been incurred by many of us as a result of the rules and regulations that have been implemented from your laws. Many people are beginning to ask the question "Is cleaning up the last pound of air or the last gallon of water really worth the cost it takes to do the job?"

253 I wish to refer you to an article entitled, "Sewage: The Cost Of Promising You a Rose Garden", which appeared in the Dallas Morning News on February 20, 1977. In this article the cost-benefit question was raised when a sewage treatment plant was designed with such high standards to reach purity that the cost was overwhelming. A thorough cost-benefit assessment was recommended and according to the article "then the consumer will know there is a cost coming in and there is a cost going out".

253 Congress must face this same question or the public is going to turn on you. The backlash against environmentalists and over-restrictive legislation will really put the environmental movement back many years. I personally hope this will not happen and that you in your wisdom will chart a course for this country with strict progressive environmental regulation on the one hand and concern for the economic effects on the consumer on the other.

253 You are all nice people. I am impressed by each Member of Congress I meet face to face and I have a great deal of empathy for all of you in the tough decisions you must make to run this great nation.

253 Let's look at the procedures, hearings, permit procedures, studies, and

approvals that go with this proposed legislation and take a step-by-step look at
the requirements that must be satisfied by the mining operators. I ask you to
place yourselves in my position in overseeing such requirements.

254 (1) Secure Operating Permits - In general, within eight months following the establishment of federal and state programs, operating permits must be issued from the new authority to all operators.

254 Permits are good for only five years.

254 Right to successive renewal exists, but there must be a public hearing
before renewal. The right to successive renewal does not apply to geographic extensions of the mining area.

254 (2) Submit Mining and Engineering Plans - As part of the operating permit acquisition process, all mining plans, engineering equipment to be used,
and engineering techniques must be submitted for review and public inspection.

254 (3) Submit Reclamation Plans - All reclamation plans must be submitted
for review and approval and open for citizen inspection and review.

254 (4) Positive Demonstration Requirement - Operators must positively demonstrate they will be performing all of the things they have agreed to perform.

254 (5) Citizen Suits - Citizen suits can be brought at any time during the
licensing and approval procedures as well as during day-to-day operations.

254 THIS IS NOT A RECLAMATION BILL; IT IS A GUARANTEED RELIEF AND RETIREMENT
ACT FOR ACTIVIST LAWYERS.

254 Each one of the steps is left wide open for certain individuals, who have no responsibility to themselves or the national interest, to delay the process. This is beginning to be a serious threat to our democratic existence.
Surely we must find some better way for our democratic society to make technical
decisions than through the adversary process. It seems to me that the democratic procedures are designed in order to keep our freedoms and to see that
the public's rights and equities are protected in the courts and in the legislative process. But to put technical decisions in the same process exposes
the nation to endless debate without reaching a decision.

255 This proposed legislation provides for more debate, not orderly public
involvement. Rather, it sets up a machinery whereby any self-interested

individual who is accountable to no one, not even the national interest, could
conceivably enter a suit against us on any given day, halting our operations. THIS IS INCREDIBLE - since we have complied with the laws, gone through public
hearings, committed our stockholders as well as our customers financial interests to projects - to have the law provide for anyone, and I mean anyone gentlemen, to bring our operations to a complete halt.

255 While schools were closed, thousands of people out of work, and the economy shut down to a standstill, a federal judge rules that the National Environmental Policy Act had been violated and declared null and viod 93 mid-Atlantic leases granted to oil and gas companies last year. These leases were not only going to net the government $1 .1 billion in revenues, but more importantly, they were going to make oil flow as early as spring from offshore
oil drilling.This is another example where delays are grinding our economy to a
halt. AGAIN, THIS IS INCREDIBLE.

255 Restrictions on the development of our oil resources, together with the
limitation of natural gas resources, leaves this nation with only one alternative. That is to turn to coal and nuclear.

255 Let me first discuss the nuclear alternative. We are already frustrated
with a nuclear licensing process for the same reason we are asking you not to pass this act. The hearings, regulations, permits, revisions, studies, and approvals have turned the licensing and operating permit process into an administrative nightmare that has nothing to do with safety. Other nations of
the world can place nuclear power plants into operation that are just as safe as
ours in a smaller percentage of time than we can do it. If we could cut in half
the time reguired for licensing and construction, it would save our customers millions of dollars.

256 Now let me get to the basic need that the country must have.That is a
greater supply of energy. Louis Rukeyser writing in the Nashville Banner recently said it very well when he wrote, "But let us try to see the picture whole. Conservation alone will never move us toward three essential energy goals:

256 - Keeping our families warm in winter.

256 - Avoiding blackmail in foreign affairs.

256 - Providing the jobs for those who need them.

256 All those goals, in the end, require action on the supply side."

256 The legislation that has been passed in the last four or five years has

actually restricted the supply of energy. Between the Environmental Protection Agency and Nuclear Regulatory Commission, regulations have been issued that have done nothing but cause delay and raise prices. Unfortunately, we have not been able to repeal the law of supply and demand. Any time we restrict the supply with bad management policies or bad governmental regulations, it amounts to the same thing - it raises the cost to the consumer. I will admit that we must have environmental laws. However, when we pass legislation without any regard to the economic effects, then we are not addressing ourselves to the overall national interest and particularly are not concerned with the consumer. He deserves a break.

257 In summary, gentlemen:

257 (1) The energy problems we face are not getting better, they are getting worse for lack of a national energy policy which would have all governmental agencies working together in close concert with industry to get the job done.

257 (2) The proposed federal legislation is not needed. The states have addressed themselves to this problem adequately and are accomplishing the environmental goals pertinent to each particular state. In addition, corporations such as the one I represent, voluntarily go beyond those requirements in saving the land.

257 (3) The proposed federal legislation would impede coal production and slow us down to a standstill. The step-by-step procedure that I have outlined shows the numerous ways that you are shifting the responsibility from the operator to the bureaucracy and certain individuals.

257 (4) The consequences of your action, if this legislation is passed, would contribute to a loss of jobs, a decline in our energy output, possible further dependence on foreign oil - creating an imbalance of payments, and the unwillingness of investors to supply the capital needed for the development of our mining operations.

257 (5) The social impact of an energy deficient country is serious. Without the energy to supply our industry, where will the jobs come from? Social unrest is tantamount to no jobs.

257 For once let's worry about an energy needing human being before he becomes an extinct species; let's put him in the place that God put him in Genesis, the first chapter beginning with the 26th verse

258 "Then God said let us make man in our image after our likeness and let him have dominion over the fish of the sea, over the birds of the air, over the

cattle and over all the earth and over every creeping thing that creeps upon the
earth."

258 God meant for man to have dominion over his environment and over the snaildarter and the other things that people seem to want to put as a more important species than mankind.

258 Without energy we cannot have employment or anywhere near the standard
of living that we have enjoyed in this nation. The dinosaur is extinct today,
so what? An unemployed steelworker in Onio is really hurting more for energy than he is for a dinosaur steak.

258 You are still great people. Not only do I thank you, I feel for you and
the hard decisions you must make in order to preserve and protect this nation's
future and keep it as great as it has been in the past.

SUMMARY STATEMENT OF ROBERT H. SMITH, ASSISTANT TO THE PRESIDENT
OKLAHOMA GAS & ELECTRIC COMPANY ON H.R. 2 BEFORE THE SUBCOMMTTEE ON ENERGY AND
ENVIRONMENT OF THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

FEBRUARY 24, 1977

260 Mr. Chairman and Members of the Committee: My name is Robert H. Smith. I am Assistant to the President of the Oklahoma Gas and Electric Company. Our company services 500,000 customers in Oklahoma and Western Arkansas in an area covering 30,000 square miles. We are an investor-owned utility using natural gas as our primary fuel source.

260 In 1969 OG&E began an investigation to determine the appropriate primary
fuel for additional generating units which it was planning to construct. The results of the investigation indicated that no more generating units should be
constructed for the use of natural gas as a primary fuel source but rather should be designed to use coal, due to the anticipated availability of long term
fuel supplies for the expected life (30 years) of the new units to be constructed.

260 After solicitation and receipt of bids and proposals from coal suppliers, OG&E determined that the most economic source of coal was the large
deposits of low sulphur coal in the Powder River Basin in the State of Wyoming.
In March of 1973, OG&E entered into a long term coal supply contract with Atlantic-Richfield Company (hereinafter referred to as "ARCO") who had plans for
opening a strip mine near Gillette, Wyoming. The agreement provided for the delivery of 3 million tons of coal annually, for a primary term of 15 years, for
use in the Muskogee Units 4 and 5, with an option for an additional 3 million

tons of coal annually for use in the Sooner Units 1 and 2.

261 Under current firm plans, the Company will place a 515 megawatt (MW) coal burning unit into service in each of the years 1977, 1978, 1979, and 1980. Sufficient coal to fuel these units for 30 years is under contract. Longer range plans propose the addition of similar units in the years of 1983, 1984, and 1985 but coal has not been contracted for. When Muskogee Unit 4 enters service in 1977, it will represent 13% of OG&E's installed capacity. By 1985, 49% of the Company's capability will be coal-fired. This year, coal will supply only 8% of the energy generated by OG&E. By 1985, this will rise to nearly 49%.

261 The present minimum lead time to construct a coal-fired unit is six years. Delays in site acquisition, pollution control features, locating transmission lines, environmental impact statements, public hearings and manufacturing have been numerous. The conditions under which coal can be mined in the Western states have not been settled by Congress and the President, so coal availability and cost for units installed after 1980 are indeterminate.

261 The company's current plans assume that the Oklahoma economy will continue to grow and will require an increase in electrical capacity of 7 - 8% per year. The requirements of this program have been difficult to finance. Additional heavy costs to replace capacity will present greater financial problems and must be passed on to the rate payers. It is quite probable that the resultant energy costs would depress or stop Oklahoma's growth.

262 An added expense also is the installation of equipment required by environmental regulations. Since ARCO was prevented from going forward, and our original plans stopped, its costing the rate payers of Oklahoma and Arkansas $9,000,000.

262 Over one-half of OG&E's industrial revenues are petroleum and energy related. In fact, our largest industrial customer is a refinery producing petroleum products. Hundreds of oil and gas wells, as well as pipelines, are large users of electricity in Oklahoma, also agricultural products, including fertilizer, consume large quantities of electric power in our State. To interfere with electric supplies to these customers would in our opinion only reduce availability of energy all over the United States. We cannot conceive of a concerned Congress enacting into law any legislation which would lead directly to a depression and therby deprive the working man and woman of a livlihood.

262 Oklahoma coal resources are estimated at 3.2 billion tons, of which about 400 to 500 million tons are regarded as strippable. In 1974, eight companies produced about 2,375,000 tons from a total of nine mines. The major use of this coal was out of state for coking.

262 Oklahoma coal with a sulphur content of 3.5-4.0%, is unusable under EPA regulations. OG&E has been forced by economics to contract for coal from Wyoming, 1100 miles away, rather than use nearby Oklahoma reserves.

263 Even the use of Western coal has been stymied by Sierra Club suits which have delayed our centract by 2 1/2 years and increased costs by 9 million dollars.

263 The FPC Ft Worth Regional office has projected total Southwest coal requirements for 1984 at 155 million tons based on present electric utility planning. Although this represents a 13 fold increase over 1975 usage, it does not provide for extensive conversion or replacement of gas-fired capacity. The movement of that much coal will require 124 units trains with 100 cars each, making 125 round trips to the coal fields each year. The environmental impact of just the movement of this material through the intervening states of Nebraska, Colorado, Kansas and Oklahoma will be tremendous. The physical condition of the American railroad system is also of concern as to its ability to move such quantities. Yet again, the authorization for coal slurry lines to help move the coal has been withheld.

263 The OG&E Company has 45 existing units, totaling 3599 MW of capacity, burning only natural gas. The installed cost of all of these units is approximately $1 00/KW. The coal burning units now under construction at Muskogee, for operation in 1977 and 1978, will cost $2 40/KW. The cost of Sooner Station, for operation in 1979 and 1980 will be $3 80/KW. The new Sooner Station site has a cooling reservoir large enough for 4500 MW. Impending air quality regulations, however, may limit this site to just the units under construction. The State of Oklahoma's Grand River Dam Authority is seeking authorization for a coal plant in 1981 which will cost $590/KW.

264 The use of nuclear energy to produce electricity would certainly reduce the usage of gas as well as the problems of coal burning. However, due to massive environmental opposition and delays which result in lead times of 10-13 years, OG&E has not pursued the nuclear option. Our present plans call for adding coal-fired capacity at a rate which, by 1985, will see 49% of our electrical energy produced by coal-burning. These planned additions are taxing the ability of the Company to obtain financing. If, in addition, OG&E cannot burn gas under its existing boilers, the prospects look very poor. The OG&E Company, with a total net value of 1 billion dollars today, would have to raise 2 billion dollars just to replace its existing capacity. The economic trade-off for this would see OG&E's total gas reserves of 1.2 trillion cubic feet supplying just 17 days of the national usage of 20 trillion cubic feet per year.

264 The OG&E Company's present plans for adding base-load coal-fired units
will conserve natural gas, and provide maximum economic utilization of current
resources.The precipitate replacement of gas-fired units will waste economic
resources without greatly affecting the availability of natural gas to
out-of-state users. The lowered reliability and resultant blackouts will also
have an effect on the ability to pump the gas out of Oklahoma.

264 Our company is gravely concerned that the legislation now before this
Committee would make it difficult and costly for us to complete our planned
expansion with coal-fired unit.

Statement by H. E. Bond Atlantic Richfield Company

Before the Subcommittee on Energy and the Environment of the House Committee
on Interior and Insular Affairs

H.R. 2, Surface Mining Control and Reclamation Act of 1977

Washington, D.C.

February 24, 1977

266 Introduction

266 Good morning. I am H. E. Bond, Vice President of Atlantic Richfield
Company and Manager of the Synthetic Crude & Minerals Division which is
responsible for developing mineral related projects such as coal, oil shale,
uranium and phosphates.

266 Atlantic Richfield Company has acquired and is in the process of
developing coal resources in several states. The majority of our surface
mineable resources are located in the Powder River Basin of Wyoming. We have
two surface mineable tracts in Wyoming consisting of federal and state leases,
referred to as Black Thunder and Coal Creek. The Black Thunder Mine is now
under construction and Atlantic Richfield expects to begin production by the
fourth quarter of 1977. We have contracts to deliver coal for electricity
generation from Black Thunder to utilities located in the states of Nebraska,
Oklahoma and Texas. We were scheduled to produce coal from this mine by the
last quarter of 1975 but were delayed because of the injunction resulting from
the Sierra Club v. Morton lawsuit. The Company is now attempting to market coal
from its Coal Creek property, and desires to begin construction as soon as the
ongoing marketing/permitting/EIS activities are complete.

266 Need to Develop All Major Coal Basins

266 Before elaborating on specific issues related to the proposed
legislation, I want to stress the urgent requirement to vigorously develop all

major coal basins in this country - including the East, Midwest and West. Oil imports are continuing to increase at alarming rates as most recently evidenced by the fact that imports during the first part of 1977 accounted for 50 percent of our liquid fuel consumption. These high levels of imports result in balance of payments problems (projected to be in the neighborhood of $4 0 billion this year), loss of jobs and a substantial increase in the insecurity of our supplies of energy. We all recognize the need for greater conservation of energy as a means of reducing the demand for energy. In addition, coal, and to a lesser extent, unclear power, are the only near-term energy supply options this country has to attempt to hold oil imports in check.

266 Atlantic Richfield is convinced that eastern coal producers will be hard pressed to satisfy the demands of eastern consumers. Appalachian coal producers from Pennsylvania through Alabama have the potential to modestly increase production from the 1976 level of about 400 million tons; however, there are significant problems that must be solved. The most significant problem is underground mine productivity. In 1969, production averaged 15.6 tons per man shift and has subsequently decreased to 9.5 tons per man shift in 1975. On the other hand, the western coal fields, and particularly the low sulfur federal surface mineable reserves in the Powder River Basin of Wyoming and Montana, offer an enormous potential of indigenous energy supplies because productivity is expected to be in excess of 100 tons per man shift.

266 Atlantic Richfield believes there appears to be a bias in Congress in support of eastern underground mining at the expense of western surface mining because of a lack of understanding that surface mining can be accomplished in an environmentally acceptable manner, including successful land reclamation.

268 No Requirement for Federal Surface Mining Legislation

268 The Company is convinced that there is no need for federal surface mining legislation. Thiryt-eight states, including those that contain the bulk of the federal surface mineable coal reserves, have enacted surface mining and reclamation laws. Montana, North Dakota and Wyoming, have passed stringent state laws that protect the environment and require the restoration and revegetation of the surface as mining is occurring. Under existing fedderal regulations, states with stringent environmental protection regulations can have the authority delegated to them to regulate reclamation activities on federal lands. For example, Wyoming and North Dakota have completed agreements with the Department of the Interior to accomplish this purpose. These agreements are

within established constitutional principles which indicate that the federal government has supreme power over its own lands but has the power to delegate authority to the states.

268 There are people who object to the surface mining of coal because of the history of Appalachia and other areas where reclamation was not required. The environmental damage could have been mitigated if state reclamation laws had been in place. It should, however, be noted that the hilly terrain in Appalachia, having frequent substantial changes in elevation, presents problems in replacing the surface mined overburden which do not occur in the gently rolling topography of the Powder River Basin. We in this country need to accept moderate, temporary environmental disturbances as a part of energy development. The following example is illustrative of the kinds of tradeoffs we need to make in this country in formulating a national energy policy. At our Black Thunder Mine, during full production the Company will produce approximately 20 million tons per year. In doing so, we plan to disturb some 180 acres per year. It will take no more than five years to fully reclaim these lands; therefore, the maximum area we should have disturbed at any one time is about 900 acres. Considering access roads, plant facilities, etc., this number expands to about 1300 acres. Based upon estimates of range management professionals at the University of Wyoming, this would indicate a loss in grazing capability of only 35 cattle. The energy from 20 million tons of coal can provide approximately all the electricity needs for the state of Virginia.

269 Environmental Protection Performance Standards

269 Atlantic Richfield supports the environmental protection performance standards contained in H.R. 2 and, indeed, has incorporated most of them into the Company's mining and reclamation plans for its Wyoming coal properties. It should be noted, however, that federal surface coal mining regulations and some state reclamation laws similar to the environmental protection performance standards are already in existence.

269 Recommended Revisions to H.R. 2

269 The Company's major concern with the Bill is the substantial amount of ambiguous language that is certain to lead to court battles and protracted delays in the development of surface mineable coal reserves at a time when the Nation can least afford further delay. If Congress is determined to enact surface mining legislation, then the Company believes that several key modifications and/or refinements are needed in the Bill so that increased surface coal production will not be eliminated or delayed. Several major

damaging aspects in the Bill include those provisions concerning alluvial valley floors, hydrological balance, designating areas unsuitable for surface coal mining, and surface owner consent.

270 Alluvial Valley Floors

270 The extremely ambiguous language contained in the alluvial valley floor provision is certain to lead to extensive litigation and lengthy delays in efforts to increase western coal supplies. The definition of alluvial valley floor contained in Section 701 of H.R. 2 is much broader than the qualified alluvial valley floor language of Section 510, Permit Approval or Denial. This qualification may permit mining of alluvial valley floors that are considered part of" . . . undeveloped range lands which are not significant to farming . . . " Unfortunately, even the latter definition of alluvial valley floors is not adequately detailed and must specify what is considered "significant to farming." Most of the alluvial valley floors in the Powder River Basin of Wyoming have not bee, in the commonly considered usage, "significant to farming" in the past. If the potential for agriculture has not been considered substantial to date, it is not reasonable to exclude those areas from mining because of possible future agricultural applications. Stated simply, this entire area is not significant to the nation's food resource. As the language reads now, the measure of "significant" is not based on any meaningful production unit but rather on an individual farm. Therefore, the language "farm's" should be eliminated from Section 510(b)(5)(A), line 16, and replaced with the more meaningful language "state's." A simple solution to the problem of ambiguous definition of alluvial valley floors is the definition suggested by the State Geologist for the State of Montana which appears to resolve our concern. (See Attachment A for specific wording.)

271 The Permit Approval or Denial Section states that the proposed surface mining operations, if located west of the hundredth meridian west longitude should "not adversely affect the quantity or quality of water in surface or underground water systems that supply these valley floors." How is the term "adversely" defined? I know that similar language in the National Environmental Policy Act has been defined extremely broadly to include almost any effect.

271 Hydrological Balance

271 Section 510, Permit Approval or Denial, states that the applicant will document "the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrological balance . . . and the proposed operation thereof has been designed to prevent significant irreparable off-site damage to hydrologic balance." Atlantic Richfield is making an extensive effort to

determine the hydrologic consequences of its mining and reclamation operations.
The program consists of drilling water monitoring wells which are pump tested to
determine the porosity (amount of the void space filled with water) and the permeability (ease with which water flows through the aquifer). The program is
currently located mainly on the Black Thunder lease, but there are three observation wells off the lease. The permeability and porosity of both the coal
and overburden is being determined. This program will result in a better definition of the hydrologic cycle.

272 Even with a hydrologic program of this magnitude and detail, the ambiguous language associated with the hydrological requirements of the Bill cause us much concern. What is the definition of the phrase "significant irreparable off-site damage to hydrological balance"? It appears that this provision will result in several years of delay while this matter is litigated.
Section 515(b)(10), Environmental Protection Performance Standards, states that
the producer will replace "the water supply of water from domestic, agricultural, industrial or other legitimate use from underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from mining." Atlantic Richfield plans to replace the water supply of an owner whose water supply it has adversely impacted; however, how do you determine if the contamination, diminution, or interruption proximately resulted from mining? Do you hold formal hearings, who
has the burden of proof, and is there any procedure for judicial review of any
such determination?

272 Designating Areas Unsuitable for Surface Coal Mining

272 Because of the immediate need to expand coal production, this country does not have the luxury of being able to exclude significant coal-bearing lands
from development if the environmet can be protected and the land can be reclaimed in an acceptable manner. Our concern with the provisions permitting
states to ban mining on Federal lands is that the citeria by which the states make these determinations are vague. We wholeheartedly concur with the concept
of local participation in this decision-making process. We suggest that the criteria be better defined to avoid irresponsible withdrawals.

273 As presently worded, the requirements of Section 522, Designating Areas Unsuitable for Surface Coal Mining, "shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of
this Act or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operations are in existence prior to September 1, 1974." Tlantic Richfield recommends that the September 1, 1974 date
be changed to the date of enactment of this Bill to permit those potential operations for which substantial legal, financial and other commitments have

been made to continue development. Valid, substantial commitments could include such items as engineering studies, environmental impact statement, permit application, mine construction, equipment procurement, sales contract, etc.

273 Surface Owner Consent

273 Land owners in the west, and particularly the Powder River Basin, acquired title to the surface lands fully realizing they did not control the vast natural resources of coal and other minerals lying beneath. It was clear when the landowners received title to their land from the Federal Government that the same government reserved the right to mine the coal for the national good. Now, when our nation needs this coal, under this Bill and contrary to all existing law, these same landowners could prohibit the development of the federal coal; thus, the landowners could arbitrarily hinder the national effort toward improving our energy avails. It appears that this provision delegates to individual landowners the custodial responsibility for federal coal which is currently vested in the Federal Government.

274 While I think most of the surface owner consent provision should be stricken from the Bill, a compromise approach would include the following language refinement in Section 714(d) and (e): (d) "The Secretary shall not enter into any lease of such coal deposits until the applicant has agreed to pay in addition to the rental and royalty and other obligations due the United States the money value of the surface owner's interest as determined according to the provisions of subsection(e)." (e) "The value of the surface owner's interest shall be fixed by the Secretary based on appraisals made by three appraisers. One such appraiser shall be appointed by the Secretary, one appointed by the surface owner concerned, and one appointed jointly by the appraisers named by the Secretary and such surface owner. In computing the value of the surface owner's interest, the appraisers shall first fix and determine the fair market value of the surface estate to be established under accepted principle of federal condemnation law." A formal condemnation proceeding need not be utilized since there is no compensible interest that is being taken. In effect, this would amount to a gift to the surface landowner.
(See Attachment B for further explanation.)

275 Conclusion

275 Atlantic Richfield does not believe that federal surface mining legislation is necessary because of the actions taken by coal producing states to effectively regulate surface mining practices. If Congress and the Administration believe this type of legislation is in the nation's interest, H.R. 2 needs, in certain instances, more precise language so as to not invite litigation with its attendant delays of coal mining projects. In addition to the four major points previously discussed, there are several other areas of the

Bill in need of further attention. An example is the requirement that treatment standards for sedimentation require the use of the "best currently available technology" which many will claim means without regard to cost. This country needs to produce all the coal it can from all the major coal basins in an environmentally acceptable fashion. Atlantic Richfield supports sensible reclamation requirements as exemplified in Wyoming's Environmental Quality Act. We are concerned that federal surface mining legislation will delay development of urgently needed low sulfur, surface mineable coal and will exacerbate our oil import dilemma.

275 Thank you very much.

276 Attachment A

276 Additional Comments of Atlantic Richfield Company on the Alluvial Valley Floor Provision

276 "Alluvial valley floors means the unconsolidated stream laid deposits of major river or stream valleys where water availability is sufficient for flood irrigation of economical agricultural activities of 160 acres or more."

277 Attachment B

277 Additional Comments of Atlantic Richfield Company on Surface Owner Consent Provision

277 As an accommodation, responsible developers have no objection to paying fair market value for ranch or farmland to bonafide ranchers or farmers.However, regarding fair market value, it is a general principle of federal condemnation law that the government does not pay for the additional value to land created by the government project, nor is the landowner penalized for any diminution in value created by the government project. Consequently, in determining fair market value the incremental value to the landowner, created in essence by the coal operator's need to obtain the surface owner's consent, should not be considered. The value of the land should be determined under traditional condemnation principles, namely its value solely as farmland or ranchland.

278 Attachment C

278 Additional Comments of Atlantic Richfield Company on the Need to Streamline the Regulatory Process Concerning Federal Coal Development

278 There is an immediate need to streamline and simplify regulatory procedures associated with federal coal lease development. It is now taking about ten years to develop and produce coal from a federal lease. Many

activities and functions need to be accomplished by the developer, federal, state and local agencies. These include, but are not limited to, the following:
environmental and socioeconomic baseline studies; regional environmental impact
statement and possible update; site specific EIS; formulate EIS to satisfy implemention of this Bill, Section 702(d); obtain thirty or more permits, licenses, and/or approvals; evaluate reserves, which includes an extensive core
hole drilling program; perform definitive engineering study; market the coal; construct the mine; procure equipment; and shakedown the mine during initial operations. Acquiring permits is a costly and time consuming effort. It involves dealing with numerous federal, state and local agencies, all of which
have varying and changing requirements which at the present moment nearly defy
proper planning and often are an open invitation to litigation. Their effect is
to at least delay, if not prohibit, projects from going ahead which justifiably
are needed.

STATEMENT PREPARED BY DR. THEODORE J. PLANJE DEAN, SCHOOL OF MINES & METALLURGY, UNIVERSITY OF MISSOURI - ROLLA CHAIRMAN, COMMITTEE ON MINERAL RESOURCES NATIONAL ASSOCIATION OF STATE UNIVERSITIES & LAND GRANT COLLEGES FOR
THE SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT OF THE INTERIOR & INSULAR AFFAIRS
COMMITTEE OF THE UNITED STATES CONGRESS ON HOUSE BILL H.R. 2 "SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977"

-February 24, 1977-

279 MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

279 I am Theodore J. Planje, Dean of the School of Mines and Metallurgy of
the University of Missouri at Rolla, I present this statement in behalf of the
members of the Committee on Mineral Resources of The National Association of State Universities and Land Grant Colleges, an organization which represents over one-hundred institutions of higher education. I am submitting this statement as a part of the Committee on Mineral Resources' continuing support for the provisions contained in Title III, State Mining & Mineral Resources and
Research Institutes, as adopted by the three previous sessions of Congress and
as contained in H.R. 2.

279 The enactment of H.R. 2 will impose upon the mining industry, employing
surface mining methods, a significant increase in the overall engineering activity required to recover a unit quantity of mineral resource in that the earth materials which must be removed to expose the mineral body must be practically moved a second time to accomplish the required reclamation. This increased level of engineering activity will require the industry to expand

significantly its engineering manpower. Furthermore, it has been the experience of the industry operating surface mines in states which have adopted similar reclamation requirements in the past few years that the reclamation costs are averaging some $4 000 per acre, adding significantly to the market price of the recovered mineral product. If the impact of reclamation costs upon our economy is to be lessened, a new reclamation technology must be developed, and this engineering activity will further heighten the demand for engineering manpower by the mining industry, as well as the mining equipment industry.

280 In past hearings relative to this legislation the Committee on Mineral Resources has provided data on the recent and current trends in the production of mining and mineral engineering graduates by our universities, the critical need for an increased supply of qualified individuals in these professions, and has commended you gentlemen for recognizing these needs by including the provisions of Title III in this legislation, as it relates to resolving this country's burgeoning mineral and energy resource production and management problems.

280 For the first time in over twenty years it is unnecessary to take valuable time in a Congressional hearing to explain why one should anticipate energy and mineral shortages to be imminent. The energy supply problems of this past month and trade deficits of this past year have removed any doubt as to the validity of many studies made and reports written over the past twenty years to delineate pending problems. Because of its relevance to the deliberations today, it is appropriate, however, to recite from one such study made some eight years ago by the National Academies of Science and Engineering, Mineral Science and Technology: Needs, Challenges, and Opportunities, a report by the Committee on Mineral Science and Technology of the NAS and NAE dated 1969, quotes:

280 "The state of mineral technology in the United States is wretched. In universities, where the formal training of mineral scientists and engineers occurs and where a sound base of active research should be underway, the picture is indeed dismal. As an example, only 17 departments of mining engineering remain out of 26 accredited departments existing in 1962."

280 For the twenty year period prior to this report and the eight years since universities have received support from the NSF, NASA, AEC, DOD, NIH, and other agencies to promote the education of scientists and engineers and pursue research and development in fields that served to accelerate the consumption of

our energy and mineral resources. In the same time period there was no support for the disciplines concerned with assessment and development of these resources, including mining, petroleum, and natural gas engineering, mineral beneficiation, extractive metallurgy, ceramics, fuel science and mineral economics. The lack of support for these latter disciplines accounts for not only the dismal lack of a sound base for research and development in these fields but the abandonment of educational programs in them by many universities in this country, as the NAS and NAE report noted.

281 The results, as measured in terms of the number of degrees awarded in the energy and mineral engineering fields over the past some twenty years, are depicted in Table I (see pages 4 and 5). The importance of these trends in productivity of graduates in these disciplines has been demonstrated in several instances in the recent past as a consequence of announced national goal for doubling our annual coal production by 1985. This has been documented in several reports of which an article in the April 19, 1975 issue of Science is but an example and in which it is stated:

281 "In some areas, the shortages of manpower are painfully obvious. Last year only about 200 mining engineers were graduated in the entire country, and one coal company tried to hire 60 of them."

281 The coal company in this instance is one that produces about 11% of the nation's annual tonnage. If the other coal producers had a proportionate need to increase their mining engineering staffs, the total national need would have been approximately 550, which from interview schedules and job offers on all campuses offering mining engineering degrees was a reasonable estimate that year. This level of demand appears to be continuing and from Table I it is evident that the supply of mining engineers is still falling far short of this demand.

281 Coal production for 1975 totaled 654,648 tons and increased to 671,200 in 1976, or only a 2.5% increase during a year of mounting energy problems and less than half the annual growth rate required to double production by 1985. If this industry is required to divert engineering effort from its mining operations to reclamation programs, a loss in coal production would have to be anticipated.

281 Because of the coal industries demand for mining engineers over the last three years and the industry's recruiting practices, the metallic and non-metallic mining industries have been unable to compete for mining

engineering graduates. The impact of this legislation upon the production of these mineral commodities, as mined by stripping methods, will be even greater.

281 An often overlooked dimension of our mining and mineral engineering manpower problem is that the majority, almost seventy percent, of the practicing
engineers

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*8*TABLE I
*2*BACCALAU REATE DEGREES AWARDED IN MINERAL SCIENCE
& ENGINEERING, 1956-76
*2*Prepared
by the Mineral Resources Committee of the National Association of
State Universiti es and Land Grant Colleges
2(Data for the years 1957 through 1966 are from the 1969
NAS-NAE Report, "Mineral Science & Technology")

Year	Total	(1) Mining Engineering	(2) Petroleum Engineering	(3) Geological Engineering	(4) Ceramic Engineering	(5) Metallurgical Engineering	(6) Materials Engineering and Science
1956-57	1813	231	650	227	128	577	
1957-58	1982	240	688	225	159	670	
1958-59	2114	239	731	243	177	7 24	
1959-60	1902	242	597	212	169	682	
1960-61	1724	220	455	162	167	720	
1961-62	1480	193	323	136	149	679	
1962-63	1391	1 80	228	88	174	721	
1963-64	1267	144	158	74	205	686	
1964-65	1436	146	174	70	195*	851*	*
1965-66	1351	138	133	117	182*	7 81*	*
1966-67	1148	112	147	51	182	442	214
1967-68	1202	95	182	35	228	451	211
1968-69	1401	137	234	50	252	488	250
1969 -70	1499	124	271	65	244	512	296
1970-71	1435	136	297	73	237	450	255
1971-72	1334	139	310	48	258	340	251
1972-73	1349	159	301	68	274	321	237
1973-74	1283	210	314	56	226	238	257
1974-75	1351	304**	426	78	189	174***	180
1975-76	1363	299**	429	73	172	209***	181
1976-77	1573	432	472	85	189	235***	160
1977-78	1743	480	619	74	201	245	124

[See Table in Original]

282 * Included in data reported for Ceramic and Metallurgical Engineering for these two years.

282 ** From reports of the Bureau of Mines.

282 *** Excludes Physical Metallurgy.

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GRADUATE DEGREES AWARDED IN MINERAL SCIENCE & ENGINEERING, 1967-76

		(1) Mining Engineering		(2) Petroleum Engineering		(3) Geological Engineering		(4) Ceramic Engineering		(5) Metallurgical Engineering		(6) Materials Engineering	
Year	Total	M.S.	Ph.D.	M.S.	Ph.D.	M.S.	Ph.D.	M.S.	Ph.D.	M.S.	Ph.D.	M.S.	Ph.D.
1966-67	754	21	4	51	8	10	0	82	65	239	89	94	91
1967-68	812	29	6	60	17	9	2	94	65	256	99	89	86
196 8-69	874	24	7	87	20	10	2	80	74	253	119	110	88
1969-70	820	35	7	65	15	10	3	91	81	224	113	132	95
1970-71	955	19	10	70	21	10	2	84	74	255	131	172	109
1971-72	953	20	15	71	17	15	9	108	55	242	124	165	117
1972-73	983	25	17	92	16	16	8	76	5 2	234	118	184	147
1973-74	895	32	7	66	18	9	6	80	50	214	107	187	123
1974-75	*	49	7	79	15	12	7	74	43	207	91	*	*
1975-76	*	79	8	*	*	*	*	*	*	67	44	*	*

[See Table in Original]

283 * Data not available. in these professions received their education in the period prior to 1950 and will be leaving the work force in the next fifteen years. To provide experienced personnel for the industry the replacements for these members of the professions should be in the educational "pipeline" at this time. This need was not recognized in a recent study by the National Planning Association in which it was estimated that by 1980 1400 mining engineering graduates would be needed per year and by 1985 this need would be upward to 2200 per year.

283 At the present time the universities in this country offering mining and mineral engineering education are struggling to accommodate present enrollments.

Faculties are small and all are competing intensely for an inadequate supply of qualified individuals. Last year there were thirty-eight known faculty openings in mining engineering and only eight doctoral candidates were awarded degrees during that year. The supply is not expected to increase in a job market where bachelor's degree candidates receive salary offers equal to or higher than prevailing salaries for assistant professors. As mentioned before, mining and mineral engineering education has been neglected for the past two decades, and the existing schools and departments find themselves with inadequate and outdated physical facilities and equipment at a time when all institutions of higher education are being forced to reduce expenditures because of steady-state total enrollments and mounting costs. Inasmuch as all the existing schools and departments of mining and mineral engineering education are operating at or very near the limits of their enrollment capacities in terms of faculties and facilities, the projected requirements for graduates cannot be met without significant financial assistance from sources other than their parent institutions.

284 Gentlemen, I wish to commend you for recognizing these problems and needs in drafting this legislation. The provisions of Title III of this bill are essential, if the prevailing manpower problems are to be resolved and the needs of the future are to be fulfilled. As a representative of one of the member institutions of the National Association of State Universities and Land Grant Colleges, I fully support the provisions of Title III of H.R. 2 and urge that it be retained in such legislation, as may be enacted in this Congressional Session, to regulate the reclamation of surface mining to ensure that the enforcement of the primary provisions will not impair our nation's future production of energy and mineral resources.

THE PENNSYLVANIA STATE UNIVERSITY Testimony for House Subcommittee on Energy and the Environment on Title III - State Mining and Mineral Resources and Research Institutes of H.R. 2 - "Surface Mining Control and Reclamation Act of 1977"

Dr. E. F. Osborn

Professor Emeritus of Geochemistry

212 Deike Building

University Park, Pa. 16802

February 24, 1977

286 Mr. Chairman, members of the Subcommittee, I am E. F. Osborn. I am

currently associated with the Carnegie Geophysical Laboratory. It is an honor to represent the National Association of State Universities and Land-Grant Colleges Committee on Mineral Resources to you. Although I am no longer a member of the Committee, I served as its Chairman prior to my service as Director of the U.S. Bureau of Mines. I am pleased to continue as consultant to this important Committee. I hope my formal testimony which you have will be included in the record of these hearings.

286 The Mineral Resources Committee of NASULGC was organized out of concern for the increasingly precarious financial condition of America's schools of mines and departments of mineral science and technology. Since there is a close relationship between the concerns of our colleges and our national interest in minerals (both energy bearing and otherwise) with respect to conservation, extraction, and their effective use, our Committee has returned to the Congress repeatedly for help.

286 The NASULGC Mineral Resources Committee supports the continuation of the Mining and Mineral Resources and Research Institutes in the Surface Mining Control and Reclamation Act of 1977 (H.R. 2).

287 PURPOSE

287 The purpose of Title III, as it appears in H.R. 2, is intended to provide a more adequate national program of mining, mineral, and mineral fuels research through the establishment of mining and mineral resources research institutes in the various states. The Title will strengthen existing schools of mines and other academic administrative units wherein education and research are carried out in the mineral engineering fields. Where a state does not now have such a school or administrative unit, this Title will encourage development of an institute by the promise of possible funding two years after its establishment. Research in the institutes would be conducted in the exploration, extraction, processing, and development of mineral and mineral fuel resources. Title III also provides for the training of mining and mineral scientists, engineers, and technicians.

287 LEGISLATIVE HISTORY

287 Title III is identical in purpose and similar in content to the Mining and Minerals Resources Research Act passed by the Congress and subsequently vetoed in 1972. It was included as part of the surface mining legislation passed and vetoed during the 94th Congress. The Committee reaffirms its support

of mining and minerals research in the context of the Surface Mining Act and in
the context of the current dependence of the U.S. on foreign energy resources.

288 NEED

288 The need for mining and mineral resources centers is documented in Senate Report No. 92-266 that accompanied S. 635 (amending the Mining and Minerals Policy Act of 1970). The Report (the pertinent provisions of which are
attached) focused upon the expanding consumption of non-renewable resources in
the United States; the failure of the U.S. to develop mineral and mineral fuel
technology at a rate fast enough to cope with increased consumption; and, finally, the current inadequate and decreasing supply of trained manpower in the
mineral engineering fields.

288 We have learned dramatically of the consequences of dependence on foreign powers for one of the basic mineral fuels, petroleum. Our dependence does not stop with petroleum: In 1972, minerals and mineral fuels accounted for
a $7.5 billion deficit in the U.S. Balance of Trade, an increase of $4 billion
in two years (as compared with only a $2 .3 billion increase over the ten-year
period of the '60's). The thrust of Title III is not an immediate solution to
the energy crisis as a whole or to the specific problems of extraction, reclamation, and processing of minerals and fuels, in particular. Its purpose
is to assure that the U.S., in the future, will have the research base, the technological capability, and the qualified manpower to avoid repeated crises of
mineral supply and technology. Only thus can it avoid disadvantageous dependence upon foreign sources for these items so critical to its domestic welfare. The need for a minerals resources research act is supported in the Final Report of the National Commission on Materials Policy, June 1973; and again in "Mining and Minerals Policy, 1973," Second Annual Report of the Secretary of Interior under the Mining and Minerals Policy Act of 1970.

289 The NASULGC Committee stresses the urgency of sustaining grants (on a
dollar-for-dollar matching basis) and other federal financial assistance for mining and minerals research and training centers to ward off the progressive weakening of mineral engineering disciplines in U.S. colleges and universities.
Neither industry, the States, nor the Federal Government provides sufficient support to halt and reverse present downward trends in research and research manpower at a time when both should be expanding to meet present deficiencies and growing needs.

289 SECTION-BY-SECTION ANALYSIS

289 Section 301(a) authorizes the appropriation for FY 1978 of the sum of

$200,000 for each participating state; for FY 1979, $3 00,000; and $4 00,000 for each fiscal year thereafter for five years to assist the states in establishing and maintaining a mining and mineral resources and research institute at a public college or university at the state which has a school of mines in existence at the time of enactment. For the purposes of this Title, a school of mines at a college or university is an administrative unit, such as a school or department, wherein education and research are being carried out in the mineral engineering fields.

290 The House-Senate Conference Report on S. 635, which passed both Houses in 1972, provided for an institute in each state, providing only that federal monies be matched on a dollar-for-dollar basis with non-federal funds. Title III retains that requirement and adds two requirements that institutions must meet in order to qualify for federal funds.

290 1. Title III requires that to qualify for federal support a school of mines shall have been in existence for at least two years. The purpose of this provision is to assure that there shall be sufficient initiative and development at local levels to justify federal support.

290 2. The legislation requires that each qualifying institution employ at least four (4) full-time faculty. A school, to qualify, should have an adequate number of faculty to provide coverage of either a major field of mineral science and technology or of the broad field of mineral engineering. Some institutes may specialize in one field, such as mining engineering, extractive metallurgy, petroleum engineering, or geological engineering, because this field is of particular importance to the mineral industries of that region of the Country. Other institutes may give mineral engineering students a broader training and do research in more general areas of mineral science and engineering. In either case, a minimum number of faculty are needed to insure adequate coverage of the subject and viability of the programs.

291 The Advisory Committee on Mining and Minerals Resources Research (Section 309) is the agency responsible for determining whether or not an applicant college or university has an eligible school of mines under terms of the Act.

291 Section 301(a)(1) provides for non-federal matching funds on a dollar-for-dollar basis.

291 Section 301(a)(2) enables the governor of a state to choose between competing qualified colleges in the state if there has been no designation to the contrary by act of the legislature of the state.

292 Section 301(a)(3) provides that if there is no public college or university with an eligible school of mines in the state, according to requirements established in Section 301 of this Title as evaluated by the Advisory Committee, the Advisory Committee may allocate the state's allotment to an eligible private college or university.

292 By establishing criteria for eligibility and by invoking the Advisory Committee to evaluate the eligibility of each institution by applying the criteria, the bill provides that only qualified institutions become eligible for federal support.

292 Section 301(b) describes the duties of the institutes.

292 Section 302(a) authorizes the appropriation of $1 5,000,000 for FY 1978 and for each of the seven (7) succeeding fiscal years (the sum increases by $2 ,000,000 each year after the initial year) for the institutes to meet expenses of research and demonstration projects of industry-wide application which would not otherwise be undertaken. Research related to the mission of the Department of Interior is encouraged.

292 Section 302(b) establishes elements that should be included in grant applications.

293 Section 302(c). The Secretary is encouraged to use the facilities of the institutes for research authorized by this section.

293 Section 302(d). Selection of projects should be based on merit of proposals and need for knowledge proposal is intended to produce.

293 Section 302(e). Grants may not be used for the purchase or lease, rental or construction of buildings.

293 Sections 303 and 304 provide for the use of funds under this Title and charge the Secretary with the proper administration of the Act.

293 Section 305 is a disclaimer of federal control over a college or university or any alteration in the relationship of a college or university to a state.

293 Miscellaneous Provisions

293 Section 306(a) directs the Secretary to cooperate with other federal

agencies, state agencies and private institutions to eliminate duplication and
to coordinate mining and minerals research programs.

293 Section 306(b) is a disclaimer of any authority or surveillance over mining and mineral research programs conducted by any other federal agency.

294 Section 306(c) permits contracts or other work under this Act to be conducted without regard to Sec. 3684 Revised Statutes (31 U.S.C. 529) when the
Secretary finds advance payments of initial expenses are required to facilitate
the progress of the work.

294 Section 306(d) contains a provision that any patents or processes developed as a result of a grant pursuant to this Act will be available to the
public unless such disclosure would not be in the interest of national defense.

294 Section 307 provides for the establishment, by the President, in an agency and location as determined by him, of a center or clearinghouse for cataloging current and projected mineral research activities.

294 Section 308 provides that the President may, where necessary, clarify agency responsibility and direct coordination of research authorized by this Act.

294 Section 309(a), (b), and (c) provides for the establishment of an Advisory Committee. The membership, duties and responsibilities, as well as payment and reimbursement of its members, are set forth in detail.

295 Cost

295 The maximum federal expenditure for this program in Fiscal 1978 is $25,000,000. The cost would reach $2 5,000,000 only in the event that each of
50 states has an institution that has research and education programs in minerals engineering and in the event that dollar-for-dollar matching is available in the several states. Information provided to the Land-Grant Committee indicates that fewer than half of the states will qualify for their full entitlements under Section 301. The Committee estimates an actual expenditure of less than $7 ,000,000 which would provide for a maximum of 35 institutes in 1978. There would be an appropriate reduction in the use of research funds authorized in Section 302. The total cost of the program in FY
1978 should not exceed $17,000,000.

295 Authorized expenditures in the bill follow:

1978	$25,000,000
1979	$32,000,000
1980	$39,000,000
1981	$41,000,000
1982	$43,000,000
1983	$45,000,000

295 Committee Recommendations

295 The Committee on Mineral Resources of NASULGC commends Title III to the House Subcommittee on Energy and the Environment. The current shortage in mineral fuels and the consequent energy deficiency are parts of a pending crisis relating to nearly all mineral resources. With this legislation, the Nation will take an important step toward the goal of national indepence - not just with respect to energy, but with respect to all of our non-renewable resources.

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TESTIMONY

Before the Subcommittee on Energy and Environment of the Committee on Interior and Insular Affairs February 24, 1977 BY Charles L. Hosler, Dean College of Earth and Mineral Sciences The Pennsylvania State University University Park, PA

301 Mr. Chairman, members of the Committee, I would like to thank you for the opportunity to appear before you to testify on behalf of the advisability of including in H.R. 2 a provision for state mining and mineral resources and research institutes.

301 One would have to maintain a rather detached stance from what is going on in the world to be unaware of the problems facing our society relating to mineral resources of all sorts. We have been particularly aware in recent years of those mineral resources which contribute to our energy supply. For the past 25 years faculty of the colleges concerned with mineral resources have been pleading the case for expanded research efforts and have been predicting the very events which we see taking place today - higher dependence upon foreign mineral resources and crippling shortages and unanswered questions about the environmental impact of mineral extraction and processing. At Penn State our mission has been and continues to be to train people to explore the earth, extract minerals from it, and process these minerals with minimum environmental disturbance. At the same time we carry on research aimed at expanding our knowledge and for the purpose of educating students about problems of mineral exploration, extraction and processing, and have been one of the largest contributors to the pool of trained people in these fields in the United States. This has not been an easy task particularly in view of the waxing and waning of enthusiasm for these pursuits on the part of society.There also is severe competition for resources within universities. Academics in mineral fields make their best case but are not very powerful in terms of numbers. Support for

research has varied widely from year to year and the favorite topic for research has varied just as widely as the mood of the society has changed. It has been very difficult to sustain a critical mass of faculty and students in some areas or to sustain long-term and difficult research with this widely fluctuating support.

302 Having said this it would be expected of me that I would be in favor of anything which might benefit my organization financially or would contribute to its stability. I do not deny this motive. However, the same time I appear here as a patriot who sees no shame in wanting our nation to continue to be strong and prosperous. The strength of the U.S.A. is not based upon the number of people we have, a mere 6% of the world's population nor can it be based any more on superiority of resources. Our strength and prosperity stems from the initiatives in application of our intellects to the problems at hand. The universities play a dominant role in developing and channeling that intellect into productive areas vital to our survival. If you agree that the availability of mineral and energy resources is important to America then I don't see how in good conscience we can have energy and mineral policies that do not specifically provide for nourishment of university research and training in mineral fields. I don't think any serious student of our economy would deny that increased efficiency in utilizing our limited mineral resources is of vital importance. Yet, we seem to go from feast to famine and do not begin to provide the needed resources until we run out of something or the economy is thrown into turmoil by an embargo or shortage.

303 In the field of agriculture the desirability of sustaining research which would guarantee an abundant supply of food for our nation and the world was recognized many years ago when the land grant colleges and universities were established. In spite of the fact that the economy is equally dependent on mineral exploration, extraction and processing, no similar recognition has been forthcoming for these fields. Even the provision of fertilizer to sustain our agricultural effort hinges upon continued proficiency in the mineral industries. State governments have been hard pressed to sustain their support of education and research in these areas perhaps due to somewhat narrower interests and concern than those of the nation as a whole, and also because mineral resources do not begin and stop at state borders. There is no doubt that at the present

time there is much money for energy research available to the mineral oriented colleges and universities in the United States. However, the problem is more complex than just the amount of money available. The moneys that are being granted at this time are largely for those immediate goals and for those goals that are considered by the many government agencies to be most appropriate for their particular mission. Many are for relatively short-term intensive efforts which cannot readily be accommodated in an academic setting. For example, a six- or nine-month crash study does not lend itself easily to involvement of graduate students or teaching faculty. Without meaning to denigrate those who determine what research the government will and should sponsor, neither they, nor industry, nor universities have a monopoly on good ideas. The greater the number of people whose attention is directed toward a problem area, the higher the probability a solution may emerge.The university is the place where the focus is on new ideas and where the greatest willingness to take risks resides.
There is very little provision in government programs for sustaining basic research and investigation about entirely new and novel things which may be our salvation in the future.Much of the present effort is in the direction of development rather than research. ERDA does not have a program of sustained support of university research. Likewise, there is too little interest in sustaining training of undergraduate and graduate students in these areas as an investment in the future. While one cannot minimize the need to obtain quick results and develop the ideas already put forth, we must nurture the environment from which the next generation of ideas can spring. We wouldn't be in the present predicament if more attention had been paid to mineral and mining research 25 years ago. When the next emergency arises one will have to look for trained people and ideas to put out the brush fires. If our present crash program focuses solely on today's problem and does not provide adequately for long-range research and training, we may reach a time when neither firemen nor equipment come to put the brush fires out. What the colleges involved with mineral exploration, extraction, and processing need the most is support which would guarantee a continuous base level of effort that would assure availability of trained personnel and a reservoir of ideas to carry us into the future. Industrial support has not met this need.

304 Therefore, it is my purpose today to strongly urge that state mining and mineral resources and research institutes within the universities of America be sustained by some base level of federal funding to be matched from state or university sources. I would hope that you would promote authorization of such

funding by this Congress.

Statement of William D. Copeland Dean of the Graduate School Colorado School of Mines Submitted to the House Committee on Interior and Insular Affairs
Subcommittee on Energy and Environment Concerning Title III, H.R. 2 February 24,
1977

305 Mr. Chairman and Members of the Subcommittee:

305 I shall speak to Title III, "Mineral Institutes" of H.R. 2. The purpose
of my testimony is to explain the need for research and the training of research
personnel in mineral and fuels development.

305 It is my contention that this nation has failed first to advance satisfactorily its fundamental mineral technology and second to provide a sufficient number of people trained in minerals research. Until recently, the
vast majority of people in the United States has believed that our nation was blessed with an inexhaustible supply of minerals and fuels, and hence, that we
did not need to worry about sources of supply.

305 One can find in recent reports of prestigious committees, lists of top
priority research needs ranging from new exploration methods to acceptable utilization of the final products. It is revealing to discover how similiar these lists are to those proposed by the Advisory Committee on Minerals Research
to the National Science Foundation in 1956, twenty one years ago.

306 The training of the research people who can confront these problems is
at an equally critical state. At dinner last Friday evening, a department chairman from a similiar institution and I were discussing the national supply
of young professors of mineral processing. We were able to name six and it is
unlikely that we missed an equal number since we know the handful of older professors nationwide who can serve as advisors. It is instructive to speculate
on the fate of our space program if in 1959 we had only a dozen young people in
electrical engineering.

306 To broaden the focus to the whole mineral field, let us consider the number of young researchers graduating from the nation's graduate schools. In
the last year for which HEW has provided complete national statistics on graduates, 298, 148 graduate degrees were conferred. Of these only 646 were in
mineral engineering fields; less than 1/4 of 1%. If we add to this number all

of the graduates in any earth science field, our total will still be less than
1% of the research degrees granted.

306 The need for more of these graduates is underscored by the fact that it
is not uncommon for one of our graduates to receive a salary offer from industry
which is higher than we can afford to pay his or her professor. This compounds
the problem by making it more difficult to retain good faculty members.

306 Traditionally, the universities have provided two vital roles in the
advancement of our nation's technology: fundamental research and the training of
research manpower. The normal pattern of development has been the fundamental
discovery in the university laboratory followed by a significant incubation
period until the concept was developed and applied, and new processes or
products were available to the public, We do not have the luxury of that
leisurely pace today; the discoverers and the developers must be working
together. It is for this reason that merely throwing money at these problems
will not provide the timely solutions. The key is the intelligent application
of research funds to organizations which can pull together all of the varied
expertise which is required. This specifically includes the laboratories of
private industry and governmental agencies as well as those of the
universities.

307 To use the subject of this proposed legislation as an example, the
associated problems fall into several broad categories:

307 1) Exploration for and mapping of new coal fields,

307 2) Reserve estimation,

307 3) Mining, processing and transportation technology,

307 4) Efficient and clean utilization of coal,

307 5) Health and safety,

307 6) Reclamation of mining lands,

307 7) Socio-economic consequences of development, and

307 8) Economic consequences of regulations.

307 No signle institution or agency has the broad expertise to tackle both
the fundamental and applied problems in each of these categories. To illustrate
the extent of the required cooperation, there is within a seven mile radius of
Golden, Colorado, where the Colorado School of Mines is located, a complex of
mineral laboratories which have grown up around our institution. In addition to

the academic laboratories at Mines, this complex includes the laboratories of nine private companies and four governmental agencies. If this group were encouraged to work together on the above set of problems, we would still have to
draw on expertise from Colorado State University, The University of Colorado, and the University of Denver Research Institute. In particular, we would rely
on CSU for their experience in land reclamation.

308 For these reasons, it is our opinion that the nation needs a few well-conceived centers which can gain the cooperation of all those organizations
which have the varied expertise which the solution of these pressing problems will require. The mineral engineering schools with their established satellite
industrial and government laboratories, plus the land grant institutions with their established networks of extension services would appear to make ideal teams for the goals expressed in this proposed legislation.

309
Colorado School of Mines
golden, colorado 80401. (303) 279-0300
March 3, 1977
The Honorable Dan Marriott
1610 Longworth Building
Washington, D.C. 20515
Dear Mr. Marriott,

309 On Thursday, February 24, 1977 you asked if I would give you a list of
mineral engineering schools which might qualify as centers in the sense of the
term as I used it in my testimony. The criteria would be a significant mineral
complex which has developed around the school because of its presence.

309 My nominees for centers are as follows, moving from east to west:

309 Virginia Polytechnic University

309 West Virginia University

309 Pennsylvania State University

309 University of Kentucky

309 University of Alabama

309 Michigan Technological University

309 University of Missouri - Rolla

309 South Dakota School of Mines

309 Colorado School of Mines

309 New Mexico Institute of Mining & Technology

309 Montana College of Mineral Science

309 University of Arizona

309 University of Utah

309 There are of course, those who would argue that I have left out some obvious candidates. In fairness to them I am enclosing a copy of a report of mineral education enrollments compiled by the Bureau of Mines. This gives a good picture of which schools are presently active in this area.

310 After reading of the latest mine disaster, I feel compelled to add that the lack of national interest in mining safety research is appalling. There are so many important projects in this area from the elimination of respirable coal dust (the cause of black lung disease) to automated mining techniques which move the operators back from the coal face and give earlier warnings of potential danger.

310 While I may agree in principle with some members of your committee that
this research should be the subject of separate legislation, I heartily endorse
Dr. Osborn's comment that it can't wait until another session. In addition I hope that you and your Senate colleagues will insist that the new Head of the Bureau of Mines will diligently pursue funding for mining safety research from
all appropriate agencies.

310 Thank you for your interest.

310 Sincerely,

310 William D. Copeland

310 cc: Mr. Donald Crane - for the Committee 1324 Longworth Building Washington, D.C. 20515

311 United States Department of the Interior

311 BUREAU OF MINES 2401 E STREET, NW.

311 WASHINGTON, D.C. 20241

311 GROWTH PATTERNS OF UNIVERSITY EDUCATIONAL PROGRAMS IN MINING ENGINEERING, MINERAL ENGINEERING AND MINERAL ECONOMICS

311 UNDERGRADUATE AND GRADUATE ENROLLMENTS, Academic years 1975-76 and 1976-77

311 BACCALAUREATE AND GRADUATE DEGREES AWARDED, 1976 and anticipated 1977

311 (selected mineral-education institutions)

311 December 1976

311 Office of University Relations

312 MINERAL UNIVERSITIES SITUATION - ENROLLMENT AND DEGREES

312 The Bureau of Mines has just completed a survey of the enrollment and degree situation at United States mineral institutions for the academic years of 1975-76 and 1976-77. The results are summarized as follows:

312 1. Mining Engineering

312 Table I: In this discipline, undergraduate enrollment during the two academic years increased from 2141 to 2679, by 538, or 25 percent. The number of graduates last year was 299 and the number expected to graduate this year is 432, an increase of 133 or 44 percent.

312 Table II: Graduate school enrollment increased from 227 to 304, by 77, or 34 percent. At the master's level, the number of graduates last year was 79, and the number expected to graduate this year is 75, a decrease of 4, or 5 percent. At the doctorate level, 8 graduated last year and 16 are expected to graduate this year, an increase of 8, or 100 percent. The total number expected to graduate this year, at both levels, is 91, an increase of 4, or 5 percent.

312 The total enrollment for all three levels increased from 2368 to 2983 by 615, or 26 percent. The total number of graduates last year was 386 and the number expected to graduate this year is 523, an increase of 137, or 35 percent.

312 2. Mineral Engineering

312 Table III: In these categories are included curricula leading to degrees in minerals preparation, extraction, and processing. Excluded were physical metallurgy, geology, etc.

312 Undergraduate enrollment during the two academic years increased from 850 to 997, by 147, or 17 percent. The number of graduates last year was 209 and the number expected to graduate this year is 235, an increase of 26, or 12 percent.

312 Table IV: Graduate School enrollment increased from 272 to 359, by 87 or 32 percent. At the master's level, the number of graduates last year was 67 and the number expected to graduate this year is 95, an increase of 28, or 42 percent. At the doctorate level, 44 graduated last year and 36 are expected to graduate this year, a decrease of 8, or 18 percent. The total number expected

to graduate this year at both levels is 131, an increase of 20, or 18 percent.

312 The total enrollment for all three levels increased from 1122 to 1356, by 234, or 21 percent. The total number of graduates last year was 320 and the number expected to graduate this year is 366, an increase of 46, or 14 percent.

313 3. Mineral Economics

313 Table V: The undergraduate enrollment, for the three institutions which grant degrees, increased from 44 to 78, by 34, or 77 percent. The number of graduates last year was 13 and the number expected to graduate this year is 17, an increase of 4, or 31 percent. Graduate school enrollment increased from 95 to 106, by 11, or 12 percent. At the master's level, the number of graduates last year was 20, and the number expected to graduate this year is 24, an increase of 4, or 20 percent. At the doctorate level, 5 graduated last year and 11 are expected to graduate this year, an increase of 6, or 120 percent. The total enrollments for all three levels increased from 139 to 184, by 45, or 32 percent. The total number of graduates last year was 38 and the number expected to graduate this year is 52, an increase of 14, or 37 percent.

313 SUMMARY

313 Table VI: This table summarizes enrollment and degrees for the three disciplines and the levels surveyed. As shown, total enrollment increased from 3629 to 4523 by 894, or 25 percent. Total number of degrees awarded last year was 744 and the total expected this year is 941 an increase of 197, or 26 percent.

314 [See Table in Original]

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319 [See Table in Original]

PRESENTATION OF THE HARLAN COUNTY APPALACHIAN SURFACE MINING AND RECLAMATION ASSOCIATION TO THE HOUSE OF REPRESENTATIVES INTERIOR AND INSULAR AFFAIRS COMMITTEE RELATING TO H.R. 2

APPEARING BEFORE THE COMMITTEE:

Karl S. Forester Box 935 Harlan, Kentucky 40831

Rodney E. Buttermore, Jr. Box 935 Harlan, Kentucky 40831

321 We are appearing here today in behalf of the Harlan County Appalachian Surface Mining and Reclamation Association of Harlan, Kentucky. Our comments are directed to certain provisions of H.R. 2 presently pending in the House of Representatives, and before this Committee.

321 The Harlan County Appalachian Surface Mining and Reclamation Association is an Association of surface miners who do business in or around the Harlan County area of southeastern Kentucky. Members of the Association are small surface mine operators and individuals who are directly involved, associated or benefited by the surface mining industry in this area. The surface mining members of this Association are small operators in terms of tonnage production. All operators during 1976 mined less than 250,000 tons.

321 Harlan County, Kentucky and the surrounding area is characterized by narrow valleys surrounded by a mountainous terrain in excess of 3,500 feet in height. Harlan County, Kentucky has, since the beginning of coal production in the County, been primarily dependant upon the coal industry for its economic base. The surface mining industry is a substantial contributor to the economic well being of the southern Appalachian area, and more specifically, the Harlan County area.

322 A large majority of the members of the Association have been in the surface mining business for a period of less than 6 years. Each member of the Association has operated under the terms and conditions of Kentucky surface mining laws and regulations, which are among the most comprehensive in the nation insofar as a balance between environmental protection and coal production is concerned. Members of the Association are all citizens and residents of southeastern Kentucky and are most interested in seeing that the environment be protected through legislation and on a voluntary basis.

322 We are aware of the failure on the part of some states to adopt surface mining laws which adequately protect the environment. We, for this reason, see the necessity for Federal intervention and the imposition of Federal standards on those states and those coal operators who have been derelict in the imposition and the implementation of adequate and protective surface mining laws and techniques.

323 We, however, want to point out to the Committee that H.R. 2, in its present form will result in a most serious burden, not only on the members of this Association, but on those who depend upon the surface mining industry for a livelihood. It should be pointed out that in our area, in most instances, coal which is surface mined is not economically recoverable through any other known mining technique. We mine high quality coal found in seams which are less than 30" in height. The primary method of mining used by the members of this Association in extracting this coal is the auger mining method, which results in minimal surface disturbance.

323 ECONOMIC IMPACT OF H.R. 2 ON SURFACE MINING IN HARLAN COUNTY

323 Presently, auger mining of coal in Harlan County requires, as basic equipment inventory, a multi-headed auger of the Salem Tool Company "Mul-T" variety, and associated paraphernalia such as conveyors; auger sections; fuel tanks, etc.; a heavy hydraulically operated bulldozer of the caterpillar D8 or D9 variety; a medium size rubber-tired highlift of the Clark Michigan 197 type, a related production equipment such as a haul truck to remove the coal from the mined area. This equipment is quite expensive, but is required to effect the most most effecient mechanical, maximum coal recovery and to comply with surface mining regulations in Kentucky.

324 If H.R. 2 in its present form is enacted, the members of this Association would be required to purchase new equipment, which given todays present market costs would require a minimum capital investment in excess of five hundred thousand ($5 ,00000.00) dollars for each auger operated. This is assuming that each auger operation will be required to purchase a large rubber tired highlift of the Clark Michigan 475 variety and at least two 35 ton Euclid type rock haul back trucks. For those members of the Association who are required to operate in dense rock strata, they would be required to substitute a large shovel of 10-15 yards capacity rather than a rubber tired highlift. For those members who would be required to use a shovel rather than a highlift, a minimum capital expenditure of from five hundred thousand ($500,000.00) dollars to approximately one million ($1 ,,000000.00) dollar per auger operation would be required.

324 As can be seen from the above, a new capital investment of a substantial nature will be required. Each operator will have to purchase required equipment on the open market Certainly, even if capital is available the specialized

equipment will not be available because of increased demands of the market place.

325 This also assumes that these small operators will be able to obtain the operating capital necessary to purchase or make the minimum downpayments on the required equipment. It is unlikely that the members of this Association could obtain financing for this equipment within the time schedule for the implementation of this act.

325 The members of this Committee are urged to have a staff investigation made as to the availability of the various types of equipment which will be required to be used by surface mining operators. The Committee will find that at the present time, in the entire State of Kentucky, there are no more than five 15-20 yard endloaders available for purchase. The Committee will further find that there is presently a serious shortage of large dirt carriers available for sale in the State of Kentucky.The members of the Association further urge the members of this Committee to investigate and determine the production capacity of the various companies in the country which manufacture the types of equipment required for lawful operation under the present terms of H.R. 2.

325 We would direct the Committee's attention to the fact that:

325 (1) When the Federal Coal Mine Health and Safety Act of 1969 was first passed, there was a serious shortage of the equipment necessary to comply with that Act.

326 (2) The state of the art was not sufficiently sophisticated, at the time of the passage of that Act, for underground operators to meet the requirements of the Act.

326 (3) That provisions were made in the Federal Coal Mine Health and Safety Act of 1969 to allow those who were compelled to operate under the terms of the Act to come into compliance with the Act. For instance, provision was made for stage implementation of the cab and canopy provisions. That is, on or after January 1, 1974, canopies were required on electrical equipment cabs in coal mines having mining heights of 72" or more. Six months later the requirement was lowered to coal mines having mining heights of 60" or lower. Six months later, canopies were required for coal mines having mining heights of 48" or lower. Finally, after 18 additional months, canopies were required in coal mines having mining heights of less than 24".

326 This Association would recommend to this Committee, and the Congress, that because of the great economic impact and capitalization requirements for operators and especially small operators, that provisions be added to the present Bill to ease the burden on the small operator coming into compliance with the Act. We would also recommend that, as in the Coal Mine Health and Safety Act of 1969, an extension of time be granted to the small operator in

order to provide an opportunity for him to obtain the capital necessary to finance the required equipment.

327 We further maintain that, in view of the foregoing discussion of the Bill and in consideration of this Committee's own findings, an extension of three years before the requirements of the Act be finally implemented, would be a rational and justified provision.

327 In the alternative, in the event the Congress does not allow an extension, this Association would recommend that operators who make a good faith effort to purchase the required equipment be allowed a grace period during which they could continue to operate utilizing present mining methods, until full compliance is a practical possibility. Such a grace period would minimize economic hardship and prevent many small companies from being forced out of business during the transition from present mining laws to the new Federal Act. These recommendations, as previously pointed out, are within the spirit of previous mining laws, particularly the Federal Coal Mine Health And Safety Act of 1969.

327 APPLICATION REQUIREMENTS FOR OBTAINING A MINING PERMIT UNDER SECTION 507 ET SEQ. OF H.R. 2 ARE UNDULY BURDENSOME

327 The members of the Association feel that the mining permit requirements of H.R. 2 are unrealistic. One of the primary problems with the permit procedure of the Act relates to an absence of time limitations within which the regulatory authority must act. We submit that the regulatory agency should be required to notify a permit applicant within 60 days after receipt of a completed application as to whether or not the proposed plan is acceptable. We further submit that if a plan is not acceptable the regulatory agency should be required to articulate the basis for its declination of the plan. The regulatory agency should have the further duty to propose modifications, which would render the plan acceptable. It is wholly unrealistic to empower a regulatory agency without providing a time-frame within which it must act. You have previously heard testimony relating to the unavailability at the present time, of experts capable of interpreting the hydrological data called for by the proposed Act. We do not dwell upon the unavailability of these experts, in view of the fact that this Committee has been so advised by testimony and by the study done under Contract # EQ6AC016 by ICF Incorporated.

328 We further believe that core drilling requirements of H.R. 2 are wholly unrealistic when applied to Southeastern Kentucky. The geology of

Southeastern Kentucky is well documented by seventy years of active coal mining in the area. The general geology for any seam of coal in the Harlan County area is already known to both the operator and regulatory agencies. Further, over the years, the United States Bureau of Mines has compiled similar data concerning the geology of Southeast Kentucky. No substantially new information could be garnered from any further geological core drilling studies.

329 Also of concern to this Association is the time required to obtain a permit, under the proposed Act. As we have previously mentioned, and as pointed out in the ICF Report, it is impossible for an operator to gather the necessary data and comply with other permit procedures within the time schedule for implementation provided in the Act.

329 In light of the ICF report and what we have previously mentioned, we would propose that the Act be amended to allow an extension of three years for the implementation of the section of the Act concerning permit requirements. This is a reasonable and rational time period considering the vast amount of hydrological data that wil be required, the number of new hydrologists who will have to be trained and available, as well as the fact that it will take at least one year to compile the data necessary even to make an application for a permit.

329 As this Committee knows, H.R. 2 requires the posting of a bond which must remain in effect for five growing seasons after the reclamation is completed. In Kentucky, a bond is required to remain in effect for two growing seasons after the reclamation work is completed. In Kentucky there may be a partial release of the bond after one growing season if a suitable vegetation cover is obtained.

329 While we can understand that a five growing season requirement is in the Act because of the tremendous difficulties in obtaining adequate ground cover in the western states, where adequate rainfall and soil composition is a serious problem; we must point out that this is not a problem in Eastern Kentucky. The Act should provide that, East of the Mississippi River, upon successful growth of an adequate ground cover and vegetation during a period of not more than two years, the bond must be released in its totality.

330 EFFECT OF APPROXIMATE ORIGINAL CONTOUR REQUIREMENT ON SLOPES GREATER THAN 20 degrees AS IT RELATES TO SURFACE MINING OPERATIONS IN HARLAN COUNTY, KENTUCKY

330 Section 515(b)(2) H.R. 2, in its present form, provides that any permit issued shall not be approved unless the reclamation plan calls for restoration of "the land affected to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining, or for higher or beter uses . . . " This provision is the National reclamation standard, to be used in all areas, other than mountainous areas where the slopes are greater than 20 degrees, of the United States.

330 Section 515(d) H.R. 2, requires all surface mining operations on slopes greater than 20 degrees be conducted in such a manner that the highwall is completely covered and the site returned to the approximate original contour.

330 The Committee's attention is directed to the ICF report, wherein it is pointed out that grading mountainous land to the approximate original contour provides an adequate degree of environmental protection but does not always achieve the highest level of reclamation.

331 In Harlan County, Kentucky, the lands on which the various members of this Association operate are of topography such that, prior to mining activity, the only use of the land was for the growth of timber. As shown in the ICF report, re-grading to the approximate original contour would result in the loss of many desirable post-mining land uses, e.g., pasture development, access roads for forest fire breaks, logging activities, openings for wildlife, housing and industrial sites.

331 Moreover, H.R. 2 discriminates between operators on steep slopes and those on slopes of less than 20 degrees in that the operators on land that is relatively flat do not have to return the land to the same contour as they found it. In other words, an operator on land with less than a 20 degrees slope who began operations on land that was completely flat would only have to return it to a rolling type configuration. On the other hand, an operator on a slope greater than 20 degrees, who mined upon land which was relatively useless prior to mining would be required to re-grade to the approximate original contour even though such re-grading may detract from future beneficial uses.

331 Further, by returning the mined land to its approximate original contour, the instances of erosion and soil loss are increased, making it difficult to re-vegetate. As demonstrated in the ICF report, special precautions must be taken to control erosion by terracing to break the slope length and remove runoff to a safe outlet so that streams will not be silted.

332 We submit that the potential for environmental damage, by eliminating highwalls, as required by the Act, is greater than the threat

present under the system now used in Kentucky. Kentucky regulations call for reduced highwalls, but not a total elimination of them. Kentucky has experienced satisfactory results with this procedure. Accordingly, this Association recommends that the standard for slope re-grading now utilized in Kentucky be substituted for the requirements set forth in H.R. 2.

332 CONCLUSION

332 The members of the Harlan County Appalachian Surface Miners and Reclamation Association strongly urge Congress and the members of this Committee to consider and accept the Association's proposed amendments to the Act. It is clear that the present H.R. 2 Bill has many technical defects which would, if enacted in its present form, force many surface miners out of business.

332 However, the members of this Association feel that with the proposed changes, an effective surface mining bill will have been enacteed. The suggestions proposed by this Association are no more than weere granted to the underground coal mining industry by the Federal Coal Mine Health and Safety Act of 1969. It is imperative that H.R. 2 be modified to eliminate the unnecessarily harsh implementation time standards.

333 The members of this Association wish to thank this Committee for allowing them to present their proposals.

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES INTERIOR SUBCOMMITTEE WASHINGTON, D.C.

FEBRUARY 24, 1977

HR 2, SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

BY: PAUL E. PATTON

335 Mr. Chairman and Members of the Committee, I am Paul Patton of Pikeville, Kentucky. I am a medium sized independent coal operator engaged primarily in underground coal mining. I am not presently engaged in the active management of a surface mine and derive less than 10% of my income from surface mining. From a strictly personal point of view, the enactment of this bill in it's present form will result in increased profits for me at the expense of the nation as a whole and my region of Eastern Kentucky in particular. I cannot make a significant contribution toward saving the consumers of this country the needless expense that portions of this act will precipitate, because I realize that this bill will not be substantially changed and it will become the law. I feel compelled to attempt to obtain a few modifications which can greatly reduce the adverse economic impact on my region.

335 We people of the appalachian mountains have been isolated and economically deprived for generations, but we have a heritage of loyalty and devition to family and friends that has by and large been lost in the rest of the country.

335 I speak to you today on behalf of my friend; the coal miners, shop keepers, small businessmen, who have only recently begun to realize the economic advantages that are taken for granted by most Americans. I believe my record of service and concern for my people qualifies me to be their spokesman.

335 I am not an expert on the contents of this proposed legislation, but I have studied it enough to realize that it will have severe economic impact on applachian surface mining and therefore on the people of the region. I believe most anyone with a working knowledge of the structure and mechanics of the industry would agree.

336 I will make several observations which to me are obvious facts which need no further explanation. I will deal in more depth with two subjects which are of critical importance to Eastern Kentucky. I will be available should members of your staff wish to pursue any of these subjects further.

336 My first observation is that this bill will not destroy surface mining. This nation will burn coal in increasing quantities, not because we want to, but because we have no other choice. And the consumer will pay any cost increases associated with this act.

336 The coal operator is like any other businessman, if his costs go up, he must raise prices. If more capital is required, he expects more profit. The one great protection the nation has against price manipulation and market control by a few large producers, is the large number of smaller independent producers, who historically have the ability to increase production rapidly to take advantage of short term price increases and thereby bring about fair and reasonable prices.

336 The coal market is the last truly competative major industrial commodity market where supply and demand set the price. Over the long term, this assures the american people of the lowest cost energy. This bill is another step toward the elimination of this competition and creation of an artificial monopoly. This bill unduly restricts the ability of any producers, and particularly the smaller producer from quick entry into the market. I can forsee the day when coal will be like steel and automobiles. A price increase by one or two large producers will be followed by everyone in the industry.

337 This bill will result in relatively moderate price increases, probably in the range of 15 to 20 percent. It will probably cost the consumer, not the coal industry, but the consumers less than a billion dollars. The act will eliminate only about 30 million tons of production or about 5 percent of the total.

337 What concerns me, is that most of this lost production will be in Eastern Kentucky, and most of the economic hardship will fall on us. It's true that the act will create more jobs than it eliminates, but they will not be in Eastern Kentucky. A job in Utah or Montana does not help a bulldozer operator in Pike County, Kentucky.

337 This bill is basically overkill, an attempt on the part of some misguided environmentalist to completely eliminate the adverse effect of disturbing the earth to remove coal. Modern man cannot live on this planet without degrading the environment, and he cannot mine coal or burn coal without the same result. What must be achieved is a balance, and this bill is not a reasonable balance.

337 The bill requires a voluminous amount of paper work, most of which will never be read. It ignores and destroys the tremendous progress made by several states in recent years toward solving their own unique problems. It penalizes every section of the country by making every operator combat problems that are only peculiar to one region of the country.

337 There are many sections of the bill that should be changed, but I wish to deal in detail with the two areas which I feel will impact Eastern Kentucky the most. The first is restoration to original contour on slopes greater than 20 degrees and secondly, the surface effects of underground mines.

338 There are many reasons why the original contour should not be restored in steep slope mining. Some of these are: cost, land use, erosion control, wildlife habitat, future harvesting of timbers, forest fire control, and in some instances it is just impossible.There is one reason why the original contour should be restored and that is esthetic.

338 The primary reason the coal industry opposes the complete elimination of the highwall, is that in some areas it is impossible, and where it is possible it is very costly. Costs which are uniformly distributed throughout the

industry can be passed along to the consumer, but this cost, applicable only to appalachia is what will make about half of the surface mined coal now being produced in Eastern Kentucky non-competitive.

338 Newspapers that are opposed to strip mining have created a myth, that it is the cheapest way to mine coal. This is simply not true. Strip mining is a way to recover coal which cannot be recovered by deep mining and vice-versa. My own personal experience has been that deep mining is cheaper.

338 From a land use view point it will be a tragedy if we in Eastern Kentucky are deprived of some of the flat land which has been and can be created by surface mining. In many instances, the creation of useable land is the greatest benefit derived by the surface owner. This act gives absolutley no consideration to the desires of the surface owner and it deprives him of the use of the land for 5 or 10 years after mining. I do not contend that all of the strip mine benches will be useful, or half of them or even 10%, but there are some, a small percent, which are invaluable for higher land use. I cannot go deeply into this subject, but it is important. I urge you to study in detail the advisability of exemption of certain low lying benches that could have real value as building sites.

339 Wildlife habitat, timber harvesting and forest fire control are three very important subjects dealt with in a paper prepared by Mr. Ben Wolcott of the Kentucky Reclamation Association. I enclose this report as Appendices I.

339 Perhaps the strongest argument against restoration to the original contour can be made from an environmental viewpoint. The environmental impact of surface mining is almost entirely related to erosion and stream pollution.Therefore, the major thrust of the legislation should be toward elimination of erosion. Enclosed is a report by Mr. Gary Howard, Civil Engineer, which I enclose as appendices II, which shows the amount of exposed surface subject to erosion using the method common in Kentucky today as compared to restoration to original contour.

339 The location is a typical site in Johnson County, Kentucky and shows that while the total area subject to erosion is about the same in both cases. The original contour method resulted in 87.5% of the area with a 28.5 degree average slope where erosion would be severe. The other method resulted in 18.1% of the area exposed with a 28.5 degree slope, 16.1% with a 20 degree slope and 65.9% with a 6 degree slope where very little erosion should occur.

339 To my knowledge, very little research has been done to determine the relationship between the amount of erosion and the steepness of freshly

disturbed earth. The layman should be able to appreciate the fact that as the steepness of the slope increases, both sheet and gully erosion increases dramatically. Strictly from the standpoint of erosion control, each mine should be reclaimed to the final configuration which gives that combination of area and slope which results in the least erosion. My understanding of original control from the language of the law, confirmed by conversations with House Committee Staff Members two years ago means there will be no roads, ditches, or highwalls, not even a two foot highwall.

340 In many instances this will be physically impossible and in every instance it will be an environmental disaster. I cannot comprehend a method of reclamation which does not control the water coming off the surface above the highwall. I state as a matter of absolute fact that restoring to original contour will result in substantial increases in stream siltation and pollution to the extent that mines are able to stay in production.

340 I concede that a highwall stretching for miles without apparent function is not beautiful and a 100 foot highwall will never be screened by trees. There must be a balance between esthetics, erosion control, and what the operator can reasonably be expected to do.

340 I suggest that as a compromise, highwalls should be allowed to the extent that they can in time be screened by trees. This would be 40 or 50 feet. In addition no regraded area should be steeper than 20 degrees, all water coming off the highwall should be controlled, no material should be placed below the coal seam except at designated hollow fills, and trees of the proper variety should be planted next to the highwall.

341 Research should begin immediately to determine the relationship ship between erosion and steepness of slope. This information should be used to determine the final reclaimed configuration of the mine so as to result in the least possible erosion. The Ocngress has done a tremendous amount of work on this act, but you have not yet developed the proper approach and I fear at this late date, you won't.

341 As I read this act, underground mines must comply with all the provisions that apply to surface mines plus some additional requirements. My companies are strong enough financially an administratively to cope with the requirements of this act. Most smaller operators are not.

341 Enclosed as Appendices III is a summary of the effects of this act on underground mines. Reclamation of abandon underground mines should be required,

but there must be recognition of the difference between surface and underground mines.

341 It is extremely frustrating to debate an issue such as this, when I feel so strongly that parts of this act are extreme, unnecesary, regressive, and just plain wrong, and yet I know that there is little if anything I can do to effect a change.

341 I appreciate your patience, and thank you for this opportunity to speak.

342 APPENDIX 1

342 Kentucky Reclamation Association, Inc. Earlington, Kentucky A non-profit conservation service organization for the producers of coal and other minerals by surface mining.

342 POSITION STATEMENT

342 EFFECTS OF RETURN-TO-ORIGINAL-CONTOUR ON SOME POST-RECLAMATION LAND USES

342 Reclamation of contour-stripped areas by backfilling to original contour negates two desirable associated factors: opportunity for wildlife habitat improvement and access to otherwise remote areas for recreation, timber harvesting, and forest fire control.

342 The Kentucky Department of Fish and Wildlife Resources, the Department for Natural Resources and Environmental Protection's Division of Forestry, and the Northeastern Forest Experiment Station of the U.S. Forest Service support the above statement (see attached letters).

342 Prime habitat for many wildlife species is characterized by a maximum of "edge "effect, i.e., the zone of change from one environment to another. Contour benches provide the opportunity to establish food plantings for grouse, rabbits, quail, doves, and deer, and preferred travel areas for fox, raccoon, o'possum, skunk, and babcat. Water is a necessary ingredient of good wildlife habitat. Contour benches provide opportunity to establish small basins for wildlife use, and for fire suppression.

343 Ruffled grouse are a highly popular game animal in areas where contour mining is practiced. Grouse hunting can be viewed as a recreation resource with some tourist potential. Proper habitat establishment on contour benches will

provide many acres of land accessible to the hunter and attractive to the birds.
Even on land where hunting is not allowed, the carrying capacity for grouse and
other wildlife species will be improved.

343 Enhancement of wildlife habitat provides the opportunity to make immediate recreational use of land which would otherwise be idle. If return-to-original-contour provisions are established, the area affected by mining will have no higher land use capability than prior to mining, and perhaps
none whatever if erosion and sloughing occur. Wildlife habitat improvement will
not be possible because the resulting steep slopes can not be traversed on the
contour with tillage equipment. Infact, it is unclear whether any conventional
revegetation techniques can be applied at all because access to the reclaimed areas will be eliminated.

344 Contour benches form a point of access to hardwood timber up-and down-slope. In steep country, there may well be no other opportunity to harvest
this timber, simply because of lack of access. Contour benches provide current
and future access to otherwise remote areas, and natural resources which may otherwise be untapped.

344 Wildfire suppression also demands quick access to remote areas. Contour
benches can provide access for fire-fighting equipment and manpower, and serve
as established firebreaks for control of this resource-wasting catastrophe.

345 Return-to-original-contour is environmentally undesirable because the
opportunities of land capability improvement through wildlife habitat establishment are lost, and access for recreation, timber harvesting, and wildfire suppression is denied. It is difficult to envision any post-reclamation land use that will be enhanced by return-to-original-contour.

346
COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FISH & WILDLIFE RESOURCES
ARNOLD L. MITCHELL, COMMISSIONER
February 9, 1977
Mr. Ben H. Wolcott
Western Kentucky Field Director
Kentucky Reclamation Association
Earlington, Kentucky 42410
Dear Ben:

346 This is in response to your request for our views in connection with the
reclamation of stripmined areas by returning disturbed lands to their original

contour in the Eastern Kentucky Coal Fields and the expected resulting effect on
wildlife habitat in comparison with other reclamation options.

346 It is our feeling in general that wildlife habitat would best be developed in conjunction with land reclamation operations in the mountainous areas of the state where contour stripmining is used by converting the benches
produced by the mining around the mountain sides to wildlife food and cover strips rather than returning the land to its original contour and planting with
pine trees. This reclamation method would provide a more diverse habitat with
an extensive edge effect that is attractive and essential for the would also provide better hunter access and the benches could serve as hunting lanes around
the mountain side. Whereas, returning the soil to its original contour would not provide this opportunity in many instances and massive landslides could be
expected to occur due to steep slopes and land instability in many cases. However, we believe the following items should be considered in developing these
wildlife habitat strips:

346 1. Establishment of an undisturbed berm between the bench and outslope
to prevent slides and serve as a screening effect.

346 2. Ensure that mountain tops are not isolated by contour mining operation, access lanes should be preserved or provided.

347 3. Ensure that the establishment of wildlife food and cover plantings
is well planned and adequate and that due consideration is given to the needs of
the target wildlife species.

347 We appreciate your interest in developing wildlife habitat in conjunction with countour mining reclamation operations.

347 Yours very truly,

347 Arnold L. Mitchell

347 Commissioner

347 ALM: vld

347 cc: Mr. Joe Bruna

348
COMMONWEALTH OF KENTUCKY
DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
BUREAU OF NATURAL RESOURCES
JOHN D WITT
COMMISSIONER
FRANKFORT, KENTUCKY 40601

February 7, 1977
Division of Forestry
Mr. Ben Wolcott
Box 217
Kentucky Reclamation Association
Earlington, Kentucky 42410
Dear Mr. Wolcott:

348 I have discussed the subject of strip mine benches and their value to forestry with our fire control and management staff personnel, and they feel that the following statement is just and fair.

348 Strip mine benches have been used for pastures, orchards, vineyards, airports, house sites, etc. When properly reclaimed and diversified vegitation established, they provide cover and food for wildlife. Benches can be very valuable as access roads for logging operations and fire fighting activities provided they are maintained in a passable condition after mining activity has ceased.

348 Sincerely,

348 ELMORE C. GRIM

348 DIRECTOR

349 STATEMENT

349 At the present time we have no research results showing the effects of benches and highwalls on wildlife and wildlife habitat. However, general observations indicate that the land form of contour strip mines with benches and highwalls does provide habitats that are beneficial to some types of wildlife, but are sometimes detrimental to other types. For example, highwalls may be beneficial in that they can provide nesting sites for certain cliff-nesting song birds. Stony spoils left on the outer slopes of some contoured benches provide den sites and hiding places for small mammals such as field mice and shrews, and sometimes for larger mammals such as groundhog, rabbit, and fox. Benches on contour strip mines offer more opportunity than smooth steep-sloping backfills for the development of water catchments and cultivated food patches for wildlife use. On the other hand, it has been observed and reported that deer movement can be restricted by extremely steep highwalls unless land bridges are left for access.

349 The shape of the regraded mined area also influences the severity of erosion that occurs on it. We do have data to show that erosion is more severe

and more difficult to control on long uninterrupted slopes than on short slopes
and nearly level benches. Erosion is detrimental because it causes stream sedimentation that destroys aquatic flora and fauna. Mining and reclamation techniques should be concerned with controlling erosion and reducing stream siltation.

349 Willie R. Curtis, Project Leader

349 Surface Mine Reclamation Research Project

349 Northeastern Forest Experiment Station

349 USDA - Forest Service

349 Berea, Kentucky

350 APPENDIX 2

350 REPORT TO THE COAL INDUSTRY ADVISORY COMMITTEE TO THE KENTUCKY DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION.

350 SOIL EROSION CHARACTERISTICS WHEN RECLAIMING SURFACE CONTOURMINING TO ITS ORIGINAL TOPOGRAPHY

350 PREPARED FOR JOHN BIZZACK BY GARY G. HOWARD

351 Section 415(6)(3) of Senate Bill 7 states, "with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil
piles and depressions eliminated ( )". This provision is included in the act
as one of the minimum general performance standards applicable to all surface coal mining and reclamation operations.

351 An effort will be made in this composition to identify some of the problems associated with this requirement and evaluate their effects upon the control of sedimentation in a contour surface mining operation in mountainous terrain.

351 Soil erosion of an area is influenced by the climate, vegetative cover,
soil properties, and topography. Given a particular area, then the climate, the
vegetative cover, and the soil properties will be the same. Then the erosion associated with either operation discussed here depends on the control measures
taken during the life of the operation and the effects of topography of the reclaimed disturbed area during and upon completion of the operation.

351 For this report, only the effects of the topography on sedimentation will be discussed. Those items to be considered include the steepness and length of these slopes. As a reclaimed slope becomes steeper, then the velocity
of the run off becomes greater; and, as a result, there is an increase in the

amount of sediment that becomes suspended and this sediment stays in suspension
a longer time span.

352 Figure (1) represents an area in Johnson County, Kentucky, on which a
2500 L.F. operation is indicated between points A and B. The computations, comparisons, and conclusions pertain specifically to this area. However, it is
contended that this area is representative of the reclamation necessary to be accomplished on a contour surface mining operation in mountainous terrain.

352 Figure (2) represents the average vertical end area between points A and
B on Figure (1). In this example it has been assumed that a 5-foot seam of steam coal exists at an elevation of 1000 feet and that the economics of the coal industry at the time of this proposed operation dictates that the overburden from a 100 foot highwall can profitably be removed from this seam of
coal.

352 On the basis of the end area from Figure (2) for a distance of 2500 feet, 737,700 c.y. of overburden would have to be removed to extract approximately 67,000 tons of coal. Upon blasting, assuming that the solid rock
will swell 20 percent, then a storage area with a capacity of 870,000 c.y. is needed for placement of this excavated overburden material. Following are two
cases illustrating how this overburden may be handled:

353 [See Illustration in Original]

354 [See Illustration in Original]

355 The first case involves utilizing this overburden material to restore
the topography to the approximate original contour and completely eliminating the highwall, in accordance with the Act. After extraction of the coal, 805,000
c.y. of this material, based on the vertical end area of Figure (2) would be needed for this accomplishment. However, 65,000 c.y. (870,000 - 805,000) would
remain and for this study it is assumed that under this proposed Act the surplus
excavated material could be placed in properly designated and constructed hollow-fill type spoil areas. A hollow fill with a 20 degree outslope has been
designed to accomodate this 65,000 c.y. and is so indicated on Figure (1).

355 In this case, the disturbed area, backfilled to the approximately original coutour, and based on horizontal dimensions, amounts to 10.2 acres. This 10.2 acres, as is evident from Figure (2), is on a slope of 28.5 degrees.
The hollow fill designed for the remaining 65,000 c.y. would result in 0.9 acres
on a slope of 6 degrees and 0.6 acres on a slope of 20 degrees.

355 The second case pertains to utilizing the overburden material to backfill the excavated pit to an elevation of 1035 feet, or 40 feet above the bottom of the coal bed after extraction, with the remaining overburden to be placed in a hollow fill. The excavated pit backfilled as indicated on Figure (3) would accomodate 492,000 c.y., and would result in leaving an approximate 65 foot highwall exposed. The remaining 378,000 c.y. (870,000 - 492,000) is to be placed in a hollow fill spoil area, depicted in Figure (4), with an outslope of 20 degrees.

356 In this second case, the disturbed area exposed by backfilling the excavated pit would amount to 5.8 acres on a slope of 6 degrees and 2.6 acres on a slope of 28.5 degrees. The hollow fill designed for the remaining 378,000 c.y. would result in 3.7 acres on a slope of 6 degrees and 2.3 acres on a 20 degree slope designed with a 30 foot terrace to break the flow and thus decrease the velocity of the run off.

*4*TABLE (1) -
SUMMARY OF
DISTURBED AREAS

	DISTURBED AREA (ACRES)	DEGREE OF SLOPE (DEGREES)	PERCENT OF TOTAL DISTURBED AREA
CASE (1)	10.2	28.5	87.2
	0.6	20	5.1
	0.9	6	7.7
TOTAL =	11.7		
CASE (2)	2.6	28.5	18.1
	2.3	20	16.1
	9.5	6	65.9
TOTAL =	14.4		

356 (1) overburden utilized to restore the topography to the approximate original contour

356 (2) overburden utilized to backfill pit 40 feet above bottom of coal seam

357 [See Illustration in Original]

358 [See Illustration in Original]

359 The total disturbed area from Case (1) is 11.7 acres and 10.2 acres of this total is necessary to restore the topography back to the approximate original contour.

359 This method of handling the overburden material results in 87.2 percent of the reclaimed area to be on a slope of 28.5 degrees from the horizontal.

359 In comparison, the method of placing spoil utilized in Case (2) only results in 18.1 percent of the total reclaimed area to be on a slope of 28.5 degrees.

359 A publication by EPA entitled Erosion and Sediment Control, October, 1976, states, "A doubling of the velocity of water produced by increasing the degree and length of the slope enables water to move soil particles 64 times larger, allowing it to carry 32 times more soil material, and makes the erosive power, in total, 4 times greater."

359 Consequently, it becomes evident that the potential for more volume of eroded materials exist when the topography is restored to the approximate original contour in mountainous terrain, than when a portion of the highwall is accepted and left exposed, and the overburden material placed in spoil areas on flatter degrees of slope. In an effort to eliminate the highwall more problems are going to be encountered in trying to remove the additional volume of suspended solids from the run off by constructing diversion ditches, larger sedimentation basins, and other velocity retention measures.Also, obtaining vegetative cover on steeper slopes is more difficult due to the erosive action of the run off.

360 In conclusion, on the basis of this study, it is evident that a question exists as to whether restoring the topography to the approximate original contour may, in many instances, particularly in mountainous terrain, induce the potential for more erosion than would occur if a highwall were left exposed and the additional overburden placed on flatter slopes. It would; therefore, be suggested that more study and research be conducted on this aspect prior to incorporating this requirement into the Act.

STATEMENT OF LLOYD BAKER PRESIDENT - DISTRICT 20

(ALABAMA, GEORGIA AND MISSISSIPPI)

UNITED MINE WORKERS OF AMERICA BEFORE THE INTERIOR COMMITTEE

THURSDAY, FEBRUARY 24, 1977

HOUSE BILL H.R. 2

361 Mr. Chairman and Members of the Committee:

361 My name is Lloyd Baker and I appear before you today as President of District 20 of the United Mine Workers of America. District 20 includes that part of the Appalachian coal field which extends into Alabama, Mississippi and Georgia.

361 I appreciate this opportunity to appear before you to express the concern of the Alabama coal miners regarding H.R. 2 titled as the Surface Mining Control and Reclamation Act of 1977. Alabama's union miners concur with the resolution of the U.M.W.A. Executive Board of February 11, 1977, in which they

called for the regulation of surface coal mining to remain in the hands of the individual States rather than be subject to control by the Federal Government.

362 We understand that under certain conditions there are provisions in H.R. 2 for the state to enforce and administer surface mining regulations if that bill becomes law. But we also understand that H.R. 2 has no provision to allow for the difference in the mining conditions encountered in the different states.

362 We do not feel that one law with a rigid set of uniform regulations can be workable throughout the country - the western regions of the United States have extremely thick, low quality coal seams; those in Alabama are thin but of high quality; western coal fields are dry, arid places getting only six inches or less of rain per year; in Alabama we normally have ten times that amount; in the Midwest the topsoil is measured in feet, whereas in Alabama it is measured in inches.

362 These are only a few of the God created differences encountered throughout the coal fields of the United States. It would be nearly impossible to write any single law which would be flexible enough to cover the many, many differences found without creating financial inequities. Passage of H.R. 2 as it is presently written would not only eliminate much District 20 coal, but would create a cost disadvantage for the remaining production.

363 That is why the membership of District 20 favors state regulation of the coal fields within each individual state. We feel that the state legislators know well the conditions and problems of their own states and with this knowledge have enacted workable surface mining laws in each of the coal mining states. The states have shown their continuing interest in surface mining by regularly revising and upgrading their law governing the industry.

363 Our membership is also concerned that enactment of H.R. 2 will endanger their jobs in Alabama. Since the coal seams in our state are thin, averaging only about 24 inches in thickness, most of them can only be surface mined. If it was possible to mine them by underground methods, our job potential would increase, but this is not the case in Alabama. Therefore, since this bill is slanted toward fostering underground mining, we are concerned that its enactment into law will decrease the available mining jobs in Alabama.

363 Our concern for our jobs is not unfounded. The original draft of the

I.C.F. Incorporated report dated January 24, 1977, showed this to be true. That report indicated that enactment of H.R. 2 would result in the loss of 22 million tons of production and 1,400 jobs in the Appalachian coal fields alone, and the two states that would bear most of this loss would be Virginia and District 20's Alabama. The reason given for the tonnage and job losses was the terrain and the thin coal seams in those two states.

364 It is easy to understand that when per acre reclamation costs are more or less standardized, the area having the thinnest coal and the least tonnage per acre of production is bound to have the highest cost. H.R. 2 would put District 20 coal at a competitive disadvantage and cost us jobs.

364 From a safety standpoint, we know that there are four times as many fatalities from mining equal tonnage by underground methods rather than by surface mining. Safety has long been one of the foremost concerns of the United Mine Workers and in District 20 lives are still important.

364 Our country needs to have a healthy underground coal mining industry and we should work toward bettering its safety record. But why should we lose lives to make a point; why should we pass over much of our surface mineable coal. I repeat - in District 20 lives are still important.

364 We are also concerned by the many built-in delays in H.R. 2. The bill calls for many public hearings, appeals from the hearing results, and makes provision for lawsuits. The resulting delays will make the opening of new mines and even the continuation and expansion of present mines slow and costly. These delays are expensive for the mine operator and will discourage the start of new projects. For a small operator, the cost of the delays alone will make him afraid to undertake any expansion and, we believe, he will be forced out of production - and with him will go District 20 jobs.

365 Every step of the process of obtaining a mining permit and obtainingapproval of a mining plan calls for public participation through hearings. We are not opposed to public hearings - they can have good results. However, we recognize public hearings only bring out opponents to a project. Those in favor or who have no objections stay at home or are silent. A few out-spoken opponents generally monopolize public hearings and have more influence than their numbers warrant. Participation in the hearings called for concerning permitting and mining plans should be limited to property owners in the area concerned.

365 The procedures outlined in Section 522 titled "Designating Areas Unsuitable for Surface Coal Mining" are typical of those throughout the bill which concern us. How can any businessman seriously consider a project which the regulating agency has up to twelve months to decide is unsuitable?

365 Coal miners have living expenses just as you do - food and groceries to buy, rent to pay, and children to raise. Delays in mine extensions and cancelled mine openings will mean lost paydays and an uncertain future.

365 If H.R. 2 has to be the law of the land, our sincere hope is that it will be completely rewritten so that it controls surface mining as its title states, but does not prohibit surface mining and our surface mining jobs.

365 Thank you, Mr. Chairman.

STATEMENT BY TOM DUNCAN PRESIDENT KENTUCKY COAL ASSOCIATION LEXINGTON, KENTUCKY submitted to the COMMITTEE ON INTERIOR AND INSULAR AFFAIRS with respect to H.R. 2 THE PROPOSED "SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977" U.S. HOUSE OF REPRESENTATIVES Washington, D.C.

February 24, 1977

367 Mr. Chairman and Members of the Committee:

367 The Kentucky Coal Association membership includes both surface and underground coal operators in both the Eastern and Western Kentucky coalfields.

367 We appreciate the opportunity to present this statement as the Committee considers H.R. 2.

367 You have been and will be presented with strongly conflicting views on the bill and on the need for federal legislation to regulate surface mining. We will limit ourselves to those aspects of the bill that strike especially harshly at the Kentucky coal industry and on which we have a firm base of knowledge and experience, plus some parts of the bill that cause us deep concern because of vagueness, procedural questions, and the like.

367 But, first, we would point out a major underlying flaw in the concept of H.R. 2: It attempts to dictate mining practices rather than to set real environmental goals. If this philosophy had been followed rigidly by the regulatory agency in Kentucky, the industry would not have been allowed to develop the mountaintop removal method of mining which permits almost complete recovery of the coal and has resulted in some of the best reclamation, leaving the mined and reclaimed area in a much more useful condition than it was before

mining began. It should be a fully authorized method, encouraged rather than permitted only under highly prejudicial variance provisions.

368 In this connection, we would urge the Committee to seek the opinion of landowners, particularly those in the steeper slopes of Eastern Kentucky, where level or gently rolling land is at a premium - and is almost non-existant above the floodplain. It may be difficult for some to believe, but level land in a mountain business center such as Pikeville can rival land in Washington, D.C., in value. But the fact is that it is at such a premium that the federal government is spending millions of dollars to support a project to cut through a mountain and reroute a river and railroad in Pikeville.

368 We might add that the "highwalls" from this project are truly awesome, as are ones along many miles of federal highways in the mountains. But they are essential to improvements for the people in the area and are not considered eyesores by those enjoying these improvements.

368 Benches left from contour mining on steep slopes also provide level, stable land above the flood plain, land that is much more useful than the original mountainside.

368 And both these benches and the areas reclaimed by the mountaintop removal and hollow fill method provide a key element that usually would not be economically feasible without the recovery of coal - access. The haul roads built to transport the coal represent a major expense, but they offer good access to the reclaimed areas after mining is completed.

368 Certainly, not all these areas have been put to their highest use. It may be years before some are developed to their full potential. But the fact remains that many are being put to higher uses, and the potential of almost all of them is much greater than is that of steep, inaccessible slopes. Again, we urge that you make an extensive study of the views of landowners, who in Kentucky often do not own the coal beneath the surface. Ask them how they would prefer their land be reclaimed. Their views should carry as much weight as those of the owners of land overlying federal coal.

369 Perhaps even more pertinent to the avowed purpose of H.R. 2 is that both the mountaintop removal method of mining and only reducing, rather than eliminating, highwalls on steep slopes are sound environmentally. In both cases, of course, the key factor is the proper placement, stabilization and revegetation of the disturbed material, which actually should be determined on a site specific basis. But that is exactly what the bill would prohibit with its requirement that steep slopes be restored to their approximate original

contour.This can only lead to increased erosion, siltation and mineralization of
streams. The justification can only be on the grounds of esthetics, and even
that justification is questionable at best in light of the facts pointed out by
the Division of Reclamation of the Kentucky Department for Natural Resources and
Environmental Protection.

369 Incidentally, the Kentucky Coal Association agrees with the basic
position taken by the Commonwealth on mountaintop removal and return to
approximate original contour. We differ on some specifics and feel the
Commonwealth has not followed the facts to their logical conclusion, but its
statements on various elements of the bill merit your careful study. We have
had bad mining practices and reclamation in Kentucky in the past, but we have
learned from experience, research and innovation.It would be irresponsibly
shortsighted to fail to use this knowledge on a subject so critical to the
nation's energy situation and absolutely vital to Kentucky's economy.

370 We have intentionally refrained from invoking the spectre of bankrupt
coal operators, unemployed miners and general economic depression in an area
whose sole major industry is coal. But even if one accepts the studies cited by
advocates of H.R. 2 (and we would welcome the opportunity to debate the reasons
we definitely do not), it is apparent that Kentucky will bear a major share of
the burden of closedowns and severe disruptions of the industry because of our
combination of huge reserves on steep slopes and a tremendous number of small
and medium sized operators.

370 Our numerous smaller underground operators also will be especially hard
hit by the bill's provision for covering all surface activities connected with
underground mining. While it will be physically impossible in any event for
increased underground production to make up the overall loss in surface
production under H.R. 2 in the foreseeable future, it will be just as impossible
for Kentucky even to maintain its present underground production if the
provisions of H.R. 2 are applied as rigidly as other sections of the bill would
indicate.

370 To cite only two points, the prohibition against placing material on the
outslope and the requirement to restore steep slopes to approximate original
contour would place impossible deterrants on developing many potential
underground mines. They must have level working areas near the mine mouth for
equipment and facilities. Often the only way to obtain this space is to cut
into the mountainside - and extend the bench with fill material on the outslope.
Obviously the operator must stabilize the fill material for it to be useful.
Once it is stabilized it would be foolhardy to require that, when operations

cease, the material be disturbed again and placed so as to recreate a steep slope subject to severe erosion.

371 All this may bring the response that mining simply should be done somewhere else. But the fact is that coal must be mined where it is or not mined at all. If the aim is to hold environmental damage to a minimum and have the land left in a useful condition, we have no quarrel. But if that is the aim, we refer you again to our arguments on mountaintop removal and benches. And if the aim is simply to place added burdens and restrictions on coal operators, especially those in the steep slopes of Eastern Kentucky, we must say that the opportunity of mining "somewhere else" offers precious little comfort for those whose livelihoods are involved.In that connection, we would cite the fact that the requirement for return to approximate original contour applies only to so-called steep slopes - the very terrain where the practice is most harmful environmentally and lest defensible on the basis of post-mining land use.

371 On the procedural questions, the concept of land-use planning embodied in H.R. 2 is perhaps potentially the most dangerous element. Without debating the merits of land-use planning in general, we would point out that this particular effort would be directed specifically at determining only which areas would be "unsuitable" for coal mining - for a variety of vaguely stated reasons. No other development would be so restricted, only coal mining, which obviously must be done where the coal is.Even more to the point is the fact that the entire permitting process contemplated by H.R. 2 is aimed at forcing the applicant to demonstrate in almost unbelievable detail that he can and indeed will reclaim the land. But under H.R. 2, even if he could demonstrate this, he could be denied that opportunity on grounds that the area involved has already been declared "unsuitable" for mining on the basis of standards that may have no logical connection with the developing technology of mining and reclamation.

372 Indeed, a Kentucky operator could not obtain a permit until the area has been designated as not "unsuitable" - the very thing the permitting process is supposed to accomplish.

372 The time implications of this designating process, various other procedures required and the threat of endless hearings, reviews and litigation probably are extremely significant in causing widely divergent predictions of the impact of the bill. It is one thing to calculate the cost of moving a cubic yard of material a given distance, although variables even in that can be amazingly complex. But it is an entirely different matter to estimate even

roughly the potential cost of being unable to predict with any certainty whether
a permit can be obtained in six months, a year or two years - and thus when the
men, machines, transportation facilities and the like should be in place.

373 In Kentucky, the question of availability of hydrologists, geologists,
soil scientists, etc., will make it impossible to set timetables on the
completion of applications. The requirements for hydrological data alone will
be beyond the capability of many operators - and far beyond the need of the
regulatory agency.The Commonwealth recognizes that it, too, will find it
difficult, at best, to obtain the professional and technical personnel
required.

373 Inordinate delays are the only predictable outcome. As we read the bill
(and we admit there seem to be as many interpretations to various parts as there
are readers - and perhaps even those who haven't read it), there is no time
limit set for action on an application for a permit unless there is a protest.
That, plus the various studies required and the landuse designation process
mentioned above, would leave the applicant in limbo. While some operators
already in the industry, perhaps even a few smaller ones, may be able to cope
with the process (or at least will be forced to try by sheer necessity for
economic survival), the only real incentive for anyone to enter the industry
would be greatly inflated coal prices. That unfortunate development could
easily occur under H.R. 2.

373 We have seen all too recently what shortages can do to prices. And,
while the Kentucky Coal Association believes the best interest of the industry
and the nation would be served by a stable market producing a reasonable profit
over the long term, it is not difficult to understand the thinking of an
operator, fearing he will be legislated or regulated out of business, whose main
interest is a quick return. But even those operators with the resources to deal
with the requirements of the bill and continue operating over the long term must
in simple prudence build into their cost calculations ample provision for the
delays and uncertainties found throughout the bill.

374 If it is countered that regulations to be issued in connection with
the bill will correct these problems, we would answer that harsh experience has
taught us that the direct opposite is much more likely. But even if the intent
is to clear up such matters through regulations, would it not be much better,
surely safer, to state procedural guidelines clearly and specifically in the
bill itself? A baffling contradiction is that the bill is rigid in matters
dealing with mining and reclamation, where developing technology and vastly
differing conditions from site to site dictate flexibility, and yet it is often

vague or contradictory in dealing with procedural matters, where the standards should be clear and precise. It is this type of thing which makes H.R. 2 a bill to prohibit mining, at least in many areas, rather than to regulate mining.

374 Although we have dwelt mainly on the situation in Eastern Kentucky, because the bill's approach to steep slopes makes its potential impact much more traumatic there, especially in view of the number of small and medium sized operations, the procedures and studies required will be just as burdensome in Western Kentucky. And in Western Kentucky, where the coal's sulfur content is high, production has been decreasing steadily even without H.R. 2. The response, again, may be that the coal should be mined "somewhere elsa." But the fact is that we have in place the structure, the manpower, skills and machinery, to produce a vast amount of energy critical to the nation's economy - with no way to move that capability "somewhere else" at a whim.

375 Kentucky produces more than one-fifth of the nation's coal, although production dropped to approximately 140,000,000 tons last year from more than 144,000,000 tons in 1975. We are capable of producing much more. Given the right governmental and market climate, we can expand production steadily and strongly for many, many years to come.And we can do it in an environmentally responsible manner, leaving the land in a more useful condition than before mining. But many of our operators will be unable to cope with provisions of H.R. 2 that actually are peripheral to that goal. Their production, which represents a great portion of the entire coal industry's surge capacity, will be sorely missed, particularly in times of an unexpected increase in demand, such as came during the OPEC oil embargo.

375 The temptation may be to say that other states will make up for Kentucky's production loss. That, of course, is little consolation to us. And we would doubt the validity anyway. Although many points in H.R. 2 seem aimed punitively at Kentucky, it obviously will have detrimental effects elsewhere. We have not discussed the problems and conditions outside the Commonwealth because there are others much more knowledgeable on those matters. On the other hand, we feel secure in saying that we in Kentucky know much more about our problems and conditions than do others who would take a brief look, or none at all, then prescribe a cure-all. They and those who would impose burdens on Kentucky's coal industry in an effort to gain a competitive advantage would do this nation, as well as us, a great disservice.

376 We again urge the Committee to give careful consideration to testimony on behalf of the Commonwealth of Kentucky, although we do not agree with it in

all details. We endorse the basic position of the National Coal Association and the American Mining Congress. Members of the Board of Directors of the Kentucky Coal Association and other executives of member companies also have testified.We respectfully request that their testimony be given careful study.

376 The Kentucky Coal Association appreciates the opportunity to submit this statement. We and our members stand ready to assist the Committee in obtaining further information, and we invite you to visit Kentucky with enough time to get a full understanding of the situation.

377 POSITION STATEMENT OF THE WESTERN GOVERNORS' REGIONAL EXERGY POLICY OFFICE ON FEDERAL STRIP MINE LEGISLATION

377 We agree with the declaration and finding of Congress, as expressed in earlier and current strip mine legislation that -

377 "because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States"

377 In order to accomplish this and other objectives of federal strip mine legislation we believe that any final bill should provide the following.

377 State Administration

377 It is imperative that states retain responsibility for administering and enforcing coal mine reclamation standards in order to adequately respond to unique conditions in each state, retain continuity in enforcement of reclamation standards, avoid creating a new federal bureaucracy, and avoid the problems of administering two standards within the same state (i.e., one for federal land, one for other land).

377 Specifically, we recommend that any legislation provide that:

377 - At the request of the Governor of a state, the Secretary shall enter into a cooperative agreement with the state to provide state administration and enforcement of the provisions of the Act, including the interim and final performance standards, regardless of whether such state has a reclamation law as

stringent or more stringent than such standards, provided that such state demonstrates it has or will have the capability to administer and enforce such standards.

378 - Any state with an approved state program or cooperative agreement may elect to regulate surface coal mining and reclamation operations on federal lands within the state. Such regulation shall be subject to all the provisions of the Act.

378 Financing State Administration and Enforcement

378 If a state assumes exclusive jurisdiction of mine reclamation, the federal government, which would have to administer a reclamation program if the state did not undertake that responsibility, should, when requested by the Governor of a state, share the administrative cost with the state on all non-federal land and pay the state for the full cost of administering reclamation standards on federal land.

378 Specifically, we recommend that final legislation contain the language in S 7, Section 505.

378 Timetable for Implementation of State and Federal Programs

378 Several varied provisions of both the Senate and House bills designate specific periods for developing State and Federal programs as well as setting time schedules with which operators must comply. We recommend that the States be given the maximum time possible for implementing individual State programs and that the Department of Interior be prevented from expanding federal staffing to implement and administer the provisions of such an Act where States are diligently attempting to develop their own programs. Specifically, the final legislation must recognize that some state legislatures meet every two years instead of annually including Montana and North Dakota. Thus, in those instances where a state legislature may not be able to act on their State program development for as long as two years, and such State does not have a cooperative agreement as suggested above, the interim regulatory provisions must be permitted to continue beyond the 24 month deadline for submission of a State program. This is needed so as to avoid the implementation of a Federal program and the concomitant Federal staffing buildup before a state legislature can act on developing their program.

379 Abandoned Mine Reclamation

379 We strongly recommend that any abandoned mine reclamation provisions not be included in federal strip mine legislation and be considered as separate

legislation. The prerequisites of any such legislation on abandoned mine reclamation should include the following:

379 - Revenue for an abandoned mine reclamation fund be derived from a fee on all coal and that such fee be in addition to royalties on federal coal.

379 - All revenue in an abandoned mine reclamation fund be returned to the state in which it was collected.

379 - Priority expenditure for such money would be (1) for reclamation of abandoned coal mines, (2) to amelioriate coal-related socio-economic impacts and (3) for reclamation of abandoned non-coal mines. Other allowable uses of such money should be as specified in HR 2.

379 - At the request of the Governor of a state with an approved reclamation program or with a cooperative agreement with the Department of Interior, the state shall operate any abandoned mine reclamation program contained in the legislation.

379 Mining of Federal Coal Under Non-Federal Surface

379 We believe there needs to be protection of surface owners whose land contains federal coal.However, we believe that the so-called "Mansfield Amendment", which prohibits surface mining of all federal coal deposits which are under surface not owned by the federal government, would be untenable to western states and in many instances be tantamount to halting coal development.

380 Alluvial Vallcy Floors

380 We recommend that final legislation contain the alluvial valley floor provisions found in HR 2 rather than the provisions found in S 7.

380 Designation of Lands Unsuitable for Noncoal Mining

380 In keeping with the primary intention of Congress that this legislation be directed toward the problems associated with coal mining operations, we recommend that any final bill not contain the language of Title VI, of HR 2. This Title would permit the Secretary of Interior to designate certain Federal lands as unsuitable for noncoal mining. This responsibility should rest with the States, and in any case, should not be included in legislation of this nature.

380 Burden on Small Operators

380 We recognize the need for reducing the burdens certain regulatory requirements, such as hydrologic tests, place on small mine operators. We believe that these burdens should be borne by the entire coal industry and its

ultimate consumers and should not be shifted to the state regulatory authority.

380 Federal Mineral Lease Terms

380 In lieu of the language of section 523(b) of HR 2 and section 423(b) of S 7 regarding Federal mineral lease terms and conditions, we recommend that the requirements of such an Act and the Federal lands program or the approved State program, whichever is applicable, must be incorporated into any Federal mineral lease, permit, or contract involving surface coal exploration, mining and reclamation.

381 Frequencies of Mine Inspections

381 While we well recognize the need for proper and timely inspection of mines to assure compliance with the law, we believe that strip mine legislation should not require complete inspections of every mine on an average of once per month. There needs to be flexibility in such a requirement to permit a state to allocate its manpower effectively. Some mining operations would not require a complete inspection on an average of once a month. Others may require frequent inspections for certain recurring conditions, such as stream pollution. We recommend that the final legislation require inspections no more frequently than an average of once per calendar quarter.

381 Interim Regulatory Provisions

381 We-recommend that the language of section 502(c) of HR 2 stating that operators must comply with the interim regulatory provisions of the bill within one year of enactment be included in the final legislation.

381 Period for Permit Application

381 We recommend the language of section 402(e) of S 7 stating that those expecting to pursue coal mine operations after State program approval or Federal program implementation must file a permit application within 20 months of enactment be included in final legislation. Also, an Act should require that the application be processed within 6 months of State program approval and not later than 30 months from enactment.

381 Bond Release Provisions

381 We support the language of HR 2 in section 519(g) permitting the regulatory authority to establish an informal conference procedure to resolve objections to bond release in lieu of formal transcribed hearings.

382 NEPA Compliance

382 We recommend that any final legislation not contain the language of section 502(d) of S 7 and section 702(d) of HR 2 which require the completion of
an environmental impact statement prior to aproval of a state program or commencement of a Federal program. This impact statement requirement is not germane in light of the extensive procedures which must be completed in a State's development and Interior's final approval of a State program. The same
is true for the development and implementation of a Federal program where a State does not submit or is unable to obtain approval of a State program. As impact statements will be required on a site-specific or regional basis regarding proposed federal coal lease sales, requiring an extensive impact statement prior to program approval or implementation is unnecessary.

383
STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE 87503
February 24, 1977
The Honorable Morris K. Udall
United States Representative
U.S. House of Representatives
Washington, D.C. 20515
Dear Representitive Udall:

383 Enclosed you will find a brief statement I released on Monday concerning
federal strip mine legislation.

383 I continue to support enactment of federal legislation in this area, while strongly recommending that cooperative agreements presently in effect between Western states and the Department of the Interior be accommodated and allowed to remain in force in whatever final legislation is passed by the Congress.

383 Your serious consideration of my views on strip mine legislation is deeply appreciated.

383 Sincerely,

383 JERRY APODACA

383 Governor

383 JA: flo

383 Enclosures

384 STATE OF NEW MEXICO OFFICE OF THE GOVERNOR SANTA FE 87503

384 February 21, 1977

384 For Immediate Release

384 Contact: Richard de Uriarte

384 Federal strip mine legislation was endorsed today by Gov. Jerry Apodaca, though qualified by several recommendations.

384 Congress is currently considering two strip mine bills, S. 7 introduced by Senator Lee Metcalf of Montana and H.R. 2 introduced by Congressman Morris Udall of Arizona.

384 "I welcome the initiatives in S. 7 and H.R. 2 and hope that Congress will pass and the President will sign federal strip mine legislation this year," Apodaca said. "My endorsement, however, is not without some qualifications."

384 Apodaca noted that New Mexico already has strict standards for reclamation of surface mined coal lands and has also recently signed a cooperative agreement with the Department of the Interior which allows the State to administer and enforce surface reclamation requirements on federal land.

384 "I would strongly recommend that current federal strip mine legislation accommodate cooperative agreements presently in effect between Western states and the Department of the Interior by incorporating appropriate language allowing these agreements to remain in force," Apodaca said. "I would further recommend that those provisions of a Draft Position Statement of the Western Governors' Regional Energy Policy Office (WGREPO) on Federal Strip Mine Legislation (attached), which was recently submitted to the ten Western governors for final approval, also be incorporated into current legislation."

385 The U.S. House of Representatives is conducting hearings this week on H.R. 2, and the Senate has sceduled hearings next week on S. 7.

386 STATEMENT OF JERRY APODACA GOVERNOR OF THE STATE OF NEW MEXICO ON FEDERAL STRIP MINE LEGISLATION February 21, 1977

386 Since early 1975, Western governors have supported the establishment of federal guidelines to regulate strip mining. I have been a strong advocate of such guidelines. This session of Congress is currently considering legislation to regulate surface coal mining operations throughout our nation, and I welcome the initiatives in S. 7 and H.R. 2 and hope that Congress will pass and the President will sign federal strip mine legislation this year. My endorsement, however, is not without some qualifications.

386 In 1972, the State of New Mexico enacted legislation governing the reclamation of surface mined coal lands under state ownership. Subsequently, regulations implementing this act were promulgated by the State Coal Surface

Mining Commission. Under these regulations, permits issued by the Commission to operators of coal surface mines in New Mexico have included detailed requirements which ensure that the land mined will be restored to condition equal to or better than that existing prior to commencement of mining operations. The State feels that to achieve reclamation of surface mined lands, under the wide variety of geological and climatic conditions existing in New Mexico, the flexibility offered by our existing statutes and regulations must be maintained. With this point in mind, the State of New Mexico signed a cooperative agreement with the Department of the Interior in January of this year. This agreement provides for a cooperative program between the Department of the Interior and the State of New Mexico with respect to the administration and enforcement of surface coal reclamation operations conducted under coal leases issued by the Department of the Interior under the Mineral Leasing Act of 1920. The basic purpose of this agreement is to prevent duality of administration and enforcement of surface reclamation requirments by designating the State of New Mexico, wherever possible, as the principal entity to enforce reclamation laws and regulations in New Mexico. I would strongly recommend that current federal strip mine legislation accommodate cooperative agreements presently in effect between Western states and the Department of the Interior by incorporating appropriate language allowing these agreements to remain in force.

387 In addition to the above recommendation, I would further recommend that those provisions of a Draft Position Statement of the Western Governors' Regional Energy Policy Office on Federal Strip Mine Legislation (attached), which was recently submitted to the ten Western governors for final approval, also be incorporated into current legislation. This statement has my overwhelming support and I would hope that Congress will give the concerns of the Western governors their very serious consideration as they deliberate further on federal strip mine legislation.

STATEMENT OF CONSOLIDATION COAL COMPANY to the U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT HEARINGS ON H.R. 2 by R.E. "Gene" SAMPLES PRESIDENT and CHIEF OPERATING OFFICER

FEBRUARY 25, 1977

389 Mr. Chairman and distinguished members of the Subcommittee:

389 My name is Gene Samples. I am president and chief operating officer of Consolidation Coal Company, the nation's largest coal company and second largest producer, producing about fifty-four million tons annually. My company operates

in eight states located in the East, Midwest, and West. We produce coal by both the underground and surface mining methods; about 70 per cent of our production is from underground mines. Despite this high percentage of underground production, my company holds large reserves of coal, much of it in the West and mineable only by surface mining methods.

389 Our country is in the throes of an unusually severe winter that has produced many emergencies due to energy shortages. It is now experiencing a situation similar to one experienced three years ago following the oil embargo imposed by the Middle East nations: that, of course, is a dramatically heightened interest in America's energy situation, its alternate energy sources - including coal - and the prospects for the utilization of these sources in the near-term.

389 Hopefully, following this crisis, we will not do what we did after the oil embargo, which was essentially nothing. We are dependent on foreign energy today to a greater degree than we were in 1973. America must face up to its ever-worsening energy situation, and the Congress must provide the direction to make the critical decisions that will help us move forward to an era of adequate energy. We hope this direction will come without redundant bureaucracy and its endless mass of regulations.

390 One of the chief impediments to expansion of the coal industry in recent years has been the negative impact of federal legislation. I feel strongly that the bill under consideration here today would be another example of detrimental legislation.

390 For all the reasons that have been set forth by other coal industry officials in testimony before this Committee, I am firm in my belief that this legislation would establish a whole new layer of bureaucracy and a new set of requirements that will unnecessarily compound the delays in coal development at a time when we can ill-afford another wasted day.

390 Further, with what I hear from the media, it would appear that this Committee is determined to pass a bill imposing national standards upon our industry, notwithstanding the comprehensive and painstaking efforts of the several states to pass and implement responsible controls based upon the geographic peculiarities of the many dissimilar mining locations.

391 I fear that the Committee will hastily force this legislation upon the Nation's coal industry and that the Congress will later stand idly by as the regulatory authorities lop off vital parts of our coal resources which don't

happen to fit your idealized pattern, and, in the process build interminable new
layers of bureaucracy.

391 BILL INVITES LITIGATION AND DELAY

391 The one aspect of this bill that constitutes the greatest single impediment to increased coal production is the potential for endless and repetitive litigation inherent in the numerous ambiguous terms and requirements
of the bill. Every operation is open to challenge at every step of the detailed
administrative proceedings as well as in the courts.

391 In addition, under the "Citizen Suits" provision, Section 520, specific
statutory authority is granted to sue the federal government, the state agencies, and the operators. This authority is in addition to all existing

rights to bring suit under other statutes and the common law. In other words,
no action taken or decision made by the regulatory authority is above challenge.

391 In the past few years, particularly, we have watched in utter frustration while groups with a cause to champion or an axe to grind - but without the national interest at heart - have brought energy development to a virtual standstill. Coal development in the entire Northern Great Plains was halted by a single lawsuit. A hydroelectric dam has been prevented because of
pretended concern for the 2-1/2" Snail-darter fish. The construction of a badly
needed nuclear power plant was halted because discharged waters raised the temperature of the ocean water a few degrees along a few miles of the New England coast. This list goes on and on. Something might be said in defense of
each of these actions, I know, but the overall pattern of obstructive delay and
disregard for the backbone of our economy is a violation of the trust to the American people.

392 SURFACE MINING DISCOURAGED

392 Presumably, the underlying concept of this proposed legislation is that
if certain lands cannot be reclaimed, they should not be mined. It would seem
to follow, conversely, that if certain lands can be reclaimed, development of these lands should be permissible within the framework of surface mining regulations.

392 I enthusiastically endorse the concept that mining should not proceed if
effective reclamation cannot be accomplished. But too many provisions of this
bill state or imply a simple prohibition of surface mining regardless of whether

reclamation is achievable

393 An example is the section dealing with surface owner protection. On page 171, line 3, the bill instructs the Secretary of the Interior "in his discretion but, to the maximum extent practicable," to refrain from leasing federal coal deposits underlying privately-owned surface lands for development by methods other than underground mining techniques.

393 This does not constitute direct statutory prohibition, but certainly conveys Congressional encouragement and approval of prohibition.

393 This provision raises other troublesome questions. Many owners of lands overlying federal coal welcome the financial benefits of coal development on their properties. Other provisions of this bill would assure that land would be returned to a property owner in a reclaimed condition. Why, then, should he not benefit financially from coal development as other landowners have? The bill limits the surface owner's compensation with an expensive, time-consuming and restrictive appraisal system.

393 SURFACE MINING SAFER

393 In addition, the language in this provision, and in other portions of the bill, seems to encourage mining by underground methods.

393 I'd like to make two points in this regard:

394 Although the coal mining industry is making a successful concerted effort to improve the safety of underground mining, surface mining remains, and will continue to be the safer - and, for that matter - the more productive method of mining. My company's frequency rate of disabling accidents, which is far superior to the industry average, is revealing when a comparison is made between underground and surface mining methods.

394 In 1976, Consolidation's accident frequency rate of 13.31 injuries per million man-hours in underground operations was more than twice as high as the accident frequency rate of 5.68 injuries per million man-hours in surface operations. Incidentally, the 5.68 frequency is just slightly better than the experience rate for federal civilian employees, according to the National Safety Council's figures.

394 It seems to me that while the industry is devoting millions of dollars and millions of man-hours to improving its safety performance, the federal government should not be discouraging the safest method of producing coal.

394 Secondly, the method of mining also determines the percentage of coal

that can be mined in a given reserve. Surface mining techniques can essentially recover all the coal in a reserve, whereas underground mining, depending on the method employed, will always recover less and often only 50% as much. At this time of energy shortages we need to maximize our productive effort, conserve its finite resources and not constrain them unnecessarily.

395 BILL OVERLAYS UNDERGROUND MINING

395 This bill, unlike some earlier versions, attempts to consolidate regulations governing the surface effects of underground mines into one section, Section 516. In my opinion, this has been helpful. Now in one simple amendment the Committee can and should strike this travesty from this bill.

395 Underground operations, mine stability, subsidence, and disposal of mine refuse involve extremely complex geological and engineering considerations. Further, they cannot be divorced from the paramount concern for mine safety. These matters, including comprehensive provisions relating to coal refuse disposal and impoundments, are exhaustively covered by the Federal Coal Mine Health and Safety Act of 1969.

395 Our environmental consultants advise me that language on the top of page 104 would be interpreted to require a "zero discharge" meaning runoff water cannot contain any suspended solids. Strict but liveable standards are already set by federal EPA.You would be requiring the coal mining industry to do what even farmers cannot do.

396 I conclude that a great deal of additional study is required before underground operations are included in the proposed legislation. You have excluded minerals other than coal for that very reason.

396 HYDROLOGIC DATA EXCESSES

396 One of the most onerous provisions of H.R. 2 involves the requirements for hydrologic data. The accumulation of a sufficient amount of data to satisfy the requirements of the bill could take a year or more and would involve great expense.

396 A more reasonable approach would be to require a description of the hydrology of the permit area, water levels and water table measurements, and data regarding the dissolved and suspended solids under seasonal flow conditions. In the fragile regions of the country the bill seems to be most concerned about the regulatory authority should be empowered to request additional data where necessary. The determination of the cumulative effect of

"all anticipated mining" in the area seems more appropriately to be the responsibility of the regulatory authority.

397 ALLUVIAL VALLEY FLOORS

397 The section dealing with alluvial valley floors has been addressed comprehensively by other spokesmen. It is only for that reason that I limit my severe misgivings to the following observation:

397 It is impossible to determine accurately how much tonnage would be put off limits by the section dealing with alluvial valley floors on pages 75 and 76. Previous estimates have been as high as 66 billion tons of strippable reserves. It may well be that high; it could be higher. In any event it would be more tonnage than this nation can afford to lock up. I can corroborate the claim that the impact would be grave by looking at the effect upon Consol's reserves.

397 The alluvial valley floors provision would cut the heart out of our logical mining units, rendering many of our most attractive western coal reserves infeasible for economic development.

397 LANDS UNSUITABLE

397 Another section of H.R. 2 sets up a mechanism to declare as "unsuitable for mining" lands that are "fragile" or "historic", renewable resource lands, natural hazard areas, or lands where surface mining is deemed incompatible with existing land use programs. These ambiguous standards could apply to almost any area as being unsuitable for surface mining.

398 Again, if the land can be reclaimed, these kinds of subjective prohibitive restraints should not be imposed on the mining of coal.

398 APPROXIMATE ORIGINAL CONTOUR

398 As written, this bill authorizes variances from the requirement to reclaim land to approximate original contours for mountaintop mining only. But the reasons for permitting variances for post-mining industrial, commercial, residential, and recreational uses remain valid no matter what form of mining is employed.

398 In many instances, reclaiming to approximate original contours may not be suitable for the post-mining use of the land that is contemplated. Adoption of the bill's language in its present form unnecessarily ties the regulatory authority's hands and unreasonably restricts the uses to which the land can be put after mining.

398 I have not addressed myself to all of the deficiencies that I believe are contained in this proposed legislation. Mining problems have been cited by other industry witnesses, and I concur in their objections.

398 Nevertheless, I do wish to reemphasize my firm belief that this bill is ill-conceived and ill-timed. The scenario facing Congress several years ago, when certain of its members were convinced that deficient local regulation compelled sweeping federal controls, has changed markedly. Passing H.R. 2 in its present form would be an act of incredible excess and irresponsibility in light of existing state laws and the pressing need for the development of our domestic energy resources.

399 The coal mining industry is repeatedly demonstrating the effectiveness of its surface mining and reclamation practices. I am proud of the work my own company has accomplished in these areas, and I encourage the members of the Committee to get a firsthand look at reclamation work effected by my company and other companies in the industry.

NATIONAL COAL ASSOCIATION

STATEMENT BY JOHN H. PAUL VICE PRESIDENT, PUBLIC AFFATRS AMAX COAL COMPANY INDIANAPOLIS, INDIANA before the COMMITTEE ON INTERIOR AND INSULAR AFFAIRS with respect to SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 U.S. HOUSE OF REPRESENTATIVES Washington, D.C.

February 25, 1977

401 Mr. Chairman and members of the Committee:

401 My name is John H. Paul, Vice President of Public Affairs for Amax Coal Co., a division of Amax Inc. I appreciate the opportunity to testify before your committee on the proposed "Surface Mining Control and Reclamation Act of 1977".

401 As you know, Mr. Ian MacGregor, Chairman of Amax, Inc. testified before this committee on January 12, 1977. During his testimony Mr. MacGregor stated that he saw no present need for a federal law that would supersede existing state regulation of surface mining and reclamation. We support and agree with this statement and in light of recent public announcements by state officials, unions and associations opposing federal legislation ask that the committee continue to examine this position.

401 We believe that during the passage of time since Congress began deliberation on the issue of federal surface mining legislation, and industry was given the opportunity to testify in 1973, any justification for

Congressional action has ceased to exist. Currently thirty-eight states have laws concerning surface mining, including every major coal producing state. Since 1973 when the Interior Committee held hearings, twenty-nine of those states have either enacted new legislation or amended their existing laws. Significant changes in regulations implementing the laws has been an ongoing process. Also the Department of Interior has completed a major revision of regulations governing surface mining and reclamation on coal mined on federal lands.

401 When analyzing most new legislation one usually finds and argues that increased costs, bureaucracy and procedural red tape, which is often unnecessary, will have such an adverse impact on industry that we are forced to address primarily those provisions. In the case of H.R. 2, the situation is even more grevious.

402 The general approach, and the specific language in most of the important subsections, remains a repetition of what confronted the coal industry during the entire 94th Congress. Apart from the well recognized need to increase coal production to meet the Nation's energy needs, it does not appear that any meaningful effort has been made to incorporate any of the suggestions of industry to correct significant deficiencies in the currently proposed legislation, which will prohibit present or proposed mining, cause delay of mining operations, impose unnecessary burdens and costs, and allow for administrative interpretation of important Sections which will result in serious delays and continual litigation.

402 There are numerous areas within the proposed legislation which we believe are either unnecessary or have been improperly approached, however, the following issues are of significant importance to Amax mining operations or will substantially delay and impede future operations:

402 (1) Alluvial Valleys

402 Subsection 701(27) defines alluvial valley floors as follows: " . . . unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities." Two other subsections must be reviewed in connection with the definition. Subsection 510(b)(5) prohibits the issuance of a permit for mining on an alluvial valley floor (as defined in subsection 701(27)) west of the 100th meridian unless the regulatory authority finds, in addition to other requirements, that the proposed operation will not "(A) interrupt, discontinue, or prevent farming on alluvial valley floors that are irrigated or naturally subirrigated, but excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands that the regulatory authority finds that if the farming that will be interrupted, discontinued, or

prevented is of such small acreage as to be of negligible impact on the farms'
agricultural production, or, (B) not adversely affect the quantity or quality of
water in surface or underground water systems that supply those valley floors in
(A) of subsection (b)(5): Provided, That this paragraph (5) shall not affect
those surface coal mining operations which in the year preceding the enactment
of this Act (1) produced coal in commercial quantities, and (2) were located
within or adjacent to alluvial valley floors or had obtained specific permit
approval by the state regulatory authority to conduct surface coal mining
operations within said alluvial valley floors." An evaluation of the alluvial
valley question must be made with a reading of the above two subsections in
light of a third subsection (515(b)(10)(F)) which provides that "as a minimum"
surface coal mining operations be conducted in such a manner that will preserve
"throughout the mining and reclamation process the essential hydrologic
functions of alluvial valley floors in the arid and semi-arid areas of the
country . . . "

402 Too many times dialogue between proponents of the legislation and
members of industry has become bogged down and counterproductive because
individual subsections are discussed and amendments suggested without a total
review of the probable impact of the cumulative language which addresses the
issue of mining in alluvial valley floors. Lack of clear definitions and
varying interpretations of all applicable subsections raise the following
points:

404 (a) The definition of alluvial floors in subsection 701(27) could
include every dry wash west of the 100th meridian. If the other important
subsections (510(b)(5) and 515(b)(10)) were clear and not subject to continual
discussion as to intent, and were truly aimed at protecting essential areas,
perhaps the definition in 701(27) would be adequate. However, because of
possible conflicting interpretation and regulatory application, areas intended
to be protected should be clearly defined. For instance, these provisions would
include perennial, intermittent and ephemeral streams. If the bill is enacted
it is imperative that the legislative history make clear that implementing
regulations recognize each type of stream separately with regard to its
importance within the overall regional agricultural activity.

404 (b) Subsection 510(b)(5) provides that an interruption or discontinuance
of farming on alluvial valley floors will prevent the issuance of a permit.
Granted there is an attempt to limit the prohibition by excluding undeveloped
range lands which are not significant to farming. Nowhere is there a clear
definition or explanation as to what constitutes undeveloped range land or what
is the meaning of significant. "Farming that . . . is of such small acreage as
to be of negligible impact on the farm's agricultural production" is also

excluded from the prohibition. Initially, a query is raised as to the meaning of the exclusionary language insofar as possible future farming activity is concerned - particularly since subsections 510(b)(5) talks in terms of "preventing" farming on alluvial valley floors which, in turn, would prohibit mining. It also appears that whether you have a 10,000 acre farm with 100 acres of valley floor, or a 500-acre farm with 100 acres of valley floor, the regulatory authority could determine that in each case the valley floor acreage is significant to the individual farm and hence mining could be prohibited. The above interpretation ignores the overall impact of a proposed mining and reclamation activity as it relates to broad or regional agricultural usages. The intention appears to be a prohibition of mining where there will be an interruption, discontinuance or prevention of farming without regard to whether mining and reclamation can be successfully accomplished.

405 Subsection 510(b)(5) also refers to prevention of farming on alluvial valley floors. Granted, there are qualifiers covering underdeveloped range lands and negligible impact; however, "prevents" contemplates not only present, but future farming, and it is totally unclear what "excluding underdeveloped range lands which are significant to farming" means when we contemplate possible future farming.

405 (c) The so-called "grandfather clause" in subsection 510(b)(5) is unclear and probably not sufficient to protect active operations and situations where an operation has made substantial financial and legal commitments. In order to qualify a surface coal mine must have produced coal in commercial quantities in the year preceding enactment. What is "commercial quantities"? Surface coal mining operations in many parts of the West contain large tonnage within the logical mining unit. A possible interpretation of this requirement would necessitate the mining of 5,000,000 tons of a 500 million ton reserve and 10,000,000 tons of a billion ton reserve. When discussing the interpretation of commercial quantities, it is important to note that the second largest coal mine in the United States in 1976 mined only 7.3 million tons of coal. Also, the grandfather clause requires not only meeting the commercial quantity requirement, but also the approval by the state regulatory authority. We suggest that an operator who has made significant financial and legal commitments should qualify under the "grandfather clause" regardless of commercial quantity, whatever that may be. See, for example, the Interior Department's 30 CFR 211.1 reclamation regulations under which an existing operation is defined as an operation which has (1) an approved Interior Department mining and reclamation plan and (2) an operation with respect to which a proposed plan has been submitted and the Department has expended substantial resources in the preparation or completion of an environmental impact statement.

405 $4 06 We also question the duration of the intended "grandfather" protection. As an example, in Wyoming the State issues life of the mine permits which are subject to continued inspection and reporting requirements. H.R. 2 provides for up to five-year permits. Is a mining operation where there is an approved State permit, substantial financial commitments, and current production in the traditional sense, as well as long-term commitments to utilities customers actually grandfathered? Or are these utility customers to proceed without knowing if a regulatory authority will at some time in the future interpret subsections 701(27), 510(b)(5) and 515(b)(10) as applying to existing mines which should have been grandfathered by this legislation and subsequently deny a permit renewal? This problem is made more acute by subsection 506(d)(2) which provides that if an "application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for revision of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this Act".

407 In this connection we direct the Committee's attention to the report of this Committee on H.R. 25 as well as to the recent ICF Report - the former makes clear a prior Congressional intention to broaden grandfather protection beyond that contemplated by H.R. 2, and the latter recommends specific changes in subsection 510(b)(5). Thus, last year's Committee Report stated:

407 "However, the alluvial valley floor provisions will not apply to . . . ongoing mining operations which, in the year before enactment of this Act, produced coal in commercial quantities on or adjacent to alluvial valley floors or had obtained specific permit approval to do so from a state regulatory authority . . . "

407 Indeed the more recent ICF report recommends the following amendatory language:

407 " . . . paragraph (5) shall not affect those surface coal mining operations which in the year preceding the enactment of this Act had specific permit approval by the state regulatory authority to conduct surface mining operations within or near said alluvial valley floor." (p. V-45)"

408 (2) Hydrology

408 Subsection 507(b)(11) requires all operators to include in the permit application, among other things, "a determination of the hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with

respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding area so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability".

408 This requirement applies to all surface mine operators who are required to file a permit application within two months after a state program is approved. (It should be noted that subsection 516(b)(9) imposes requirements on underground mines in regard to hydrologic balance at the mine site and in associated off-site areas.) Most major western surface mining operations involve federal land and/or minerals and, therefore, have an approved or pending environmental impact statement. That statement includes site specific hydrologic information which should be sufficient for a determination of the on-site impact of the mining operation. A determination which will satisfy the regulatory authority as to the "cumulative impact" appears to be extremely onerous if not impossible within the time frames required by the bill for individual operators regardless of size and expertise, or location. Legal questions concerning access to "surrounding areas", however defined, create substantial problems. It is also unclear, assuming you can obtain necessary approvals for off-site study, what is the scope of the "anticipated mining" to be studied. As currently proposed the operator would be required to project the cumulative hydrologic impacts of mining operations in the area of his proposed operation. We would recommend that the hydrology provision be modified to provide that the regulatory authority must clearly outline the cumulative hydrologic impacts which must be determined and set forth precisely the surrounding areas within which these impacts must be measured.

409 Small operators everywhere will be confronted with an impossible task since they are subject to the same requirements as large mines. The proposed legislation provides a procedure intended to assist operators who do not produce more than 250,000 tons per year. However, even these operators will have an extremely difficult time in complying with requirements within the stated time frames. Operators producing more than 250,000 tons per year will also have similar difficulties. Studies provided for in 507(c) cannot be performed until the regulatory authority expends the per ton money and the "regulatory authority" is defined in subsection 701(16) as "the State regulatory authority where the State is administering this Act under a Federal program". Subsection 502(e) requires an operator to submit a permit application not later than two months following approval of a State program, and the hydrologic data and results of test boring and core samplings as required by 507(b)(11) and (15) are

a significant element of that permit application. Two months is a totally unrealistic time period for the required hydrologic studies in view of the magnitude of the undertaking and the fact that seasonal flow conditions must be measured. Therefore, it is imperative that the time frame within which this testing must be accomplished should be extended for both small and large operators.

410 We also believe that consideration should be given to the establishment of a procedure whereby operators have the opportunity to conduct the studies themselves, or select a third party consultant from an approved list provided by the regulatory authority. In the event the third party approach is employed, the studies would be the responsibility of the consultant and the cost of funding such studies would be shared by the operators benefiting from this study.

410 The application of the hydrologic requirements in subsection 515(b)(10) as it applies to alluvial valleys has been previously discussed. However, this subsection, which requires the operator to "minimize the disturbance to the prevailing hydrologic balance at the mine site and in associated off-site areas . . . " , is also an interim standard which applies to all existing mines, regardless of size or location, not later than 180 days from enacment. It is questionable whether the allowed time for compliance provides a realistic opportunity for the operator to make any necessary changes in the approved, ongoing operation in order to meet the detailed, complicated hydrologic requirements of subsection 515(b)(10).

411 (3) Surface Owner Protection

411 Opponents and proponents of the proposed legislation have argued this issue continually. Objections to this provision have not only come from the coal industry. Substantial objections, in fact, have been raised by surface owners who are not related in any manner to the coal industry. Numerous approaches have been proposed and none have been satisfactory. Any effort to incorporate language which allows the coal operator to have access to the minerals without regard to the wishes of the surface owner has been objected to as strongly as language which would attempt to give the surface owner complete right of veto to mining. The current language in Section 714 first inhibits the surface owners' rights by stating that " . . . the Secretary shall, in his discretion but, to the maximum extent practicable, refrain from leasing such coal deposits for development by methods other than underground mining techniques." Additional language creates an arbitrary system of valuing the surface owner's interest whereby there is a substantial limitation placed on the value which a surface owner can receive for his land. A combination of the mandate to the Secretary and the unrealistic limitation on the amount which a surface owner can receive for his land will serve to unreasonably discourage

action by the Secretary and the surface owners who might otherwise approve of and desire development of the coal reserves underlying the land. Also, these provisions totally ignore the question of whether mining and reclamation can be accomplished in accordance with the requirements of the Act.

412 The question of surface owner protection should not be addressed in the proposed legislation and the statutory and legal rights currently in existence in the individual states should continue in force. The proposals contained in H.R. 2 do not meet the objectives of the operators nor the surface owners as defined in subsection 714(g). The rights of those persons holding valid, legal surface interests who do not meet the definition are totally unclear.

412 (4) Areas Unsuitable - Land Use

412 Section 502 establishes a procedure whereby each State shall establish a land use planning process in order for the State to be eligible to assume primary regulatory authority pursuant to Section 503. Not only is this the establishment of a federally required and enforced zoning program, but it ignores the needs and goals of the individual states. Subsection 522(a) sets forth a list of criteria such as: "(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; or (C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology." The criteria are vague and subject to future subjective determination by the regulatory authority. In fact, under the broadest interpretation this could potentially preclude mining anywhere in the United States. In addition, if there is to be federally imposed State land use planning, and we do not support that concept, the States should be the ones to determine what criteria should be included in the program in order to meet their individual needs and goals.

413 The impact of Section 522 becomes even more critical in the overall mine planning process when it is recognized that subsection 522(c) allows "any person having an interest which is or may be adversely affected" to petition the regulatory authority to have an area designated unsuitable for surface mining.

The exclusionary language in 510(b)(4), dealing with permit approval or denial for areas under study for designation as an area unsuitable, provides protection for an operator who " . . . prior to the date of enactment of this Act, . . . has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit . . . " This is in direct conflict with subsection 522(a)(6) which adopts the same exclusionary language, but only with respect to substantial legal or financial commitments in operations which exist prior to September 1, 1974. This obvious oversight could cause substantially differing results concerning the intended protection. Both exclusions should apply to operations with legal and financial commitments made prior to the date of the Act.

414 The procedures for permit approval or denial in subsection 510(b)(4) provide that "the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to Section 522 or is not within an area under study for such designation in an administrative proceeding . . . " We again question the protection for operatore who have made substantial legal and financial commitments in regard to federal lands. Subsection 522(b) provides that the "Secretary may permit surface coal mining on Federal lands prior to the completion of review". Whether the Secretary will actually allow mining to proceed on federal lands under review is certainly questionable, and litigation under this provision is certain. In addition, the time which will be required to formally complete the review of federal lands could last for years. In any case, it is clear that there will be substantial delays in permitting new mines required to meet national energy goals.

414 (5) Miscellaneous

414 There are many other areas of concern within H.R. 2 which may have the effect of prohibiting or delaying mining and will certainly result in unnecessary costs which ultimately must be borne by the consumers. Among these concerns are requirements for return to original contour and a questionable variance procedure for mountain region. Mandated top soil requirements fail to recognize the individual needs of the States and the varying mining conditions which exist in the individual states. A reclamation tax is imposed on all coal mined (surface and underground) partly for the purpose of reclaiming orphan

lands. Not only is this tax an unnecessary cost imposition for a program which has never been properly justified, but the proceeds of the tax can be used for other federally instituted programs which have no relation to reclamation and there is no guarantee of a return to the areas which generated the revenue. The extensive requirements imposed on underground mining have no place in a federal surface mine bill and should be excluded.

415 Mr. Chairman. I have addressed a few of the major problems that we have with H.R. 2. These few areas alone point out that if this bill is enacted in its present form it will prohibit the mining of millions of tons of coal without considering the fact that that coal could be mined while maintaining or improving the environment through present reclamation techniques. It may also preclude the continued operation of existing deposits which are either being mined or to which significant financial and legal commitment has been made.

415 I want to draw your attention to the provisions dealing with alluvial valleys alone which demonstrate that possible ambiguities in this bill could lead to enormous differences in the impact these provisions will have on reserve bases and production. I submit a chart set forth in the ICF study which adopts a moderate impact scenario and yet recognizes the potential validity of the high impact scenario which could be caused by this Act.

416
*3*Alluvial Vall ey Floor Reserve Base Impacts
1
3(billions oftons)
LOW MODERATE
HIGH
0.6 2.4
12.6

*4*Alluv ial Valley Floor Production Impacts 2
4(millions of tons)

	LOW	MODERATE	HIGH
1977	0	4.0	17.0
1978	0	12.0	25.0
1979	0	16.0	35.0
1980	0	20.0	47.0
1981	0	24.0	53.0
1982	0	30.0	68.0
1983	0	32.0	75.0
1984	0	35.0	91.0
1985	0	35.0	104.0

416 It is more than disturbing to think that in one year after the enactment

of this bill between 12.0 and 25.0 million tons of coal energy could be lost and
by 1985 the nation could be deprived of between 35.0 and 104 million additional
tons. This is only one example . . . however, it is greatly compounded when you
consider the potential negative impact on coal development of all the provisions
of H.R. 2 which we have discussed during these hearings.

416 In conclusion, we subscribe to the concept of proper reclamation requirements and that areas which cannot be reclaimed should not be mined. However, H.R. 2 appears to be aimed at restricting mining through detailed, unclear, subjective requirements that impose unnecessary requirements on the States and the operators.

417 All in all we, as an industry, want to be judged by our present activity and not that of the past. This bill fails to recognize present surface
mining and reclamation techniques by which we can extract coal and return the land to the same or better than pre-mining condition. The coal industry has vastly improved its attitude and actions toward mining and reclamation; it is our hope that others so concerned will be receptive to our point of view. If an
equitable middle ground is not reached on this legislation the effect upon miners, producers, utilities and the American citizen will be greater than is presently anticipated. It will, also, unnecessarily place us all behind the energy eight ball.

417 Again thank you for providing this opportunity to testify.

NATIONAL COAL ASSOCIATION

STATEMENT BY J. L. JACKSON PRESIDENT FALCON COAL COMPANY, INC. LEXINGTON, KENTUCKY before the COMMITTEE ON INTERIOR AND INSULAR AFFAIRS with respect to SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 H.R. 2

U.S. HOUSE OF REPRESENTATIVES Washington, D.C.

February 25, 1977

432 Mr. Chairman and Members of the Committee:

432 My name is J. L. Jackson. I am president of Falcon Coal Company, which
is engaged in the surface mining of coal solely in the Commonwealth of Kentucky.
I am also a Director of National Coal Association.

432 I appreciate the opportunity to appear before the Committee again. As
you know, I presented testimony before the Committee last January 12th, and have
since been visited by you, Mr. Chairman, and Secretary Andrus at one of my operations. Since Falcon Coal Company's operations are conducted on the steep

slopes of Eastern Kentucky, I will confine my remarks to some of the aspects of the bill which affect such operations. However, I do believe that my comments are applicable to most of the mountainous terrain of Appalachia. I will attempt to confine my remarks to those aspects that most directly affect production.In order to save time, I will discuss only some of the significant concerns with which I am most familiar.

432 I would also like to reiterate my previous statement of January 12 that I think Kentucky has adequate surface mining and reclamation legislation, and has improved its enforcement mechanism with the hiring of qualified technical personnel in the last couple of years. However, it is my understanding that we are here today to discuss only the pending legislation.

433 In Eastern Kentucky, we are utilizing a technology which permits the mountaintop mining of coal and which creates gently rolling terrain after mining. Falcon Coal Company has several of these operations and this same technology is used in other areas of Appalachia. All of the mining areas have ridgebacks and hollows, and mountaintop technology utilizes the heads of the hollows as permanent spoil placement areas. The hollow fills are graded to blend in with the mined area to provide large contiguous level areas. Flat land is extremely valuable and desperately needed in many areas of Appalachia. It provides a land form that can be used for numerous beneficial and productive postmining uses, whereas the land prior to mining was so rugged and steep that little or no productive use could be made of it. Even the growth that occurs on the undistrubed slopes is for the most part scrub vegetation.

434 Although I realize that Section 515(c) is intended to provide a variance mechanism to permit mountaintop mining, it establishes so many unrealistic conditions, that few operations will be able to qualify for the variance. In effect, mountaintop mining would be prohibited.

434 In order to comply with Section 515(c)(3) the operator would have to prove a postmining use and that it is obtainable by submitting data regarding the following:

434 (1) expected need and market;

434 (2) assurance of investment in necessary public facilities;

434 (3) assurance of private financial capability; and

434 (4) demonstration that the postmining use is pursuant to a preconceived design and schedule attached to the reclamation plan. (Section 515(c)(3)(C)(i)

- (vii) In addition, the permissable postmining uses are limited to industrial, commercial (including commercial agricultural), residential or public facility (including recreational facility). These detailed requirements make the variance, as a practical matter, unavailable. It is not possible, in most cases, to specify the exact postmining use as early as when the mining plan is submitted. Many times it will be 10 years or more before mining is completed and the land will be available for ultimate postmining uses. Obviously, a financial commitment or other data required so far in advance is not practical, and in most cases not possible. Furthermore, the language of the exception, by including only commercial agricultural uses, would not permit small, private farms to take advantage of the exception.

435 Over 90% of the surface affected by Falcon Coal Company's surface mining operations is privately owned, primarily by numerous individual residents. Falcon Coal Company and most other operators do not own the land. We are not real estate developers, and cannot make a commitment for the land's postmining uses. Each owner has his own ideas about what he wants to do with his land, and by the time mining is completed there may be as amny proposed uses as there are owners; all, however, preferred to original uses available.The restrictive variance for mountaintop mining will be unavailable because the operator cannot make a commitment for the postmining land uses. Consideration should be given to the fact that level land provided by mountaintop mining is valuable and is desperately needed and wanted by the private landowner in Appalachia. After all, the land is theirs and their desires should be of primary concern. It would be economically impossible to provide such improved land except in conjunction with the mining of coal. The bill should recognize that mountaintop mining is an acceptable mining practice that is more protective of environmental damages than the proposed return to approximate original contour. It, therefore, should be specifically authorized and excluded from the requirements of return to approximate original contour so long as it meets the other standards of the Act. In this way, the complicated variance procedure could be eliminated. If Section 515(c) must be retained, it should provide more realistic prerequisites. The restrictive postmining uses should be eliminated provided the operator can show that equal or better uses can be obtained after mining. Data requirements as to specific market need, commitment of public agencies and data as to financial capability should be deleted.

437 I would like to urge you to reconsider the requirement to return all surface mining on steep slopes to approximate original contour. This requirement is counterproductive to the achievement of some of those standards in the bill specifically related to environmental protection (e.g. stability,

erosion, sedimentation and drainage control). In many cases putting back unconsolidated material on steep slopes is an unsound practice and can lead to erosion and sedimentation problems in comparison with other spoil disposal techniques which are available. The requirement to return the surface to approximate original contour is primarily an aesthetic or cosmetic oriented provision, not a provision attendant to true environmental protection. Many of you feel that the practice of return to approximate original contour is necessary to eliminate landslides, sedimentation and mineralization. These problems are associated with placement of spoil on the downslope and not with the highwall that is left from contour stripping. Some of the practices of the past, such as failure to cover toxic material and the indiscriminate dumping of waste materials down the hillsides, have created the problems. Unfortunately, those who were not aware of what was happening tended to identify the problem with the existence of the highwall. The vertical highwall, however, is in most cases stable and contributes little if anything to the environmental problems associated with past surface mining. If you don't like the appearance of the highwall and want to legislate its elimination, do it openly for that purpose and not under the guise of protecting the environment against sedimentation, landslides, mineralization and the like.

438 The requirement of return to approximate original contour will deny the operator the use of other acceptable land forms that are utilized in many other large scale landscape operations such as highway construction and flood control projects. These land forms include diversion terracing, stair stepping, and partial backfilling.

439 In spite of the urgent need for additional flat land, the requirement to return the land to approximate original contour ignores better postmining uses and the desires of the landowner to do what he wants with his land after mining. Other configurations will often support postmining uses which are equal or better economic or public uses in comparison with the premining use. Leveling land for better uses can be achieved as part of postmining reclamation and will establish a base for agriculture, homes, schools, hospitals and other public buildings throughout Appalachia. The floodplain is often the only level land available. More important in an economic sense, industrial development, which could help diversify the Appalachian economy, is stifled when no suitable industrial sites are available. Because of the rough terrain with its very limited uses, citizens of Appalachia have been eking a tough existence out of the hills for many years. By requiring return of Appalachia's slopes to approximate original contour, you are limiting land use and denying Appalachia's citizens the opportunity to take advantage of new uses that may be provided only through the expensive earth-moving mining process. Under the proposed

legislation, the use of head of hollow fill would be limited to the deposit of excess spoil material from the return to original contour and mountaintop mining techniques. The head of hollow fill, however, is currently used as an effective method for eliminating or controlling landslides, controlling sedimentation and has additional valuable environmental effects. Presently head of hollow fill is allowed and is being successfully used under existing Kentucky law.

440 Another objection to the return-to-original-contour concept is that it prevents creation of new water sources. New water sources may be created by leveling basins in mountainous terrain so that the land is graded back toward the center of the reclaimed area. Water accumulates in the mountaintop basins, runoff is slowed down, sediment falls out, and clear water can be drained from the area through use of a drainpipe over the hillside at an undisturbed location. Requiring return to approximate original contour would not permit this.

441 It is recommended that certain exceptions be provided for variances to approximate original contour mining. If an operator can show a land form that will achieve better environmental protection, he should not be required to return the land to approximate original contour. Similarly, if the operator can show equal or better postmining uses while complying with the environmental standards of the Act, he should not be required to return to approximate original contour. If these exceptions are granted, the operator should be able to take advantage of the off-site spoil placement provisions of Section 515(d) which permits head of hollow fill. Head of hollow fill has been effectively used for spoil disposal purposes and for eliminating or controlling landslides and controlling sedimentation under Kentucky's existing law.

441 Operators are required to comply with the hydrologic requirements of Subsection 507(b)(10) for new permits obtained 6 months after enactment and for all existing operations within a year.Section 515(b)(10) requires, among other things, that each operator protect against the addition of suspended solids to stream flow above natural levels under seasonal flow conditions as measured prior to any mining. In many areas where mining has been conducted for generations, data as to flows prior to any mining are simply not obtainable. Even in areas where mining has not yet occurred, it will take at least a year to obtain seasonal flow data. Compliance within six monthd would be impossible assuming seasonal means all four seasons of the year. Appalachia is crisscrossed with a network of streams and creeks, and compliance with Section 515(b)(10) within a year will be impossible in many instances, especially if

there is any delay in promulgating the federal regulations.

442 The provision authorizing approved state regulatory agencies to gather the hydrologic data for operators producing less than 250,000 tons annually does not take into consideration the time limitations imposed by the bill. The approved state regulatory authority which would supervise the acquisition of this data will not be functional for at least 18 months and possibly 30 months or more. Aoo operators, however, must comply within 6 months or a year. Additionally, the hydrologic data contemplated under Subsection 507(b)(11) apparently must be completed in most cases within 2 months after the state regulatory authority comes into existence. Such studies must measure seasonal flow conditions. Therefore, at least a year or more will be required.

443 There are many other ambiguities and contradictions in the proposed Bill which must be noted and dealt with. The problem areas that I have discussed are of major import to a workable, sensible Bill that truly has the objective of allowing the surface mining of coal while providing meaningful assurance of adequate environmental protection.

443 Thank you for the opportunity to comment on my very serious concerns with the proposed legislation.

STATEMENT OF ROBERT D. BELL, SECRETARY DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION COMMONWEALTH OF KENTUCKY FRANKFORT, KENTUCKY ON HR 2 FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 TO THE SUB-COMMITTEE ON ENERGY AND THE ENVIRONMENT COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1977

445 MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM ROBERT D. BELL, SECRETARY OF THE KENTUCKY DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION. I APPRECIATE VERY MUCH THE OPPORTUNITY TO ADDRESS THE COMMITTEE.

445 IN ORDER THAT YOU MIGHT UNDERSTAND MY INTEREST IN THE FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, I WOULD LIKE TO EXPLAIN THAT I AM APPOINTED BY AND SERVE AT THE PLEASURE OF THE GOVERNOR OF THE COMMONWEALTH OF KENTUCKY. AT THE STATE LEVEL, OUR DEPARTMENT HAS RESPONSIBILITY FOR MOST OF THE FUNCTIONS PERFORMED AT THE FEDERAL LEVEL BY THE DEPARTMENT OF THE INTERIOR AND THE ENVIRONMENTAL PROTECTION AGENCY. UNDER THIS LEGISLATION, THE DIVISION OF RECLAMATION IN OUR DEPARTMENT WOULD BECOME THE STATE REGULATORY AUTHORITY.

445 THE COMMONWEALTH OF KENTUCKY ENTHUSIASTICALLY SUPPORTS THE BROAD OBJECTIVES OF THE PROPOSED LEGISLATION. GOVERNOR JULIAN M. CARROLL HAS PERSONALLY EXPRESSED THIS SUPPORT ON SEVERAL PUBLIC OCCASIONS. HAVING SAID THIS, LET ME NOW SAY EMPHATICALLY THAT THERE ARE PROVISIONS OF THE PROPOSED LEGISLATION WHICH WE THINK SHOULD BE CHANGED.

445 WITHIN A WEEK, WE WILL COMPLETE A COMMENTARY WHICH WILL ADDRESS PRACTICALLY EVERY SECTION OF THE PROPOSED LEGISLATION. THROUGH OUR KENTUCKY CONGRESSIONAL DELEGATION, WE WILL TRANSMIT THIS COMMENTARY TO THE STAFF OF THE
APPROPRIATE COMMITTEES FOR THEIR CONSIDERATION.

446 AT THIS TIME, WE HAVE THE FOLLOWING MAJOR CONCERNS:

446 WE BELIEVE MANY OF THE PROCEDURAL REQUIREMENTS SET FORTH IN THE BILL COULD BE SIMPLIFIED IN THE INTEREST OF THE ENVIRONMENT, THE PUBLIC, THE GOVERNMENT AND THE INDUSTRY

446 WE ARE CONCERNED ABOUT THE ABANDONED MINE RECLAMATION FUND AND THE PROCEDURES UNDER WHICH THE PROCEEDS FROM THIS FUND WILL BE ALLOCATED TO THE STATES;

446 WE ARE WORRIED AS TO WHETHER OR NOT THERE WILL BE SUFFICIENT FEDERAL FINANCIAL SUPPORT OF THE STATE REGULATORY AUTHORITIES;

446 WE WORRY ABOUT THE RIGHTS OF SURFACE LAND OWNERS WHO ARE IMPACTED BY SURFACE MINE OPERATIONS AND WHETHER THOSE RIGHTS ARE FULLY PROTECTED BY THIS LEGISLATION.

446 ALL OF THE ABOVE CONCERNS AND OTHERS WILL BE ADDRESSED IN THE COMMENTARY
WHICH WILL BE PROVIDED TO THE COMMITTEE.

446 TODAY, I WILL ADDRESS ONLY TWO ISSUES WHICH RELATE SPECIFICALLY TO STEEP
SLOPE MINING IN THE CENTRAL APPALACHIAN AREA. THESE ARE: (1) MOUNTAINTOP REMOVAL AND (2) APPROXIMATE ORIGINAL CONTOUR.

447 EASTERN KENTUCKY, SOUTHERN WEST VIRGINIA, SOUTHWESTERN VIRGINIA AND NORTHEASTERN TENNESSEE MAKE UP CENTRAL APPALACHIA. GENERALLY, CENTRAL APPALACHIA HAS NATURAL GROUND SLOPE ANGLES GREATER THAN TWENTY DEGREES. ACCORDING TO DATA PREPARED FOR THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, LESS THAN FOUR PERCENT OF THE COAL SURFACE MINED IN CENTRAL APPALACHIA
COMES FROM SLOPES OF LESS THAN FIFTEEN DEGREES. OVER SEVENTY PERCENT OF CURRENT
SURFACE PRODUCTION COMES FROM SLOPES OF MORE THAN TWENTY-FIVE DEGREES.

447 IT IS IMPORTANT FOR US TO DEMONSTRATE TO THE COMMITTEE THAT THE CHARACTERISTICS AND DEGREE OF SLOPE IN CENTRAL APPALACHIA ARE IN NO WAY COMPARABLE TO THOSE FOUND IN NORTHERN APPALACHIA WHICH CONSISTS OF EASTERN OHIO,
WESTERN PENNSYLVANIA, NORTHERN WEST VIRGINIA AND MARYLAND.

447 WHEN IT IS ARGUED THAT THE PENNSYLVANIA EXPERIENCE CAN SIMPLY BE TRANSPOSED TO CENTRAL APPALACHIA, IT IS UNREALISTIC; IT IS UNFAIR. ACCORDING TO
THE SAME AUTHORITATIVE SOURCE CITED ABOVE, OVER EIGHTY-FIVE PERCENT OF THE STRIPPABLE RESERVES IN PENNSYLVANIA UNDERLIE SLOPES WHICH MEASURE LESS THAN TEN
DEGREES; ALMOST NINETY-NINE PERCENT UNDERLIE SLOPES WHICH MEASURE LESS THAN FIFTEEN DEGREES.

447 WE HAVE PREPARED TWO POSITION PAPERS WHICH ADDRESS THE ISSUES OF MOUNTAINTOP REMOVAL AND APPROXIMATE ORIGINAL CONTOUR. MR. CHAIRMAN, I WOULD LIKE TO ENTER EACH OF THESE POSITION PAPERS INTO THE RECORD.

448 IN PREPARATION OF THESE TWO POSITION PAPERS, WE HAVE RELIED ON RECENT AUTHORITATIVE CONSULTING STUDIES PERFORMED FOR THE FEDERAL GOVERNMENT. THESE ARE:

448 EVALUATION OF CURRENT SURFACE COAL MINING OVERBURDEN HANDLING TECHNIQUES AND RECLAMATION PRACTICES, PHASE III: EASTERN U.S., PREPARED BY MATHTECH INC., PRINCETON, NEW JERSEY, FOR THE U.S. DEPARTMENT OF THE INTERIOR, JULY 1976.

448 EROSION AND SEDIMENT CONTROL: SURFACE MINING IN EASTERN U.S., PREPARED BY HITTMAN ASSOCIATES, COLUMBIA, MARYLAND, FOR THE U.S. ENIRONMENTAL PROTECTION AGENCY, OCTOBER 1976.

448 ENERGY AND ECONOMIC IMPACT OF HR 13950, PREPARED BY ICF INC., WASHINGTON, D.C., FOR THE U.S. COUNCIL ON ENVIRONMENTAL QUALITY AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY, JANUARY 1977.

448 IN OUR OPINION, THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS WHICH ARE SET FORTH IN THESE MOST RECENT COMPREHENSIVE AND AUTHORITATIVE STUDIES DO NOT SUPPORT THE PROVISIONS IN THE LEGISLATION WHICH RELATE TO MOUNTAINTOP REMOVAL AND RETURN TO APPROXIMATE ORIGINAL CONTOUR IN STEEP SLOPE AREAS. WE ARE CONCERNED THAT ALL OF THIS INFORMATION MAY NOT HAVE BEEN MADE AVAILABLE TO THE MEMBERS OF THE COMMITTEE.

448 MOUNTAINTOP REMOVAL

448 IN CENTRAL APPALACHIA, COAL SURFACE MINING USING MODERN MOUNTAINTOP REMOVAL EXTRACTION TECHNOLOGY ACCOUNTS FOR A SUBSTANTIAL PROPORTION OF ALL SURFACE MINING TONNAGE; IN EASTERN KENTUCKY APPROXIMATELY FIFTY PERCENT.

449 PROFESSIONALS KNOWLEDGEABLE ABOUT BOTH RECLAMATION AND MINING AGREE THAT MOUNTAINTOP REMOVAL TECHNOLOGY, ESPECIALLY AS IT HAS BEEN DEVELOPED OVER THE LAST TWO TO THREE YEARS, HAS THE FOLLOWING MAJOR ADVANTAGES:

449 SAVE FOR THE AESTHETIC CHANGE WHICH OCCURS, IS ENVIRONMENTALLY PREFERABLE TO ALL OTHER STEEP SLOPE EXTRACTION TECHNIQUES;

449 RECOVERS MAXIMUM OF SOLID FUEL RESOURCE;

449 DISTURBS LEAST SURFACE ACREAGE FOR TONNAGE REMOVED;

449 RECOVERS SOLID FUEL RESOURCE NOT POSSIBLE OF RECOVERY BY UNDERGROUND METHODS;

449 PROVIDES (AT LEAST IN THE LONG TERM) AN EXCELLENT POST-MINING LAND USE POTENTIAL; AND

449 EXTRACTS A HIGH QUALITY LOW-SULFUR COAL SORELY NEEDED TO ACHIEVE NATIONAL ENVIRONMENTAL OBJECTIVES (CLEAN AIR ACT).

450 HR 2 AND S 7, AS WRITTEN, WILL SERIOUSLY INHIBIT, IF NOT PRECLUDE THIS MINING AND RECLAMATION TECHNOLOGY. WHY SHOULD WE ADOPT A NATIONAL POLICY WHICH MAY MAKE IT MORE DIFFICULT, IF NOT IMPOSSIBLE, TO PURSUE SUCH TECHNOLOGY?

450 ON SATURDAY, FEBRUARY 5, 1977, CHAIRMAN UDALL AND SECRETARY OF THE INTERIOR CECIL ANDRUS VIEWED TWO EXAMPLES OF MOUNTAINTOP REMOVAL IN THE STEEP SLOPE AREAS OF EASTERN KENTUCKY: MOUNTAIN DRIVE COAL COMPANY, BELL COUNTY, AND FALCON COAL COMPANY, BREATHITT COUNTY. BOTH OFFICIALS AGREED THAT THE LAW OUGHT TO PERMIT SUCH PRACTICES.

450 THE COMMONWEALTH OF KENTUCKY SINCERELY BELIEVES THAT IN STEEP SLOPE AREAS MODERN MOUNTAINTOP REMOVAL TECHNOLOGY SHOULD BE RECOGNIZED AS A PROVEN AND ACCEPTABLE PRACTICE.

450 SUGGESTED CHANGES TO SUBSECTION (C) OF SECTION 515, TITLE V OF HR 2 ARE ATTACHED TO OUR POSITION PAPER. WE URGE CONSIDERATION OF THESE CHANGES.

450 APPROXIMATE ORIGINAL CONTOUR

450 THE CONGRESS, UP TO THIS POINT-IN-TIME, HAS EMBRACED THE CONCEPT OF RETURN TO APPROXIMATE ORIGINAL CONTOUR - EVEN TO ALL STEEP SLOPE AREAS. ENGINEERS OF THE KENTUCKY STATE REGULATORY AUTHORITY - THE DIVISION OF RECLAMATION - DO NOT AGREE THAT RETURN TO APPROXIMATE ORIGINAL CONTOUR IS ALWAYS THE BEST PRACTICE.

451 RETURN TO APPROXIMATE ORIGINAL CONTOUR, INCLUDING ELIMINATION OF ALL HIGHWALLS, IS PROPER ONLY WHERE THE PRACTICE IS ENGINEERINGLY CORRECT AND ENVIRONMENTALLY SOUND.

451 IN GENERAL, ORIGINAL SLOPES WHICH EXCEED ABOUT TWENTY-FIVE DEGREES SHOULD NOT BE RETURNED TO APPROXIMATE ORIGINAL CONTOUR. IN THIS INSTANCE, THE PARTIAL REDUCTION OF HIGHWALL ACCOMPLISHED BY RECONSTRUCTION OF A SLOPE TWENTY-FIVE DEGREES OR LESS IS PREFERABLE. THE REMAINING OVERBURDEN SHOULD BE BACKHAULED TO A DESIGNED SPOIL AREA.

451 THE SPOIL ON THE SOLID BENCH AND IN THE SPOIL STORAGE AREA - SHOULD BE PROPERLY GRADED, DRAINED, AND REVEGETATED SO AS TO ACHIEVE A SCREENING WITHIN FIVE YEARS AFTER PLANTING.

451 THE ADVANTAGES OF PLACING MORE OVERBURDEN IN SPOIL STORAGE AREAS AND LESS OVERBURDEN ON THE SOLID BENCH ARE OBVIOUS AND INCLUDE:

451 THE OVERBURDEN ON BOTH THE SOLID BENCH AND IN THE SPOIL STORAGE AREA CAN BE RESTORED WITH GRADUAL SLOPES;

451 BOTH AREAS WILL BE MORE STABLE AND LESS SUBJECT TO EROSION;

451 ADDITIONAL YARDAGE PLACED IN THE SPOIL STORAGE AREA WILL HAVE MUCH LESS SURFACE EXPOSURE; AND

451 BOTH SLOPES CAN BE TERRACED MORE EASILY.

452 HISTORICALLY, IT HAS BEEN DIFFICULT FOR ENVIRONMENTALISTS TO DISASSOCIATE THE ENGINEERING PROBLEMS CAUSED BY IMPROPER HANDLING OF SURFACE MINE SPOIL AND OVERBURDEN FROM THE AESTHETIC PROBLEM OF EXPOSED HIGHWALLS - ESPECIALLY SINCE THE TWO PROBLEMS RESULT FROM THE SAME OPERATION, REMOVAL OF MATERIAL TO REACH A COAL SEAM.

452 IN OUR OPINION, IT IS CLEARLY THE HANDLING OF OVERBURDEN AND SPOIL THAT HAS CONTRIBUTED MOST TO THE ASSOCIATED PROBLEMS OF EROSION, SEDIMENTATION, ACID DRAINAGE, LANDSLIDES AND WATER POLLUTION. THE HISTORICAL PRACTICE OF ALLOWING OVERBURDEN AND SPOIL TO BE CAST OVER THE OUTER SLOPE AND THE CONSTRUCTION OF FILL BENCHES AT THE OUTER EDGES OF THE SOLID, OR UNDISTURBED, BENCH AREA HAVE BEEN THE PRACTICES WHICH MORE THAN ANY OTHERS HAVE ENVIRONMENTALLY DEGRADED OUR SURFACE MINING AREAS.

452 "PLACEMENT OF LARGE VOLUMES OF UNCOMPACTED SPOIL AT ITS NATURAL REPOSE ANGLE ON STEEP SLOPES BELOW THE ELEVATION OF THE COAL SEAM CROPLINE WILL GENERALLY RESULT IN LANDSLIDES AND SEVERE EROSION." AGREED. THE PROPOSED ACT PROHIBITS, OR DRASTICALLY RESTRICTS, PLACEMENT OF OVERBURDEN OVER THE OUTSLOPES. THIS IS A STRONG POSITIVE FEATURE OF THE PROPOSED LEGISLATION; KENTUCKY SUPPORTS THIS PROVISION.

452 SEDIMENTATION IN STREAMS FROM A MINING OPERATION GENERALLY DERIVES FROM LONG, UNINTERRUPTED SLOPES WITH A LESS THAN ADEQUATE VEGETATIVE COVER. THERE IS NO BASIC DISAGREEMENT AMONG ENGINEERS, GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. NEWLY GRADED LONG STEEP SLOPES ARE HIGHLY VULNERABLE TO EROSION AND THE STEEPER AND LONGER THE SLOPE, THE GREATER THE VULNERABILITY. .

453 FROM AN ENGINEERING VIEWPOINT, THE PROVISION IN THE LEGISLATION WHICH IN STEEP SLOPE AREAS WOULD ALWAYS REQUIRE RESTORATION TO APPROXIMATE ORIGINAL CONTOUR IS OPEN TO SERIOUS CHALLENGE.

453 WE BELIEVE IT IS ILLOGICAL TO ARGUE THAT STEEP SLOPE AREAS PRESENT UNUSUAL RECLAMATION PROBLEMS AND THEN CONTEND THAT ORIGINAL SLOPES SHOULD ALWAYS BE RECREATED AFTER MINING BY CONSTRUCTING MANMADE SLOPES OF UNCONSOLIDATED, LESS

STABLE MATERIAL THAN EXISTED BEFORE MINING.

453 A SUGGESTED AMENDMENT TO SECTION 515(D)(2) WHICH WOULD MAKE THE RETURN TO APPROXIMATE ORIGINAL CONTOUR REQUIREMENT OR STEEP SLOPES CONSISTENT WITH SOUND ENGINEERING PRINCIPLES IS ATTACHED TO OUR POSITION PAPER. WE URGE ITS CONSIDERATION.

453 UNDISTURBED NATURAL BARRIER

453 SECTION 515(C)(4)(A), TITLE V, HR 2, RELATING TO MOUNTAINTOP REMOVAL, REQUIRES A NATURAL BARRIER BE RETAINED IN PLACE AT THE TOE OF THE LOWEST COAL SEAM IN ORDER TO ACT AS A CONSTRAINT TO SLIDES AND EROSION.THIS IS AN EXCELLENT MINING AND RECLAMATION PRACTICE. WE BELIEVE THE ACT WOULD BE STRENGTHENED IF THIS REQUIREMENT WAS EXPLICITLY SET FORTH AS ONE OF THE PERFORMANCE STANDARDS APPLICABLE TO ALL STEEP SLOPE MINING.

454 A SUGGESTED ADDITION TO THE ACT, SECTION 515(B)22, WOULD ADD A NEW GENERAL PERFORMANCE STANDARD WHICH WOULD REQUIRE IN ALL SURFACE MINING AN UNDISTURBED NATURAL BARRIER BE LEFT SO AS TO PREVENT SLIDES AND EROSION. THIS IS ALSO ATTACHED TO OUR POSITION PAPER. WE URGE ITS CONSIDERATION.

454 REPRESENTATIVES OF TWO PROFESSIONAL NATIONAL CONSULTING ORGANIZATIONS WHO HAVE SUCCESSFULLY COMPLETED A LARGE NUMBER OF CONSULTING ASSIGNMENTS FOR THE FEDERAL GOVERNMENT - IN THE EXPLICIT AREA OF EASTERN U.S. SURFACE MINING - ARE WITH ME TODAY. I AM CONFIDENT THAT THEY WILL SUPPORT MY STATEMENT AND OUR POSITION PAPER. I EARNESTLY HOPE YOU WILL AVAIL YOURSELF OF THEIR EXPERTISE AND THEIR INDEPENDENT PROFESSIONAL JUDGMENT. THANK YOU.

Position Paper MOUNTAINTOP REMOVAL AND THE FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (HR 2 and s 7)

Prepared By Division of Reclamation, Bureau of Natural Resources Department for Natural Resources and Environmental Protection Commonwealth of Kentucky

February 14, 1977

455 Introduction and Background

455 The Commonwealth of Kentucky - including the state regulatory authority, the Department for Natural Resources and Environmental Protection - supports federal legislation to control the surface mining of coal. Governor Julian M. Carroll has publicly stated that the Commonwealth supports the Act's broad objectives but believes the proposed legislation can be perfected and strengthened - especially from the point-of-view of engineering and environmental considerations.

455 The Commonwealth intends to provide comment on a number of procedural

provisions in the legislation. Such commentary will be provided in testimony before the respective committees of the Congress or will be provided in written form to the General Counsel of these committees.

455 The Commonwealth sincerely feels that two substantive areas of the legislation may be counter-productive to the Nation's environmental and energy objectives. These are:

455 (1) Such stringent criteria are established in order to qualify "mountaintop removal" coal surface mining and reclamation technology as an approved method that the method is all but precluded in Appalachia; and

455 (2) The requirement to restore acreage affected by contour mining in steep slope areas (over 20 degrees) to their "approximate original contour."

456 This paper addresses the issue of "mountaintop removal." A separate paper addresses the issue of "approximate original contour."

456 Throughout the two position papers, constant reference will be made to two recently published studies which we believe to be the most current and authoritative studies which have been completed to date on surface mining in the Eastern United States. These reports are as follows:

456 Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III: Eastern U.S.; U.S. Department of the Interior, Bureau of Mines; July, 1976, prepared under contract by Mathtech, a division of Mathematica, and Ford, Bacon and Davis Utah Inc., a subsidiary of Ford, Bacon and Davis; and

456 Erosion and Sediment Control, Surface Mining in the Eastern U.S., U.S. Environmental Protection Agency; October, 1976, prepared under contract by Hittman Associates, Columbia, MD.

456 In our considered opinion, neither of the two authorities cited above give conceptual or technical support to the provisions of the legislation which relate to "mountaintop removal" or return to "approximate original contour" in steep slope areas.

456 What is Mountaintop Removal?

456 Mountaintop removal is a surface mining method wherein " . . . 100 percent of the overburden covering a coal seam is removed in order to recover 100 percent of the mineral. Excess spoil material is hauled to a nearby hollow to create a valley fill. n1

456 n1 Erosion and Sediment Control: Surface Mining in Eastern U.S., Environmental Protection Agency, Technology Transfer Seminar Publication, EPA-625/3-76-006, October, 1976, p. 98.

457 "When many cuts are made across the mountaintop, and the top is completely removed, leaving no final highwalls, the mining method is called mountaintop removal." n2

457 "Mountaintop removal, practiced only in steep slope areas, is, as the name implies, a method in which the entire top of a mountain is removed to recover virtually 100 percent of a high-lying coal seam or seams . . . in varying degrees, mountaintop removal involves the use of both contour and area mining techniques. The degree to which each technique is used depends upon topography and mining equipment." n3

457 House report No. 94-1445 described mountaintop removal as follows:

457 "A variant of contour mining is called 'mountain-top removal'. This method of mining proceeds entirely through the elevation following the coal seam. It permits nearly complete recovery of the coal seam, or of multiple coal seams if done sequentially. The overburden is placed downslope in the so-called 'head-of-the-hollow fill.' The end result is not a serpentine bench and highwall but rather a flat area comprising the 'solid bench' from which the coal has been removed, and the contiguous 'fill bench' where the overburden has been deposited." n4

457 n2 Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III: Eastern U.S., U.S. Department of Interior, Bureau of Mines, USBM Contract No. S0144081, prepared by Mathtech, Inc., Princeton, New Jersey, July 22, 1976, p. 107.

457 n3 Ibid., p. 41.

457 n4 U.S. Congress, House Committee on Interior and Insular Affairs, "Surface Mining Control and Reclamation Act of 1976," House Report No. 94-1445, 94th Congress, 2d Session, to accompany HR 13950, U.S. Government Printing Office, Washington, D.C., August 31, 1976, p. 26.

457 Mountaintop Removal in Appalachia and in Eastern Kentucky

457 Many topographical areas of Appalachia are characterized by socalled steep slopes (over 20 degrees). In these areas practically all contemporary surface coal mining is by either contour mining with full or partial haulback or by mountaintop removal.

458 In 1976, Mathtech, a division of Mathematica, Inc., estimated that in Eastern Kentucky this methodology was used at 30 percent of all surface mines; that 49 percent of the tonnage in steep slope areas was mined by the mountaintop removal method. n5

458 n5 Bureau of Mines, op. cit., p. 108.

458 Argument for Mountaintop Removal

458 In the opinion of professional engineers of the Kentucky Division of Reclamation, mountaintop removal coupled with haulback and the use of valley fills is the most successful coal surface mining and reclamation technology yet developed for steep slope areas.

458 House Report No. 94-1445 on HR 13950 cited a 1974 report of Mathematica and Ford, Bacon and Davis as supporting the conceptual basis on which the proposed legislation rests. However, this very report set forth numerous advantages of the mountaintop removal methodology. Among these were the following:

458 "(1) Recovers coal not recoverable by underground methods.

458 (2) Recovers total coal seam reserve, eliminating the possibility of reopening of the mine by later miners.

458 (3) Relatively low ratio of disturbed acres to coal tonnage.

458 (4) Relatively low rates of erosion due to surface water runoff.

458 (5) Spoil stacked on solid bench to a height of 20 feet above bottom of coal.

459 (6) More acceptable aesthetically than conventional contour mining, if no highwall is left.

459 (7) Excellent post-mining land-use potential." n6

459 n6 Design of Surface Mining Systems in Eastern Kentucky, Vol. II, Appalachian Regional Commission, Report ARC-71-66-71, prepared by Mathematica, Inc., Princeton, New Jersey, and Ford, Eacon & Davis, Inc., New York, New York, January 19, 1974, p. II-23.

459 Today this same consulting organization, after considerable additional field research in the Eastern United States, concludes: "Today, using improved mountaintop removal methods, it is possible to get nearly 95 percent coal recovery and to leave the land better than it was before mining." n7

459 n7 Bureau of Mines, op. cit., p. 109.

459 Further, the authors of this current study consider this technology "to be a method that is very sound from environmental and resource recovery viewpoints . . ." n8 and, "As practiced in 1975, mountaintop removal and haulback mining methods were environmentally sound." n9

459 n8 Ibid ., p. 132.

459 n9 Ibid., p. iv.

459 Hittman Associates point out " . . . considering the areal nature of these operations and the overall reduction in relief that is achieved, the potential for offsite sediment damage is likely to be less than for a contour strip mine disturbing an equal area of land." n10

459 n10 Environmental Protection Agency, op. cit., p. 10.

459 Grim and Hill, in October, 1974, also pointed out that mountaintop removal technology has, from the standpoint of soil loss potential, a distinct advantage over other methods. n11

459 n11 Elmore C. Grim and R. D. Hill, Environmental Protection in Surface Mining of Coal, Environmental Protection Technology Series, EPA-670/2-74-093, October, 1974, p. 74.

460 Mountaintop removal technology is completely responsive to one of the major purposes of the Act itself:

460 HR 2, Sec. 102(f) "assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being, is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy;"

460 Eastern Kentucky and Appalachia steep slope surface mined coal is needed not only as an essential source of energy but also as an essential source of clean energy to meet the Nation's environmental objectives as expressed in the Clean Air Act.

460 "Of the national coal production having a sulfur content of one percent, or less, the Appalachia region is projected to contribute almost 71 percent. The value of the vast reserves of Appalachia lowsulful coal is enhanced by its contribution to air quality. This factor becomes increasingly important as a growing proportion of utility fuel needs are met by coal." n12

460 n12 U.S. Congress, House Report, op. cit., p. 12.

460 The very first general performance standard set forth in Sec. 515 of the Act itself reads as follows:

460 "(b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a

minimum to -

460 (1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;"

461 In steep slope areas of Eastern Kentucky and elsewhere in Appalachia, no other surface mining technology can cause greater recovery of the solid fuel resource; no other surface mining technology can possibly recover more coal per acre of surface disturbed.

461 HR 2 and S 7 and Mountaintop Removal

461 Section 515, subsection (c) of HR 2 and Section 415, subsection (c) of S 7 provide that an applicant who meets certain requirements may be granted a variance from the requirement to restore to approximate original contour:

461 " . . . where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c)(4)(A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection."

461 What are these requirements? We quote further from HR 2, Section 515(c):

461 "(3) In cases where an industrial, commercial (including commercial agricultural), residential or public facility (including recreational facilities) development is proposed for the postmining use of the affected land, the regulatory authority may grant a variance for a surface mining operation of the nature described in subsection (c)(2) where -

461 (A) after consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use;

462 (B) the equal or better economic or public use can be obtained only if one or more exceptions to the requirements of section 515(b)(3) are granted;

462 (C) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be -

462 (i) compatible with adjacent land uses;

462 (ii) obtainable according to data regarding expected need and market;

462 (iii) assured of investment in necessary public facilities;

462 (iv) supported by commitments from public agencies where appropriate;

462 (v) practicable with respect to private financial capability for completion of the proposed development;

462 (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

462 (vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

462 (D) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

462 (E) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

463 (F) a public hearing is held in the locality of the proposed surface coal mining operation prior to the grant of any permit including a variance; and

463 (G) all other requirements of this Act will be met."

463 The state regulatory authority of Kentucky is not aware of any mountaintop removal permits presently existing which would have responded to all requirements set forth in 515(c)(3).

463 The crucial constraint and language is "In cases where an industrial, commercial (including commercial agricultural), residential or public facility (including recreational facilities) development is proposed for the postmining use of the affected land . . . " However, it is not clearly understood what is meant by "commercial (including commercial agricultural)." Nowhere in the Act is this defined. Practically all previously mined mountaintop removal permits are, or could be, used for general agricultural purposes - especially for hay production and grazing. In the short term, only in occasional instances will there be opportunity in Eastern Kentucky, and probably elsewhere in steep slope areas of Appalachia, to have postmining uses (resulting from mountaintop

removal) that will be industrial, commercial or residential in nature - mainly because of the lack of essential public utility service. Nevertheless, even in the long term, if this methodology improves the land-use potential in an area that is deficient in usable level land, there should be no limitations placed on its future use.

464 Summary, Conclusions and Recommendations

464 "As a general rule, the steepest slopes and greatest relief occur in Central Appalachia . . . " n13 (Southern West Virginia, Southwestern Virginia, Eastern Kentucky and Northeastern Tennessee)

464 n13 Bureau of Mines, op.cit., pp. 17 and 20.

464 In this area, coal surface mining using modern mountaintop removal extraction technology accounts for a substantial proportion of all surface mining tonnage; in Eastern Kentucky approximately 50 percent.

464 Professionals knowledgeable about both reclamation and mining agree that mountaintop removal technology, especially as it has been developed over the last two to three years, has the following major advantages:

464 - Save for the aesthetic change which occurs, is environmentally preferable to all other steep slope extraction techniques;

464 - Recovers maximum of solid fuel resource;

464 - Disturbs least surface acreage for tonnage removed;

464 - Recovers solid fuel resource not possible of recovery by underground methods;

464 - Provides (at least in the long term) an excellent post-mining land use potential; and

464 - Recovers, for the most part, a high quality low-sulfur coal sorely needed to achieve other national environmental objectives (Clean Air Act).

464 HR 2 and S 7, as written, will seriously inhibit, if not preclude, this mining and reclamation technology. Why should we adopt a national policy which may preclude such preferred technology or even make it more difficult, if not impossible, to pursue such technology?

465 On Saturday, February 5, 1977, Congressman Morris K. Udall and Secretary of the Interior Cecil Andrus viewed two excellent examples of mountaintop removal in the steep slope areas of Eastern Kentucky (Mountain Drive Coal Co., Bell County; Falcon Coal Co., Breathitt County). Both officials

agreed that the law ought to permit such practices. n14

465 n14 Louisville Courier-Journal, February 6, 1977, A-1; and Lexington Herald-Leader, February 6, 1977, A-1.

465 The Commonwealth of Kentucky sincerely believes that in steep slope areas modern mountaintop removal technology ought not require a variance under the Federal Surface Mining and Control Act of 1977, but should be a recognized and acceptable practice. We believe the two most recent (1976) and authoritative studies on Eastern United States surface mining, which have been cited throughout this position paper, fully support this position.

465 Suggested changes to subsection (c) of Section 515, Title V of HR 2 are attached and identified as "Exhibit A." We urge consideration of these changes.

467 Exhibit A - Mountaintop Removal

467 Suggested Changes in Subsection (c), Section 515, Title V of HR 2 Submitted by the Commonwealth of Kentucky

467 515(c)(1): Where the mining operation will remove an entire seam or seams running through the upper fraction of a mountain, ridge or hill by removing all the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting postmining uses in accord with the requirements of restoring the mined area to approximate original contour as provided in subsection 515(b)(3) or 515(d) of this section shall not apply where -

467 (2) the reclaimed area will be suitable for an agricultural, industrial, commercial, residential or public use (including recreational facilities);

467 (3) (A) after consulation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use, as compared with the pre-mining use, and is

467 (i) compatible with adjacent land uses;

467 (ii) obtainable according to data regarding expected need and market;

467 (iii) assured of investment in necessary public facilities;

467 (iv) supported by commitments from public agencies where appropriate;

467 (v) practicable with respect to private financial capability for completion of the proposed development;

467 (vi) planned pursuant to a schedule attached to the reclamation plan so
as to integrate the mining operation and reclamation with the postmining land use;

468 (vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site; and

468 (viii) consistent with adjacent land uses, and existing State and local
land use plans and programs.

468 (B) the regulatory authority provides the governing body of the unit of
general-purpose government in which the land is located and any State or Federal
agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

468 (C) all other requirements of this Act will be met.

468 (4) In granting a permit pursuant to this subsection the regulatory authority shall require that -

468 (A) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

468 (B) all other requirements of this Act will be met.

468 (5) The regulatory authority shall promulgate specific regulations to govern the issuance of permits in accord with the provisions of this subsection,
and may impose such additional requirements as it deems to be necessary.

468 (6) All permits granted under the provisions of this subsection shall be
reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is
proceeding in accordance with the terms of the approved schedule and reclamation
plan.

469 Position Paper Return to "Approximate Original Contour" and the Federal Surface Mining Control and Reclamation Act of 1977 (HR 2 and S 7)

469 Prepared By Division of Reclaration, Bureau of Natural Resources Department for Natural Resources and Environmental Protection Commonwealth of Kentucky

469 February 14, 1977

469 Introduction and Background

469 The Commonwealth of Kentucky - including the state regulatory

authority, the Department for Natural Resources and Environmental Protectionsupports federal legislation to control the surface mining of coal. Governor Julian M. Carroll has publicly stated that the Commonwealth takes the position that certain provisions within the proposed legislation can be perfected and strengthened - especially from the point-of-view of engineering and environmental considerations.

469 The Commonwealth intends to provide comment on a number of procedural provisions in the legislation. Such commentary will be provided in testimony before the respective committees of the Congress or will be provided in written form to the General Counsel of these committees.

469 The Commonwealth sincerely feels that two substantive areas of the legislation may be counter-productive to the Nation's environmental and energy objectives. These are:

469 (1) Such stringent criteria are established in order to qualify "mountaintop removal" coal surface mining and reclamation technology as an approved method that the method is all but precluded in Appalachia; and

469 (2) The requirement to restore acreage affected by contour mining in steep slope areas (over 20 degrees) to their "approximate original contour."

470 This paper addresses the issue of "approximate original contour." A separate paper addresses the issue of "mountaintop removal."

470 Throughout the two position papers, constant reference will be made to two recently published studies which we believe to be the most current and authoritative studies which have yet been completed on surface mining in the Eastern United States. These reports are as follows:

470 Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III: Eastern U.S.; U.S. Department of the Interior, Bureau of Mines; July, 1976, prepared under contract by Mathtech, a division of Mathematica, and Ford, Bacon and Davis Utah Inc., a subsidiary of Ford, Bacon and Davis; and

470 Erosion and Sediment Control, Surface Mining in the Eastern U.S., U.S. Environmental Protection Agency; October, 1976, prepared under contract by Hittman Associates, Columbia, MD.

470 In our considered opinion, neither of the two reports cited above give conceptual or technical support to the provisions of the legislation which relate to "mountaintop removal" or return to "approximate original contour" in steep slope areas.

470 What is Return to "Approximate Original Contour"?

470 Section 701, Title VII (HR 2), defines "approximate original contour" as follows:

470 "For the purpose of this Act - (23) 'approximate original contour' means that surface configuration achieved by back filling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with section 515(b)(8) of this Act;"

471 Section 515(b) of Title V, HR 2, sets forth the general performance standards and requires mined areas to be returned to "approximate original contour" as follows:

471 "General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to -

471 (3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated . . . "

471 Section 515(b)(3) provided further, however, that where "the thickness of coal deposits relative to the volume of overburden is large" and therefore where overburden is insufficient to restore the approximate original contour the general requirement is waived. Generally, this condition is present only in the Western United States. The section provides further that where overburden is large relative to the thickness of coal deposits (Eastern United States) the operator shall restore to approximate original contour and shall haul the excess overburden to a waste or fill area.

471 A variance from return to "approximate original contour" is provided in Section 515(c) to permit the "mountaintop removal" mining and reclamation technology developed in the last four to five years in Appalachia - and especially in Eastern Kentucky. However, the Commonwealth of Kentucky believes the criteria established in the proposed Act are such as to practically preclude this technology. (See other position paper dated February 14, 1977, entitled "Mountaintop Removal and the Federal Surface Mining Control and Reclamation Act

of 1977," prepared by the Commonwealth of Kentucky.)

472 Section 515(d)(4) imposes additional performance standards to steep-slope surface coal mining:

472 "For the purposes of this section, the term 'steep slope' is any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or state."

472 Section 515(d)(2) imposes the requirement of restoration to "approximate original contour" as follows:

472 "(2) complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation."

472 It is precisely the language above just quoted - applicable specifically to steep slope areas - that concerns the professional engineers of the Kentucky Division of Reclamation. From an engineers' viewpoint, the legislative mandate may be contradictory in itself. The remainder of this paper addresses this issue.

472 Steep Slopes in Appalachia

472 Eight Appalachian states make up the coal surface mining area of the Eastern United States. Mathtech and Ford, Bacon and Davis Utah, Inc., in their recent study entitled Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III: Eastern U.S., produced for the United States Department of the Interior, Bureau of Mines, in 1976, divided the overall area into three regions as follows:

473 Northern Appalachia: eastern Ohio, western Pennsylvania, northern West Virginia and Maryland

473 Central Appalachia: southern West Virginia, southwestern Virginia, east Kentucky and northern Tennessee

473 Southern Appalachia: central and southern Tennessee and northern and central Alabama n1

473 n1 Evaluation of Current Surface Coal Mining Overburden Handling Techniques and Reclamation Practices, Phase III: Eastern U.S., prepared for U.S.

Department of Interior, Bureau of Mines, USBM, Contract No. SO 144081, prepared by Mathtech, Inc., Princeton, New Jersey, and Ford, Bacon & Davis Utah Inc., Salt Lake City, Utah, July 22, 1976, p. 17.

473 It is often suggested by members of the House Committee on Interior and Insular Affairs, or its staff, that the Pennsylvania experience can be simply transposed to other areas of Appalachia. Mathtech's description of the general topography of the entire area should be noted here:

473 "Topography in the Appalachian coal region ranges from gently rolling in central Alabama and northeastern Ohio to mountainous in southern West Virginia, southwestern Virginia, and east Kentucky. As a general rule, the steepest slopes and greatest relief occur in Central Appalachia, which is mountainous, followed by Northern Appalachia, best described as rolling-to-hilly, and Southern Appalachia, where gently rolling terrain predominates. Topographic relief for the region, depicted in Figure 15, ranges from 2,500 feet in southwestern Virginia to 300 feet in parts of Ohio and Alabama.

473 Qualitatively speaking, most mining in Central Appalachia takes place on steep slopes, defined here as natural ground slope angles greater than 17 degrees. Natural ground slope angles as high as 35 degrees were observed at some active mines in southern West Virginia. Slope angles in Northern Appalachian are more gradual, with angles of 10-18 degrees being the rule at active mines visited during the field survey. It should be noted here that there are some very steep slope areas in the Northern Appalachia coal region, but available data suggest that most of the surface mining activity takes place in rolling and hilly terrain. Topography at mines visited in south-central Tennessee and central Alabama is best described as gently rolling, with natural ground slope angles less than ten degrees being the general rule." n2

473 n2 Ibid., p. 20.

474 It seems apparent from the above that there is considerable variation in topography and relief throughout Appalachia. Consequently, mining conditions and reclamation procedures must vary from area to area just as they must from site to site.

474 Conceptual Basis for "Approximate Original Contour"

474 Readings of the Report of the Committee on Interior and Insular Affairs, House of Representatives, which were issued in conjunction with prior versions of HR 2, indicate that some provisions of the legislation were greatly influenced by certain consultant studies. One of these, Design of Surface Mining Systems in Eastern Kentucky, was published in 1974 under the auspices of

the Appalachian Regional Commission. The reports, based on field work that dated back as far as 1971, were authorod by Mathematica, Inc., Princeton, New Jersey, and Ford, Bacon and Davis, Inc., New York, New York.

474 This report did seem to suggest that return to approximate original contour was a panacea for the evils and excesses of coal surface mining, especially when it stated, "Elimination of the highwall and permanent fill bench would, in our opinion, significantly reduce the major remaining environmental impacts of surface mining." n3

474 n3 Design of Surface Mining Systems in Eastern Kentucky, Vol I, prepared for Appalachian Regional Commission, Report ARC-71-66-71, prepared by Mathematica, Inc., Princeton, New Jersey, and Ford, Bacon & Davis, Inc., New York, New York, January 29, 1974, p. 5.

474 Historically, it has been difficult for environmentalists to disassociate the engineering problems caused by improper handling of surface mine spoil and overburden from the aesthetic problem of exposed highwalls - especially since the two problems result from the same operation, removal of material to reach a coal seam. However, engineers of the Kentucky Division of Reclamation believe that the two problems, (1) outslpe overburden and (2) highwalls, must be disassociated - at least from an engineer's viewpoint - if appropriate solutions are to be achieved.

475 In our opinion, it is clearly the handling of overburden and spoil that has contributed most to the associated problems of erosion, sedimentation, acid drainage, landslides and water pollution. The historical practice of allowing overburden and spoil to be cast over the outer slpe and the construction of fill benches at the outer edges of the solid, or undisturbed, bench area have been the practices which more than any others have environmentally degraded our surface mining areas.

475 "Placement of large volumes of uncompacted spoil at its natural repose angle on steep slopes below the elevation of the coal seam cropline will generally result in landslides and severe erosion." n4 Agreed. The proposed Act prohibits, or drastically restricts, placement of overburden over the outslopes. This is a strong positive feature of the proposed legislation; Kentucky supports this provision.

475 n4 Bureau of Mines, op.cit., p. 32.

475 In general, the Kentucky Division of Reclamation sees no insurmountable problem in restoration of approximate original contour in non-steep slope areas or those slopes twenty degrees or less. However, we still do not believe this will always be the most desirable practice. Even in some slopes exceeding twenty degrees - say up to twenty-five degrees - it may be possible and

engineeringly feasible to reconstruct to approximate original contour provided
appropriate principles of soil mechanics are followed. However, again we believe it is not always desirable to completely eliminate highwalls and reconstruct to approximate original contour and especially where original slopes
range above twenty-five degrees. We believe the recent works of recognized national authorities support our contentions.

476 Arguments Against Return to Approximate Original Contour

476 Sedimentation in streams from a mining operation generally derives from
long, uninterrupted slopes with a less than adequate vegetative cover.

476 The staff of both the Senate and House Committees considering this legislation have in their possession initial draft copies of a consultant study
prepared by ICF, Inc. for the Council on Environmental Quality and the Environmental Protection Agency. Considerable attention has been given those portions of this study which tend to support HR 2 and S 7. However, in our opinion, sections of this study seem to clearly challenge the conceptual basis
of return to approximate original contour in steep slope areas.

476 "Unfortunately, vegetative establishment on surface-mined land often is
a long-term process. During the first year, perennial cover crops may not provide very efficient control, yet the first year is most critical on surface-mined areas. Furthermore, surface-mining may be completed at a particular time of year when rapid establishment of vegetation is impossible.Thus some form of mechanical stabilization, such as terraces, becomes
necessary." n5

476 "Thus it appears that while approximate original contour generally provides a good level of environmental protection, it does not always achieve the best level of protection when mining on steep slopes." n6

476 "It has also been argued that approximate original contour regrading could preclude some desirable post-mining land-uses. In many areas of Appalachia, there is a shortage of relatively flat, flood-free land available for development. On many steep slopes, the approximate original contour has limited land-use value. In such areas, previous contour mining operations have
created new land-use opportunities." n7

476 n5 Willie R. Curtis, U.S.D.A. Forest Surface, "Terraces Reduce Runoff and Erosion on Surface-Mine Benches," Journal of Soil and Water Conservation, September-October, 1971.

476 n6 Energy and Economic Impacts of H.R. 13950 ("Surface Mining Control and Reclamation Act of 1976," 94th Congress); prepared for the Council on Environmental Quality and Environmental Protection Agency, Contract No. EQ 6AC016, prepared by ICF, Inc., Washington, D.C., February 1, 1977, p. v-16.

476 n7 Ibid., pp. v-16 and v-17.

477 One U.S.E.P.A. publication points out some specific reasons for not returning the contour mined area to its original slope.

477 "If highwalls are not reduced and the benches are properly reclaimed, they can provide land conducive for:

477 1. Pasture development,

477 2. Access roads or trails that can be used as:

477 a. Forest-fire breaks,

477 b. Entrance to remote areas for forest fire control crews,

477 c. Logging activities,

477 d. Recreation such as horseback riding, hiking, camping, hunting and fishing,

477 3. Openings for wildlife (including food, cover and water),

477 4. Housing and industrial sites." n8

477 n8 Elmore C. Grim and R. D. Hill, Environmental Protection in Surface Mining of Coal, Environmental Protection Technology Series, Environmental Protection Agency, EPA-670/2-74-093, October, 1974.

477 In some cases, sediment from landslides or mudslides contribute to the problem. Landslides are almost always caused by negligence on the part of the operator and/or the failure to utilize geologic and engineering expertise.

477 From an engineering viewpoint, the provision in the legislation which in steep slope areas would always require restoration to approximate original contour is open to serious challenge.

477 Hittman Associates, in a 1976 study performed for the Environmental Protection Agency, points out the following:

477 "Topographic consideration for erosion control includes slope steepness and length. As slope steepness increases, there is a corresponding rise in the velocity of the surface runoff, which in turn results in greater erosion. A doubling of the velocity of water produced by increasing the degree and length of the slope enables water to move soil particles 64 times larger, allows it to carry 32 times more soil material, and makes the erosive power, in total, 4 times greater." n9

478 Hittman Associates 1976 report also points out:

478 "Slope design should be based on the erodibility of the surface soils as well as stability against landslides. Restoring the approximate original contour may not be desirable in all cases. A reduction in relief and an overall flattening of the topography may be desirable from an erosion and sediment control standpoint. It must be remembered that shorter or flatter slopes are less erodible." n10

478 And again, ICF, Incorporated, 1977 says:

478 "However, it does not always follow that approximate original contour will achieve the highest level of environmental protection when mining on steep slopes. The process of overburden removal and replacement effectively results in replacing well-defined strata with a more homogeneous composition. Although approximate original contour regrading may produce an external appearance that resembles pre-mining conditions, the underlying geologic conditions are quite different. The regraded material behaves quite differently from the original site in terms of density, stability, premeability, and other factors." n11

478 n9 Erosion and Sediment Control: Surface Mining in Eastern U.S., Environmental Protection Agency Technology Transfer Seminar Publication, EPA-625/3-76-0006, prepared by Hittman Associates, Columbia, Maryland, October, 1976, p. 29.

478 n10 Ibid., p. 32.

478 n11 Council on Environmental Quality, op.cit., p. iv.

478 There is no basic disagreement among engineers, geologists, hydrologists and soil scientists. Newly graded long steep slopes are highly vulnerable to erosion and the steeper and longer the slope, the greater the vulnerability.

478 Mathtech - based on an exhaustive study of surface mining operations in the Eastern United States - reported in 1976 as follows:

478 "Restoration of long, uninterrupted slopes has resulted in erosion, cited by many mine operators in northern. Appalachia as their major problem." n12

479 "When all backfilling and grading has been completed, and the long uninterrupted slopes of the hills have been restored . . . erosion and sedimentation occur. Several mine operators interviewed in Ohio and Pennsylvania stated that backfilling of the final cut and control of erosion were their two biggest problems." n13

479 "Erosion and sedimentation are major problems, particularly since revision of reclamation laws to require contour restoration, including

backfilling of the final cuts in rolling areas of Ohio, Pennsylvania and northern West Virginia." n14

479 n12 Bureau Mines, op.cit., p. iv.

479 n13 Ibid., pp. 25 and 26.

479 n14 Ibid., p. 31.

479 The proponents of rigid application of the return to approximate original contour concept - even in steep slope areas - are simply not sufficiently advised of the current "state of the art."

479 Where placing overburden over the outslope is prohibited - as it is in the proposed legislation - consideration should be given to alternate placement of spoil overburden. Considering "swell," it will always be necessary to place some material in approved waste or fill areas - even when total restoration to approximate original contour is achieved. We submit that it is probably more desirable to "haulback" and place more of this material in waste areas after partial reduction of highwall - and especially where original slopes are in excess of twenty-five degrees.

479 We believe it is illogical to argue that steep slope areas present unusual reclamation problems and then contend that original slopes should always be recreated after mining by constructing man-made slopes of unconsolidated, less stable material than existed before mining.

479 Other cases in which partial reduction of a highwall may be the most viable approach to environmental protection include the remining of previously abandoned benches or mining in areas near abandoned benches where division of the spoil material can aid in the establishment of vegetation on both the new and old sites.

480 The Highwall Myth

480 It is common to read of the environmental problems associated with highwalls. Among others, it is argued that highwalls are unsightly and unstable; that they contribute to erosion and sedimentation; that they cause landslides; that they contribute to water pollution through acid mine drainage; that they are unsafe for wildlife.

480 Highwalls have been associated by some with every environmental problem in Eastern Kentucky. Although highwalls are usually present where environmental problems - landslides, sedimentation in streams, toxic water, and degradation of aesthetics - are abundant, the highwall per se is responsible for possibly only one of these problems - degradation of aesthetics.

480 It is possible that there are certain areas where slope stability analysis would indicate a potential problem of highwall instability. These areas should not be mined. The premining requirements required by HR 2 (core drilling, geologic and hydrologic examination) should identify such areas. Section 522 of HR 2, Designating Areas Unsuitable for Surface Coal Mining, also provides a mechanism for safeguarding these areas.

480 It has been suggested that exposed highwalls contribute to toxic water pollution. This may be the case in isolated instances, but in general, acid drainage originates from exposed spoil, not solid rock highwalls.

480 Toxic water pollution is caused by the shattering and exposure of pyritic overburden. Associated with a small percentage of Eastern Kentucky's coal seams are shale and sandstone strata that contain varied types of pyrite. In their lithified state the pyrites are fairly stable, but when the rocks are shattered blasting and exposed to air and water, as in spoil handling, the iron and sulfur separate forming new compounds, one of which is a weak solution of sulfuric acid.Toxic water pollution results when this shattered rock remains on the surface or when impounded water seeps through spoil containing these strata. This can be prevented by proper premining planning and spoil segregation. In almost all cases, the toxic strata are located directly above the coal seam and in the lower 1/3 of the highwall. This being the case, a partial backfill method, with no material over the outslope, utilizing proper spoil segregation, would eliminate toxic water pollution.

481 It is also argued that from a safety point-of-view highwalls represent a hazard to wildlife. We simply place no credence in this argument and know of no professional wildlife biologist who makes such a representation.

481 We believe, therefore, that the only viable argument which can be made against highwalls rests on an aesthetic premise. If highwalls are considerably reduced and if proper vegetation and screening are required, we believe the problem of aesthetics can be obviated.

481 Proposed Solution

481 If it is concluded - as it properly should - that in mining steep slope areas overburden and spoil should not be cast over the outslope and that the construction of fill benches are undesirable, then alternatives for proper placement of spoil and overburden should be considered.

482 We believe the Committees of Congress, and their respective staffs,

have not been properly appraised of recent developments in the handling, hauling
and placement of overburden and spoil in well designed and engineered spoil storage areas.

482 Mathtech, in their 1976 report to the U.S. Bureau of Mines, addresses this development in great detail:

482 "There have been many dramatic changes in steep slope mining practices
over the past several years, and there will be more changes in the future. Spoil haulage trucks, until several years ago used only at the largest mines, are now a virtual necessity for mining in compliance with the reclamation laws
in all states but Virginia. Although construction equipment is used for overburden removal and spoil replacement at an estimated 97 percent of the mines
in the region, it is likely, as large established companies move into Appalachia, that draglines will be used to mine large mountaintop areas. An increasing percentage of supervisory personnel in the state reclamation agencies
are civil engineers with nighway design and construction experience. The effect
of this trend can be seen in the regulations governing methods for construction
of sediment basins and hollow fills. It is likely that further highway construction principles and procedures will be used in steep slope mining areas
in future years." n15

482 "Haulback mining, which is generally used only in steep slope areas, is
a method in which dozers and loaders are used for overburden removal, and trucks
are used for spoil haulage and placement. There are many variations of this method, but in all of them some spoil is deposited on the solid pit floor and some is permanently stored in selected hollows." n16

482 n15 Ibid., p. 82.

482 n16 Ibid., p. 39.

482 Kentucky believes that surface mined steep slope areas should be returned to approximate original contour with all highwalls eliminated - wherever such practice is engineeringly feasible and environmentally sound. As a
general rule, it may be technologically possible - though not necessarily desirable - to do this where original slopes were up to twenty-five degrees. Above that degree of slope, however, it is probably engineeringly and environmentally sound only to reconstruct a more gradual slope and to haul all
excess overburden and spoil to properly designed and engineered waste or fill areas. The latter areas should always be constructed on twenty degree or less
slopes and toe out on natural slopes not exceeding ten degrees.

483 We believe the residual highwall left when constructing slopes to

twenty degrees which were originally in excess say of twenty-five degrees will
be only a few feet in height - somewhere between ten and twenty feet depending
on exact factors present. This residual highwall - with proper planting and vegetation - could be satisfactorily screened within five years. (See illustration attached)

483 Contour mining on these steeper slopes can produce more coal and result
in stable, vegetated gentle slopes by the utilization of a partial backfill method, covering all but the upper ten to twenty feet of the highwall.

483 With the utilization of the partial backfill method, the finished product is gently sloping with terraces to minimize erosion and stream sedimentation. All other material is placed in a stable spoil storage area, designed by engineers and constructed under professional supervision.

483 Undisturbed Natural Barrier

483 Section 515(c)(4)(A), Title V, HR 2, relating to mountaintop removal, requires a natural barrier be retained in place at the toe of the lowest coal seam in order to act as a constraint to slides and erosion. This is often referred to as the box cut method and is an excellent mining and reclamation practice. We believe the Act would be strengthened if this requirement was explicitly set forth as one of the general performance standards. Accordingly,
we recommend amendment to the Act to guarantee this practice.

484 Summary, Conclusions and Recommendations

484 Special conditions need to apply to surface mining in steep slope areas
- those above twenty degrees. These conditions most often prevail in Central Appalachia (southwestern West Virginia, western Virginia, northwestern Tennessee
and eastern Kentucky).

484 The Congress, up to this point-in-time, has embraced the concept of return to approximate original contour - even to all steep slope areas. Engineers of the Kentucky state regulatory authority - the Division of Reclamation - do not agree that return to approximate original contour is always the best practice.

484 Return to approximate original contour, including elimination of all highwalls, is proper only where the practice is engineeringly correct and environmentally sound.

484 In general, original slopes which exceed about twenty-five degrees should n not be returned to approximate original contour. In this instance, the
partial reduction of highwall accomplished by reconstruction of a slope twenty-five degrees or less is preferable. The remaining overburden should be
backhauled to a designed spoil storage area. Both areas - on the solid bench and on the spoil storage area - should be properly graded, drained, and

revegetated. The low residual highwall remaining should be revegetated so as to
achieve a screening within five years after planting.

485 The advantages of placing more overburden in spoil storage areas as opposed to placing too much of this overburden on the solid bench are obvious and include:

485 - The overburden on both the solid bench and in the spoil storage area
can be restored with gradual slopes;

485 - Both areas will be more stable and less subject to erosion;

485 - Additional yardage placed in the spoil storage area will have much less surface exposure; and

485 - Both slopes can be terraced more easily.

485 One additional precaution required in Kentucky is to prevent the inclusion of trees and brush in the regraded spoil. Such a practice has been observed to occur in the past and often results in an unstable condition.

485 Suggested changes to Section 515, Title V of HR 2 are attached which would, in our opinion, strengthen the proposed legislation. The first of these
Sec. 515(b)22 would add a new general performance standard which would guarantee
in all surface mining an undisturbed natural barrier be left so as to prevent slides and erosion. The second of these would amend Section 515(d)(2) to make
the return to approximate original contour requirement on steep slopes consistent with sound engineering principles. These are marked Exhibits A and
B.

487 EXHIBIT A - STEEP SLOPES

487 Suggested addition to Sec. 515(b) to provide an additional general performance standard.

487 Sec. 515(b)(22), Title V, HR 2

487 Submitted by Commonwealth of Kentucky

487 Add:

487 Sec. 515(b)(22) an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained
in place as a barrier to slides and erosion;

488 EXHIBIT B - STEEP SLOPES

488 Suggested amendment to Sec. 515(d)(2), Title V of HR 2

488 Submitted by Commonwealth of Kentucky Amend Sec. 515(d)(2) to read:

488 (2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour, unless slope stability analysis indicates that the spoil material will not remain stable following mining and reclamation in which event the highwall shall be reduced to the maximum extent consistent with sound engineering technology, and provide further that a vegetation plan has been approved which is reasonably calculated to screen the remaining portion of the highwall within five years after initial seeding or planting.

FEBRUARY 25, 1977

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT STATEMENT OF VERNON KERRY KERRY COAL COMPANY PORTERSVILLE, PENNSYLVANIA H.R. 2

489 Mr. Chairman and members of the Committee:

489 My name is Vernon Kerry, and I am a small family Pennsylvania surface mining operator with 33 employees producing approximately 225 thousand tons of bituminous coal per year, in Lawrence County, Pennsylvania. Despite the fact that you admit that the Pennsylvania statutory and regulatory program is the strictest in the nation, both in terms of environmental protection and reclamation standards, and also the most effective, H.R. 2 as now written realistically prevents Pennsylvania from continuing our present effective program. Ironically, Pennsylvania's present regulation program - which you admit is a model and has nothing wrong with it - cannot even qualify for certification under Section 503. You have assumed a vast responsibility in drafting a bill to specifically cover the particular and peculiar concerns of both Eastern and Western surface mining. Accordingly, I am sure that most of these problems resulted from your not being aware of H.R. 2's many and serious conflicts with present Pennsylvania law.

490 Members of Congress and of this Committee have repeatedly cited Pennsylvania's law as a model for the nation. H.R. 2's present inflexibility destroys that model.

490 For the past few years "Project Independence", the gas shortage, OPEC, and the need for an affirmative energy policy has been a lively matter on your agenda. In Pennsylvania and throughout America these issues are not theories; they are deadly serious problems, which must not be compounded by the present inflexibility of H.R. 2.

490 We have reviewed H.R. 2 carefully. Its present form is an unmitigated disaster. Today, I will share a few general thoughts with you. I am simultaneously submitting specific amendments, and request the opportunity to review them with your Committee staff. First, H.R. 2 combines, in quiet extensive detail, environmental protection and reclamation standards for Eastern or Appalachian surface mining and Western surface mining. Surface mining technigues are admittedly quite different in both these areas in regulatory needs and concerns, being conducted under very different conditions of terrain, weather, and hydrology. H.R. 2 outlines environmentally essential procedures for Western mining and that are totally unnecessary in the East, such as the inflexibly mandated hydrological imbalance study.

491 Second, H.R. 2 is unreasonably inflexible. It precludes certain tested and effective reclamation techniques used by Pennsylvania.

491 For example, terrace backfilling, a technique which has reclaimed thousands of Pennsylvania acres for useful purposes, is prohibited by H.R. 2. We have suggested an amendment to Section 515(b)(3) to allow Pennsylvania regulatory authorities to continue to use the valuable tool of terrace backfilling.

491 Section 512(a) of H.R. 2 requires a time consuming coal exploration permit, which is not required in Pennsylvania because most Pennsylvania exploration is done by drilling, not by potentially destructive excavation techniques.

491 Accordingly, we suggest that Section 512(a) be amended so as not to require these permits for drill bore exploration.

491 Section 515(b)(15) of H.R. 2 is an impossibility. Thunderstorms, a late dynamite truck arrival, and any one of a hundred operational dislocations can change our daily blasting schedule. Pennsylvania's experience recognizes this, and we need @ 515(b)(15) amended to require the use of explosives consistent with federal and state law. @ 515(b)(15) should not create a new substantive federal law of explosives.

492 Section 521(a) and (5)(2) of H.R. 2 allows for the issuance of Cease and Desist Orders, but fails to provide that the burden of proof to sustain this drastic action should properly be on the regulatory agency evoking this drastic power. When the regulatory uses this most stringent power, it should hold a hearing within seventy two (72) hours at the job site or else these ex parte draconian orders expire. Otherwise, an operator will be deprived of due process. Both the Pennsylvania and federal rules of civil procedure require that ex parte orders expire unless a hearing is held, and Section 521(a)(2) and (5) must be amended.

492 Similarly, since a Cessation Order is itself such an inherently harsh

penalty, the additional impositio of a civil penalty should not be automatically
imposed through Section 518(a), but should instead be left to the discretion of
the regulatory agency.

492 These are not mere housekeeping items. These are fundamental issues on
which Pennsylvania's program has significant experience, and we vigorously urge
you to cut red tape and bureaucratic inefficiency by amending H.R. 2 to allow
administrative flexibility in these vital areas. Thank you

494 2600 The Fidelity Building Philadelphia, Pa. 19109 (215) 546-3000

494 HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS SUBCOMMITTEE ON ENERGY
AND THE ENVIRONMENT FEBRUARY 25, 1977

STATEMENT OF RUSSELL HALLER PRESIDENT, WEST FREEDOM MINING COMPANY
KITTANNING, PENNSYLVANIA

494 Mr. Chairman and members of the Committee:

494 I am Russell Haller, a Pennsylvania surface coal mine operator from
Kittanning, Armstrong County, Pennsylvania. I am a small, independent operator
employing 44 persons and mining approximately 200,000 tons per year in this
rural, economically depressed area.

494 I am an engineer and an ardent conservationist. I have reclaimed over
1,100 acres of pre-World War II desolated strippings without a penny of state or
federal funds. Pennsylvania's present reclamation program works. I have
carefully followed these - and your earlier - hearings, and the record does not
disclose a single criticism of Pennsylvania's present reclamation program. On
the contrary, you have saluted Pennsylvania as a leader in this area.

494 I earnestly beg you not to destroy Pennsylvania's present regulatory
program. HR. 2 as presently drafted must be amended to allow Pennsylvania the
breathing room, which is essential to the timely and efficient operation of any
reclamation program.

495 My business is capital intensive. I pay in excess of $2 50,000 for
even a small bulldozer; my employees are skilled workmen; my cash flow is a
serious matter. For example, most Pennsylvania coal operators lease the areas
they mine. Royalties and option payments join heavy capitalization as up-front
financial investments. Our communities depend upon our financial infusions and
our social commitment.

495 My motto - which prominently hangs in my office - is "if you can't put it back, don't dig it up." I subscribe to the worthy goals of HR. 2, but you must make the following amendments to allow Pennsylvania's present effective program to exist.

495 For example, Section 510(a) of HR. 2 must be amended to require the regulatory authority to act on the permit application within ninety days. Section 510(b)(4) as presently written would allow the mere filing of an "unsuitability" action to stay a permit renewal. At a bare minimum, HR. 2 must be amended to provide that persons filing unsuitability provisions possess a valid legal interest (such as the Supreme Court has articulated in Sierra Club v. Morton, 405 U.S. 727 (1972), and Village of Arlington Heights v. Metropolitan Housing Development Corp., January 11, 1977). Otherwise, you are inviting negative gadflies irresponsibly to deny permits through delay. Furthermore, Section 514(c) of HR. 2 must be amended to provide that appeals from the granting or denial of permits are limited to persons with valid legal interests.

496 Congress has rejected national land use legislation and in doing so decided that land use issues properly belong with local and state authorities. Yet, Sections 508(a)(9), 515(b)(2) and (b)(17) of HR. 2 by indirection foists many severe land use controls upon local and state authorities.

496 It is incredible to me that Section 515(c)(1) of HR. 2 presently does not require each state certified program to contain variance procedures, which are a regular and effective part of our Pennsylvania program. Unfortunate inflexibility is also present in Section 518(c) which mandates once-a-month inspection. Frankly, some operators should be visited twelve times a day. Others may only need inspections a few times a year. To eliminate the proliferation of a vast bureaucracy, HR. 2 should allow the regulatory agency the discretion to ascertain how many inspections are necessary.

496 I have lived and worked in Wyoming. I am aware of the different conditions and mining techniques of the East and the West. A crucial progeny of HR. 2 will be the regulations it spawns. To make HR. 2 work, I urge you to add to Section 501(a) a specific amendment creating an Advisory Committee on Environmental Protection and Reclamation Standards which shall be consulted by the regulatory body prior to promulgation of regulations. This broad-based Advisory Committee will inject practical experience and knowledge into any reclamation program.

497 I invite you to visit my Pennsylvania reclamation sites. I want to work with you to make HR. 2 an effective vehicle for environmental progress. I hope you will work with me to achieve this goal.

497 Thank you.

STATEMENT OF STEVEN L. FRIEDMAN COUNSEL FOR THE PENNSYLVANIA COAL MINING ASSOCIATION

498 Mr. Chairman and members of the Committee:

498 I am Steven L. Friedman, counsel for the Pennsylvania Coal Mining Association, an association of independent surface mining operators located and mining coal in Pennsylvania. Appearing with me today is Vincent Marino, Clearfield, Pennsylvania, Executive Director, Pennsylvania Coal Mining Association.

498 At a time when there is an increasing consensus for energy independence, Pennsylvania's surface operators are seeking to increase production and to tap our extensive surface mining coal reserves in the face of increased regulatory costs. Surface mining operators confront not only environmental and reclamation regulation, but a labyrinth of federal and state water quality laws, standards under the Occupational Health and Safety Act, and most significantly rapidly escalating costs of coverage for liability under the Federal and State Black Lung Acts.

498 Pennsylvania operators have proudly mined coal under the strictest environmental and reclamation standards of any state in the nation. Pennsylvania, as you are all aware, has had a surface mining law since 1941, which was amended as recently as 1973. Perhaps the most significant amendment was in 1963 when retention of vertical highwalls was prohibited. Other amendments have required preservation and replacement of topsoil, and the determination of bond amount based on the "cost of reclamation." Other provisions of Pennsylvania's water quality laws require minimal spoil on downslopes to control erosion and siltation.

499 The Pennsylvania regulatory scheme admittedly works. The approximately 40,000 acres mined, backfilled, and reclaimed pursuant to current Pennsylvania law, end up more stable and productive than prior to any mining. Significantly, Pennsylvania law specifically authorizes the re-mining of areas previously mined under environmentally lax standards with exposed highwalls and spoil piles. Once re-mined under current Pennsylvania law, these areas are reclaimed into stable, attractive, and productive areas. The Pennsylvania regulatory system not only preserves and enhances the quality of virgin land, mined for the first time, but restores and reclaims thousands of acres of land previously mined and degraded under environmentally lax standards.

499 To quote a prominent Southern philosopher, "if it ain't broke, don't fix it." The Pennsylvania statutory and regulatory system, developed through decades

of regulatory experience, has repeatedly proved itself. HR. 2 is proclaimed by you as a vehicle to bring the rest of the nation up to Pennsylvania standards. Unfortunately, its rehetoric falls woefully short cf these worthy goals. As presently drafted, HR. 2 is at best an inflexible effort to codify uniform, detailed regulations for different coal fields with strikingly different climate, terrain, and hydrology. Instead of establishing workable, environmental protection and reclamation standards for the nation's coal fields, HR. 2 will strait jacket and hamper Pennsylvania's effective and proven program.

500 We have carefully reviewed HR. 2 and respectfully submit to the Committee the attached specific amendments to preserve the present Pennsylvania regulatory program, which is a vivid example of effective state governmental action. Pennsylvania does not need HR. 2. HR. 2 will unnecessarily interfere with Pennsylvania's present program. Indeed, without substantial amendments to its law, Pennsylvania's present program cannot even be certified pursuant to Section 503 of HR. 2 to continue its effective environmental protection and reclamation efforts.

500 Without these amendments which we respectfully submit to you today, HR. 2's inflexibility will destroy Pennsylvania's present program. As presently drafted, HR. 2 imposes unnecessary mandatory procedures on Pennsylvania's present program, when in fact these procedures may only be justified in western coal fields. HR. 2 also provides for mandatory hearing procedures at every stage of the permit process thereby inviting unnecessary delay and it contains numerous other administrative and drafting problems which must be amended to provide the administrative flexibility which is necessary for Pennsylvania to continue its present excellent regulatory program.

501 I. REGULATORY INFLEXIBILITY

501 HR. 2 imposes inflexible uniform minimum environmental protection and reclamation standards for the entire nation without regard for the different conditions and needs of the two general coal mining regions with totally different seams of coal, terrain, climate, and ground water and sub-surface water conditions, namely: (1) the Eastern or Appalachian coal fields; and (2) the Western coal fields.

501 In the West, average annual rainfall is generally less than 26 inches and surface mining in these generally arid regions may have impact on diminished surface and ground water supplies vitally needed for grazing and agriculture. However, in the Eastern Appalachian region, including Pennsylvania, average annual rainfall is in the range of 40 or more inches per year, and surface mining does not deplete or diminish surface or ground water flow or supply.

501 Within the Appalachian coal fields, there are three distinct mining

areas - the northern Appalachian (Pennsylvania, Ohio and western West Virginia),
the central Appalachian (eastern West Virginia, Kentucky), and the southern Appalachian (parts of Tennessee and Alabama). These three regions differ substantially in terms of coal seams, terrain, nature of the overburden, and climate. In spite of these environmentally significant regional differences, HR. 2 has inflexibly imposed inappropriate uniform standards.

502 HR. 2 automatically requires each applicant for a permit to perform the costly study of the hydrologic consequences of mining and to include such a
study in the reclamation plan. Sec. 507(b)(11); Sec. 507(b)(14); Sec. 510(b)(3). This hydrological imbalance study may only be necessary in the arid
western regions, where surface mining may deplete ground waters. The proposed
amendment limits this mandatory requirement to the western region, making it discretionary with the regulatory authority in the eastern region.

502 To conform HR. 2 to Pennsylvania law, we have also suggested amendments
which give the regulatory authority the discretion to require or waive other studies, data, or information, which are necessary in Pennsylvania only under special circumstances. For example, chemical analysis of the overburden is presently required in only a small percentage of Pennsylvania applications. Properly, the Pennsylvania regulatory authority has the discretion to decide when it needs to require this information. Unfortunately, Sections 507(b) and
508(a)(11) of HR. 2, inflexibly require a chemical analysis of the overburden in
each application and reclamation plan. Usually, a review of the drill hole logs
combined with other geologic data is sufficient to analyze the overburden. Clearly, the regulatory authority must have the discretion to determine whether
or not to require this costly chemical analysis. The proposed amendments to Sections 507(b) and 508(a)(11) will conform HR. 2 to current Pennsylvania law.

503 Pennsylvania law specifically authorizes permit amendments when additional documentation is filed which would have been sufficient if filed as
part of the original application. HR. 2, in contrast, requires a totally new application and a "revised reclamation plan" for any permit revision except those involving "incidental boundary revisions." Section 511(a)(3). To avoid unnecessary burden on the operator and the regulatory authority, we have suggested an amendment requiring a new application and reclamation plan only in
those instances involving "significant alterations to the reclamation plan." This is consistent with HR. 2's current limitation of hearing and notice requirements to those amendments "involving significant alterations in the reclamation plan." Section 511(a)(2).

503 Another critical element of Pennsylvania law is incremental bonding which allows an operator to permit an area and then bond it in parts. This allows necessary flexibility to the operator who may be in the process of securing mineral rights from several adjoining landowners. While HR. 2

implicitly refers to incremental bonding in Section 509, amendments to Section 507(b)(8)-(9) and Section 519 were necessary to insure that this necessary and environmentally sound Pennsylvania practice is permitted.

504 In a similar vein, an amendment has been proposed to Section 509 concerning the amount of bond conforming this provision with Pennsylvania law and eliminating the burdensome and unnecessary "two independent estimates." In addition, the minimum bond amount is proposed to be reduced from $10,000 to $5,000 to conform with Pennsylvania law and prevent discrimination against small operators.

504 HR. 2 has also imposed an unworkable restraint on the release of bonds, allowing bond releases to be help up if there is contribution of any suspended solids to streamflow or runoff "above natural levels under seasonal flow conditions as measured prior to any mining." Section 519(c)(2). Clearly, any land disturbance, even farming, contributes suspended solid solids to streamflow or runoff above "natural levels." Furthermore, the section as drafted requires a measurement of such seasonal conditions for a year prior to mining. The amendments eliminate this ridiculously burdensome requirement and allow denial of bond release only for contributions of suspended solids in excess of the applicable state or federal discharge standards.

504 HR. 2 not only materially and significantly conflicts with Pennsylvania's reclamation requirements but fails to recognize environmentally sound reclamation techniques long permitted in Pennsylvania. Pennsylvania law specifically authorizes the terracing method of backfilling and reclamation of sites previously mined under the environmentally lax pre-1963 standards. There is no specific provision for terracing in Section 515(b)(3). This invaluable and environmentally sound reclamation technique must be specifically authorized or else Pennsylvania could lose a means of reclaiming thousands of acres.

505 II.PROCEDURAL CONFUSION

505 HR. 2 creates a morass of procedures accompanying permit applications and operations and release of performance bonds. HR. 2 provides mandatory hearing procedures for every phase of a permit frominitial application to final release of bond. Such mandatory hearing procedures at every stage of operations could add tremendous legal and administrative expenses to the cost of mining without environmental justification. The proposed amendments make the decision

to grant a hearing discretionary with the Secretary or regulatory authority, allowing spurious and frivolous objections to permits and operations to be resolved without the unnecessary expense of a hearing. See Amendments to Sec.
513(a)(b).

505 On the other hand, HR. 2 gives the Secretary the power to order cessation of operations in Sec. 521(a)(2) without notice or hearing or any time
limit defined within which a post-cessation hearing must be held. The proposed
amendment to Sec. 521(a)(2) would require a hearing within 72 hours of the cessation order at or near the site and is essential to prevent an ill-considered unsubstantiated closure order from putting an operator out of business.

506 HR. 2 has arbitrarily limited permits to 5 years. See Section 506(a).
This arbitrary limit does not serve any legitimate environmental purposes. If
the permittee is operating in compliance, the permit should continue. Furthermore, there is likewise no environmental necessity to require any successor in interest to reapply for a permit and secure approval of a reclamation plan if the successor has secured bond coverage and continues to operate in accord with the already approved permit and reclamation plan. The proposed amendments to Section 506(b) eliminate the arbitrary 5 year time limit
and the guarantee the right to successor to continue the permit thus conforming
Section 506(b) with Pennsylvania law.

506 III. OTHER PROBLEMS

506 The proposed amendments attempt to resolve numerous other administrative
and drafting defects in HR. 2. In light of the strikingly different mining conditions and regulatory authorities of the various coal fields, it is essential that coal operators and the heads of regulatory authorities have an institutionalized input into the process of promulgating regulations. The proposed amendment to Section 501 provides for an Advisory Committee on Environmental Protection and Reclamation Standards which shall include operators
and heads of state regulatory authorities. Furthermore, if a regulation specifically affects three states or less, than the Advisory Committee reviewing
those regulations must include operators and heads of regulatory authorities from those states.

507 The excessive regulatory burden imposed on small operators by the state and federal black lung acts, OSHA, and the federal and state water quality
laws is only heightened by the reclamation fee imposed by Section 401. Further,
the bill as drafted imposes a 35 cent fee for surface mining as opposed to a 15
cent fee for deep mining. The amendment allows for a credit of the reclamation

fee against the cost of coverage of liability under the black lung acts and equalizes the fee for surface and deep mining. The proposed amendments also increase the contributing state's allocation from 50% to 80% to properly reflect
Pennsylvania's reclamation needs and tonnage. Section 401(e).

507 In order to avoid protracted delay in the permit and reclamation plan approval process, the proposed amendments have inserted time limits to insure prompt action by the regulatory authority. Section 510(a) has been amended to
require action on a permit and reclamation plan within ninety (90) days of submission to the regulatory authority. Section 513(b) has been amended to include a thirty (30) day time limit to hold a hearing, if necessary, on any objections to a permit application. IV. CONCLUSION

507 HR. 2 does not codify the already proven environmentally sound Pennsylvania law. Instead, it inflexibly subjects Pennsylvania to standards suited, if at all, for other regions of the country. It requires burdensome and
environmentally unnecessary submissions of data by operators and deprives the operators of the necessary flexibility so vital to insure environmentally sound
and efficient coal production. In summary, HR. 2 as drafted will destroy the strictest most effective regulatory system in the country. The proposed amendments are essential to avoid such a regulatory fiasco which can only jeopardize our vitally neccessary coal production.

508 I am available for questions. Thank you.

PREPARED TESTIMONY OF R.L. WINGFIELD BEFORE THE SUBCOMMITTEE ON ENERGY AND ENVIRONMENT OF THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

FEBRUARY 25, 1977

509 MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

509 MY NAME IS R. L. WINGFIELD, AND I AM FROM DALLAS, TEXAS AND GRUNDY, VIRGINIA.

509 I AM HERE TO TALK ABOUT THE NEW H.R. 2, ALIAS H.R. 13950, ALIAS H.R. 25,
BETTER KNOWN AS THE MELCHER BILL.

509 ENERGY HAS BEEN MY BUSINESS SINCE 1939. I WAS AN INDEPENDENT OIL AND GAS PRODUCER FROM 1947 UNTIL I BECAME AN INDEPENDENT COAL OPERATOR IN 1967.

509 I KNOW THAT EVERYONE HAS REFUSED TO BELIEVE THAT A REAL ENERGY CRISIS HAS BEEN TICKING AWAY LIKE A TIME BOMB FOR OVER TWENTY-FIVE YEARS.

509 WELL, JUST RECENTLY MOTHER NATURE HAS FINALLY EXPLODED IN OUR FACE, AND
HAS FORCED MOST AMERICANS TO BEGIN TO BELIEVE WHAT EVERY EXPERT IN OR OUT OF THE
COAL INDUSTRY HAS WARNED ABOUT FOR OVER THIRTY YEARS: AMERICA'S GREATEST NEED,
OTHER THAN PEACE, IS ENERGY, BECAUSE WITHOUT ENERGY NOTHING MOVES, AND NOTHING

HAPPENS AND THE NATION SIMPLY SHUTS DOWN. AND COAL IS OUR GREAT DOMESTIC ENERGY
RESOURCE.

509 MAKE NO MISTAKE, GENTLEMEN, YOU LIFESTYLE AND MINE HAS CHANGED FOREVER.
THIS CRISIS IS REAL, AND IS NOT GOING TO GO AWAY.

510 I SHALL NOT REMIND YOU AGAIN OF OUR MOST RECENT DEVASTATING WINTER TEMPERATURES, AND THE SHARP AND IMMEDIATE EFFECT THEY HAVE HAD ON THE NATION'S
ECONOMY. I DO, HOWEVER, WANT TO CLEARLY POINT TO ONE UNAVOIDABLE FACT: THE ABSOLUTE FAILURE OF GOVERNMENT AT ALL LEVELS TO DEAL EFFECTIVELY WITH THE PROBLEM. ALL OF THE REGULATIONS, ALLOCATIONS, GUIDELINES, PRICE CONTROLS AND MONSTROUS RED TAPE OF THE FEDERAL BUREAUCRACY ONLY SUCCEEDED IN BRINGING THE NATION TO ITS KNEES.

510 THIS NEAR NATIONAL DISASTER HAD ITS OVERALL BEGINNINGS YEARS AGO, IN HUNDREDS OF COMMITTEE HEARINGS IDENTICAL IN MANY WAYS TO THIS HEARING TODAY. NOW, H.R. 2 WOULD ONLY COMPOUND THE MANY MISTAKES OF THE PAST.

510 MOST PEOPLE DO NOT UNDERSTAND H.R. 2 OR TODAY'S SURFACE MINING METHODS
AS PRACTICED UNDER STATE LAW. I KNOW THIS FROM PERSONAL EXPERIENCE AFTER VISITING WITH OVER ONE HUNDRED MEMBERS OF CONGRESS. MANY BELIEVED THAT THEY KNEW WHAT H.R. 2 PROVIDED. SEVERAL HAD ACTUALLY READ SOME OF THE COMMITTEE REPORTS. BUT MY LAWYERS TELL ME A REPORT IS NOT THE LAW AND THE DIFFERENCES BETWEEN WHAT SOME MEMBERS TOLD ME WHAT THEY THOUGHT WAS IN THE BILL AND WHAT IS
ACTUALLY THERE WOULD BE THE DIFFERENCE BETWEEN SUCCESS AND FAILURE OF AN ENTIRE
INDUSTRY.

510 LET ME GIVE YOU AN EXAMPLE: MOST PEOPLE THINK THAT UNDER H.R. 2 MINING
OPERATIONS ON STEEP SLOPES WOULD BE ALLOWED TO DO WHAT WE ARE DOING NOW, CREATING VALUABLE FLAT LAND FOR PEOPLE TO USE. MR. CHAIRMAN, THIS IS SIMPLY NOT
TRUE. THE BILL WOULD REQUIRE THAT THE APPROXIMATE ORIGINAL CONTOUR BE RESTORED,
AND SECTION 502(D), WOULD ALLOW A VARIANCE FROM THIS REQUIREMENT ONLY WHERE THE
ENTIRE TOP OF A MOUNTAIN IS TO BE REMOVED, AND THE FILL CAN BE PLACED IN THE HEAD OF A HOLLOW. (SECTIONS 515(B)(3), 515(D)). WHY SHOULD THE CONGRESS INSIST
THAT WE PUT THE LAND BACK TO ITS ORIGINAL CONTOUR WHEN THE OWNERS THEMSELVES DON'T WANT IT PUT BACK? CAN ANYONE HERE REALLY SAY THAT FARMS, SCHOOLS, HOSPITALS AND AIRPORTS ARE ALL THAT BAD? I HOPE NOT, BECAUSE EVERYONE DOWN OUR
WAY THINKS THEY'RE JUST GREAT.

511 ANOTHER WIDESPREAD MISCONCEPTION IS THAT THE TIMETABLES OF H.R. 2 WOULD ALLOW OPERATORS TO PHASE IN THEIR OPERATIONS TO MEET ITS NEW REQUIREMENTS.
MR. CHAIRMAN, THIS IS ALSO NOT TRUE. MANY OF THESE REQUIREMENTS ARE IMPOSSIBLE
IN ANY TIME FRAME. FURTHER, ALL OF THE REQUIREMENTS THAT REALLY MATTER TO AN

ONGOING OPERATION WOULD HAVE TO BE COMPLETED WITHIN ONE YEAR (SECTION 502(C). THIS CAN'T BE DONE.

511 THESE FACTS ARE NOT UNDERSTOOD BY THE MEMBERS OF CONGRESS, LET ALONE THE MEDIA AND THE WELL-INTENTIONED ENVIRONMENTALISTS WHO SUPPORT THIS BILL.

511 AFTER THE PRESIDENT'S VETO OF H.R. 25, THE ENVIRONMENTAL PROTECTION AGENCY AND THE PRESIDENT'S COUNCIL ON ENVIRONMENTAL QUALITY ASKED THAT AN INDEPENDENT STUDY OF THE BILL'S IMPACTS BE PREPARED. THIS STUDY, BY ICF, INC., POINTS OUT THAT H.R. 13950, THE EARLIER MELCHER BILL, WAS INDEED AMBIGUOUS, AND WOULD RESULT IN WHAT THE AUTHORS DESCRIBED AS "UNINTENDED EFFECTS DUE TO MISMATCHES BETWEEN THE APPARENT INTENT AND THE ACTUAL WORDING OF THE BILL."

511 ICF, INC., DISCOVERED WHAT I ALREADY KNEW, NAMELY THAT H.R. 13950 WAS IN FACT VERY DIFFERENT FROM WHAT THE CONGRESS HAD BELIEVED IT TO BE.

511 MR. CHAIRMAN, NOTHING HAS CHANGED TO THIS DAY, AND I AM CONVINCED THAT THE CONGRESS STILL DOESN'T UNDERSTAND H.R. 2.

511 FURTHER, MR. CHAIRMAN, THE ICF REPORT SETS OUT IN GREAT DETAIL WHAT MANY OF US IN INDUSTRY HAVE BEEN SAYING ALL ALONG. H.R. 2 IS AN INCREDIBLY COMPLEX BILL. MANY OF ITS PROVISIONS ARE VAGUE AND AMBIGUOUS. AT THE VERY BEST, LONG DELAYS AND EXTENSIVE LITIGATION CAN BE ANTICIPATED IN OBTAINING PERMITS. AT THE VERY WORST, PROPER PERMIT APPLICATIONS CAN BE DENIED.

512 OVER AND OVER H.R. 2 HAS BEEN PRESENTED AS NOTHING MORE THAN A BILL TO REQUIRE THE RECLAMATION OF SURFACED MINED LAND. HOWEVER, THIS IS A FAR CRY FROM THE TRUTH.

512 MANY SUPPORTERS OF H.R. 2 SEEM TO BE DELIBERATELY MISLEADING THE PRESIDENT, THE CONGRESS, THE NATIONAL NEWS MEDIA AND LAST BUT NOT LEAST THE POOR AMERICAN TAXPAYER, WHO ALREADY CANNOT PAY HIS ENERGY BILLS.

512 DEATH AND TAXES HAVE ALWAYS BEFORE BEEN THE ONLY TWO IRREVOCABLE THINGS IN LIFE. NOW THERE ARE THREE.

512 A NEW FEDERAL AGENCY, ONCE CREATED, IS LIKE DEATH AND TAXES. IT JUST WON'T GO AWAY. THE NEW FEDERAL AGENCY THAT WOULD BE CREATED BY THIS BILL WILL JUST CONTINUE TO GROW AND GROW AND FINALLY, COMBINED WITH ALL OF THE OTHER STRANGULATING GOVERNMENT AGENCIES, THE ECONOMIC HEALTH OF OUR NATION WILL BECOME TERMINAL.

512 THE ONLY POSSIBLE BENEFIT TO US IN THIS PROPOSED NEW FEDERAL AGENCY WILL BE THAT HUNDREDS OR THOUSANDS OF INDIVIDUAL PEOPLE WILL GAIN JOBS IN THE CIVIL SERVICE SECTION OF THE FEDERAL GOVERNMENT. IT IS REDUNDANT TO POINT OUT THAT THESE NEW PEOPLE WILL BE IN THE NON-PROFIT, NON-PRODUCTIVE SECTOR OF OUR ECONOMY. WHEN IT BECOMES OBVIOUS TO CONGRESS AND THE AMERICAN PEOPLE THAT THIS BILL IS A MISTAKE, AFTER CREATING AN ADDITIONAL COSTLY LAYER OF FEDERAL BUREAUCRATS, IT WILL THEN BE TOO LATE.

512 TO EVEN CONSIDER THE COMPLETE DISMANTELING OF THE SURFACE COAL MINING INDUSTRY, ESPECIALLY IN VIEW OF THE CRITICAL POLITICAL UNREST IN THE VOLATILE MIDDLE EAST OIL PRODUCING NATIONS, IS ABSOLUTE SHEER FOLLY. LET US TAKE THE NECESSARY TIME TO SOLVE THE ENERGY CRISIS WITHOUT BECOMING PANIC-STRICKEN OVER THE STRIP MINING OF COAL WHICH IS ALREADY ADEQUATELY CONTROLLED BY THE COAL MINING STATES THEMSELVES.

513 MR. CHAIRMAN, I AM A BUSINESSMAN AND I UNDERSTAND MY RESPONSIBILITY TO PROTECT THE ENVIRONMENT.

513 VERY SOON, THE FULL CONGRESS WILL AGAIN CONSIDER A SURFACE MINE BILL. I AM CONVINCED THAT FEW, IF ANY, MEMBERS HAVE ACTUALLY READ H.R. 2. I AM ALSO CONVINCED THAT NONE OF THE INDIVIDUAL MEMBERS' STAFF UNDERSTAND H.R. 2.

513 COAL IS OUR NATION'S MOST VALUABLE ENERGY RESOURCE, AND THE ARABS DON'T OWN IT. H.R. 2 IS THE MOST IMPORTANT BILL NOW BEFORE THE CONGRESS, AND IT CAN BE READ IN JUST TWO HOURS.

513 IF CONGRESS IS SO UNCONCERNED ABOUT THE ENERGY CRISIS AS TO VOTE AGAIN ON THIS BILL WITHOUT UNDERSTANDING IT, THEN I SAY THAT THE SURFACE COAL MINING INDUSTRY IS JUST THAT TWO HOURS FROM ETERNITY.

513 PRESIDENT CARTER HAS ASKED ALL OF HIS CABINET OFFICERS TO READ ALL THE REGULATIONS THAT THEY SIGN.

513 NOW, WHY CAN'T EACH MEMBER OF CONGRESS READ H.R. 2 AND LET THE FOLKS BACK HOME KNOW THAT THIS TIME HIS VOTES WILL REFLECT HIS OWN PERSONAL JUDGMENT.

513 MR. CHAIRMAN, THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO APPEAR BEFORE YOUR COMMITTEE.

TESTIMONY BY KENNETH R. FAERBER, RECLAMATION MANAGER HOBET MINING & CONSTRUCTION COMPANY, INC. Before The COMMITTEE ON INTERIOR AND INSULAR AFFAIRS U.S. HOUSE OF REPRESENTATIVES

February 25, 1977

515 MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS KENNETH R. FAERBER, RECLAMATION MANAGER FOR HOBET MINING AND CONSTRUCTION COMPANY, INC. AND AFFILIATED COMPANIES. HOBET HAS BEEN ENGAGED EXTENSIVELY IN SURFACE MINING THROUGHOUT WEST VIRGINIA, VIRGINIA AND OHIO FOR THE PAST 21 YEARS.THROUGHOUT THESE YEARS, HOBET HAS BEEN A LEADER IN SURFACE MINING TECHNOLOGY, PIONEERING THE "HAULBACK" OR LATERAL MOVEMENT METHOD OF MINING ON STEEP SLOPES IN SOUTHERN WEST VIRGINIA. DURING ITS 21 YEARS, HOBET HAS OPERATED UNDER EVERY DEGREE OF SURFACE MINE LEGISLATION KNOWN TO EXIST IN THE UNITED STATES AND IS PRESENTLY OPERATING IN WEST VIRGINIA WHICH IS NOW RECOGNIZED AS HAVING THE NATION'S MOST STRINGENT RECLAMATION REQUIREMENTS.

515 HOBET MINING & CONSTRUCTION COMPANY, INC. AND ITS AFFILIATES ARE WELL AWARE OF THEIR RESPONSIBILITY TO PROTECT THE ENVIRONMENT FROM ANY ADVERSE AFFECTS OF SURFACE MINING COAL. CHANGES IN OUR MINING TECHNOLOGY HAVE ENABLED HOBET TO RECOVER VALUABLE COAL RESERVES BY SURFACE MINING WHILE, AT THE SAME TIME, FULLY PROTECTING OUR PHYSICAL ENVIRONMENT.

515 HOBET FIRMLY BELIEVES THAT THE PRODUCTION OF ENERGY AND THE PROTECTION OF OUR ENVIRONMENT ARE COMPATIBLE. HOWEVER, THE PRODUCTION OF ENERGY AND THE REQUIREMENTS OF HR-2 WILL IMPOSE ADDITIONAL PERMIT APPLICATION REQUIREMENTS, PARTICULARLY FOR CORE SAMPLE ANALYSIS, CROSS-SECTION MAPPING, HYDROLOGICAL ANALYSIS, ASSESSMENT, PUBLIC HEARINGS AND WRITTEN NOTIFICATION OF BLASTING SCHEDULE. ALL OF THE ABOVE WILL RESULT IN LENGTHY TIME DELAYS LEADING TO A DECREASE IN PRODUCTION, WHILE NOT SIGNIFICANTLY CONTRIBUTING TO THE PROTECTION OF THE ENVIRONMENT. THE ADDITIONAL COST OF THE PROPER RECLAMATION IS JUSTIFIED WITH THE INCREASED RELIANCE ON U.S. COAL. HOWEVER, IT IS BOTH UNFAIR AND UNREASONABLE FOR THE OPERATOR AND, ULTIMATELY THE CONSUMER, TO BEAR THE ADDITIONAL COST OF PERMIT APPLICATION WHICH RESULTS FROM LENGTHY TIME DELAYS.

516 THE MAJORITY OF HOBET'S PRODUCTION IS ON STEEP SLOPES IN SOUTHERN WEST VIRGINIA. OPERATING UNDER THE RULES AND REGULATIONS OF THE 1971 WEST VIRGINIA

SURFACE MINING AND RECLAMATION ACT, THE ENTIRE PERMIT PROCEDURE FROM DATE OF APPLICATION TO APPROVAL OF PERMIT IS APPROXIMATELY A 60-DAY PROCESS, IF THE PERMIT IS FOUND TO BE IN ORDER DURING THE REVIEW PERIOD AND THERE ARE NO MAJOR CHANGES REQUIRED. ADD TO THIS AN ADDITIONAL 30 DAYS FOR INITIAL PERMIT PREPARATION AND THE ENTIRE TIME TO OBTAIN A SURFACE MINE PERMIT IN THE STATE WITH THE MOST STRINGENT RECLAMATION REQUIREMENTS IN THE UNITED STATES IS AN APPROXIMATE 90-DAY PERIOD.

516 I CAN ASSURE YOU THAT A FIELD INSPECTION OF WEST VIRGINIA RECLAMATION AND A REVIEW OF THE DETAILED INDIVIDUAL MINING PLANS WOULD LEAVE LITTLE DOUBT THAT THE DEPARTMENT OF NATURAL RESOURCES IS NOT ISSUING "MAIL ORDER" PERMITS; AND THEY ARE DOING IT IN A 60-DAY PERIOD WITHOUT REQUIRING 5 PUBLIC HEARINGS DURING THE PERMIT PROCESS, INDIVIDUAL CORE ANALYSIS FOR ALL PERMITS,

HYDROLOGICAL ANALYSIS FOR ALL PERMITS, CROSS-SECTION MAPPING AND ASSESSMENTS.

516 UNDER THE PROPOSED REQUIREMENTS OF HR-2, IT IS ESTIMATED THAT IT WOULD TAKE BETWEEN 12 TO 18 MONTHS TO OBTAIN A SURFACE MINE PERMIT FROM THE REGULATORY AUTHORITY, DEPENDING UPON THE LENGTH OF TIME TO COMPLETE CORE DRILLING AND ANALYSIS, HYDROLOGIC ANALYSIS AND ASSESSMENT. THIS IS A FULL 9 TO 15 MONTH DELAY IN COAL PRODUCTION FROM THE PRESENT 3-MONTH PERIOD THAT IS REQUIRED TO INSURE PROTECTION OF WEST VIRGINIA'S PHYSICAL ENVIRONMENT.

517 IN TERMS OF HOBET'S AND ITS AFFILIATES' PRODUCTION, THE DIRECT RESULT OF THE ADDITIONAL TIME LAG WOULD MEAN A LOSS OF ENERGY TO THE NATION OF APPROXIMATELY 100,000 TONS PER MONTH OF HIGH GRADE LOW SULPHUR COAL, WHICH IS APPROXIMATELY 1.25 BILLION BTU'S, OR ENOUGH ENERGY WHICH COULD BE UTILIZED IN 9,100 HOMES EACH MONTH. WE ARE CERTAIN THAT THE PEOPLE OF WEST VIRGINIA AND THE NATION ARE IN FAVOR OF A BALANCE OF ENVIRONMENTAL AND ENERGY OBJECTIVES. THE COAL MINING INDUSTRY IN WEST VIRGINIA HAS REACHED THIS POINT OF BALANCE BUT CONTINUES TO WORK INDIVIDUALLY AND COOPERATIVELY WITH THE STATE REGULATORY AUTHORITY TO IMPROVE ITS SURFACE MINING TECHNIQUES AND TO INSURE A CONTINUED UNINTERRUPTED SUPPLY OF ENERGY.

517 HOBET MINING & CONSTRUCTION COMPANY, INC. AND ITS AFFILIATED COMPANIES ENDORSE THE CONCEPT OF NATIONAL STANDARDS FOR RECLAMATION OF AREAS DISTURBED BY SURFACE MINING. IF ENACTED, HR-2 SHOULD HAVE ENOUGH FLEXIBILITY TO RECOGONIZE A STATE PROGRAM THAT TAKES INTO CONSIDERATION THE NATURE OF THE STATE'S TERRAIN, CLIMATE, BIOLOGICAL, CHEMICAL AND OTHER RELEVANT PHYSICAL CONDITIONS AND THE MINING METHODS WHICH ARE PRESENTLY ENPLOYED TO SURFACE MINE COAL IN THAT STATE.

517 HOBET AND ITS AFFILIATES ARE CONCERNED THAT HR-2 DOES NOT SPECIFICALLY PROVIDE OPERATING CONDITIONS FOR THE HAULBACK OR MOUNTAIN TOP REMOVAL METHODS OF MINING. IN THE STEEP SLOPES OF SOUTHERN WEST VIRGINIA, THE HAULBACK AND MOUNTAIN TOP REMOVAL METHODS ARE BEING UTILIZED ON ALL HOBET OPERATIONS AND VIRTUALLY ALL OTHER OPERATING SURFACE COAL MINING COMPANIES. OPERATING CONDITIONS, WHICH ARE ESSENTIAL FOR BOTH METHODS, BUT ARE NOT SPECIFICALLY COVERED IN HR-2 INCLUDE VALLEYFILLS AND SIDEHILL FILLS. A VALLEYFILL OR SIDEHILL FILL IS REQUIRED AS A PERMANENT STORAGE AREA FOR EXCESS MATERIAL FROM THE INITIAL BOX CUT. IN LARGE MOUNTAIN TOP REMOVALS OR LARGE HAULBACKS MORE THAN ONE VALLEYFILL MAY BE REQUIRED TO STORE EXCESS MATERIAL FROM ADDITIONAL CUTS IF THE SWELL FACTOR OF THE OVERBURDEN IS HIGH.

518 FURTHERMORE, HOBET IS STRONGLY OPPOSED TO SECTION 513, PUBLIC NOTICE AND PUBLIC HEARINGS, OF HR-2. WE FEEL A PUBLIC HEARING SHOULD NOT BE REQUIRED IF THE APPLICANT CAN SHOW LEGAL RIGHT TO ENTER AND COMMENCE SURFACE MINING

OPERATIONS ON THE AREA AFFECTED, SUBMITS A COMPLETED APPLICATION, AND THE AREA
AFFECTED DOES NOT ENTER OR BORDER FEDERAL OR STATE OWNED PROPERTY AND FINALLY THAT THE COAL TO BE MINED IS NOT UNDER FEDERAL OR STATE OWNERSHIP.

518 ANY DIVIATION FROM THIS WOULD BE INFRINGING ON THE RIGHT OF AN INDIVIDUAL TO EXPLORE, MINE OR DEVELOP A NATURAL RESOURCE WHICH HE EITHER OWNS,
LEASES OR CONTROLS IN ANY OTHER MANNER.

518 THE PEOPLE OF WEST VIRGINIA DO NOT NEED A FEDERAL SURFACE MINE LAW TO PROTECT THE ENVIRONMENT OF OUR STATE NOR DO THEY NEED THE INCREASE IN UTILITY BILLS THAT WOULD RESULT IF A FEDERAL BILL IS ENACTED. WEST VIRGINIANS ACTED RESPONSIBLY IN 1971 TO INSURE THE ENVIRONMENTALLY SOUND DEVELOPMENT OF ITS MOST
IMPORTANT ENERGY RESOURCE. HOWEVER, WEST VIRGINIA DOES NEED NATIONAL REGULATIONS IF IT IS GOING TO CONTINUE TO COMPETE IN THE COAL MARKET WITH STATES
THAT HAVE LESS STRINGENT RECLAMATION LAWS. A FEDERAL SURFACE MINE LAW REGULATING ALL STATES, WOULD PREVENT THOSE STATES WITH LESS STRINGENT STANDARDS
FROM REAPING AN UNFAIR ECONOMIC ADVANTAGE OVER STRICTLY REGULATED WEST VIRGINIA.

American Farm Bureau Federation
February 22, 1977
The Honorable Morris K. Udall, Chairman
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515
Dear Mr. Chairman:

520 The American Farm Bureau Federation, representing over 2.6 million Farm
Bureau member families in 49 states and Puerto Rico, wishes to take this opportunity to advise you of its views on the regulation of strip mining. We understand that hearings will be held soon on H.R. 2, the "Surface Mining Control and Reclamation Act of 1977," and would like to have these comments entered into the official hearing record.

520 At the annual meeting of the AFBF, held in Honolulu, Hawaii, in January,
1977, the official voting delegates of the member State Farm Bureaus adopted the
following policy statement:

520 "Many states contain lands whose surface and mineral rights are owned separately.

520 "We support legislation to deal with this problem in the following manner:

520 "(1) Allow our nation to use our abundant supply of coal to achieve energy independence as soon as practical.

520 "(2) Require the reclamation of all mined lands, including distupted underground and surface water.

520 "(3) Treat surface owners fairly by requiring landowner consent in coal company-landowner negotiations.

520 "(4) Encourage states to develop their own reclamation standards, which could exceed federal standards in order to protect the local environment."

520 We believe that coal mining can be consistent with the wise use of agricultural land and other natural resources. We also believe that environmental standards should be realistic and practical.

520 We urge your support of the principles set forth in the above statement.

520 Sincerely,

520 John C. Datt, Director

520 Washington Office

520 CC: Committee members

COLLEGE OF NATURAL RESOURCES
Utah State University
Logan, Utah 84322
February 23, 1977
The Honorable Morris Udall
House of Representatives
Washington, D.C.
Dear Congressman Udall:

521 Few issues are as important to those of us in the West as that of a rational use of our mineral and energy resources.

521 Attached is a statement on H.R. 2 for your Committee's consideration. Please let me know if I can be of additional help to you. It is a pleasure to see legislation again moving forward in this vital area.

521 Best personal regards.

521 Sincerely, Thadis W. Box Dean TWB:bmd

521 Attachment

TESTIMONY ON THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 by Thadis W. Box 23 February 1977

522 I appreciate the opportunity to give my thoughts on the Surface Mining Control and Reclamation Act of 1977. This bill is extremely important to those of us who live in the West and who feel strongly that we must share our wealth of energy and mineral resources with the rest of the country. We want to

meet the national need for energy, yet we want to do so in a way that will preserve our western heritage, our unique life style, and the western environment that helps shape both of them. In my opinion a Federal mining and reclamation law is overdue. I have watched earlier bills with great interest and I would like to see H.R. 2 develop into an act that will become law.

522 During 1973 a study committee of the National Academy of Sciences examined the rehabilitation potential of the western coal lands. I had the pleasure of chairing that study team. We reviewed the literature at the time, made on-site visits, and drew on our experience to compile a set of findings and recommendations.

522 Today I would like to relate my testimony in three parts. First, I will comment on the original findings and recommendations of the NAS committee. I will then address some specific areas where Chairman Udall has indicated he would like some comments and, third, I will comment on the research needs and the impact Title III of the Act may have on reclamation.

522 The findings and recommendations in the NAS study are still generally true. However, some should be modified because of changes since 1973. For instance, the acreage to be disturbed is much too conservative in the document. The change in demand for coal due to the rapidly changing energy scene has accelerated the amount of disturbance. A doubling or even tripling of the figures in finding one would not be unreasonable.

523 One of the most controversial statements in our book was our belief that areas receiving more than 10 inches of precipitation could be rehabilitated and those with less could not. Few people considered our conditions for the statement - that evaporation should not be excessive, that landscapes were to be properly shaped, and that techniques demonstrated on disturbed rangeland in the particular climatic area be used. The 10-inch level should be used only as a general guide, not as a rule of thumb. There are certain mesic, favorable sites with less than 10 inches that can be rehabilitated; there are those with 20 inches that are not good candidates for reclamation because of slope, exposure, soil conditions, etc. Our finding that natural succession is mostly too slow to meet society's needs is still true.

523 Our finding that rehabilitation should include stable animal communities, an appreciation for aesthetics, and a restored hydrologic balance remains essentially unchanged.

523 The statement that rehabilitation in the West is critically sitespecific is still valid. It is important to treat each site individually and to develop

guidelines for each site.

523 Our recommendation that plant communities can be used as an indicator of natural conditions is still a good one. Different reclamation standards may be desirable for different vegetation types, but broad guidelines can be developed for each major vegetation type.

524 Our finding that much technology was available and little of it had been properly applied was true at the time of the writing of the book. However, because of current environmental concern and new state legislation, etc., I am happy to report that much more rehabilitation technology is now being applied and that new information is being developed daily. Our finding that there was a shortage of competent people is still true, but people are being produced at a greater rate through universities and through experience and training on the job.

524 Our finding that there was a lack of uniformity between existing state laws is still partially true. However, as new state laws have been written, some progress has been made. Our finding that state laws did not generally provide for adequate planning, monitoring, and enforcement is still partially true. New state laws have made much progress in this area. However, state agencies are still understaffed and in need of more funding.

524 Our finding that water requirements for surface mining and rehabilitation will not be large is certainly true. However, our statement that the disruption of natural hydrologic networks will interfere with downstream use is as true today as it was when it was written. Our finding that the off-site impacts may be greater than the on-site activities is as true today as when it was written.

524 The general recommendations made by the National Academy study are still valid. We went on record then as favoring a Federal law that would provide for correcting many of the deficiencies outlined in our findings. We are pleased to see that H.R.2 is following several recommendations made in our original study. It is indeed gratifying to see that our document was used as background for the bill.

525 I would now like to comment on specific areas in the bill where Chairman Udall indicated that it might be of help. In Section 507, dealing with

application requirements, Item No. 11 requires that an estimate be made of the hyrdologic consequences of mining at the time of the original application. I think that this portion of the bill is in keeping with the recommendations of our committee and could be a vital part of the bill. Throughout our study the value of water and its impact on the entire western economy recurred as a major item for consideration.

525 Section 508, dealing with the reclamation plan requirement, generally followed the recommendations of our study committee. One of our major recommendations was that reclamation plans be made prior to mining and that documents be provided to indicate that the entire reclamation process had been thought through prior to breaking ground. Again, Item No. 12 deals with water and my earlier comments about water in the West apply here.

525 Section 510, dealing with the permit approval or denial, includes Section 5 which discusses the importance of alluvial valley floors west of the 100th Meridian. In the National Academy of Sciences study considerable discussion was given to the protection of alluvial valley floors, primarily because the committee was concerned with the loss of productivity due to loss of subirrigation in some areas. In my opinion, this section should remain as part of the bill.

526 The environmental protection performance standards covered in Section 515 of H.R. 2 appear to be in keeping with the recommendations of the findings of the National Academy of Sciences Study Committee. In my opinion major concern should be given to keeping options for future land use open to society. Not only should we be concerned about reclaiming the land for specific purposes today, but we should insist that no major use be precluded in the future because of what we do with the land in this generation.

526 The inspections and monitorings required in Section 578 of the bill are necessary. It is essential that we continuously evaluate what we are doing and have the flexibility to correct our mistakes early.

526 Section 522, dealing with areas unsuitable for surface coal mining, was not treated in detail in the National Academy of Sciences study. Our recommendation was that if there were irreplaceable historic, scenic, or archaeological sites or endangered species present in an area proposed for mineral exploration or surface mining or if such values in a neighboring area would be irreparably damaged by such activities, no mining should take place

without an extensive review of the consequences. This extensive review of the consequences is an area in which science can address itself. Societies can and should evaluate the effects of an activity and the tradeoffs involved. However, since the ultimate decision to mine or not to mine is based on what society wants from the land, it is more in the area of values and philosophy than in science. If society wants to protect certain lands and deny itself the value of the energy resource underneath it, then it certainly should do so. On the other hand, if society wants to sacrifice aesthetics or endangered species for energy, it may so do.

527 I think the strength of Section 522 will be in the states' ability to develop land use planning mechanisms that will evaluate those areas that should not be mined and so designate them. I would personally prefer to see the items dealing with public lands to follow the same philosophy. I would prefer that, rather than exclude mining by statute from lands such as national forests, the administrative agencies be charged with a thorough scientific evaluation and the designation of certain areas that may be unsuitable for mining.

527 In general, I find that H.R. 2 follows sound scientific principles and the recommendation of the House Report No. 94-1445.

527 I would like to turn my attention to Title III of H.R. 2, dealing with the state mining and mineral resources research institutes. Throughout my work with many different groups over the past few years, one of the major items that continues to impede the development of strip mining is the lack of adequate research on the reclamation process itself. Although much work has been done since the National Academy of Sciences study in 1973 by the U.S. Forest Service SEAM Project and the land grant universitites in the western United States, there is still much to be done. I would strongly recommend that H.R. 2 include a specific title or item dealing with reclamation research. Unfortunately, Section 301 of Title III does not meet the need as I see it. Section 301 sets up state institutes but designates that the money go to a school of mines or division dealing with mining in the state. Very little of the significant research done in the past, or being done in the present, is conducted from schools of mines. For the most part the significant rehabilitation and reclamation research is done in the land grant colleges, usually through the college of natural resources or the college of agriculture. Several of these

western land grant colleges - University of Arizona, Colorado State University,
Montana State University, and Utah State University - have active rehabilitation
institutes or working groups within their organization. Personnel are on board
and preliminary research has begun. However, none of these is adequately
supported. The addition of funds, such as described in Section 301, into these
already existing institutes or work groups to allow them to do a more efficient
job would have a much greater payoff than establishing new institutes in schools
of mines. I strongly urge that Section 301 of Title III be revised to allow or
require the participation of land grant universities in the rehabilitation
research work.

528 Mr. Chairman, it has been a pleasure to testify before this committee.
It is indeed gratifying to think that the recommendations of scientists working
in this field are now about to be incorporated into laws and regulations that
will make mineral and energy resource extraction possible and still leave our
landscapes intact.

528 Thank you.

Jim Walter resources, inc.
February 24, 1977
Honorable Morris K. Udall
c/o Subcommittee on Energy and the Environment
1324 Longworth Building
Washington, D.C. 20515
Dear Congressman Udall:

529 It was a real pleasure to hear you address at the recent AMC Annual
Meeting. I am only sorry I could not personally meet you at the reception, but
with the number of people greeting you and the photographers, I found it
impossible.

529 I would like to discuss briefly HR 2 introduced by you and others now
under consideration by your subcommittee or committee. I sincerely hope you
will not consider this as impugning you, your staff or other Congressmen who
have participated in preparing this bill. I am writing to you as I believe you
would like the thoughts of various companies, both large and small, as indicated
in your recent address.

529 Jim Walter Resources is a division of Jim Walter Corporation, Tampa,
Florida, and one of our primary products is coal. We have four deep shaft mines
1200' to 2000' deep in various stages of completion and are operating two older

mines. We do not perform any stripping but do lease land for stripping operations. The record will show us as loyal citizens responsive to the total environment-"the aggregate of social and cultural conditions that influence the life of the individual and community".

529 Our stripping leases have for many years contained more stringent reclamation requirements than required by law. Our State of Alabama is making considerable progress in this field. We have a law and a commission and after some experience, we expect some modifications this year. Our feeling is strip mining should be state regulated rather than federal. This is the same philosophy expressed in HR 2 Section 101(e). The responsibility of the "Office" should be clearly stated to include establishment of only broad and general rules and regulations, not completely detailed rules and regulations, which would act as guidelines for the states. This would allow each state to take into consideration diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations. In addition, permit applications could be acted upon quickly. These minor changes would in no way effect the attainment of the purposes of the proposed bill. The states with their intimate knowledge of the areas subject to mining operations could use the flexibility provided to minimize production losses and cost increase.

530 There are two or three general areas which we feel should be considered if a Federal law is adopted and these refer to HR 2 or any other similar bill under consideration.

530 We do not understand the inclusion of underground mines in a bill which is aimed specifically at various functions of surface mining and reclamation. If underground mines need to be covered, they should be considered in a separate bill. The creation of the "Office" in 201(e) to act as an independent Federal regulatory agency can cause conflicts and administration difficulties as there are already many other agencies involved in underground mining such as Bureau of Mines, MESA, EPA and local air and water pollution agencies.

530 We believe we can sum up our feelings concerning the proposed bill by discussing flexibility and small operators. Both are needed considerations and if included, in our judgement, will not adversely affect HR 2. Small operators in many parts of our country are helping to supply coal to provide needed energy.

530 Much has been stated in the news media concerning the loss of production

and increased cost although some authorities have projected very little cost increase or loss of production. The same type predictions were made when the Federal Coal Mine Health and Safety Act of 1969 was passed. There is increased cost and loss of production. The same will be true in this case. If HR 2 is passed in its present form, it is believed that many small operators will not be able to comply and that it will be very difficult for larger operators to obtain permits and mine under its stringent provisions thus increasing their costs and causing loss of production of coal needed to produce energy.

530 To our knowledge, no accurate impact study has been made on the effects of this bill on mine costs and production. We feel that a considerable increase in cost, probably in the neighborhood of 25% and possibly that same percentage in loss of production, will result. Others have estimated larger percentages. The nature of the lands and coal seams in our area present special cases where sections adjacent to those being mined on the surface are not suitable for stripping but other sections, maybe a section of two removed, can be adequately and economically stripped. Under the proposed law another permit would be required and under the rigorous provisions, the cost of obtaining a permit can be more than the possible profit thus affecting production and costs adversely. The variances in section 507(c) and 528 would not, in our judgement, apply in this case. Additional flexibility could be added which would provide some help.

531 Another item which deals with flexibility is the reclamation of high walls. In many cases this may be necessary, but in other cases may actually be detrimental. Many natural lakes have high walls placed there by nature and they help to enhance the aesthetic value. Flexibility in this case could be provided by allowing the mine owner and the authority to study the reclamation and if the high wall was shown to be environmentally sound and would not adversely affect the land, it could remain and be used as a fire break as recommended by some forresters. Again, this flexibility properly administered would in no way affect HR 2.

531 Speaking to the flexibility and the small operator, the minimum bond of $1 0,000 in Section 507(a) will have detrimental effects. Consider the small operator where the cost of reclaiming the land after mining is less than $1 0,000. Potential profits may not even approach this amount. A sentence should

be added to allow reduction of this bond if the authority agrees the reclamation
cost would not be this large.

531 We have already addressed the inclusion of underground mines in a surface mining bill. The 15 cents per ton or 10% of the value of the coal, whichever is less, is not only a high price to contribute to the "fund" but represents a duplication of "severance" type taxing that state, county and municipal governments are already stacking up.

531 Such a levy would be just another item of cost that would have to be passed on, thus adding to the final consumer's cost. A lower figure should be
sufficient to perform the functions required of the "fund". Likewise the 35 cents etc., applied to stripped coal seems excessive. Should the final bill include underground mining, we suggest some flexibility concerning this charge.
The underground mine owner should be allowed to perform the functions required
of the "fund" if he can develop an enviromental plan satisfactory to the authority without the excessive contribution to the "fund".

531 Citizen's suits seem to be the concept in most laws of this nature in the last few years. This along with the statement "by any person" in 502(f)(1)
could be used to harass operators and cause increased costs and loss of production without contributing to the goals of the proposed bill. Something to
deter this type of action by the petitioner or "any person", such as assessing
them the charges in the event of frivolous actions, seem appropriate for citizens, operators and the government agency and yet in no way detracts from the proposed bill.

531 Section 515(c)(3) permitting variances in our judgement is very good and
shows the sound thinking of those preparing the bill. If the other areas we have mentioned could provide similar flexibility, we believe it would help operators to perform the arduous tasks which will confront them.

532 The Permit Section 506 and following sections seem to provide some duplication in addition to being possibly an "overkill" in some instances. We
have environmental laws with which we are in compliance and all other states have similar laws. We feel sure that you do not desire any duplicate efforts and hope you will critically examine these sections with that thought in mind.

532 We appreciate your indulgence in reading these thoughts and let us again
express, they are made in a sincere manner which we hope you will consider in your deliberations.

532 Since we have been unable to be in Washington at the hearings, we ask you to include this data in your offical proceedings.

532 Yours very truly,

532 R. Bates Wilson

532 Corporate Engineering Consultant

Phone 748-1400
STARVAGGL INDUSTRIES, INC.
401 Pennsylvania Avenue
Weirton, West Virginia 26062
February 24, 1977
Honorable Morris K. Udall, Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
W Washington, D.C. 20515
RE: H.R. 2
Dear Congressman Udall:

I was advised by our Congressman, Robert Mollohan, that you graciously consented to permit my appearance before your Committee on Friday, February 25th, 1977; however, after discussing this at great length, it was pointed out
that the testimony has been quite extensive and time consuming, and that the same purpose could be accomplished by submitting my testimony in writing for inclusion in the record.

Accordingly, I am enclosing a copy of my prepared statement and would only
add that I would be most happy to confer and work with any of your Committee or
Staff should the same be of further interest.

You can readily determine that our basic contention is that the proposed Bill does not recognize the tremendous progress made by the States of Pennsylvania, West Virginia and Ohio in Surface Mining and Reclamation, and which States have long since overcome the concerns which are apparent in H.R. 2.

Your consideration is respectfully requested and appreciated, for we realize
the importance of Guidelines in States which do not measure up to those we already have in West Virginia, Ohio and Pennsylvania.

Very truly yours, STARVAGGI INDUSTRIES, INC.

STATEMENT OF DONALD R. DONELL, PRESIDENT STARVAGGI INDUSTRIES, INC., WEIRTON, WEST VIRGINIA and PRESIDENT OF EASTERN OHIO COAL OPERATORS ASSOCTATION,
STEUBENVILLE, OHIO FOR THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES HOUSE OF REPRESENTATIVES

RE: H.R. 2 THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

FEBRUARY 25, 1977

535 I AM DONALD R. DONELL OF WEIRTON, WEST VIRGINIA, AND I AM GRATEFUL FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF STARVAGGI INDUSTRIES, INC. OF

WEIRTON, WEST VIRGINIA AND AS WELL ELEVEN (11) MEMBER COMPANIES OF THE EASTERN
OHIO COAL OPERATORS ASSOCIATION, OF WHICH I AM THE PRESIDENT.

535 OUR COMPANY, AND THE OTHER TEN (10) COMPANIES OF OUR ASSOCIATION ARE RELATIVELY SMALL BY INDUSTRY STANDARDS AND AS SMALL PRODUCERS WE ARE THE FIRST
TO BE AFFECTED BY ANY REGULATIONS AND THE MOST SEVERELY INJURED BY ADVERSE MARKET CONDITIONS.

535 STARVAGGI INDUSTRIES, INC. HAS BEEN IN THE BUSINESS OF SURFACE MINING FOR OVER 45 YEARS, AND WE HAVE SURFACE MINES IN THE STATES OF OHIO, WEST VIRGINIA AND PENNSYLVANIA.

535 OF THE OTHER MEMBER COMPANIES, EIGHT (8) HAVE BEEN ENGAGED IN THESE STATES FOR OVER 25 YEARS AND THE OTHER TWO COMPANIES FOR MORE THAN 10 YEARS.

535 SINCE WE ARE SMALL AND NOT POSSESSED OF UNLIMITED RESOURCES, WE MUST RELY UPON A TOTAL INVOLVEMENT AND COMMITTMENT OF OUR ENTIRE PERSONNEL; INSIST UPON TIGHT CONTROL OVER OUR OPERATIONS AND FINANCIAL MATTERS; AND PROHIBIT THE
UNNECESSARY EXPENDITURE OF MONIES.

535 IN 45 YEARS WE HAVE NEVER FORFEITED A BOND IN ANY STATE IN WHICH WE HAVE
CONDUCTED SURFACE MINING OPERATIONS, AND BEING IN THREE STATES, WE HAVE WITNESSED DRAMATIC CHANGES IN THE SURFACE MINING INDUSTRY.

535 FOR THE SMALLER COMPANIES, TYPICAL OF OURSELVES AND OUR ASSOCIATION MEMBERSHIP, WE BELIEVE THAT THE CONSEQUENCES ARE PREDICTABLE WITH A GREATER DEGREE OF CERTAINTY, IF THE PROPOSED H.R. 2 IS NOT REVISED IN SOME AREAS.

536 LET ME STATE AT THE OUTSET, THAT ALL OF US, AS NORMAL HUMAN BEINGS,
ARE INCLINED TO REACT EVERY TIME A REGULATORY MEASURE IS PROPOSED; WHETHER IT BE
TO REGULATE FISHING, TRAVEL OR MINING; HOWEVER, I SINCERELY BELIEVE THAT OUR COMMENTS AND OBSERVATIONS TO H.R. 2 ARE OBJECTIVE AND REFLECTIVE OF OUR CUMULATIVE EXPERIENCE IN THE SURFACE MINING INDUSTRY.

536 WE BELIEVE THAT SINCE WE HAVE GONE THROUGH THE MAJOR LEGISLATIVE AND REGULATORY ACTIONS WHICH HAVE OCCURRED IN THE STATES OF OHIO, PENNSYLVANIA AND
WEST VIRGINIA SINCE 1930, AND BECAUSE OF OUR SMALL SIZE, WE ARE ABLE TO PRESENT
OBSERVATIONS AND RECOMMENDATIONS BASED UPON FACTUAL EXPERIENCES AND REALITIES RATHER THAN HYPOTHETICAL OR THEORETICAL PROBABILITIES.

536 1. SECTION 101 J: SHOULD BE CHANGED TO "ENCOURAGE THE FULL UTILIZATION
OF COAL RESOURCES THROUGH THE DEVELOPMENT AND APPLICATION OF RESPONSIBLE EXTRACTION TECHNOLOGIES, BY WHATEVER METHODS." THIS WOULD SIMPLY RECOGNIZE THE
FACT THAT SURFACE MINING IS A PART OF INDUSTRIAL AMERICA THE SAME AS UNDERGROUND
AND REMOVE THE ADVERSARY ATMOSPHERE WHICH EXISTS IN SOME AREAS.

536 TITLE IV - ABANDONED MINE RECLAMATION FUND

536 2. SECTION 401(d): WE BELIEVE THAT THE TOTAL AMOUNT OF ANY RECLAMATION FEE PAID FOR AN ABANDONED MINE RECLAMATION FUND SHOULD BE ESTABLISHED BY AND PAID DIRECTLY TO THE STATE FROM WHENCE THE SAME IS GENERATED. THIS SHOULD BE WITHIN THE SOLE DISCRETION OF THE STATE.

536 UNDER NO CIRCUMSTANCES CAN WE SEE ANY JUSTIFICATION FOR PAYMENT TO THE FEDERAL GOVERNMENT IF A STATE HAS AN ACCEPTABLE PROGRAM. IF THE COAL IS FEDERALLY OWNED, THEN YOU HAVE A RIGHT TO INSIST UPON THIS ADDITIONAL ROYALTY TO DISBURSE FOR RECLAMATION PROJECTS AS THE FEDERAL GOVERNMENT DEEMS PROPER.

536 OHIO, FOR EXAMPLE HAS AN ABANDONED MINE PROGRAM CALLED "LAND REBORN" AND CREATES A BUILT-IN INDUCEMENT FOR OPERATORS TO RE-ENTER ABANDONED SITES AS WELL AS SEVERANCE TAX.

537 WEST VIRGINIA ONCE HAD A SPECIFIC FUND EARMARKED FOR AN ORPHANED LAND PROGRAM; HOWEVER, THEY ELECTED TO SUBSTANTIALLY INCREASE THE BUSINESS AND OCCUPATION TAX ON COAL TO $3.85 PER $1 00.00 VALUE AND 17 1/2~ GOES TO THE COUNTY WHERE MINED AND 17 1/2~ TO ALL OTHER COUNTIES. IN ADDITION WE PAY $60.00 PER ACRE INTO RECLAMATION FUND.

537 PENNSYLVANIA APPROACHES THIS PROBLEM FROM A DIFFERENT ANGLE BY UTILIZING A COMBINATION APPROACH.

537 THE POINT IS, THAT THESE THREE STATES IN FACT, HAVE ONGOING PROGRAMS WHICH ARE SUCCESSFUL AND AN INTEGRAL PART OF SURFACE MINING AND RECLAMATION AND SHOULD BE RECOGNIZED AND ACCEPTED AS COMPLYING WITH FEDERAL GUIDELINES RATHER THAN IMPOSING AN ADDITIONAL UNNECESSARY COST ON THE TAXPAYER, SINCE THE AIMS AND OBJECTIVES ARE BEING MET.

537 APPLICATION REQUIREMENTS

537 3. SECTION 507(a): THE FEE WHICH IS TO ACCOMPANY EACH APPLICATION COULD CONCEIVABLY COST AS LITTLE AS $25.00, WHICH MIGHT COVER ONLY PROCESSING, OR AS MUCH AS $1 22,000. IF THE OPERATOR IS TO BE RESPONSIBLE FOR 5 YEARS, AS PROPOSED.

537 WE HAVE REVIEWED THREE (3) OF OUR MOST RECENT PERMITS FOR THE PAST CALENDAR YEAR, ONE IN PENNSYLVANIA, ONE IN OHIO AND ONE IN WEST VIRGINIA, AND ATTEMPTED TO DETERMINE HOW THE APPLICABILITY OF PROPOSED H.R. 2 WOULD AFFECT THESE UNDER THIS SECTION AS WRITTEN.

538 WE PRESUMED THAT THE STATE AGENCY OR DEPARTMENT RESPONSIBLE FOR

ADMINISTERING THE BILL WOULD INSIST UPON THE MAXIMUM FEE SINCE IT IS PERMISSIBLE
AS PROPOSED.

538 WE COULD BE MADE TO PAY FOR THE FOLLOWING:

538 1. CLERICAL PROCESSORS SALARY (PROPORTIONATE)

538 2. TECHNICAL PERSONNEL (PROPORTIONATE)

538 3. DIRECTORS SALARY (PROPORTIONATE)

538 4. INSPECTORS SALARY (PROPORTIONATE)

538 5. INSPECTORS JEEP (PROPORTIONATE)

538 6. INSPECTORS TRAVEL EXPENSES (PROPORTIONATE)

538 7. HEARING AND CONFERENCE EXPENSES (WE BELIEVE 7 OR 8 PUBLIC HEARINGS
COULD RESULT)

538 8. COURT REPORTERS

538 9. STATE ATTORNEYS

538 10. BOARDS OF REVIEW

538 11. APPELLATE COSTS

538 12. FIELD INSPECTORS (AVERAGE ONE EVERY EIGHT DAYS PER PERMIT)

538 PRESENTLY, EACH OF THE THREE STATES SETS THE APPLICATION FEE WHICH MUST
ACCOMPANY OUR APPLICATION, THE HIGHEST OF WHICH IS $300.00.

538 THIS RECOGNIZES THAT BECAUSE OF THE PRESENT TAXES GENERATED BY COAL IN
THE STATES IN WHICH WE ARE INVOLVED AND THE BONDS AND DATA REQUIRED, IT WOULD BE
GROSSLY UNFAIR TO PERMIT THE PYRAMIDING OF ADDITIONAL COSTS WHICH YOU AND I KNOW
MUST ULTIMATELY BE PASSED ON TO THE CONSUMER AS ANOTHER COST.

538 THE SYSTEMS WORK SATISFACTORILY IN WEST VIRGINIA, PENNSYLVANIA AND OHIO
AND I SHUDDER AT AFFORDING ANYONE AN OPPORTUNITY TO FURTHER TAX THE AMERICAN
PUBLIC UNNECESSARILY.

539 4. SECTION 507(b)(6): IN WEST VIRGINIA, WE ADVERTIZE ONCE A WEEK FOR
THREE SUCCESSIVE WEEKS; IN PENNSYLVANIA IT IS PUBLISHED IN THE PENNSYLVANIA
REGISTER AND IN OHIO IT APPEARS IN THEIR JOURNAL; THEREFORE, WE BELIEVE IT
UNNECESSARY TO CHANGE THIS PROCEDURE AND PERMIT STATES TO PROCEED AS IT DESIRES,
SO LONG AS A SYSTEM EXISTS FOR NOTICES.

539 WHICHEVER METHOD IS SELECTED WILL WORK; HOWEVER, THERE IS CERTAINLY NO NEED TO EXTEND ADVERTIZEMENT FOR FOUR SUCCESSIVE WEEKS; IN FACT, WE BELIEVE ONCE A WEEK FOR TWO SUCCESSIVE WEEKS WOULD SUFFICE IF YOU INSIST UPON NEWSPAPER PUBLICATIONS.

539 5. SECTION 507(b)(11)(12)(14): IF THE HYDROLOGIC INFORMATION, CLIMATOLOGICAL FACTORS AND CORE SAMPLES ARE MANDATORY, OUR PAST EXPERIENCES ARE AS FOLLOWS:

539 A. WE PAID $4.50 PER FOOT DOWN TO THE COAL AND THEN $1 8.50 PER FOOT TO HAVE COAL CORE SAMPLES TAKEN WHEN INITIAL REGULATIONS WERE PROMULGATED IN ONE STATE, WHICH HAVE SINCE BEEN REVISED TO PERMIT TEST BORINGS BY OUR OWN STRAIGHT ROTARY DRILLS, AND ALL HAVE ELIMINATED THE COMPLICATED INFORMATION CONTAINED IN H.R. 2.

539 B. THE COST OF A COMPLETE CORE SAMPLE WE TOOK WAS AS FOLLOWS: 0' - 50', $10.50 PER FOOT; 50'-100', $13.50 PER FOOT; 100'-150', $1 8.50 PER FOOT; OVER 150' TO 200', $23.50 PER FOOT. TOTAL COST FOR ONE (1) CORE ONLY WAS $2 ,315.00.

539 IN ADDITION THERE WAS A $1 00.00 SET-UP FEE; PLUS CASING FEE AT $3 .75 PER FOOT; PLUS BAG MATERIAL AT PREVAILING PRICE IN AREA; PLUS WATER CHARGE WHICH IS REQUIRED IN CORE BORINGS DUE TO DIAMOND HEAD DRILL.

539 ONCE THIS WAS ACCOMPLISHED, THE LABORATORY FEES, DEPENDING UPON WHAT WAS TO BE DETERMINED, RAN FROM $17.50 TO $7 5.00 PER SAMPLE; HOWEVER, EVEN THE STATE LAB IN OUR CASE WAS NOT SET UP TO RUN SIX (6) OF THE TESTS AND THE TESTS WERE NEVER FINALIZED SINCE REGULATIONS WERE CHANGED.

539 THESE CORE SAMPLES WHICH WE OBTAINED WERE BAGGED AND STORED FOR OVER 19 MONTHS BECAUSE ONLY ONE LABORATORY IN THE STATE COULD CONDUCT THE THEN PROPOSED REGULATIONS.

539 WE SUBMIT AGAIN, THAT WHILE SUBSEOTION (15) OF SAID SECTION PERMITS A WAIVER, OUR YEARS OF EXPERIENCE IN THE STATES OF OHIO, PENNSYLVANIA AND WEST VIRGINIA HAVE PROVEN THIS TO BE UNNECESSARY AND THEREFORE SHOULD BE DELETED COMPLETELY, AND LEFT TO THE DISCRETION OF EACH STATE AS CONDITIONS DICTATE.

539 6. SECTION 507(b)(16)(e): IS UNNECESSARY SINCE THE INFORMATION WILL BE OF RECORD IN THE STATE OFFICE CONCERNED WITH SURFACE MINING AND IS A MERE DUPLICATION.

539 7. SECTION 508 - RECLAMATION PLAN REQUIRED (a)(1): CONCERNS ITSELF WITH
TEST BORINGS ABOUT WHICH WE HAVE ALREADY COMMENTED.

539 8. SECTION 509(a) - PERFORMANCE BONDS: THE REQUIREMENTS OF AT LEAST TWO
INDEPENDENT ESTIMATES ON RECLAMATION BONDS IS UNNECESSARY FOR THE FOLLOWING
REASONS: (1) UNDER EXISTING STATE LAWS, OPERATORS MAY NOT REMOVE EQUIPMENT FROM
THE SITE WHICH THE INSPECTOR DEEMS NECESSARY TO COMPLETE RECLAMATION, KEEPING IN
MIND THE RECLAMATION REMAINING AT THE TIME OF EACH INSPECTION AND THE EQUIPMENT
PRESENT.

539 THE PRESENT LANGUAGE OF 509(A) DOES NOT PRESUME CONCURRENT RECLAMATION
WORK BEING PERFORMED, AND AN INDEPENDENT ESTIMATOR COULD CONCEIVABLY SUBMIT HIS
ESTIMATE BASED ON TOTAL REMOVAL OF TOP-SOIL AND OVERBURDEN AND TOTAL RETURN OF
SAME BY MEANS OF CONVENTIONAL EARTH MOVERS. THIS IS A CERTAINTY IF THE
ESTIMATORS HAVE NO EXPERIENCE IN SURFACE MINING.

541 I CAN ENVISION ON A 100 ACRE TRACT OF LAND, PRESUMING 65' OF
OVERBURDEN ON 4' OF COAL, THAT AN EARTH MOVING CONTRACTOR COULD SUBMIT AN
INITIAL BID OR ESTIMATE OF NOT LESS THAN $4 ,500,000.00 WITH ESCALATIONS TO
COVER SHALE, ROCK, ETC., AS CONDITIONS ARISE, SIMPLY BECAUSE HE WOULD NOT BE
FAMILIAR WITH PARTICULAR METHODS OF MINING SUCH AS HAULBACK, LATERAL OR DRAGLINE
AND REMOVE FIRST CUT METHOD.

541 THE CUBIC YARDS OF OVERBURDEN IN THIS EXAMPLE IS 10,486,666 CUBIC YARDS,
AND WHICH WE SUBMIT WOULD REGULATE US OUT OF BUSINESS.

541 SECTION 509(b): PRESENT LANGUAGE DOES NOT PROVIDE FOR BOND REDUCTION AS
RECLAMATION PROGRESSES, BUT IS PENAL IN NATURE SINCE THE TOTAL BOND MUST REMAIN
FOR A PERIOD COINCIDENT WITH VEGETATION.

541 AGAIN, MAY I EMPHASIZE THAT IN 45 YEARS WE HAVE NEVER FORFEITED A BOND;
HOWEVER, WE ARE IN NO POSITION TO POST A $4 ,500,000. BOND, WHICH IS WHAT COULD
HAPPEN IF H.R. 2 IS PASSED IN ITS PRESENT FORM.

541 THE AMOUNT OF THE BOND AND DURATION SHOULD BE LEFT IN THE DISCRETION OF
THE STATES, AS WELL AS PROVISIONS FOR REDUCTION OF SAME AS BACKFILLING,
RECLAMATION AND SEEDING PROGRESSES.

541 9. SECTION 513 - PUBLIC NOTICE AND PUBLIC HEARINGS: WE SUBMIT THAT
WHERE A STATE REQUIRES US TO PUBLISH ONCE A WEEK FOR THREE (3) CONSECUTIVE WEEKS

IS MORE THAN SUFFICIENT; HOWEVER, WHERE PUBLICATIONS ARE MADE IN STATE REGISTERS
OR JOURNALS, THIS SHOULD BE PRESERVED AS A PREROGATIVE OF THE STATE'S RIGHTS.
IT HAS WORKED IN PENNSYLVANIA, OHIO AND WEST VIRGINIA AND SHOULD BE APPROVED AS
ACCEPTABLE.

542 THE REQUIREMENT THAT GOVERNMENTAL BODIES OR AGENCIES MUST SUBMIT WRITTEN COMMENTS IS MOST UNNECESSARY UNLESS IN FACT THEY ENVISION AN ADVERSE IMPACT UPON THEIR PARTICULAR POSITION, IN WHICH EVENT THEY SHOULD MOST CERTAINLY
COMMENT.

542 10. SECTION 513(L): THE REQUIREMENT MANDATING A PUBLIC HEARING IF REQUESTED BY "ANY PERSON WITH A VALID LEGAL INTEREST" WILL OPEN PANDORA'S BOX TO
UNENDING HEARINGS AND LITIGATIONS, FOR THE TERM "VALID LEGAL INTEREST" WOULD COVER ANY SELFAPPOINTED GROUP OR INDIVIDUAL IN BEHALF OF GOD AND COUNTRY.

542 THE STATE, AS PRESENTLY EXISTS, SHOULD AND MUST RETAIN THE RIGHT TO INITIALLY DETERMINE IF IN FACT A HEARING IS WARRANTED.

542 IN OUR OWN CASE, ONE OF OUR LATEST PERMITS WAS OBJECTED TO BY ONE PARTY
FROM TEXAS BECAUSE SHE WENT TO SCHOOL HERE AND USED TO WALK IN OUR WOODS; ANOTHER BY A GROUP LOCATED OVER 300 MILES AWAY; AND ANOTHER BY A GROUP OF CONCERNED CITIZENS NONE OF WHOM LIVED IN THE AREA.

542 NO PROTESTS WERE FILED BY PROPERTY OWNERS IN THE IMMEDIATE AREA, YET WE
ANSWERED THE SPURIOUS OBJECTIONS AND WERE OVER NINE MONTHS GETTING THE PERMIT.

542 THE INTENT, I AM CERTAIN IS HONORABLE, BUT I CAN ASSURE YOU WE WILL BE
SPENDING MORE MONEY ON LAWYERS, TRANSCRIPTS AND WASTED TIME, THAN MINING COAL,
WHICH IS A VITAL, INTEGRAL PART OF OUR NATION WHETHER EXTRACTED BY SURFACE OR UNDERGROUND METHODS.

542 SHOULD ANY HEARING BE REQUIRED, IT IS OUR BELIEF THAT THE BURDEN SHOULD
BE UPON THE PARTY PROTESTING TO PROVE THAT THE APPLICATION DOES NOT COMPLY WITH
THE LAW AND REGULATIONS AND DO SO WITH CLARITY RATHER THAN IN GENERAL TERMS, AND
THAT ANY OBJECTIONS BE FILED UNDER OATH.

543 11. SECTION 513(c): IF AN APPLICANT DESIRES TO APPEAL HE SHOULD POST
A BOND COVERING COSTS; AND IF AN OBJECTOR FILES AN APPEAL HE SHOULD POST A BOND
COVERING COSTS AND LOSS OF EARNINGS AND DAMAGES IN THE EVENT THE APPLICANT PREVAILS.

543 ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

543 12. SECTION 515(a): SUGGEST THAT THIS SECTION BE REVISED TO READ AS FOLLOWS: ANY PERMIT ISSUED UNDER ANY APPROVED STATE OR FEDERAL PROGRAM PURSUANT
TO THIS ACT TO CONDUCT SURFACE COAL MINING OPERATIONS SHALL REQUIRE THAT SUCH SURFACE COAL MINING OPERATIONS WILL MEET THE APPLICABLE PERFORMANCE OF THE APPROVED STATE PROGRAM OR OF THIS ACT, AND SUBJECT TO THE REQUIREMENTS AS THE STATE OR FEDERAL, AS THE CASE MAY BE, REGULATORY AUTHORITY SHALL PROMULGATE. (REVISIONS AS UNDERLINED)

543 13. SECTION 515(b)(2): RESTORE THE LAND AFFECTED TO A CONDITION AT LEAST FULLY CAPABLE OF SUPPORTING THE USES WHICH IT SUPPORTED PRIOR TO ANY MINING . . .

543 14. SECTION 515nb)(3): THE FOLLOWING SHOULD BE ADDED: AND PROVIDED FURTHER, THAT STATES MAY PROVIDE FOR RESTORATION AND RECLAMATION OTHER THAN TO
THE APPROXIMATE ORIGINAL CONTOUR, WHERE THE EXPERIENCE IN THE STATE INDICATES THAT METHODS KNOWN AS TERRACING, VALLEY FILL, HAULBACK, OR BY WHATEVER NAME, HAS
ACHIEVED THE DESIRED ENDS OF THIS ACT, I.E. SOIL STABILITY AND CONTROL OF LANDSLIDES, EROSION AND SEDIMENTATION.

543 15. SECTION 515(b)(10)(c): REMOVING TEMPORARY OR LARGE SILTATION STRUCTURES FROM DRAINWAYS AFTER DISTURBED AREAS ARE REVEGITATED AND STABILIZED,
UNLESS RETENTION OF THE SAME HAS BEEN APPROVED AS BENEFICIAL TO THE AREA.

543 16. SECTION 515nb)(12): REFRAIN FROM SURFACE COAL MINING WITHIN 500 FEET FROM AN ACTIVE UNDERGROUND MINE AND 100 FEET FROM AN ABANDONED UNDERGROUND
MINE IF NECESSARY TO PROTECT THE HEALTH OR SAFETY OF MINERS: PROVIDED, THAT THE
REGULATORY AUTHORITY SHALL PERMIT AN OPERATOR TO MINE CLOSER TO AN ACTIVE OR ABANDONED UNDERGROUND MINE; . . .

544 17. SECTION 515(b)(13): ADD THE FOLLOWING: PROVIDED HOWEVER, THAT
NOTHING CONTAINED HEREIN SHALL PREVENT OR PRECLUDE ANY STATE FROM INSTITUTING ITS OWN PROGRAMS INTENDED TO RECLAIM, STABILIZE, REMOVE OR IN ANY WAY IMPROVE CONDITIONS WHICH MAY HAVE EXISTED AT FORMER MINING OPERATIONS, WHETHER DEEP OR
SURFACE, AND TO THAT END SHALL NOT BE DEEMED INCONSISTENT WITH THIS PARAGRAPH.

544 18. SECTION 515nb)(17): RECOMMEND TO BE CHANGED AS FOLLOWS: . . . PROVIDED THAT, THE REGULATORY AUTHORITY MAY PERMIT THE RETENTION AFTER MINING OF
ACCESS ROADS, DIVERSION DITCHES OR OTHER CONFIGURATIONS WHICH THE REGULATORY AGENCY DEEMS CONSISTENT WITH ITS PROGRAM OR WHICH LOCAL LAND USE PLANS AND PROGRAMS REQUIRE OR PERMIT THE SAME, AND . . .

544 19. SECTION 515(b)(18): SHOULD BE REVISED AS FOLLOWS: . . . ; PROVIDED
HOWEVER, THAT THIS SHALL NOT APPLY TO WET WEATHER STREAMS OR TO SUCH AREAS WHERE
STREAM BEDS OR DRAINAGE CHANNELS MAY BE PROPERLY RELOCATED AND AS APPROVED BY THE REGULATORY AGENCY.

544 20. SECTION 515(b)(20): . . . ; AND PROVIDED FURTHER, THAT IN STATES
WHERE EXPERIENCE HAS PROVEN THAT A LESSER PERIOD THAN FIVE (5) YEARS IS SUFFICIENT TO ESTABLISH REVEGITATION, RELEASES MAY BE ISSUED AND SHALL NOT BE DEEMED TO BE INCONSISTENT WITH THIS PARAGRAPH.

544 IT HAS BEEN OUR EXPERIENCE AT OUR AREAS OF WEST VIRGINIA, PENNSYLVANIA
AND OHIO THAT WE CAN ADEQUATELY ACCOMPLISH TWO (2) PLANTING SEASONS IN A SINGLE
YEAR AND CAN RECEIVE A RELEASE AFTER TWO(2) GROWING SEASONS UPON INSPECTION AND
APPROVAL BY THE STATE.

545 21. SECTION 515(C)(3)(F): RECOMMEND THAT THE PUBLIC HEARING BE ELIMINATED AS UNNECESSARY SINCE ANY AGENCY WHICH MAY BE INVOLVED IS IN FACT CHARGED WITH THE RESPONSIBILITY OF ADMINISTERING AND PARTICIPATING IN THE DETERMINATION AS REQUIRED BY THE AUTHORITY UNDER WHICH SAID AGENCY HAS BEEN INSTITUTED; I.E. IF IT IS A STATE, COUNTY, TOWNSHIP, CITY OR FEDERAL AGENCY THERE ARE PROCEDURES THROUGH WHICH THEY MUST GO IN APPROVING PLANS AND THIS SHOULD BE MORE THAN SUFFICIENT.

545 I WOULD ALSO ADD AT THIS TIME THAT THE PROPER FORM FOR ANY PARTIES TO REGISTER LEGITIMATE COMPLAINTS AGAINST SURFACE MINING PER SE IS HERE AND NOW AND
THAT ONCE HAVING PASSED THE NECESSARY LEGISLATION AND IMPLEMENTED THE NECESSARY
REGULATIONS, ALL COMPLAINTS WILL HAVE BEEN TAKEN INTO CONSIDERATION AND WE SHOULD ALL THEN BE PERMITTED TO PROCEED WITH DISPATCH.

545 OUR COMPANY, AS INDICATED EARLIER, HAS BEEN SUBJECTED TO HEARINGS AND CONFERENCES REQUIRED UNDER THE EXISTING STATUTES AND REGULATIONS OF PENNSYLVANIA, OHIO AND WEST VIRGINIA AND WE RESPECTFULLY SUBMIT THAT THE PROVISOS CONTAINED THEREIN ARE MORE THAN AMPLE TO AFFORD ANY LEGITIMATE PROTESTS
AND WE SUBMIT ADEQUATELY BURDENSOME TO US SINCE WE HAVE NEVER FORFEITED A BOND
OR BEEN DENIED A PERMIT ONCE THE PERMITS HAVE BEEN APPROVED BY THE STATE AGENCY
INVOLVED.

545 22. SECTION 515(D)(2): THE FOLLOWING SHOULD BE ADDED TO THIS PARAGRAPH;
PROVIDED HOWEVER, THAT THIS PARAGRAPH SHALL NOT PROHIBIT THE APPROVAL OF BACKFILLING AND RECLAMATION PLANS OTHER THAN TO THE APPROXIMATE ORIGINAL CONTOUR
BY THE STATE AGENCY PURSUANT TO ITS PROGRAM OR IN THE ABSENCE OF A STATE PROGRAM
BY THE TERMS OF THIS ACT WHICH WOULD PERMIT THE SAME.

546 23. SECTION 515(D)(4): SUGGEST THAT THE TERM STEEP SLOPE BE ANY SLOPE
ABOVE 3 30 DEGREES.

546 INSPECTIONS AND MONITORING

546 24. SECTION 515(F): SECTION SHOULD BE REVISED AS FOLLOWS: COPIES OF ANY
RECORDS, REPORTS, INSPECTION MATERIALS, OR INFORMATION OBTAINED UNDER THIS TITLE
BY THE REGULATORY AUTHORITY SHALL BE MADE AVAILABLE TO THE PUBLIC AT SUCH
LOCATION AS THE STATE PROGRAM MAY DESIGNATE AND IN THE ABSENCE OF A STATE
PROGRAM, AT SUCH LOCATION AS THE SECRETARY SHALL ESTABLISH.

546 RELEASE OF PERFORMANCE BONDS OR DEPOSITS

546 25. SECTION 519(A): THE SECTION SHOULD BE REWRITTEN SO AS TO ELIMINATE
THE NEED FOR PUBLICATION AND NOTIFICATION TO ADJOINING PROPERTY OWNERS AND LOCAL
GOVERNMENTAL BODIES IN THAT ONCE A PROGRAM HAS BEEN APPROVED, ANY PERMITS ISSUED
BECOME THE RESPONSIBILITY OF THE STATE OR FEDERAL AGENCY, AS THE CASE MAY BE,
AND THE PROCEDURES CONTAINED IN THE PROGRAMS ARE MORE THAN AMPLE AND SUFFICIENT
INSOFAR AS SAFEGUARDS ARE CONCERNED.

546 THE PRESENT LANGUAGE SERVES NO USEFUL PURPOSE AND WOULD ONLY GIVE RISE
TO UNNECESSARY COSTS AND HEARINGS. AGAIN WE BELIEVE THAT ONCE A BILL HAS BEEN
PASSED AND PROGRAMS APPROVED, THE RESPONSIBILITY IS THEN ENTRUSTED TO A
PARTICULAR AGENCY AND THAT AGENCY SHOULD BE PERMITTED TO EXERCISE THE
RESPONSIBILITIES THEREIN CONTAINED.

546 WE HAVE GONE THROUGH THE PROBLEMS WHICH APPARENTLY BOTHER THIS COMMITTEE
AND WHICH ALSO BOTHERED THE LEGISLATORS OF THESE THREE STATES; HOWEVER, THE
CONCERNS HAVE BEEN RESOLVED AND THE REGULATIONS WHICH HAVE BEEN PROMULGATED
ADEQUATELY PROTECT THE PUBLIC AND AFFORD EVERYONE CONCERNED OF A WORKABLE
PROGRAM AND ATMOSPHERE.

547 THUS IN ITS PRESENT FORM, AS I HAVE ATTEMPTED TO DELINEATE, THE
PRESENT BILL H.R. 2 DOES NOT CONSIDER AND RECOGNIZE THE PROGRESS MADE IN OHIO,
PENNSYLVANIA AND WEST VIRGINIA, AND THE LAWS AND REGULATIONS IN EXISTENCE
RELATIVE TO MINING METHODS AND RECLAMATION.

547 IN ITS PRESENT FORM, IT COULD BE AN ADMINISTRATIVE NIGHTMARE AND A
LAWYERS' AND PROFESSIONAL PERSONS' DELIGHT; AND COULD, QUITE FRANKLY MEAN THE
DEMISE OF COMPANIES SUCH AS OURS SIMPLY BECAUSE WE DO NOT HAVE THE FINANCIAL
RESOURCES TO MEET THE MYRIAD REQUIREMENTS AND ENDLESS ROUNDS OF HEARINGS AND
LITIGATION WHICH COULD RESULT.

547 YOU SHOULD, AT THE VERY LEAST, AFFORD ANY STATE THE ABSOLUTE RITHT TO
PROMULGATE ITS REGULATIONS AND VARY FROM YOURS IF THE HISTORY AND EXPERIENCE IN
THAT STATE SUBSTANTIATE THAT POSITION. THIS WOULD ENABLE EACH STATE THE RIGHT
TO DRAW UPON ITS EXPERIENCE AND CONDITIONS AS THEY EXIST IN THAT STATE, FOR SOME
METHODS AND PROCEDURES WHICH ARE COMPLETELY PROPER AND SOUND IN ONE STATE OR

AREA, MAY NOT APPLY TO ANOTHER; THEREFORE, LATTITUDE MUST BE A MATTER OF RIGHT
ON THE STATE LEVEL AND NOT DISCRETION ON THE FEDERAL LEVEL.

547 I WOULD INVITE THIS COMMITTEE TO WEIRTON, WEST VIRGINIA AND STEUBENVILLE, OHIO, AS OUR GUESTS, TO SEE WHAT WE HAVE DONE AND ARE DOING.

548 COME UNANNOUNCED OR BE OUR GUESTS FOR LUNCH AND A PLANNED TOUR OF THE
TRI-STATE AREA.

548 OUR DOORS ARE ALWAYS OPEN.

548 RESPECTFULLY,

548 DON R. DONELL

TEXACO INC.
1050 SEVENTEENTH STREET, N.W. WASHINGTON, D.C. 20036
March 1, 1977
Honorable Morris Udall
Chairman, Committee on Interior and Insular Affairs
1320 Longworth House Office Bldg.
Washington, D.C. 20515
Dear Mr. Udall:

549 In connection with the hearings which your committee's Subcommittee on
Energy and the Environment is holding concerning H.R. 2, Texaco respectfully submits the attached statement. We would appreciate having our views, as reflected in this statement, included in the official hearing record.

549 Thank you for your cooperation.

549 Very truly yours,

549 WKTjr/1mb

549 Attachment

549 cc: All Members of Subcommittee on Energy and the Environment

STATEMENT BY TEXACO INC. PERTAINING TO H.R. 2 SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 TO THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT WASHINGTON, D.C.

FEBRUARY 28, 1977

551 COMMENTS BY TEXACO INC. PERTAINING TO SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 - H.R. 2

551 Texaco respectfully submits this statement in regard to the proposed bill H.R. 2, the Surface Mining Control and Reclamation Act of 1977. For future

energy developments in the United States it is generally recognized that coal is the major energy source that will be used as the reserves of petroleum and natural gas decline. The utilization of this great natural resource must be under circumstances that bring the greatest good to all. A proper balance must be struck between our energy needs, the economic aspects of furnishing this energy to our citizens, and the environmental protection which must be provided to our lands and to the health and well being of our people.

551 The proper legislation, in our belief, has already been provided by the coal producing states. In recent years the states have recognized the necessity for strict mining and reclamation laws to protect their environment. As a result, current mining is being conducted under rules and regulations which are bringing about effective reclamation. Federal coal lands are mined under strict controls provided by the Department of Interior. The Department has recognized that a growing list of states have such effective laws that the Department has signed agreements with a number of them, notably Wyoming, New Mexico, Utah, and North Dakota. These agreements rely on the states to administer mining and reclamation permits, enforcement, and bonding.

552 It is our opinion that use of state legislation is the more effective way to control strip mining because each state can take account of its own particular conditions of climate, terrain, land use and other needs.

552 Many who urge a Federal strip mining bill do so because they have overlooked the stringent state laws that are now being effectively enforced and the resultant reclamation now being successfully accomplished. Further, they fear that coal strip mining will reduce the ability to grow the food necessary for this country and for populations in other parts of the world. An examination of the facts should allay such fears and demonstrate that coal mining, and energy development in general, are vitally needed by agriculture.

552 It is not widely recognized, but it has been definitely established, that in the United States and other countries where high yields of foods are obtained, fossil energy plays a major part in that productivity. It is an astounding fact * that 10 units of fossil energy are required to put one unit of food energy on the table. In other words, it requires 10 calories of fossil energy for such items as operation of farm machinery, pumping of irrigation water, manufacture and use of fertilizer, transportation and distribution of food to enable the citizen to eat one calorie of food energy at the dinner table. While agricultural energy is small compared to that now used for heating, manufacturing and transportation, it continues to grow as more and more food is required to feed a hungry world.

552 * Steinhard and Steinhard, "Food Uses in the United States Food System",
Science, Vol. 184, pages 307-322, 1974; and

552 Heichel, "Energy Needs and Food Yields", Technological Review, Massachusetts Institute of Technology, Vol. 76, No. 8, July, 1974.

553 Another factor in this fear of mining versus agriculture is the misapprehension of how much land will be withdrawn from farming or ranching. In
actuality, surface mining will have a very minimal effect. This is clearly borne out by the Northern Great Plains Resources Program ** conducted in cooperation with federal, state, regional, local and private organizations in the states of Nebraska, North and South Dakota, Montana, and Wyoming.

553 ** Northern Great Plains Resources Program, Denver Federal Center, Denver, Colorado 80225, "Effects of Coal Development in the Northern Great Plains, a Review of Major Issues and Consequences of Different Rates of Development", April, 1975, pages 139-147.

553 In the study, three Coal Development Profiles (CDP-I, II, and III) are
considered. I is for low development, II is intermediate (or most probable) and
III is high (or the greatest possible development). On page 142 it shows that
the amount of land displaced relative to 91 million acres of agricultural land
in the region is: CDP-I, 0.04 percent; CDP-II, 0.14 percent; and CDP-III, 0.34
percent. These miniscule land removals are, however, based on prompt reclamation and return to agricultural uses. Loss in wheat production, the principal crop in the study area, is only 0.22 percent for CDP-II and only 0.45
percent for CDP-III. On page 144 the report brings out that animal units (cow
and calf) displaced by mining by the greatest possible development in the year
2000 is only 0.19 percent.

554 When considration is given to the extremely small effect on agriculture, and the benefits to the local, regional, state, and national interests, of the energy produced, it is clearly apparent that properly conducted mining is a far superior use of the land.This is especially true since, as reclamation goes forward as governed by state rules and regulations,
the lands are restored to equal or greater agricultural utilization for the future.

554 In view of the above, Texaco respectfully suggests that a federal bill
such as H.R. 2 is no longer needed and urges that such federal legislation be dropped.

554 If the Congress decides, after considering all aspects of the situation,

that a Federal strip mining bill is necessary, then Texaco would urge modification of the provisions of H.R. 2 which pertain to mining in alluvial valleys in the west.

554 We are fully in accord with the need to protect agricultural lands and especially the water quality of flowing streams and aquifers which may be used for irrigation purposes. With proper engineering planning and operation, it is certainly possible to mine in alluvial valleys while protecting the downstream water use and to reclaim the mined area so that it can be returned to its previous or higher use. Effective protection of this kind is provided by the bill's reclamation requirements.

555 The language of the bill, particularly Section 510(b)(5)(A) appears to be absolutist in nature and prohibits mining in alluvial valleys, with certain fringe exceptions. This eliminates, in an unwarranted manner, the mining of many millions of tons of low sulfur coal which are needed to supply energy for the citizens of the United States. This provision is made presumably in the interest of food production. However, as previously shown, general strip mining in the Northern Great Plains has a negligible effect on reducing agricultural production. If the alluvial valley areas containing coal are withdrawn for a period of time, this will have a minimal effect on the agricultural productivity of the region. The economic value of the energy extracted before the lands are returned to equal or higher agricultural use will be many fold more than the temporarily displaced value of the agriculture. Since the land will be restored and the water quality for downstream users will be protected, it is clear that mining is the best use of the land and that the citizens of the region, the state and the country as a whole will be benefited.

556 Section 527 effectively prohibits the method of open pit mining.This method is highly practical and safe and often is the only way in which thick, pitching seams or multiple seams can be mined. Also in specific circumstances, it permits reclamation which is superior to other mining operations. Therefore, the bill should be modified to permit open pit mining.

556 Other sections of H.R. 2 relating to alluvial valleys, or hydrology, namely 510(b)(3), 510(b)(5)(B), and 515(b)(10)(F) also tend to be absolutist in preventing mining of such valleys. We feel that such outright prohibition should be altered and mining of alluvial valleys be allowed, but only under the strictest conditions.

556 In view of the significant amounts of coal at stake, the current language of the above referenced provisions is not in the best interests of the people of the western states, nor of the country as a whole. Therefore, we strongly urge that these provisions be modified so as to read as follows: Rewording of H.R. 2, pages 73-75

556 Sec. 510(b)

556 No permit, revision, or renewal application shall be approved unless the application 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 that -

557 (3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in 507(b) has been made and the proposed operation thereof has been designed to prevent to the maximum extent possible, using the best available technology, significant irreparable offsite damage to hydrologic balance;

557 (5) The proposed surface mining operations, if located west of the one hundredth meridian west longitude, would, to the maximum extent possible, using the best available technology -

557 (A) not have a substantial adverse effect, except temporarily during the period of mining, on croplands or haylands overlying alluvial valley floors where such croplands or haylands are significant to the practice of farming or ranching operations, such valleys being restored in accordance with Sec. 515(b)(2)

557 (B) not adversely affect the quantity or quality of water in surface or underground water systems in the valley floors downstream from the mining area.

557 Rewording of H.R. 2, pages 89-90

557 515(b)(10)(F)

557 preserving to the maximum extent possible, using the best available technology, throughout the mining and reclamation process the essential hydrologic function of alluvial valley floors in the arid and semi-arid areas of the country;

557 In summary, Texaco respectively suggests that this proposed legislation is not needed since states have demonstrated effective legislation.

IA & PL Subc.
COAL: Strip M.
AW/sc
March 2, 1977
Honorable Joe Skubitz
U.S. House of Representatives
Washington, D.C. 20515
Dear Joe:

558 You will recall that during hearings on the surface mining bill last week, the issue was raised concerning the impact of Montana's newly enacted severance tax on the electric bills of Detroit Edison consumers. At that time,
I made the point that the overall impact would amount to about one penny per day, and that was a small price to pay to compensate Montana residents for the
social and oconomic disruption associated with booming energy development in the
Northern Great Plains States.

558 Attached you will find statistics provided by the State of Montana which
confirm my statements. Further, I'm sure you will be interested to note the tables which show that Northern Great Plains' coal is a bargain when compared on
a BTU basis to oil, gas, and most Eastern coals (which are much higher in sulfur
content). In short, it would appear that Montana's 303 severance tax will not
deter utilities from contracting for delivery of Montana coal.

558 I would be happy to supply you with any further information you may require in this regard.

558 With warm regards.

558 Yours,

558 TENO RONCALIO, Chairman

558 Subcommittee on Indian Affirs and Public Lands

558 Enclosure

MONTANA ENERGY ADVISORY COUNCIL
STATE CAPITOL
HELENA, MT 59601
February 23, 1977
Mr. Andy Weisner
Subcommittee on Indian Affairs and Public Lands
U.S. House of Representatives
Room 421, House Office Building Annex
Washington, D.C. 20515
Dear Mr. Weisner:

559 Pat Sweeney seems to think these charts are self-descriptive, but I would be pleased to discuss them with you if you have any questions.

559 Sincerely,

559 Bill Christiansen

559 Chairman

559 BC/sb

559 Enc.

560 Last week, the Chairman of Detroit Edison Company, William G. Meese, complained of Montana's new coal tax laws, calling them "outrageous and exorbitant". Meese claims that the new law is "unwarranted, unreasonable and places a definite economic hardship on the people of Southeastern Michigan who eventually pay these taxes". He indicated that he has launched a campaign in Washington to soften or negate the effects of our law, saying, "Hell, Montana is going to be taxing the whole country." I find this last comment particularly interesting in view of my feeling, and that of many Montanans, that the whole country wants to mine Montana.

560 But let's look behind the rhetoric implicit in Mr. Meese's statement. He estimates that the Montana tax will cost Detroit Edison's customers some $6 .2 million in 1976. In this context, it is interesting to note the recent rate increases that have been granted to the Detroit Deison Company by the Michigan Public Service Commission.

560 According to the Standard & Poors Report of April, 1975, the company was allowed an increase in September, 1973, of $2 6.8 million. In January of 1974, an increase was ordered for $18.9 million and later in 1974, and additional increase was allowed that will result in $3 0 million more to the company's income. Finally, in February, 1975, another $5 5 million was allowed and, in that same month, an additional $1 7 million was authorized as a fuel price adjustment increase - a total of $72 million, to date, in 1975 alone.

560 This amounts to just over one cent a day. You may have seen appliance commercials that advertise the cost of operating the appliance as "just a few cents a day".

560 There is another matter Mr. Meese did not address. In discussing the increases in the price of coal that our taxes will create, Mr. Meese neglected to mention the past two year's 250 percent increase, overall, in the price of oil his company burns in its boilers. Detroit Edison paid from $1.74 to $3 .26 per million Btu's for oil last year, according to Federal Power Commission

reports. We estimate that Detroit Edison will pay just about 90 cents a million Btu's for our coal, at the burn sites, including our new tax. Since federal programs demand the conversion of boilers to coal from oil, and since our coal is far less expensive than the oil they now are burning, one could assume that the use of our coal could reduce the electric bills of Detroit Edison customers.

561 I feel that Mr. Meese, and his customers, should ask themselves what it costs to build and maintain highways, facilities and schools in Montana and to provide necessary services to increased populations resulting from the mining impacts. I also think they should ask themselves what they should pay for the depletion of a non-renewable resource and the possible long-term degradation of our natural resource base, both of which will be of use to future citizens of Montana, Michigan and "the whole country"?

561 Beyond this, some of that tax money will go to research and development of alternative energy sources, which will be cleaner and based upon renewable resources (such as the sun, wind and organic wastes). Many of Mr. Meese's customers perhaps will benefit from the reserarch.

561 Surely just over a cent a day isn't too much.

*2*COAL PRICES - 1975 *

Eastern Coal	Price/Ton
Coal at Mine	$3 4.00
Freight to Utility	7.32
	$41.32 **
Western Coal	
Coal at Mine	$5.87
Rail Freight to Duluth	6.14
Storage, Dumping to Ship	1.40
Ship Freight to Utility	3.00
Montana Coal Severance	
	$17.91 ***

561 * Leonard F.C. Reichle, "The Economics of Nuclear Power", August 27, 1975.

561 ** Based on a 1975 Ebasco study for a major Eastern electric utility company.

561 *** William Meese, President, Detroit Edison Co., "Coal Week", August 4, 1975.

563 [See Table in Original]

564 [See Table in Original]

565 [*]

566 [See Table in Original]

National Association of Manufacturers

567 Statement of NATIONAL ASSOCIATION OF MANUFACTURERS on H.R. 2 "SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977" Before the Subcommittee on Energy and Environment Committee on Interior and Insular Affairs U.S. House of Representatives

567 March 17, 1977

568 This statement is submitted by the National Association of Manufacturers, a voluntary business organization composed of more than 13,000 member companies of all sizes - small, medium and large - which account for a major portion of the productive capacity and employment of United States industry.

568 The National Association of Manufacturers believes that the federal government should encourage effective reclaiming and restoring of surface-mined lands so as to promote use of these techniques by the mining industry under State regulation. Therefore, the National Association of Manufacturers would support reasonable and realistic federal surface-mining legislation which encourage protection of the environment. However, we believe that great care must be taken in designing such legislation in order to avoid arbitrary requirements which would not contribute to environmental protection, but rather could severely cripple or destroy the mining industry and deprive us of valuable national assets. These comments are submitted with a view of achieving balanced legislation in this field.

568 American manufacturers are deeply concerned about the status of present and future United States energy supplies, inasmuch as their production activities require over 40% of the energy used in this country. Without adequate and assured supplies of energy resources, the wheels of our entire economy would slow down. The United States would be unable to produce all the goods its citizens want and need. Loss of production and loss of jobs would be inevitable. There would be grave hazards to public health both because of inadequate heating and because of inadequate energy to operate production control facilities.

569 In recent years, there have been an increasing number of instances of industrial shutdowns in the United States caused by energy shortages, resulting in decreased production and declines in workers' aggregate income.

The consequential closing of many industries this winter due to the natural gas shortages is a perfect example of how energy affects employment.

569 It is imperative that this Nation begin now to substitute coal for natural gas and other fossil fuels in scarce supply when this switch can be accomplished in a sound and economical manner. We believe that the curtailments of the mining of coal created by this legislation will not accelerate the pace of this change but, rather will retard it.

569 Plants are unwilling to make a commitment to coal utilization if they are not assured of a secure supply of coal. This legislation will do little to bolster this lack of confidence. Plant shutdowns for a lack of energy will increase the cost of manufactured goods. Additionally, the increased cost of coal as a result of this bill will also be passed on to the consumer.

569 E. Douglas Kenna, President of the National Association of Manufacturers, sent President Carter copies of the Associations position papers entitled "National Energy Policy", and "Environmental Quality". A copy of these policy statements are submitted herewith for inclusion and in the files of the Committee.

570 Almost half of the electricity generated in the United States is generated by burning coal and 60% (50,000,000 tons) of that coal came from surface mines. It is essential that suitable means be developed to assure that this vital fuel resource continues to be utilized for electric power generation. Coal will continue to be a major source of basic fuel for electric utility throughout the remainder of this century. Coal is a vitally important raw material for the American steel industry and other industries. Exportation of coal helps in our international balance of payments. Coal is our most abundant domestic energy reserve, with varying estimates of supply ranging upward from 300 or 400 years. There is good reason to believe that a major answer in the long-term to some of our energy and environment problems will be gasification and liquefaction of these vast coal reserves.

570 If the United States denies to itself the availability of this valuable energy reserve, it will be tragic. Yet restrictions on the sulphur content of fuel has already done this in regard to the very extensive deposits of high sulphur coal located in the eastern half of the United States. It is essential that continued use of coal be allowed so long as reasonable standards for ground level concentrations of sulphur oxides are not exceeded.

571 Currently, approximately 50% of our nation's total coal supply is

surface mined. It has been estimated that there are some approximately 137 billion tons of commercially available surface coal, equivalent to 548 billion barrels of crude oil and representing hundreds of billions of dollars in value. Any undue restriction on surface mining of coal would be a shortsighted hobbling of our national strength and wealth.

571 Unfortunately, some measures have been introduced in Congress which would prohibit surface mining completely or would severely curb it. In addition to direct impasse in terms of production, employment, energy availability and regional and national incomes, unjustifiable restrictions on surface mining would have other unfortunate results. Surface mining is characterized by higher productivity rates and by lower fatality and accident rates than is deep mining.To the extent that coal production could or would be diverted to test coal mines, it would be at a cost of lowered productivity and increased fatalities and accidents for American coal miners.

571 The following is a discussion of specific provisions of H.R. 2:

571 Alluvial Valley Floors

571 Subsection 510(b)(5) prohibits the issuance of a permit for mining in an alluvial valley floor west of the 100th meridian unless the regulatory authority finds, among other things, that the proposed surface coal mining operation will not (A) "interrupt, discontinue, or prevent farming on alluvial valley floors that are irrigated or naturally subirrigated", or (B) will "not adversely affect the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors."

572 The underlying concept of the bill "that if the lands cannot be reclaimed, they cannot be mined," as required by other provisions of the bill, is shunted aside and ignored by this provision.No matter whether an area can be reclaimed, surface mining is prohibited if it will simply "interrupt" farming. Obviously, an area cannot be farmed and mined at the same time, so if mining is to proceed, farming must necessarily be interrupted. The prohibition is clear.

572 The use of the word "prevent" contemplates the future. Therefore, any area of an alluvial valley floor that could be farmed in the future could be subject to the prohibition, unless the regulatory authority finds that the farming is of such small acreage as to be of negligible impact on the farm's agricultural production. Additionally, since the area is not now being farmed,

a question is raised as to its importance to a farm's agricultural production.

572 With respect to Clause (B), which prohibits the issuance of a permit if mining would adversely affect the quantity or quality of water, either surface or underground, supplying these valley floors, this language is subject to the interpretation that it is a prohibiton on the use of water rights acquired by an operator for use in the mining operation, as well as in the reclamation process (e.g., irrigation of reseeded areas, hydroseeding, etc.). If the use of water is construed as "adversely affecting" the quantity of water, Clause (B) could constitute a taking of a valuable property right without compensation. Further, it could frustrate reclamation efforts on mined lands. In any event, a new federal test is imposed on water uses. As such the new test can result in interference with the orderly transfer and use of water rights under State law, which has traditionally been the controlling law.

573 The "grandfather clause" contains another element of confusion. It appears to treat operators in states with annual permit renewals, such as Montana, differently from operators in states with "life of the mine or permitted area" permit procedures, such as Wyoming. As the second requirement for eligibility for the "grandfather" exclusion, the operator must already be mining an alluvial valley floor or have "specific permit approval by the regulatory authority." Because of the annual renewal procedure, Montana operators will only have under permit those areas expected to be mined during the current year. It is unclear, therefore, whether the entire mine or only a part thereof is eligible for the "grandfather" exclusion.Not only is this provision confusing, it also appears to inject a new element of discrimination between different companies as well as between mining operations occuring in different states.

574 Since "alluvial valley floors" is a defined term in subsection 701(27), the effect of subsection 515(b)(10)(F) must also be reviewed. "Alluvial valley floors" are defined as "the consolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities." It requires "preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arrid and semi-arrid areas of the country." Because the word "preserving" is an absolute, it can be interpreted as a prohibition of mining in such areas.

574 The net effect of subsection 510(b)(5) and 515(b)(10)(F) is to make even more rigid and prohibitory the bill's approach to surface coal mining in alluvial valley floors.

574 The National Association of Manufacturers urges that subsection 510(b)(5) be stricken from the bill and that subsection 515(b)(10)(F) be amended to require "protection" of the essential hydrologic functions of alluvial valley floors.

574 Higher Post-Mining Uses (Variances)

574 The legislation should be amended to reflect an awareness that the approximate original contour may not be suitable for the post-mining use that is proposed for the land in instances when mining methods other than mountain-top removal are used. Adoption of the bill's language in its present form could restrict the uses to which the land can be put after mining because of the rigid reguirement for restoration to approximate original contour. It is unrealistic to expend the energy and money to return the area to its approximate original contour when the approved subsequent use calls for a different contour. The legislation should be amended to reflect this.

575 Areas Unsuitable for Mining - Federal Zoning

575 If an area cannot be reclaimed, it should not be mined for coal, but with the advancement of technology what is unreclaimable in one year may be reclaimable in a following year. However, the bill goes far beyond this and sets up a mechanism in section 522 whereby lands may be declared unsuitable for mining if they are "fragile" or "historic" (which includes cultural and aesthetic values and natural systems), renewable resource lands (which include aquifers and aquifer recharge areas), natural hazard areas (which include areas of frequent flooding and areas of unstable geology), or if surface coal mining is incompatible with existing land use plans or programs. Such vague and subjective standards could apply to essentially any area of the United States. It could therefore lead to the designation of any area as being unsuitable for surface coal mining.

575 In addition, subsection 522(a)(4)(C) requires each state to establish land use planning methods concerning surface coal mining - in effect, federally enforced zoning.

576 The National Association of Manufacturers believes that with respect to surface coal mining, if the land cannot be reclaimed it should not be mined. Conversely, if the land can be reclaimed, then extraneous, vague and subjective restraints should not be imposed on the mining of coal. The entire bill contemplates that the land will be reclaimed after surface coal mining, but

this section provides one more incidence of prohibition in the guise of regulation and should be deleted.

576 Surface Owner Protection.

576 Subsection 714(a) instructs the Secretary, "in his discretion but, to the maximum extent practicable", to refrain from leasing federal coal deposits underlying privately owned surface lands for development by methods other than underground mining techniques. While this is not a direct statutory prohibition on leasing such lands by directing the Secretary to "refrain from leasing such coal deposits" to the maximum extent practicable, it is tantamount to a statutory prohibition.

576 This de facto prohibition, coupled with the prohibitions contained in subsection 522(e) and prohibitions achieved through "designation of areas as being unsuitable for surface coal mining", will extraordinarily limit the federal lands available to the Secretary for coal leasing in this period of energy crisis. (The Department of the Interior estimates that 38% of federally owned mineral rights to coal are under lands where the surface is privately owned.) Under other provisions of the bill, the land will be reclaimed and can be returned to its previous use, but the nation needs the federally owned low-sulphur western coal now, and the combined effect of these provisions can result in severely reduced opportunities for increased production.

577 Clearly, the surface owner should be "made whole" with respect to any damages he may suffer, but the procedures required to be followed in section 714 are so unwieldy they may fall of their own weight. The surface owner is assured that his land will be returned to him in a reclaimed condition under other provisions of the bill.

577 Reclamation Fee

577 Section 401(d) imposes a reclamation fee of 35 cents per ton on surface mined coal, and 15 cents per ton on underground coal, or 10% of the value of the coal at the mine, whichever is less. In the case of lignite coal, the fee is 5% of the value of the coal at the mine, or 35 cents per ton, whichever is less. The fee accrues starting in the first quarter of 1977 and the first payment is due on April 30, 1977. Future payments are due 30 days after the end of succeeding calendar quarters. H.R. 2 provides a 15-year life for the reclamation fund, and states that the "primary objective" for expenditures from the fund would be the reclamation of orphaned lands. However, 20% of the fees

collected can be reserved for the purpose of performing hydrologic analyses and test borings or core samplings for operators whose probable annual production from an operation will not exceed 250,000 tons.

578 The Bureau of Mines has estimated that approximately one million acres of orphaned lands surface mined for coal now exist, mostly in the Appalachian region. However, according to the Bureau, not all of these lands are in need of reclamation since about half have already stabilized and have assumed a timber and vegetative cover compatible to that area.

578 Further, the nation as a whole benefited from the lower cost of the coal mined from these orphaned lands and the reclamation of these lands should be a general obligation financed by general revenues.

578 To the extent that the fee is passed on to the ultimate consumer, it will result in increased cost of electricity and will have at least a temporary inflationary effect, not only on the cost of energy but also on the cost of manufactured products where energy is a significant component of the production costs.

578 The National Association of Manufacturers recommends that the Title IV be amended to provide for appropriations for reclamation of orphaned lands.

578 Hydrologic Data

578 Section 507(b)(11) would require all operators to obtain, as part of each application, sufficient data (both onsite and offsite) to determine the cumulative impact of all anticipated mining in the areas upon hydrology and water availability. This is an extremely onerous and perhaps impossible burden to place on individual operators without the full cooperation of federal and state governments. These data are often not available today and may take years to accumulate, and in the meantime, all operations would have to stop.

578 Further, the right to enter onto other property to obtain these data will be extremely difficult, if not impossible, without statutory language giving the operator the authority to do so.

578 Subsection 401(b)(3) authorizes the reservation of 20% of the reclamation fees (per ton tax) collected under subsection 401(d) for the purpose of paying for the hydrologic data acquisition requirements and the results of test borings and core samplings for operators who will not produce more than 250,000 tons per year. Use of thes funds is, of course, subject to the appropriation process. Subsection 507(c) authorizes the "regulatory authority" to contract for the required work. The inclusion of this authority in H.R. 2

is, of course, clear evidence that the data requirements for a permit application are excessively onerous.

578 This effort to ease the burden on small operators by having other operations finance part of their costs for achieving a permit creates new problems for the small operator. Only the "regulatory authority" is authorized to expend a part of the per ton tax money for such purposes, and this means that the small operator has to await the creation of a "regulatory authority", and await the pleasure of the "regulatory authority" to either perform the work or contract for its performance.

580 Section 701(16) defines regulatory authority as follows: ". . . ' regulatory authority' means the State regulatory authority where the State is administering this Act under an approved State program or the Secretary where the Secretary is administering this Act under a Federal porgram". Therefore, the "regulatory authority" will not exist in a state until its program is approved and funds have been appropriated and transmitted to the "regulatory authority". However, subsection 502(e) requires operators to submit a permit application" . . . not later than two months following approval of a State program . . . " The hydrologic data and the results of test borings and core samplings will, of course, be a significant element of the permit application (subsections 507(b)(11) and (15). Under section 510(a), "the applicant for a permit . . . shall have the burden of establishing that his application is in compliance with all the requirements of the applicable State or Federal program". Obvously, if a significant element of the permit application is missing, the permit would have to be denied.

580 Two months is a totally unrealistic period of time for such hydrologic studies contemplated under subsection 507(b)(11), even if funding were immediately available, not only because of the enormity of the data to be required but also because such studies must measure seasonal flow conditions. Such studies would likely require a year or more. As outlined above, an incomplete permit application will necessarily result in a permit denial. And a permit denial to a small operator of an existing mine not only means a shut-down of his mine, but more importantly, it could mean financial ruin. It should be understood that about 88% of the Nation's surface and underground mines produce less than 200,000 tons per year, so its impact will be significant.

581 The hydrologic data which are required should be limited to a description of the hydrology of the proposed permit area, water levels and water table measurements, and data regarding dissolved and suspended solids under seasonal flow conditions. The determination of the cumulative effect of "all anticipated mining" in the area is more appropriately the responsibility of the regulatory authority.

581 The National Association of Manufacturers urges that amendments to significantly simplify the data requirements be adopted.

581 Designation of Areas Unsuitable for Mining Minerals Other Than Coal

581 Section 601 constitutes a partial land-use program and singles out one land use - mining - for restriction. Mineable deposits of minerals occur rarely in Nature and can only be mined where they are found. Section 601 could, conceivably, lead to the designation of virtually any and all areas of federal lands as unsuitable for mining, because the criteria are subjective and subject to broad interpretation.

581 Not only is section 601 not germane to the remainder of the bill whose principal thrust is the regualtion of coal surface mining, but it is not consistent with legislation enacted late in the 94th Congress, namely, the "Federal Land Policy and Management Act of 1976" (94-579). Section 204 of that Act contains a complete system for making and reviewing withdrawals of public lands, including a provision for "emergency withdrawals". Section 601 of H.R. 2 directly conflicts with these provisions and should, therefore, be deleted in its entirety.

582 Litigation Unlimited

582 The greatest single impediment contained in this bill to the increased coal production essential to achievement of less dependence upon foreign energy sources is the potential for endless and repetitive litigation inherent in the numerous ambibuous terms and requirements of the bill. Every permit application is open to repeated challenge at every step of the administrative proceedings as well as in the courts.

582 In addition, under the citizen suits provision (Section 520), specific statutory authority is granted to sue the federal government, the state agencies and the operators. This authority is in addition to all existing rights to bring suit under other statutes and the common law. Thus, the regulatory authority is open to legal challenge of any action taken or decision made pursuant to his responsibilities under the bill.There should be an end to litigation, and H.R. 2 should be amended to achieve this purpose.