

CONGRESSIONAL RECORD FEBRUARY 25, 1977

Legislative History

Congressional Record February 25, 1977

Following is the February 25, 1977 Congressional Record. 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.

**123 CONG.REC. S3120 February 25, 1977
STATUS REPORT ON PROPOSED FEDERAL SURFACE MINING
RECLAMATION LEGISLATION, FEBRUARY 15, 1977**

S3120 In the RECORD of February 24, 1977, several paragraphs were inadvertently omitted from Mr. HANSEN'S attachment, on page S3007.

In the permanent RECORD the attachment, in its entirety, will be printed as follows:

S3120 [Attachment]

S3120 STATUS REPORT ON PROPOSED FEDERAL SURFACE MINING
RECLAMATION LEGISLATION, FEBRUARY 15, 1977

S3120 MAJOR DIFFERENCES BETWEEN SENATE, HOUSE BILLS

S3120 Legislation to establish a federal surface mining reclamation law has been introduced in both Houses of Congress - in the House of Representatives by Congressman Mo Udall, D-Ariz. (H.R. 2); and in the Senate by Senator Lee Metcalf, D-Mont. (S. 7).

{S3121} The House Interior Committee and the Senate Energy and Natural Resources Committee (formerly the Interior Committee) have begun hearings on these bills. More Senate hearings will be held in March. A federal law of some sort will very likely be enacted, in view of President Carter's expressed support for federal surface-mining reclamation legislation. Congress has passed similar bills on two previous occasions, but both were vetoed by former Presidents.

S3121 The provisions of the pending House and Senate bills are not the same. Major differences between the two bills include the way they would affect people who own land on top of federal coal deposits; the rights and responsibilities of states like Wyoming that have their own reclamation laws and have entered into agreements with the government to apply those laws to the mining of federal coal; and whether part of the royalty income from federal coal will be used for abandoned mine reclamation.

S3121 What follows is a comparison of the provisions in the House and Senate bills affecting these three major areas of concern - surface-owner protection, the right of states to regulate mining within their borders, and whether reclamation of abandoned mines will be paid for out of mineral royalty receipts.

S3121 STATE ADMINISTRATION AND ENFORCEMENT OF RECLAMATION LAWS ON FEDERAL LAND

S3121 The Senate version of the surface mining bill (S. 7) contains the following provision on state regulation of mining and reclamation:

S3121 "Section 423(d). - Any state with an approved state program may elect to regulate surface coal mining and reclamation operations on federal lands within the state. Such regulations shall be subject to all the provisions of this Act."

S3121 The House version of the bill, H.R. 2, contains no comparable provision concerning state administration and/or enforcement on federal lands.

S3121 Both the Senate and House versions allow states to submit a plan to regulate mining and reclamation on lands other than federal and Indian lands. Also, both bills authorize state-federal enforcement agreements for "checkerboarded" land where a single management plan would be more desirable. In other words, if a mining region were "dotted" with small areas containing federal coal, as opposed to state or privately-owned coal, a plan could be worked out so that the "dotted" areas could be regulated by state officials.

S3121 RIGHTS OF SURFACE OWNERS

S3121 The Senate bill contains the "Mansfield prohibition" - a provision originally drafted several years ago by former Montana Senator Mike Mansfield that bans surface-mining of federal coal where the surface is privately owned, even if the surface owner favors such mining.

S3121 This provision was deleted from an earlier federal reclamation bill, but it has been resurrected in the pending Senate bill. The provision says that where the surface is privately owned and the coal beneath it is federally owned, that coal can only be mined by underground methods. This provision amounts to a flat prohibition on mining since Western coal is too close to the surface to be underground-mined without causing the surface to collapse. The provision says:

S3121 "423(e). - All coal deposits, title to which is in the United States, in lands with respect to which the United States is not the surface owner thereof, are hereby withdrawn from all forms of surface mining operations and openpit mining, except for surface operations incident to an underground coal mine."

S3121 The House bill gives surface owners the right to say "yes" or "no" as to whether federal coal beneath their lands can be mined, but it limits what a landowner can be paid and sets up a complex system for determining the value of the surface owner's interests. The House provision says:

S3121 "(c) Prior to placing any deposit subject to this section in a leasing tract; the Secretary shall give to any surface owner whose land is to be included in the proposed leasing tract actual written notice of his intention to place such deposits under such land in a leasing tract.

S3121 "(d) The Secretary shall not enter into any lease of such coal deposits until the surface owner has given written consent and the Secretary has obtained such consent, to enter and commence surface mining operations, and 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)."

S3121 Subsection (e) says: "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 and they shall then determine and add the value of such of the following losses and costs to the extent that such losses and costs arise from the surface coal mining operations;

S3121 "(1) loss of income to the surface owner during the mining and reclamation process;

S3121 "(2) cost to the surface owner for relocation or dislocation during the mining and reclamation process;

S3121 "(3) cost to the surface owner for the loss of livestock, crops, water or other improvements;

S3121 "(4) any other damage to the surface reasonably anticipated to be caused by surface mining and reclamation operations; and

S3121 "(5) such additional reasonable amount of compensation as the Secretary may determine is equitable in light of the length of tenure of the ownership; Provided, that such additional reasonable amount of compensation may not exceed the value of the losses and costs as established pursuant to this subsection and in paragraph (1) through (4) above, or \$100 per acre, whichever is less.

S3121 "(f) All bills submitted to the Secretary for any such lease shall, in addition to any rental or royalty and other obligations, be accompanied by the deposit of an amount equal to the value of the surface owner's interest computed under subsection (e). The Secretary shall pay such amount to the surface owner either upon the execution of such lease or upon the commencement of mining, or shall require posting of bond to assure installment payments over a period of years acceptable to the surface owner, at the option of the surface owner. At the time of initial payment, the surface owner may request a review of the initial determination of the amount of the surface owner's interest for the purpose of adjusting such amount to reflect any increase in the Consumer Price Index since the initial determination. The lessee shall pay such increased amount to the Secretary to be paid over to the surface owner. Upon the release of the performance bonds or deposits under Section 519, or at an earlier time as may be determined by the Secretary, all rights to enter into and use the surface of the land subject to such lease shall revert to the surface owner.

S3121 "(g) For the purpose of this section the term 'surface owner' means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who:

S3121 "(1) hold legal or equitable title to the land surface;

S3121 "(2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and

S3121 "(3) have met the conditions of paragraphs (1) and (2) for a period of at least three years

prior to the granting of the consent. In computing the three-year period, the Secretary may include periods during which the title was owned by a relative of such person by blood or marriage during which period such relatives would have met the requirements of this subsection.

S3121 "(h) Where surface lands over coal subject to this section are owned by any person who meets the requirements of paragraphs (1) and (2) of this subsection (g) but who does not meet the requirements of paragraph (3) of subsection (g), the Secretary shall not place such coal deposit in a leasing tract unless such person has owned the surface lands for a period of three years. After the expiration of such three-year period such coal deposit may be leased by the Secretary: provided, that if such person qualifies as a surface owner as defined by subsection (g) his consent has been obtained pursuant to the procedures set forth in this section.

S3121 "(i) The determination of the value of the surface owner's interest fixed pursuant to subsection (e) or any adjustment to that determination made pursuant to subsection (f) shall be subject to judicial review only in the United States district court for the locality in which the leasing tract is located.

S3121 "(k) At the end of each two-year period after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the implementation of the Federal coal leasing policy established by this section. The report shall include a list of the surface owners who have (1) given their consent, (2) received payments pursuant to this section, (3) refused to give consent, and (4) the acreage of land involved in each category. The report shall also indicate the Secretary's views on the impact of the leasing policy on the availability of federal coal to meet national energy needs and on receipt of fair market value for federal coal.

S3121 "(l) This section shall not apply to Indian lands.

S3121 "(m) Any person who gives, offers, or promises anything of value to any surface owner or offers or promises any surface owner to give anything of value to any other person or entity in order to induce such surface owner to give the Secretary his written consent pursuant to this section, and any surface owner who accepts, receives, or offers or agrees to receive anything of value for himself or any other person or entity, in return for giving his written consent pursuant to this section, shall be subject to a civil penalty of one and one half times the monetary equivalent of the thing of value.

Such penalty shall be assessed by the Secretary . . . "

S3121 SENATE BILL WOULD USE MINERAL ROYALTY MONEY FOR RECLAMATION

S3121 The Senate version of the bill contains a provision authorizing reclamation of abandoned mines. The reclamation would be paid for out of the royalties the federal government collects from the mining of federal coal. This provision could reduce the amount of money Western states will get under their 50 per cent share of royalties since it would siphon off a portion of the "total amount of royalties paid leaving the states with half of whatever is left." The states' share of royalties was increased to 50 per cent from 37 1/2 per cent last year under a provision sponsored by Senator Hansen.

{S3122} COMMENTS OF ADMINISTRATION OFFICIALS ON SENATE BILL

S3122 On February 7, the Senate Energy and Natural Resources Committee (formerly the Interior Committee) held a one-day hearing to question Carter Administration officials on the Senate bill, S. 7. Following are excerpts from that hearing, where Senator Hansen questioned Secretary of the Interior Cecil Andrus and Federal Energy Administrator John O'Leary about states' rights, surface owners' rights, and use of royalty income to pay for reclamation of abandoned mines:

S3122 Senator HANSEN. "As you know, I have supported surface mine legislation as it has come down through the legislative process in times past. It is my intention to support it again, if the final version adequately protects the rights of the states, landowners and the public in general. I think the protection of our environment, our land resources and agricultural way of life, and our water, is of the highest importance. I certainly want to do everything I can to see whatever is passed here takes full recognition of these values. I am also concerned because my state of Wyoming has taken a very active role in passing laws that address the problems that are incident to the development of energy through coal. A federal strip mining bill enters the area of federal-state jurisdiction and touches upon the police powers that normally have been under the jurisdiction of the states . . . "

S3122 " . . . the Governor of Wyoming and the Secretary of the Interior entered into an agreement prompted by a lawsuit brought by the State of Wyoming, which marks out areas of state authority,

recognizing among other things the adequacy of the laws passed by the State of Wyoming insofar as reclamation and mining processes generally are seen whatever is passed here takes full recognize this very worthwhile cooperative effort between the federal government on the one hand and the states on the other, recognizing the continuing validity of the kind of agreement your predecessor, Mr. Secretary, and my Governor entered into.

S3122 "My first question deals with the state versus federal responsibility in this area. As you know, four states, including Wyoming, North Dakota, Utah and New Mexico, have entered into agreements with the Department whereby the state laws will apply, and I think it would be fair to note, the State of Wyoming has probably gone farther in this regard than the other states, although I have not had the opportunity to personally examine those agreements. But would it be your thought this approach recognizes the diversity of conditions and situations and is the kind of cooperative agreement you might want to promote and continue?"

S3122 Secretary ANDRUS. " . . . I would like to see the states have the ability and then the right to participate in the regulatory measures in this regard. I have not personally looked at those documents that were signed the last week or the week prior to my coming into office, but the concept I concur with. As I mentioned in my testimony, rather than just a blanket situation where they can request they have the program, I think it would be well if the Department of Interior had the opportunity to enter into a contract with them because of the very point you bring out, the diversity of the various states it is very difficult.

S3122 Senator HANSEN. "I think the concern you expressed in your prepared statement was that competitively, there may be later on an effort made by one state to lower its standards, to reduce its requirements, and the performance that might be expected so as to gain an economic advantage over another state. My question to be precise is this: If a state equals or exceeds the requirements in the federal law, then would you be willing to leave with that state the administration and enforcement of the law?"

S3122 Secretary ANDRUS. "Mr. Chairman, yes sir. And I concur it should be on federal lands as well as other lands, all lands with coal in the state with the single proviso the Department of Interior enters into that contract and makes certain these standards are upheld. We don't intend to have two, one following the other."

S3122 Senator METCALF. "Do you envisage any Constitutional problems involved with delegation of authority over federal lands to the administration of state agencies?"

S3122 Secretary ANDRUS. "No, sir. I do not. But I would yield to my colleague."

S3122 JOHN O'LEARY. "Senator Metcalf, I was instrumental in the New Mexico agreement in my capacity as Director of Energy Resources there. We carefully reviewed that. There was no problem. Indeed, it was contemplated the regulations issued by the Secretary of the Interior, following the August 4 amendments to the Mineral Leasing Act. In our view, there simply is no conflict."

S3122 (Both Secretary Andrus and Administrator O'Leary agreed at this point to supply written comments on the issue of state administration and enforcement on federal lands of state surface mining reclamation laws.)

S3122 Senator HANSEN. "My next question has to do with abandoned mine reclamation. Two proposals have been discussed. One is to establish a fund from federal royalties and the other proposal would establish the fund by levying fees on all mined coal. As you know, last year one of the bills that was passed was the BLM Organic Act and it contained a provision that was directed to bring relief to those hard-hit communities where an explosion of activity occurred in the development of energy which we know quite a lot about - all too well in my state of Wyoming - to provide front-end money so the towns that are called upon to provide extra services, extra facilities, and to do planning, can afford it."

S3122 "Under the bill as it first passed the Senate, 60 percent of those royalties would have been given back to the states for the social and economic impact problems. Finally, out of the compromise of the House and Senate, it was scaled down to 50 per cent. Those funds come from federal royalties."

S3122 "What way do you think the reclamation of abandoned mines should be paid for? Do you think from royalties, or from a tax on the coal or a fee on the coal?"

S3122 Secretary ANDRUS. "Mr. Chairman, in response, there is room for discussion in that area. If you are asking which one I would prefer, it is a fee on the coal. Then you are in a position

where the people who are actually profiting from the extraction of that coal are building a fund for the reclamation and I think that is the fairest way to guarantee the funds will be available for that purpose."

S3122 Senator HANSEN (to Mr. O'Leary). "Would you care to comment?"

S3122 Mr. O'LEARY. "Yes, Mr. Chairman. I would like to support that. We have taken a look, of course. There is a commitment (to the states) of 50 per cent. We think it would be unfortunate if that were to be diluted. All in all, this is a matter of internalizing some costs that have not so far been borne by the coal operations. We think the tax approach is appropriate."

S3122 Senator HANSEN. "I do have one further question, Mr. Chairman. Contained in S. 7 is language which precludes operations in significant portions of the state of Wyoming. (The language is the Mansfield amendment.) I refer to language which would prohibit the mining of federally-owned coal where the surface is owned by some other property owner than the federal government. I would invite your observations on this particular section."

S3122 Secretary ANDRUS. "Senator, this is one of the areas where we are concerned. We recognize the need for protection for those people that have the surface rights and the federal government has the mineral rights. We are very sympathetic to an outright consent, but we also recognize that there are given situations where perhaps consent of that surface owner who by the sweat of his brow created that ranch or that farm, then maybe consent could be a way out and there should be protection for them to do it. I refer to the language that was in the conference report of a year ago, or last year, that we prefer over the outright consent prohibition."

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Office of Surface Mining
1951 Constitution Ave. N.W.
Washington, D.C. 20240
202-208-2719
getinfo@osmre.gov