

CONGRESSIONAL RECORD APRIL 18, 1977

Legislative History

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123 CONG.REC. S5862

April 18, 1977

Mr. METCALF. Mr. President, when Interior Secretary Cecil Andrus appeared before the Subcommittee on Minerals, and Fuels - now the Public Lands and Resources Subcommittee - on February 7, 1977, to testify regarding the Surface Mining Control and Reclamation Act of 1977 (S. 7), he urged early passage of the bill, stressing the importance of preserving the Nation's prime agricultural lands.

S5862 Secretary Andrus has now followed up those intitial comments with a detailed series of recommendations for improving S. 7.

S5862 Among the Secretary's recommendations are the establishing of a 5-year moratorium on surface mining in prime farmlands, strong endorsement of the principle of return to the approximate original contour and elimination of all highwalls, addition of a "grandfather" exemption to the section relating to protection of alluvial valley floors, and the allowance of mountaintop removal mining without requiring a variance where all spoil is retained upon the mountaintop.

S5862 In view of the significance of Secretary Andrus' recommendations, I ask unanimous consent that his report to the Energy and Natural Resources Committee be printed in the RECORD.

S5862 There being no objection, the report was ordered to be printed in the RECORD, as follows:

S5862 U.S. DEPARTMENT OF THE INTERIOR, Washington, D.C., April 1, 1977.

S5862 HON. HENRY M. JACKSON,

S5862 Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

S5862 DEAR MR. CHAIRMAN: This letter supplements the Administration's views set forth in

our letter of February 4, 1977, on S. 7, the "Surface Mining Control and Reclamation Act of 1977."

S5862 We strongly support your efforts to provide sound strip mine legislation. S. 7 provides a framework for administering a comprehensive, workable, surface mining and reclamation program. We would like to present our views and to offer some amendments in addition to those previously sent which we believe will strengthen the bill.

S5862 TITLE II - OFFICE OF SURFACE MINING AND RECLAMATION

S5862 This Administration strongly supports the creation of an independent Office within the Department of the Interior. In anticipation of passage of the strip mine bill, the Department has begun to work toward smooth implementation of the bill's provisions and to establish the new Office. To allow for the best overall management arrangements, however, we recommend that the statute not require the Office to report directly to the Secretary and that it be clearly authorized to use the personnel of other agencies to carry out the program.

S5862 TITLE III - ABANDONED MINE RECLAMATION

S5862 We suggest provisions to establish State managed abandoned land programs. We recommend that until a State's full regulatory program is approved, allocation of its 50% share of funds not be made and that there be no funding of any State abandoned land program. Until such approval is given, the Secretary should also have authority to withhold expenditures for the Federal abandoned land program for a State under section 305. This would encourage the States to obtain approval for a strong State regulatory program rather than allowing a Federal program to be established for that State. The Secretary should not be prevented, however, from expending unearmarked funds within a State where there was not an approved regulatory program; thus in cases where reclamation work would be urgently needed it could be accomplished.

S5862 In order to assure that reclamation is accomplished on abandoned lands as quickly as possible, section 305 should be changed to insure that the first two objectives of the fund specified in section 302, the protection of public health and safety and the prevention of continued environmental harm, be accomplished before money could be spent on public facilities, except for emergency situations.

S5862 The program under section 304, Reclamation of Rural Lands, should be preserved. This program will benefit many communities by assuring that the expertise of the Department of Agriculture in reclaiming disturbed lands is put to good use.

S5862 Allocating the reclamation fee money in slightly different proportions would provide increased money for areas where there are the most severely disturbed lands. We recommend providing financial assistance for obtaining hydrological data for permit applications of mines producing under 100,000 tons per year, but doing so on a cost-sharing basis with the operator providing 25 percent of the amount necessary for data and analysis. The reclamation fee money would provide the other 75 percent. Additionally we recommend adding a provision for cost recovery in cases where a permit application is not made after the hydrological data financed from the Fund have been collected and analyzed.

S5862 We also are of the view that the 50 percent share reserved for expenditure in the State or Indian lands where collected should be determined after 10 percent is allocated for hydrological studies and 20 percent for the Rural Lands Program. This would provide further funds for States having the largest amount of abandoned coal mined lands. Funds reserved to the State or Indian land where collected should be available also for non-coal mine reclamation.

S5862 TITLE IV - CONTROL OF THE ENVIRONMENTAL IMPACTS OF COAL SURFACE MINING

S5862 We support a timetable for implementing the performed standards which provides that Interior regulations are to be issued three months after enactment; new mines must comply six months after enactment and existing mines must comply nine months after enactment. The permanent regulatory program regulations must be promulgated within a year after enactment. This timetable is contingent, however, upon express provision that no environmental impact statement be required for the Interim program regulations. For consistency, the Federal and Indian lands program should also be slated for implementation one year after enactment.

S5862 Although the Department does not foresee having to intervene in State regulatory programs often, the bill currently provides no method of intervention in cases where the State program may be faltering in only one or two areas short of State program revocation. In these instances the Department needs the authority to review selected permits. We recommend adding a

provision which would permit limited intervention without withdrawing approval of a State regulatory program.

S5862 Large mining operations often need several years to get mining equipment and other ancillary requirements in place. The regulatory authority needs to evaluate the proposed mining operation before site development begins, but at the same time must be in a position to give the mine operator a permit for a time period adequate for developing a site and obtaining financing. We recommend that the time of the first permit be not more than five years after the first removal of overburden and that removal of overburden must begin within six years issuance of the permit. If, however, overburden removal does not begin within three years after issuance, one year prior to scheduled overburden removal the regulatory authority should be required to obtain such information as is necessary to determine whether modifications of the permit pursuant to section 411(c) or otherwise are needed.

S5862 The Administration supports strong protection for surface owners; surface owner consent should be required for the entire area covered by a permit application. For Federal lands this consent should be written, given before leasing, and available only to the limited class of persons specified in H.R. 25 in the 94th Congress. We also recommend that with regard to the compensation formula provided therein, that fair market value be defined to exclude the value of the coal resource, as mentioned in our earlier report.

S5862 Alluvial valley floors will require strong protection if these important areas are to maintain their hydrological integrity and usefulness for farming and range use. In view of this, we believe our proposed section 410(b)(5) should be revised so as not to exempt undeveloped range lands or small areas where mining would have a negligible impact on agricultural or livestock production. Because information about effects of mining in alluvial valley floors is relatively embryonic and the administrative determination of where these exemptions would apply may be particularly difficult, it appears preferable to clearly exclude mining from the alluvial valley floor without land use exception. The Administration supports "grandfathering" only those mines which are located in alluvial valley floors and in commercial production, as specified in our February 4, 1977, letter.

S5862 Section 422 relating to the designation of areas unsuitable for surface coal mining,

contains a grandfather exemption to be granted for those operations which have "substantial legal and financial commitments." We believe the term should be further defined or eliminated from the statute. The grandfather clause as written could undermine the integrity of the designation process and be subject to abuse.

S5862 We continue to support the bill's designation of national forests as unsuitable for mining. We would also favor authorizing the Secretary to designate critical areas adjacent to the mandatory designation areas under section 422 in order to protect the integrity of these areas. In the case of Federal lands in critical adjacent areas, designation as unsuitable would be mandatory. In the case of private or State lands in the critical areas, the Federal government would petition the State to designate these areas as unsuitable for strip mining, and further, there would be required consultation between the State and the Secretary for any permit within the critical adjacent area.

S5862 Prime agricultural lands have recently become the subject of considerable attention. The loss of such agricultural areas as a source of future food production is of as much concern as the possible loss of coal production resulting from prohibiting mining of these lands. We therefore favor an amendment to require restoration of soil productivity for prime agricultural lands. In addition, we recommend a five year moratorium on surface mining in prime farmlands in order to provide an opportunity to determine the ability to restore the productivity of these valuable lands. An appropriate grandfather exception would also be provided. An amendment for prime agricultural lands protection will be furnished shortly.

S5862 Several concerns for essential features of the performance standards set forth in section 415 of the bill deserve emphasis. We strongly support the principle of return to approximate original contour. We believe this concept as defined in section 501(23) properly embraces use of terracing as an appropriate reclamation technique, whether or not expressly referred to. Such terracing must, however, be for drainage purposes only and designed for the best overall environmental results. High walls cannot be permitted under any circumstances.

S5862 With respect to siltation structures, we are concerned that maintenance responsibility continue as long as such structures present the possibility of harm. We therefore support an amendment strengthening @ 415(b)(10)(C).

S5862 We would oppose deleting safety protections provided by the bill. Blasting limitations are particularly important but further information is needed to ascertain whether additional measures beyond those provided in @ 415(b)(15) are needed. We believe a study of blasting requirements should be undertaken.

S5862 S. 7 allows a variance from special performance standards for mountaintop mining where certain post-mining land uses will obtain. The most critical feature of mountaintop mining relates to spoil placement. Mountaintop mining which retains spoil on top of the mountain does not require special treatment. Serious problems are presented, however, by operations using head-of-the-hollow or valley fill. For such operations, it is uncertain whether spoil can be placed in an environmentally sound manner. Some evidence exists that technology in which spoil is placed in lifts to create a series of stair stepbenches and french rock drains are used may provide satisfactory protection. In any event, we believe that placement of spoils on the downslope should be limited to the minimum and that strong spoil placement standards are needed to insure that there will be no offsite damages.

S5862 We support provisions to strengthen the administrative, judicial, and enforcement provisions of the bill. Among these are provisions relating to citizen suits and we support elimination of the amount-in-controversy and diversity of citizenship requirements of these provisions. We also believe that attorney's fees should be awarded in the discretion of the court against any party. For administrative proceedings, discretionary award of attorney's fees is appropriate against a losing party (not the United States). In addition, for the permanent enforcement program, we favor a requirement of monthly partial inspections and full inspections once each quarter. We will further review the need for further improvement and updating of the administrative, judicial and enforcement provisions.

S5862 Enactment of this legislation will correct a major deficiency in our overall policy of environmental protection. Benefits will directly follow its enactment for protection and enhancement of water quality, fish and wildlife values and for improved land use, among others.

S5862 We attach suggested amendments to deal with the problems outlined and certain other matters, including those contained in our February 4, 1977, letter to the Committee on S. 7.

S5862 Early passage of strong surface mining legislation remains among the highest priorities of this Administration. We will be prepared to work with the Committee to achieve this goal.

S5862 The Office of Management and Budget has advised that enactment of legislation conforming to the views set forth above would be in accord with the problem of the President and it has no objection to the presentation of this report.

S5862 Sincerely, CECIL D. ANDRUS, Secretary.