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Legislative History

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SPEECH OF HON. RON MARLENEE OF MONTANA IN THE HOUSE OF REPRESENTATIVES

E2720 Friday, April 29, 1977

E2720 The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

E2720 Mr. MARLENEE. Mr. Chairman, I would like some clarification on section 510(b) (6), and I will address my question to the chairman of the Committee on Interior and Insular Affairs, who labored so hard and in such a dedicated manner to bring the bill to this point.

E2720 I will ask the gentleman from Arizona (Mr. UDALL) this: Is it the gentleman's interpretation that the provisions of this section provides surface order consent protection to farmers and ranchers who own land surfaces in ceded strips outside the exterior boundaries of an Indian reservation, but where the coal is either owned by an Indian tribe or held in trust for an Indian tribe?

E2720 Mr. UDALL. Mr. Chairman, will the gentleman yield?

E2720 Mr. MARLENEE. I yield to the gentleman from Arizona.

E2720 (Mr. UDALL asked and was given permission to revise and extend his remarks.)

E2720 Mr. UDALL. Mr. Chairman, I have asked for permission to revise and extend my remarks so I may include a very careful answer to the gentleman's question.

E2720 Let me say now that the regulation of surface mining of Indian coal presents many unique and very difficult problems. In line with the overall concern with surface mining, the committee had to act expeditiously and did not have time to give the Indian tribes the needed protection.

E2720 We, therefore, adopted the approach of a 1-year study by the Secretary of the Interior, and in the meantime we provide basic, minimum environmental protection in Indian coal development.

{E2721} The concern of the gentleman from Montana (Mr. MARLENEE) is evidently directed toward the Crow Ceded Area in Montana where the Crow tribe ceded certain lands to the United States and reserved the mineral interest. Most of the surface of that area is now owned by private non-Indian individuals and the State.

E2721 Section 510 provides that, where the private surface interest is severed from the private mineral interest, the applicant must obtain the written consent of the surface owner unless some other existing law, including the conveyance in which the two estates were severed, permits surface mining without the consent of the surface owner.

E2721 I believe that this holds true for the leasing and development of Indian coal. The applicant must obtain written consent of the surface owner to develop Indian coal, unless some other existing law, including the agreement by which the tribe ceded lands to the United States and reserved the mineral interests, permits surface mining without the consent of the surface owner.

E2721 As trustee for the resources of the Indian tribes, I think we should proceed very carefully before we cut off any existing right of the tribes to develop their subsurface rights. I am advised that there is some possibility that, should we abrogate or impair a mineral right which the tribes derive from a cession agreement or other Federal law, we may subject the United States to a fifth amendment taking claim.

E2721 Mr. MARLENEE. Mr. Chairman, I thank the gentleman.