

CONGRESSIONAL RECORD MAY 19, 1977
Legislative History
Congressional Record May 19, 1977

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123 CONG.REC. S7996
May 19, 1977

{S7996} The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will now proceed to the consideration of S 7, which the clerk will state by title.

S7996 The legislative clerk read as follows:

S7996 Calendar No. 107, S. 7, a bill to provide for the Cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

S7996 The Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment in the nature of a substitute.

S7996 Mr. METCALF. Mr. President, yesterday I placed an opening statement in the RECORD.
(See RECORD of May 18, 1977, Page S7890.)

S7996 I ask unanimous consent to have printed in the RECORD a letter from Secretary Andrus to the chairman of our committee, Senator JACKSON, with respect to this bill.

S7996 There being no objection, the letter was ordered to be printed in the RECORD, as follows:

S7996 U.S. DEPARTMENT OF THE INTERIOR, Washington, D.C., May 17, 1977.

S7996 Hon. HENRY M. JACKSON, Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

S7996 DEAR MR. CHAIRMAN: In my judgment, S. 7 as reported by your Committee, provides a sound State-Federal partnership for carrying out an effective and balanced surface coal mining reclamation and enforcement program.

S7996 The Administration strongly opposes an amendment which I understand may be offered to permit individual States to continue surface mining regulation under their existing laws, modified only to incorporate specified performance standards. Such an amendment was recently endorsed by

the Western Governors' Regional Energy Policy Office. It would eliminate major protections and procedural safeguards in the bill which are essential to establishing a fair and effective approach to surface mining regulation.

S7996 As you know, we proposed and S. 7 incorporates specific provisions in section 423 and elsewhere to accommodate States desiring to carry out the program on Federal lands and we have endorsed other changes to assure that States will have a strong role in controlling the abuses of surface coal mining within their borders. As a former State governor, I am keenly aware that every effort must be made to encourage strong state programs without undue Federal intrusion.

S7996 In contrast to the provisions of the reported bill, however, the proposed amendment would do serious damage to the integrity of the regulatory program of S. 7. If offered. I urge the Senate to defeat such an amendment.

S7996 In addition to our opposition to this amendment, several other matters are of particular concern. I urge your support of a strong provision for protection of alluvial valley floors, such as that incorporated in H.R. 2 as passed. We have also recommended a special five-year prime agricultural land protection until the effect of mining on these lands can be ascertained. We oppose the 30 month exemption in the reported S. 7 for persons producing less than 200,000 tons annually and any weakening of the basic return-to-approximate-original-contour and highwall elimination standards of the bill. To assure that the surface mining reclamation and enforcement program is a sound one, I urge the Senate to give favorable consideration to these views and to recommendations we have previously made to your Committee.

S7996 Sincerely,

S7996 CECIL D. ANDRUS, Secretary.

S7996 Mr. HANSEN. Mr. President, many of us here have been through the debate on surface mining legislation a few times before. As a member of the Senate Interior Committee, now known as the Energy and Natural Resources Committee, I was involved in the formulation of the various surface-mining bills which preceded the one we are debating today. There are some new issues this time around, but essentially, we will be focusing on some very familiar questions, such as how to treat fairly the private landowner with Federal coal beneath his property, how to deal with mining in

alluvial valley floors, how to handle the problem of damage caused by past mining, and to what extent the Federal Government should dictate to the individual States on regulation of mining and assuring that reclamation will take place after mining.

{S7997} For a number of years, we in the West have talked about the fact that the Nation is looking to us to reduce the severity of the energy crisis. We have expressed our concern about the effects which intensive energy development will have on our Western economy and way of living. By calling for massive conversion to coal by industry, the President has brought into sharp focus the role that will be played by the West, where there are vast amounts of coal.

S7997 Over the years as Congress has debated several surface-mining bills, I have repeated my goal of formulating legislation that will protect our environment and still allow for recovery of the resources in a balanced manner. My objectives have not changed: First, to require reclamation of mined lands; second, to treat surface owners fairly; and third, to allow our Nation access to its abundant supply of coal.

S7997 The bill reported out by the Senate Energy and Natural Resources Committee will insure reclamation. Proof that land can be reclaimed will have to be evident before mining can take place. While I had hoped that the individual States could be given more latitude in adopting regulatory and reclamation standards specifically suited to local conditions and circumstances, I am satisfied with the bill's provision to protect the agreements. Wyoming and other States have signed with the Interior Department to allow application of State law to all surface-mining in these States. The provision says that any State with an approved State program "may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State," providing the State has the capability to enforce the law. The provision also says that "States with cooperative agreements existing on the date of enactment may elect to continue regulation on Federal lands within the State" until the State program is formally approved.

S7997 The Senate committee's bill also provides protection for the private land-owner with Federal coal beneath his property. There are more than 16 million acres of privately-owned land in this country where the coal beneath the land is owned by the Federal Government. The

surface-owner is protected under this bill by a provision I proposed in committee. The original version of the Senate bill contained a total prohibition on mining of any Federal coal beneath a privately owned surface. The committee deleted that provision and also rejected an initial amendment of mine to require surface-owner consent after leasing of the Federal coal, but before mining.

S7997 The committee then accepted my compromise amendment, which was identical to the House-passed provision, to require the Government to obtain written consent from the surface owner before leasing the coal. A surface owner is defined as one who has held title to and lived on the land for at least 3 years and has personally conducted farming or ranching operations or received a significant portion of income, if any, from such farming or ranching.

S7997 The Senate bill also addresses the problem of damage from past mining. Citizens of Rock Springs, Wyo., are probably as well-qualified as anyone in this country to bear witness to the fact that great damage has been caused by past mining practices. Their entire community is situated above abandoned underground coal mine voids. The earth above these voids has collapsed in many areas of the town, destroying public and personal property and jeopardizing public health and safety. Of course, such problems are not confined to Rock Springs, although it is that situation I am most familiar with.

S7997 The Bureau of Mines has indicated that approximately 3.4 million acres of land throughout the United States has been affected by surface and underground coal mining in the past 40 years or so, and 569,000 acres of surface-mined land remains unreclaimed, while 1.8 million acres of underground mined land has been affected by subsidence like that occurring in Rock Springs. There are the problems of burning coal waste banks and of fires in underground mines. Such fires and the noxious gases they generate are a threat to people, wildlife, and vegetative life. Further, they consume vast quantities of coal. The Bureau of Mines says there are 255 uncontrolled mine fires burning today in 16 States including Wyoming.

S7997 In the case of areas affected by subsidence, there are tragic situations where people's homes and businesses have been destroyed. We all agree that such situations should be addressed, and the abandoned mine reclamation fund is meant to help solve these problems.

S7997 In the past, the Government has had authority to correct subsidence and to help people affected by subsidence only if they lived in the Appalachian States. That is because specific authority was included in legislation of benefit to these particular States which said the Government could pay 75 percent of the cost of correcting subsidence caused by past mining.

S7997 The Bureau of Mines has not had the authority to correct subsidence problems outside of the Appalachian area. The Bureau has done some underground mine backfilling at Rock Springs, but only because it wanted to test a new backfilling process. And even under this research effort which has resulted in the backfilling of some of the mine voids beneath Rock Springs, the Government has not been able to deal with the human aspects of the problem - to help the people who list their homes and their businesses because of subsidence.

S7997 About 3 or 4 years ago when the committee was working on an earlier version of surface-mining legislation. I asked that there be included a provision extending the authority which the Government already had in Appalachia to fill and seal abandoned underground mine voids and tunnels. I had in mind, of course, extending this authority so that the citizens of Rock Springs and other areas affected by subsidence could be helped. That provision was expanded upon by others with a concern about abandoned mine problems, and what started out to be essentially a subsidence control provision has become the provision we are considering today which sets up an abandoned mine reclamation fund and calls for broad efforts to reclaim areas damaged by past mining.

S7997 It is my understanding that the money that will accrue to Wyoming as the State's share of the abandoned mine reclamation fund could be used to help the people of Rock Springs and of any other area damaged by past mining. It could be used to help compensate people who have lost their homes or who have been damaged because of subsidence.

S7997 There has been a great deal of debate about whether or not mining should be allowed in alluvial valley floors. The House passed the so-called Baucus amendment which essentially bans mining in such areas. The Senate bill is far more reasonable in this regard. The Senate section on alluvial valley floors is based on the overall premise of the bill that mining will not be carried out in areas where the land cannot be reclaimed. Insofar as alluvial valley floors are concerned. I see no

reason to ban mining when reclamation can be carried out, and when such mining would not jeopardize water rights. The Senate provision is more strict than I would have liked, but it does recognize the validity of existing operations in such areas. It is vastly preferable to the House provision.

S7997 Mr. JACKSON. Mr. President, today we began the next to last step in the long effort by the Congress to develop Federal legislation governing the surface mining of coal in our country. I will not recite the long history of hearings, committee markups, floor debate and Senate-House conference committee meetings which have gone into this legislation. Suffice it to say that both the 93d and 94th Congresses passed surface mining bills by overwhelming margins. Unfortunately, President Ford saw fit to veto both bills and in 1975 the House of Representatives failed by a mere three votes in its attempt to override the veto.

S7997 I firmly believe that this legislation will be enacted this year. We have a President who has repeatedly stated his support for it. Responsible representatives of the coal industry have indicated that they can live with it. Recent studies by outside experts have demonstrated that the exaggerated claims of adverse impacts made by the Ford administration and some industry representatives are nonsense.

S7997 The United States is truly the "Saudi Arabia of coal." Development of coal is the key to meeting our energy needs for the rest of this century.

{S7998} One of the major inhibiting factors to coal development in all of the coal regions of the country - East and West - is the failure to establish Federal surface mining standards. Our coal industry must know what the guidelines are in order to be able to plan their investments and proceed with mining.

S7998 I think it is important to keep in mind that our domestic reserves of coal are so large that we can afford to establish standards which provide strong protection for water quality, and renewable resources even if in some instances this means that certain coal deposits will not be mined.

S7998 Once we have established the rules for digging the coal, then we must insure that we can burn it without impairing the quality of our air. The question of air quality standards will be before

the Senate soon. Furthermore, the Energy Research and Development authorization bill (S. 36) reported by the Committee on Energy and Natural Resources steps up the necessary research and development to find ways of solving the air quality problem. For example, we are encouraging the development of better methods of removing the sulfur from the coal before or during burning.

S7998 In closing, I want to pay tribute to Senator LEE METCALF who has led the fight for Federal surface mining legislation for the last 4 years. He has done the work of chairing hearings, leading the committee markups and managing the legislation on the floor. The Senate has repeatedly endorsed his efforts by overwhelming votes. Indeed, the last Senate rollcall on surface mining was 84 to 13. That kind of vote reflected the conviction of Senators from all parts of the country that Senator METCALF had brought before them legislation which struck an appropriate balance between the need to develop our coal reserves and to protect our lands and waters. It further reflected their feeling that the legislation was flexible enough to be applicable to the mountain sides of Appalachia, the fertile agricultural areas of the Midwest and the arid, fragile lands of the West, and that it recognized the interest of the individual States by giving them the principal responsibility for regulation of mining within their borders.

S7998 I am sure that Senator METCALF has been even more frustrated than I over the failure to enact a Federal law. I am equally sure that such a law will be enacted within the next few weeks. When it is, Senator METCALF will have the satisfaction of knowing that his efforts have, at long last, borne fruit.

S7998 Mr. FORD. Mr. President, I ask unanimous consent that my amendment No 280 follow the Johnston amendment.

S7998 The PRESIDING OFFICER (Mr. McINTYRE). Is there objection? The Chair hears none, and it is so ordered.

S7998 Mr. METCALF. I have no problem.

S7998 Mr. President, I ask unanimous consent that the following staff members of the Committee on Energy and Natural Resources be given the privilege of the floor during consideration of and voting on S. 7: R. D. Folsom, Mike Harvey, Norm Williams, Dan Dreyfus, Mary Flanagan, Caroline Clark, Fred Craft, Tom Wylie, Faye Widenmann, and Carol Sacchi.

S7998 Mr. HANSEN. Mr. President, will the Senator yield for a moment? I ask unanimous consent that Tony Bevinetto of my staff, Rick Herod on Senator BAKER'S staff, and Mike Maloof on Senator GRIFFIN'S staff may have access to the floor during all debate and votes on this bill.

S7998 The PRESIDING OFFICER. Without objection, it is so ordered.

S7998 Mr. JOHNSTON. Mr. President, I ask unanimous consent that Bob Szabo of my staff have the same privileges of the floor.

S7998 The PRESIDING OFFICER. Without objection, it is so ordered.

S7998 Mr. HATCH. Mr. President, I ask unanimous consent that Henry Welch of my staff be accorded the same privileges.

S7998 The PRESIDING OFFICER. Without objection, it is so ordered.

S7998 Mr. METCALF. Is the Senator from Alaska on the floor?

S7998 Mr. HANSEN. I do not think so.

S7998 Mr. METCALF. The Senator from Wyoming and I have already put our statements in the RECORD, and we are prepared to listen to amendments.

S7998 Will the Senator from Louisiana offer one of his amendments until the Senator from Alaska comes?

S7998 The PRESIDING OFFICER. The Senator from Louisiana is recognized.

S7998 AMENDMENT NO. 276

S7998 Mr. JOHNSTON. I have an amendment at the desk, which is No. 276, which I ask be reported.

S7998 The PRESIDING OFFICER. The clerk will state the amendment.

S7998 The legislative clerk read as follows:

S7998 The Senator from Louisiana (Mr. JOHNSON), for himself, Mr. BUMPERS, and Mr. HASKELL, proposes an amendment numbered 276.

S7998 The amendment is as follows:

S7998 On page 303, line 21, strike all of section 515 and insert in lieu thereof a new section 515 as follows:

S7998 SEC. 515. (a) The provisions and procedures specified in this section shall apply where

coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

S7998 (b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Leasing Act of 1920 (30 U.S.C. 201a), except that no award shall be made by any method other than competitive bidding.

S7998 (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.

S7998 (d) The Secretary shall not approve any mining plan pursuant to this Act until the appraised value of the surface owner's interest has been tendered in accordance with the provisions of subsection (e). Upon such tender and upon approval of the mining plan, the lessee may enter and commence mining operations whether or not the determination of value of the surface owner's interest is subject to judicial review as provided in this section.

S7998 (e) Tender of the appraised value of the surface owner's interest shall occur when -

S7998 (1) the lessee and the surface owner agree on an amount and method of compensation for the surface owner's interest, whether or not the amount of compensation is fixed in accordance with the provisions of subsection (f), and the surface owner has given the Secretary written consent for the lessee to enter and commence surface mining operations; or

S7998 (2) the lessee has deposited the appraised value of the surface owner's interest in the United States district court for the locality in which the leasing tract is located. At any time after the appraised value of the surface owner's interest is deposited in the court and upon execution by the surface owner and the lessee of a final settlement of their rights under this section, the surface owner shall be entitled to withdraw from the registry of the court the full amount of the deposit.

S7998 (f) For purposes of this section, the term "appraised value of the surface owner's interest" means the value of the surface owner's interest 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 fix and determine -

S7998 (1) the difference between the fair market value of the surface estate, computed without reference to the value of the underlying coal, immediately before mining is to commence, and what said fair market value is reasonably expected to be immediately after mining and associated activities have been completed;

S7998 (2) the net income the surface owner can be expected to lose as a result of the surface mining operation during the two years immediately following approval of the mining plan: Provided, however, That if mining and associated activities are reasonably expected to be completed within a shorter period of time, then said net income shall be computed only for that shorter period of time;

S7998 (3) the cost to the surface owner for relocation or dislocation during the mining and reclamation process; and

S7998 (4) any other damage to the surface caused or reasonably anticipated to be caused by the surface mining and reclamation operations.

S7998 (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 -

S7998 (1) hold legal or equitable title to the and surface; and

S7998 (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.

S7998 (h) The United States district court for the locality in which the leasing tract is located shall have exclusive jurisdiction to review the determination of the value of the surface owner's interest made pursuant to this section.

S7998 (i) This section shall not apply to Indian lands.

S7998 Mr. JOHNSTON. Mr. President, last year we considered the surface owner consent provision of the strip-mining bill. After some weeks of hearing in the Committee on Interior, and after extended debate on the floor of the Senate, the bill then went to a conference committee.

S7998 At the conference committee strip mining was virtually dead. Having met for some weeks and being unable to agree on the subject of surface owner consent, the chairman, in effect, announced that that was the last meeting, and we were folding our tents and closing the books on strip mining.

{S7999} Mr. METCALF. Will the Senator identify the chairman? It was Congressman UDALL.

S7999 Mr. JOHNSTON. Yes; Congressman UDALL was the chairman of the conference at that time.

S7999 I wanted to see strip mining pass, and I came up with an amendment as a compromise which saved surface owner consent and, in effect, saved the bill.

S7999 Now, I am not asking for any credit but I simply want to show the Senate where I am coming from on the subject of strip mining as not only someone who has supported strip mining but someone who could have killed the whole bill last year.

S7999 But, Mr. President, this year we are presented with a package on surface owner consent that is so outrageous that it would make Teapot Dome not only legal but increase the number of dollars involved in the Teapot Dome scandal.

S7999 Now, Mr. President, that is not an overstatement. Let me state precisely what this bill does on surface owner consent. It states that in those situations where a surface owner owns the surface and the Government owns the coal, no mining may take place until the surface owner consents. In effect, the surface owner has two rights: first, he can lock up vast areas of very rich coal reserves which are needed if President Carter's program on coal conversion means anything, so, first, he can lock it up or, second, he can sell it.

S7999 Now, what kind of figures are we talking about, Mr. President? Well, I can tell you what at least one of the lower estimates is. One of the lowest estimates we have heard is an example taken from the Rocky Mountain Mineral Law Institute paper entitled "Representing the Land Owner in

Mineral or Surface Lease or Sales Transactions." Senator HANSEN uses this paper as justification for his surface owner consent provision.

S7999 That article states that in a typical area, using a royalty rate of only 5 cents a ton, it would amount to \$1,632,000 a section, a section being, of course, 640 acres.

S7999 Now, the usual royalty rate is 50 cents a ton, but this article uses 5 cents a ton. So, Mr. President, what we are saying in this bill, and let us understand this very clearly, is that a landowner does not own the coal, the Federal Government does, but you are giving that landowner the right to sell it for \$1,600,000 at 5 cents a ton or 10 times that if it is at 50 cents a ton, which is the going rate.

S7999 Can you imagine the enormity of that outrage, allowing a man who does not own something to sell the Government's coal for \$1 million or \$16 million? It would be, if you had 50 cents a ton, which is the going rate, \$16 million which would be the amount they would allow that individual to sell the Government's coal for.

S7999 Now Mr. President, that is indefensible. That is not an overstatement. That is indefensible. If that is bad, what would be worse would be to lock up the Government's coal. You know, you have some people in this world who have such an affection for a piece of land that they love that land above anything else, and I do not denigrate that emotion of love for the land. We have people in my State who love every inch of a piece of property as if it were a child.

S7999 I do say that we have made a decision in this Government from the time of the founding of the Government that there are some natural values that transcend that love of an individual for a piece of land. One of those values is the natural good, whether it is building a highway, extending a runway or an air base, or whatever the natural value is. We have given to the Government the right of eminent domain, when the right of the people of this country transcends that of private property.

S7999 But what we are saying here is that the right of surface owners is so sacred, so sacrosanct that it should be enshrined above all other values.

S7999 For that reason, Mr. President, I think the present bill with its present provision is contrary to the national interest, it defeats President Carter's energy program, and it allows a ripoff of the

taxpayers of the property of the people of this country. We have a lot of people in this body who talk about obscene profits, who talk about ripoffs. This is one prime example where, unless my amendment is adopted, we are getting ready to make it legal, we are putting the imprimature of this body on a sale of the taxpayers' property for private interests.

S7999 Mr. President, my amendment is joined in by the distinguished Senator from Arkansas (Mr. BUMPERS), and the distinguished Senator from Colorado (Mr. HASKELL). What the amendment does, in a word, is totally to recompense the value of that which the surface owner owns and not allow him the right to lock up the coal or to sell the Government's coal. It provides that in those instances where the surface owner owns the surface and the Government owns the coal the surface owner may give his consent to the Secretary in which event the Secretary shall put the coal up for lease and have it proceed at public bid, the highest bidder getting the bid and getting the lease.

S7999 If the owner and the Government are not able to agree as to what the value of that coal is, then there is a provision provided for the appraisal of that piece of property where the owner will appoint one person, the Government will appoint another, and the two will select a third, and they shall in turn appraise the property.

S7999 Mr. President, under our amendment the owner would get more than the value of what he owns. Let me give you the elements that would go into that appraisal. First, he would get the difference between the fair market value of the surface estate, computed without reference to the coal, immediately prior to and immediately after the mining operation. In other words, that is what he loses. He loses the value of that surface estate as diminished by the mining operation.

S7999 Second, he would get the net income the surface owner can be expected to lose as a result of the surface mining operation during the 2 years immediately following the approval of the mining plan. In other words, he gets 2 years' loss of income.

S7999 Third, he gets the cost for relocation or dislocation during the mining operation.

S7999 And fourth, he gets any other damage to the surface caused or reasonably anticipated to be caused by the surface mining and reclamation operations.

S7999 In other words, Mr. President, he gets to keep his property. He gets it back, and he gets the value of what he loses. He gets his relocation expenses. He gets any other damages, and he gets 2 years' income. That is more than he has lost. I submit it is very generous; moreover, and this is very important, he does not have the right to lock up the Government's coal.

S7999 Mr. President, in my State of Louisiana we have many industries that are burning gas. That gas is very much needed around this country. We recognize that. We are willing to convert those industries that can be converted to the burning of coal. But, Mr. President, if you want us to burn coal in Louisiana so we can ship that gas elsewhere, you have to make the coal available and if you are going to give every surface owner the right to say no to a mining operation, it simply is not going to be possible to get the coal in the quantities needed to the Southwest where we are burning gas.

S7999 You can hear a lot of people tell you we have billions of acres of coal and if you do not mine them in the Powder River Basin you can go somewhere else. I can tell you this, Mr. President: The owners of industry in my State commissioned a study to find out whether coal would be available, and we have that study, which is rather thick, definitive, and detailed, about the availability of coal, and let me tell you there is, first, a great question about the availability of coal. People do not know whether they can mine it or not.

S7999 They do not know whether they can get the miners, and it is thought to take about 40,000 additional miners. They do not know whether they can get the capital, and they do not know whether they are going to be able to get around environmental standards in order to be able - well, really to get around this bill in order to mine the coal; and one of the biggest stumbling blocks right here is the surface-owner lockup of the coal.

S7999 Either way you want to take it, either a lockup or a sale of the Government's coal, is equally an outrage to the taxpayers of this country.

S7999 Mr. President, I think the case is so clear that it cannot be defended on any grounds other than the desire to get more bucks from the Government, and I can understand that desire, particularly if you represent some of the people who would like to get rich on the taxpayers, but as far as the national interest is concerned, Mr. President, it is clear; I hope that the Senate will adopt this amendment.

{S8000} The PRESIDING OFFICER.The Senator from Wyoming.

S8000 Mr. HANSEN. Mr. President, first let me pay tribute to my good friend, Senator JOHNSTON, from Louisiana. I have had the pleasure and the privilege of working with him for as many years as he has been a Member of the Senate. It is indeed a pleasure to work and to be associated with him. He is a very knowledgeable and able person, a person for whom I have the deepest respect and regard.

S8000 Mr. JOHNSTON. Mr. President, will the Senator yield?

S8000 Mr. HANSEN. I am happy to yield.

S8000 Mr. JOHNSTON. I thank my able colleague from Wyoming. One of the great pleasures in the Senate is to work with the Senator from Wyoming, who is the senior Senator now from Wyoming, for whom I have not only great respect but great affection, as well. While I know his remarks about me stem from overgenerosity with which he is greatly imbued, I, nevertheless, appreciate those comments and return them doublefold. I thank him.

S8000 Mr. HANSEN. Mr. President, I thank my good friend from Louisiana.

S8000 Let me say by way of introduction, Mr. President, that I think it would be inappropriate to begin the consideration of this extremely important piece of legislation without first paying my respects to the distinguished chairman of the subcommittee that has been handling this legislation, the senior Senator from Montana, Senator METCALF. I know that Senator JOHNSTON joins with me in saying that those of us on the Energy and Natural Resources Committee are privileged to have the dedicated leadership, ability, willingness to listen, patience, and deep understanding that so characterizes LEE METCALF. He is a person who has grown up in the West. He has been educated in the West, and he has served in many capacities for western people and for the people of the United States. I wanted to say before we get bogged down into a consideration of amendments how grateful I am to him for his leadership and for his understanding and comprehension.

S8000 Now, to speak specifically to the amendment that is offered by the distinguished Senator from Louisiana, let me say that as he began his remarks he said that the amendment which was adopted by the Energy and Natural Resources Committee - I am not certain what vote the language

in the bill was adopted by: I have forgotten what the final vote was. We reported out the language. But Senator JOHNSTON'S amendment, the same amendment he now offers, was rejected, Mr. President. I make this point: It was rejected by a vote of either 11 to 3 or 10 to 4.

S8000 I think it is important that Senators understand that we discussed this issue at length. I have no illusions at all about the ability of Members of the Senate here this afternoon, if we were to spend the entire afternoon on it, to even begin to achieve the degree of comprehension on this specific issue that I can say advisedly the members of the Energy and Natural Resources Committee had before we finally voted on and rejected, as we did overwhelmingly, the Johnston amendment.

S8000 Yesterday we took up the President's energy proposal. It was a very complicated piece of legislation. In some remarks that I offered just before we took the final vote, I observed that I had concern because I did not know what was in the package. There were many unresolved issues that I thought we should have had a better handle on than we did. There were many things that I felt Senators, if not yesterday certainly in the future, will be called upon to answer, and to justify to their constituents why they voted or positioned themselves as they did on the different issues.

S8000 I make that point because in voting against the passage of the bill yesterday which I did reluctantly, after first having paid full respects to President Carter and to the dedicated members of the Government Operations Committee for the work they had done, I observed that it seemed to me that we just did not have time enough, compressed into the time frame that we were placed in yesterday afternoon, to start to understand what all was in the energy package.

S8000 I say that because I am fearful that Senators may find themselves in the same situation this afternoon. This is a difficult and a complicated measure. It is extremely complex to understand what is involved in an issue of surface owner consent.

S8000 After the Government started reserving materials for retention by the Federal Government of the Government's ownership in those minerals, it was concluded that the Government might sell just the surface of the public lands, or offer for sale or homestead the surface of the public lands, mostly in the West, to homesteaders, affording them an opportunity to take up more land than they

had been afforded earlier, but reserving the minerals, with the idea that the minerals could and indeed would become more important. Of course, the wisdom of Congress was prophetic insofar as that point was concerned, but less understood and less appreciated was the fact. I submit, that no one in Congress at that time could possibly have contemplated the kind of surface mining operations that exist in Montana, Wyoming, and other Western States today. It is not a case of digging a mine shaft and going underground with little disruption of the surface, as legislators back at the time these withdrawals or reservations were made would have contemplated. There was no reason on earth for anyone to have imagined the massive, enormous pieces of equipment that would be brought on the scene today. Nor could anyone, I submit, possibly have assumed that an ongoing surface mining operation could disrupt the surface owner's entire operation and management of those lands for several decades.

S8000 So when we are talking about the rights that would be reserved to the surface owners by the language presently in this bill as reported out by the Energy and Natural Resources Committee, let us keep in mind that the issue is not a position or a concern that was resolved back many years ago when the Government started reserving these minerals, but rather the development and the evolution of a mining process, which casts an entirely different light upon the issue than we had at that time.

S8000 I say that because the owners of the surface know only too well that when a permit is granted by the Government of the United States and a development plan is approved, and a coal company moves in, for all intents and purposes the owner of the land had just as well kiss it good-bye. It does not matter; it is of little satisfaction to him to remember that maybe 40 years from now, if his children are still alive, they will have that land back. As far as he is concerned, he has had the land taken from him. And it does not matter how long or how far back those ties go, he is indeed being effectively separated from the ownership and control of the land.

S8000 The Senator from Louisiana says, according to his figures, that this could amount to \$1,600,000 per section. I divide that amount of money by 640, which is the number of acres in a section of ground, and if my mathematics is correct, it comes to \$2,500 an acre.

S8000 Many people would say that is a lot of money. But I was watching, just here 2 weeks ago, a part of the Today show, showing what was happening in Illinois, a State that has a lot of coal. I noted there that one of the farmers whose ranch or farm was prominently displayed in that program observed that his land was worth about \$6,000 an acre - not the \$2 ,500 that Senator JOHNSTON says these Wyoming and Montana ranchers and farmers would "rip off the Federal Government." Not that \$2,500, but \$6 ,000 an acre. That is what this farmer in Illinois said his land was worth on today's market.

S8000 Senator JOHNSTON says that this language in the bill would either lock these coal reserves up or result in their being sold by the surface owner, when he really has no right to it at all.

S8000 Mr. JOHNSTON. Mr. President, will the Senator yield?

S8000 Mr. HANSEN. Be happy to.

S8000 Mr. JOHNSTON. I wanted to clarify that what I was quoting from was a Rocky Mountain Mineral Law Institute paper, which I think the Senator from Wyoming has used in connection with his amendment. But the figure that they used was \$25,000 an acre, not \$2 ,500, and that is based on a current royalty rate of 50 cents per ton.

S8000 Mr. HANSEN. I thought the Senator quoted 5 cents a ton and 50 cents a ton both. Which figure was he using?

S8000 Mr. JOHNSTON. Let me read it if I may. The coal is owned by -

S8000 Mr. HANSEN. I was just taking the Senator's statement. Is it not true that he spoke about 5 cents a ton, and 50 cents a ton later?

S8000 Mr. JOHNSTON. I used both figures, and the article uses both. It said at the current royalty rate of 50 cents a ton, it would amount to \$2 5,000 an acre, or if you assumed 5 cents a ton, and I do not know where they got the 5 cents a ton, it would amount to \$2 ,500 an acre. So, just quoting from that article, which I think was the Senator's authority in earlier speeches on this matter, it would be \$25,000 using the current rate of 50 cents per ton, or \$2 ,500 using one-tenth of that rate.

{S8001} I have some other examples I can give later when I get the floor as to what I think the real cost per acre to the people might be.

S8001 Mr. HANSEN. Mr. President, let me say these figures are pretty deceptive. If we were to apply the same criteria that Senator JOHNSTON is now proposing we consider in trying to determine the fairness and equity, which I think are both on our side, in the language in this present bill, I would say to my good friend from Louisiana, figure out for me how much the people of the United States are going to pay per acre for the oil or gas developed in Louisiana. If he will figure that out per acre, I would be interested.

S8001 I will say, in answering that question he would have rather considerable latitude because it depends on how much oil and gas they will get out of an acre of gas, obviously. I think I can anticipate maybe one of the answers my good friend from Louisiana might give. He would say, "First, let us decide how much is going to come out."

S8001 Mr. JOHNSTON. If the Senator will yield, the Government would not pay 1 cent on oil which is owned by the United States. That is what we are talking about. Here we are talking about coal which is owned by the United States, and we are talking about oil on the OCS, I believe, which is owned by the United States. There we get nothing and here we are talking about figures of \$10 million an acre or whatever.

S8001 I can give the justification for that figure of \$10 million an acre if the Senator would like to have it.

S8001 Mr. HANSEN. What I would like the Senator to do is to speak as long as he wants and make whatever case he believes will best support his position. Then I would like to make a statement, if I may. I yield to the Senator for that purpose.

S8001 Mr. JOHNSTON. I apologize to my friend from Wyoming for interrupting his train of thought. I just wanted to clear up that point, since I believe he did ask a question about how much was made on an acre of oil in Louisiana. As I say private owners do not receive anything on Government-owned oil in Louisiana. They are not entitled to anything. I am not making any claim for anything. But I am saying that where the Government owns the coal in Wyoming, the same rule ought to apply. The Government ought to receive whatever that figure is, whether it is \$10 million for a 40-acre tract or whether it is \$1 million. The Government ought to receive that and not the private landowner. Under my amendment the private landowner is being very generously recompensed.

S8001 Would the Senator concede that under my amendment the surface owner is being given more than the law presently allows? Will the Senator concede that much?

S8001 Mr. HANSEN. No, I will not concede that.

S8001 Mr. JOHNSTON. Would the Senator prefer to have that compensation determined by the present law?

S8001 Mr. HANSEN. I believe the Senator from Louisiana is asking rhetorical questions. He knows perfectly well what the Senator from Wyoming would desire and what a majority of the members of the Energy and Natural Resources Committee all agree is fair and equitable. That is that the surface owner consent provision in the present bill addresses those issues and resolves them in a fair, equitable, and satisfactory manner. So my response is that if the Senator wants to know what I think, read what is in the bill, the position of 10 or 11 members who were present and voting.

S8001 Mr. JOHNSTON. If the Senator will recall, at the time of that vote a number of Senators were not present. It was voted by proxy. We are sure the vote was overwhelming, 10 to 4 or 11 to 3, whatever it is.

S8001 Mr. HANSEN. If the Senator will yield on that point, I am sorry my good friend from Louisiana must feel so hardpressed in trying to defend his position that he would seek to impugn the validity of those proxies. I suspect that every one of those persons will be present this afternoon, if there is any doubt in the mind of the Senator. I believe the RECORD will pretty well disclose that the proxies which have been voted since I have been a member of that committee have been far greater in number on his side of the aisle.

S8001 I have never once questioned the authority of Senator JACKSON, Senator JOHNSTON, or any other Senator to cast proxies. I am sorry the Senator from Louisiana would impugn my fairness and my honesty in casting proxies on this issue.

S8001 I can say to him that I believe those persons whose proxies I cast, if they are in town and if they are here this afternoon, will be glad to appear on this floor to assure my good friend from Louisiana that I did indeed vote their proxies fairly and honestly. If there is any doubt about that, would the Senator from Louisiana so indicate to me now?

S8001 Mr. METCALF. Will the Senator yield?

S8001 Mr. HANSEN. I will be happy to.

S8001 Mr. JOHNSTON. May I answer the question first? I want to clear this up. First of all, I believe the Senator knows I would never impugn his honesty, his fairness, his accuracy, indeed his authority to cast proxies. We are not dealing with that.

S8001 Mr. HANSEN. It was the Senator who raised the issue.

S8001 Mr. JOHNSTON. The reason I raised the issue was because a number of proxies were cast, at least on our side of the aisle, by members who told me they did not understand the issue. They would have voted differently had they been there. Indeed, at least one of those is a coauthor of this amendment.

S8001 I understand the proxy system. I vote proxies both as the proxy and the "proxor."
[Laughter.]

S8001 I can say that occasionally Senators vote proxies and have proxies voted for them when they do not understand the issue. I am just saying I think this is one of those issues. I do not know where the majority of the committee would go. I hope the majority of the Senate recognizes the issue for what it is.

S8001 The Senator says we should discuss this for a long time. That is fine with me. Frankly, I believe time is on my side. We do not have many Senators present to listen to this debate, but if we can keep this going for a while, word will trickle back to the offices. The able aides who do cover the floor action will find out what the very simple issue is. The simple issue is whether a private person can sell the Government's coal or lock up the Government's coal.

S8001 Those may be majority terms but that is precisely what it does.

S8001 Let me give an assumption -

S8001 Mr. METCALF. Before the Senator goes into some other subject, I would like to address myself to this charge about proxies, if the Senator from Wyoming will yield.

S8001 Mr. HANSEN. I am not sure who has the floor. I thought I did.

S8001 Mr. METCALF. I thought the Senator did, too.

S8001 Mr. HANSEN. If I do not, address the request to our good friend from Louisiana. If I have the floor, I will be happy to yield to the chairman.

S8001 The PRESIDING OFFICER. The Senator from Louisiana has the floor.

S8001 Mr. METCALF. Where did he get the floor, Mr. President?

S8001 Mr. JOHNSTON. Let me keep it long enough -

S8001 The PRESIDING OFFICER. A Senator cannot maintain the floor when he remains seated.

S8001 Mr. METCALF. Will the Senator from Louisiana yield to me for a moment?

S8001 Mr. JOHNSTON. Certainly. I will yield the floor. But first, let me say -

S8001 Mr. METCALF. I want the Senator to go ahead with his other developemnts, but I want to talk for jsut a moment about proxies.

S8001 Mr. JOHNSTON. Before I yield the floor, on the subject of proxies I want to make clear there is no charge of anybody doing anything wrong on proxies. I am saying that at the time we voted, a lot of proxies were voted. I do not think they were fully understood. Some Senators have told me that. That is all.

S8001 Mr. METCALF. I want to say to the Senator from Louisiana that I voted many proxies during the course and development of this debate. Sometimes I refrained from voting proxies because I was not sure, as the Senator from Louisiana very well knows, how the Senators who gave me the proxies would have wanted them voted. But on this subject, this is a matter, as the Senator from Louisiana has suggested, that we spent hours and hours on in conference. We spent hours in discussion. Every Senator knows just exactly what the issues are, every Senator who is a member of the committee. I voted those proxies as I was instructed and informed that I should vote from the Senators who left them with me. I make no apology about it.

S8001 I am going to speak a little later on this very subject matter, if I can get the floor.

{S8002} I say to the Senator from Louisiana that I carefully refrained, as we were discussing the bill, from voting anybody's proxy on any matter on which I was not sure of the position that the Senator would take.

S8002 Mr. JOHNSTON. I state to my friend from Montana that I have never charged, I want to make clear that I have never charged otherwise. I think the Senator from Montana, first of all, is the

soul of fairness and equity and integrity. Moreover, he is a pleasant and able chairman under which to serve. When this bill becomes law, which I am confident it will, it will be, to a large extent - to the principal extent - because of the efforts of the Senator from Montana. I want to make that very clear. I am just charging that there are some people who did not know precisely what the issue is. Maybe they had just not heard my argument. That is what I would like to say.

S8002 Mr. HASKELL. Will the Senator yield without losing his right to the floor?

S8002 Mr. JOHNSTON. Yes, I yield to the Senator from Colorado.

S8002 Mr. HASKELL. Mr. President, first, on the proxy issue, I am sure that the Senator from Indiana would not have indicated in any way that the Senator from Montana or the Senator from Wyoming would vote proxies contrary to the giver's views. We on the committee all have the utmost respect for the Senator from Wyoming and the Senator from Montana. I should like briefly, Mr. President, to state my views on this matter.

S8002 In certain parts of the country, private individuals own the surface and the United States owns the minerals underneath. Those minerals, at least in my view, are the people's minerals. They are owned by people who live in Denver, Colo.; in Houston, Tex.; in Los Angeles, and in Billings, Mont., as well as the fortunate few who may own the surface. My understanding of the bill or the committee amendments - whichever they are - the bill presented to the Senate - is as follows: that where you have a split ownership - the Government owning the minerals and an individual owning the surface, who otherwise qualifies - that is, has owned the surface for a certain length of time - that individual may refuse access to the Government for it to get at its minerals. With that ability to refuse access, there is implied the right to give access for a price.

S8002 In other words, if I should happen to own the surface, and if I have lived there - I think it is 3 years - I could say to a potential lessee, who is, for purposes of this illustration, the U.S. Government - "Yes, you can come on; you can get your minerals, you can get your coal; but I am going to charge you a certain price." The price, of course, would be dependent upon the richness of the minerals underlying my land.

S8002 In that way, by a fortuitous set of circumstances, I can become a multimillionaire. Not that that would not be nice, but I do not think I should become a multimillionaire by the

happenstance of ownership.

S8002 The amendment of the Senator from Louisiana, if I understand it correctly, would say, "All right, Government, you can come on HASKELL'S land, but you have to pay HASKELL the damages which he incurs as a result of your coming on his land." And since the bill requires that the land be restored - because the basis of the bill is that if you cannot restore, you cannot mine - the result would be that I would be made whole for the damages that I would incur by loss of use of the land during the mining operation. But I would get my land back, and I would get it back whole. So I would be made whole.

S8002 Mr. WALLOP. Will the Senator yield on that point?

S8002 Mr. HASKELL. Not right now, but in just a minute, I say to the Senator from Wyoming.

S8002 If my understanding is correct, the amendment of the Senator from Louisiana basically is the compromise which we worked out 2 years ago, I think - is that correct, I ask the Senator from Louisiana? Was that 2 or 3 years ago?

S8002 Mr. JOHNSTON. Would the Senator repeat the question, please?

S8002 Mr. HASKELL. As I understand the amendment of the Senator from Louisiana, it reflects the compromise we worked out in conference committee, or substantially that compromise, which we worked out 2 or 3 years ago, was it?

S8002 Mr. JOHNSTON. It is a variation on the theme that we had a couple of years ago. The basis of it is that it treats the surface owner a little bit more generously than we would if we left him under present law; nevertheless, we do not allow him to sell the Government's coal.

S8002 Mr. HASKELL. That is what I thought. We worked for - I do not know how long it was. The Senator from Louisiana, the Senator from Montana, and the Senator from Wyoming were on the conference committee. We worked to get this compromise over a period of weeks. I personally think it is fair.

S8002 This really ends my presentation. I am glad to yield to the distinguished Senator from Wyoming.

S8002 Mr. HANSEN. If the Senator from Wyoming, my very good colleague and greatly prized friend, will yield, I wish to make one observation.

S8002 I may be interesting to Senator JOHNSTON and Senator HASKELL to know that this particular vote on the Johnston amendment occurred with no proxies being cast. It was a vote of 11 to 3. I have just had the record checked. There were no proxies cast in that 14-vote case there. There were 11 votes against the Johnston amendment, and there were 3 for it. So I think it is really rather academic to argue further about the proxy situation. I am glad we obtained that information to refresh Senators minds.

S8002 I observe, Mr. President, that this issue was voted upon by persons present and voting. The Johnston amendment having followed long hours of debate, I think I can say with certainty that a clearer understanding of the issues being held in the minds of those persons who voted than we could possibly hope to bring about here this afternoon resulted in a rejection of the Johnston amendment by a vote of 11 to 3.

S8002 I thank my friend from Wyoming for yielding.

S8002 Mr. HASKELL. May I make one observation to the senior Senator from Wyoming?

S8002 Mr. WALLOP. By all means.

S8002 Mr. HASKELL. Maybe some of those people have changed their minds because, after all, they are older now and, as they get older, they get wiser.

S8002 The PRESIDING OFFICER. The junior Senator from Wyoming is recognized to respond to the Senator from Colorado.

S8002 Does the Senator from Colorado have the floor?

S8002 Mr. HASKELL. I yielded to the Senator from Wyoming for a question and I am yielding for that purpose. If he wants the floor, the Senator from Louisiana has the floor.

S8002 If the Senator from Wyoming wants to ask a question, I yield to him for that purpose.

S8002 Mr. WALLOP. I would like to ask a question and make an observation.

S8002 I also take the opportunity to ask unanimous consent that Mr. Rob Wallace and Mr. Bob Jerome of my staff may have the privilege of the floor.

S8002 The PRESIDING OFFICER. Without objection, it is so ordered.

S8002 Mr. WALLOP. With regard to the questions raised by the Senator from Colorado, in which he has made the statement that the surface holder would be made whole, there are many of us who have fought these battles for a long time, at the State level and at other levels, who question how whole in those lands anybody can ever be made, regardless of the findings that will be made prior to mining. The product you get back will not be the product you gave up. It will be a synthetic creation of machines, men, possibly irrigation. But nobody will know for 20, 30, 3r 40 years, despite the best judges around, whether this is really going to be something that makes you whole.

S8002 On top of that, during the course of mining on such an enormous extent as is going to take place in those western surface mining fields - we are talking here, and will be a little bit later, about alluvial valleys and those kinds of things - a ranching operation gets split in half. It is not economically pursuable any longer. You cannot make somebody whole, and you cannot really compensate them for that length of time.

S8002 That was the reason, I am convinced, that no mention was ever made of it when they held these reservations in the first place, when the Government reserved the coal. Nobody knew about strip mining. Nobody ever contemplated the enormous shovels and other things that exist now.

S8002 Nobody ever could have imagined the extent to which technology has made us capable of disrupting the surface of the Earth.

S8002 Those reservations were for holes and mine mouths and tipples, but they were not for vast acreages; they were never mentioned.

S8002 None of the language in any of the legislative proceedings of the U.S. Congress even remotely recognizes the possibility of surface entry on this kind of scale. So I do not think somebody can be made whole or have other comments later.

{S8003} In the remarks addressed to the distinguished Senator from Colorado, on that one point alone, and there are other points I would care to make before this argument is finished, but on that one point alone. I do not think anybody in this body can claim to make somebody whole to the extent that the amendment of the distinguished Senator from Louisiana would contemplate.

S8003 Mr. HASKELL. Just 1 minute, if I may.

S8003 Mr. President, in response to the remarks of the Senator from Wyoming the whole underpinning of the bill is that if we cannot restore, we cannot mine.

S8003 Specifically, as I read the Senator from Louisiana's amendment, among the elements of damage which would be awarded ahead of time, incidentally, to the owner of the surface, it reads, and this is on page 4:

S8003 Any other damage to the surface caused or reasonably anticipated to be caused by the surface mining and reclamation operation.

S8003 I certainly remember the debate years ago. It was well pointed out that surface mining on some portion of a man's land might interrupt his entire economic operation - which was the distinguished Senator's point. This disruption of the economic operation is intended to be an element of damage, at least, as I understand it - and I would like a comment from the Senator from Louisiana - as an element of damage which would be awarded to the surface owner.

S8003 Could the Senator from Louisiana comment?

S8003 Mr. JOHNSTON. I think the Senator from Colorado makes an excellent point. This amendment is designed and does very specifically give that owner every element of damage, plus it gives him 2 years' income.

S8003 Now, if the Senator from Wyoming could point out to me in this amendment, and I hope he will read the amendment carefully, what kinds of damage specifically are not covered by this amendment, then I would be glad to amend it and include the elements of damage.

S8003 Mr. WALLOP. May I attempt to answer?

S8003 Mr. JOHNSTON. Certainly.

S8003 The PRESIDING OFFICER. The Senator from Louisiana has the floor.

S8003 Mr. JOHNSTON. I yielded for a question.

S8003 Mr. WALLOP. First of all, it speaks of damages that can be reasonably supposed. It does not have any review process of that damage that might be far in excess of the damage that has been reasonably supposed.

S8003 Mr. JOHNSTON. If the Senator will yield, I will give the answer.

S8003 If the Senator will look at subsection (f), first, it provides for appraisal whereby the owner will appoint an appraiser and the Government will appoint an appraiser, and those two will appoint a third.

S8003 If the owner does not like that appraiser, he can go to court, as in subsection (f), that whole procedure is set out.

S8003 So he can go to court if he is not satisfied with the appraisal.

S8003 Mr. WALLOP. But most of this is a relatively new process. A great deal of it will not be reasonably forecastable.

S8003 Mr. JOHNSTON. What was that?

S8003 Mr. WALLOP. Forecastable, or reasonably supposed.

S8003 Nobody will know how these kind of things take place, and there is no reentry.

S8003 Mr. JOHNSTON. What was that?

S8003 Mr. WALLOP. Reentry into the proceedings.

S8003 We get the findings. There is no reentry provision. So 10 years down the road we find there are things far in excess of what was reasonably supposed.

S8003 Mr. JOHNSTON. That can cut both ways. He can also get far in excess of what his actual losses were.

S8003 There has to be some time for an end to litigation, and we provide an appraisal process for people in the area to do the appraisal. If they do not like it, they go to a court located in the area.

S8003 That seems to be reasonable due process and the best kind of superstructure we could put together protecting those rights.

S8003 I wonder if the Senator can point out any element of damage, any element whatsoever, that is not covered under this amendment.

S8003 Mr. WALLOP. Yes. I could point out one that has not been contemplated at any level, in the discussions I have read in the hearing record, or anything else. That is the tax law this very Congress passed last year in which we sought to make it possible for rural people, agricultural people, to stay in agriculture, by giving them an exemption, an agricultural exemption in inheritance taxes.

S8003 One of the requirements of that exemption is that the property be kept in agricultural production for 15 years.

S8003 Suppose my good friend from Louisiana takes the role as the father of my friend from Wyoming and he dies and leaves this property to my friend from Wyoming, his son.

S8003 His son takes the agricultural exemption, up to \$5 0,000 worth of it, and then along comes the distinguished Senator from Colorado who holds the coal lease under that and says, "I come to claim my coal."

S8003 Now, this man is in terrible shape and that is not a forecastable event.

S8003 All during this time a set of taxes nobody even contemplated becomes triggered by this several interest that exists primarily in the West.

S8003 Mr. JOHNSTON. Is that the only element that the Senator can refer to?

S8003 Mr. WALLOP. No I do not think anyone has the scientific technological ability to really forecast damages there; there is no reentry provided and we have to get one. I have seen the results of this. I have watched it. It is quite a fact that we sit here in our wisdom and say we have a surface reclamation bill which requires that if we cannot restore it, we cannot mine it. But I think we will find down the road that many of these things we thought we could do, we are not really so capable of doing, as we sit here in comfort and contemplate today.

S8003 Mr. JOHNSTON. If I may make a comment, that situation adheres in both the bill as proffered by my friend from Montana and my friend from Wyoming and under my amendment.

S8003 In other words, my amendment does not exaggerate the difficulties of trying to forecast what the damages will be in the future. That is inherent in the bill as presently written.

S8003 Mr. WALLOP. I recognize that, but it is inherent in the injustices which I see in the amendment of the distinguished Senator from Louisiana because it is an impossible thing. It is better to let these people get together and, hopefully, keep this land in some agriculture owner's hands.

S8003 The product returned to the "owner" is synthetic. There is nothing in this which can prevent sale prior to the lease, and that is exactly what is going to happen.

S8003 In the Ruhr area of West Germany, the biggest single landowner is no longer small farmers; it is coal companies. This amendment would have the effect of forcing people to leave small agricultural holdings and put agricultural holdings and most agricultural land in the hands of coal companies. It would actually do that. I realize the distinguished Senator from Louisiana thinks he is going to be keeping people on the land with this but, as a matter of fact, it will be exactly the opposite.

S8003 Mr. BUMPERS. Will the Senator yield?

S8003 Mr. JOHNSTON. I yield to my friend from Arkansas.

S8003 Mr. BUMPERS. Mr. President, I was not here for the opening of the debate, so I may be covering ground that has already been covered. But I am curious as to whether or not some of my colleagues in this body understand the implications of what this bill contains without this amendment.

S8003 Let me give some statistics.

S8003 Twenty-nine percent of all the mineral acres in Montana, Wyoming, and North Dakota is owned by the U.S. Government. That ownership represents 60 percent of all the coal under that 29 percent of the Federal ownership.

S8003 What we are saying is that the owners of the surface can thwart the mining of 60 percent of the coal in those three States. We are talking about more than 100 billion tons of coal - 96 billion tons of coal, to be precise - that cannot be mined unless the surface owner gives his consent.

S8003 The President has declared war on energy, and we come in here with a bill which is designed to an absolute certainty to prohibit our being able to cope with it.

S8003 Let me ask the Senator a couple of questions and make a couple of points.

S8003 No. 1, the Secretary of the Interior prescribes a tract of land to be leased, and that land has coal under it. Let us assume that the tract consists of a thousand acres, and in the middle of that thousand-acre tract, the surface of a 500-acre tract is owned by one man.

S8003 That means one thing: That tract will not be mined, simply because anybody who is going to make the investment necessary to mine it will not do it for less than 1,000 acres.

{S8004} Assume that the Secretary has set this 1,000-acre tract out as an economically viable tract of land to mine, and the Federal Government owns all the minerals under the entire 1,000 acres, but in the middle of that tract, it does not own the surface of half of it, or 500 acres; or, cut that to 200 acres. To make it a little more interesting, just spot a few 40-acre tracts around in it, where the surface is owned by some individual.

S8004 That means that unless the lessee, the coal company that wants to become involved in mining that coal, can get the consent of the surface owners, that coal is not going to be mined.

S8004 No. 2, what kind of leverage does this give that surface owner in demanding damages from the lessee before the lessee can operate the tract? It is a leverage that is unheard of in the common law or the codified law of any State in this country.

S8004 I ask either Senator or both Senators from Wyoming, what are the damages provided by the laws of Wyoming where an individual owns the surface and somebody else owns the minerals? I can tell the Senators what it says in my State. It says that the surface owner will be compensated for the difference between the value of the land before it was mined and the value immediately after it is mined.

S8004 The Senator from Louisiana, the Senator from Colorado, and I drafted this amendment and have gone not an extra mile but an extra half-dozen miles in trying to accommodate the so-called poor farmer who is going to be chased off his land. We have provided that he gets not only the difference between the before and after value but also 2 years loss of profits. He gets all the expenses he may incur for being relocated and any other damages he possibly can incur.

S8004 No. 3, what happens after the U.S. Government or the lessee pays him all of that? The lessee must reclaim the land, in accordance with this bill, put it back in its approximate original contour, with the surface back on top the way he found it, and then given the land back to the surface owner.

S8004 We are not talking about a few tracts of land. We are talking about 60 percent of the

lowest sulfur content, finest grade of coal in the United States.

S8004 I respect the people of Wyoming and I respect their delegation in this body, but that coal does not belong to one citizen. It was reserved by some farsighted people in this country when the land was sold. Whoever owns that surface right bought it with full knowledge that the United States owned the coal and had the right to mine it at any time in the future that it desired to do so.

S8004 Mr. WALLOP. Mr. President, will the Senator yield?

S8004 Mr. BUMPERS. I yield for a question.

S8004 Mr. WALLOP. I should like to answer the question that the Senator from Arkansas posed to the Senator from Washington.

S8004 Our State has recognized this dilemma and has come down in favor of the landowner's consent in almost exactly the language of the Senator's proposal. This it does with the State's coal, and this it does with private coal where the surface and mineral interests have been severed.

S8004 However, I think the Senator is making a mistake in talking about one person locking up all this coal. It just has not worked that way. We in Wyoming have been operating with exactly this kind of principle, while Congress has fiddled back and forth in passing a bill, and it has not locked up any coal in Wyoming.

S8004 Wyoming had the law that was recognized - the first in the country - as being in excess of those regulations promulgated by the Department of the Interior. It is just not going to lock up coal.

S8004 Mr. HANSEN. Mr. President, if the Senator will yield further, I should like to make one point.

S8004 Mr. BUMPERS. Let the Senator from Louisiana respond, if he will. I yield to him to respond to the distinguished Senator from Wyoming.

S8004 Mr. JOHNSTON. Mr. President, my friend from Wyoming says that, at present, the surface owners are not holding up the Government, that they are not locking up the coal. The reason for that is that the law now does not allow them to do so.

S8004 I quote from the present law, which is 43 United States Code, section 299. It reads:

S8004 All entries made and patents issued under the provisions of sections 201 to 301 of this title

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S8004 Those are the homesteading provisions whereby an owner can go in and get 640 acres of the surface.

S8004 - shall be subject to and contain a reservation to the United States of all the coal and other minerals and the lands so entered and patented, together with the right to prospect for, mine and remove the same.

S8004 I will not read the remainder, but it goes into some detail, stating what his rights to damages are, which is much more limited than under our amendment, and what the rights of the Government, or the Government's lessee are to go in and occupy the surface and remove the coal. That is what the present law is. The present law provides for no lockup and no compensation to that owner.

S8004 It is true that some owners are getting more by giving their consent, but the only reason for that is that the coal is so tremendously valuable that these coal companies want to make darn sure that Congress does not take a step such as is proposed to be taken in this bill, whereby they are given the right to lock it up. That is why they are able to get a thousand dollars an acre, or whatever it is.

S8004 Believe me, if this amendment is adopted, one never will be able to buy an acre of that prime coal land for a thousand dollars. It will be more on the order of \$25,000 to \$40,000 an acre; or, for one of these homesteaded 640-acre tracts that are allowed for homesteading under the provisions I referred to, it will be \$900 million.

S8004 Mr. BUMPERS. Mr. President, I yield to the Senator from Wyoming for a question.

S8004 Mr. HANSEN. I thank the Senator from Arkansas.

S8004 I think the Senator from Arkansas inadvertently may have overstated the situation in the West.

S8004 It is my understanding that 60 percent of the coal in the area that my friend from Arkansas described is Federal coal. The point I make is, however, that the Federal Government owns the surface with respect to about half of that coal, roughly.

S8004 Mr. BUMPERS. The Senator is correct. If I said something that reflected otherwise, I will correct the RECORD, because the Senator is correct.

S8004 Mr. HANSEN. Actually what I am trying to say is only half of that amount of coal is coal owned by the Federal Government with the surface in private ownership. I think it is an important point.

S8004 Mr. BUMPERS. It is an important point. But I believe the Senator will agree with me that 96 billion tons of coal are under divided ownership between surface and minerals.

S8004 Mr. HANSEN. Did the Senator say 96 billion?

S8004 Mr. BUMPERS. Yes, 96 billion tons.

S8004 Mr. President, if I may make a couple of other observations; In the Decker-Birney area in Montana there was an evaluation made of about 900,000 acres of federally owned land and minerals. In some of this area they own the minerals, and in other areas, they own the minerals and the surface. But that 900,000 acres - which is just one area in Montana - has 15.9 billion tons of recoverable and mineable coal. Now, on today's market of it the value of coal is \$20 a ton that would be \$3 0 billion worth of coal.

S8004 Mr. HANSEN. Mr. President, if the Senator will yield, let me see if I am figuring the same way he is. He talked about 15.9 billion tons at \$20 a ton, would that not be \$3 00 billion instead of \$30 billion?

S8004 Mr. BUMPERS. I stand corrected.

S8004 Mr. HANSEN. The Senator has trouble with his mathematics. I often do, too, so I can be sympathetic.

S8004 Mr. BUMPERS. Well, it is very assuring to have a mathematician on the floor to help me because I am not very strong in mathematics.

S8004 Mr. HANSEN. The Senator needs it because his case is not strong. He needs a little help.
[Laughter.]

S8004 Mr. BUMPERS. Out of that 900,000 acres, the Federal Government owns both the surface and minerals on about 79,000 acres of it or less than one-tenth of it.

S8004 Underlying those 79,000 acres are 1.4 billion tons. In other words, the Government can go in and mine 1.4 billion tons of the 15.9 billion, and the other 14.5 billion may not be mined without the surface owner's consent.

S8004 That is just a little dramatic illustration of what we are confronting here with this absurdity of saying that the U.S. Government may not take what belongs to it without possible arbitrary and capricious consent of somebody who happens to own the surface rights.

{S8005} I wanted to make another point that I started on a moment ago, and I mean this with all respect in the world to the people of Wyoming, Montana, South Dakota, and North Carolina. But that coal was reserved by the United States for a very specific purpose, and that purpose was for the good and for the benefit of all of the people of this country. That includes the people in Louisiana, who have been sharing their oil with the rest of the Nation; that includes the people in my State; it includes the people of Illinois; it includes all of the people in the United States.

S8005 To allow surface owners to have the kind of leverage they are going to have in this impending energy crisis, which the Senator from Louisiana has described even more graphically than I did, could only be classified as an outrage.

S8005 Let me make a point. What is some Hollywood star bought several thousand acres of surface rights in Wyoming in the past 60 days. He is going to, whether he has speculated on it or not, stand a chance to reap the biggest windfall profit that has ever been experienced in the history of this country because he is not going to just recover the value of the surface, which is maybe all he paid for, but he is going to hold somebody's feet to the fire for a big chunk of the value of that coal, or they are not going to mine it.

S8005 Later on during this debate I intend to ask unanimous consent of the principal sponsor, the Senator from Louisiana, to modify the amendment, to provide that anyone who does not meet all the criteria of having lived on the land and received, not only a "significant part," but a majority of it during the past 6 to 10 years can benefit from this amendment years can benefit from this amendment in any manner. U.S. Congress at least since 1972. Anybody who wanted to start speculating in 1972 by buying those surface rights is going to be in clover if this bill passes in its present form.

S8005 I will not go into that right now, but I certainly think anybody who has not lived on that land and has not gotten a majority of his income from the surface of that land for the past 10 years should not be handed this kind of a windfall.

S8005 Mr. HANSEN. Let me make several points. Let me go back to what the Senator from Louisiana was talking about when he was speaking about oil. I would certainly agree it is not comparable because when oil is produced on a person's land, a small area may be occupied. When a ranch is strip mined it is going to be taken over sooner or later, and I am referring to all of the land under which coal might be found.

S8005 If the situation in removing coal were comparable to the situation in removing oil, we would not be here because that situation was not contemplated by the Congress of the United States when the law was passed reserving these minerals to the ownership of the United States.

S8005 The second point I would like to make is that the Senator from Arkansas speaks about 15.9 billions of coal, and he is talking about that coal just in this particular part of the West.

S8005 I have great respect for all of my colleagues, and I have particular respect for the sagacity, the wisdom, and the knowledge of the two proponents of this amendment, the Senator from Arkansas (Mr. BUMPERS) and the Senator from Louisiana (Mr. JOHNSTON).

S8005 Let me say this: You know your neighbor may sell out for \$5 00 an acre, and it does not mean it is worth \$5 00 an acre. There is an old axiom "Oil is where you find it and land is worth what you can get for it."

S8005 Now, the trouble with this scare tactic we are hearing this afternoon, about these terrible ripoffs that are going to result of this law, if this legislation becomes law, is simply this: The Secretary of the Interior and the Secretary-designate of the Department of Energy, when it comes into being, along with the President of the United States are hopeful that we may increase coal production, that we may increase coal production in this country by slightly more than a million tons a year.

S8005 Do you know how much we are at present producing? We are producing about 665 million tons. Figure out, if you will, divide 1.1 million tons into 15.9 billion - I hope I might have

the attention of my friend from Arkansas because this was his point, and I did want him to hear it - I would say to my friend from Arkansas, who is good with a sharp pencil, if we would divide 1.1 million tons into 15.9 billion tons he will find out there is going to be a lot of coal around for a long time just in this part of the West.

S8005 If anybody thinks that a rancher or every rancher, every period who has ownership of the surface and not of the coal, can write his own ticket for what he is going to receive if he gives his consent to having his place taken over by a mining operation for several decades, he has got another think coming because all you have to do is go down the road to the next place and say, "What would you take to give owner consent for your operation here?" I will guarantee you when you compare 15.9 billion tons in just this small area of the West with 1.1 million tons that the Government hopes we may be able to use by 1985, it becomes readily apparent that those people out there on the land now are going to be dead and gone and several generations following them will be dead and gone before anybody is going back a second time and say to them, "What will you take in order to give us surface owner consent today?"

S8005 The facts are that I took the figures that Senator JOHNSTON quoted. Let us assume that the land to get surface owner consent would go for \$2,500 an acre. I shall be very honest with the Senator. I do not know of anyone who has gotten that much out there. I do not say it has not been paid, but I do not know of anyone who has gotten that much. The top price about which I have heard is \$1,000 an acre. Let us take the \$2,500 an acre to which Senator JOHNSTON alluded. We have coal around the Gillette area that is found in seams 90 feet thick, and that is a lot of coal because 1 acre of ground with coal under it 1 foot thick has about 1,750 tons, just that 1 foot thick seam of coal. If you have coal 90 feet thick, if my mathematics are right, I figure that there would be under an acre of ground out there to be found 157,500 tons of coal.

S8005 Mr. BUMPERS. Mr. President, will the Senator yield for a question?

S8005 Mr. HANSEN. No, I will not yield. I would be very happy to yield, but I am afraid it will be a long spell between speeches. I wish to have a chance to finish this point. If the Senator has a question, he may ask me.

S8005 Mr. BUMPERS. I have a question.

S8005 Mr. HANSEN. I yield for a question only.

S8005 Mr. BUMPERS. My question is: Will the Senator agree with me that developing and mining of coal for any significant size operation requires a rather large contiguous area? Will the Senator agree with that?

S8005 Mr. HANSEN. These are relative terms. When the Senator speaks about large - I will not ask him a question. My response to his question is that "large" is a relative term. I think that if he wants to find out what the average size of an operation is out there I suspect the most definitive answer I know of could be found in the Bureau of Mines. I yielded for that question. I wish to continue if I may.

S8005 Mr. BUMPERS. Will the Senator yield for only one additional short question?

S8005 Mr. HANSEN. I yield.

S8005 Mr. BUMPERS. We mentioned this area in Montana that contained 15.9 billion tons of coal under 900,000 acres of federally owned land. That is federally owned minerals. Out of the 900,000 acres the Federal Government only owns the surface and the minerals under 79,000 acres. It is under those 79,000 acres that 1.5 billion tons of coal is located. Will the Senator agree with me that if the Federal Government ownership of that 79,000 acres is spotted around in various places within that 900,000 acres, it would make the leasing of it vitually impossible?

S8005 Mr. HANSEN. I do not agree with the statement by the Senator from Arkansas.

S8005 To continue my statement about what we are talking here in terms of the value of this coal, Senators should understand, as I was pointing out, Mr. President, that we have in the Gillette area coal in seams 90 feet thick, and we have coal in seams 200 feet thick around the Buffalo-Story-Sheridan areas. If the coal seams are only 90 feet thick, which is the case around Gillette, under each one of those acres is found or contained 157,500 tons of coal. If the surface owner were to receive \$2 ,500 an acre, and my friend from Wyoming, Senator WALLOP, and I know of no such price being paid out where; \$1 ,000 is about the maximum I know of, and that is where the coal company comes in and buys the man out. They do not buy the right to mine it; they come and buy the whole ranch. They buy the whole ranch for about \$1,000 per acre.

S8005 But let us say \$2 ,500, which is 2 1/2 times as much as ranches have been selling for, as far as I know, at that rate, the return that the surface owner would receive would be 1.6 cents per ton. I ask some of my friends in the utility business, what does this mean in terms of extra charges per kilowatt hour? And to take the figures that were suggested by my friend from Arkansas, if coal is worth \$2 0 a ton it is so infinitesimal that there would be no way to factor in less than 2 cents per ton. So my point is it is not a ripoff. It makes the point that my colleague from Wyoming, Senator WALLOP, made that if we believe there is virtue, strength, good wisdom, and defensible national policy in keeping farms and ranches in family ownerships, there is, indeed, strong reason and persuasive argument in support of the language contained in this bill. I think it makes sense to keep it this way.

{S8006} } If we want to look at the alternatives, then precisely what has occurred in West Germany will, indeed, obtain in Wyoming, Montana, and North Dakota. The coal companies will be coming in and they will own the land, and they may not be quite as concerned with the quality of reclamation that will be demanded as would have been required if we had kept that land in family ownerships.

S8006 I am going to yield the floor to my good friend from Montana, a person with whom I have worked closely because I know he has some points he wishes to make.

S8006 Mr. METCALF. I am grateful to the Senator from Wyoming. I think, by and large, the debate that has gone on for an hour and a half, has been helpful. I wish to move on. We are going to talk about alluvial valley floors, prime agricultural land, and some of these other questions.

S8006 One point has not been made, I say to Senator WALLOP, and that is that there are people out in Montana and Wyoming who do not want to sell their ranch. They do not want to sell it for \$2 0,000 an acre. They want to continue their ranching operations, and this provision will permit them to do so.

S8006 Mr. WALLOP. The Senator is absolutely correct, and it was the reason that this came about as a concept in the first place. It was not to provide windfalls but to provide protection. The country will always have a lot of coal, and that is not going to go anywhere. There is plenty of time to take care of that when it runs out, and the only things remaining are ranches to keep together.

S8006 Mr. METCALF. In 1973, we put in the so-called Mansfield amendment that said when there is private surface ownership and Federal coal we will keep it in reserve. We will let these people keep their surface ownership and the Federal Government will keep its coal under the land. This year that provision ran into so much opposition from President Carter's energy program that I withdrew it. But, nevertheless, there are men and women out there in Montana and in Wyoming, especially, third generation ranchers, who are not going to sell their ranch for any amount of money to a coal company that is going to cut it apart for a 150-foot seam of coal.

S8006 Mr. WALLOP. The Senator brings in the single most important group of people affected by this amendment, and I thank him.

S8006 Mr. METCALF. I wonder if Senator HANSEN and Senator JOHNSTON will agree that we are going to wind this amendment up and move forward in consideration of this legislation.

S8006 Mr. JOHNSTON. I certainly have no desire to delay the matter. I have a few more words to say, but not a great deal.

S8006 Mr. METCALF. I am not going to ask unanimous consent, but I really urge my colleague to bring this to a vote and let us move on.

S8006 Mr. JOHNSTON. I think we are very close to winding it up unless there are others who want to speak, and I imagine my colleague from Arkansas would wish to say some more on this side, but I do not know of others who wish to speak for a long time.

S8006 Mr. METCALF. Senator SCHMITT has some comments to make. But I hope we will move on.

S8006 Mr. SCHMITT. Mr. President, if the Senator will yield for a very brief comment, first of all let me compliment Senator METCALF and Senator HANSEN for the work they have done on this bill. I am not yet convinced I am going to support the bill in its entirety. I think there are some other problems. But in this particular area I have been involved in the mining business, or close to it, for many years. As a matter of fact, I was born in the copper pit Santa Rita region of New Mexico.

S8006 I just would say that the mining industry gets extremely clever when it runs into a

bottleneck in terms of a particular lease or section of land or acre that is not available because of a high price or some other circumstance.

S8006 I suspect that if we find that kind of problem developing, we will also find the industry, the coal miners, working out ways in which they can circumvent the high price that is being asked, or any other contingency that might develop.

S8006 I think even more important, however, is the total amount of public lands of which the Government owns both the surface and the mineral rights. That area, particularly with respect to coal, is so very, very large that, at this point in our national need, to pass an amendment such as that proposed by the distinguished Senator from Louisiana, I think, is unnecessary and may well open up some difficulties that we had just as well let alone.

S8006 The ranchers and the farmers who would like to keep their land, I think, should certainly for the time being have the right to do that. Maybe at some future time, if it appears that a national emergency is involved or something like that, we could look at this question again; but I would say the time is premature for that issue at this time.

S8006 Mr. BUMPERS. Mr. President, a parliamentary inquiry.

S8006 The PRESIDING OFFICER (Mr. GRAVEL). The Senator will state it.

S8006 Mr. BUMPERS. Is the pending bill considered the original text, so that the pending amendment is subject to an amendment?

S8006 The PRESIDING OFFICER. The committee amendment is an amendment in the nature of a substitute, which does not kill a degree. So the pending amendment is in the first degree, and obviously is available for an amendment in the second degree.

S8006 UP AMENDMENT NO. 249

S8006 Mr. BUMPERS. Mr. President, I send to the desk an amendment modifying the pending amendment.

S8006 The PRESIDING OFFICER. The clerk will state the amendment.

S8006 The assistant legislative clerk read as follows:

S8006 The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 249 to amendment No. 276:

S8006 On page 4 of the amendment No. 276, line 25, add the following subsection -

S8006 Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

S8006 The PRESIDING OFFICER. Without objection, it is so ordered.

S8006 The amendment is as follows:

S8006 On page 4 of the amendment No. 276, line 25, add the following subsection:

S8006 (3) have met the conditions of paragraphs (1) and (2) for a period of at least six years prior to the granting of the consent. In computing the six-year period the Secretary may include periods during which title was owned by a relative of such persons by blood or marriage during which period such relative would have met the requirements of this subsection.

S8006 On page 4 of the amendment, line 23 and 24, strike the words "significant portion," and insert in lieu thereof the word "majority."

S8006 Mr. BUMPERS. Mr. President, let me spend just about 60 seconds describing to my colleagues what this amendment could do.

S8006 Under the pending bill, there is no provision that a surface owner must have lived on the land for any period of time before he is entitled to all the privileges that the bill gives him.

S8006 This amendment to the pending amendment would provide that the surface owner must have lived on the land for at least 6 years, and must have derived a majority of his income from that land during that period of time.

S8006 Mr. HANSEN. Mr. President, will the Senator from Arkansas yield for a question?

S8006 Mr. BUMPERS. Certainly.

S8006 Mr. HANSEN. Is it not a fact that despite the statement by our colleague from Arkansas, a movie star might come in and buy up a lot of land -

S8006 Mr. BUMPERS. I have nothing against movie stars; I just used that as an illustration.

S8006 Mr. METCALF. How about a Texas oil man?

S8006 Mr. BUMPERS. Make it an oil man; that might be better.

S8006 Mr. HANSEN. My point is, is it not a fact that the language in the committee will precisely excludes that sort of operator from coming in and doing what the Senator said he could do?

S8006 If the Senator will look on page 305 of the bill (S. 7), he will find this language;

{S} 8007 For the urpose 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 othe requirements of this section) who -

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

S (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

S (3) have met the conditions of paragraph (1) and (2) for a period of at least three years prior to the granting of the consent.

S My question is, have we not precluded, as my friend from Arkansas said, a Hollywood movie star coming in and buying up land out there and taking windfall profits from it?

S Mr. BUMPERS. To answer the Senator's question, the word "significant" is always an ambiguous term. I resist that term in committee and on this floor every time I see it, because it could mean anything.

S The Senator will recall that yesterday morning, in the Energy Committee, we got into a debate over whether or not someone had committed a significant amount of money to the development of an offshore oil lease. I resisted it, and I resist it here.

S I assume if we are talking about someone whose income is a million dollars a year, and only \$5 0,000 of it came from the surface of the property, that probably would not be considered a significant amount. But \$5 0,000 is indeed a significant amount of income to 99.9 percent of the people of this country.

S To answer the Senator's question, I would say no, we have not addressed it, or, at least, not in a

manner that will prohibit people from speculating or having previously speculated.

S Finally, the bill provides for a 3-year period in which these things must have occurred. The point I made in my original statement is that we have been debating strip mining since 1972. That is now 5 years, and I am just suggesting 6 years to make sure that nobody, from the time we started talking about surface mining, will have been able to benefit from speculating on the purchase of surface rights in the far West.

S Mr. JOHNSTON. Mr. President, the choice of 3 years in my amendment was entirely arbitrary. I think the Senator from Arkansas does make a point about the length of time that this matter has been debated, and perhaps 6 years is a preferable length of time. If he feels that 6 years is a better number of years, it is perfectly acceptable to me.

S Therefore, I move to amend my amendment to conform to the amendment of the Senator from Arkansas.

S The PRESIDING OFFICER. The Senator has the right to modify his amendment, and it is so modified.

S The amendment (No. 276), as modified, is as follows:

S On page 303, line 21, strike all of section 515 and insert in lieu thereof a new section 515 as follows:

S SEC. 515. (a) The provisions and procedures specified in this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground ground mining techniques.

S (b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Leasing Act of 1920 (30 U.S.C. 201a), except that no award shall be made by any method other than competitive bidding.

S (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.

S (d) The Secretary shall not approve any mining plan pursuant to this Act until the appraised

value of the surface owner's interest has been tendered in accordance with the provisions of subsection (c). Upon such tender and upon approval of the mining plan, the lessee may enter and commence mining operations whether or not the determination of value of the surface owners' interest is subject to judicial review as provided in this section.

S (e) Tender of the appraised value of the surface owner's interest shall occur when -

S (1) the lessee and the surface owner agree on an amount and method of compensation for the surface owner's interest, whether or not the amount of compensation is fixed in accordance with the provisions of subsection (f), and the surface owner has given the Secretary written consent for the lessee to enter and commence surface mining operations; or

S (2) the lessee has deposited the appraised value of the surface owner's interest in the United States district court for the locality in which the leasing tract is located. At any time after the appraised value of the surface owner's interest is deposited in the court and upon execution by the surface owner and the lessee of a final settlement of their rights under this section, the surface owner shall be entitled to withdraw from the registry of the court the full amount of the deposit.

S (f) For the purposes of this section, the term "appraised value of the surface owner's interest" means the value of the surface owner's interest 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 fix and determine -

S (1) the difference between the fair market value of the surface estate, computed without reference to the value of the underlying coal, immediately before mining is to commence, and what said fair market value is reasonably expected to be immediately after mining and associated activities have been completed;

S (2) the net income the surface owner can be expected to lose as a result of the surface mining operation during the two years immediately following approval of the mining plan: Provided, however, That if mining and associated activities are reasonably expected to be completed within a

shorter period of time, then said net income shall be computed only for that shorter period of time;

S (3) the cost to the surface owner for relocation or dislocation during the mining and reclamation process; and

S (4) any other damage to the surface caused or reasonably anticipated to be caused by the surface mining and reclamation operations.

S (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 -

S (1) hold legal or equitable title to the land surface; and

S (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.

S (3) have met the conditions of paragraphs (1) and (2) for a period of at least six years prior to the granting of the consent.

S In computing the six-year period the Secretary may include periods during which title was owned by a relative of such persons by blood or marriage during which period such relative would have met the requirements of this subsection.

S On page 4 of the amendment, line 23 and 24, strike the words "significant portion," and insert in lieu thereof the word "majority."

S (h) The United States district court for the locality in which the leasing tract is located shall have exclusive jurisdiction to review the determination of the value of the surface owner's interest made pursuant to this section.

S (i) This section shall not apply to Indian lands.

S Mr. JOHNSTON. Very well. Mr. President, I would like to make clear the kind of figures we are talking about. Just to take that example that the Senator from Wyoming used from the Powder River Basin, where you have a seam of coal, as he pointed out, I believe he said a seam of coal 90 feet thick. Let us take a seam of coal 70 feet thick, and if you assume 1,750 tons of coal per acre

foot, which is, I think, also a figure he used, or in any event the figure that is ordinarily used, you have an amount of coal per acre of 122,500 tons. If you assume a \$7 selling fee for that coal, you end up with a huge amount of money.

S Or let us just say, instead of assuming the \$7 per ton sales price, that we assume a 50-cent fee to that owner, which is about what owners get now when they lease their coal. Let us assume what they get is 50 cents, and not any more than 50 cents per ton. You have a value of \$6 1,250 per acre, and you can pick any figure you want. At 60 cents, you get \$7 3,500. At 25 cents, you get almost 31,000; or you can take a much smaller percentage. The point is that we are talking about multimillions of dollars for the leasing of 640 acres.

S Mr. President, I am just about ready to bring this matter to a vote, if Senators are ready. I would like to close on one note: President Carter made a television address not too many nights ago, in which he talked about the crisis which this country faces.

S He said that we are running out of oil and gas, that it is a crisis calling for sacrifice by every American. He called it the moral equivalent of war.

S He offered a gasoline tax that goes up as high as 50 cents a gallon. He offered a gas guzzler tax that, in its initial year, goes up to \$500 a car, and goes up as high as \$2 ,500 a car. He offered a tax on natural gas; a tax upon oil. He offered a tax on the industrial use of natural gas over and above that. He proposed a conversion program that will cost my section of the country alone some \$18 billion, according to the administration.

{S8008 } He called for sacrifice by every American.

S8008 So it seems to me, Mr. President, peculiarly inappropriate that here in the midst of this moral equivalent of war, in the midst of this crisis, that those from the coal-owning areas say -

S8008 We do not want to make the sacrifice. We do not want to get less than our land is worth. In fact, we want you to pay us whatever our land is worth when you want to mine the Government's coal. In addition is that, we want about \$10 million for every 640-acre tract.

S8008 That is what this bill provides. That is not an exaggeration and that is not an overstatement. That is fact.

S8008 If that is what this Senate wants to do, if this Senate wants to say in the midst of this crisis, "Let us give a \$1 0 million per 640-acres windfall to these owners of the surface," when the Government and the people of this country own the coal, then I submit to this Senate let us forget this talk about crisis; let us forget this talk about sacrifice.

S8008 If the Senate expects me as a Senator from Louisiana to vote sacrifices upon my people when we are granting \$1 0 million windfalls out West, if the Senate wants me to ask my people to give up oil and gas, and give up oil and gas for runways and for all the multiplicity of purposes the Government has, I say it is not right. I say it is an outrage.

S8008 I trust the Members of this Senate are going to recognize the unfairness, the inequity, and the outrageous nature of this bill and vote for this amendment.

S8008 Mr. MELCHER. Mr. President, Montana was part of the Louisiana Purchase. When that purchase was made, perhaps the people in Louisiana, when they received patent to their land, also received title to the subsurface minerals.

S8008 When the first settlers came to Montana, they received patent to their land and title to the subsurface, to the minerals underneath.

S8008 There are many cases where title to the surface is separated from title to the subsurface and the minerals which lie thereunder. But it was an act of Congress in the early 1900's, the Homestead Act, that said the coal would be reserved to the United States but the homesteaders could have title to the surface.

S8008 The very colloquy in the House during debate on that bill in the early 1900's stressed the point that this would indeed not be so much of a hindrance to those homesteaders who came out West, survived the rigors, and proved up on their claims, receiving title to their land. If that coal which was reserved to the United States was ever mined, they would be out the right-of-way for the tipple, the road, and the railroad tracks necessary for underground mining.

S8008 The colloquy demonstrated that. That is what Congress had in mind.

S8008 It did not have in mind that the land might some day be stripmined to get the coal that was reserved to he United States, where all the surface would be taken away.

S8008 What would be paid to the landowner under that law in the early 1900's? Well, he would

get paid for the loss of his crops, for the loss of the right-of-way for the tipple, the roadway, and the railroad tracks, but he would still have the huge percentage of that land. That surface would be his and would not be interfered with.

S8008 During all the debate we have had on the national strip mine reclamation bill during the past 4 or 5 years we have come up against this issue, we are against it today.

S8008 The Senator from Louisiana talks about sacrifice for his people. What is at issue here are the property rights of those people who own their land but because of this reservation in the Homestead Act they do not own the subsurface; they do not own the minerals.

S8008 It is Congress which must address this issue and say what the rights of the landowners are since the modern method of mining that coal will be stripping it and taking away all the surface.

S8008 We had quite a siege in the conference committee in the Congress before last when we reached this point. The conference darn near failed on this issue. We finally resolved it by saying, "Yes, the landowner's rights to his land comes first. He shall have the right to say, 'Yes, I will permit my land to be strip mined,' or he shall have the right to say, 'no.'"

S8008 Then in the compromise offered by the Senator from Louisiana and accepted by the conference, we agreed to a system of arriving at the value of the surface in relation to the coal underneath if the landowner said, "Yes," but we reserved that right. The landowner could keep his land as is and say, "No," and then negotiate on the basis of what it would take if he were going to lose the surface of his land.

S8008 We accepted the compromise of the Senator from Louisiana for that formula. It ended the difficulty in the conference and we had a bill. The conference committee was successful. The House accepted it, the Senate accepted it, but the President vetoed it.

S8008 Mr. JOHNSTON. Will the Senator yield at that point?

S8008 Mr. MELCHER. I will be delighted to yield.

S8008 Mr. JOHNSTON. The basis of that formula was basically the value of the surface plus not to exceed \$100 per acre. Is that accurate, as a general statement?

S8008 Mr. MELCHER. The value of the surface, the value of the interruption of his business,

the value of the loss of income, the value of moving, and then \$100 as a bonus, if it were necessary.

S8008 Mr. JOHNSTON. Limited to a total a of \$100 bonus.

S8008 Mr. MELCHER. No, not limited to a total of \$1 00. And a bonus of \$100. A bonus means something on top.

S8008 Mr. JOHNSTON. That is correct.

S8008 Mr. MELCHER. Having arrived at that compromise, it was the thought of the House and the Senate committees at this time - and the Senator served on the Committee on Energy which handled this bill - it was the thought at the start of this Congress, "Let us get a bill. We have a solution for this issue."

S8008 I understand that the committees have modified it somewhat, both in the House and in the Senate. That modification is not objectionable. But to go back now and say to those landowners, after these many years, "We have not arrived at the point of protecting your rights as landowner, but we are going to throw you into the pit of uncertainty and you are going to run the risk of having your land stripped away from you" - I have to say no to that. I think the Senate should say no to it, as the House has said no to it.

S8008 I hope the Senator's amendment is defeated.

S8008 Mr. BUMPERS. Mr. President, I assume we have just about reached the point where everybody has said everything they want to say on this.

S8008 First, I ask unanimous consent that Ark Monroe and George Jacobson, of my staff, may have the privilege of the floor during debate and vote on this measure.

S8008 The PRESIDING OFFICER. Without objection, it is so ordered.

S8008 Mr. BUMPERS. Second, since the Senator from Louisiana modified his amendment in accordance with my amendment to his amendment, at this time, I withdraw my amendment.

S8008 The amendment was withdrawn.

S8008 Mr. BUMPERS. Mr. President, there are two or three salient points I think ought to be made before the Senate votes on this. I preface what I want to say by saying that if the Senate does not accept this amendment, it will live to rue the day. It will live to rue the day.

S8008 First, we spend a lot of time talking about consumer rights. We are worried about inflation in this country because of the rapid rise of energy rates that have occurred and will continue to occur. Yet, here we are, about to pass a bill - and this of the greatest solutions to the energy provide for the literal obstruction of one of the greatest solutions to the energy crisis. That is the mining of coal.

S8008 Second, there is not a State in the Union, to my knowledge - not one of the 50 States - that provides that people who legitimately own the mineral rights can be deprived of those mineral rights simply because the surface owner does not want them to allow them. There is not a State in the Union that provides for anything even close to the compensation that this amendment provides in case the coal under the surface is dug.

S8008 There is not a State in the Union that even comes close to that compensation. And, Mr. President, I defy anybody in this Chamber to find for me a statute on the books of the United States Code that is as generous in the compensation that is to be awarded, through eminent domain or any other taking, as provided by this amendment.

S8008 Mr. President, as my third point, I reiterate just what this amendment does: It says to these surface owners, "We will give you the difference between the value of your farm today and after it is mined. That is the law in this country in all eminent domain proceedings: you get the difference between the before and the after value, considering the highest and best use to which that property could ever be put. Not only are we going to give you the before and after value; we are going to give you 2 years for loss of profits; and we are going to give you every expense that you have incurred by being dislocated or anything else.

{S8009} Fourth, we are going to give you any other expenses that you can conceive of no matter how specious it may be, and no matter how farfetched it may be. If there is a reasonable expectation of it, you get that.

S8009 Then what is this bill all about? I shall tell you what the bill is all about: It is to make sure that all strip mining is done and the land reclaimed to its original contours and as close to its original productivity as is possible.

S8009 So, after we pay all those four kinds of compensations, and after we reclaim the land and

put it back into its original contour, as close to its original productivity as is possible, we give the land back to him.

S8009 I do not think there is anything uncharitable or ungenerous about that.

S8009 Let us take another point. We are talking about consumers. Who is going to pay if the predictions that the Senator from Louisiana and I have made come true about the unjust enrichment that is going to be provided to the surface owners, who are going to have the hammer over the head of every lessee, the Department of the Interior, and the people of the United States? Who is going to pay for this outrageous price that these lessees will have to pay these surface owners? You and I both know who is going to pay: the consumers, the people who use electricity.

S8009 And somewhere down the line, I say to my dear colleague from Wyoming, we are not going to be mining a billion tons a year, as the President has said we should be doing by 1980 or 1985; we are going to be mining 2 to 10 billion tons a year. And we are going to be doing it very soon. And what is the price going to be? That is just anybody's guess.

S8009 So there are two things we want to bear in mind: No. 1, all of those millions of dollars that are going to go into the pockets of those surface owners, according to the illustration used by the Senator from Colorado a while ago, the consumers are going to pay. Who is going to be the loser? When the lessees bid this tract of land or the Department of the Interior puts out a tract of land for lease and says, "You can mine this if you can get the surface owners' consent," who also suffers? The Treasury of the United States.

S8009 We are not going to get as much for the coal because the lessee cannot pay that much for the coal. He has to pay for the surface on it. So the Treasury of the United States, and therefore, the people of the United States, are being robbed again - and I hesitate to use such a strong term.

S8009 Mr. President, as I say, I do not know of much that can be said that has not already been said on this amendment. But I do want to say that I am glad to stand on the Senate floor today and say that, unless this amendment is adopted and unless it sticks in the conference, the people of the United States will have a legitimate right to hold us responsible for an irresponsible act.

S8009 Mr. MELCHER. Mr. President, the Senator from Arkansas was talking generally about

the statutes concerning mining and eminent domain. I do not think he is really addressing strip mining of an area that might be 1,000 acres or 2,000 acres or 3,000 acres. I think his remarks were more pertinent to deep mining, where you just disturb a tiny fraction of the surface and sink a shaft.

S8009 Is there not a vast amount of difference where they are going to strip mine and take away all the surface that belongs to a landowner, and tell him, "Maybe you can get it back, reclaimed, 15 years from now, or maybe after a generation"? Is that not a huge difference from the question of what is a landowner's rights in relation to shaft mining, where they only disturb a little bit of the surface?

S8009 And what about all this cost for the consumer? We have heard this over and over again during the last 3 years. So we took some figures. There was a utility company that said "If we had surface owners' rights, those landowners out in Montana or Wyoming might get as much as \$1,000 an acre for their surface for that sage land, that grazing land."

S8009 So we took their figures, \$1,000 an acre, figured out the tonnage of coal underneath that, and figured out how many kilowatts of electricity it would generate. And, yes, it was going to cost the consumers. That was going to cost the consumers about \$0.00636 in their monthly utility bills. Find it in their monthly utility bill: \$0.00636 in the average monthly utility bill of consumers.

S8009 So, there, for the cost to consumers.

S8009 What is more important - that the landowner have some right over his surface, or do we concern ourselves about \$0.00636 in the average monthly utility bill of the consumer?

S8009 How much coal is involved? In my State, the USGS tells us there are 40-odd billion tons of strippable coal. The marketplace is going to establish where that coal is strip mined next year, 5 years from now, 10 years from now, and 20 years from now. We shall probably only strip mine, in the West, 200 million tons of coal in any year during the next 10 years. Why do we have to trample over the rights of those landowners, where it looks best to strip mine now, and ignore their rights for their surface, rather than being selective and saying to the marketplace, and through the economics of transportation and the economics of where the coal is wanted to be used: "Let us look at a series of alternatives where we might strip mine."

S8009 In doing so, then negotiate with the landowners in those particular areas of the West to see which ones are willing to forgo their surface.

S8009 It will not impede strip mining in the West, but it will bring to it an honesty and an equity we must have and this Senate must agree to.

S8009 Mr. McCLURE addressed the Chair.

S8009 Mr. DANFORTH. Will the Senator yield for a unanimous-consent request?

S8009 Mr. McCLURE. I am happy to .

S8009 Mr. DANFORTH. Mr. President, I ask unanimous consent that Allen Moore of my staff be granted the privilege of the floor.

S8009 The PRESIDING OFFICER (Mr. PELL). Without objection, it is so ordered.

S8009 Mr. McCLURE. Mr. President, I ask unanimous consent that Doug Smith of my staff be granted the privilege of the floor at all stages of the proceedings on this legislation.

S8009 The PRESIDING OFFICER. Without objection, it is so ordered.

S8009 Mr. McCLURE. Mr. President, a number of us have been involved in this debate for the last several years. An has been pointed out, this matter has been before the Congress of the United States for several years. My first reaction, as the Senator from Montana would know, is that we should not deal with the question of the surface owners. That is something that perhaps should best be dealt with by the States under State laws, in the various variety of ways in which State legislatures and State courts have wrestled with the question of surface, subsurface, owner rights, and the way we balance those two rights and the equities involved.

S8009 That was the initial reaction of the committee, to remain silent on this and let each State confront the question in its own way.

S8009 As we get into this question more deeply and we get involved more and more in a matter of national policy, then we begin to wrestle ourselves with what kind of policy was best.

S8009 I am convinced that if we have to make an error in this field, we ought to err on the side of protecting the rights of the surface property owner. That is really what we are talking about.

S8009 The Senator from Louisiana and the Senator from Arkansas are talking about payments of \$1 0 million an acre to the surface owner. That is patently and obviously ridiculous. That is not going to happen. Market constraints themselves will prevent that from happening. As the Senator from Wyoming has pointed out, no payments he knows of have exceeded \$1,000 an acre for surface-owner consent.

S8009 It has been suggested by some that all of this coal will be deprived to the owners of the coal, that people of the United States. The Senator from Louisiana stated that his people in Louisiana had to give up their oil and gas for the public good, why should not the people in the West have to give up their surface for the public good?

S8009 That is not exactly what he said, but this is what he meant.

S8009 Let me say, the owners of the oil and gas in Louisiana did not give it up, they sold it. It was not reserved for the Federal Government. It was owned by the owners who then sold it on the market and they got a price for all of it, not just the owner's consent.

S8009 They did not sell the right to consent to remove that oil and gas. They got the market price of the oil and gas. We are not even talking about that here.

S8009 I am not talking for people in my State because the State of Idaho does not have strippable coal. It has very little coal at all. But I am concerned about the competitive rights of the people who live in the Western United States, the public land States, as compared to people who live in the rest of the States in the United States because, as was observed, we did not have the same options that people in the rest of the United States had with regard to how we owned the land.

{S8010} The Congress of the United States put some restrictions on it before they would allow our people to own it. Those restrictions now become an onerous burden. I do not think it makes any sense at all, at least not to this Senator, to say, "You now must bear that burden because we want that coal."

S8010 It is not going to deprive the markets of the United States of coal that is necessary for the energy program in this country. There is plenty of coal, as has been observed by some.

S8010 The President of the United States has said that there is a national crisis in energy and I applaud him for having said that.

S8010 I applaud this Congress for finally beginning to realize that is true. Perhaps we will now evolve an energy policy because we now do recognize it is true.

S8010 But if we increase the coal consumption in this country to the extent the President of the United States has indicated we might over the next 7 years, he indicates, and others indicate, that half that will come from the eastern United States - from West Virginia, from Kentucky, from Arkansas, from Illinois, from Pennsylvania - and only half of it will come from the western United States, if that. And that half can be mined from private lands. It can be mined from Federal lands in which there is no division of ownership between surface and subsurface. It can be mined on public lands in which there is a division, but there is a consent freely given.

S8010 Why should we go further when it is not necessary to go further? Why should we deprive surface owners of their rights of ownership simply because it is convenient to Government to do that?

S8010 The Senator from Arkansas has indicated that it must take large tracts of land to put together a mining operation and we start to talk about 900,000 acres, or some such figure that was mentioned.

S8010 Let me put that into some kind of perspective. Any mining operation will be built around the single shovelful in the bottom of that hole. That single shovel with its necessary supporting activities will at any one time occupy probably less than 100 acres of surface.

S8010 Now, we may haul on roads, have storage yards, get into larger areas, but we are not talking about stripping 900,000 acres immediately or over the next 5, 10, or 15 years.

S8010 We are talking about maybe 50 or 100 shovels each operating in the bottom of a pit which occupies less than 100 acres. That pit will move, that opening will move. Over a period of time, from the time it is removed, from production until the time it is returned to production, some 5 or 6 years after mining is completed, we will have about 500 or 600 acres per shovel, per operation, removed from productive use at any one time.

S8010 That is not a massive disruption unless - unless - it happens to be critical to the operation of the farmer or the rancher whose land it may be occupying.

S8010 I went to Germany last year to take a look at the strip mine operations there in the lignite operation, the so-called brown coal, to see what they do over a 20- or 30-year period as they move through the countryside, remove villages, disrupt old churches, dig up old cemeteries, in order to get the coal that is underneath.

S8010 Is that what we want to say to the people of this country, that in every instance the public interest demands that they give up all of their heritage, that they give up what is important to them and sacrifice that on the altar of public convenience, when, as a matter of fact, it is not necessary to make that sacrifice of that nature in the public convenience?

S8010 Why should not the surface owner say, "I don't want you to mine that land"?

S8010 "Mr. BUMPERS. Will the Senator yield?"

S8010 Mr. McCLURE. "I want to maintain that bit of land."

S8010 I yield for a question without losing my right to the floor.

S8010 Mr. BUMPERS. Does the Senator know a single instance of State or Federal law where surface owner consent is required before minerals can be dug, or preservation reserved?

S8010 Mr. McCLURE. Let me put it in the contrary situation.

S8010 I know of no situation either under State or Federal law where the Federal Government can take private property for public use unless it is necessary to the public use.

S8010 Mr. BUMPERS. Does the Senator not consider the mining of coal necessary for public use?

S8010 Mr. McCLURE. If the Senator had been listening to my remarks, he would have understood the answer to that question. That is, it is not necessary to meet the public demand for coal to mine where it is not desired by the owner of the surface where the surface and subsurface are in separate ownership.

S8010 There is plenty of coal to meet all of our demands for the foreseeable future without concentrating on and without invading the one situation in which the surface and subsurface are in separate ownerships, and that is where the surface is owned by a private individual and the subsurface by the Federal Government, the mineral rights by the Federal Government - that one

instance. That is all we are talking about.

S8010 It is not necessary to mine those areas in order to meet the coal commitments that are necessary for our country. I do not know of a single instance in which any government - any government in a free society such as the United States - is given the authority to take private property and destroy private property rights unless it is essential to the public good. It is not essential to the public good in this instance.

S8010 Will there be a rip-off? I think not. I think it is quite obvious that there can be no rip-off when so many alternative sources of coal are readily available. When they have the alternatives, there is no way that that surface owner will then have the leverage that is necessary to have the rip-off of \$10 million per section that is referred to by the Senator from Louisiana.

S8010 Mr. BUMPERS. Mr. President, will the Senator yield for an observation?

S8010 Mr. McCLURE. I yield.

S8010 Mr. BUMPERS. I agree with the Senator to this extent: If all the acres where the Federal Government owns the surface and the minerals were contiguous and in economically viable tracts, then I think that what the Senator says is at least partially correct, and there would be no need right now because there would be enough acres of coal where the Federal Government owns the minerals and the surface to meet our immediate needs. But that overlooks one point.

S8010 The ownership of these surface rights is interspersed throughout the entire western part of the United States. The land in which the United States owns the surface and the minerals is not contiguous, and it is virtually impossible for the Secretary to design a plan on which anybody will want to bid. That makes this thing so obnoxious to me.

S8010 Mr. McCLURE. I understand the Senator's point, and I think he probably could find some instances in which the dispersed pattern of ownerships, the checkerboarding of ownership, might have that result. But I think it is also quite possible to show that there are large contiguous tracts of land far more than necessary to meet the needs of the public for the next 75 or 80 years, at least, where that pattern does not exist.

S8010 The truth of the matter is that, while we may speculate on that issue, I do not suppose that

either the Senator from Arkansas or the Senator from Idaho can produce a map this afternoon to prove that point.

S8010 However, I think it is obvious, with the tremendous volumes of coal that are out there, as compared to the market demand, that we simply do not have to confront that unique situation at the expense of depriving people of their private property rights.

S8010 Mr. McCLURE. I yield.

S8010 Mr. GOLDWATER. I call my friend's attention to the fact that in the State of Arizona, located on the Hopi and Navajo Indian Reservations, remains one-third of the coal in the entire United States. This is coal that is not on private land. This is Indian land. There is a section in this bill that deals specifically with how the Indians will be protected, and so forth, as they negotiate.

S8010 So in just this one area of shale coal, this cheap coal - my friend from New Mexico knows that it makes a good fire and that we generate a lot of electricity wanted to make certain that people understood that, and I also want to back up the Senator's claim that we do not have to disturb the Western United States to that extent.

S8010 Mr. McCLURE. I thank the Senator from Arizona for that observation.

S8010 Mr. President, I do not want to belabor this question. It is just that after several years of consideration, trying to sort out all the hypothetical and possible cases that might be made for or against any particular case, this Senator, at least, with it - I think it is important that we protect the surface rights of the individual.

S8010 We went through all this in years past and finally have enacted into law - thanks to the senior Senator from Montana - the protection of the property rights, the surface rights, and the subsurface rights on copper, gold, silver, or anything else that might be underneath. No longer can a man just back a rig up to your home and start drilling for minerals.

{S8011} This is not in this act, but I just decided that it was not necessary to deprive the ranchers of the Western United States of their rights to continue a ranching operation if they desired to do so. That is all it boils down to. If it were necessary, then we would have to confront this in a much different way, but it is not necessary. We can meet our energy commitments in this country, so far

as coal is concerned - any reasonable expectation over the next half century to a century - without confronting this problem by saying to the individual properly owner, "Sorry, friend; your home, your farm, your memories, your background must be sacrificed to the public good."

S8011 I do not think that is necessary now, and this Senator, at least, came down on the side of protecting the rights of the individual against the oppressive weight of the Federal Government in this instance.

S8011 Mr. DOMENICCI. Mr. President, will the Senator yield?

S8011 Mr. McCLURE. I yield.

S8011 Mr. DOMENICCI. Mr. President, I would not speak to this issue today but for the position of some of those who favor the amendment and oppose the committee report and because of the way they have expressed themselves with respect to what the committee bill does and what I, therefore, am supporting. When I support it, I feel compelled to make a few remarks.

S8011 First of all, we have a great deal of public domain land in my State, but we have very little that is festered with the problem we are discussing today. So I started a year ago trying to learn about this problem on the committee on which I serve.

S8011 First, I thank the junior Senator from Montana, who spoke today for a few moments, because I think it is important, in understanding how I voted in the committee, to know that I started with the explanation he made. It sounds today, in listening to the proponents of the amendment, as though this question of the surface rights and the mineral rights is just a black and white situation; that it is a simple question of mining law, that obviously Congress and these people clearly understood everything; that they knew they were reserving these mineral rights, and that at some late date you could come along and take out those minerals. The fact is that that is a very gray area.

S8011 Those particular homestead deeds reserve these minerals that we are speaking of today; but it is very questionable as the junior Senator from Montana said, whether or not we ever envisioned in that reservation the destruction of the fee, of the surface right fee, while we mined that coal.

S8011 So as I pursued my answer, I started there. I said that if that is so, then I have an absolute right, as a Senator, to be part of a policy that might clarify that particular gray set of property rights

vis-a-vis the United States and its constituent fee owner, surface owner, who sacrificed in homesteading. I started with that.

S8011 The second issue of which I had to convince myself was how much of this American coal owned by the Government is in that condition. I cannot give an exact percentage, but this Senator satisfied himself that the overwhelming proportion of it was not on that kind of land but, rather, on land that did not have that problem.

S8011 If we are talking about hundreds of billions of tons of coal on the public domain, the majority of it is not on this kind of land.

S8011 The majority of it is on land that the Federal Government owns, that is going to put out for lease and we are going to mine to satisfy our energy needs.

S8011 Once I have satisfied myself on those two points then I have to make a public policy decision, and it is a matter of policy as to whether or not we are going to move quickly against those lands wherein the surface and the fee are owned by an owner and by the Federal Government in terms of fee and mines, or whether we are going to let the marketplace go on the rest of the lands under a reclamation law that is valid.

S8011 I convinced myself that the property owners had a serious complaint that it was never intended that their lands be stripped, to begin with.

S8011 I convinced myself there is plenty of coal on land that is not like this, and it is a proper public policy to say, "Go first on that land that is not of diverse ownership, and if you want to go after the other do the reasonable, logical thing and require consent."

S8011 For those who think the marketplace is not going to have anything to do with the consent, they are ignoring the issue. They are talking as if you could drive down the road and find no other coal available to bid on, so you have to pay a farmer \$10 million an acre. That is an absurdity. That is an absurdity unless there are a few isolated cases of a little piece of land that you cannot do without. But the abundance of the evidence is that if you drive down the road and find two sections of Federal land that do not have the ownership problem, you bid on them and you are not going to drive up the street if you can bid that to the Federal Government and pay a man \$10 million an acre for land up the road.

S8011 Mr. JOHNSTON. Mr President, will the Senator yield?

S8011 Mr. DOMENICCI. Let me just finish. I have been waiting all afternoon, listening to the arguments, and let me say to my good friend from Louisiana on this one I do not agree, on the next one we will be together. We both have the same kind of goal on this bill, and it is to do right by the energy crisis and by the American people.

S8011 If I were the least bit convinced that we were going to be ripped off, I would not be for it. Quite to the contrary, I am convinced there is a valid public reason and valid public policy to distinguish between the ownership rights of these kinds of people who homesteaded and clear-cut cases where the Federal Government reserved the mineral rights, and that is the answer to some of the questions here about whether there is any law, any mining law, that makes you pay for these kinds of damages you provide for. Of course not, because here we have a gray kind of conveyance. The Federal Government never intended to reserve strip-mineable coal, as the junior Senator from Montana said. So we have a real opportunity to do equity kind of belatedly, and we are not going to harm the solution to the energy crisis.

S8011 My last remark is this: If it came to pass that 5 or 6 years from this date this kind of land was holding up energy development in this country, I would just ask what have we done that will not permit us to come back to the floor of the Senate and do what the Senator asks us to do today. In my opinion, nothing.

S8011 Those owners who have consented will have consented, and their land will be developed and mines will be growing very slowly, taking many, many decades, and if we find it has not worked, and consent is not being given, and \$1 0 million is being extracted, it will not be extracted very many times; let us come back and say, "Let us establish another policy," and let us say yours is right, then condemn it, as you suggest - you do not use the word, but condemn it - and pay reasonable damages under your definition or some other one. I think that is the issue.

S8011 There is a clear right to a public policy that says "protect these people." It is not black and white. It is not owners ripping off the Federal Government. These owners, under different circumstances in different times, would never have had these minerals ever even touched, for who would have dreamed at the turn of the century, that a mineral reservation meant one of these coal

machines that can dig up 30 tons at one whack. Nobody thought of that when we reserved this, so it is our job to determine this policy one way or the other. It is not in an atmosphere of who is going to rip off whom; it is in an atmosphere of what is right, and will we hurt America by doing it in its energy solution. The answer is the bill-is right, and we will not hurt the solution to the energy crisis if we go at it this way.

S8011 I would be delighted to yield to the Senator from Louisiana.

S8011 Mr. JOHNSTON. Mr. President, I ask for the yeas and nays.

S8011 The PRESIDING OFFICER (Mr. PELL). Is there a sufficient second? There is a sufficient second.

S8011 The yeas and nays were ordered.

S8011 Mr. DURKIN. Mr. President, will the Senator yield for a unanimous-consent request?

S8011 Mr. JOHNSTON. I yield.

S8011 Mr. DURKIN. I ask unanimous consent that William Houser of my staff be permitted the privileges of the floor during the deliberations and votes on the pending measure.

S8011 Mr. MELCHER. Mr. President, will the Senator yield for a similar unanimous consent request?

S8011 Mr. JOHNSTON. I yield.

{S8012} Mr. MELCHER. Mr. President, I ask unanimous consent that during the debate and votes on this bill three members of my staff be allowed the privileges of the floor: Bill Whitsitt, Janine Volsky, and Benton Stong.

S8012 The PRESIDING OFFICER. Without objection, it is so ordered.

S8012 Mr. JOHNSTON. Mr. President, I hope we can be ready to vote at this time. There is a lot of repetition that many of us can state, but I am ready to vote at this time.

S8012 Mr. STEVENS. Mr. President, I ask unanimous consent that my assistant, Timothy McKeever, be granted the privileges of the floor during the consideration and debate on this measure.

S8012 The PRESIDING OFFICER. Without objection, it is so ordered.

S8012 Mr. STEVENS. Mr. President, a parliamentary inquiry.

S8012 The PRESIDING OFFICER. The Senator will state it.

S8012 Mr. STEVENS. It is my understanding that following this vote the two amendments I submitted last night under the special order will follow.

S8012 The PRESIDING OFFICER. The Senator is correct. Following this vote the Senator from Alaska will be recognized to call up his two amendments.

S8012 The question is now on agreeing to the amendment, as amended, of the Senator from Louisiana.

S8012 Mr. DOMENICI. Mr. President, I ask unanimous consent that Darla West, Eric Everett, and Sam Ballinger be granted floor privileges.

S8012 The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

S8012 The clerk will call the roll.

S8012 The legislative clerk called the roll.

S8012 Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON), the Senator from California, (Mr. CRANSTON), the Senator from Maine (Mr. HATHAWAY), the Senator from Hawaii (Mr. INOUE), and the senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

S8012 I further announce that, if present and voting, the senator from Nevada (Mr. CANNON) would vote "nay."

S8012 Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD), the Senator from Nevada (Mr. LAXALT), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

S8012 The result was announced - yeas 25, nays 67, as follows:

S8012 [Rollcall Vote No. 149 Leg.]

S8012 YEAS - 25

S8012 Allen

S8012 Anderson

S8012 Bartlett

S8012 Bellmon
S8012 Bentsen
S8012 Bumpers
S8012 Case
S8012 Chiles
S8012 Curtis
S8012 Eagleton
S8012 Griffin
S8012 Haskell
S8012 Humphrey
S8012 Jackson
S8012 Javits
S8012 Johnston
S8012 Long
S8012 Mathias
S8012 Metzenbaum
S8012 Morgan
S8012 Nelson
S8012 Nunn
S8012 Pell
S8012 Stevenson
S8012 Talmadge
S8012 NAYS - 67
S8012 Abourezk
S8012 Baker
S8012 Bayh
S8012 Biden
S8012 Brooke

S8012 Burdick
S8012 Byrd, Harry F., Jr.
S8012 Byrd, Robert C.
S8012 Chafee
S8012 Church
S8012 Clark
S8012 Culver
S8012 Danforth
S8012 DeConcini
S8012 Dole
S8012 Domenici
S8012 Durkin
S8012 Eastland
S8012 Ford
S8012 Garn
S8012 Glenn
S8012 Goldwater
S8012 Gravel
S8012 Hansen
S8012 Hart
S8012 Hatch
S8012 Hayakawa
S8012 Heinz
S8012 Helms
S8012 Hollings
S8012 Huddleston
S8012 Kennedy
S8012 Leahy
S8012 Lugar

S8012 Magnuson
S8012 Matsunaga
S8012 McClure
S8012 McGovern
S8012 McIntyre
S8012 Melcher
S8012 Metcalf
S8012 Moynihan
S8012 Muskie
S8012 Pearson
S8012 Percy
S8012 Proxmire
S8012 Randolph
S8012 Ribicoff
S8012 Riegle
S8012 Roth
S8012 Sarbanes
S8012 Sasser
S8012 Schmitt
S8012 Schweiker
S8012 Scott
S8012 Sparkman
S8012 Stafford
S8012 Stennis
S8012 Stevens
S8012 Stone
S8012 Thurmond
S8012 Tower

S8012 Wallop

S8012 Weicker

S8012 Williams

S8012 Young

S8012 Zorinsky

S8012 NOT VOTING - 8

S8012 Cannon

S8012 Cranston

S8012 Hatfield

S8012 Hathaway

S8012 Inouye

S8012 Laxalt

S8012 McClellan

S8012 Packwood

S8012 So Mr. JOHNSTON'S amendment was rejected.

S8012 Mr. HANSEN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

S8012 Mr. METCALF. I move to lay that motion on the table.

S8012 The motion to lay on the table was agreed to.

S8012 Mr. METCALF. May we have order, Mr. President?

S8012 The PRESIDING OFFICER. The Senate will be in order. Senators will take their seats.

S8012 UP AMENDMENT NO. 250

S8012 Mr. STEVENS. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

S8012 The PRESIDING OFFICER. The amendment will be stated.

S8012 The second assistant legislative clerk read as follows:

S8012 The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment numbered 250.

S8012 Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be waived.

S8012 The PRESIDING OFFICER. Without objection, it is so ordered.

S8012 The amendment is as follows:

S8012 On page 305, line 24, insert following new section:

S8012 SEC. 516. (a) The Secretary is directed to contract with the National Academy of Sciences-National Academy of Engineering for an in-depth study of surface coal mining conditions in the State of Alaska in order to determine which, if any, of the provisions of this Act should be modified with respect to surface coal mining operations in Alaska.

S8012 (b) The Secretary shall report on the findings of the study to the President and Congress no later than two years after the date of enactment of this Act.

S8012 (c) The Secretary shall include in his report a draft of legislation to implement any changes recommended to this Act.

S8012 (d) Until one year after the Secretary has made this report to the President and Congress, or three years after the date of enactment of this Act, whichever comes first, the Secretary is authorized to modify the applicability of any environmental protection provision of this Act, or any regulation issued pursuant thereto, to any surface coal mining operation in Alaska from which coal has been mined during the year preceding enactment of this Act if he determines that it is necessary to insure the continued operation of such surface coal mining operation. The Secretary may exercise this authority only after he has (1) published notice of proposed modification in the Federal circulation and in a newspaper of general circulation in the area of Alaska in which the affected surface coal mining operation is located, and (2) held a public hearing on the proposed modification in Alaska.

S8012 (e) In order to allow new mines in Alaska to continue orderly development, the Secretary is authorized to issue interim regulations pursuant to Sec. 401(b) including those modifications to the environmental standards as required based on the special physical, hydrological and climatic conditions in Alaska but with the purpose of protecting the environment to an extent equivalent to those standards for the other coal regions.

S8012 (f) There is hereby authorized to be appropriated for the purpose of this section \$250,000.

S8012 Mr. STEVENS. I yield to the Senator from Oklahoma for a unanimous-consent request, without relinquishing my right to the floor.

S8012 Mr. BARTLETT. Mr. President, I ask unanimous consent that Erich Evered of my staff be accorded the privilege of the floor during the discussion and voting on this measure.

S8012 The PRESIDING OFFICER. Without objection, it is so ordered.

S8012 Mr. METCALF. Mr. President, may we have order? The Senate is not in order.

S8012 Mr. HEINZ. Mr. President, will the Senator yield for a unanimous-consent request?

S8012 Mr. STEVENS. Mr. President, I am hopeful that with the aid of -

S8012 The PRESIDING OFFICER. The Senate will be in order.

S8012 The Senator from Alaska may proceed.

S8012 Mr. STEVENS. I am hopeful that we can get the managers of the bill to accept this amendment. I do not expect to take much time. I would be willing to enter into a time limitation agreement, but I do not believe it is really necessary.

S8012 This amendment is similar to one I offered last year when the bill was before the committee. This year I submitted it to the committee again, but the committee felt that it would be better to offer the amendment on the floor.

S8012 The problem is tht in Alaska some 54,152 square miles of land onshore and ovr 4,000 square miles offshore are potential producing areas containing known economic deposits of coal. In most of those areas, the coal exists in the permafrost or semicontlnuous permafrost areas where, if the overburden is removed, the ice portion, that is, the frozen water portion of the overburden melts, making it impossible to comply with some of the provisions in this bill. Thsi is particularly true with respect to the original contour concept, and with regard to the restoration of topsoil conditions.

S8012 This amendment authorizes the Secretary of the Interior to continue to permit mining; and there is at least one mine in Alaska that would be forced to shut down if the amendment were not adopted. It would authorize the Secretary of the Interior to publish special regulations to modify any environmental protection provisions of this act, or any regulation issued under it, for any surface

coal mining operation in Alaska, as he deems necessary. There will be public notice and there will be adequate protection for the environment under this approach.

{S8013} Let me point out that this is not a small matter that we are discussing, because Alaska has total demonstrated coal resources of 2.029 trillion tons. Over 2 trillion tons of coal could be mined in my State.

S8013 We do not seek any provisions which would allow our State to be raped. What we do seek is regulations which are adapted to the special and peculiar conditions of our area.

S8013 I am hopeful that the Senator from Montana will once again accept this amendment. It has been modified, as he knows, and it has been discussed with his staff.

S8013 Mr. METCALF. Mr. President, as the Senator from Alaska has already told us, this is an amendment which was accepted last year, the last time the bill was considered. The amendment has been modified so that it complies with some of the other provisions of the legislation. I am perfectly willing to accept it. I have talked to the minority leader (Mr. HANSEN) and I believe he is willing to accept it. I would like to move forward, unless there is further discussion.

S8013 Mr. STEVENS. The Senator knows we did modify it to cover the environmental section.

S8013 Mr. METCALF. Yes; I have spoken to the Senator from Alaska about this amendment, about the modifications I felt were necessary in order to make it comply with some of the other provisions of the legislation. He has modified it.

S8013 Mr. STEVENS. I appreciate that. It would permit the Secretary to issue regulations to allow the mines to operate, waiving only the environmental conditions. That is the modification.

S8013 Mr. METCALF. The Senator is correct. The Senator from Wyoming is nodding and I understand he concurs in the agreement that we have reached with the Senator from Alaska.

S8013 Mr. STEVENS. With that understanding, unless there is someone who wishes to raise any questions, I move the adoption of the amendment.

S8013 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8013 The amendment was agreed to.

S8013 Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

S8013 Mr. METCALF. Mr. President, I move to lay that motion on the table.

S8013 The motion to lay on the table was agreed to.

S8013 The PRESIDING OFFICER. The Senator from Alaska.

S8013 UP AMENDMENT NO. 251

S8013 Mr. STEVENS. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

S8013 The PRESIDING OFFICER. The amendment will be stated.

S8013 The legislative clerk read as follows:

S8013 The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment No. 251.

S8013 The legislative clerk proceeded to read the amendment.

S8013 Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8013 Mr. MELCHER. Mr. President, reserving the right to object, is this a printed amendment?

S8013 Mr. STEVENS.No, it is not a printed amendment. It is title I and title II of S. 302, which is printed and available to the Senator. I would be happy to explain that, if he would give me a minute.

S8013 Mr. METCALF. May I say to my colleague that S. 302 is a bill I introduced and a bill upon which I held hearings in the last Congress, a matter with which I am in accord with the Senator from Alaska.

S8013 Mr. MELCHER.Mr. President, I have no objection.

S8013 The PRESIDING OFFICER. Without objection, it is so ordered.

S8013 The amendment is as follows:

S8013 On page 284, line 7, insert the following:

S8013 Title V - UNIVERSITY COAL RESEARCH LABORATORIES

S8013 ESTABLISHMENT OF UNIVERSITY COAL RESEARCH LABORATORIES

S8013 SEC. 501. (a) The Director of the National Science Foundation, after consultation with the National Academy of Engineering, is authorized and directed to designate ten institutions of higher education at which university coal research laboratories will be established and operated.

S8013 (b) In making designations under this section, the Director shall consider the following criteria:

S8013 (1) The institution of higher education shall be located in a State with abundant coal reserves.

S8013 (2) The institution of higher education shall have experience in coal research, expertise in several areas of coal research, and potential or currently active, outstanding programs in coal research.

S8013 (3) The institution of higher education has the capacity to establish and operate the coal laboratories to be assisted under this title.

S8013 (c) Not more than one coal laboratory established pursuant to this title shall be located in a single State and at least one coal laboratory shall be established within each of the major coal provinces recognized by the Bureau of Mines, including Alaska.

S8013 (d) The Director shall establish a period, not in excess of ninety days after the date of enactment of this Act, for the submission of applications for designation under this section. Any institution of higher education desiring to be designated under this title shall submit an application to the Director in such form, at such time, and containing or accompanied by such information as the Director may reasonably require. Each application shall -

S8013 (1) describe the facilities to be established for coal energy resources and conversion research and research on related environmental problems including facilities for interdisciplinary academic research projects by the combined efforts of specialists such as mining engineers, mineral engineers, geochemists, mineralogists, mineral economists, fuel scientists, combustion engineers, mineral preparation engineers, coal petrographers, geologists, chemical engineers, civil engineers, mechanical engineers, and ecologists:

S8013 (2) set forth a program for the establishment of a test laboratory for coal characterization

which, in addition, may be used as a site for the exchange of coal research activities by representatives of private industry engaged in coal research and characterization;

S8013 (3) set forth a program for providing research and development activities for students engaged in advanced study in any discipline which is related to the development of adequate energy supplies in the United States. The research laboratory shall be associated with an ongoing educational and research program on extraction and utilization of coal.

S8013 (e) The Director shall designate the ten institutions of higher education under this section not later than ninety days after the date on which such applications are to be submitted.

S8013 FINANCIAL ASSISTANCE

S8013 SEC. 502.(a) The Director is authorized to make grants to any institution of higher education designated under section 101 to pay the Federal share of the cost of establishing (including the construction of such facilities as may be necessary) and maintaining a coal laboratory.

S8013 (b) Each institution of higher education designated pursuant to section 101 shall submit an application to the Director. Each such application shall -

S8013 (1) set forth the program to be conducted at the coal laboratory which includes the purposes set forth in section 101(d);

S8013 (2) provide assurances that the university will pay from non-Federal sources the remaining costs of carrying out the program set forth;

S8013 (3) provide such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for Federal funds received under this title;

S8013 (4) provide for making an annual report which shall include a description of the activities conducted at the coal laboratory and an evaluation of the success of such activities, and such other necessary reports in such form and containing such information as the Director may require, and for keeping such records and affording such access thereto as may be necessary to assure the correctness and verification of such reports; and

S8013 (5) set forth such policies and procedures as will insure that Federal funds made available

under this section for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available for the purposes of the activities described in section 101(d) (1), (2), and (3), and in no case supplant such funds.

S8013 LIMITATION ON PAYMENTS

S8013 SEC. 503. (a) No institution of higher education may receive more than \$4 ,000,000 for the construction of its coal research laboratory, including initially installed fixed equipment, nor may it receive more than \$1 ,500,000 for initially installed movable equipment, nor may it receive more than \$50 00,000 for new program startup expenses.

S8013 (b) No institution of higher education may receive more than \$1 ,500,000 per year from the Federal Government for operating expenses.

S8013 PAYMENTS

S8013 SEC. 504. (a) From the amounts appropriated pursuant to section 106, the Director shall pay to each institution of higher education having an application approved under this title an amount equal to the Federal share of the cost of carrying out tht application. Such payments may be in installments, by way of reimbursement, or by way of advance with necessary adjustments on account of underpayments or overpayments.

S8013 (b) The Federal share of operating expenses for any fiscal year shall not exceed 50 per centum of the cost of the operation of a coal research laboratory.

S8013 ADVISORY COUNCIL ON COAL RESEARCH

S8013 SEC. 505. (a) There is established an Advisory Council on Coal Research which shall be composed of -

{S8014} (1) the Director fo the National Science Foundation, who shall be Chairman;

S8014 (2) the Director of the Bureau of Mines of the Department of the Interior;

S8014 (3) the President of the National Academy of Sciences;

S8014 (4) the President of the National Academy of Engineering;

S8014 (5) the Director of the United States Geological Survey; and

S8014 (6) six members appointed by the Director from among individuals who, by virtue of experience or training, are knowledgeable in the field of coal research and mining, and who are representatives of institutions of higher education, industrial users of coal and coal-derived fuels, the coal industry, mine workers, nonindustrial consumer groups, and institutions concerned with the preservation of the environment.

S8014 (b) The Advisory Council shall advise the Director with respect to the general administration of this title, and furnish such additional advice as he may request.

S8014 (c) The Advisory Council shall make an annual report of its findings and recommendations (including recommendations for changes in the provisions of this title) to the President not later than December 31 of each calendar year. The President shall transmit each such report to the Congress.

S8014 (d) (1) Members of the Council who are not regular officers or employees of the United States Government shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Director, but not exceeding the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

S8014 (2) Members of the Council who are officers or employees of the Government shall be reimbursed for travel subsistence, and other necessary expenses incurred by them in carrying out their duties on the Council.

S8014 (e) Whenever a member of the Council appointed under clauses (1) through (5) is unable to attend a meeting, that member shall appoint an appropriate alternate to represent him for that meeting.

S8014 AUTHORIZATION OF APPROPRIATIONS

S8014 SEC. 506. There are authorized to be appointed not to exceed \$30,000,000 for the fiscal year ending September 30, 1979 (including the cost for construction, equipment, and startup expenses) and \$7,500,000 beginning with the fiscal year 1980 each fiscal year thereafter through the

fiscal year ending June 30, 1983, to carry out the provisions of this title.

S8014 TITLE VI - ENERGY RESOURCE GRADUATE FELLOWSHIPS

S8014 PROGRAM AUTHORIZED

S8014 SEC. 601. (a) The Director is authorized to award under the provisions of this title not to exceed one thousand fellowships for the fiscal year ending September 30 1979, and each of the five succeeding fiscal years. Fellowships shall be awarded under the provisions of this title for graduate study and research in those areas of applied science and engineering that are related to the production, conservaton, and utilization of fuels and energy. Fellowships shall be awarded to students in programs leading to master's degrees. Such fellowships may be awarded for graduate study and research at any institution of higher education, library, archive, or any other research center approved by the Director after consultation with the Commissioner of Education.

S8014 (b) Such fellowships shall be awarded for such periods as the Director may determine, but not to exceed two years.

S8014 (c) In addition to the number of fellowships authorized to e awarded by subsection (a) of this section, the Commissioner is authorized to award fellowships equal to the number previously awarded during any fiscal year under this title but vacated prior to the end of the period for whcih they were awarded; except that each fellowship awarded under this subsection shall be for such period fo graduate work or research, not in excess of the remainder of the period for which the fellowship which it replaces was awarded as the Commissioner may determine.

S8014 AWARDING OF FELLOWSHIPS

S8014 SEC. 602. Recipients of fellowships under this title shall be -

S8014 (a) persons who have been accepted b an institution of higher education for graduate study leading to an advanced degree or for a professional degree, and

S8014 (b) persons who plan a career in the field of energy resources, production, or utilization.

S8014 DISTRICUTION OF FELLOWSHIPS

S8014 SEC. 603. In awarding followships under the provisions of this title, the Director shall endeavor to provide equitable distribution of such fellowships throughout the Nation, except that the

Director shall give special attention of institutions of higher education, libraries, archives, or other research centers which have a demonstrated capacity to offer courses of study or research in the field of energy resources and conservation and conversion and related disciplines. In carrying out his responsibilities under this section, the Director shall take into consideration the projected need for highly trained engineers and scientists in the field of energy sources.

S8014 STIPENDS AND INSTITUTIONS OF HIGHER EDUCATION ALLOWANCES

S8014 SEC. 604. (a) Each person awarded a fellowship under this title shall receive a stipend of \$10,000 for each academic year of study. An additional amount of \$500 for each such calendar year of study shall be paid to such person on account of each of his dependents.

S8014 (b) In addition to the amount paid to person pursuant to subsection (a) there shall be paid to the institution of higher education at which each such person is pursuing his course of study, 100 per centum of the amount paid to such person less the amount paid on account of such person's dependents, to such person less any amount charged such person for tuition.

S8014 LIMITATION

S8014 SEC. 605. No fellowship shall be awarded under this title for study at a school or department of divinity. For the purpose of this section, the term "school or department of divinity" means an institution or department or branch of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation or to prepare them to teach theological subjects.

S8014 FELLOWSHIP CONDITIONS

S8014 SEC. 606. (a) A person awarded a fellowship under the provisions of this title shall continue to receive the payments provided in section 204(a) only during such periods as the Director finds that he is maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, in an institution of higher education, and is not engaging in gainful employment other than part-time employment in teaching, research, or similar activities, approved by the Director.

S8014 (b) The Director shall require reports containing such information in such forms and to be filed at such times as he determines necessary from each person awarded a fellowship under the

provisions of this title. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Director, stating that such person is making satisfactory progress in, and is devoting essentially full time to, the research for which the fellowship was awarded.

S8014 APPROPRIATIONS AUTHORIZED

S8014 SEC. 607. There are authorized to be appropriated \$1 1,000,000 for the fiscal year ending September 30, 1979, and for each of the five succeeding fiscal years. For payments for the initial awarding of fellowships awarded under this title, there are authorized to be appropriated for the fiscal year ending September 30, 1979, and for each of the five succeeding fiscal years, such sums as may be necessary in order that fellowships already awarded might be completed.

S8014 RESEARCH AND DEMONSTRATION PROJECTS OF ALTERNATIVE COAL-MINING TECHNOLOGIES

S8014 SEC. 608. (a) The Secretary is authorized to conduct and promote the coordination and acceleration of, research, studies, surveys, experiments, demonstration projects, and training relating to -

S8014 (1) the development and application of coal-mining technologies which provide alternatives to surface disturbance and which maximize the recovery of available coal resources, including the improvement of present underground mining methods, methods for the return of underground mining wastes to the mine void, methods for the underground mining of thick coal seams and very deep seams, and

S8014 (2) safety and health in the application of such technologies, methods, and means.

S8014 (b) In conducting the activities authorized by this section, the Secretary may enter into contracts with and make grants to qualified institutions, agencies, organizations, and persons.

S8014 (c) There are authorized to be appropriated to the Secretary, to carry out the purposes of this section, \$3 5,000,000 for each fiscal year beginning with the fiscal year 1979, and for each year thereafter for the next four years.

S8014 (d) At least sixty days before any funds are obligated for any research studies, surveys,

experiments or demonstration projects to be conducted or financed under this Act in any fiscal year, the Secretary in consultation with the Administrator of the Energy Research and Development Administration and the heads of other Federal agencies having the authority to conduct or finance such projects, shall determine and publish such determinations in the Federal Register that such projects are not being conducted or financed by any other Federal agency. On December 31 of each calendar year, the Secretary shall report to the Congress on the research studies, surveys, experiments or demonstration projects, conducted or financed under this Act, including, but not limited to, a statement of the nature and purpose of each project, the Federal cost thereof, the identity and affiliation of the persons engaged in such projects, the expected completion date of the projects and the relationship of the projects to other such projects of a similar nature.

S8014 (c) Subject to the patent provisions of section 306(d) of this Act, all information and data resulting from any research studies, surveys, experiments, or demonstration projects conducted or financed under this Act shall be promptly made available to the public.

S8014 Page 284 line 7 renumber Title called; "Administrative and Miscellaneous Provisions" as Title VII and renumber subsections accordingly.

{S8015} Page 291 after line 3 add:

S8015 "(30) 'coal laboratory' means a university coal research laboratory established and operated pursuant to a designation made under Section 501 of this Act,

S8015 "(31) 'institution of higher learning' means any such institution as defined by Section 1201(a) of the Higher Education Act of 1968, and

S8015 "(32) 'Director' means Director of the National Science Foundation."

S8015 Mr. METZENBAUM. Will the Senator from Alaska yield for a unanimous-consent request?

S8015 Mr. STEVENS. I yield.

S8015 Mr. METZENBAUM. Mr. President, I ask unanimous consent that Mary Jane Due Roger Berliner, and Roger Miller of my staff be accorded the privilege of the floor during the consideration of the pending legislation.

S8015 The PRESIDING OFFICER. Without objection, it is so ordered.

S8015 Mr. HART. Will the Senator yield for a unanimous-consent request?

S8015 Mr. STEVENS. I yield.

S8015 Mr. HART. Mr. President, I ask unanimous consent that Peter Gold and Len Stewart of my staff, be granted the privilege of the floor during the consideration of the pending legislation.

S8015 The PRESIDING OFFICER. Without objection, it is so ordered.

S8015 Mr. HARRY F. BYRD, JR. Will the Senator yield for another unanimous-consent request?

S8015 Mr. STEVENS. I yield.

S8015 Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that John I. Brooks, of my staff, be granted the privilege of the floor during the consideration of the pending legislation.

S8015 The PRESIDING OFFICER. Without objection, it is so ordered.

S8015 Mr. STEVENS. Mr. President, this is title I and title II of S. 302 introduced by the senior Senator from Montana, the manager of the bill. I am not in any way trying to embarrass my distinguished colleague. The situation was this: It was my understanding that this was in the House bill. I had a visitor in my office who pointed out that only title III of the Senator's bill was in the House version of the bill.

S8015 Title I deals with the establishment of university coal research laboratories and is a provision I believe most of us would support.

S8015 Title II deals with the creation of energy research graduate fellowships.

S8015 One of the great difficulties we have as we try to move the country to convert and substitute for either gas or oil is the lack of trained people, particularly graduate level people, to work in the area of coal conversion, and particularly in the environmental controls necessary to assure the proper development of the coal land consistent with this policy of Congress.

S8015 I hope my good friend knows I am not trying to embarrass him by offering this amendment, but I do not believe the bill would be complete unless all portions of S. 302 are considered in conference. I am hopeful the Senator will accept this amendment also. It is precisely

title I and II of the Senator's bill, S. 302.

S8015 Mr. METCALF. Mr. President, as the Senator knows, the Interior and Insular Affairs Committee held hearings on this bill last year. We had witnesses from industry laboratories and the various academic institutions testify before them.

S8015 One of the things in the President's program is the necessity to provide for the cleaner burning of coal so that we will have less air pollution. This is one of the research investigations which is necessary.

S8015 I will take the amendment to conference. It is not a new idea because we have held hearings in the Senate.

S8015 Mr. STEVENS. It is a very good idea. It is the Senator's idea, which my university very much applauds. People from the University of Idaho and other western universities came to see me about this. Until that time, as I said, I thought this was in the House bill. It was not until we discovered that it was not that I thought it should be offered here and we should have the option of taking it to conference.

S8015 If there are no further comments concerning the amendment, Mr. President, I move the adoption of this amendment.

S8015 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8015 The amendment was agreed to.

S8015 Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

S8015 Mr. METCALF. Mr. President, I move to lay that motion on the table.

S8015 The motion to lay on the table was agreed to.

S8015 Mr. RANDOLPH. Mr. President, I have an amendment at the desk.

S8015 The PRESIDING OFFICER. Under the previous order the Senator from Louisiana is to be recognized.

S8015 Mr. RANDOLPH. Mr. President, I have made arrangements with the Senator from Louisiana (Mr. JOHNSTON) and the Senator from Montana (Mr. METCALF) to proceed with my amendment.

S8015 Mr. METCALF. Mr. President, I ask unanimous consent that the Senator from West Virginia be recognized just for a moment. The amendment of the Senator from Louisiana is rather long.

S8015 The PRESIDING OFFICER. Without objection, the Senator from West Virginia is recognized.

S8015 UP AMENDMENT NO. 252

S8015 Mr. RANDOLPH. I am very apprecitive.

S8015 Mr. President, I ask that my amendment, which is at the desk, be considered at this time.

S8015 The PRESIDING OFFICER. The amendment will be stated.

S8015 The legislative clerk read as follows:

S8015 The Senator from West Virginia (Mr. RANDOLPH) proposes unprinted amendment No. 252.

S8015 Mr. RANDOLPH. Mr. President, I ask that reading of the amendment be dispensed with.

S8015 The PRESIDING OFFICER. Without objection, it is so ordered.

S8015 The amendment is as follows:

S8015 On page 305, line [*] insert the following new section:

S8015 "COORDINATION OF REGULATORY AND INSPECTION ACTIVITIES"

S8015 "SEC. 516(a). The President shall, to the extent appropriate, and in keeping with the particular enforcement requirements of each Act referred to heren, insure the coordination of regulatory and inspection activities among the departments, agencies, and instrumentalities to which such activities are assigned by this Act, by the Clean Air Act, by the Water Pollution Control Act, by the Department of Energy Organization Act, and by existing or subsequently enacted Federal mine safety and health laws, except that no such coordination shall be required with respect to mine safety and health inspections, advance notice of which is or may be prohibited by existing or subsequently enacted Federal ne safety and health laws.

S8015 (b) The President may execute the coordination required by this section by means of an Executive Order or by any other mechanism he determines to be appropriate."

S8015 Mr. RANDOLPH. Mr. President, this amendment requires the President to coordinate regulatory and inspection activities under several critical environmental and safety programs. I desire to have the complete understanding of the able managers of this important legislation, Senator METCALF and Senator HANSEN and I believe they are in favor of the amendment.

S8015 This amendment would direct the President to effect this coordination to the extent practicable among regulatory and inspection activities mandated under S. 7, under the Department of Energy Organization Act, the Clean Air Act, the Water Pollution Control Act, and under nine health and safety laws in order to avoid duplication of effort and excessive numbers of inspections by these agencies. The amendment is designed to achieve a cooperative effort among the agencies involved in these programs and develop, if possible, a system so that such agencies may jointly inspect an operation, mine, or facility at the same time. Its purpose also is to avoid the promulgation of regulations by several agencies which, if independently arrived at, may act at cross purposes with each other or cause confusion.

S8015 The amendment does not reduce the number of inspections in various areas of concern - for example surface mine reclamation and water pollution - but it will help alleviate the total number of disruptions to a particular operation. This, in my judgment, will be beneficial to both employees and management.

S8015 An exception is provided with respect to any mine safety and health inspections, which are, by law, prohibited from disclosure in advance to anyone outside the agency. Such inspections and their confidentiality are essential to the success of mine safety and health standards enforcement.

S8015 Mr. METCALF. Will the Senator from West Virginia yield?

S8015 Mr. RANDOLPH. I yield to the able Senator from Montana.

S8015 Mr. METCALF. As I understand it, we are talking about the fact that we do not want a parade of inspectors through these mines. We want to have a coordination of inspections. But insofar as safety and health inspections are concerned, there is an exception in the Senator's amendment.

{S8016} Mr. RANDOLPH. That is correct.

S8016 Mr. METCALF. I thank the Senator. I am in accord, and I agree.

S8016 Mr. RANDOLPH. I appreciate the helpfulness and cooperation of the able Senator from Montana (Mr. METCALF).

S8016 The PRESIDING OFFICER (Mr. MOYNIHAN). The question is on agreeing to the amendment.

S8016 The amendment was agreed to.

S8016 Mr. RANDOLPH. I move to reconsider the vote by which the amendment was agreed to.

S8016 Mr. METCALF. I move the lay that motion on the table.

S8016 The motion to lay on the table was agreed to.

S8016 Mr. JOHNSTON. Mr. President, I call up my amendment No. 277 and ask for its immediate consideration.

S8016 The PRESIDING OFFICER. The amendment will be stated.

S8016 The assistant legislative clerk read as follows:

S8016 The Senator from Louisiana (Mr. JOHNSTON) for himself, Mr. DOMENICI, Mr. BARTLETT, Mr. LAXALT, Mr. HAYAKAWA, Mr. McCLURE, Mr. HATCH, Mr. TOWER, Mr. GOLDWATER, Mr. HARRY F. BYRD, Jr., Mr. BELLMON, Mr. ALLEN, and Mr. GARN proposes an amendment.

S8016 On page 284, line 6, insert a new section 429 as follows:

S8016 SEC. 429. (a) Notwithstanding any other provision of the Act, any State which has, on the date of enactment of this Act, an existing program regulating surface coal mining operation may elect to retain exclusive State jurisdiction over the regulation of surface coal mining and reclamation operations taking place on lands within the State by incorporating in State law standards which are equal to or more stringent than the environmental protection performance standards of sections 415 and 416.

S8016 (1) If a State so elects, it shall notify the Secretary within one hundred and thirty-five days after enactment of this Act. Pending final determination by the Secretary pursuant to this section (including judicial review), the State shall apply and insure compliance with subsections 402(a), (b), and (c).

S8016 (2) Such environmental performance standards shall be incorporated into State law within twenty-four months after enactment of the Act.

S8016 (3) The Secretary shall hold a public hearing in the State as soon after such standards are incorporated into State law to determine if the environmental performance standards are equal to or more stringent than the standards in sections 415 and 416.

S8016 (4) If the Secretary finds that the State standards are not equal to or more stringent than the standards in sections 415 and 416, he shall recommend to the State what conforming changes are necessary and shall afford such State an appropriate period of time to enact conforming amendments but in no event shall such period exceed adjournment sine die of the next full session of the State legislature to occur after such finding. Such finding shall be reviewable in a trial de novo in a Federal district court in such State.

S8016 (5) If such State falls within the prescribed time to submit acceptable amendments, the Secretary shall impose a program pursuant to section 403 or 404.

S8016 (6) If the Secretary finds that State law is equal to or more stringent than the standards in section 415 and 416, then the State shall retain exclusive jurisdiction pursuant to State law over all surface coal mining operations in such State except as follows:

S8016 (a) For a period of four years after such determination, the Secretary shall take such actions as he deems appropriate to monitor State regulation. If within this period the Secretary determines after public hearings that the State is failing to effectively enforce State law with regard to the environmental performance standards, he shall impose a program pursuant to section 403 or 404 of this Act. Such determination shall be reviewable in a trial de novo in a federal district court in such State.

S8016 (b) Nothing in this section shall be construed to deny such States the effect of sections 505(a) and (c) of this Act, nor the right to fully participate with respect to title III in the same manner as a State with an approved State program.

S8016 (c) States, with cooperative agreements with the Secretary existing on the date of enactment of this Act, which elect pursuant to this section shall be permitted to continue to regulate surface coal mining and reclamation operations on Federal lands within the State pursuant to such agreements: Provided, That the Secretary has made the determination required by subsection (a) (6) and such agreements are modified accordingly: Provided further, That such existing agreements are

modified to require compliance with the initial regulatory procedures of subsection (a) (1).

S8016 The Secretary shall retain his duties under sections 2(a), (2) (B) and 2(a) (3) of the Federal Mineral Leasing Act, as amended. Nothing in this section shall be construed as authorizing the Secretary to delegate to the State his duty to designate certain Federal lands as unsuitable for coal mining pursuant to section 422 of this Act, or to regulate other activities taking place on Federal lands.

S8016 Mr. JOHNSTON. Mr. President, this is known as the Johnston-Domenici amendment. It is an amendment which was put together by the distinguished Senator from New Mexico in the committee and was jointly handled by the two of us.

S8016 This is the States rights amendment. Let me say at the outset, Mr. President, that I hope we can vote on this matter before the hour of 6 p.m. I understand our Republican friends must go to a dinner tonight. I wonder if it will be possible to get a unanimous-consent agreement to vote on it on or before the hour of 6 p.m.?

S8016 Mr. DURKIN. Reserving the right to object, I shall have to check on this time.

S8016 Mr. JOHNSTON. The problem is that we shall have to put it over until tomorrow and a number of us have plans not to be here tomorrow. I think the issue is well understood and it just means making some of us miss our appointments back in our States.

S8016 Mr. DURKIN. I have no desire to cause anyone to miss any engagements. I am concerned that, if it is adopted, this amendment will effectively nullify most of the bill. So, at this time, I think the Senator from New Hampshire will have to object.

S8016 Mr. JOHNSTON. The Senator will object?

S8016 Mr. DURKIN. I think the Senator has to object.

S8016 Mr. METCALF. Will the Senator yield to me for a moment?

S8016 Mr. JOHNSTON. Yes.

S8016 Mr. METCALF. Will the Senator from Louisiana agree to a division of time? It is now 5 minutes after 5. If the Senator wants a vote at 6, maybe I can persuade the Senator from New Hampshire, if we have a division of time.

S8016 Mr. JOHNSTON. Certainly.

S8016 Mr. METCALF. Could we divide the time between the opponents and the proponents?

S8016 Mr. JOHNSTON. Yes, absolutely.

S8016 Mr. DURKIN. Mr. President, I reserve the right to object for 5 minutes.

S8016 Mr. JOHNSTON. Mr. President, this is the so-called States rights amendment. What it does is this: Where the Secretary determines, after a public hearing, that the State law is at least as stringent as, or more stringent than, the Federal law, the State shall be given the opportunity to elect State control over their strip mining law. They shall make that notification within 135 days after enactment of this bill.

S8016 Mr. President, I understand that we can get a unanimous-consent agreement at this time.

S8016 Mr. METCALF. If the Senator has 30 minutes, would he give me 25 minutes?

S8016 Mr. JOHNSTON. Absolutely.

S8016 Mr. METCALF. And vote at 6 p.m.

S8016 Mr. JOHNSTON. Mr. President, I ask unanimous consent that a vote on the pending amendment occur not later than the hour of 6 p.m.; that the time be divided equally between myself and Senator DOMENICI.

S8016 The PRESIDING OFFICER. Is there objection?

S8016 Mr. WALLOP. Mr. President, reserving the right to object, I have an amendment which I propose to add as a perfecting amendment to this. I want to have the opportunity to do that. If the Senator's amendment will not take very long -

S8016 Mr. JOHNSTON. That will have to be done out of the time.

S8016 Mr. WALLOP. I ask if the Senator will reserve me a moment out of his time.

S8016 The PRESIDING OFFICER. The Senator from Louisiana has the floor.

S8016 Mr. METCALF. Could we get a vote at a quarter to 6?

S8016 Mr. JOHNSTON. Quarter to 6 is all right.

S8016 Mr. METCALF. May we have the yeas and nays?

S8016 Mr. MELCHER. Mr. President, reserving the right to object.

S8016 Mr. DOMENICI addressed the Chair.

S8016 Mr. MELCHER. Will the Senator yield? Does the Presiding Officer recognize me?

S8016 The PRESIDING OFFICER. The Senator from Louisiana has the floor, Will he yield to the Senator from Montana?

S8016 Mr. JOHNSTON. Only for reserving the right to object, Mr. President.

S8016 Mr. MELCHER. Reserving the right to object, this is a pretty serious amendment and I do not know how many amendments might be made to it. To dispose of it in only 40 minutes is asking quite a bit of us. I hope that the Senator from Louisiana can see fit at least to debate it for a couple of hours. I do not know how many people have plans.

S8016 Mr. JOHNSTON. I say to my distinguished friend that it is not the seriousness of the amendment, but the fact that our Republican friends must leave at 6 to attend a dinner. A number of us had plans to leave on Friday. I think the amendment is well understood. It is a simple concept. I hope we can vote on it and let us keep our plans to go back to our States.

{S8017} Mr. MELCHER. Mr. President, may I inquire how many amendments to this amendment there might be?

S8017 The PRESIDING OFFICER. So far, one Senator has announced an intention.

S8017 Mr. JOHNSTON. And I shall modify my own amendment.

S8017 Mr. MELCHER. In that case, I shall not object.

S8017 Mr. DOMENICI. Mr. President, reserving the right to object, I ask the junior Senator from Wyoming if he intends to ask for a rollcall vote on his amendment.

S8017 Mr. WALLOP. It is my intention at this moment, although it may not be necessary.

S8017 Mr. DOMENICI. I ask the Senator from Louisiana, how are we going to work that out in terms of allowing him time? If we allow him just a few moments and 15 minutes for a rollcall vote, there is not much time for the amendment.

S8017 Mr. JOHNSTON. Could we have a 10-minute rollcall; have the rollcall for the amendment of the Senator from Wyoming start at 10 minutes to 6 and the rollcall start at 6 o'clock on our amendment?

S8017 Mr. President, let me restate the unanimous-consent request.

S8017 I ask unanimous consent that the Johnston-Domenici amendment be called for a vote not later than the hour of 6 p.m.; that that vote be limited to 10 minutes in length; that the time be equally divided on that; that the junior Senator from Wyoming have a vote on his amendment in the first degree; that that vote occur at the hour of 10 minutes to 6, and also be limited to 10 minutes.

S8017 Mr. BROOKE. I object.

S8017 The PRESIDING OFFICER. Objection is heard.

S8017 The Senator from Louisiana has the floor.

S8017 Mr. JOHNSTON. Mr. President, this amendment, as I say, I thought was well understood. I thought we could get this business out of the way. I regret very much that we cannot dispatch the matter more quickly. However, let me say what this amendment does.

S8017 Mr. BROOKE. Will the Senator yield?

S8017 Mr. JOHNSTON. Yes.

S8017 Mr. BROOKE. I had hoped the Senate would agree to vote on it at 5:45, as the Senator had originally asked. I have a meeting at 6 o'clock. Could we vote on it at 5:45? We have heard this amendment, it has been debated. We all know what it is. If the Senator requires a vote, could he not have a vote on his amendment, at least, say, at 25 minutes to 6, a 10-minute vote? Would he agree to that

S8017 Mr. JOHNSTON. I agree to that.

S8017 Mr. President, I ask unanimous consent that a vote on the Johnston-Domenici amendment occur at the hour of 5:45 p.m.; that it be limited to 10 minutes; that a vote on the amendment in the first degree of the Senator from Wyoming occur at 5:35 p.m., and be limited to 10 minutes; and that, in the meantime, the time be divided equally.

S8017 Mr. MAKER. Reserving the right to object, did I understand correctly that the Senator is asking for a 10-minute limit on the first vote?

S8017 Mr. JOHNSTON. A 10-minute vote on both amendments.

S8017 Mr. BAKER. I would have to object to that. I hope the Senator will agree to a 15-minute

vote on the first and 10 minutes on the second.

S8017 Mr. JOHNSTON. Very well. I modify my request to request 15 minutes for the first and 10 minutes for the second.

S8017 The PRESIDING OFFICER. Is there objection?

S8017 Without objection, it is so ordered.

S8017 Mr. JOHNSTON. Mr. President, if State has a program which is at least as stringent or more stringent than the Federal program, it shall, within 135 days of the passage of this amendment, notify the Secretary of the Interior.

S8017 If the Secretary of the Interior determines that that is the case, then the State may proceed with the administration of its own program.

S8017 If the Secretary finds the State standards are not equal or more stringent than the Federal standards, he shall recommend to the State conforming changes that would be necessary.

S8017 Now, if a State fails to submit the required amendments, then the Secretary imposes a Federal program.

S8017 Very simply stated, Mr. President, it is a procedure with due process requirements that allows a State to continue with its own program, if it has a program at least as good as the Federal program. Mr. President, there has been one efficiency cited to the amendment.

S8017 A number of our colleagues have said, "Suppose a State initially has a program that is as stringent or more stringent than the Federal program, but the State amends that program, which can we do then?"

S8017 UP AMENDMENT NO. 253, MODIFICATION TO AMENDMENT 277

S8017 Mr. President, I send a modification of my amendment to the desk and ask for its immediate consideration.

S8017 The PRESIDING OFFICER. The amendment will be stated.

S8017 The assistant legislative clerk read as follows:

S8017 The Senator from Louisiana (Mr. JOHNSTON) proposes a modification to his amendment numbered 253.

S8017 Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the

amendment be dispensed with.

S8017 The PRESIDING OFFICER. Without objection, it is so ordered.

S8017 The amendment is as follows:

S8017 (b) (1) Upon revision of or significant amendment to the environmental performance standards of such state law adopted pursuant to subsection (a) of this section the Secretary shall ascertain whether such amended or revised environmental performance standards remain at least equal to the environmental performance standards sections 415 and 416 of this Act. In the event that the Secretary determines that such state law as revised or amended is not at least equal to the performance standards of sections 415 and 416, he shall cause a hearing to be held in the state, and the burden of proof shall be upon the state to show that its revised or amended reclamation law provides for environmental performance at least equal to those standards in sections 415 and 416 of this Act. If the Secretary finds that the environmental performance standards of the revised or amended state law are not equal to those of sections 415 and 416, he may proceed to impose a program pursuant to section 403 or section 404: Provided, however, that such findings shall first be reviewable in a trial de novo in a Federal District Court in such state.

S8017 (2) Prior to adoption of a revision or amendment to the environmental performance standards of such state law, the state regulatory authority may consult with the Secretary and shall receive in writing the opinion of the Secretary with respect to said revision or amendment. If in the opinion of the Secretary the environmental performance standards would remain at least equal to the environmental performance standards of sections 415 and 416 upon adoption of said revision or amendment, he shall so state, in writing, to the state regulatory authority, and such statement shall be binding upon the Secretary and his successors.

S8017 Mr. JOHNSTON. Mr. President, what this modification does is to provide that in case a State changes its law after once getting the ability to go ahead, if it changes that law then the Secretary shall hold a hearing in the State on the question of whether that law is still as stringent as or more stringent than the Federal law, and the State in that hearing shall bear the burden of proof to show the requisite finding.

S8017 It can be appealable to a district court where the State bears the burden of proving that change.

S8017 Should the State desire to make a change in its law and it wants to find out in advance, it may submit a request to the Secretary for a ruling in writing, and the Secretary may give that ruling in advance, in which event the ruling would be binding upon that Secretary and future Secretaries.

S8017 In other works, what this modification and amendment would do would provide a fall-safe mechanism to insure that once a State gets in conformity, gets control of its own strip mining program, that it not thereafter stray from the straight-and-narrow path by amending its own law in a way that would do damage to the program.

S8017 Mr. President, can we modify the amendment?

S8017 The PRESIDING OFFICER. The amendment has been modified.

S8017 Mr. JOHNSTON. Very well, I yield to my distinguished friend from New Mexico (Mr. DOMENICI).

S8017 Mr. DOMENICI. I think my friend from Louisiana.

S8017 Mr. President, I ask unanimous consent that Senators SCHWEIKER, LUGAR, and SCHMITT be added as original cosponsors to those shown on the printed amendment.

S8017 The PRESIDING OFFICER. Without objection, it is so ordered.

S8017 Mr. DOMENICI. Mr. President, I ask at this point that communications from the following State Governors be printed at this point in the RECORD.

S8017 We have a telegram urging support from the Governors of Louisiana, Illinois, Oklahoma, Utah, Nevada, New Mexico, and Texas and the Railroad Commission of Texas.

{S8018} There being no objection, the material was ordered to be printed in the RECORD, as follows:

S8018 BATON ROUGE, LA., March 30, 1977.

S8018 Hon. DEWEY F. BARTLETT, Russell Senate Office Building, Washington, D.C.;

S8018 I have reviewed a proposed amendment to section 42 of S. 7, the "Surface Mining Control and Reclamation Act of 1977" granting exclusive jurisdiction to regulate surface coal mining activities to those States which have existing programs patterned after the environmental protection standards of section 415 and 416 and wholeheartedly endorse its adoption.

S8018 EDWIN EDWARDS, Governor, State of Louisiana.

S8018 SPRINGFIELD, ILL., April 28, 1977.

S8018 Senator DEWEY F. BARTLETT, Russell Senate Office Building, Washington, D.C.

S8018 DEAR SENATOR BARTLETT: The State of Illinois with its vast coal reserves and its great agricultural production has considerable interest in the consideration of S. 7, the Surface Mining Control and Reclamation Act of 1977. Illinois has been a leader with its strong surface mining regulations and I strongly support efforts to bring all States into conformity with strict national environmental performance standards. I understand that you are considering amendments to S. 7 which would grant to a State exclusive jurisdiction over all surface mining in the State if that State enacts standards equal to the Federal requirements.

S8018 I would strongly endorse such an amendment and am hopeful that it will receive positive action in the Senate.

S8018 Sincerely, JIM THOMPSON, Governor of Illinois.

S8018 OKLAHOMA CITY, OKLA., April 12, 1977.

S8018 Hon. DEWEY F. BARTLETT, Russell Senate Office Building, Washington, D.C.;

S8018 I have reviewed a proposed amendment to section 429 of Senate bill 7, the Surface Mining Control and Reclamation Act of 1977, granting exclusive jurisdiction to regulate surface coal mining activities to those States which have programs patterned after the environmental protection standard of section 415 and 416. I endorse the concept of State regulation, which is the basis of this amendment.

S8018 DAVID L. BOREN, Governor of Oklahoma.

S8018 SALT LAKE CITY, UTAH, April 21, 1977.

S8018 Senator ORRIN G. HATCH, U.S. Senate, Washington, D.C.

S8018 I strongly urge your support for the Hansen amendment to S. 7 Federal strip mining legislation. The amendment would recognize Federal-State cooperative agreements for surface coal mine reclamation similar to the one entered into between Utah and the Department of Interior and would grant exclusive jurisdiction for enforcement of standards to States with existing reclamation

standards at least as stringent as Federal requirements. The amendment would preclude unnecessary duplication of enforcement efforts and reduce cost, this provision was adopted in subcommittee and I urge your support of the measure in full committee markup and floor consideration.

S8018 Sincerely, SCOTT M. MATHESON, Governor.

S8018 CARSON CITY, NEV., March 29, 1972.

S8018 Hon. PAUL LAXALT, U.S. Senate, Russell Senate Office Building, Washington, D.C.

S8018 I support the amendment to section 57 permitting exclusive State regulation. I believe States should have the right to regulate mining and reclamation operations within their boundaries.

S8018 Sincerely, MIKE O'CALLAGHAN, Governor of Nevada.

S8018 RAILROAD COMMISSION OF TEXAS, Austin, Texas, April 7, 1977.

S8018 Hon. DEWEY BARTLETT, U.S. Senate, Senate Office Building, Washington, D.C.

S8018 DEAR SENATOR BARTLETT: It is my understanding that you propose to introduce an amendment to S. 7 (the pending "Surface Mining Control and Reclamation Act of 1977") which would in effect allow a state which has an existing program regulating the surface mining and reclamation of coal lands within its state boundaries to elect to retain its jurisdiction over this regulatory function. As the Chairman of the Railroad Commission of Texas and Executive Officer of this State's agency administering this responsibility. I heartily applaud and support your proposed amendment.

S8018 As you are aware, the current language of S. 7 assumes that the states are presently not adequately regulating coal surface mining activities within their boundaries. This is certainly not the case in Texas. It is in the national interest to produce energy - not to create another federal program.

S8018 I congratulate you on your proposed amendment and offer you whatever assistance this agency has the power to provide you in your effort.

S8018 Sincerely, MACK WALLACE, Chairman.

S8018 OFFICE OF THE GOVERNOR, Austin, Texas, April 27, 1977.

S8018 Senator JOHN G. TOWER, Russell Office Building, Washington, D.C.

S8018 DEAR SENATOR TOWER: As you know, I oppose Federal coal surface mining legislation as unnecessary. Virtually every one of the coal producing states has enacted legislation regulating surface coal mining and reclamation. Texas, of course, has a very effective statutory program and it is being vigorously enforced.

S8018 In fact, the proposed federal surface mining legislation would destroy existing programs. It would abandon the expertise and experience developed by the states, including the entire procedural and administrative framework upon which the programs rest and which are tailored to the needs of each area. The federal bill (S. 7) would substitute instead an inflexible federal program which would be administratively unfeasible from the state's viewpoint. S. 7 would require the states to administer a federal program instead of their own programs. The state would be the agent of the federal government subject to the direction of a huge new federal bureaucracy.

S8018 I urge that the amendment to be offered in Committee and possibly on the Senate Floor by Senator Johnston be adopted so that states that presently regulate surface coal mining could elect to retain their own programs if the state adopted the environmental performance standards in S. 7 within 24 months after enactment. It would also permit the Federal Government to monitor the effectiveness of the modified state programs for a period of four years. Several other Governors also endorse the Johnston approach including those from: Wyoming, Montana, North Dakota, South Dakota, Nebraska, Nevada, New Mexico, Indiana, Oklahoma, Alabama and Louisiana.

S8018 It is the national interest to produce energy - not to create another Federal program. Senator Johnston's amendment will serve this interest. It will simplify the implementation of the bill, it will eliminate the need for a substantial federal, bureaucracy which would otherwise be necessary to implement the bill's provisions, and it will recognize the importance of the state in regulation of surface mining within its boundaries.

S8018 In view of its importance to the State of Texas and the Nation, I urge your consideration and support of Senator Johnston's amendment, which is cosponsored by Senators Domenici, Bartlett, and Laxalt, so that the integrity of state programs can be maintained.

S8018 Sincerely, DOLPH BRISCOE, Governor of Texas.

S8018 SANTA FE, N.MEX., April 14, 1977.

S8018 Re: Amendment S. 7.

S8018 Senator PETE DOMENICI, Capitol One, D.C.

S8018 I have reviewed the proposed amendment to S. 7, the Surface Mining Control and Reclamation Act of 1977, which grants exclusive jurisdiction to States which have existing regulation programs.

S8018 It is my understanding that the amendment would accomplish the goal of bringing all States into conformity with national environmental performance standards while recognizing and respecting the usefulness and importance of existing State reclamation programs.

S8018 I cannot overemphasize my endorsement of this amendment, and I am hopeful it will receive swift and positive action in the Senate.

S8018 JERRY APODACA, Governor.

S8018 [From the Congressional Record, Mar. 17, 1977]

S8018 POM-90. Senate Concurrent Resolution No. 5 adopted by the Legislature of the State of Utah relating to proposed surface management regulations of the Bureau of Land Management on Public Lands; to the Committee on Energy and Natural Resources:

S8018 "SENATE CONCURRENT RESOLUTION NO. 5

S8018 " Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:

S8018 "Whereas, a viable mining industry is essential to the economic and physical well being of the State of Utah and the Nation and independent prospectors and miners are significantly contributing to the discovery and development of mineral resources on public lands;

S8018 management rules which do not adversely affect important mining development in this State and Nation and the right of the individual to enter upon public lands for purposes of discovery, exploration and mining of mineral resources; request that the Congress recognize that this State has established an orderly plan for development and reclamation of mining properties, and that the State must be allowed to enforce its reclamation laws; and request that the Congress of the United States immediately evaluate the potential adverse effect of the proposed regulations and pass such

legislation as will better serve the public interest and the rights of individuals in the development of mineral resources on public lands.

S8018 "Be it further resolved, that a copy of this Resolution be forwarded to all members of the congressional delegation of the State of Utah, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to the Department of the Interior."

{S8019} POM-91. Senate Concurrent Resolution No. 6 adopted by the Legislature of the State of Utah relating to the recent order of President Carter deleting funds for the Bonneville Unit of the Central Utah Project from his fiscal 1973 budget requests; to the Committee on Energy and Natural Resources:

S8019 "SENATE CONCURRENT RESOLUTION NO. 6

S8019 " Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:

S8019 "Whereas, the Central Utah Project was instituted by the Colorado River Storage Project Act with the Bonneville Unit having a cost of approximately \$7 73 million and which would include 10 new reservoirs together with the enlargement of two more reservoirs, 140 miles of aqueducts, tunnels and canals, three power plants, nine pumping plants and 200 miles of pipe drains; and

S8019 "Whereas, the adequacy of these Environmental Studies and findings portraying tradeoffs and consequences of development were recently confirmed and upheld by the Federal District and Appellate Courts, and

S8019 "Whereas, since 1956, approximately \$2 00 million have already been expended toward the completion of this unit; and

S8019 "Whereas, \$3 2 million in federal funding was required for the fiscal year 1978 to maintain the completionschedule of this unit; and

S8019 "Whereas, the importance of the Bonneville Unit of the Central Utah Project was particularly evident this year when a recent meeting of the governors of the western and midwestern states in Denver. Colorado, together with the Secretary of the Interior, Cecil Andrus, concluded that the western and midwestern states are facing the worst drought in the history of the United States; and

S8019 "Whereas, the drought is expected to be devastating this year and to continue to cause severe water shortages for several years to come; and

S8019 "Whereas, this country is currently in the midst of an energy shortage which even the President has indicated will not change in the foreseeable future; and

S8019 "Whereas, since 1956 the construction and development in Salt Lake County has been established on the basis of the completion date set for the Bonneville unit and, absent such construction, the persons living therein would face a severe water shortage even in good water years; and

S8019 "Whereas, the termination of funds for this unit at this time, and in view of all of the foregoing, can serve only to extend the devastating impact which Utah and its surrounding states are presently facing and enhance the energy and food shortage facing the United States; and

S8019 "Whereas, if any steps changing this funding should be made, the funding should be increased at this time to speed up the completion of the unit in view of the energy shortage and drought facing this country.

S8019 "Now, therefore be it resolved, that the 42nd Legislature of the State of Utah, the Governor concurring therein, memorializes the President of the United States to reconsider his deletion of funding of the Bonneville Unit of the Central Utah Project for the fiscal year 1978 and, if he feels further study on the unit is required, that the study be undertaken while the unit continues.

S8019 "Be it further resolved, that copies of lature urges Congress to pass a budget which will allow the usage of funds for the continuation of the Bonneville unit, and that the construction of all units of the Central Utah Project should be expedited so that they can meet the existing and rapidly growing water requirements for both Indians and non-Indians within the State of Utah.

S8019 "Be is further resolved, that copies of this Resolution be forwarded to the President of the United States, the Speaker of the House, the President of the Senate, and the Congressional Delegation of Utah and the other western and midwestern states, as an expression of the strong feelings of the people of the state in relation to this project."

S8019 Mr. DOMENICI. Mr. President, I will read from the Governor of the State of New

Mexico, the last paragraph, and I quote:

S8019 I cannot overemphasize my endorsement of this amendment, and I am hopeful it will receive swift and positive action in the Senate.

S8019 Mr. President. I read that because when we first started hearings on this strip mining bill, many Governors from around the country, including the Governor of the State of New Mexico and a number of those that I have just read off, and that I will read off shortly, all indicated in a general sense that they supported a national strip mining law.

S8019 Then, as we read their testimony and their qualified support, we find inherent in every one of their endorsements a genuine concern.

S8019 One is positive, and that concern is that we set some minimal reclamation and environmental standards that can be enforced unequivocally by our National Government.

S8019 Then we see some very negative and some genuine concerns about the bill that is before us. That is that as they look at the permit system, as they look at the bonding system as they look at all of the front end parts of this bill, they say, "But we don't need those in order to have a reclamation program that is environmentally sound."

S8019 So the good Senator from Louisiana and I came up with this approach. We take the two sections of this bill that set forth the reclamation and environmental standards, that is section 415 and section 416, and we say that once and for all if we pass this bill, there is no State in the Union that can have less than that, and we say to any State in the Union, "You've got 24 months to put in place a State law, State rules and regulations that are enforceable and that are so found by the Secretary of the Interior."

S8019 And then we say, "If you so desire and the Secretary so finds, you are out from under this strip mining bill, but you are bound by the Senator from Louisiana's recent amendment to continue under that reclamation and environmental approach that has been once certified by the Federal Government."

S8019 Mr. President, this is a third way to get the minimal requirements under this law. The first way is to turn it all over to the National Government and let them do it. This bill permit a State to do that, if they so choose. I do not think anyone in his right mind will do it.

S8019 The second one permits a State to basically put in place everything that the Federal Government requires in this bill, regulations, rules, permit systems, and all the rest, and an environmental reclamation plan, and then the Federal Government might delegate to them on a revocable basis the right for the State to run that.

S8019 We are providing a third way. That third way is to get their program certified in 24 months as to environmental and reclamation standards and they opt out of this bill and run their own program.

S8019 In addition, the States of South Dakota, North Dakota, Montana, Virginia, Alabama, and Indiana have supported this amendment by direct communication.

S8019 Mr. President, I want to reserve for my friend from Louisiana and I some time and we are going to run short. But I want to clear up one other aspect of this amendment as we present it.

S8019 In the West, where there is public domain, there may be some concern that by a State getting its reclamation and environmental rules and standards up to the minimum in 24 months, that we may be turning over the Federal lands to them to run under that program. I want to clarify that under our amendment such an event requires the full consent of the Secretary of the Interior. So that we retain that right of the Secretary of the Interior inviolate for him to run that public domain under his rules and regulations, be they this national stripmining law or by consent to let the State run it under its law.

S8019 Mr. President, for those in this body who have seen national laws that started with a great goal and then end up totally festered by bureaucracy because we run a complicated program out of Washington, D.C., and for those who run around this country saying, "We don't want any more of that," the good Senator from Louisiana and I are offering them an opportunity to let their State get our from under that kind of bureaucracy and redtape. Yet, we feel that the principal ingredients of this bill, section 416 and section 415, will have to be complied with before they can opt out.

S8019 We think that reaches the genuine goals of the strip mining bill in its inception, when it was conceived and when it was brought forth by the committees of Congress.

S8019 I urge every Senator who thinks his State, with minimal Federal standards, might do a

better job than the Federal Government in running this program, with rules and regulations that are adopted here, a permit system that is designed and administered here, to seriously consider voting for the Johnston-Domenici State exclusive regulation amendment.

S8019 I reserve the remainder of my time.

S8019 Mr. JOHNSTON. Mr. President, I ask for the yeas and nays on both amendments.

S8019 The PRESIDING OFFICER. Without objection, the motion is in order.

S8019 Is there a sufficient second? There is a sufficient second.

S8019 The yeas and nays were ordered.

S8019 Mr. METCALF. Mr. President, a parliamentary inquiry.

{S8020} The PRESIDING OFFICER. The Senator will state it.

S8020 Mr. METCALF. What is the time situation?

S8020 The PRESIDING OFFICER. The vote will occur at 5:35. The Senator from Louisiana has a minute and a half. The Senator from Montana has 12.5 minutes.

S8020 Mr. METCALF. Mr. President, I will yield 5 minutes of the 12.5 minutes to the Senator from Wyoming, for his amendment, and then I want to have some time to conclude the debate.

S8020 I yield to the junior Senator from Wyoming.

S8020 UP AMENDMENT NO. 254

S8020 Mr. WALLOP. Mr. President, I call up my amendment.

S8020 The PRESIDING OFFICER. The amendment will be stated.

S8020 The assistant legislative clerk read as follows:

S8020 The Senator from Wyoming (Mr. WALLOP) proposes an unprinted amendment numbered 254, to Senator JOHNSTON's amendment, as amended:

S8020 Substitute a comma for a period after the words "Section 415 and 416" appearing at the end of the first paragraph in Section 429(a) and add "and by incorporating in State law provisions comparable to those contained in Sections 407, 408, 409, 410, 420, 421, and 514, of this Act.

S8020 The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the amendment.

S8020 Mr. WALLOP. Mr. President, the purpose of this amendment, although I doubt the sponsors of the Johnston-Domenici amendment agree, is to strengthen their amendment.

S8020 The amendment proposed by the Senator from Louisiana and the Senator from New Mexico and others applies only to the reclamation standards, and none of the enforcement procedures are there.

S8020 So the first thing that is going to happen is that we are going to lever the States into a weakened position. They will be sitting there, forced by their neighbors who have lower requirements to lower their own requirements; and instead of the States' reclamation procedures being enhanced, they will be diminished.

S8020 I do not disagree with the Senator from New Mexico about the burdensome role of the Federal bureaucracy; but my proposal would put into the amendment all the enforcement procedures to go with the reclamation standards. It would mean that the States would have something useful and worthwhile with which to deal with the problems they have.

S8020 The sections are quite simple. The first one, 407, is the enumeration of the application requirements necessary for filing for permits, including the most necessary information of the applicant, of his plans for mining, the hydrologic consequences of mining, the sampling, the adequacy of insurance, and the reclamation plan. It seems simple. We have standards, and we have to have them.

S8020 Section 408 is the requirement that they have a reclamation plan. There is no way in the proposed Johnston-Domenici amendment that that requirement exist.

S8020 Section 409 refers to the performance bonds. There is no way that the performance bond aspect would be a requirement under the Johnston-Domenici amendments as proposed, which I hope to amend.

S8020 Section 410 relates to certain prerequisites for permit approval, including the written findings by the regulatory authorities of the State, the fees, the prevention of hydrologic imbalance, and the alluvial protection.

S8020 Section 420 and 421, which refers to citizen suits for those adversely affected, is included to compel compliance with the act and gives the authority to issue cease and desist orders to

inspectors on the site.

S8020 The last one, section 514, is the proviso that persons whose water rights will be affected can be protected.

S8020 All these things enhance the amendment and would give the States some ability to keep the requirements of the Federal bill on their books. It would give them the leverage to be good States rights citizens and so avoid the competition between States to reduce their standards because of economic pressures.

S8020 I do not disagree in any way with what the Senator from New Mexico said about burdensome bureaucracy in the promulgation of rules that cannot be lived up to. I could accept the Johnston-Domentici amendments, if the enforcement requirements of my amendment were included.

S8020 The PRESIDING OFFICER. The Senator's time has expired.

S8020 Mr. WALLOP. I understand that the yeas and nays have been ordered.

S8020 Mr. METCALF. Mr. President, I will use my time now and will leave a minute and a half to Senator JOHNSON, to conclude the debate.

S8020 Mr. President, this amendment is one of the most important amendments we are considering in the proposed legislation.

S8020 For years, we have been trying to pass a strip mining bill. We have been trying to put reclamation and restoration enforcement into such a bill. Now, with this amendment, at the end of all that time, we are going to say that the States do not have to abide by the provisions of the legislation for as many as 4 years, perhaps 6 or 7 years; that the States do not have to listen to the Federal oversight.

S8020 The Senator from Wyoming made a suggestion that, to my mind, helps the amendment offered by requiring bonding procedures and requiring some of the licensing procedures that are in this bill. But if the amendment by the Senator from Louisiana and the Senator from New Mexico is adopted, many States will not have to abide by the enforcement procedures in the proposed legislation for perhaps as many as 8 years. All the efforts that have been expended, all the work that has gone into devising the reclamation procedures, the licensing procedures, and the bonding procedures will be abandoned for 4 to 8 years.

S8020 The Senator from Wyoming (Mr. HANSEN) and I have long insisted that a part of this legislation would be the practice of the various and respective States to pass laws complying with the minimum provisions of the Federal legislation. But here we are saying that for 4 more years, even if this bill is passed, even if the amendment of the junior Senator from Wyoming is adopted, many of these legislative provisions, many of these strictures, much of this reclamation, will not take place at all.

S8020 What happens to the States of Wyoming and the State of Montana, where we have had strict legislation and where we will be competing for the next few years with States which have failed to pass any legislation, which have failed to enforce any legislation?

S8020 The Senator from Tennessee (Mr. BAKER) put an outstanding article into the RECORD a couple of days ago. I put in the RECORD last night many arguments that have been presented.

S8020 Secretary Andrus has especially written to Senator JACKSON and told Senator JACKSON that he regards this amendment as the principal challenge to this legislation.

S8020 Mr. RANDOLPH. Mr. President, will the Senator yield?

S8020 Mr. METCALF. Oh, yes, I yield to the Senator from West Virginia.

S8020 Mr. RANDOLPH. In the State of West Virginia, Mr. President, we have a very stringent surface mining law. If the Johnston amendment is agreed to is it not the opinion of the able manager of the bill, the Senator from Montana (Mr. METCALF) that this would penalize the State of West Virginia?

S8020 Mr. METCALF. It is my opinion if this amendment is adopted that States which have strong surface mining legislation and have passed legislation in order to conform with its anticipated Federal legislation will have distinct competitive disadvantage with States that have neither passed such legislation nor States that are not enforcing it.

S8020 Mr. RANDOLPH. I fully agree.

S8020 My good friend, Senator DOMENICI, may say that this amendment will not place West Virginia or other States which have improved their reclamation laws at a competitive disadvantage. Is it not true, I ask the Senator, that it is the absence of effective Federal enforcement during the

interim period which is the problem? And that being so, is it not true that a State with weak regulation of its reclamation laws is likely to delay as long as possible coming into compliance with the Federal standards of the bill?

S8020 Mr. METCALF. The Senator is correct. I believe that is a reasonable expectation and Secretary Andrus seems to be in agreement in his opposition to the amendment.

S8020 Mr. RANDOLPH. Then I am sure West Virginia would continue to lose surface mining business to neighboring States, as it has ever since it began to bring its laws and regulations into line with the proposed Federal program. I thank the Senator.

S8020 Mr. METCALF. How is my time, Mr. President?

S8020 The PRESIDING OFFICER. The Senator has 4 minutes remaining.

{S8021} Mr. DOMENICI. A parliamentary inquiry, Mr. President.

S8021 The PRESIDING OFFICER. The Senator will state it.

S8021 Mr. DOMENICI. How much time remains for the proponents of the amendment?

S8021 The PRESIDING OFFICER. One minute and a half.

S8021 Mr. METCALF. Mr. President, this so-called exclusive States jurisdiction amendment was considered during markup of S. 7 in the Energy and Natural Resources Committee and was decisively rejected. It was rejected because the amendment would seriously weaken enforcement of the interim performance standards of the bill and would render Federal oversight of the bill as a whole meaningless in many instances.

S8021 Congress has worked long and hard to develop a whole body of administrative, citizen participation, appeals and other procedures to assure adequate enforcement of the performance standard in the bill. The amendment would eliminate these provisions in the interim. Without this supportive legal structure, States having a weak regulatory capability are not likely to enforce the tougher Federal standards during the initial regulatory period of 8 years from enactment - the period to which this amendment would lengthen the interim implementation time of the bill. This means we will end up with the status quo in most States for a period of 4 to 8 years or longer.

S8021 There is no question in my mind that the impact of this amendment will be severe in

Appalachian States where citizen unrest concerning inadequate State regulation of strip mining has been a large factor in bringing about this bill.

S8021 Citizens in many of these States, under this amendment, would be denied recourse to the Secretary or to the Federal courts if their State's enforcement of the interim standards in sections 415 and 416 is unsatisfactory. There would be no significant Federal supervision from the viewpoint of the citizen who is anxious to protect his home and community from the ravages of strip mining.

S8021 I think Senator BAKER put the basic problem with this amendment exceedingly well in his statement which appeared in the May 17 CONGRESSIONAL RECORD. He said - and I hope he does not mind my quoting him at some length as follows:

S8021 While I am mindful of and sympathetic to arguments for enhanced State initiative, I firmly believe surface mine control demands a strong Federal presence if State reclamation efforts are to continue to be effective.

S8021 Additionally, there is a real need for uniformity. In fairness to the States and to industry the environmental ethic applicable to surface mining must not only be clear and practicable but must apply equally in all regions. Flexibility in the design of specific standards should be allowed, but fundamental requirements such as contour restoration, erosion control, performance bonding and so forth must be uniformly applied if they are to be equitable. Only a strong Federal presence can assure that these standards will be so applied.

S8021 The administration's strong opposition to this amendment was expressed by Secretary Andrus in his letter of May 17, 1977, to Senator JACKSON, chairman of the Energy and Natural Resources Committee. Secretary Andrus wrote:

S8021 It (the proposed amendment) would eliminate major protections and procedural safeguards in the bill which are essential to establishing a fair and effective approach to surface mining regulation.

S8021 As you know, we proposed and S. 7 incorporates specific provisions in section 423 and elsewhere to accommodate States desiring to carry out the program on Federal lands -

S8021 And that is the so-called Hansen-Metcalf amendment -

S8021 And we have endorsed other changes to assure that States will have a strong role in controlling the abuses of surface coal mining within their borders. As a former State governor, I am keenly aware that every effort must be made to encourage strong State programs without undue Federal intrusion.

S8021 In contrast to the provisions of the reported bill, however, the proposed amendment would do serious damage to the integrity of the regulatory program of S. 7. If offered, I urge the Senate to defeat such an amendment.

S8021 Although this amendment has been pushed as a western Governors' amendment, it does not have the unanimous support of the western Governors, some of whom are aware of the serious consequences it will have for Eastern States. At least two Governors of Appalachian coal producing States have expressed their active opposition to the amendment: Governor Carroll of Kentucky and Governor Rockefeller of West Virginia.

S8021 Although the sponsors of the amendment have made some modifications in the original language with respect to State enforcement of performance standards on Federal lands, the over-all effect of the amendment on implementation of the bill remains essentially unchanged in the printed version. My understanding of the amendment is that the Secretary of the Interior would be unable to enforce any standard for as long as eight years after the date of enactment, or possibly longer depending upon likelihood of judicial appeal by the States.

S8021 States with existing regulatory programs - no matter how inadequate - would have the option, within 135 days after enactment, of retaining exclusive jurisdiction of surface mining regulations within the State and of regulating surface mining of Federal lands within the State.

S8021 These States would be required, with a period of 24 months after enactment, to amend their laws to comply with the standards set forth in sections 415 and 416 for surface mining operations and underground mining operations.

S8021 The Secretary must determine whether the amended State laws are as stringent as the standards of the act or not, must recommend changes where necessary, and must allow the States up to two additional years - where State legislatures meet biennially - to adopt the changes.

S8021 The Secretary can impose a Federal program under section 404 in a State which fails to meet the stringency test or he can require submittal of a State program for his approval under section 403.

S8021 If the State meets the stringency test, then the Secretary would monitor State enforcement for a period of 4 years after his finding on stringency. If he finds during this period that the State is "failing to effectively enforce State law with regard to environmental protection performance standards," he must impose either requirements for submittal of a State program, or he must impose a Federal program from that State.

S8021 The State may challenge the Secretary's finding on stringency or on adequate enforcement in court.

S8021 States would receive Federal grants from the Secretary under section 505 (a) and (c) for administration of regulatory programs both on Federal and non-Federal lands.

S8021 Major effects of the amendment would be as follows:

S8021 First. To abolish procedures for Federal oversight and enforcement of the interim environmental protection performance standards contained in section 402(d), (e), (f), and (g).

S8021 Second. To abolish the absolute requirement that a State wishing to continue exercising regulatory authority over surface mining must submit a State program for the Secretary's approval under section 403.

S8021 Third. To abolish review of the States' proposed programs by EPA and other affected Federal agencies.

S8021 Fourth. To extend the interim period between enactment of the act and full implementation from the 42 months in the bill - assuming no litigation - to 8 years - assuming no litigation. During this period, grossly inadequate environmental practices such as allowing placement of spoil on steep slopes would most likely continue to be allowable in some States.

S8021 Fifth. To abolish all Federal oversight over enforcement of standards for at least 2 and possibly as long as 4 years from the date of enactment. During that time citizen complaints concerning inadequate enforcement and citizen suits under sections 402(f) and 420 would be precluded entirely.

S8021 Sixth. To abolish ongoing Federal oversight and monitoring of State enforcement of standards, where a State has been found by the Secretary to meet the stringency test. The Secretary is allowed 4 years to monitor that State's regulations of surface mining. After that time, if the State enforcement is deemed to be acceptable, the Federal presence would terminate permanently.

S8021 Seventh. To allow State regulation of surface mining on Federal lands.

S8021 Eighth. To abolish all criteria applying to the Secretary's finding as to either stringency of State laws or effectiveness of State enforcement of standards.

S8021 Ninth. To abolish all bonding and other important requirements of title IV other than sections 405 and 406.

S8021 Tenth. To, apparently, authorize the Secretary, at his discretion, to impose State law under section 403, if he chooses to impose a State program rather than a Federal program in a State failing the stringency or adequacy tests.

{S8022} I cannot stress too strongly, that this amendment would render S. 7 virtually meaningless as far as the ability of citizens to appeal to the Federal Government to enforce the standards of the act for 8 or more years from date of enactment. It would remove or reduce all the review, public hearing, bonding, appeal, inspection, monitoring, and other requirements of title IV in States meeting the stringency or adequacy tests.

S8022 And once the Secretary has determined enforcement to be effective in a State, the amendment would put an end to all Federal oversight permanently in such a State.

S8022 I would urge the defeat of this amendment.

S8022 Now, I am not going to quarrel with my friend from New Mexico, but I have talked to the Governor of Montana. The Governor of Montana refused to go along with one of those cooperative agreements until we were offered the same sort of enforcement procedure that the State of Wyoming and the State of North Dakota and others have.

S8022 The Governor of Montana has just recently signed such a procedure. The Governors of West Virginia and Kentucky have notified me, at least, that they are opposed to the amendment

offered by the Senator from New Mexico, so there is at least a difference between the opinion of some of the Governors on one side and some on the other.

S8022 I say to my friends that if we are going to pass a strip mining bill and we are going to apply these regulations, we should apply them from the date of enactment and not give 4 to 8 years leeway to some of the States that do not have any strip mining legislation, that are not enforcing such legislation, and give them a competitive advantage over States that have tried to comply.

S8022 The PRESIDING OFFICER. The Senator from Louisiana has a minute and a half.

S8022 Mr. JOHNSTON. Mr. President, we strongly oppose the Wallop amendment. All that does is write into my amendment all these procedural rules that this bill requires.

S8022 The thrust of our amendment is, as Bert Lance is wont to say, "If it ain't broke don't fix it." If you have a good State program, like Pennsylvania has a good program, let them continue to run that program without changing all these rules at great cost, at great Federal intervention.

S8022 You have got to be at least as stringent as the Federal rules to be eligible to run your State program under our amendment, and it ought to be passed, and the Wallop amendment ought to be defeated.

S8022 I yield the remainder of my time to the coauthor of my amendment, Senator DOMENICI.

S8022 Mr. DOMENICI. I want to say to my good friend from West Virginia, Senator RANDOLPH, that there is nothing in the Johnston-Domenici amendment that will penalize the State of West Virginia for the 135 days they have to make that election. The interim standards applicable to all States of the Union will apply.

S8022 If they so elect they have 2 years to get their program up to the minimum, and the interim standards that are being promulgated for all the States will apply.

S8022 The point I am making is if a State like the State of West Virginia thinks that by the adoption of this national law they are going to make a few little changes to an already good law and be out from under the Federal Government, then I will predict - and I am not used to doing this - that when the State of West Virginia finishes with this national law unless they can opt out under our

amendment they will be back down here asking you, "how did that Federal law so penalize the State?"

S8022 Our amendment makes all States the same ultimately on minimum standards on reclamation and environment. None are excluded.

S8022 Mr. ALLEN. Mr. President, I rise in support of the amendment offered to S. 7 by my distinguished colleagues from Louisiana, (Mr. JOHNSTON) and New Mexico (Mr. DOMENICI).

S8022 The amendment would, in my opinion, recognizes a fact of life and that is, the States of the United States can and do react to the concerns of their citizens.

S8022 The heart of Senator JOHNSTON's amendment would be congressional recognition of the advances made by the States to control the deleterious effects on the environment, of surface mining within their respective borders. I should state at the outset that I have supported the concept of Federal minimum regulatory standards for surface coal mining in the past, and hope to be able to support final passage of the pending legislation, but I have always believed that primary responsibility for surface mining regulation should be in the hands of those who know with what they deal and not in the hands of a group of well-meaning bureaucrats here in Washington who may not know the potential adverse impact on the environment or the economies of the various States and regions of the country. In short, Mr. President, I support the old-fashion concept that those at the local level know best how to deal with local problems.

S8022 Mr. President, my support for the "exclusive State jurisdiction" amendment is not an indication that the State of Alabama intends to operate in a vacuum or regulate strip mining operations without due regard for improvements in technology in other parts of the country. The State of Alabama has, and will continue to have, a close working relationship with Federal Government officials on the subject of surface mining and land reclamation. In a press announcement of May 14, from the Department of Interior's Bureau of Mines, I learned that the Bureau and the Alabama Surface Mining Reclamation Council will be discussing, in an open briefing in Birmingham, on May 19, a plethora of matters regarding surface mining techniques and related topics.

S8022 The Bureau is bringing to Alabama the benefit of its most recent research pertaining to

surface mining which will include development of new and improved types of equipment for surface mining, research on blasting and the vibrations from blasting associated with such mining, the results of research to improve the health and safety of surface miners, and improved strip mining and reclamation systems based on existing equipment and techniques. This gathering is an example of Federal-State cooperation on a national problem that has unique applications in each State of the Union.

S8022 As a further measure of proof that the States have met and are meeting their responsibilities to their citizens and to the general environment, let us recall that when President Lyndon Johnson - on March 8, 1968 - called for surface mining reclamation legislation, only 14 States had surface mining laws, and 5 such laws applied strictly to surface coal mining. In a sense, Mr. President, in the 10-year period, 38 of the States of the Union have "seen the environmental light" and through their duly elected legislators, enacted laws to protect local environments from the ravages of unregulated strip mining.

S8022 I think that is a pretty good record of accomplishment for the States. In effect, each of such 38 States has recognized the national concern over surface coal mining and past or potential adverse impacts on the land, and then, in a spirit befitting the gravity of the problem, each of these States took upon itself to remedy or protect its citizens and its fragile land from the potential harm resulting from surface mining. Each of those 38 States has, in effect, gone through the debate we are now launched upon, and in consideration of the peculiarities and vagaries of the mining operations and mining potential in each State, adopted what they considered as realistic laws and regulations to protect their citizens and, at the same time, continue the production of coal, State action, not Federal action, has prepared the way for the country to meet the challenge of increasing coal production which the President and his top energy advisers tell us is absolutely necessary.

S8022 Mr. President, the proposed amendment does not proclaim itself to be the "end" of the matter with respect to the dual roles of the Federal Government and the State government in the matter of controlling surface mining. In fact, quite the opposite is the case.

S8022 The proposed new section 429 would grant to those States which have an existing program

that regulates surface coal mining, exclusive State jurisdiction over all surface mining in the State, if the State enacts legislation which is equal to or more stringent than the environmental protection standards of sections 415 and 416 of the pending bill, S. 7.

S8022 The State would have 135 days to notify the Federal Government that it desires to elect exclusive State jurisdiction, and the amendment requires the State to enact a State law encompassing those performance standards within 24 months of enactment of the pending Federal legislation.

S8022 Now, if the Secretary of the Interior, after a hearing, determines that the State standards are not equal to or more stringent than the forthcoming new law, then the Secretary would notify the State as to the deficiencies in its law and the State would have to make up those deficiencies during the sitting of the then current legislature.

{S8023} } Mr. President, the most critical portion of the pending amendment should satisfy the proponents of S. 7, for the amendment specifically states that if a State refuses to adopt the performance standards called for in the Federal law, then the Secretary of the Interior would assume Federal jurisdiction over surface mining operations in that State. Thus, it appears to me that the proponents of a Federal law, and the supporters of State initiative, could achieve the best of both worlds and without bringing to a halt or disrupting the surface coal mining that is currently underway to produce the coal called for by the President. Furthermore, while even with the amendment, there is still the specter of "big brotherism" in the bill, the States themselves are responsible for the decision or lack of decision to bring the Federal Government down upon the mining activities in the State.

S8023 Going a step further, the Secretary of the Interior would monitor the States' enforcement programs for a 4-year period and within this period, the Secretary, after a hearing, could cancel exclusive State jurisdiction if the State failed to perform as expected in the pending legislation. Adoption of the amendment would not preclude the States from participating in the grant monies made available by section 503 of the act; those funds are made available to the States to develop and administer as well as enforce State programs.

S8023 The States which have Federal coal lands within their borders would be permitted to regulate surface mining on those Federal lands through this procedure. Under existing agreements

between the Secretary, several States are already regulating such Federal coal lands; this amendment would grandfather-in those agreements.

S8023 Mr. President, the proposed amendment would accomplish the major objective of a Federal surface mining and reclamation act: to bring all States into conformity with strict national environmental performance standards while at the same time recognizing the usefulness and importance of existing State reclamation programs. The amendment requires all States to live up to Federal standards but, at the same time, it preserves for the States the necessary flexibility to influence and achieve the goals of the act through existing State regulatory mechanisms.

S8023 Without such an amendment, the Federal surface mining and reclamation act would strike down every State law and every regulatory provision which has heretofore regulated surface mining.

S8023 I realize, Mr. President, that supporters of the committee's bill will be quick to point to many sections of the measure, particularly title IV, and say that "the States' rights and prerogatives are already fully protected." I submit that that title and the multitudinous sections contained therein and in connection with further sections of the bill, are in reality, the means of enforcing a slowdown in surface mining in various States until such time as State plans are approved by the Secretary of the Interior, if at all, with the assistance of the horrendous bureaucratic newly formed Office of Surface Mining Reclamation and Enforcement. Without a point-by-point dissertation of the impacts of the sections mentioned on State laws, it seems to me that the presumption in the proposed legislation is that the States do not have, will not have, and have little interest in perfecting, legislative means of controlling surface mining within their borders.

S8023 This is patently untrue, as the fact is that most of the States of the United States have enacted such laws. Now, whether or not those laws fully conform to the requirements, or the full intent, of the pending bill, is subject to legitimate question, but the presumption should be that the States are interested in and willing to meet reasonable environmental standards for surface mining, and will upgrade such current laws as are in existence to meet new Federal rules and regulations without their present efforts being called into question as to effectiveness, as is implicit in the committee's bill.

S8023 With the amendment under consideration, a State could simply adopt in State law the two-core provisions of the bill, the reclamation standards set down in sections 415 and 416 and once these environmental performance standards are adopted as State law, the existing State regulatory machinery would be used to continue the regulatory job that is being done today. The role of the Federal Government then would be to monitor the effectiveness of State enforcement of those laws.

S8023 The proposed amendment would eliminate the need for a vast Federal bureaucracy which otherwise would be necessary to implement the provisions of the act. States would have the choice of regulating surface coal mining themselves or leaving it to the Federal Government. Should the States fall to take advantage of this option, there will be no one to blame but the State.

S8023 The amendment I am supporting puts the Congress in the position of trusting the States and also recognizing that the States are best equipped to deal with the differences in climate, topography, geography, and various conditions which vary from coal mining State to coal mining State. As a slight digression, but to emphasize the point of State-by-State differences in minable seams, I pointed out in a speech on the floor of the Senate on October 9, 1973, with reference to remarks made by the distinguished senior Senator from Wyoming (Mr. HANSEN):

S8023 The distinguished Senator from Wyoming spoke of seams in his State being 100 or 200 feet thick, whereas in Alabama they are sometimes as little as 18 inches to 2 feet in thickness.

S8023 While that comment was made with reference to another point of contention in all surface mining regulation proposals, the facts remain the same: Differing areas of the country require different means of mining, and that means different means of regulation of the operations of those who would seek to mine the coal.

S8023 Mr. President, I shall bring my remarks in support of the amendment to a close with references to public and private persons in Alabama who have suggested and urged the adoption of the "exclusive State jurisdiction" amendment now pending.

S8023 I am, of course, pleased to inform our colleagues that Governor Wallace, Lt. Gov. Jere Beasley, House of Representatives Speaker Joe McCorquodale, Speaker Pro Tempore of the Alabama House Bobby Tom Crowe, and members of the Alabama Surface Mining Reclamation

Commission, and the President and members of the Alabama Public Service Commission, have all contacted me in support of the amendment.

S8023 Governor Wallace has said:

S8023 While the intent and purpose of H.R. 2 and S. 7 are worthy, the bills must be construed in light of practical application, as well as our State and national energy requirement. I, therefore, find the proposed amendments to be in line with realities; and hence, endorse their favorable consideration by the Congress.

S8023 The speaker pro tempore of the Alabama House of Representatives, Robert T. Crowe, states:

S8023 I am writing to continue my support for having mining and reclamation governed by the states on a state by state basis. The State of Alabama is making great progress in the area of strip mining regulations. It takes time to develop an effective program. The State of Alabama is committed to developing a program to meet the particular needs of coal mining in Alabama. It is the belief and position of the State of Alabama that each state's mining is peculiar due to nature itself. With this a firm reality, we believe each state should regulate its own mining operations.

S8023 At a time when coal production is declining and the demand is rising, cost should be of upmost concern. Utility bills are increasing at an alarming rate and many federal surface mining regulations would add hundreds of millions of dollars to utility bills paid by the consumer. These factors should be considered and the Congress should be working toward a positive energy program rather than negative controls.

S8023 The Alabama Public Service Commission, the State agency charged with the responsibility of overseeing the cost of utility rates in our State, wrote the following:

S8023 As members of the Alabama Public Service Commission, it is our duty to ensure that the citizens of this State receive a reliable source of energy at the lowest possible cost. There will be no way for us to discharge our duty to Alabama energy consumers if the Federal surface-mining bill, S. 7, is passed in its present form. We have already unanimously stated our opposition to passage of the proposed Federal surface-mining legislation in resolution dated March 7, 1977.

S8023 As you know, virtually all the coal-producing states have enacted strong legislation to regulate surface coal mining and reclamation. Alabama, in particular, has greatly (strengthened) its law and is vigorously enforcing it now.

S8023 Passage of the proposed Federal surface-mining bill would destroy Alabama's regulatory program and increase the cost of energy for Alabama consumers without a corresponding improvement in environment benefits to its citizens. The proposed Federal surface-mining bill merely creates an unneeded Federal bureaucracy to accomplish what the state is doing for less cost.

S8023 Instead of making the state merely an agent for implementing the Federal program, we urge you to allow states with existing surface-mining regulatory programs to retain their own programs. However, in order to do so, the state's regulatory authority must adopt the "Environmental Protection Performance Standards" of Sections 415 and 416 within 24 months after enactment of the Federal legislation. We have enclosed a copy of an amendment which would accomplish this objective.

{S} 8024 Mr. President, the resolution referred to above was passed by the public service commission in March, before the present bill was reported to the Senate for action, but it reflects the concern of the commission for restrictive surface mining legislation and I ask unanimous consent that the text of the resolution appear in the RECORD at the conclusion of my remarks.

S The PRESIDING OFFICER. Without objection, it is so ordered.

S (See exhibit 1.)

S Mr. ALLEN. The foregoing comments came from the "public" side of the aisle in Alabama. I am also pleased to report that the "private" side has been in active support of the amendment I have been speaking on, specifically, the Alabama Surface Mining Reclamation Council. The council, composed of all the major surface mining firms in Alabama, has taken the lead in coordinating efforts to modify the pending Federal bill so that it will not have an adverse economic impact on the State and the employment that is connected with surface mining in Alabama.

S The council compiled a chart dealing with some of the costs to Alabama of the passage of S. 7 and, keeping in mind that these are only estimates, one must be extremely concerned about the

future of energy costs in our State alone if these figures prove accurate. Overall, the council estimates that passage could cause a 40 percent loss or 5.4 million tons of coal. Last year, according to the council, Alabama, the eighth largest coal producing State in the Nation produced 13,670,750 tons of coal.

S Finally, Mr. President, the president of District 20 of the United Mine Workers of America, testified in opposition to H.R. 2 before the House Interior and Insular Affairs Committee early in the year, and spoke to the issue of the efficacy of a single law for the Nation dealing with surface mining. Mr. Lloyd Baker made the following comments about the "job impact" of the pending bill which, I suspect, could be model for the impact on other surface miners in other States:

S 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.

S 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.

S And later, Mr. Baker says:

S 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.

S Mr. President, I ask unanimous consent that the text of Mr. Baker's statement of February 24, 1977 appear in the RECORD at the conclusion of my remarks.

S The PRESIDING OFFICER. Without objection, it is so ordered.

S (See exhibit 2.)

S Mr. ALLEN. In conclusion. Mr. President, Alabama is willing and prepared to accept new stricter Federal surface mining regulations, but private and public citizens alike believe that the best

machinery, and the most effective and efficient machinery for carrying out this task already is in place in our State and there is no reasonable excuse for burdening the State with Federal regulations that are already in place in Alabama Passage of S. 7 without the perfecting amendment offered by Senator JOHNSTON, myself, and others, could cause large economic disruptions in the State, increase utility costs to an already overburdened population, and cost the American taxpayer untold millions of additional dollars for the creation of a new Federal bureaucracy. Therefore, I urge my colleagues to adopt the "exclusive State regulation" amendment.

S What is the difference between State plan approved under S. 7, and State plan approved under amendment?

S Under the bill the existing State program will be completely overhauled in every material respect. This would include a complete revision of its procedures, of its citizen suit participation, enforcement, and much of its administrative mechanism. In effect, the State program developed under S. 7 would be a completely designed Federal program in every respect including land use planning, the application requirements, hearing requirements, standing to sue, enforcement including continuing perpetual Federal surveillance of that enforcement with the right vested in the Secretary to take away the program or to step in and enforce the State program. If, even after the Federal Government approves the State's program, the Secretary still has the authority and option to: First, through the rulemaking procedure change the State approved program; second, substitute a Federal program, and/or third, take over the so-called federally State approved program.

S Under the amendment the State need only adopt the environmental standards into its current program and, therefore, the State's procedures and enforcement and hearing apparatus will continue as before. However, the Federal Government will have a 4-year limit period within which to evaluate the effective enforcement by the State and only within that period can they substitute a Federal program.

S The following Governors are in support of the pending Johnston-Domenici amendment:
Montana, Gov. Thomas L. Judge; Nebraska, Gov. James J. Exon; Nevada, Gov. Mike O'Callaghan;
New Mexico, Gov. Jerry Apokaca; North Dakota, Gov. Arthur A. Link; South Dakota, Gov. Richard Kneip; Utah, Gov. Scott Matheson; Wyoming, Gov. Ed Herchler; Alabama, Gov. George

C. Wallace; Illinois, Gov. James R. Thompson; Louisiana, Gov. Edwin W. Edwards; Oklahoma, Gov. David L. Boren; and Texas, Gov. Dolph Briscoe.

S EXHIBIT 1

S RESOLUTION OF THE ALABAMA PUBLIC SERVICE COMMISSION

S At a meeting held in its offices in Montgomery, Alabama, on March 7, 1977, the Alabama Public Service Commission adopted the following Resolution concerning Proposed Federal Legislation, H.R.-2 and S. 7, Surface Mining Control and Reclamation Act of 1977:

S Whereas, approximately 80 percent of the electric energy produced for use by the citizens of Alabama served by Alabama Power Company is derived from the energy contained in coal, and

S Whereas, approximately 60 percent of the coal used by Alabama Power Company to produce electricity is obtained from surface mines, and

S Whereas, it is becoming obvious that our country and the State of Alabama must rely heavily on coal as a major source of energy, and

S Whereas, the necessity to maintain and improve our standard of living depends on an adequate supply of energy at the lowest practical cost, and

S Whereas, the people of Alabama are finding it more difficult to pay for higher energy costs, and

S Whereas, there are serious concerns about protecting the environment, and

S Whereas, there is legislation presently before the Federal Congress entitled "The Surface Mining Control and Reclamation Act of 1977." (H.R.-2 and S. 7) that would, if enacted, substantially increase the cost of coal and thereby increase the cost of electricity, and

S Whereas, there is in Alabama, as well as in other states, state regulatory bodies responsible for ensuring that coal is properly mined from surface mines, and that proper reclamation is performed, consistent with the unique characteristics of the terrain of each state and region, in ways that will protect the environment, ensure the highest and best use of the reclaimed mined lands, and minimize the costs, which ultimately must be borne by the consumer, and

S Whereas, there are thousands of persons employed in the Alabama mining industry whose jobs

could be put in jeopardy if, because of the unique characteristics of the thin Alabama coal seams, Alabama coal became uneconomical to mine because of unreasonable reclamation requirements, and

S Whereas, any legislative actions which increase the cost of Alabama coal, or reduce the production of Alabama coal, would have the effect of increasing energy costs and imposing severe economic hardships on the citizens of Alabama.

S Now, therefore, be it resolved that the Alabama Public Service Commission urges you to oppose the present form of "The Surface Mining Control and Reclamation Act of 1977 (H.R.-2 and S. 7)" because of provisions that would impose severe economic hardships on the citizens of Alabama, without accomplishing reasonable protection of the environment, and without protecting the rights of the citizens of Alabama.

S EXHIBIT 2

S STATEMENT OF LLOYD BAKER

S Mr. Chairman and Members of the Committee:

{S } 8025 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.

S 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.

S 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.

S 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 we normally 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.

S 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.

S 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.

S 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 surfaced 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.

S 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 these two states.

S 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.

S 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.

S 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.

S We are also concerned by the many builtin 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.

S Every step of the process of obtaining a mining permits 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.

S 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?

S 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.

S 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.

S Thank you, Mr. Chairman.

S The PRESIDING OFFICER. All time has expired. The yeas and nays have been ordered. The question is one agreeing to the amendment of the Senator from Wyoming (Mr. WALLOP), No. 254. The clerk will call the roll.

S The assistant legislative clerk called the roll.

S Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON), the Senator from California (Mr. CRANSTON), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

S Mr. BAKER. I announce that the Senator from Nebraska (Mr. CURTIS), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Nevada (Mr. LAXALT), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

S I further announced that, if present and voting, the Senator from Alaska (Mr. STEVENS) would vote "nay."

S The result was announced - yeas 22, nays 63, as follows:

S [Rollcall Vote No. 150 Leg.]

S YEAS - 22

S Baker

S Brooke

S Case

S Charfee

S Church

S Clark

S Culver

S DeConcini

S Durkin

S Glenn
S Hansen
S Hathaway
S Heinz
S Javits
S Mathias
S McIntyre
S Muskie
S Nelson
S Proxmire
S Stevenson
S Wallop
S Zorinsky
S NAYS - 68
S Abourezk
S Allen
S Anderson
S Bartlett
S Bath
S Bellimon
S Bentsen
S Biden
S Bumpers
S Burdick
S Byrd, Harry F., Jr.
S Byrd, Robert C
S Chiles
S Danforth

S Dole
S Domenici
S Eagleton
S Eastland
S Ford
S Garn
S Goldwater
S Gravel
S Hart
S Haskell
S Hatch
S Hayakawa
S Heims
S Hollings
S Huddleston
S Humphrey
S Inouye
S Jackson
S Johnston
S Kennedy
S Leahy
S Long
S Lugar
S Magnuson
S Matsunaga
S McClure
S Melcher
S Metcalf
S Metzenbaum

S Morgan

S Moynihan

S Nunn

S Person

S Pell

S Percy

S Randolph

S Ribicoff

S Riegie

S Roth

S Sarbanes

S Sasser

S Schmitt

S Schweiker

S Scott

S Sparkman

S Stanfford

S Stennis

S Stone

S Talmadge

S Thurmond

S Tower

S Weicker

S Williams

S Young

S NOT VOTING - 10

S Cannon

S Cranston

S Curtis

S Griffin

S Hatfield

S Laxalt

S McClellan

S McGovern

S Packwood

S Stevens

S So, Mr. WALLOP's amendment was rejected.

S Mr. METCALF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

S Mr. SCOTT. I move to lay that motion on the table.

S The motion to lay on the table was agreed to.

S The PRESIDING OFFICER. The question now is on agreeing to amendment No. 277, as modified, of the Senator from Louisiana (Mr. JOHNSTON). This will be a 10-minute vote. The yeas and nays have been ordered, and the clerk will call the roll.

S Mr. ROBERT C. BYRD. Mr. President, this will be the last rollcall vote tonight. However, debate will be in order if other Senators wish to call up amendments and discuss them this evening to their hearts' content. There will be no further rollcall votes, tonight, but tomorrow morning at 9 o'clock a.m. the Senate will resume consideration of this measure.

S The PRESIDING OFFICER. The clerk will call the roll.

S The second assistant legislative clerk proceeded to call the roll.

S Mr. FORD. Mr. President, may we have order? May we have order, Mr. President, please?

S The PRESIDING OFFICER. The Senate will be in order. The clerk may proceed.

S The call of the roll was resumed and concluded.

S Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON), the Senator from California (Mr. CRANSTON), the Senator from South Carolina (Mr. HOLLINGS),

the Senator from Arkansas (Mr. McCLELLAN), and the Senator from South Dakota (Mr. McGOVERN), are necessarily absent.

{S} 8026 Mr. BAKER. I announce that the Senator from Nebraska (Mr. CURTIS), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Alaska (Mr. STEVENS), are necessarily absent.

S I further announce that, if present and voting, the Senator from Alaska (Mr. STEVENS) would vote "yea."

S The result was announced - yeas 39, nays 51, as follows:

S [Rollcall Vote No. 151 Leg.]

S YEAS - 39

S Allen

S Bartlett

S Bellmon

S Bentsen

S Burdick

S Byrd, Harry F., Jr.

S Chiles

S Danforth

S DeConcini

S Dole

S Domenici

S Eastland

S Ford

S Garn

S Goldwater

S Gravel

S Hatch

S Hayakawa

S Helms
S Huddleston
S Johnston
S Laxalt
S Long
S Lugar
S McClure
S Morgan
S Nunn
S Pearson
S Roth
S Schmitt
S Schweiker
S Scott
S Sparkman
S Stennis
S Talmadge
S Thurmond
S Tower
S Young
S Zorinsky
S NAYS - 51
S Abourezk
S Anderson
S Baker
S Bayh
S Biden
S Brooke
S Bumpers

S Byrd, Robert C.

S Case

S Chafee

S Church

S Clark

S Cuiver

S Durkin

S Eagleton

S Glenn

S Hansen

S Hart

S Haskell

S Hathaway

S Heinz

S Humphrey

S Inouye

S Jackson

S Javits

S Kennedy

S Leahy

S Magnuson

S Mathias

S Matsunaga

S McIntyre

S Melcher

S Metcalf

S Metzenbaum

S Moynihan

S Muskie

S Nelson

S Pell

S Percy

S Proxmire

S Randolph

S Ribicoff

S Riegle

S Sarbanes

S Sasser

S Stafford

S Stevenson

S Stone

S Wallop

S Weicker

S Williams

S NOT VOTING - 10

S Cannon

S Cranston

S Curtis

S Griffin

S Hatfield

S Hollings

S McClellan

S McGovern

S Packwood

S Stevens

S So Mr. JOHNSTON's amendment (No. 277), as modified, was rejected.

S Mr. METCALF. I move to reconsider the vote by which the amendment was rejected, Mr. President.

S Mr. HANSEN. Mr. President, I move to lay that motion on the table.

S The motion to lay on the table was agreed to.

S Mr. METCALF. Mr. President, I understand there are not going to be any more amendments requiring rollcall votes this evening, but we can run on a little while and take up amendments and discuss amendments, if someone wants to be recognized.

S Mr. HANSEN. Will the distinguished floor leader of the bill yield?

S Mr. METCALF. I yield.

S Mr. HANSEN. It would be my hope, Mr. President, that we might be able to adjourn by 6:15. I would have no objection at all to amendments being laid down. As Senators know, many of us on this side of the aisle, and that is not all that many, do have another obligation this evening. If we were able to adjourn by around 6:15, I would consider it a great personal favor.

S Mr. METCALF. I defer to the distinguished majority leader.

S Several Senators addressed the Chair.

S The PRESIDING OFFICER (Mr. MATSUNAGA). The Senator from Montana has the floor.

S Mr. METCALF. I yield to anyone who wants to offer an amendment, Mr. President.

S Several Senators addressed the Chair.

S Mr. METCALF. Mr. President, I yield to my friend who is going to offer an amendment that I will agree to the Senator from Pennsylvania.

S Mr. ABOUREZK. Mr. President, I was seeking recognition.

S The PRESIDING OFFICER. At the time the Senator was seeking recognition, the Senator from Montana had the floor.

S Mr. DECONCINI. Mr. President, will the Senator yield for a unanimous-consent request?

S Mr. HEINZ. Mr. President, I believe the Senator from Montana has yielded to me.

S The PRESIDING OFFICER. Will the Senator yield for a unanimous-consent request?

S Mr. HEINZ. I will be happy to yield for a unanimous-consent request without losing my right to the floor.

S Mr. DECONCINI. Mr. President, I ask unanimous consent that a member of my staff, Jim Magner, be granted the privilege of the floor during the consideration of the pending legislation.

S The PRESIDING OFFICER. Without objection, it is so ordered.

S Mr. JAVITS. Mr. President, if the Senator will yield further, I ask unanimous consent that Charles Warren, of my staff, be granted the privilege of the floor during the consideration of the pending legislation.

S The PRESIDING OFFICER. Without objection, it is so ordered.

S AMENDMENT NO. 289

S Mr. HEINZ. Mr. President, I ask unanimous consent that it be in order to call up my printed amendment No. 289 and to ask for its immediate consideration.

S The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be stated.

S The assistant legislative clerk read as follows:

S The Senator from Pennsylvania (Mr. HEINZ), for himself and Mr. RANDOLPH, proposes Amendment No. 289.

S Mr. HEINZ. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S The PRESIDING OFFICER. Without objection, it is so ordered.

S The amendment is as follows:

S After section 515 ending on page 305, line 24, insert the following new title:

S TITLE VI - STATE COAL MINING AND COAL RESOURCES AND RESEARCH INSTITUTES

S AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

S SEC. 601. (a) There are authorized to be appropriated to the Secretary of the Interior sums adequate to provide for each participating State \$200,000 for fiscal year 1978, \$3 00,000 for fiscal

year 1979, and \$4 00,000 for each fiscal year thereafter for five years, to assist the States in carrying on the work of a competent and qualified coal mining and coal resources and research institute, or center (hereinafter referred to as "institute") at one public college or university in the State which has in existence at the time of enactment of this title a school of mines, or division, or department conducting a program of substantial instruction and research in coal mining and coal preparation and related research, or which establishes such a school of mines, or division, or department subsequent to the enactment of this title and which school of mines, or division or department shall have been in existence for at least two years. The Advisory Committee on Coal Mining and Coal Resources and Research, as created by this title, shall determine a college or university to have an eligible school of mines, or division, or department conducting a program of substantial instruction and research in coal mining, coal preparation and related research wherein education and research in these engineering fields are being carried out and wherein at least four fulltime permanent faculty members are employed: Provided, That -

S (1) such moneys when appropriated shall be made available to match, on a dollar-for-dollar basis, non-Federal funds which shall be at least equal to the Federal share to support the institute;

S (2) if there is more than one such eligible college or university in a State, funds under this title shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid to one such college or university designed by the Governor of the State;

S (3) where a State does not have a public college or university with an eligible school of mines, or division, or department conducting a program of substantial instruction and research in coal mining, coal preparation are related areas, said advisory committee may allocate the State's allotment to one private college or university which it determines to have an eligible school of mines, or division, or department as provided herein.

S (b) It shall be the duty of each such institute to plan and conduct and/or arrange for a component or components of the college or university with which it is affiliated to conduct competent reserach, investingations, demonstrations, and experiments of either a basic or practical nature, or both, in relation to coal iming, coal preparation (including anthracite), and to provide for the training of engineers and seientists through such research, investigations, demonstrations, and

experiments. Such research, investigations, demonstrations, experiments, and training may include, without being limited to: exploration; the extraction; processing; development; production of coal resources; coal mining and preparation technology; supply and demand for coal; conservation and best use of available supplies of coal; the economic, legal, social, engineering, recreational, biological, geographic, ecological, health and safety, and other aspects of coal mining, coal preparation, and mineral reclamation from coals, having due regard to the interrelation on the natural environment, the varying conditions and needs of the respective States, to coal mining and coal preparation research projects being conducted by agencies of the Federal and State governments, and other institutes.

S RESEARCH FUNDS TO INSTITUTES

S SEC. 602. (a) There is authorized to be appropriated annually for seven years to the Secretary of the Interior the sum of \$15,000,000 in fiscal year 1978, said sum increased by \$2,000,000 each fiscal year thereafter for six years, which shall remain available until expended. Such moneys when appropriated shall be made available to institutes to meet the necessary expenses for purposes of:

{S} 8027 (1) specific coal mining, coal preparation and related research and demonstration projects of industry-wide application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional coal mining, coal preparation and related research projects by two or more institutes, and

S (2) research into any aspects of coal mining, coal preparation and related problems related to the mission of the Department of the Interior, which may be deemed desirable and are not otherwise being studied.

S (b) Each application for a grant pursuant to subsection (a) of this section shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the estimated costs, the importance of the project to the Nation, region, or State concerned, and its relation to other known research projects theretofore pursued or being pursued, and the extent to which it will provide opportunity for the training of coal mining, coal preparation engineers and scientists, and the extent of participation by nongovernmental sources in the project.

S (c) The Secretary shall, insofar as it is practicable, utilize the facilities of institutes designated in section 301 of this title to perform such special research, authorized by this section, and shall select the institutes for the performance of such special research on the basis of the qualifications without regard to race or sex of the personnel who will conduct and direct it, and on the basis of the facilities available in relation to the particular needs of the research project, special geographic, geologic, or climatic conditions within the immediate vicinity of the institute in relation to any special requirements of the research project, and the extent to which it will provide opportunity for training individuals as mining engineers and scientists. The Secretary may designate and utilize such portions of the funds authorized to be appropriated by this section as he deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

S (d) No grant shall be made under subsection (a) of this section except for a project approved by the Secretary of the Interior and all grants shall be made upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mining engineers and scientists.

S (e) No portion of any grant under this section shall be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

S FUNDING CRITERIA

S SEC. 603. (a) Sums available to institutes under the terms of sections 301 and 302 of this title shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Each institute shall set forth its plan to provide for the training of individuals as mining engineers and scientists under a curriculum appropriate to the field of coal mining, and coal preparation engineering and related fields; set forth policies and procedures which assure that Federal funds made available under this title for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this title, and in no case supplant such funds; have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this title and shall make an annual report to the Secretary on or before the

first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this title during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary. If any of the moneys received by the authorized receiving officer of any institute under the provisions of this title shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, it shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

S (b) Moneys appropriated pursuant to this title shall be available for expenses for research, investigations, experiments, and training conducted under authority of this title. The institutes are hereby authorized and encouraged to plan and conduct programs under this title in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the coal mining, coal preparation and related problems involved, and moneys appropriated pursuant to this title shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

S DUTIES OF THE SECRETARY

S SEC. 604. (a) The Secretary of the Interior is hereby charged with the responsibility for the proper administration of this title and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall furnish such advice and assistance as will best promote the purposes of this title, participate in coordinating research initiated under this title by the institutes, indicate to them such lines of inquiry as to him seem most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

S (b) On or before the 1st day of July in each year after the passage of this title, the Secretary shall ascertain whether the requirements of section 303(a) have been met as to each institute and State.

S (c) The Secretary shall make an annual report to the Congress of the receipts, expenditures, and work of the institutes in all States under the provisions of this title. The Secretary's report shall

indicate whether any portion of an appropriation available for allotment to any State has been withheld and, if so, the reasons therefor.

S AUTONOMY

S SEC. 605. Nothing in this title shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this title shall in any way be construed to authorize Federal control or direction of education at any college or university.

S MISCELLANEOUS PROVISIONS

S SEC. 606. (a) The Secretary of the Interior shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with coal mining and coal resources and related research of State and local governments, and of private institutions and individuals to assure that the programs authorized in this title will supplement and not duplicate established coal mining, coal preparation and related research programs, to stimulate research in otherwise neglected areas, and to contribute to a comprehensive nationwide program of coal mining, coal preparation and related research, having due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports or projects completed, in progress, or planned under the provisions of this title, in addition to any direct publication of information by the institutes themselves.

S (b) Nothing in this title is intended to give or shall be construed as giving the Secretary of the Interior any authority over coal mining, coal preparation and related research conducted by any other agency of the Federal Government, or as repealing, superseding, or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with coal mining, coal preparation and related research.

S (c) Contracts or other arrangements for coal mining, coal preparation and related research work authorized under this title with an institute, educational institution, or nonprofit organization may be undertaken without regard to the provisions of section 3684 of the Revised Statutes (31 U.S.C. 529) when, in the judgment of the Secretary of the Interior, advance payments of initial expense are

necessary to facilitate such work: Provided, That authority to make payments under this subsection shall be effective only to such extent or in such amounts as are provided in advance by appropriation Acts.

S (d) No research, demonstration, or experiment shall be carried out under this Act by an institute financed by grants under this Act, unless all uses, products, processes, patents, and other developments resulting therefrom, with such exception or limitation, if any, as the Secretary may find necessary in the public interest, be available promptly to the general public. Nothing contained in this section shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent. There are authorized to be appropriated such sums as are necessary for the printing and publishing of the results of activities carried out by institutes under the provisions of this Act and for administrative planning and direction, but such appropriations shall not exceed \$1,000,000 in any fiscal year: Provided, That no new budget authority is authorized to be appropriated for fiscal year 1977.

S CENTER FOR CATALOGING

S SEC. 607. The Secretary shall establish a center for cataloging current and projected scientific research in all fields of coal mining and coal preparation. Each Federal agency doing coal mining, coal preparation, and related research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for public use a catalog of coal mining, coal preparation, and related research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of Government, colleges, universities, private institutions, firms, and individuals as may make such information available.

S INTERAGENCY COOPERATION

S SEC. 608. The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal coal mining and coal preparation and related research and provide for interagency coordination of such research, including the research authorized by this title. Such coordination shall include -

S (a) continuing review of the adequacy of the Government-wide program in coal mining, coal preparation, and related research;

S (b) identification and elimination of duplication and overlap between two or more agency programs;

{S8028} (c) identification of technical needs in various coal mining, coal preparation, and related research categories;

S8028 (d) recommendations with respect to allocation of technical effort among Federal agencies;

S8028 (e) review of technical manpower needs and findings concerning management policies to improve the quality of the Government-wide research effort; and

S8028 (f) actions to facilitate interagency communication at management levels.

S8028 ADVISORY COMMITTEE

S8028 SEC. 609.(a) The Secretary of the Interior shall appoint an Advisory Committee on Coal Mining and Coal Resources and Research composed of -

S8028 (1) the Director, Bureau of Mines, or his delegate, with his consent;

S8028 (2) the Director of the National Science Foundation, or his delegate, with his consent;

S8028 (3) the President, National Academy of Sciences, or his delegate, with his consent;

S8028 (4) the President, National Academy of Engineering, or his delegate, with his consent;

S8028 (5) the Director, United States Geological Survey, or his delegate, with his consent; and

S8028 (6) not more than four other persons who are knowledgeable in the fields or coal mining, coal preparation and related research, at least one of who shall be a representative of working coal miners.

S8028 (b) The Secretary shall designate the Chairman of the Advisory Committee. The Advisory Committee shall consult with, and make recommendations to, the Secretary of the Interior on all matters involving or relating to coal mining, coal preparation and related research and such determinations as provided in this title. The Secretary of the interior shall consult with, and consider recommendations of, such Committee in the conduct of coal mining, coal preparation and related

research and the making of any grant under this title.

S8028 (c) Advisory Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the Secretary, but not in excess of the maximum rate of pay for grade GS-18 as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, United States Code, be fully reimbursed for travel, subsistence, and related expenses.

S8028 Mr. HEINZ. Mr. President. I am pleased to propose an amendment to S. 7 that would establish at a college or university in each qualified State, a Coal Mining and Coal Resources and Research Institute. I offer this amendment for myself, Mr. RANDOPH, Mr. McCLURE, and Mr. ALLEN.

S8028 Mr. President, H.R. 2 in the House, and last year's Surface Mining Act, included a nearly identical title except that research in these bills would be conducted on all minerals, not just coal. But since we are debating a coal bill, I am restricting my amendment to research on coal and coal resources.

S8028 One needs only to look at the daily headlines to know why we must expand coal research. Coal is not only our most important energy resource, it is also a resource for chemical components of fabrics, plastics, and medicine. Continuing research is needed to put coal to use for the benefit of society.

S8028 Coal is potentially the greatest polluter and its mining the greatest desecrater of our land. Furthermore, coal mining is the most hazardous occupation of which I am aware. Mining is dangerous not only because of accidental death and injury, but black lung disease debilitates strong men in the prime of their lives. Gentleman, we pay a billion dollars a year in back lung benefits - and relatively speaking - hardly a dime in research to prevent black lung, or to cure it.

S8028 My amendment is designed to provide for research in coal comparable to agricultural research particularly in our great land-grant colleges. It is because of our historical support of agricultural research that we can feed ourselves and a good portion of the rest of the world. We

must provide the same support for coal research.

S8028 The use of coal, at once, despoils our land and pollutes our air. It is our most precious and our most dangerous mineral. But coal varies in composition in each State - and the problems of mining and processing coal differ from State to State. I think that this amendment is a worthy component of a bill that will halt the pillage of our land. Let me take this opportunity to develop some legislative history for this amendment.

S8028 THE NEED FOR INSTITUTES

S8028 The legislation establishes an allotment program for coal mining, coal resources and research institutes. These institutes are intended to develop technology and manpower to meet pressing coal research and coal industry needs of our country. As mined land reclamation is the major issue addressed by S. 7, reclamation will be an important concern for institutes in affected States. There are several problems that my amendment aims at:

S8028 First, passage of the Surface Mining Act will call, at once, for the solution of technical problems relating to land reclamation as well as surface and underground water pollution. The nature and scope of these problems will vary from region to region, depending upon the character of the coal being mined, the topography of the area, the geologic nature of the overburden, the thickness of the deposit, and the problems encountered in removal of the coal and the intermediate placement and replacement of overburden during the mining process.

S8028 Second, reclamation costs in States that currently have surface mining legislation average \$4 ,000 per acre. The impact of new reclamation procedures on the price of coal, with the passage of Federal legislation, may be heavy.

S8028 Third, coal production in 1976 increased by only 2.5 percent over 1975 despite mounting energy problems. A 2.5 percent increase is less than half the rate needed to double production by 1985. Yet industry will encounter additional engineering problems upon passage of the Surface Mining Act. Prospects for increasing the rate of coal production are slim.

S8028 Fourth, the coal industry demand for trained engineers has depleted our manpower reserves. Metallic and nonmetallic industries have been unable to compete for mining engineering graduates.

S8028 BACKGROUND

S8028 This amendment has a considerable legislative history. Legislation that would have established State mining and mineral resources and research institutes has been enacted by the Congress three times since 1972. Each time the bill was vetoed - once when Congress passed the law on its own merits, and twice as part of comprehensive legislation that would regulate surface mining. In each instance, the legislation failed to become law. The legislation under consideration reduces the scope of the authorized research activities to coal.

S8028 SUSTAINING GRANTS

S8028 This amendment provides sustaining grants for qualified schools of mines and departments of mining engineering, among others. Funds authorized by this legislation would provide a stable funding base for research and education about coal and coal resources much as the Hatch Act of 1877 provides for our renewable resources - agriculture. This base would enable a viable research program to be sustained through periods of widely fluctuating support from grants and contracts and to assure that institutions would not drop such programs due to pressure to respond to more limited, short-term institutional needs.

S8028 THE NEED FOR STATE COAL MINING AND COAL RESOURCES AND RESEARCH INSTITUTES

S8028 The need for State Coal Mining and Coal Resources and Research Institutes has been documented in congressional hearings repeatedly since 1970. The broader, desirable national goals emerging from these hearings include the needs:

S8028 First, to support and stimulate research and education in mining, mined land reclamation, fuel, energy economics, and related environmental research. The support of a qualified research and education institute in the States will insure a continuing, long-range research effort and an adequate supply of scientists, engineers, and technicians.

S8028 Second, to reduce our dependence on foreign energy sources through the development of our own coal resources and improvement in the efficiency of utilization.

S8028 Third, to provide scientists and engineers to improve coal production, preparation and related techniques needed to prevent environmental damage and to reclaim mined land under the diverse geological and climatic conditions in the States affected. A continual flow of trained

manpower into Government and industry will assure that we can handle our energy problems. If personnel are not available, it may take years to develop them. The result may be an economy in disarray because of the inability to cope with an emergency.

S8028 Fourth, to support research reducing death, disease and injury caused by mining accidents and coal dust.

S8028 CRITERIA FOR ELIGIBILITY

S8028 To be eligible for a designation as a State Coal Mining and Coal Resources and Research Institute, a college or university must meet the following criteria:

S8028 First. It must have an eligible school of mines or division or department conducting a program of substantial instruction and research in coal mining and preparation and related research.

{S8029} Second. It must have existed for 2 years.

S8029 Third. The division or department must employ at least four full-time faculty members.

S8029 fourth. The institution must be able to match the Federal contribution. If there is more than one eligible college in the State, the Governor may designate the college to receive the Federal support.

S8029 COST TO THE FEDERAL GOVERNMENT

S8029 In the event that each of the 50 States became eligible for Federal support - an event which is unlikely, indeed - and in the event Congress appropriates all of the money authorized in the project grant section, the program would cost \$25,000,000 in fiscal year 1978 - \$1 0 million for sustaining grants and \$15 million for research grants.

S8029 Total authorized expenditures follow:

S8029 1978 - - - \$2 5,000,000

S8029 1979 - - - \$32,000,000

S8029 1980 - - - \$39,000,000

S8029 1981 - - - \$41,000,000

S8029 1982 - - - \$43,000,000

S8029 1983 - - - \$44,000,000

S8029 1984 - - - \$45,000,000

S8029 RESEARCH GRANTS

S8029 The research grant component of this amendment is particularly important. Such grants are not necessarily restricted to existing schools of mines and will have wide participation.

S8029 Let me specify some of the very real and pressing issues that need to be addressed and researched effectively so we may make the progress we need to come anywhere near meeting President Carter's announced goal of nearly doubling our Nation's coal production. To identify just a few:

S8029 With prevailing technology, the regulation of surface mining, as authorized by S. 7, is counter to the national goal for increased utilization of coal in meeting future energy needs.

S8029 A whole new surface mining technology must be developed, which is both cost and energy efficient, if coal production is to be increased beyond the meager 2.5 percent experienced this past year.

S8029 Because of regional variations in topography and geologic character of coal deposits, no single technology will be adaptable in all regions. A diversity of R. & D. efforts must be stimulated and encouraged in industry, Government, and the academic community, if appropriate technologies are to become available on a timely basis.

S8029 The academic community's potential contribution has been seriously impaired by the nationwide decline in academic programs in mining engineering and related sciences over the last quarter century; 10 of 28 accredited programs have been discontinued in this time period.

S8029 The involvement of the academic community is essential and of twofold consequence. First, there is a critical lack of [*] in industry and Government, as well as education, to launch the needed R. & D. effort. Second, the compliance with the surface mining regulations will require a significant increase in the level of engineering activity required to produce a ton of coal, and the coal industry's present demand for mining engineers outstrips the supply by a factor variously estimated to range from three to four.

S8029 With present technology, coal preparation required to precondition coal to meet "new

source" SO2 emission standards leads to the loss of up to 30 percent of the mined coal in many instances, and still requires electric utilities and other consumers of coal in direct coalfired boilers and furnaces to resort to flue gas scrubbers which, even when oversized, are ineffective and inefficient in terms of energy, materials, and cost.

S8029 To permit coal to be used as a primary energy source in an environmentally satisfactory mode, a new coal preparation technology must be developed, and in some regions that technology can be directly dependent upon the surface mining practices required for reclamation compliance. Again, the manpower required for the development of this technology, as well as applying that technology, does not exist.

S8029 Previous Congresses recognized the important need for revitalizing these educational and academic research programs, as contributors to fulfill the technology and manpower needs that attend improved reclamation practices. In light of our present goals for increased coal production, this Congress must exercise equal wisdom.

S8029 This is by no means an all inclusive list, but I think it serves to illustrate the point that our research needs are far beyond our current capacity.

S8029 Mr. President, there are numerous questions that have been asked about this legislation. To assist my colleagues I would like to enumerate these questions and my responses:

S8029 Q. Do private universities qualify (for example. Columbia and Stanford)?

S8029 A. The legislation provides that if there is no qualified public institution in a state a private institution may be designated.

S8029 Q. The legislation requires that the institution match Federal funds. Not many schools can come up with \$200,000 or more each year.

S8029 A. It is the intention of the legislation that the schools match Federal funds with on-going programs of instruction and research into coal mining and coal resources. All of the criteria for eligibility are designed to ensure that the Federal funds will build on a substantial base.

S8029 Q. Will a particular school qualify?

S8029 A. The criteria for designation as an institute are designed to ensure that Federal funds are

well spent on existing substantial programs of coal research. Year school will qualify if it has an existing program of coal research, if it has existed for two years, if it has at least four full-time faculty and if it can match Federal funds with university funds that support existing research and teaching programs.

S8029 Q. Will Penn State, for example, get more money than the University of Missouri?

S8029 A. Each school will receive the same amount of money . . . unless, of course one is unable to match the Federal contribution. In which case I presume its funds would be ratably reduced.

S8029 Q. Why do we need so many institutes?

S8029 A. Coal not only differs from state to state, it differs from seam to seam. Mining techniques differ depending on terrain, annual precipitation, and other variables. State mining laws will affect methods of extraction, preparation and the transportation of coal. Further, mining engineers and scientists at each school are a limited national treasure. It is in the interest of our nation to nurture them carefully in whichever state they may be found.

S8029 Q. Why limit the bill to coal when other minerals are equally important?

S8029 A. S. 7 regulates surface mining of coal. Those regulations together with other problems of coal mining and coal preparation, makes coal our first priority. I acknowledge that other minerals: cooper, bauxite, and potash, to name only a few, are also critical but we have to get started. And, today coal is the most critical.

S8029 Q. Your amendment provides for annual grants to each institute and also research grants. What is the purpose of both programs?

S8029 A. The annual grants are sustaining grants. They are designed to do for coal what agricultural experiment stations do for agriculture. The universities will have to account for the use of Federal funds, but they will not be required to produce specific research results. The sustaining grants will establish a faculty base of the dimensions we have in our colleges of agriculture. That faculty base will enable each school to undertake expanded programs of research and development.

S8029 The research grants will be available to all colleges and universities. They will be

distributed on the basis of competitive proposals. It is hoped that their availability will enable states, that do not qualify today, to become qualified for the institute designation as their programs are developed.

S8029 Q. My State has two qualified schools. Will they both be designated as institutes?

S8029 A. Only one per State! If two schools are qualified according to criteria in the legislation, the Governor of the State makes the final designation. (Criteria include an existing program of coal research, matching funds, 2 years old and four (4) faculty).

S8029 Q. What about research to eliminate accidents and black lung disease?

S8029 A. My amendment specifically includes both of those research areas. I am shocked to learn that we spend more than a billion dollars a year on black lung benefits and almost nothing on prevention and treatment of the disease.

S8029 Q. Shouldn't the responsible agency be the new Department of Energy?

S8029 A. My amendment deals with what is. I leave that issue to the wisdom of my colleagues and the Executive Branch once the new Department is authorized.

S8029 Q. What about Bureau of Mines and ERDA Labs; Won't there be overlap?

S8029 A. Sec. 608(b) provides that the President shall, by such means as he deems appropriate, for identification and elimination of duplication and overlap between programs. Furthermore, since the character of coal and surface mining conditions vary from region to region, the Coal Mining Institute in a given state will logically address those problems and needs which are typical of the coal reserves in that state.

S8029 Q. Isn't there plenty of contract coal research out of the Bureau of Mines and ERDA?

S8029 A. The Bureau of Mines contract coal mining research is limited to that applicable to health and safety, generally in underground mining, which must be sustained. Funds herein authorized are to stimulate and encourage coal mining, preparation and other research to minimize the impact of the surface mine regulations upon coal production, recognizing that the character of such research will vary from region to region and coal seam to coal seam.

S8029 ERDA's grant and contract coal research is largely related to coal utilization in energy systems, which is a most vital phase and one step beyond the mining and preparation phases.

{S8030} Q. What about coal conversion, gasification and liquification?

S8030 A. Where such research is peculiar to the coals of concern to the Institutes and other universities and does not duplicate or overlap that within or sponsored by ERDA such research would be appropriate and should be encouraged.

S8030 Q. Does the schools' matching share have to be new money?

S8030 A. No. However, each school must at least maintain its present funding effort. It is not my intent that any portion of the State allotments be used to replace or refund any current or ongoing commitments at these schools.

S8030 Mr. President, I hope this discussion has been helpful to my colleagues. Equally, I hope my colleagues will carefully weigh the strong case in favor of this amendment, and I ask for their support in at least ensuring that this commitment to coal research be enacted.

S8030 I do not mean to take a lot of my colleagues' time. This is an amendment which is not a new one to this body. It is an amendment to establish coal mining and coal resources institutes in every State in the United States. It is clear to all of us, I believe, just how important it is that we do coal research on the tremendous variety and kinds of coals, the kinds of seams of coal that we have in the United States.

S8030 There are many kinds of bituminous coal, anthracite coal in the State of Arizona, tremendous amounts of coal shale, not to mention many kinds of bituminous coal in and of themselves.

S8030 The purpose of this amendment is to authorize the Secretary of the Interior to assist the operating universities, particularly State universities, in setting up research institutes.

S8030 I have discussed this amendment with both the distinguished chairman of the committee, the Senator from Montana (Mr. METCALF), and the distinguished ranking member of the committee (Mr. HANSEN). I understand they have no objection to the amendment.

S8030 Indeed, I think it should be said that the Senator from Montana has done a great deal in leading the way in this direction, Without the work he has done over the years, I do not think this amendment would be possible.

S8030 I understand, Mr. President, that the chairman does not wish this amendment to come up for consideration and a vote right now. Therefore, I think it would be appropriate, if the Senator agrees, to bring it up tomorrow morning as one of the items of business.

S8030 Mr. METCALF. Mr. President, unless someone has an objection, I am perfectly willing to accept the amendment. I believe my friend from Wyoming is also willing to accept the amendment.

S8030 Mr. HANSEN. I am.

S8030 Mr. METCALF. Perhaps we can handle it in that way.

S8030 Mr. HEINZ. If there is no objection, Mr, President, I ask for the yeas and nays on this amendment.

S8030 Mr. METCALF. Can we do it by a voice vote?

S8030 Mr. HEINZ. I would ask for a voice vote on the amendment.

S8030 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8030 The amendment was agreed to.

S8030 Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

S8030 Mr. HANSEN. Mr. President, I move to lay that motion on the table.

S8030 The motion to lay on the table was agreed to.

S8030 Mr. ABOUREZK addressed the Chair.

S8030 The PRESIDING OFFICER. Under the previous order, the Senator from Louisiana is recognized to call up another of his amendments.

S8030 AMENDMENT NO. 275

S8030 Mr. JOHNSTON. Mr. President, I call up my amendment No. 275 and ask for its immediate consideration.

S8030 The PRESIDING OFFICER. The amendment will be stated.

S8030 The assistant legislative clerk read as follows:

S8030 The Senator from Louisiana (Mr. JOHNSTON) proposes amendment No. 275.

S8030 The amendment is as follows:

S8030 On page 207, strike all of lines 1 through 21 and insert in lieu thereof the following:

S8030 "(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not interrupt, discontinue or prevent farming on alluvial valley floors unless -

S8030 "(a) throughout the surface mining operation, upstream and downstream ground and surface water flows in these alluvial valley floors are maintained so as not to impair existing rights of other water users;

S8030 "(b) during and after the reclamation process, the essential hydrologic functions of the area is preserved without materially damaging the quantity and quality of surface and ground water systems that supply these valley floors; and

S8030 "(c) the total value of the coal mined by the surface mining operation would exceed, by a ratio of 100 to 1, the total value of the farming or ranching products that would be produced from said acreage while out of production as a result of the mining activity.

S8030 "(6) Paragraph (5) shall not affect those surface coal mining operations located within or adjacent to alluvial valley floors which in the year preceding the enactment of this Act were engaged in the commercial production of coal, or which had obtained prior to January 4, 1977, specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors, or for which substantial financial and legal commitment had been made."

S8030 Mr. HUMPHREY. Mr. President, will the Senator yield?

S8030 Mr. JOHNSTON. Mr. President, I yield to the Senator from Minnesota.

S8030 Mr. HUMPHREY. Mr. President, I wonder if the Senator from Louisiana will yield to me for a unanimous-consent request which will only take, I am sure, a very brief time, provided he will not lose his right to the floor.

S8030 Mr. JOHNSTON. I yield.

{S8038} The Senate continued with the consideration of the bill (S. 7) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

S8038 AMENDMENT NO. 273

S8038 Mr. JOHNSTON. Mr. President, there will not be a vote on this amendment tonight. There will be in the morning. I am sorry that I did not have a chance to get this matter considered by committee. I brought up this amendment in committee, presented it and discussed it, and was asked to put the matter over to be studied by the staff.

S8038 It was, in fact, studied by the staff and I was advised on a preliminary basis that it would be accepted. Later, I was told that it would not be accepted.

S8038 I state that, not because I am saying that anyone has broken a promise to me, but simply to show that this amendment could have been presented in committee and brought to a vote there, where I think it would have passed. At least, I thought it would; I think it should have passed. It was almost good enough to pass muster with the Senator from Montana.

S8038 Quite frankly, Mr. President, I recognize when there is a trend and, with the last two amendments, as good as those two amendments were and as clear in my view, I recognize that we are not going to pass this, because it has the appearance that the committees have considered this and it has gone down the drain. Nevertheless. I wish to discuss it.

S8038 I would like to get a little clarification because I believe that, of all the pieces of legislation I have seen come through the Senate, I have never seen one more ambiguous than that provision that relates to alluvial valley floors. An alluvial valley floor is, as defined in the bill, an unconsolidated stream-laid deposit, which is irrigated or subirrigated, and on which farming can be performed. I believe that is the way it is phrased. That is not so ambiguous as that part of the amendment which says that the proposed coal surface mining operation would not have a substantial adverse effect on the alluvial valley floor.

S8038 Now, nobody knows what "substantial adverse effect on the alluvial valley floor" means, or another provision that says, "where such valley floors are significant to the practice of farming."

S8038 So, finding this to be so ambiguous and feeling that there are certain values in the alluvial valley floors that ought to be protected, my amendment does this: First, it protects the water. It protects the water during the mining operation and after the mining operation, and provides that all of the essential hydrologic functions must be preserved without any material damage to quantity and quality of the surface, ground water.

S8038 So if the water is what we are concerned about, and I think it is, my amendment protects the water much better than the bill does. I think that will be admitted.

S8038 As far as farming is concerned, my amendment says that, in addition to protecting the water, coal cannot be mined unless the value of the coal exceeds the value of the farming products by 100 to 1. One hundred to one, I thought, was a reasonable tradeoff.

S8038 What my amendment does is protect the water, and it balances the value of the farming; but it takes out this horrendous language that I have never had explained to me as to what it means.

S8038 So, recognizing that it is going up against the committee, and when you have considered something and rejected it, you usually lose on an apple pie issue like strip mining, I would like to do the best I can to clear this matter up, as to what it means.

S8038 Will the Senator from Montana submit to a number of questions?

S8038 Mr. METCALF. Certainly.

S8038 Mr. President, I want to say that the Senator from Louisiana is absolutely correct. When this amendment was pending in committee and there was urgency to get the legislation out so that we could move on to some other of the President's energy programs, we did say that the Senator from Louisiana would have an opportunity on the floor without having to go through the committee. So there has not been a committee vote on this amendment. The Senator is absolutely correct that he was assured that there would be an opportunity for him to present it without prejudice.

S8038 Mr. JOHNSTON. The amendment refers to a substantial adverse effect on alluvial valley floors. If it has a substantial adverse effect on alluvial valley floors, then strip mining may not take place. Is it really referring to a substantial adverse effect on the valley floor, or on the farming?

S8038 Mr. METCALF. On the valley floor. The whole concept of this alluvial valley amendment is to protect the hydrology of the area and to protect that entire alluvial valley. As the Senator from Louisiana knows, most of the coal seams are in the aquifers for water in those areas and cutting those aquifers - either upstream from a farmer - may not have a direct effect on that farmer, but would have a direct effect on agricultural operations in the alluvial valley.

S8038 Mr. JOHNSTON. Very well. Are we talking about permanent harm or temporary harm to the valley floor?

S8038 Mr. METCALF. I would say that we are talking about potential permanent harm. But that is something the Secretary would have to decide.

S8038 Any mining operation is going to have some temporary impact or effect.

S8038 Mr. JOHNSTON. That would have been my next question. If the Senator said it is temporary harm, I was going to ask how you can possibly surface-mine an alluvial valley floor without doing harm to that valley floor. You dig it up and, whatever water there is, is cut. So we are really talking about a permanent harm to the alluvial valley floor.

S8038 Mr. METCALF. I do not think we know enough about the hydrology, really, to go in there; so we are taking chances, even with the language that is in the bill

S8038 Mr. JOHNSTON. The Senator does recognize that my amendment thoroughly protected the water and it is free from any ambiguity, is it not?

S8038 Mr. METCALF. On that 100 to 1 ratio. I suppose if you are betting on Seattle Slew, that 100 is something to reckon with.

S8038 But otherwise, I would say that the very strictures that the Senator is putting in removes from the consideration of the Secretary many of the flexibilities that he has in enforcing this provision on alluvial valley floors.

S8038 Mr. JOHNSTON. That is what I am getting at. I am wondering what right he has and what he does not have.

S8038 We are talking about harm, permanent harm to the valley floor. Not talking about harm to the farming, are we?

S8038 Mr. METCALF.No. In alluvial vailey floors, as the Senator from Louisiana very well knows, what we are concerned about is harm to these larger areas. It may be one farm, a dozen farms, or have permanent harm to small hydrology downstream where it emerges in springs or water courses for watering livestock.

S8038 Mr. JOHNSTON. My amendment protects against those.

S8038 Mr. METCALF. I am not sure.

S8038 We are going to leave it in the bill and we are discussing it here. I will give the Senator as clear an answer as I can tomorrow when we have further consideration.

S8038 I am not going to agree to accept the amendment tonight.

S8038 Mr. JOHNSTON. I understand that. Quite frankly, I have got to leave tomorrow. I was advised that my amendments would be considered and voted on today. Based on that, I made commitments to leave on the early flight tomorrow. That is why all my discussion is tonight.

S8038 Senator DOMENICI will bring it up for a vote tomorrow. I, frankly, do not expect, with the opposition of the committee, that we will pass it because I see the drift of this bill.

{S8039} Mr. METCALF. The Senator from Louisiana has been very cooperative. He permitted a couple of other amendments to come in when he had an order to bring this amendment up and he consented to a unanimous-consent agreement to vote on the last amendment.

S8039 But in spite of the cooperation of the Senator from Louisiana, I am not going to agree tonight to vote on an amendment as important as this.

S8039 Mr. JOHNSTON. I understand that and I am not asking to bring it up for a vote. I hope the Senator will think about it during the evening hours and before tomorrow and perhaps accept it. I sincerely hope he will.

S8039 In the meantime, in the event he does not and the law passes as it is presently written, I would really like to get it interpreted because I am perfectly sincere when I say I have no idea what it means other than the explanation I have just been given.

S8039 But, as I understand, we are not talking about farming, farming only, in these words of the bill where it says:

S8039 Where such valley floors are significant to the practice of farming or ranching operations, including potential farming and ranching operations.

S8039 All that does is modify the kind of alluvial valley floors we are talking about. Harm to that farming is not a part of the consideration of whether we can strip mine or not.

S8039 Is that correct?

S8039 Mr. METCALF. Harm to the farmer or the farmer's actual agricultural operation is covered in some other provisions in the bill, especially in the provision the Senator from Louisiana and I were discussing in the last amendment he proposed.

S8039 But there are two principal amendments, as I see, in this legislation that will come up on prime agricultural land and this amendment on alluvial valley floors that protects the entire environment of an area.

S8039 I would like to be a little more precise than I am in colloquy such as we are having here and come in tomorrow and give the Senator a written answer to my interpretation and my construction of the language.

S8039 Mr. JOHNSTON. Very well.

S8039 Can the Senator tell me what the phrase "where such valley floors are significant to the practice of farming" means?

S8039 Does that mean significant on a state-wide basis, a local basis, or the farmer?

S8039 Mr. METCALF. Significant for the whole entire area.

S8039 As we have already mentioned, some of these big coal seams, 90 feet thick, 100 feet thick, 150 feet thick, are the purest aquifers for the transfer of underground water in an entire area, and if it is significant for farming maybe several miles downstream and there was a significant adverse impact, the Secretary should not permit such mining.

S8039 Mr. JOHNSTON. Neither would it under my amendment. It would be explicitly prohibited because we spell out the protection for the water. I think water should be spelled out.

S8039 My problem with this amendment is that it is not clear. If Senator HAYAKAWA were here, he would tell us that the syntax and the words are twisted around.

S8039 Mr. METCALF. I would be delighted if Senator HAYAKAWA would try to sit with me and give a precise explanation.

S8039 Mr. JOHNSON. What I am concerned about is ambiguity. Ambiguity of the kind that can prevent my State from getting the coal so we can switch off natural gas.

S8039 We regard this matter as being quite serious. The companies that would burn coal down there say, "Well, what does alluvial valley floor mean?" And nobody knows.

S8039 If it is to protect farming, then it does not say that. But it uses some words about farming and potential farming.

S8039 Are we talking about a significant amount of harm in farm products, in the Powder River Basin, or in the State of Wyoming, or a potential part of the single farmer's operation?

S8039 Does the Senator see what I mean about the ambiguity of this matter?

S8039 Mr. METCALF. I say to the Senator from Louisiana that I have frequently been exposed to alleged ambiguity. I found out the courts are well equipped to interpret and give a construction to some of the most loose language the Senate has ever written into legislation. I believe there are probably cases as long as our arm and a lot of cases that define some of the language such as this.

S8039 I doubt if there is any ambiguity that cannot be interpreted either by secretarial regulations or by an appeal by an appropriate court.

S8039 Mr. JOHNSTON. Part of my problem is the courts where we have citizen suits. We do not have a final determination here, as I understand it. So that we set the scene for suits that are going to be tying up the leasing of this coal, probably the Powder River Basin, for a long period of time.

S8039 How long was the Alaska pipeline held up? I can say it was long enough for the price to go up from \$1 billion to about \$7 billion.

S8039 I do not think the Senator has any misgivings about the intent of some environmental groups to hold up leasing for strip mining in the West. That is pretty plain, is it not?

S8039 Mr. METCALF. I am pretty sure that environmental groups are going to challenge several of the provisions in this statute as they challenged many others. I think they should have a

right to do so.

S8039 Mr. JOHNSTON. I think they ought to have a right to do so, too. But not because we intentionally put in language which is, believe me, so vague that I do not believe it can be interpreted.

S8039 Mr. METCALF. I cannot agree with the Senator that it is so vague that it cannot be interpreted by regulations and by the construction given to it.

S8039 Mr. JOHNSTON. I think the court can interpret it, but it is the basis for a lawsuit.

S8039 In other words, if we took this language about significant to the practice of farming and leave that to a court to interpret what "significant" does mean. The reason I put in a ratio 100 to 1, the value of the coal to farming, is so we can get some gauge to see at what level this value of farming outweighs the value of coal.

S8039 If 100 to 1 is the wrong ratio, then maybe 1,000 to 1 is the ratio. But to say significant to the practice of farming -

S8039 Mr. METCALF. I say to the Senator that sometimes it might be significant in a small area where the ratio was not 100 to 1, or was more than 100 to 1.

S8039 I mean, it seems to me that each case has to be decided on a case-by-case basis under regulations promulgated by the Secretary of the Interior and issued and enforced by the Secretary.

S8039 It may well be that in a small farming operation, we have a wholly different situation from that in a large area that comprises an alluvial valley floor.

S8039 Mr. JOHNSTON. Do we consider, then, a substantial adverse effect on farming to be a substantial adverse effect on an individual farmer if he happens to be small or large?

S8039 Mr. METCALF. No, I did not say that. I say on an area, and it may be that a couple of small farmers are involved, or it may be a huge ranching operation, or it may be several ranching operations.

S8039 Mr. JOHNSTON. It is not the value of the agricultural product we are talking about, I would think.

S8039 Mr. METCALF. Not specifically, but it is the value of the farming operation.

S8039 Mr. JOHNSTON. It is not the value of the agricultural product, and it is not the number of farmers involved.

S8039 Mr. METCALF. It may well be. It may be only one farmer involved. There may be a dozen or there may be a whole agricultural area. Whether it is one farmer in a small alluvial valley or one of the larger valleys in the Potter River Basin, for example, these things have to be decided by regulations promulgated by the Secretary, enforced by the Secretary, and carried out under the general language of the legislation.

S8039 Mr. JOHNSTON. I wonder whether the Senator from Montana would entertain a compromise along these lines:

S8039 First of all, drop the ratio. Sections (a) and (b) protect the water. The Senator has trouble with that ratio, and I was simply searching for a method to find a balance.

S8039 I would be willing to strike the ratio and add a provision that nothing in this section shall supersede or replace the requirements of sections 415 and 416 of the act. Section 415, of course, deals with the environmental protection performance standard, and section 416 deals with the surface effects of underground mining operation.

S8039 So that we would make it perfectly clear that what we are trying to do here is to preserve the water during the mining operation, the water permanently, both as to quantity and quality. Sections (a) and (b) make that clear.

S8039 We also state that nothing in this section shall supercede or replace the requirements of sections 415 and 416 of the act. That further protects water.

S8039 Mr. METCALF. I would like to accommodate the Senator. I am just not sure that in a matter of this kind we should write a significant provision in this legislation tonight, on the Senate floor.

{S8040} Mr. President, the Committee on Energy and Natural Resources did not consider this amendment at the time it modified the provision in S. 7 for consideration of the special problems relating to alluvial valley floors protection; although Senator JOHNSTON's language was read and discussed briefly, there was no action taken on it.

S8040 I believe that the language in the bill as reported by the committee adequately protects the

alluvial valley floor areas of the West. It is well known that these valleys contain the most important agricultural areas. The bill would require the regulatory authority to give due consideration to any substantial adverse effect which surface mining operations might have on such valleys if located west of the 100th meridian, and if such valleys are significant to the practice of farming or ranching operations.

S8040 Since the primary land use of alluvial valley floors is agricultural, it is important that the agricultural productivity of these valleys should become a primary guideline for determining whether or not a permit should be issued. It is important to understand that the language in S. 7 is in no way a ban on mining in alluvial valley floors, but rather requires a case-by-case consideration of each mining plan and each permit application by the regulatory authority.

S8040 In addition, the grandfather clause would insure that those surface mining operations which were producing coal in commercial quantities, if located within or adjacent to alluvial valley floors, or if they had obtained specific permit approval by the State regulatory authority, or if they had undertaken substantial financial and legal commitments prior to January 1, 1977, would be exempted. The Secretary, through his regulations, would make the determination in each case as the applicability of the substantial financial and legal commitments clause.

S8040 Mr. President, I believe that Senator JOHNSTON's amendment would go too far in mandating that the regulatory authority must consider the value of the coal relative to the value of the agricultural production of the land. I believe this would tend to encourage more mining on alluvial valley floors than might be wise. In addition, I am concerned that hydrologic standards contained in other portions of the bill; namely, section 415(b)(10)(F) might be weakened as applying to alluvial valley floor operations.

S8040 The provisions of S. 7 as reported by the committee are adequate for striking a balance between the need to allow surface mining of coal where it will not adversely affect agricultural operations, and the need to preclude such operations where this protection is not forthcoming.

S8040 Mr. President, I urge the defeat of this amendment.

S8040 Mr. HANSEN. Mr. President, will the Senator yield?

S8040 Mr. JOHNSTON. I yield.

S8040 Mr. HANSEN. It seems to me, Mr. President, that the Senator from Louisiana has proposed a possible way out of the dilemma that I suspect we may be in now. This might very well mark an appropriate time to adjourn and to give us an opportunity, each or us, to examine this offer which I understand the Senator from Louisiana to have made, to see how this checks out with the concerns we have.

S8040 I think that before we take any action one way or the other, we should give the Senator the benefit and accord him that right, and we could look into it.

S8040 Mr. JOHNSTON. Very well. Do we need to discuss this any more? Is it fully understood?

S8040 Mr. METCALF. As I understand it, the Senator from Colorado has an amendment along the same line. No matter what happens, that will have to be considered tomorrow, too.

S8040 Mr. HART addressed the Chair.

S8040 The PRESIDING OFFICER. Does the Senator from Louisiana yield?

S8040 Mr. JOHNSTON. I yield to the Senator from Colorado.

S8040 Mr. HART. Mr President, I am going to offer my amendment as a substitute, and I do not know whether I need recognition in my own right or not. If the Senator yields for that purpose, I will go ahead and do that.

S8040 Mr. JOHNSTON. I do not believe we could do that at this point. I would like to modify my amendment, and then if the Senator offers a substitute tomorrow, that would be -

S8040 Mr. METCALF. The Senator could modify his amendment. However, I am in accord with the Senator from Wyoming and do not want tonight -

S8040 The PRESIDING OFFICER. The Chair advises that the Senator does have a right to modify his amendment at this point.

S8040 Mr. METCALF. Yes. But I am not going to agree to the amendment as modified at this point, this evening, and that is what I am saying to the Senator.

S8040 Mr. MELCHER. Mr. President, will the Senator from Louisiana yield?

S8040 Mr. JOHNSTON. I yield.

S8040 Mr. MELCHER. Mr. President, since we are all laying down what we are going to do tomorrow, let me also say that I have an interest in this particular section of the bill.

S8040 The Senator from Louisiana has pointed out some of the ambiguities in this section of S. 7, has offered more language, would modify it to make it more ambiguous by referring to two sections of the bill, and would not help to clarify exactly what we are trying to do.

S8040 Since it involves only those areas of strip mining which are west of the 100th meridian, we have narrowed it down to irrigated valley floors.

S8040 Frankly, I do not believe that modifying the Senator's amendment to make references to those two sections is going to clarify the ambiguity that exists in S. 7 as we have it now.

S8040 The Senator from Colorado (Mr. HART) has an amendment to be offered that is very straightforward and very clear. You just will not mine in the valley floor if it is any kind of an alluvial valley floor. That certainly removes a lot of ambiguity, and it is going to remove a lot of mining, too, because then the whole issue will be resolved on what is the definition of "alluvial valley floor."

S8040 I will at the right time, if neither the amendment of the Senator from Louisiana nor the amendment of the Senator from Colorado is accepted, offer a clarifying amendment to S. 7 that was agreed upon by the representatives of the environmental groups last summer, representatives of labor - the United Mine Workers and the AFL-CIO - and was endorsed on February 4 by Secretary Andrus in his letter to the committee.

S8040 Mr. METCALF. Mr. President, I am not prepared to accept any amendment, because I want to protect the rights of all my colleagues, including the Senator from Colorado and the Senator from Montana and others, to offer these amendments.

S8040 Mr. President, a parliamentary inquiry.

S8040 The PRESIDING OFFICER. The Senator will state it.

S8040 Mr. METCALF. If the amendment of the Senator from Louisiana is accepted. will it foreclose the right of the Senator from Colorado or the Senator from Montana to offer an amendment on the same subject matter?

S8040 The PRESIDING OFFICER. At that particular point in the bill. However, since there is no rule for consistency, language which could disagree with the language of the Senator from Louisiana could be offered at another point in the bill.

S8040 Mr. HART. Mr. President, will the Senator yield?

S8040 Mr. JOHNSTON. Yes.

S8040 First let me say I modify my amendment by striking subsection (c) on page 2 in its entirety.

S8040 The PRESIDING OFFICER. Will the Senator send up a copy of his modification to the clerk's desk.

S8040 Mr. JOHNSTON. Let me read it also. In lieu of subsection (c) add the following:

S8040 Nothing in the section shall supersede or replace the requirements of sections 415 and 416 of this act.

S8040 I send up the modification.

S8040 The PRESIDING OFFICER. Without objection, the amendment will be so modified.

S8040 The amendment, as modified, is as follows:

S8040 On page 207, strike all of lines 1 through 21 and insert in lieu thereof the following:

S8040 "(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not interrupt, discontinue or prevent farming on alluvial valley floors unless -

S8040 "(a) throughout the surface mining operation, upstream and downstream ground and surface water flows in these alluvial valley floors are maintained so as not to impair existing rights of other water users;

S8040 "(b) during and after the reclamation process, the essential hydrologic functions of the area is preserved without materially damaging the quantity and quality of surface and ground water systems that supply these valley floors; and

S8040 (c) nothing in this section shall supersede or replace the requirements of sections 415 and 416 of this Act.

S8040 "(6) Paragraph (5) shall not affect those surface coal mining operations located within or adjacent to alluvial valley floors which in the year preceding the enactment of this Act were engaged in the commercial production of coal, or which had obtained prior to January 4, 1977, specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors, or for which substantial financial and legal commitment had been made."

{8041} Mr. JOHNSTON. Now I will yield to the Senator from Colorado.

8041 Mr. HART. Let me clarify what I want to do here. My purpose here this evening was to move to substitute my printed amendment No. 382 at the desk, for the pending amendment of the Senator from Louisiana and to try to reach some agreement about time in the morning for the consideration of my substitute, making it the pending business, and have a vote on it at a certain time in the morning. And, then, if my substitute fails we would turn to consideration of the Senator's amendment.

8041 Mr. JOHNSTON. I would want the Senator to get a vote, but the understanding was we would have no record votes tonight, and I would want a record vote and, therefore, I would want to go ahead and try to get a vote tomorrow, and I would hope that the Senator could bring his amendment up after mine, for a vote after mine.

8041 Mr. HART. I am sure that is what the Senator hopes. (Laughter.) But I wish to accommodate the Senator. I will wait until the Senator has finished debating.

8041 Mr. JOHNSTON. What kind of amendment was it? Did Senator MELCHER correctly describe it?

8041 Mr. HART. Well, he partially described it. I do not want to go into debate on it this evening, frankly, because there is no attendance, and I do not think we would serve any purpose by discussing it. The amendment has been widely circulated, and the Senators can look it over tonight. I do not think it is timely to debate it this evening, because I prefer to have some attendance for the debate. But it is an alluvial valley amendment of the sort described by the Senator from Montana.

8041 Mr. JOHNSTON. It provides that if there is farming on the valley floor that you cannot mine?

8041 Mr. HART. It would prohibit new surface mining on alluvial valley floors, just as the House bill would.

8041 Mr. ABOUREZK. Mr. President, will the Senator yield? I had a couple of amendments that had been accepted by the committee and I just wonder if I might sneak in for a couple of minutes just to offer them. I do not know how much longer the debate is going to go on. It is very interesting, I have to say, but I do have another commitment I have to take care of.

8041 Mr. JOHNSTON. Are they going to be accepted by the committee?

8041 Mr. ABOUREZK. Yes.

8041 Mr. JOHNSTON. Will it take just a minute? I am just about through.

8041 Mr. ABOUREZK. It will not take me very long.

8041 Mr. JOHNSTON. Mr. President, I ask unanimous consent that we temporarily lay this amendment aside for a short period of time to allow the Senator from South Dakota to bring up two uncontested amendments, after which my amendment would become the pending business.

8041 Mr. MELCHER. Reserving the right to object, Mr. President -

8041 The PRESIDING OFFICER. The Senator from Montana reserves the right to object.

8041 Mr. MELCHER. May I ask the Senator from South Dakota, are they printed amendments?

8041 Mr. ABOUREZK. Two of them are printed, one is not yet printed.

8041 Mr. MELCHER. Will the Senator advise me what they involve?

8041 Mr. ABOUREZK. I would be happy to if the Senator will let me offer them. If there is a note to be called for I will just put them off until tomorrow.

8041 The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

8041 AMENDMENT NO. 279

8041 Mr. ABOUREZK. Mr. President, I call up my amendment No. 279.

8041 The PRESIDING OFFICER. The clerk will report the amendment.

8041 Mr. ABOUREZK. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with, and I will describe it.

8041 The PRESIDING OFFICER. Without objection, it is so ordered.

8041 The amendment is as follows:

8041 On page 297, beginning with line 4, strike out all through line 9 on page 2998 and renumber succeeding sections accordingly.

8041 At the end of the bill, add the following new title:

8041 "TITLE VI - INDIAN LANDS

8041 "INDIAN LANDS PROGRAM

8041 "SEC. 601. Any Indian tribe on whose lands there are or may be conducted surface coal mining operations may elect, in such manner as the Secretary may prescribe pursuant to section 603, to (1) assume exclusive jurisdiction over the regulation of such coal mining operations and reclamation operations pursuant to an approved Indian lands program, (2) have any such Indian lands program administered by the Secretary, or (3) participate in the Indian lands study authorized by section 611 of this title. In no case, however, shall any election under clause (1) or (2) be construed as precluding that tribe's participation in such study pursuant to section 611.

8041 "GRANTS TO TRIBES

8041 "SEC. 602. (a) The Secretary is authorized to make annual grants directly to any Indian tribe for the purpose of (1) assisting such tribe in developing, administering, and enforcing an Indian lands program under this title, and (2) enabling such tribe to realize benefits from the development of its coal resources while protecting the cultural values of the tribe and the physical environment of the reservation including land, timber, agricultural activities, surface and ground waters, and air quality.

8041 "(b) Any Indian lands program developed by any Indian tribe shall meet all provisions of this Act and where any provision of any tribal code, ordinance, or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, provides for environmental controls and regulations of surface coal mining and reclamation operations which are more stringent than the provisions of this Act or any regulations issued pursuant thereto, such tribal code, ordinance, or regulation shall not be construed to be inconsistent with this Act.

8041 "INDIAN LANDS ENVIRONMENTAL PROTECTION STANDARDS

8041 "SEC. 603. On or before the expiration of the one hundred and eighty day period following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations on Indian lands setting mining and reclamation performance standards based on and incorporating the provisions of title IV of this Act, and establishing procedures and requirements for preparation, submission, and approval of Indian lands programs. Such regulations shall be promulgated and published under the guidelines of section 401 of this Act.

8041 "APPEOVAL OF PROGRAM

8041 "SEC. 604. (a) Each Indian tribe, on whose lands there are or may be surface coal mining operations, which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in title III of this Act, shall submit to be Secretary, on or before the expiration of the eighteen-month period following the date of the enactment of this Act, an Indian lands program which demonstrates that such tribe has the capability of carrying out the provisions of this Act and meeting its purposes.

8041 "(b) The Secretary shall approve or disapprove an Indian lands program, in whole or in part, within six full calendar months after the date such program was submitted to him, except as provided in section 506.

8041 "(c) If the Secretary disapproves an Indian lands program, in whole or in part, he shall notify the tribe in writing of his decision and set forth in detail the reasons therefor. The tribe shall have sixty days in which to resubmit a revised Indian lands program, or portion thereof. The Secretary shall approve or disapprove the resubmitted program or portion thereof within sixty days from the date of resubmission.

8041 "(b) For the purpose of this title, and section 606 of this Act, the inability of an Indian tribe to take any action, the purpose of which is to prepare, submit, or enforce an Indian lands program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under this Act, or in the imposition of a Federal program. Regulations of the surface coal mining and reclamation operations covered or to be covered by the Indian lands program subject to the injunction shall be

conducted by the Indian tribe pursuant to section 605 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of this section and section 606 again shall be fully applicable.

8041 "(e) The Secretary shall not approve an Indian lands program submitted under this section until he has -

8041 "(1) obtained the written concurrence of the administrator of the Environmental Protection Agency with respect to those aspects of an Indian lands program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857);

8041 "(2) held at least one public hearing on the Indian lands program for the enrolled members of the tribe on its reservation;

8041 "(3) found that the Indian tribe has the legal authority, the qualified personnel, and sufficient funding necessary for the enforcement of the environmental protection standards; and

{S8042} "(f) found that the Indian tribe has established a process for the designation of areas as unsuitable for surface coal mining comparable to section 422 of this Act.

S8042 "INITIAL REGULATORY PROCEDURES

S8042 "SEC. 605. (a) No person shall open or develop any new or previously mined or abandoned site for surface coal mining and reclamation operations on Indian lands after the date of enactment of this Act unless such person is in compliance with existing Federal regulations governing surface coal mining on Indian lands.

S8042 "(b) Within six months after the date of enactment of this Act, the Secretary shall implement a Federal enforcement program which shall remain in effect on those Indian lands on which there are surface coal mining operations required to comply with the provisions of this Act, until an Indian lands program has been approved pursuant to this Act or until a Federal program has been implemented pursuant to this Act. The enforcement program shall be carried out pursuant to the provisions of section 402(e) of this Act.

S8042 "(c) All surface coal mining operations on Indian lands on which such operations are regulated by existing Federal regulations which commence operations pursuant to a permit issued on

or after the date of enactment of this Act shall comply, and such permits shall contain terms requiring compliance with, the provisions of subsections 415(b)(2), 415(b)(3), 415(b)(5), 415(b)(10), 415(b)(13), 416(b)(19), and 415(e) of this Act.

S8042 "(d) On and after one hundred and thirty-five days from the date of enactment of this Act, all surface coal mining operations on lands on which such operations are regulated by existing Federal regulations which are in operation pursuant to a permit issued before the date of enactment of this Act shall comply with the provisions of subsections 415(b)(2), 415(b)(3), 415(b)(5), 415(b)(10), 415(b)(13), 415(b)(19), and 415(e) of this Act, with respect to lands from which overburden and the coal seam being mined have not been removed.

S8042 "(e) Following the final disapproval of an Indian land program, and prior to the formulation of a Federal program pursuant to this Act, including judicial review of such a program, existing surface coal mining operations may continue pursuant to the provisions of this section.

S8042 "FEDERAL PROGRAM

S8042 "SEC. 606.(a)(1) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for an Indian tribe which has received grants pursuant to section 602 of this Act, if such tribe -

S8042 "(A) fails to submit an Indian lands program covering surface coal mining and reclamation operations by the end of the eighteen-month period beginning on the date of enactment of this Act;

S8042 "(B) fails to resubmit an acceptable Indian lands program within sixty days of disapproval of a proposed Indian lands program: Provided, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of an Indian lands program as provided for in clause (A) of this subsection; or

S8042 "(C) fails to implement, enforce, or maintain its approved Indian lands program as provided for in this Act.

S8042 "(2) If tribal compliance with section 604 requires action on the part of the tribal council, or tribal legislature, the Secretary may extend the period for submission of an Indian lands program up to an additional six months. Promulgation and implementation of a Federal program vests the

Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any tribal reservation or upon tribal lands not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority. In promulgating and implementing a Federal program for a particular tribe, the Secretary shall take into consideration the nature of that Indian tribal reservation's terrain, climate, biological, chemical, and other relevant physical conditions.

S8042 "(b) At any time prior to the approval of an Indian lands program so submitted, or the approval of a resubmitted program, an Indian tribe may elect to abandon its efforts to develop and administer its Indian lands program. Such tribe shall immediately notify the Secretary of such a decision and return the unused portion of the moneys granted it pursuant to section 602 of this Act. Upon notification of such intent, the Secretary shall immediately assume exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within the tribe's reservation pursuant to subsections (c) and (d) of section 606 of this Act.

S8042 "(c) In the event that an Indian tribe has an Indian lands program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, in a manner comparable to the provisions of section 421, of that part of the Indian lands program not being enforced by such tribe.

S8042 "(d) In any case in which an Indian lands program is replaced by a Federal program, permits issued pursuant to such approved Indian lands program shall be valid but shall be reviewable under such Federal program. Immediately following the promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not being violated. If the Secretary determines that any permit has been granted contrary to the requirements of this Act he shall so advise the permittee and provide him a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program.

S8042 "(e) An Indian tribe, which has elected to have an approved Indian lands program, or has received funds pursuant to section 602, and which has failed to obtain the approval of an Indian

lands program prior to the implementation of a Federal program in accordance with this title, may submit an Indian lands program, at any time after such implementation, pursuant to section 604 of this Act. Until an Indian lands program is approved as provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder, shall remain in effect: Provided, That surface coal mining operations upon lands of a tribe which has elected to abandon its in accordance with subsection (b) of this section, shall be regulated pursuant to subsections (c) and (d) of section 605.

S8042 "(f) In any case in which a Federal program is replaced by an approved Indian lands program, permits issued pursuant to the Federal program shall be valid but reviewable under the approved Indian lands program: Provided, That the Federal permittee shall have the right to apply for an Indian lands program permit to supersede his Federal permit. The tribal regulatory authority may review such permits to determine that the requirements of this Act and the approved Indian lands program are not violated. If the tribal regulatory authority, determines any permit to have been granted contrary to the requirements of this Act, or the approved Indian lands program, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and reasonable time to conform ongoing surface mining and reclamation operations to the requirements of this Act or approved Indian lands program.

S8042 "ADMINISTRATION BY THE SECRETARY

S8042 "SEC. 607. At any time, a tribe may select to have its program administered by the Secretary. Upon such a request by a tribe, the Secretary shall immediately assume the responsibility for administering the tribe's Indian lands program for the reservation.

S8042 "PERSONNEL

S8042 "SEC. 608. (a) Indian tribes are authorized to use the funds provided pursuant to section 602 of this Act for the hiring of professional and technical personnel and, where appropriate, to allocate funds to legitimately recognized organizations of the tribe that are pursuing the objectives of this title, as well as hire special consultants, groups, or firms from the public and private sector, for the purposes of developing, establishing, or implementing an Indian lands program.

S8042 "AUTHORIZATION PRIORITY

S8042 "SEC. 609. Of the funds made available under section 611(a) of this Act, first priority on \$3 ,000,000 for each of the fiscal years shall be for the purposes of this title.

S8042 "REPORTS TO THE SECRETARY

S8042 "SEC. 610. Any Indian tribe which is receiving or has received a grant pursuant to section 602 of this Act shall report at the end of each fiscal year to the Secretary, in a manner prescribed by him, on activities undertaken by the tribe pursuant to or under this title.

S8042 "INDIAN LANDS STUDY

S8042 "SEC. 611. (a) The Secretary is directed to assist the Indian tribes in a study of the regulation of surface coal mining on Indian lands which will achieve the purposes of this Act and recognize the special jurisdictional status of these lands. In carrying out this study, the Secretary shall give grants to the Indian tribes whereby such tribes may contract qualified institutions, agencies, organizations, and persons to assist in completing the study. The study report shall include recommended changes, if any, in the provisions of the Indian lands program set forth in this Act which, if enacted, would further achieve the purposes of this Act. Any Indian tribe on whose lands there are or may be conducted surface coal mining operations, and any tribe that has received financial or technical assistance to develop, administer, or enforce an Indian lands program pursuant to this title, may participate in this study, receive grants pursuant to this section, and incorporate into an existing Indian lands program, approved by the Secretary, any recommendations resulting from such study.

S8042 "(b) The study report required by subsection (a) of this section, together with drafts of proposed legislation and the view of drafts Indian tribe which would be affected, shall be submitted to the Congress as soon as possible but not later than January 1, 1979.

S8042 "(c) On and after thirty months from the date of enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 407, 408, 409, 410, 412, 413, 414, 415, 417, 418, 419, 421, and 422 of this Act, and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

S8042 "(d) With respect to leases issued after the date of enactment of this Act, the Secretary shall include and enforce, in such leases, such terms and conditions, in addition to those required by section 605(c) and (d) and subsection (c) of this section, as may be requested by the Indian tribe.

{S8043} "(e) Any change required by section 605 (c) and (d) and subsection (c) of this section in the terms and conditions of any coal lease on Indian lands existing on the date of enactment of this Act, shall require the approval of the Secretary.

S8043 "(f) The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than \$7 00,000 of the funds made available for such study shall be reserved for such purpose."

S8043 On page 301, line 22, strike out "508" and insert in lieu thereof "611".

S8043 Mr. ABOUREZK. This amendment provides Indian tribes with three options in the bill for the regulation of surface mining. They can either choose to act as States and submit their own reclamation plan, they can have a program administered by the Secretary of the Interior, or they can choose to participate in the Indian lands study already provided for in the bill.

S8043 Now, S. 7 as written only allows the third option.

S8043 The approach that is in this amendment has the support of the tribes, and I believe provides flexibility necessary to deal with a very complex situation presented by the number of varying sizes of Indian tribes.

S8043 I have discussed this with the manager of the bill and the ranking Member, and they have agreed to accept it, with a modification.

S8043 Mr. METCALF. Mr. President, as I understand it, this amendment would give an Indian tribe the same status in appearing before the Secretary to enforce the provisions of S. 7 as we give to the various State governments.

S8043 Mr. ABOUREZK. That is one of the options.

S8043 Mr. METCALF. The Indian tribes do have a legislative body, the tribal council?

S8043 Mr. ABOUREZK. Yes.

S8043 Mr. METCALF. They have an executive body, so they are, in many senses, analogous to a State government.

S8043 Under the amendment of the Senator they the Indian tribe could go in and provide for reclamation and restoration and bonding privileges, and so forth, and if those various decisions complied with the minimum requirements of S. 7 then Indian tribes could be delegated authority to carry out the provisions of the legislation for coal within the external boundaries of the Indian reservation?

S8043 Mr. ABOUREZK. Yes; if they chose that particular option; that is correct.

S8043 Mr. METCALF. This has been a matter of some concern to both of us, as the Senator from South Dakota knows. We have a hiatus in this bill where we have not handled Indian tribes in the administration of reclamation on Indian lands. It would seem to me that in view of the fact that we have in many other pieces of legislation given the Indians this same permission to have their tribal council pass regulations and participate in various Federal programs, that the Senator is offering an amendment that would be most helpful in carrying out a provision where we failed to legislate on.

S8043 Unless my friend from Wyoming has some objection, I know of no objections from anybody to this amendment.

S8043 Mr. HANSEN. There are no objections that I am aware of on this side, and I would be willing to accept the amendment. I hope we might accept it.

S8043 The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota.

S8043 The amendment was agreed to.

S8043 Mr. ABOUREZK. I move to reconsider the vote by which the amendment was agreed to.

S8043 Mr. METCALF. I move to lay that motion on the table.

S8043 The motion to lay on the table was agreed to.

S8043 AMENDMENT NO. 281

S8043 Mr. ABOUREZK. I call up amendment No. 281. I ask unanimous consent that the reading be dispensed with, and I will explain it.

S8043 The PRESIDING OFFICER. Without objection, it is so ordered.

S8043 The amendment is as follows:

S8043 On page 305, delete lines 19 through 21 and insert a new section 515(f) to read: "This section shall not apply to Indian lands."

S8043 Mr. ABOUREZK. Mr. President. this amendment would remove Indian tribes from the surface owner consent provisions of the bill.

S8043 This language is identical to that which has been accepted by the House. The surface owners would be covered by applicable local laws.

S8043 The language would assure to the tribes that they would not lose access to the coal which they were granted by the Federal Government in permanent trust.

S8043 There is serious question whether the bill as written without this amendment would be upheld in the courts for that reason and I move the adoption of that.

S8043 This has been discussed as well with the manager and the ranking member, and they have agreed to accept the amendment.

S8043 The PRESIDING OFFICER. Without objection -

S8043 Mr. METCALF. Wait a minute, Mr. President, my colleague from Montana has a comment to make.

S8043 Mr. MELCHER. Mr. President, this amendment may be more far reaching than the few words that are written here on it. It exempts section 515(f) or it modifies section 515(f), so that the section would not apply to Indian lands.

S8043 Would the Senator from South Dakota yield?

S8043 Mr. ABOUREZK. Yes.

S8043 Mr. MELCHER. What does this mean in terms of lands on an Indian reservation where the surface is owned by an allottee but the subsurface, the coal, and the rest of the minerals are owned by the tribe?

S8043 Mr. ABOUREZK. It would give the same meaning as if it were off the reservation and the land was not trust land.

S8043 Mr. MELCHER. Might I ask what the Senator means by that?

S8043 Mr. ABOUREZK. What I mean by that is if a tribe owns the mineral rights granted to them by the Federal Government and held in trust by the Federal Government that the tribe would not need the surface owner's consent in order to exploit the resource that they own.

S8043 Mr. MELCHER. If the Senator will yield further, is it the intent to mean that the surface owner could not say no to strip mining?

S8043 Mr. ABOUREZK. That is correct, yes, if the conditions were as indicated, that is, if the land were held in trust by the Government for the Indian tribes. There is an exception. If the State law allows that to happen, the State law would be applicable.

S8043 Mr. MELCHER. I wonder if the managers of the bill, both my colleague, Senator METCALF, and Senator HANSEN, will explain to me if it is the intent of the bill as it is presented to the Senate to be consistent in surface owners' rights, if it is a question of an Indian allottee owning the surface but not owning the mineral underneath, to allow that allottee as a landowner to refuse to have his land strip mined?

S8043 Mr. METCALF. I must confess that I have, as this colloquy develops, some misgivings about it. I do not know what the effect is of an Indian allottee on the reservation, as, for example, the Tongue River Reservation of the Northern Cheyenne and an allottee outside the external boundaries of the reservation. Maybe there would be a difference there, too.

S8043 Mr. MELCHER. I have another problem.

S8043 Mr. METCALF. I have a problem with the questions that the Senator raised.

S8043 Mr. ABOUREZK. If the Senator will yield, I do not see what the problem is because it simply says if it is held in trust for an individual allottee, then that allottee, incidentally, would own the mineral rights to it and not only the surface rights.

S8043 If it is allotted land to an allottee the tribe cannot hold any mineral rights to that land. There would be no way in the world the tribe could do that. It is on trust land that the tribe itself might own.

S8043 Mr. MELCHER. The Senator from South Dakota has stated that the previous amendment was agreed to by the tribes. I accepted that. But I wonder about this amendment because we are

getting, it seems to me, into individual rights of ownership. I do not know how the amendment applies to the Indian allottee that owns the surface but the tribe has control over the subsurface. I do not know what the application would be on those reservations where portions of the surface have been sold either to other Indians or to non-Indians, but the ownership of the mineral was retained at the time of those sales.

S8043 There are a number of questions that come up with this amendment, and I would hope that we would not rush to a vote on it until we can see what the answers to these questions are.

S8043 I wish to know the application of the recent case, Hollow Beast against the Northern Cheyenne, whether it has a bearing on this particular section of the bill. Does the Senator from South Dakota care to enlighten me on that?

S8043 Mr. ABOUREZK. I do not know about the case the Senator is referring to.

S8043 May I try to explain on the allotted land that the Senator is talking about. First of all, this amendment presumes that when the Government sold, when it alienated Indian land, or when it alienates its own lands it should be able to do so by giving away the mineral rights or retaining them as it sees fit. But it would be improper for the Government to give away the mineral rights or some mineral access to the land if they are holding that in trust for the Indian tribe. There is no way they should be allowed to do that. That is actually what this amendment is getting at. So far as the individual Indian allottee is concerned, if the land has been allotted to the Indian there are only two situations which can prevail. One is that the mineral rights were transferred with the land to the allottee or the Federal Government kept the mineral rights, in which case this amendment does not apply.

{S8044} I do not know of any other situation that would apply on allotted lands.

S8044 Mr. MELCHER. One further point that comes up that needs to be clarified is the definition of "Indian lands" and will the definition of Indian lands cover the ceded strip of the Crow tribes on which there is a mine operating on the Sarpy Basin, Westmoreland, yet the coal was retained when the tribe ceded the land?

S8044 Mr. ABOUREZK. Ceded to whom?

S8044 Mr. MELCHER. Ceded to the United States.

S8044 Mr. ABOUREZK. Within the external boundaries of the reservation or outside?

S8044 Mr. MELCHER. No, it is not within the exterior boundaries.

S8044 Mr. ABOUREZK. Then it does not over because this was within the exterior boundaries of the reservation.

S8044 Mr. MELCHER. Nothing in the Senator's amendment refers to the exterior boundaries of a reservation. It says "Indian lands."

S8044 Mr. METCALF. Will the Senator yield?

S8044 Mr. MELCHER. Yes.

S8044 Mr. METCALF. On page 287 Indian lands are defined - and if the Senator will remember the Governor of the State of Montana is the one who raised the question - where we say that it means all lands within the exterior boundaries of the reservation. Governor Judge raised that question with respect to the Northern Cheyenne lands.

S8044 Mr. MELCHER. By definition the Indian lands exclude the ceded strip on Sarpy Basin.

S8044 Mr. METCALF. Yes, as I understand it, and that is what Governor Judge tried to exclude when he submitted this, and we offered that amendment.

S8044 Mr. MELCHER. Mr. President, I think there are two unanswered questions in regard to this.

S8044 The first is the question of an Indian allottee who owns the surface, but the coal is retained for the tribe.

S8044 What is the Indian allottee's rights, and will the acceptance of this amendment be consistent with surface owner's rights if he were not an Indian allottee?

S8044 The second question is, how does this affect the landowner who is not an Indian allottee? He may be an Indian or he may be a non-Indian but he owns a surface that was sold to him within the exterior boundaries of a reservation. which does qualify under the definition of "Indian lands." And how would his rights be protected? I hope we do not have to rush to a vote on this until we have those questions answered.

S8044 Mr. ABOUREZK. I already answered the first part of that question. The second part, so far as what would happen if the tribe owns the mineral rights to land within the reservation, to lands sold to a non-Indian - is that the question?

S8044 Mr. MELCHER. That could be an Indian or a non-Indian but the Indian is not an allottee in this case. He owns the lands by virtue of having purchased it.

S8044 Mr. ABOUREZK. Then this amendment would cover that particular mineral resource if it is within the exterior boundaries of the reservation. That should answer both questions.

S8044 Mr. MELCHER. I think what the Senator has said, then, is that is it were a purchaser of the land of the surface within the reservation, whether it is an Indian or a non-Indian, in that case this amendment would say that he would not have the protection of a surface owner's rights; therefore, if this amendment is accepted for those people described, the Indian allottee and the purchaser of the land within a reservation would be excluded from the protection of surface owners rights. I think that would be inconsistent with what we have done for the surface owner rights of other surface owners. So I hope we do not accept the amendment.

S8044 Mr. JOHNSTON. Mr. President, will the Senator yield?

S8044 Mr. ABOUREZK. I yield.

S8044 Mr. JOHNSTON. I do not want to call a point of order on my good friend. But I did think I was yielding 5 minutes on an uncontested amendment. So I wonder if we could put this back. I have only a few parting comments, and I am not going to have a vote on my amendment.

S8044 Mr. METCALF. I wonder if the Senator from South Dakota will take this over until tomorrow.

S8044 Mr. ABOUREZK. Yes.

S8044 I ask unanimous consent, Mr. President, that this amendment be brought up immediately upon the disposition of Senator JOHNSTON'S pending amendment and substitute to it.

S8044 The PRESIDING OFFICER. Is there objection?

S8044 Mr. MELCHER. Mr. President, reserving the right to object.

S8044 The PRESIDING OFFICER. The junior Senator from Montana reserves the right to

object.

S8044 Mr. MELCHER. Does the Senator prefer to have it immediately after the disposition of those two amendments despite the fact that I may offer an amendment? I both of those are defeated I might offer an amendment on the same subject. I am just inquiring.

S8044 Mr. ABOUREZK. Well, yes.

S8044 Mr. MELCHER. That is all right. I agree to it; it is all right with me.

S8044 The PRESIDING OFFICER. Is there objection?

S8044 Mr. METCALF. Mr. President, we have some other agreements.

S8044 The PRESIDING OFFICER. The Senator is correct. Under previous orders, the Senate has made other arrangements. But this would supersede those, if the Senate by unanimous consent arranged to do it.

S8044 Mr. METCALF. But the people who have been given those other agreements are not here on the floor. They have gone. I think they left with the understanding that they would be protected. I would want to protect them.

S8044 I would suggest that we put the amendment of the Senator from South Dakota in line with the other agreements, and give them the priority that they are entitled to.

S8044 The PRESIDING OFFICER. Does the Senator object to the unanimous-consent request?

S8044 Mr. METCALF. I am objecting to the unanimous-consent request that the amendment of the Senator from South Dakota be taken up immediately after the amendment on alluvial valley floors, if there is a conflict with previously entered agreements.

S8044 The PRESIDING OFFICER. There is only one unanimous-consent agreement pending.

S8044 Mr. METCALF. I object.

S8044 The PRESIDING OFFICER. Objection is heard.

S8044 Mr. ABOUREZK. Mr. President, what is the other agreement I am interfering with?

S8044 The PRESIDING OFFICER. Under previous order, there are other amendments now in line to follow those amendments now being offered by the Senator from Louisiana.

S8044 Mr. ABOUREZK. A parliamentary inquiry.

S8044 The PRESIDING OFFICER. The Senator will state it.

S8044 Mr. ABOUREZK. How many are there?

S8044 The PRESIDING OFFICER. The last Senator who is on order to offer an amendment is the Senator from Kentucky (Mr. FORD).

S8044 Mr. ABOUREZK. Well, then I ask unanimous consent that this amendment be brought up immediately after the disposition of Senator's FORD's amendment.

S8044 The PRESIDING OFFICER. Is there objection?

S8044 Mr. HART. Mr. President, reserving the right to object, what, when, is the posture of the Johnston amendment tomorrow morning?

S8044 The PRESIDING OFFICER. The Johnston amendment will be the first amendment pending.

S8044 Mr. FORD. So the Johnston amendment and any substitute to it, then the Ford amendment, and then the Abourezk amendment?

S8044 The PRESIDING OFFICER. No, there are other amendments at the desk.

S8044 Mr. HART. I thought the Chair said just one.

S8044 The PRESIDING OFFICER. Oh, yes. The Chair has been corrected, that there is only one other amendment following the amendments of the Senator from Louisiana, and that is Senator FORD's amendment.

S8044 Mr. ABOUREZK. Mr. President, I modify my request. I actually have two amendments. One is the one we have been discussing and the other one I shall submit for printing tonight, and I would like both of those to be considered in order tomorrow at the appropriate time I have already requested.

{S8045} The PRESIDING OFFICER. Is there objection?

S8045 Mr. MELCHER. Mr. President, further reserving the right to object, will the Chair restate the unanimous-consent request?

S8045 The PRESIDING OFFICER. The unanimous-consent request is that the Senator from South Dakota be permitted to offer two amendments following that amendment which will be offered

by the Senator from Kentucky (Mr. FORD). Is there objection? Without objection, it is so ordered.

S8045 Mr. JOHNSTON. Mr. President, I shall speak for about 5 minutes, and then I shall be done for the day.

S8045 The other amendment which I had an order under unanimous consent to call up is that which relates to the coal slurry pipeline. I shall not call it up for a vote tomorrow, Mr. President. I have been assured by the distinguished Senator from Montana that we can have hearings on that amendment.

S8045 Mr. President, I am not crying crocodile tears, in my view, when I say that the Senate has done very, very little for the energy crisis except make it more difficult to get coal. We have not done anything for the transportation of that coal. We have not really done anything to make it easier to burn that coal. Yet people in my part of the country are being told they must spend billions of dollars to convert to coal, which there is no assurance of getting.

S8045 We have surveyed the rail beds in our State, and find that they need a great deal of maintenance. We know there are a great many environmental questions in connection with mile-and-a-quarter-long unit trains going through towns, spewing out tons of coal dust, not to mention the noise and the traffic tie-ups. In order to get from one side of a town to the other with unit train going through it, it is going to be like trying to cross the Great Wall of China.

S8045 I have an amendment pending to provide for the right of eminent domain to build a coal slurry pipeline. Right now there is no right to cross, for example, railroad tracks or other Government lands. Why do we want it? The cost is half that of railroads, and it is inflation proof, because all your cost is at the front end, and thereafter there is no labor connected with it. The tariff for getting the coal in its early years will be half that of the railroads, and in later years even less.

S8045 Second, it provides competition; and without that competing source, the cost of shipping coal, the freight rates, will go through the roof.

S8045 Finally, it is more environmentally sound. First of all, you cannot build one without the water. That will be acquired under State law, under rules and regulations required by State law. In the case of the pipeline, it would come from Wyoming to Arkansas, the one that we are particularly

interested in.

S8045 It involves the Madison formation, which has 1 1/2 million acre-feet of water in the formation. That water, I might add, is saline in content, and at the depth from which it would be withdrawn - that is, something below 3,000 feet - it is unusable anyway for agricultural purposes. But anyway, there are 1 1/2 million acre-feet of water in that formation. It recharges at the rate of 150,000 acre-feet per year, and this slurry pipeline would propose to use only one-tenth of the annual recharge, or some 15,000 acre-feet a year - one-tenth of that annual recharge of water that is below the depth that could be used by farmers, below 3,000 feet, and water of a quality that cannot be used by farmers.

S8045 On the down end of the pipeline, the water presents no problem. It can either be used in the coolers of the generating plant, or discharged into the Mississippi River, which lies close by.

S8045 There is a long history of coal slurry pipelines in this country. They have been successful. They have been studied. We are going to have to have coal slurry pipelines sooner or later. The question is, how much later, because there is a 4 1/2-year leadtime. Are we going to fritter away more months and more years in the Senate, while we wait to face up to a problem?

S8045 Mr. President, it gets frustrating in the Senate, on questions of energy, to try to get something done in what I regard as a constructive way to get more energy, whether it be drilling on the Outer Continental Shelf, or whatever it be, faced with constant roadblocks in the way of supplying the energy, and, when it comes through, facing roadblocks in the way of farming, or alluvial valley floors, or giving the surface owner the right to block the mining of the Government's coal.

S8045 That is easy to do. It passes in this body by overwhelming numbers. Perhaps that is no relevant to the question of a coal slurry pipeline, but I think it is relevant to the problem that this country faces, and that is mining the coal and getting the coal there.

S8045 We have a very serious problem with natural gas in our part of the country. We burn a lot of it, and we are being told we have to cut that natural gas off. Is it going to be the kind of answer, when we ask, "Yes, but what are we going to burn in its place," that they say, "You can eat cake,

you can burn coal, but you cannot get it, you cannot transport it, you cannot mine it, and you cannot use it because it violates the Clean Air Act, but go ahead and burn coal"?

S8045 That kind of answer is amusing, in a way. People say, "The Government could not be so silly as to do that." But I think that is what we have been doing. I think there is just no real planning in it.

S8045 I am not going to bring coal slurry pipeline up for a vote, Mr. President. For one thing, the administration advises me they will back the measure. I talked to Secretary Andrus this morning. He advises me they will come out to back the measure. I think with further studies in the House, I am advised by some of my friends on the House committee, it will clear the House committee and then it will, in fact, have to come to this body.

S8045 I understand the concern with water. In the West, water is the staff of life in more ways than one. I understand that. We should not allow a pipeline that would deplete that resource. But I am for a transportation that we can afford and that is environmentally sound.

S8045 When the implications of unit trains as the sole and only mode of coal transportation becomes apparent to people, and people in the West where they are going to have converging of all these lines, I think we will have the greatest move toward coal slurry pipelines we have ever seen.

S8045 I just hope there is not too much of a delay.

S8045 I yield, and I thank the distinguished Senator from Montana.

S8045 Mr. METCALF. The Senator has my assurance that as soon as we clear the pending legislation, we will hold hearings on coal slurry pipelines, on the water implications of areas such as Montana and Wyoming where there is a great scarcity of water, on the environmental impacts, on all of these things the Senator has suggested.

S8045 The Senator from Colorado has an eloquent letter. I wish he would place that into the RECORD at this time. It shows some of the problems involved.

S8045 Both Senator HANSAN and I are agreed that we will have early hearings in regard to this urgent matter.

S8045 Mr. JOHNSTON. I thank the Senator.

S8045 Mr. HART. Mr. President, I ask unanimous consent that I may have printed in the

RECORD at this time a copy of the letter concerning the issue which the Senator from Louisiana just addressed. There being no objection, the letter was ordered to be printed in the RECORD, as follows:

S8045 U.S. SENATE, Washington, D.C., May 18, 1977.

S8045 DEAR COLLEAGUE: Amendment No. 278 is expected to be called up during debate on S. 7, the Surface Mining Control and Reclamation Act of 1977. The amendment would add a new title VI to the bill, identical to the Coal Pipeline Act of 1977 (S. 707). Powers of eminent domain would be granted by the proposal to the firms seeking to construct coal slurry pipelines. This would result in the immediate and extensive development of coal slurry pipelines throughout the nation.

S8045 We urge you to oppose the amendment because it is premature.

S8045 As you know, several coal slurry pipelines have been proposed to date. Crushed coal mixed with an equal amount by weight of water would be pumped through the pipelines. The coal would be separated from the slurry mixture at its destination, and the high sulfur content water would be disposed.

S8045 Legislation similar or identical to S. 707 and Amendment No. 278 has been considered by previous Congress. Over the years, several major consequences of coal slurry pipeline developments have been identified. Additionally, the appropriateness and precise effect of legislation such as S. 707 have been seriously questioned.

S8045 The Chairman of the Senate and House Committee and several other Senators and Representatives requested the Congressional Office of Technology Assessment last year to analyze several important questions which must be answered before coal slurry pipeline legislation should be considered. OTA's final report is expected within only six or seven months.

S8045 The OTA assessment will prove to be an invaluable Congressional tool for dealing with proposals to encourage coal slurry pipeline development deliberately and expeditiously, with all the facts at hand. Until now, most coal pipeline studies have been conducted under the auspices of one or the other opposing concerned interest groups. The OTA assessment, combined with due consideration of the issue by the appropriate committees of Congress, will enable us to devise the best possible legislation to encourage development of coal pipelines in a manner advantageous,

rather than deleterious, to the interests of the nation and the states. The report will analyze a number of critical questions.

{S8046} Water. Coal slurry pipelines require tremendous quantities of water, which would be obtained from the arid mining areas of the West and shipped with the coal to water-plentiful regions. A proposed pipeline from Wyoming to Arkansas alone would consume about 6.25 billion gallons of water every year.

S8046 The proponents of Amendment #278 maintain that states' water rights will be left intact by their amendment. This is by no means certain. A July 11, 1975, memorandum by Jerome C. Muysse, of the Washington law firm of Debevoise and Liberman, concludes that the language of Amendment #278 would "not empower a state to 'veto' (a coal slurry pipeline) project by denying it a water right or other requisite authority under state law."

S8046 Further according to Mr. Muysse, "It is quite conceivable that, in certain circumstances, a coal pipeline project might be able to acquire its water supply from a federal reserved right. Such acquisition would be contrary to the apparent intent of the proposed legislation."

S8046 These conclusions were subsequently adopted by the Federation of Rocky Mountain States, an association of the Governors of Colorado, Montana, New Mexico, Utah and Wyoming.

S8046 Eminent domain. Another question raised by the amendment is the appropriateness of granting coal pipeline company rights of eminent domain. Through-put contracts will enable pipeline firms to operate, in reality, as private carriers - technical designations to the contrary will have little real meaning. Is it appropriate to grant private carriers rights to cross private lands at will?

S8046 Railroads. Two-thirds of all U.S. coal moves by rail, accounting for about 13% of all rail revenues. At the same time we are attempting to save railroads from extinction, the concept of encouraging a transportation mode which might skim off their most lucrative business would not be appropriate without full knowledge of the consequences.

S8046 Environment. What environmental consequences would be caused by pipeline break-age? Or if, for a number of reasons, hundreds of thousands of tons of slurry mixture were purged into dumping ponds spaced every few miles along the pipeline?

S8046 Because of these unresolved questions, we urge you to oppose Amendment No. 278 when it is offered. We can easily afford to consider this issue in depth in six or seven months' time.

S8046 Sincerely,

S8046 James Abourezk, George McGovern, Lee Metcalf, Quentin Burdick, Gary Hart, Warren G. Magnuson, and Birch Bayh. U.S. Senators.

S8046 Mr. HART. Mr. President, a parliamentary inquiry.

S8046 The PRESIDING OFFICER. The Senator will state it.

S8046 Mr. HART. Is the pending business before the Senate amendment No. 275 by the Senator from Louisiana?

S8046 The PRESIDING OFFICER. Yes, as modified.

S8046 AMENDMENT NO. 282

S8046 Mr. HART. Mr. President, in lieu of the language proposed to be inserted by the Senator from Louisiana by his amendment, I offer the language contained in my printed amendment No. 282 which is at the desk. I offer that as a substitute to the amendment.

S8046 The PRESIDING OFFICER. The amendment will be stated.

S8046 The assistant legislative clerk read as follows:

S8046 The Senator from Colorado (Mr. HART) proposes an amendment in the nature of a substitute to amendment No. 275, as modified, as contained in his amendment No. 282.

S8046 Mr. HART. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8046 The PRESIDING OFFICER. Without objection, it is so ordered.

S8046 The amendment is as follows:

S8046 Strike all of section 410(b)(5), page 207, lines 1 through 21 and insert in lieu thereof:

S8046 "(5) the proposed surface coal mining operation if located west of the one hundredth meridian west [*] would -

S8046 "(A) not be located within and alluvial valey floor, or

S8046 "(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors referred to in (A) of subsection (B) (5):

S8046 Provided, That this paragraph (5) shall not apply to those surface coal mining operations located within or adjacent to alluvial valley floors which in the year preceding the enactment of this Act were engaged in the commercial production of coal or which had obtained prior to January 4, 1977, specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial floors."

S8046 Mr. HART. Mr. President, the amendment which I offer as a substitute to the amendment by the Senator from Louisiana is strongly supported by the administration. The statements by the administration outlining their views are contained in a letter from the Secretary of the Interior, Mr. Andrus. I ask unanimous consent that the text of that letter be printed in the RECORD at this point.

S8046 There being no objection, the letter was ordered to be printed in the RECORD, as follows:

S8046 DEPARTMENT OF THE INTERIOR, Washington, D.C., May 19, 1977.

S8046 Hon. GARY W. HART, U.S. Senate, Washington, D.C.

S8046 DEAR SENATOR HART: The alluvial valley protection amendment which you are offering to S. 7, the Surface Coal Mining Reclamation and Enforcement Act, has my strongest support.

S8046 Alluvial valley floors will require strong protection if these important areas of the water-short west are to maintain their hydrological integrity and usefulness for farming and range use. In view of this, we believe the reported bill should be revised so as not to exempt "undeveloped range lands" and areas not "significant to the practice of farming or ranching operations, including potential farming or ranching operation if such operations are significant and economically feasible." Because information about the 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 exclude mining from the alluvial valley floor without land use exception. Eliminating these exceptions will both strengthen the water resource and environmental protection of the bill and simplify its application. We also favor a provision such as your amendment

contains which would allow a case-by-case review of the effect on water systems of mining off the valley floor.

S8046 The Administration supports "grandfathering" only those mines which were producing coal commercially in the year preceding enactment or which have already obtained a State permit. The reported bill also would allow persons who have made "substantial financial and legal commitments" as of January 1, 1977, to qualify for grandfather treatment and to undertake mining through alluvial valleys. A grandfather clause of this breadth holds real danger of environmental harm and would be particularly difficult to administer. In any event, there appears to be no justification for the opened possibility of new mining in these fragile areas provided by the reported bill, particularly under such an uncertain test as "substantial financial and legal commitments."

S8046 This Nation has abundant supplies of coal and we can afford to be particular about where and how we mine it. Alluvial valleys can be defined geologically and are critical to the water systems on which many of our citizens depend. Determination of effects of mining in alluvial valleys is, however, particularly uncertain and the possibility of serious harm is substantial. It is essential therefore, that adequate protection be provided.

S8046 Your amendment will do this and I urge the Senate to adopt it.

S8046 Sincerely,

S8046 CECIL C. ANDRUS, Secretary.

S8046 Mr. HART. Mr. President, I would prefer to discuss this issue as the first order of business in the morning. It is my understanding, according to the unanimous-consent agreement offered by the Senator from South Dakota, that will be the case.

S8046 The PRESIDING OFFICER. The Senator is correct.

S8046 Mr. METCALF. Can the Senator from Colorado place some material in the RECORD so our colleagues will be prepared to discuss this in the morning?

S8046 Mr. HART. Yes. I have offered the administrations' letter.

S8046 Mr. METCALF. As I understand it, if I may just have a moment, this is the same amendment that my colleague in the House, Congressman BAUCUS, offered and which was adopted by the House of Representatives.

S8046 Mr. HART. The distinguished floor manager is correct. It is identical language to that contained in the House bill.

S8046 Mr. METCALF. I thank the Senator. I will look forward to seeing what the Senator says about this amendment in the morning.

S8046 Mr. HART. I thank the Senator.

S8046 Mr. TOWER. Mr. President, I would hope that the Senate is not so weary of legislating, or so anxious to impose further regulation upon the economy, that my colleagues are unwilling to focus on the measure before us which in my own opinion will render ineffective our efforts to meet the energy needs of our Nation.

{S} 8047 I noted with great disappointment the feeling among some of my colleagues that this bill, S. 7, is inevitable, and that it represents the last chapter in Congress' book on surface mining regulation.

S I regret very much if this is the case, because I do not see any greater urgency, or greater need, for this legislation now than in years past when this bill was rejected. The assumptions on which the bill is based are less accurate than in the past, and despite the continuing desire for passage among the bill's supporters, time has brought us to the point that the legislation is even less desirable than the first time it was presented to the Senate.

S The committee has been unable to explain satisfactorily why this country needs a bill to restrict and prevent energy source development at a time when this country needs every ton of coal it can produce. Likewise, the bill's proponents cannot adequately explain why a standard for reclamation, if adopted by the States, would not suffice instead of this present proposal to create yet another Washington bureaucracy.

S Finally, the supporters of S. 7 in its present form do not address the argument that State programs - 33 in all - will not do the job, when they are unable to present one iota of evidence to show that they do not.

S Regrettably, there seems to be no time for such discussion. They have the votes and do not need any facts. It is a shame, really, that this body rushes headlong into enacting legislation for which the Nation will pay dearly, simply because those who years ago felt a compulsion to enact this sort of

bill, now see the opportunity to get that bill passed regardless of its necessity or justification.

S But that is the way the Senate seems to be operating, and neither I nor my colleagues who question the merits of this bill seem to be able to top the steamroller. It will be too late when the American people realize they are in the path of that steamroller.

S Mr. President, S. 7 is a harmful bill because it will, without any doubt, reduce this Nation's ability to provide energy which we desperately need.

S We have been chastened for our profligate use of energy; we have been called on to renew our efforts to find new energy sources. The President has called us from the wilderness of oil into the promised land of coal, and what has been the Senate's response?

S With the President's blessing, they have brought to the floor of the Senate a bill which promises continued wandering dependence on Arab oil. We are called upon by those who wrote S. 7 to deny to ourselves and the Nation the "promised land" of American coal.

S We are told that we can have it both ways. We can have all the coal this Nation needs, and we are told that the coal can be obtained under overly strict environmental regulations. I am tempted to say that anyone who believes this also must believe in the tooth fairy.

S Let me just say that there is a time in all our lives to believe in the tooth fairy, but this is no time right now to delude ourselves into believing that we can have what we cannot get. And that, Mr. President, is exactly what this bill's sponsors would have us believe.

S I will assert, and leave to the bill's proponents the opportunity to prove me wrong, that this bill will prevent a sound energy program.

S It will diminish the ability to recover through surface mining that coal which is most easily obtained at prices Americans can afford.

S It will impact adversely on the western regions of this country, which is as close to a land of opportunity as yet exists in this country.

S It will eliminate the vast experience which has been developed in the various States with adequate regulatory laws and policies regarding surface mining, so that some Federal bureaucrat can reinvent the wheel in a superior shape. More than likely it will be square, given our experience with the Federal bureaucracy in the past.

S How little we learn from experience! How little we are willing to learn from those outside of Washington! Why is it that we assume that the wisdom of mankind is domiciled under this roof, when we should know from experience that those in the States have often already solved the problems which we consider so pressing?

S Mr. President. I do not speak of some hypothetical circumstance, but from the experience of my own State, which in 1975, enacted a stringent but reasonable surface mining law, a law praised by both utility companies and environmental interest groups, by producers and consumers of coal.

S That law has worked well, and yet this body seems bent on scrapping it and 37 other State laws which are doing the job of producing energy and protecting the environment right now.

S Often when Congress enacts a statute which supplants State law, there are reams of testimony of how the States have failed, about how State laws were written to pander to special interest groups, about how they are not enforced. and about how the States have abdicated their responsibility.

S But that is not the case with this bill. Not once did the committee hear from a witness of evidence that the environment is being despoiled by rapacious mining companies under lenient surface mining legislation. Not once, Mr. President.

S Of course, that does not matter to a group of Senators who want to get a few headlines and justify the adulation of those who would like to see all energy development halted so that we could end the industrial age.

S That does not matter to a President who is trying to fill so many campaign promises that are inconsistent and mutually exclusive, who is intent on repaying the debts he owes to environmentalists who supported his election.

S In the end, it seems not to matter to a great many people who should be telling the truth about this bill and who will not in order to further their own purposes, be they political or personal.

S In the end, the arguments that are invoked by opponents of this bill do not matter except to those of us who still have some modesty about our abilities to solve all the Nation's problems, and who maintain a modicum of respect for the institutions of State and local government.

S As an optimist, I would hope that these arguments someday will prevail, if not today, then at some point in the future when a majority of this body quits believing in the tooth fairy.

S In the meantime, Mr. President, I shall oppose this bill, supporting only those amendments which would return to our States their ability to regulate the matters which are rightfully within their jurisdictions.

S And I would hope, too, in the meantime, that someone more might say something that will convince the undecided that this is one law the United States does not need.

S Mr. BARTLETT. Mr. President, the strip mining bill which we have before us today would, if enacted in its present form, have a serious adverse effect on the energy posture of this Nation. As the past winter has shown, we are seriously short of readily marketable supplies of natural gas. We depend on foreign sources for half our supply of oil, and we are paying more and more for these supplies of energy each day.

S In light of these indisputable facts, one would expect the Congress to pass legislation to help expand our domestic energy supplies. Instead, this bill reduces the available supply of coal, and increases the prices of coal and electricity to consumers. Is this how Congress proposes to protect the consumer?

S Of course, such legislation might be justified if there were an overriding Federal problem requiring a Federal solution; however, no Federal problem has been identified. The States regulate surface mining of coal. While it is true that in the distant past some States have failed to impose adequate standards, the States have revised their laws in recent years and are doing a creditable job. In all the hearings we have had on this bill in the Committee on Energy and Natural Resources, not a single witness has come forward to identify a State which is not adequately regulating the surface mining of coal, and in which Federal controls are needed. I should note that none of my colleagues has offered this information either.

S Land use has been traditionally a local issue. The local people must live with land use decisions so it makes sense to let them regulate these issues themselves. This bill will prevent that. While there is lip service paid to allowing the States to regulate surface mining, regulation will be under Federal standards and the States will simply be acting as Federal agents at their own expense.

S It is difficult to find any benefits of Federal regulation, but there are many adverse consequences that can be predicted if this bill is enacted.

S First. Coal production will be reduced. Prohibition of the surface mining of coal in the very areas where it is most economically practical will undeniably restrict the near-term availability of badly needed increased supplies.

{S8048} Second. Coal development will be [*] This bill imposes an extreme surden of redtape on the producer. The number of reports and the length of applications necessitated by this act will preclude timely action by the administrator. In addition, lengthy delays from citizen suits are inevitable under the citizen suit provisions of this bill.

S8048 Third. Coal mining will become more expensive. We will force the major portion of our coal to come from underground mines and the cost will be much greater, both in terms of money and the lives of the miners who produce it.

S8048 Fourth. We will force small companies out of business. The initial expense of obtaining a mining permit, as estimated in the hearings, would be at least \$4 0,000, and the hiring of the expensive expertise required to gather data of doubtful necessity will put mining out of reach of all but the large corporate producers.

S8048 Fifth. There will be an increased burden on the Federal budget. The bureaucracy necessary to enforce this bill will be quite significant. While some of the expenses will be borne by the producer in the application process, a greater portion of the expense will come in inspecting and monitoring State programs.

S8048 Sixth. We will extend the morass of environmental impact statements to essentially private decisions on private lands. A decision on mining on private lands has always been a private question. Now, because a Federal permit will be required, it certainly must be considered to be a major Federal action, substantially affecting the environment.

S8048 Seven. Last, but not least, we will become increasingly dependent on foreign sources of energy. If we limit development of our most abundant source of energy, we will certainly increase our reliance on the whim of the OPEC cartel. We all know the ramifications to the economy, to our balance of payments, to our national security, to more and better jobs, and to our national welfare

that go with such dependence.

S8048 By passage of this bill, we as a nation will be taking a giant step backward in our energy posture. At a time when we must shift our emphasis toward the greater utilization of coal in this country, we cannot afford to throw such a roadblock as this in the way of expanded coal production.

S8048 The specific problems of this legislation are too lengthy to enumerate in a short statement. I can only urge you to abandon this bill and rethink the necessity for this type of legislation at the Federal level.

S8048 Mr. MELCHER. Mr. President, yesterday I submitted an amendment to S. 7, the pending measure, which has been printed as amendment No. 292. I ask unanimous consent that it be printed in the RECORD at this point.

S8048 There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

S8048 AMENDMENT No. 292

S8048 On page 207, beginning with line 1, strike out all through line 21 and insert in lieu thereof the following:

S8048 (5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would -

S8048 (A) not 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 farm's agricultural production, or

S8048 (B) not adversely affect the quantity or quality of water in surface or underground water systems that supply these valley floors in (Ae of subsection (b) (5):

S8048 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.

{S8059} AMENDMENT NO. 291

S8059 At the request of Mr. CULVER, the Senator from Illinois (Mr. STEVENSON), the Senator from Colorado (Mr. HART), and the Senator from Nebraska (Mr. ZORINSKY) were added as cosponsors of amendment No. 291, intended to be proposed to S. 7, the surface mining control bill.

S8059 AMENDMENT NO. 294

S8059 At the request of Mr. BAKER, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of amendment No. 294, intended to be proposed to S. 7, supra.

{S8060} AMENDMENTS NOS. 294, 295, AND 296

S8060 (Ordered to be printed and to lie on the table.)

S8060 Mr. BAKER submitted three amendments intended to be proposed by him to the bill (S. 7) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

S8060 AMENDMENTS NOS. 298 AND 299

S8060 (Ordered to be printed and to lie on the table.)

S8060 Mr. DANFORTH submitted two amendments intended to be proposed by him to the bill (S. 7), supra.

S8060 AMENDMENTS NOS. 305 THROUGH 308

S8060 (Ordered to be printed and to lie on the table.)

S8060 Mr. SCHWEIKER submitted four amendments intended to be proposed by him to the bill (S. 7), supra.

S8060 AMENDMENT NO. 309

S8060 (Ordered to be printed and to lie on the table.)

S8060 Mr. BARTLETT submitted an amendment intended to be proposed by him to the bill (S. 7), supra.

S8060 AMENDMENT NO. 310

S8060 (Ordered to be printed and to lie on the table.)

S8060 Mr. ABOUREZK submitted an amendment intended to be proposed by him to the bill (S. 7), supra.

Amdt. No. 282 (as modified)

Ordered to be printed as modified

AMENDMENT

Proposed by Mr. HART to S. 7, a bill to provide for the

{1} cooperation between the Secretary of the Interior and the
{1} States with respect to the regulation of surface mining
{1} operations, and the acquisition and reclamation of abandoned
{1} mines, and for other purposes, viz:

{1-1} In lieu of the language proposed to be inserted by the
{1-2} Senator from Louisiana, Mr. Johnston, amendment numbered
{1-3} 275, as modified, insert the following:

{1-4} "(5) the proposed surface coal mining operation if
{1-5} located west of the one hundredth meridian west longitude,
{1-6} would -

{1-7} "(A) not be located within an alluvial valley
{1-8} floor, or

{1-9} "(B) not materially damage the quantity or
{2-1} quality of water in surface or underground water
{2-2} systems that supply these valley floors referred to
{2-3} in (A) of subsection (B) (5):

{2-4} Provided, That this paragraph (5) shall not apply to
{2-5} those surface coal mining operations located within or
{2-6} adjacent to alluvial valley floors which in the year preceding
{2-7} the enactment of this Act were engaged in the
{2-8} commercial production of coal or which had obtained
{2-9} prior to January 4, 1977, specific permit approval by
{2-10} the State regulatory authority to conduct surface coal
{2-11} mining operations within said alluvial floors."

Amdt. No. 275 (as modified)

Ordered to be printed as modified

AMENDMENT

Proposed by Mr. JOHNSTON to S. 7, a bill to provide for the

{1} cooperation between the Secretary of the Interior and the
{1} States with respect to the regulation of surface mining operations,
{1} and the acquisition and reclamation of abandoned
{1} mines, and for other purposes, viz:

{1-1} On page 207, strike all of lines 1 through 21 and insert
{1-2} in lieu thereof the following:

{1-3} "(5) the proposed surface coal mining operation,
{1-4} if located west of the one hundredth meridian west longitude,
{1-5} would not interrupt, discontinue or prevent farming
{1-6} on alluvial valley floors unless -

{1-7} "(a) throughout the surface mining operation,
{1-8} upstream and downstream ground and surface water
{1-9} flows in these alluvial valley floors are maintained so
{1-10} as not to impair existing rights of other water users;

{2-1} "(b) during and after the reclamation process,
{2-2} the essential hydrologic functions of the area is preserved
{2-3} without materially damaging the quantity
{2-4} and quality of surface and ground water systems that
{2-5} supply these valley floors; and

{2-6} "(c) nothing in this section shall supersede or
{2-7} replace the requirements of sections 415 or 416 of
{2-8} this Act.

{2-9} "(6) Paragraph (5) shall not affect those surface
{2-10} coal mining operations located within or adjacent to
{2-11} alluvial valley floors which in the year preceding the
{2-12} enactment of this Act were engaged in the commercial
{2-13} production of coal, or which had obtained prior to January
{2-14} 4, 1977, specific permit approval by the State regulatory
{2-15} authority to conduct surface coal mining operations
{2-16} within said alluvial valley floors, or for which
{2-17} substantial financial and legal commitment had been
{2-18} made."

Amdt. No. 308

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. SCHWEIKER to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 195, line 3, beginning with the word "a" delete
{1-2} lines 3 through 10 to and including the word "areas" and
{1-3} in lieu of this language insert the following: "the regulatory
{1-4} authority, after taking into consideration the following:

{1-5} "annual rainfall;

{1-6} "presence of alluvial valley floors;

{1-7} "general water availability and quality; and

{1-8} "geologic, topographic, and climatic conditions; may
{1-9} designate States or certain areas within a State wherein

{1-10} a determination of the hydrologic consequences of proposed
{2-1} mining and reclamation operations is deemed an essential
{2-2} and mandatory portion of the permit application".

{2-3} On page 195, line 17, after the word "agency;" add
{2-4} the following: "that if the regulatory authority decides that
{2-5} such a determination of the hydrologic consequences by the
{2-6} applicant is not necessary to enable the regulatory authority
{2-7} to make the required assessment, the regulatory authority
{2-8} shall so notify the applicant and shall include the basis for
{2-9} this decision in its written finding pertinent to permit issuance
{2-10} or denial in section 410(b);".

Amdt. No. 309

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. BARTLETT to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 159, line 4, delete the word "Fifty", and insert
{1-2} in lieu thereof "Seventy-five".

: Amdt. No. 310

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ABOUREZK to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of
{1} surface mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 230, line 19, strike "and".

{1-2} On page 230, line 23, delete the period and insert in
{1-3} lieu thereof the following: ";and".

{1-4} On page 230 between lines 23 and 24, insert the following
{1-5} new subsection:

{1-6} "(23) to the extent possible using the best available
{1-7} technology currently available, minimize disturbances
{1-8} and adverse impacts of the operation on fish, wildlife, and
{1-9} related environmental values, and achieve enhancement
{1-10} of such resources where practicable."

Amdt. No. 307

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. SCHWEIKER to S. 7, a bill

{1} to provide for the cooperation between the Secretary of
{1} the Interior and the States with respect to the regulation
{1} of surface mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 252, line 7, commencing with "Within" delete
{1-2} the rest of this section 419(a) through line 2 on page 253
{1-3} and in lieu of this language insert the following: "As part
{1-4} of any bond release application, the applicant shall submit
{1-5} a copy of a letter which he has sent to the property owners
{1-6} whose surface was affected and to the appropriate local
{1-7} governmental body, notifying them of his intention to seek
{1-8} release from the bond. Also, as part of any bond release,
{1-9} the operator shall submit a copy of an advertisement placed
{1-10} in a newspaper of general circulation in the locality of the
{2-1} surface coal mining operation. Such advertisement, shall
{2-2} be considered part of any bond release application and shall
{2-3} contain a notification of -

{2-4} "location of the land affected and bond release
{2-5} sought;

{2-6} "number of acres involved in bond release;

{2-7} "permit number and date it was approved; and

{2-8} "amount of bond posted and the portion sought
{2-9} to be released."

{2-10} On page 255, line 17, commencing with "Any" delete
{2-11} the remainder of this section 419(f) through line 8 on
{2-12} page 256 and in lieu of this language insert the following:
{2-13} "The property owner whose surface was affected or the
{2-14} responsible officer or head of any Federal, State, or local
{2-15} governmental agency shall have the right to file written
{2-16} objections to the proposed release from bond with the regulatory
{2-17} authority within thirty days after filing of the request
{2-18} for release of bond. If written objections are filed and a hearing
{2-19} requested, the regulatory authority shall inform all the
{2-20} parties of the time and place of the hearing and hold a public
{2-21} hearing in the locality of the surface coal mining operation
{2-22} proposed for bond release."

{3-1} On page 256, line 9, delete the word "objectors" and
{3-2} replace with "property owner whose surface was affected".

{3-3} On page 256, line 22, commencing on line 22 with the
{3-4} word "required" delete "required by this Act shall be made"
{3-5} and insert "held pursuant to this section may be made,".

Amdt. No. 295

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. BAKER to S. 7, a bill to provide
{1} for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation of
{1} abandoned mines, and for other purposes, viz:

{1-1} On page 287 delete the semicolon in line 2, and add the
{1-2} following: ": Provided, That for the purposes of this Act
{1-3} lands or mineral interests owned by the United States and
{1-4} entrusted to or managed by the Tennessee Valley Authority
{1-5} shall not constitute Federal lands, and such lands or mineral
{1-6} interests shall not be subject to sections 515 (Surface Owner
{1-7} Protection) and 512 (Federal Lessee Protection) of this
{1-8} Act."

Amdt. No. 296

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. BAKER to S. 7, a bill to provide
{1} for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface mining
{1} operations, and the acquisition and reclamation of
{1} abandoned mines, and for other purposes, viz:

{1-1} On page 222 in line 1 after "(9)" insert: "conducting
{1-2} any augering operation associated with surface mining in a
{1-3} manner to maximize recoverability of mineral reserves remaining
{1-4} after the operation and reclamation are complete;
{1-5} and".

{1-6} On page 222, line 6, delete the semicolon and add:
{1-7} ": Provided, That the permitting authority may prohibit
{1-8} augering if necessary to maximize the utilization, recoverability
{1-9} or conservation of the solid fuel resources or to protect
{1-10} against adverse water quality impacts."

Amdt. No. 298

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. DANFORTH to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 217, beginning with line 3, strike out all
{1-2} through line 6 and insert in lieu thereof the following:

{1-3} "(2) restore the land affected to a condition capable
{1-4} of supporting a use or uses which satisfy any land
{1-5} use requirements of affected State and local governments
{1-6} or agencies thereof which would have to initiate, implement,
{1-7} approve, or authorize the proposed use or uses
{1-8} of the land following reclamation, so".

Amdt. No. 299

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DANFORTH to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the Interior
{1} and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation of
{1} abandoned mines, and for other purposes, viz;

{1-1} On page 217, beginning with line 17, strike out all
{1-2} through line 21 on page 219 and insert in lieu thereof the
{1-3} following:

{1-4} "(3) with respect to all surface coal mining operations
{1-5} backfill, compact (where advisable to insure stability
{1-6} or to prevent leaching of toxic materials), and grade
{1-7} in order to -

{1-8} "(A) satisfy any requirements of State and
{1-9} local governments or relevant agencies thereof with
{2-1} respect to the contours and physical appearance of
{2-2} the land, and

{2-3} "(B) satisfy any requirements of this Act or
{2-4} other Federal law or regulations with respect to
{2-5} public health, safety, water diminution, or pollution."

{2-7} On page 234, strike lines 13 through 16 and insert in
{2-8} lieu thereof the following:

{2-9} "(2) Complete backfilling with spoil material shall be
{2-10} required in a manner in which such material will maintain
{2-11} stability following mining and reclamation, in order to -

{2-12} "(A) satisfy any requirements of State and local
{2-13} governments or relevant agencies thereof with respect to
{2-14} the contours and physical appearance of the land, and

{2-15} "(B) satisfy any requirements of this Act or other
{2-16} Federal law or regulations with respect to public health,
{2-17} safety, water diminution, or pollution."

Amdt. No. 305

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. SCHWEIKER to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of surface
{1} mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 212, line 24, after the word "hearing", delete
{1-2} the remainder of this section through page 213, line 23 and
{1-3} insert the following: "an informal conference requested, the
{1-4} regulatory authority may then hold an informal conference
{1-5} in the locality of the proposed mining, if requested within a
{1-6} reasonable time of the receipt of such objections or request.
{1-7} The date, time, and location of such informal conference shall
{1-8} be advertised by the regulatory authority in a newspaper of
{1-9} general circulation in the locality at least one week prior to
{1-10} the scheduled conference date. The regulatory authority may
{2-1} arrange with the applicant upon request by any party to the
{2-2} administrative proceedings access to the proposed mining
{2-3} area for the purpose of gathering information relevant to the
{2-4} proceeding. In the event all parties requesting the informal
{2-5} conference stipulate agreement prior to the requested informal
{2-6} conference and withdraw their request, such informal
{2-7} conference need not be held."

{2-8} Delete page 213, line 24 to page 214, line 17 entirely.

{2-9} On page 215, line 4, strike out "a public hearing" and
{2-10} insert "an informal conference".

{2-11} On page 214, line 10, strike out "hearings" and insert
{2-12} "informal conference".

{2-13} On page 215, line 11, strike out "public hearing" and
{2-14} insert "informal conference".

{2-15} On page 215, lines 19 through 21, strike out everything
{2-16} after the word "notified" on line 19 through the period on
{2-17} line 21 and insert the following: "of the final decision of the
{2-18} regulatory authority on the permit application, the applicant
{2-19} or any person with an interest which is or may be adversely
{2-20} affected may request a hearing on the final determination."

{2-21} On page 216, lines 2 and 3, delete "pursuant to section
{2-22} 413(b)".

{2-23} On page 216, lines 6 to 8, strike out "other party to the
{2-24} administrative proceeding who filed written objections and
{3-1} participated in the hearing if one was held" and insert "person
{3-2} with an interest which is or may be adversely affected
{3-3} who has participated in the administrative proceedings as an
{3-4} objector."

Amdt. No. 306

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. SCHWEIKER to S. 7, a bill to
{1} provide for the cooperation between the Secretary of the
{1} Interior and the States with respect to the regulation of
{1} surface mining operations, and the acquisition and reclamation
{1} of abandoned mines, and for other purposes, viz:

{1-1} On page 108, line 10, after the word "occurs" insert:
{1-2} ": Provided, That any notice or order issued pursuant to
{1-3} this section which requires cessation of mining by the
{1-4} operator shall expire within thirty days of actual notice to
{1-5} the operator unless a public hearing is held at the site or
{1-6} within such reasonable proximity to the site that any viewings
{1-7} of the site can be conducted during the course of the
{1-8} hearing".

Admt. No. 294

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. BAKER (for himself and Mr.
{1} HUDDLESTON) to S. 7, a bill to provide for the cooperation
{1} between the Secretary of the Interior and the States with
{1} respect to the regulation of surface mining operations, and
{1} the acquisition and reclamation of abandoned mines, and for
{1} other purposes, viz: Delete all of title III, from page 157,
{1} line 8, through page 172, line 16, and insert a new title III
{1} as follows:

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 301. DECLARATION OF PUBLIC POLICY

(a) It is hereby declared as a matter of public
{1-4} policy that -

{1-5} (1) reclamation, restoration, and development of
{1-6} land and water resources in the United States, which
{1-7} have been adversely affected by past coal mining practices,
{2-1} are fundamental to the public health, safety, and
{2-2} general welfare;

{2-3} (2) a fund should be created to reclaim, restore,
{2-4} and develop land and water resources in the United
{2-5} States which have been adversely affected by past coal
{2-6} mining practices; and

{2-7} (3) the United States of America, the individual
{2-8} States, their political subdivisions, the mining industry,
{2-9} and individual property owners must cooperate and act
{2-10} to reclaim, restore, and develop land and water resources
{2-11} adversely affected by past coal mining practices.

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 302.

- (a) Not later than the end of the one hundred
{2-13} and eighty-day period immediately following the date
{2-14} of enactment of this Act, the Secretary shall promulgate
{2-15} and publish in the Federal Register regulations covering
implementation
{2-16} of an abandoned mine reclamation program incorporating
{2-17} the provisions of title III and establishing procedures
{2-18} and requirements for preparation, submission, and
{2-19} approval of State programs and development and implementation
{2-20} of Federal programs under this title.
- {2-21} (b) The Secretary shall not approve, fund, or continue
{2-22} to fund a State abandoned mine reclamation program unless
{2-23} that State either has an approved State regulatory program
{2-24} pursuant to section 403 of this Act or is diligently preparing
{3-1} its program plan for submittal to the Secretary for approval.
- {3-3} (c) If the Secretary determines that a State has developed
{3-4} a program for reclamation of abandoned mines and
{3-5} has the ability and necessary State legislation to implement
{3-6} the provisions of this title, sections 304 and 309 excepted,
{3-7} the Secretary shall approve such State program and shall
{3-8} grant to the State exclusive responsibility and authority to
{3-9} implement the provisions of this title: Provided, That the
{3-10} Secretary shall withdraw such approval and authorization
{3-11} if he determines upon the basis of information provided under
{3-12} subsection (d) of this section that the State program
{3-13} is not in compliance with the procedures, guidelines, and
{3-14} requirements established under subsection 302(a).
- {3-15} (d) The Secretary shall grant to each qualified State,
{3-16} moneys from the fund to be used for the purposes of this
{3-17} title upon an annual application for grants by the State which
{3-18} shall provide the following information:
- {3-19} (1) a general description of the State's program
{3-20} for that year;
- {3-21} (2) a priority evaluation of each element of such
{3-22} State program;
- {3-23} (3) a statement of the estimated benefits in terms of
{3-24} acres restored, miles of stream improved, acres of surface
{4-1} protected from subsidence and population protected
{4-2} from subsidence and population protected from air pollution
{4-3} and safety hazards of mine and coal refuse disposal
{4-4} area fires;
- {4-5} (4) an estimate of the cost for each element of such
{4-6} State program;

{4-7} (5) in the case of proposed research and demonstration
{4-8} projects, a description of the specific techniques
{4-9} to be evaluated or objective to be attained; and

{4-10} (6) a statement of any land to be acquired in conformity
{4-11} with section 307 and the estimated cost of such
{4-12} land;

{4-13} (7) in each year after the first in which an application
{4-14} is filed under this title, an inventor of each project
{4-15} funded under the previous year's grant; which
{4-16} inventory shall include details of financial expenditures
{4-17} on such project together with a brief description of each
{4-18} such project, including project location, landowner's
{4-19} name, acreage, type of reclamation performed.

{4-20} (e) The costs for each proposed program under this
{4-21} section shall include actual construction costs and actual
{4-22} operation and maintenance costs of permanent facilities.
{4-23} Planning and engineering costs, construction inspection
{4-24} costs, and other administrative expenses shall be included
{4-25} in the costs for each proposed project.

{5-1} (f) Grants shall be made annually to the qualifying
{5-2} States on approval by the Secretary of the applications, or
{5-3} portions thereof, according to the priorities established in
{5-4} subsection (g) of section 303 and subject to the requirements
{5-5} of subsection (f) of section 303.

{5-6} (g) The Secretary, through his designated agents, will
{5-7} monitor the progress and quality of the program. The
{5-8} States shall not be required at the start of any project to
{5-9} submit complete copies of plans and specifications.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 303.

(a) There is created on the books of the
{5-11} Treasury of the United States a trust fund to be known as
{5-12} the Federal Abandoned Mine Reclamation Fund (hereinafter
{5-13} referred to as the "fund") which shall be administered
{5-14} by the Secretary of the Interior. State abandoned mine
{5-15} reclamation funds (State funds) generated by grants from
{5-16} this title shall be established by each State pursuant to an
{5-17} approved State program.

{5-18} (b) The fund shall consist of amounts deposited in the
{5-19} fund, from time to time derived from -

{5-20} (1) the reclamation fees levied under section 304 of
{5-21} this Act;

{5-22} (2) the sale, lease rental, or user charge for land

{5-23} acquired pursuant to this title;

{5-24} (3) donations by persons, corporations, associations,
{5-25} and foundations for the purposes of this title; and

{6-1} (4) recovered moneys as provided for in this title.

{6-2} (c) Moneys in the fund may be used for the following
{6-3} purposes:

{6-4} (1) reclamation and restoration of land and water
{6-5} resources adversely affected by past coal mining, including
{6-6} but not limited to reclamation and restoration of
{6-7} abandoned surface mine areas, abandoned coal processing
{6-8} areas, and abandoned coal refuse disposal areas; sealing
{6-9} and filling abandoned deep mine entries and voids;
{6-10} planting of land adversely affected by past coal mining
{6-11} to prevent erosion and sedimentation; prevention, abatement,
{6-12} treatment, and control of water pollution created
{6-13} by coal mine drainage including restoration of stream
{6-14} beds, and construction and operation of water treatment
{6-15} plants; prevention, abatement, and control of burning
{6-16} coal refuse disposal areas and burning coal in situ; and
{6-17} prevention, abatement, and control of coal mine subsidence;

{6-19} (2) acquisition of land as provided for in section
{6-20} 307;

{6-21} (3) development of land acquired as provided for
{6-22} in subsection (d) of section 307;

{6-23} (4) enforcement and collection of the reclamation
{6-24} fee provided for in section 304 of this Act;

{6-25} (5) studies by the Department of the Interior by
{7-1} contract to such extent or in such amounts as are provided
{7-2} in advance in appropriation Acts with public and private
{7-3} organizations to provide information, advice, and technical
{7-4} assistance, including research and demonstration
{7-5} projects, conducted for the purposes of this title;

{7-6} (6) restoration, reclamation, abatement, control,
{7-7} or prevention of adverse affects of coal mining whenever
{7-8} created which constitutes an emergency as provided for
{7-9} in section 308 of this title;

{7-10} (7) grants to the States to accomplish the purposes
{7-11} of this title;

{7-12} (8) administrative expenses of the United States
{7-13} and each State to accomplish the purposes of this title;
{7-14} and

{7-15} (9) all other necessary expenses to accomplish the
{7-16} purposes of this title.

{7-17} (d) An amount not to exceed 20 per centum of the

{7-18} moneys deposited in the fund during the first calendar year
{7-19} this title is in force shall be reserved for the purposes specified
{7-20} in section 309 of this Act. As moneys are used for
{7-21} these purposes, this reserve shall be replenished by such
{7-22} portion of the quarterly deposits into the fund as shall be
{7-23} necessary.

{7-24} (e) Moneys from the fund shall be available for the
{7-25} purposes of this title, only when appropriated therefor, and
{8-1} such appropriations shall be made without fiscal year limitations:
{8-2} Provided, That moneys from the fund reserve provided
{8-3} in subsection (d) of this section shall be immediately
{8-4} available without regard to appropriations, upon authority
{8-5} of the Secretary for the purposes provided for in section 308
{8-6} of this title.

{8-7} (f) The geographic allocation of expenditures from the
{8-8} fund shall reflect both the area from which the revenue was
{8-9} derived as well as the program needs for the funds. Fifty
{8-10} per centum of the funds collected annually in any State or
{8-11} Indian reservation shall be expended in that State or Indian
{8-12} reservation by the Secretary or State regulatory authority
{8-13} pursuant to any approved State abandoned mine reclamation
{8-14} program to accomplish the purposes of this title after receiving
{8-15} and considering the recommendations of the Governor
{8-16} of that State or the head of the governing body of that tribe
{8-17} having jurisdiction over that reservation, as the case may
{8-18} be: Provided, however, That if such funds have not been
{8-19} expended within three years after being paid into the fund,
{8-20} they shall be available for expenditure in any area. The balance
{8-21} of funds collected on an annual basis may be expended
{8-22} in any State at the discretion of the Secretary in order to
{8-23} meet the purposes of this title.

{8-24} (g) Expenditure of moneys from the fund for the purposes
{9-1} of this title shall reflect the following priorities in the
{9-2} order stated:

{9-3} (1) the protection of public health, safety, general
{9-4} welfare, and property from extreme danger of adverse
{9-5} effects of coal mining practices;

{9-6} (2) the protection of public health, safety, and general
{9-7} welfare from adverse effects of past coal mining
{9-8} practices;

{9-9} (3) the restoration of land and water resources and
{9-10} the environment previously degraded by adverse effects
{9-11} of past coal mining practices including measures for the
{9-12} conservation and development of soil, water (excluding
{9-13} channelization), woodland, fish and wildlife, recreation
{9-14} resources, and agricultural productivity;

{9-15} (4) research and demonstration projects relating to
{9-16} the development of surface mining reclamation and water
{9-17} quality control program methods and techniques;

{9-18} (5) the protection, repair, replacement, construction,
{9-19} or enhancement of public facilities such as utilities,
{9-20} roads, recreation, and conservation facilities adversely
{9-21} affected by coal mining practices;

{9-22} (6) the development of publicly owned land adversely
{9-23} affected by past coal mining practices including
{9-24} land acquired as provided in this title for recreation and
{10-1} historic purposes, conservation, and reclamation purposes
{10-2} and open space benefits.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 304. RECLAMATION FEE

(a) All operators of coal mining operations
{10-5} subject to the provisions of this Act shall pay to the Secretary
{10-6} of the Interior, for deposit in the fund, a reclamation fee
{10-7} of 35 cents per ton of coal produced by surface coal mining
{10-8} and 15 cents per ton of coal produced by underground mining
{10-9} or 10 per centum of the value of the coal at the mine, as
{10-10} determined by the Secretary, whichever is less, except that
{10-11} there shall be no reclamation fee for lignite coal.

{10-12} (b) Such fee shall be paid no later than thirty days after
{10-13} the end of each calendar quarter beginning with the first
{10-14} calendar quarter occurring after January 1, 1978, and ending
{10-15} fifteen years after the date of enactment of this Act
{10-16} unless extended by an Act of Congress.

{10-17} (c) Together with such reclamation fee, all operators
{10-18} of coal mine operations shall submit a statement of the
{10-19} amount of coal produced during the calendar quarter, the
{10-20} method of coal removal and the type of coal, the accuracy of
{10-21} which shall be sworn to by the operator and notarized.

{10-22} (d) Any person, corporate officer, agent, or director,
{10-23} on behalf of a coal mine operator, who knowingly makes any
{10-24} false statement, representation, or certification required in
{10-25} this section shall, upon conviction, be punished by a fine of
{11-1} not more than \$10,000, or by imprisonment for not more
{11-2} than one year, or both.

{11-3} (e) Any portion of the reclamation fee not properly or
{11-4} promptly paid pursuant to this section shall be recoverable,
{11-5} with statutory interest and reasonable attorney's fees, from
{11-6} coal mine operators, in any court of competent jurisdiction in
{11-7} any action at law to compel payment of debts.

{11-8} (f) All Federal and State agencies shall fully cooperate
{11-9} with the Secretary of the Interior in the enforcement of this
{11-10} section.

: Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 305. ELIGIBLE AREAS

(a) The only lands eligible for expenditures
{11-13} under this title are those which were mined for coal or which
{11-14} were abandoned and unreclaimed or unrestored prior to the
{11-15} date of enactment of this Act: Provided, however, That any
{11-16} lands adversely affected by coal mining which constitutes an
{11-17} extreme danger to the public health, safety, and general
{11-18} welfare shall be eligible for expenditures from the fund as
{11-19} provided for in section 309.

{11-20} (b) Any water resources adversely affected by past coal
{11-21} mining practices shall be eligible for expenditures from the
{11-22} fund for reclamation and restoration purposes.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 306. RECLAMATION OF RURAL LANDS

(a) In order to provide for the control and
{11-25} prevention of erosion and sediment damages from unreclaimed
{12-1} mined lands, and to promote the conservation and
{12-2} development of soil and water resources of unreclaimed
{12-3} mined lands and lands affected by mining, the Secretary
{12-4} of Agriculture is authorized to enter into agreements
{12-5} of not more than ten years with landowners (including
{12-6} owners of water rights), residents, and tenants, and individually
{12-7} or collectively, determined by him to have control
{12-8} for the period of the agreement of lands in question therein,
{12-9} providing for land stabilization, erosion, and sediment control,
{12-10} and reclamation through conservation treatment, including
{12-11} measures for the conservation and development of
{12-12} soil, water (excluding stream channelization), woodland,
{12-13} wildlife, and recreation resources, and agricultural productivity
{12-14} of such lands. Such agreements shall be made by the
{12-15} Secretary with the owners, including owners of water rights,
{12-16} residents, or tenants (collectively or individually) of the
{12-17} lands in question.

{12-18} (b) The landowner, including the owner of water rights,
{12-19} resident, or tenant shall furnish to the Secretary of Agriculture
{12-20} a conservation and development plan setting forth the
{12-21} proposed land uses and conservation treatment which shall
{12-22} be mutually agreed by the Secretary of Agriculture and the
{12-23} landowner, including owner of water rights, resident, or
{12-24} tenant to be needed on the lands for which the plan was prepared.

{12-25} In those instances where it is determined that the
{13-1} water rights or water supply of a tenant, landowner, including
{13-2} owner of water rights, residents, or tenant have been
{13-3} adversely affected by a surface or underground coal mine
{13-4} operation which has removed or disturbed a stratum so as to
{13-5} significantly affect the hydrologic balance, such plan may
{13-6} include proposed measures to enhance water quality or quantity

{13-7} by means of joint action with other affected landowners,
{13-8} including owner of water rights, residents, or tenants in
{13-9} consultation with appropriate State and Federal agencies.

{13-10} (c) Such plan shall be incorporated in an agreement
{13-11} under which the landowner, including owner of water rights,
{13-12} resident, or tenant shall agree with the Secretary of Agriculture
{13-13} to effect the land uses and conservation treatment provided
{13-14} for in such plan on the lands described in the agreement
{13-15} in accordance with the terms and conditions thereof.

{13-16} (d) In return for such agreement by the landowner,
{13-17} including owner of water rights, resident, or tenant the Secretary
{13-18} of Agriculture is authorized to furnish financial and
{13-19} other assistance to such landowner, including owner of water
{13-20} rights, resident, or tenant in such amounts and subject to
{13-21} such conditions as the Secretary of Agriculture determines are
{13-22} appropriate in the public interest for carrying out the land
{13-23} use and conservation treatment set forth in the agreement.

{13-24} Grants made under this section, depending on the incomeproducing
{13-25} potential of the land after reclaiming, shall provide
{14-1} up to 80 per centum of the cost of carrying out such land
{14-2} uses and conservation treatment on not more than one hundred
{14-3} and twenty acres of land occupied by such owner
{14-4} including water rights owners, resident, or tenant, or on not
{14-5} more than one hundred and twenty acres of land which has
{14-6} been purchased jointly by such landowners including water
{14-7} rights owners, residents, or tenants under an agreement for
{14-8} the enhancement of water quality or quantity or on land
{14-9} which has been acquired by an appropriate State or local
{14-10} agency for the purpose of implementing such agreement;
{14-11} except the Secretary may reduce the matching cost share
{14-12} where he determines that (1) the main benefits to be derived
{14-13} from the project are related to improving offsite water quality,
{14-14} offsite esthetic values, or other offsite benefits, and (2)
{14-15} the matching share requirement would place a burden on
{14-16} the landowner which would probably prevent him from participating
{14-17} in the program.

{14-18} (e) The Secretary of Agriculture may terminate any
{14-19} agreement with a landowner including water rights owners,
{14-20} operator, or occupier by mutual agreement if the Secretary
{14-21} of Agriculture determines that such termination would be in
{14-22} the public interest, and may agree to such modification of
{14-23} agreements previously entered into hereunder as he deems
{15-1} desirable to carry out the purposes of this section or to
{15-2} facilitate the practical administration of the program authorized
{15-3} herein.

{15-4} (f) Notwithstanding any other provision of law, the
{15-5} Secretary of Agriculture, to the extent he deems it desirable
{15-6} to carry out the purposes of this section, may provide in any
{15-7} agreement hereunder for (1) preservation for a period not
{15-8} to exceed the period covered by the agreement and an equal
{15-9} period thereafter of the cropland, crop acreage, and allotment
{15-10} history applicable to land covered by the agreement for the
{15-11} purpose of any Federal program under which such history is

{15-12} used as a basis for an allotment or other limitation on the
production
{15-13} of such crop; or (2) surrender of any such history
{15-14} and allotments.

{15-15} (g) The Secretary of Agriculture shall be authorized to
{15-16} issue such rules and regulations as he determines are necessary
{15-17} to carry out the provisions of this section.

{15-18} (h) In carrying out the provisions of this section, the
{15-19} Secretary of Agriculture shall utilize the services of the Soil
{15-20} Conservation Service.

{15-21} (i) Funds shall be made available to the Secretary of
{15-22} Agriculture for the purposes of this section, as provided in
{15-23} section.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 307. ENTRY ON OR ACQUISITION OF LAND ADVERSELY AFFECTED BY PAST COAL MINING PRACTICES

(a) In the absence of an approved State program
{16-4} pursuant to section 302, if the Secretary makes a finding
{16-5} of fact that -

{16-6} (1) land or water resources have been adversely affected
{16-7} by past coal mining practices; and

{16-8} (2) the adverse effects are at a stage where, in the
{16-9} public interest, action to restore, reclaim, abate, control,
{16-10} or prevent should be taken; and

{16-11} (3) the owners of the land or water resources where
{16-12} entry must be made to restore, reclaim, abate, control, or
{16-13} prevent the adverse effects of past coal mining practices
{16-14} are not know, or readily available; or

{16-15} (4) the owners will not give permission for the
{16-16} United States, the States, political subdivisions, their
{16-17} agents, employees, or contractors to enter upon such
{16-18} property to restore, reclaim, abate, control, or prevent
{16-19} the adverse effects of past coal mining practices.

{16-20} Then, upon giving notice by mail to the owners if known or
{16-21} if not known by posting notice upon the premises and advertising
{16-22} once in a newspaper of general circulation in the
{16-23} municipality in which the land lies, the Secretary, his agents,
{16-24} employees, or contractors, shall have the right to enter
{16-25} upon the property adversely affected by past coal mining
{17-1} practices and any other property to have access to such
{17-2} property to do all things necessary or expedient to restores,
{17-3} reclaim, abate, control, or prevent the adverse effects. Such
{17-4} entry shall be construed as an exercise of the police power
{17-5} for the protection of public health, safety, and general welfare

{17-6} fare and shall not be construed as an act of condemnation
{17-7} of property nor of trespass thereon. The moneys expended
{17-8} for such work and the benefits accruing to any such premises
{17-9} so entered upon shall be chargeable against such land and
{17-10} shall mitigate or offset any claim in or any action brought
{17-11} by any owner of any interest in such premises for any alleged
{17-12} damages by virtue of such entry: Provided, however, That
{17-13} this provision is not intended to create new rights of action
{17-14} or eliminate existing immunities.

{17-15} (b) The Secretary, his agents, employees, or contractors
{17-16} shall have the right to enter upon any property for the
{17-17} purpose of conducting studies or exploratory work to determine
{17-18} the existence of adverse effects of past coal mining
{17-19} practices and to determine the feasibility of restoration,
{17-20} reclamation, abatement, control, or prevention of such adverse
{17-21} effects. Such entry shall be construed as an exercise
{17-22} of the police power for the protection of public health, safety,
{17-23} and general welfare and shall not be construed as an act of
{17-24} condemnation of property nor trespass thereon.

{17-25} (c) The Secretary may acquire any land, by purchase,
{18-1} donation, or condemnation, which is adversely affected by
{18-2} past coal mining practices if the Secretary determines that
{18-3} acquisition of such land is necessary to successful reclamation
{18-4} and that -

{18-5} (1) the acquired land, after restoration, reclamation,
{18-6} abatement, control, or prevention of the adverse
{18-7} effects of past coal mining practices, will serve recreation
{18-8} and historic purposes, conservation and reclamation purposes
{18-9} or provide open space benefits; or

{18-10} (2) permanent facilities such as a treatment plant
{18-11} or a relocated stream channel will be constructed on the
{18-12} land for the restoration, reclamation, abatement, control,
{18-13} or prevention of the adverse effects of past coal mining
{18-14} practices; or

{18-15} (3) acquisition of coal refuse disposal sites and all
{18-16} coal refuse thereon will serve the purposes of this title
{18-17} or that public ownership is desirable to meet emergency
{18-18} situations and prevent recurrences of the adverse effects
{18-19} of past coal mining practices.

{18-20} (d) Title to all lands acquired pursuant to this section
{18-21} shall be in the name of the United States or, if acquired by
{18-22} a State pursuant to an approved program, title shall be in the
{18-23} name of the State. The price paid for land acquired under
{18-24} this section shall reflect the market value of the land as
{18-25} adversely affected by past coal mining practices.

{19-1} (e) The Secretary, in formulating regulations for making
{19-2} grants to the States to acquire land pursuant to this section,
{19-3} shall specify that acquired land meet the criteria provided
{19-4} for in subsections (c) and (d) of this section. The
{19-5} Secretary may provide by regulation that money derived

{19-6} from the lease, rental, or user charges of such acquired land
{19-7} and facilities thereon will be deposited in the fund.

{19-8} (f) (1) Where land acquired pursuant to this section is
{19-9} deemed to be suitable for industrial, commercial, residential,
{19-10} or recreational development, the Secretary may sell or authorize
{19-11} thorize the States to sell such land by public sale under a
{19-12} system of competitive bidding, at not less than fair market
{19-13} value and under such other regulations promulgated to insure
{19-14} that such lands are put to proper use consistent with local
{19-15} and State land use plans, if any, as determined by the
{19-16} Secretary.

{19-17} (2) The Secretary when requested after appropriate
{19-18} public notice shall hold a public hearing, with the appropriate
{19-19} priate notice, in the county or counties or the appropriate
{19-20} subdivisions of the State in which lands acquired pursuant to
{19-21} this section are located. The hearings shall be held at a time
{19-22} which shall afford local citizens and governments the maximum
{19-23} opportunity to participate in the decision concerning
{19-24} the use of disposition of the lands after restoration,
reclamation,
{20-1} abatement, control, or prevention of the adverse affects
{20-2} of past coal mining practices.

{20-3} (g) In addition to the authority to acquire land under
{20-4} subsection (d) of this section the Secretary is authorized to
{20-5} use money in the fund to acquire land by purchase, donation,
{20-6} or condemnation, and to reclaim, develop, and transfer acquired
{20-7} land to any State or to a political subdivision thereof,
{20-8} or to any person, firm, association, or corporation if he
determines
{20-9} mines that such is an integral and necessary element of an
{20-10} economically feasible plan for the project to construct or
{20-11} rehabilitate housing for persons disabled as the result of
{20-12} employment in the mines or work incidental thereto, persons
{20-13} displaced by acquisition of land pursuant to this section, or
{20-14} persons dislocated as the result of adverse effects of coal
{20-15} mining practices which constitute an emergency as provided
{20-16} in section 309. Such activities shall be accomplished under
{20-17} such terms and conditions as the Secretary shall require,
{20-18} which may include transfers of land with or without
{20-19} monetary consideration: Provided, That, to the extent that
{20-20} the consideration is below the fair market value of the land
{20-21} transferred, no portion of the difference between the fair
{20-22} market value and the consideration shall accrue as a profit to
{20-23} such persons, firm, association, or corporation. Land development
{20-24} may include the construction of public facilities or other
{20-25} improvements including reasonable site work and offsite
improvements
{21-1} such as sewer and water extensions which the
{21-2} Secretary determines necessary or appropriate to the economic
{21-3} feasibility of a project.No part of the funds provided
{21-4} under this title may be used to pay the actual construction
{21-5} costs of housing.

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 308. LIENS

(a) In absence of an approved plan pursuant
{21-8} to section 302 the provisions of this section shall be applicable.

{21-10} (b) Within six months after the completion of projects
{21-11} to restore, reclaim, abate, control, or prevent adverse effects
{21-12} of past coal mining practices on privately owned land, the
{21-13} Secretary shall itemize the moneys so expended and may
{21-14} file a statement thereof in the office of the county in which
{21-15} the land lies which has the responsibility under local law for
{21-16} the recording of judgments against land, together with a
{21-17} notarized appraisal by an independent appraiser of the value
{21-18} of the land before the restoration, reclamation, abatement,
{21-19} control, or prevention of adverse effects of past coal mining
{21-20} practices if the moneys so expended shall result in a significant
{21-21} increase in property value. Such statement shall constitute
{21-22} a lien upon the said land. The lien shall not exceed
{21-23} the amount determined by the appraisal to be the increase in
{21-24} the market value of the land as a result of the restoration,
{21-25} reclamation, abatement, control, or prevention of the adverse
{22-1} effects of past coal mining practices. No lien shall be filed
{22-2} against the property of any person, in accordance with this
{22-3} subsection, who neither participated in nor exercised control
{22-4} over the mining operation which necessitated the reclamation
{22-5} performed hereunder.

{22-6} (c) The landowner may proceed as provided by local
{22-7} law to petition within sixty days of the filing of the lien, to
{22-8} determine the increase in the market value of the land as a
{22-9} result of the restoration, reclamation, abatement, control, or
{22-10} prevention of the adverse effects of past coal mining practices.
{22-11} The amount reported to be the increase in value of the
{22-12} premises shall constitute the amount of the lien and shall be
{22-13} recorded with the statement herein provided. Any party
{22-14} aggrieved by the decision may appeal as provided by local
{22-15} law.

{22-16} (d) The lien provided in this section shall be entered in
{22-17} the county office in which the land lies which has responsibility
{22-18} under local law for the recording of judgments against
{22-19} land.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 309. EMERGENCY POWERS

(a) The provisions of this section shall be
{22-22} applicable only in the absence of an approved State program
{22-23} pursuant to section 302.

{22-24} (b) The Secretary is authorized to expend moneys

{23-1} from the fund without specific legislative appropriation for
{23-2} the emergency restoration, reclamation, abatement, control,
{23-3} or prevention of adverse effects of coal mining practices,
{23-4} without regard to when the practices occurred, if the Secretary
{23-5} makes a finding of fact that -

{23-6} (1) an emergency exists constituting a danger to
{23-7} the public health, safety, or general welfare; and

{23-8} (2) no other person or agency will act expeditiously
{23-9} to restore, reclaim, abate, control, or prevent the
{23-10} adverse effects of coal mining practices.

{23-11} (c) The Secretary, his agents, employees, and contractors
{23-12} shall have the right to enter upon any land where
{23-13} the emergency exists and any other land to have access to
{23-14} the land where the emergency exists to restore, reclaim,
{23-15} abate, control, or prevent the adverse effects of coal mining
{23-16} practices and to do all things necessary or expedient to
{23-17} protect the public health, safety, or general welfare. Such
{23-18} entry shall be construed as an exercise of the police power
{23-19} and shall not be construed as an act of condemnation of
{23-20} property nor of trespass thereon. The moneys expended for
{23-21} such work and the benefits accruing to any such premises
{23-22} so entered upon shall be chargeable against such land and
{23-23} shall mitigate or offset any claim in or any action brought
{23-24} by any owner of any interest in such premises for any
{24-1} alleged damages by virtue of such entry: Provided, however,
{24-2} That this provision is not intended to create new rights
{24-3} of action or eliminate existing immunities.

{24-4} (d) All moneys expended under this section may be
{24-5} recovered in full from the landowner, or any other person,
{24-6} company, corporation, or organization if they were liable
{24-7} under law for restoring, reclaiming, abating, controlling, or
{24-8} preventing the adverse effects resulting in the emergency.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 310. FILLING VOIDS AND SEALING TUNNELS

{24-11} (a) The Congress declares that voids, and
{24-12} open and abandoned tunnels, shafts, and entryways resulting
{24-13} from any previous mining operation, constitute a hazard
{24-14} to the public health or safety and that surface impacts of
{24-15} any underground or surface mining operation may degrade
{24-16} the environment. The Secretary, at the request of the Governor
{24-17} of any State, or the chairman of any tribe, is authorized
{24-18} to fill such voids, seal such abandoned tunnels, shafts,
{24-19} and entryways, and reclaim surface impacts of underground
{24-20} or surface mines which the Secretary determines could
{24-21} endanger life and property, constitute a hazard to the public
{24-22} health and safety, or degrade the environment. State regulatory
{24-23} authorities are authorized to carry out such work pursuant
to an approved abandoned mine reclamation program.

{24-24} (b) Funds available for use in carrying out the purpose
{24-25} of this section shall be limited to those funds which must be
{25-1} expended in the respective States or Indian reservations
{25-2} under the provisions of section 303().

{25-3} (c) The Secretary may make expenditures and carry out
{25-4} the purposes of this section without regard to provisions of
{25-5} section 305 in such States or Indian reservations where requests
{25-6} are made by the Governor or tribal chairman and only
{25-7} after all reclamation with respect to abandoned coal lands or
{25-8} coal development impacts have been met, except for those
{25-9} reclamation projects relating to the protection of the public
{25-10} health or safety.

{25-11} (d) In those instances where mine waste piles are being
{25-12} reworked for conservation purposes, the incremental costs of
{25-13} disposing of the wastes from such operations by filling voids
{25-14} and sealing tunnels may be eligible for funding providing that
{25-15} the disposal of these wastes meets the purposes of this section.

{25-16} (e) The Secretary may acquire by purchase, donation,
{25-17} easement, or otherwise such interest in land as he determines
{25-18} necessary to carry out the provisions of this section.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 311. MISCELLANEOUS POWERS

(a) In the absence of an approved State program
{25-21} pursuant to section 302.

{25-22} (b) The Secretary shall have the power and authority,
{25-23} if not granted it otherwise, to engage in any work and to do
{25-24} all things necessary or expedient to implement and administer
{25-25} the provisions of this title.

{26-1} (c) The Secretary shall have the power and authority to
{26-2} engage in cooperative projects under this title with any other
{26-3} agency of the United States of America, any State and their
{26-4} governmental agencies.

{26-5} (d) The Secretary may request the Attorney General,
{26-6} who is hereby authorized to initiate, in addition to any other
{26-7} remedies provided for in this title, in any court of competent
{26-8} jurisdiction, an action in equity for an injunction to restrain
{26-9} any interference with the exercise of the right to enter land
{26-10} or to conduct of any work provided in this title.

{26-11} (e) The Secretary shall have the power and authority to
{26-12} construct and operate a plant or plants for the control and
{26-13} treatment of water pollution resulting from mine drainage.
{26-14} The extent of this control and treatment may be dependent
{26-15} upon the ultimate use of the water: Provided, That the above
{26-16} provisions of this paragraph shall not be deemed in any way

{26-17} to repeal or supersede any portion of the Federal Water Pollution
{26-18} Control Act (33 U.S.C.A. 1151, et seq. as amended)
{26-19} and no control or treatment under this subsection shall in any
{26-20} way be less than that required under the Federal Water Pollution
{26-21} Control Act. The construction of a plant or plants may
{26-22} include major interceptors and other facilities appurtenant to
{26-23} the plant.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 312. INTERAGENCY COOPERATION

(a) All departments, boards, commissioners,
{27-3} and agencies of the United States of America shall cooperate
{27-4} with the Secretary by providing technical expertise, personnel,
{27-5} equipment, materials, and supplies to implement and
{27-6} administer the provisions of this title.

{27-7} (b) The Secretary in development of guidelines and
{27-8} regulations under this title shall consult with appropriate
{27-9} Federal agencies including Department of Agriculture, Soil
{27-10} Conservation Service, Environmental Protection Administration,
{27-11} and the Tennessee Valley Authority.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 313. FUND REPORT

Not later than January 1, 1978, and annually
{27-14} thereafter, the Secretary shall report to the Congress
{27-15} on operations under the fund together with his recommendations
{27-16} as to future uses of the fund.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 314. TRANSFER OF FUNDS

The Secretary of the Interior may transfer
{27-19} funds to other appropriate Federal agencies, in order to
{27-20} carry out the reclamation activities authorized by this title.

Admt. No. 294

TITLE III - ABANDONED MINE RECLAMATION

SUB SEC. 315. CONTINUING LIABILITY

Nothing in this title shall be construed as
{27-23} a waiver, release, or limitation of any liability of any person,
{27-24} created by any law, for the adverse effects of coal mining
{27-25} practices.

Admt. No. 294

SEC. 316. SECRETARY'S AUTHORITY

The Secretary shall have the power and authority
{28-3} to establish rules and regulations to implement and
{28-4} administer the provisions of this title.